BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Joint Application of **DELTA AIR LINES, INC. and WESTJET** **Under 49 U.S.C. §§ 41308 and 41309 for Approval of and Antitrust Immunity for Alliance Agreements**	**Docket DOT-OST-2018-**

JOINT APPLICATION OF DELTA AND WESTJET FOR APPROVAL OF AND ANTITRUST IMMUNITY FOR ALLIANCE AGREEMENTS

Communications with respect to this document should be sent to:

Barbara Munroe
Executive Vice President
& General Counsel
Andrew Kay
Director Legal
WestJet Airlines
22 Aerial Place N.E.
Calgary, Alberta T2E 3J1, Canada

Peter Carter
Executive Vice President
& Chief Legal Officer
DELTA AIR LINES, INC.
1030 Delta Boulevard
Atlanta, Georgia 30320

Robert E. Cohn
Patrick R. Rizzi
HOGAN LOVELLS US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
Tel. 202 637 4999/5659

Counsel for Delta Air Lines, Inc. and WestJet Airlines

J. Scott McClain
Associate General Counsel
Alexander Krulic
Managing Director, Regulatory and International & Associate General Counsel
Christopher Walker
Director – Regulatory and International Affairs
Steven J. Seiden
Director – Regulatory Affairs
DELTA AIR LINES, INC.
1212 New York Avenue, NW Suite 200
Washington, DC 20005
Tel. 202-216-0700

October 10, 2018

Table of Contents

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Joint Application of **DELTA AIR LINES, INC. and WESTJET** **Under 49 U.S.C. §§ 41308 and 41309 for Approval of and Antitrust Immunity for Alliance Agreements**	)))))))))	**Docket DOT-OST-2018-**

JOINT APPLICATION OF DELTA AND WESTJET FOR APPROVAL OF AND ANTITRUST IMMUNITY FOR ALLIANCE AGREEMENTS

I. Introduction

Delta and WestJet[1] have entered into a comprehensive metal-neutral joint venture agreement ("JV Agreement") to integrate their passenger services between the United States and Canada ("JV"). The Delta/WestJet JV will be pro-competitive and pro-consumer. It will fully align Delta's and WestJet's incentives to offer more flights and lower fares in the large U.S.-Canada transborder market. It will also deliver substantial new online service benefits as the carriers' highly complementary U.S.-Canada route networks are combined to form a single integrated network. By combining their transborder route systems, Delta and WestJet (the "Joint Applicants" or "JV Partners") will offer seamless "single-carrier" metal-neutral services on U.S.-Canada transborder routes. The JV will offer Delta/WestJet customers access to world-class airline products, superior frequent flyer benefits, shared airport facilities and amenities, and a more seamless travel

[1] Common names are used throughout. Delta and WestJet are sometimes referred to herein as the "JV Partners."

experience. It will also create a more effective network competitor to United/Air Canada on U.S.-Canada transborder routes – which will inure directly to the benefit of consumers.

The JV meets the Department's public interest standard for approval and grant of antitrust immunity ("ATI"). It will produce significant public benefits and will not substantially reduce or eliminate competition in any relevant market. It is also consistent with previous grants of ATI for similar alliance arrangements. Prompt approval and grant of ATI to enable the Joint Applicants to implement the Alliance Agreements are imperative to ensure prompt delivery of the robust consumer benefits and efficiencies described in this Joint Application.

These benefits cannot be realized without a grant of ATI by the Department. While the JV Partners are confident that their JV will be a procompetitive joint venture, they cannot implement it without first securing the legal and regulatory certainty afforded by ATI in order to mitigate the serious potential risk of frivolous but prohibitively expensive antitrust litigation.

Accordingly, Delta and WestJet[2] apply, pursuant to 49 U.S.C. §§ 41308 and 41309, for approval of and a grant of ATI for the JV Agreement and other Alliance Agreements.[3]

II. Executive Summary

Delta and WestJet are forming a highly integrated joint venture for U.S.-Canada passenger air services that will enable the JV Partners to deliver robust consumer benefits and compete more effectively on transborder routes. The Delta/WestJet alliance will

[2] The Joint Applicants request that the grant of ATI extend to their majority-owned corporate affiliates. *See* DOT Order 2009-7-10, at 27, Ordering Paragraph 1; DOT Order 2011-11-16, at 7 & 11, Ordering Paragraph 1 (granting ATI to the "majority-owned affiliates" of the Joint Applicants).

[3] Appendix 2 contains a list of the Alliance Agreements, which are being provided to the Department on a confidential basis in accordance with 14 C.F.R. § 302.12.

create a comprehensive "metal-neutral" joint venture for air services between the U.S. and Canada, including all nonstop transborder routes operated by Delta, WestJet and/or their respective affiliated carriers, as well as behind and beyond connecting flights within the respective countries. The JV Agreement provides for sharing of incremental profits and losses, and is carefully structured so that the JV Partners will be indifferent as to which airline's aircraft operates any particular U.S.-Canada route, since they will share incremental profits and losses derived from the services offered on such routes; hence, the use of the term "metal-neutral."

The Delta/WestJet JV will invigorate U.S.-Canada competition and deliver robust consumer benefits. By cooperating on ticket prices, inventory availability and revenue management, Delta and WestJet will be able to offer customers lower fares. They will also be able to serve customers as if they were a single airline, providing more convenient schedules, seamless connections, and an enhanced airport experience. The JV Partners anticipate that they will be able to offer seamless metal-neutral service in over 8,100 city-pairs, including new or expanded service on at least 20 nonstop routes.

The enhanced coordination contemplated by the JV will deliver important benefits – not just for Delta and WestJet, but also for air travelers and communities across the U.S. and Canada. By joining together, Delta and WestJet will create a more extensive network and offer a superior product, and will thus be able to compete more effectively than either carrier can on its own in the absence of the JV. The Delta/WestJet JV will enhance consumer convenience and choice, produce operating efficiencies that will create greater value for passengers and shippers, increase competition in thousands of city-pairs, and generate substantial benefits for the U.S. and Canadian economies.

Canada is the second largest U.S. international market measured by passenger volume, trailing only Mexico. Improved air services will increase tourism and encourage local economic development, generating growth in employment and tax revenues. Delta and WestJet employees will benefit from growth opportunities at each of the carriers, and shareholders will enjoy improved returns resulting from synergies and market growth.

Specifically, Delta and WestJet expect that the JV will enable them to:

- Produce more than $241 million in annual consumer benefits.
- Create a metal-neutral network covering all nonstop flights between the United States and Canada.
- Create a seamless and integrated Delta/WestJet network linking over 8,100 U.S.-Canada city-pairs.
- Increase transborder capacity on the combined Delta/WestJet network by over 20%.
- New or expanded service on 20 nonstop routes, including the likely addition of at least six new, JV-enabled nonstop U.S.-Canada routes over the next five years. On one of these new routes, the JV would create the only nonstop service on the route, thus providing passengers with a significant improvement in flight options over existing service.
- Create a second joint network with sufficient critical mass to offer a meaningful alternative to the dominant United/Air Canada immunized transborder route network that, today, flies nearly 60% of the seats in the transborder market. WestJet and Delta trail significantly with 16% and 11% percent transborder seat capacity shares, respectively.
- Optimize connectivity over the Delta/WestJet hub networks and improve service and consumer choice on the largest and most important U.S.-Canada routes: New York-Toronto, Chicago-Toronto, Los Angeles-Vancouver, and Los Angeles-Toronto.
- Offer lower fares and more convenient service options by jointly setting fares and managing seat inventory on JV routes.
- Leverage schedule and aircraft efficiencies to launch additional transborder flights during slower demand hours.
- Implement a more effective and efficient joint sales force, increasing their ability to compete more effectively for corporate accounts and agency business.
- Create new efficiencies that improve the customer experience and lower costs, such as co-locating airport operations when and where possible.

The consumer benefits highlighted above represent just a sampling of how the JV will deepen and expand the successful codeshare partnership that Delta and WestJet have cultivated since 2011 – and which already includes more than 250 codeshare routes as well as basic reciprocal frequent flyer program benefits. In the absence of the JV, the carriers could not deliver these substantial new benefits, as they are the direct outgrowth of the closely integrated cooperation, access to each other's domestic networks, and ability to rely on each other's point-of-sale marketing and distribution strength made possible by the JV.

The deepening of the Delta/WestJet relationship and robust consumer benefits that the JV will produce are fully consistent with the Department's successful ATI policy and precedent. Since the Department issued its inaugural ATI grant to Northwest and KLM in 1993, the Department has entered into well over 100 open skies agreements and approved dozens of ATI applications – helping U.S. carriers and their foreign partners enhance their coordination and integrate their networks to deliver a truly global, seamless travel experience for millions of passengers. The Delta/WestJet JV will unleash benefits made possible by the 2007 U.S.-Canada Air Transport Agreement,[4] which provides a fully liberalized Open Skies environment. The U.S.-Canada Open Skies agreement provides a sound framework to support the proposed transborder JV Agreement between Delta and WestJet – and the substantial increase in new and enhanced transborder network service and competition it will produce.

The Department's sound, time-tested ATI framework has enabled Delta to form numerous ATI-approved joint ventures with its foreign partners covering the transpacific, transatlantic, and transborder (Mexico) sectors. These joint ventures connect

[4] *See* Air Transport Agreement Between the Government of the United States of America and the Government of Canada (signed Mar. 12, 2007).

complementary networks, allowing Delta and its partners to expand service options, add more convenient connections, and provide a more seamless customer experience than would otherwise have been possible. Numerous empirical studies conducted by economists have found that the increased cooperation enabled by immunized joint ventures leads to lower fares, increased traffic, and enhanced connectivity.[5] And now, by partnering with WestJet to create a seamless U.S.-Canada transborder route network, Delta is continuing to fulfill the Department's longstanding policy of facilitating the formation of highly integrated global alliances that connect consumers to the world. No airline does this better than Delta.

The Delta/WestJet JV will create a strong new network competitor for U.S.-Canada service, without any substantial reduction in competition. Delta's and WestJet's respective networks are highly complementary: WestJet's Calgary, Toronto and Vancouver hubs provide Delta with the network access it needs to interior Canada in order to compete with the immunized United/Air Canada alliance; and Delta provides WestJet with a broad U.S. network and strong marketing and distribution presence throughout the U.S. A grant of ATI to Delta/WestJet will improve the ability of the carriers to compete effectively with United/Air Canada on U.S.-Canada routes. Even with implementation of the JV, Delta and WestJet will offer a combined 27% of the U.S.-Canada transborder aviation market capacity – a total that will still fall far below the 46% market capacity offered by Air Canada alone and the 57% combined capacity of United and Air Canada under their immunized transborder cooperation.

As previously noted, Delta and WestJet have extensive experience as partners and have had an arm's length codeshare partnership since 2011. Under their current

[5] A more detailed discussion of these studies is contained in Section VI, *infra*.

arm's-length codeshare arrangement, Delta and WestJet market and sell each other's services on numerous transborder routes and domestic routes within the U.S. and Canada. However, because the carriers remain competitors with no incentive to divert traffic from their own flights to those of the other, like other arm's-length codeshare arrangements, they are unwilling to grant open access to each other's networks, resulting in sub-optimal inventory access, fewer and less attractive options for consumers, slower growth of service, and constrained capacity on transborder routes. Metal neutrality enabled by ATI is essential for each carrier to fully access the respective networks on both sides of the border. The metal-neutral JV will substantially increase the level of cooperation between Delta and WestJet, allowing for joint decisions on capacity, scheduling, and pricing. This greater coordination will generate substantial consumer benefits, as described further in Section V below.

A series of commercial implementing agreements will be entered into as part of the JV that provide for reciprocal flight ticketing and settlement, reciprocal codesharing, data security, and reciprocal frequent flyer programs ("FFP"). Together with the JV Agreement, these are the Alliance Agreements for which ATI is sought. The JV Agreement, the details of which are described more fully in Appendix 2, serves as the foundational centerpiece of the carriers' cooperation and coordination. It provides the foundation for enabling robust coordination in such commercial activities as codesharing; frequent flyer programs; route and schedule planning; sales, advertising, and marketing; pricing, inventory, procurement, and yield management; revenue allocation; ground handling; airport facilities and support services; cargo services; ticketing; and IT and distribution systems.

Delta and WestJet require ATI to deliver the significant public benefits of their JV. They cannot share profits, coordinate scheduling, network planning and pricing, or undertake many of the other joint activities contemplated by the Alliance Agreements in the absence of ATI without incurring the significant risk of frivolous antitrust litigation. No other similar alliance has been willing to proceed with its agreements in the absence of ATI from the Department. The Joint Applicants respectfully submit that the Alliance Agreements meet the Department's public interest standard for approval and are consistent with a long line of decisions that conferred ATI upon similar alliance arrangements.

III. Delta and WestJet Have a Strong Foundation of Cooperation that Will Strengthen Further as their JV Relationship Grows.

A. WestJet's Growth and Evolution.

Originally modeled in part on the early success of Southwest Airlines, WestJet commenced operations in 1996, with 220 employees and three aircraft serving five western Canadian destinations. Following low-cost-carrier (LCC) principles of a low cost base, a single fleet type, and a simple point-to-point network, WestJet brought a new competitive force to the Canadian marketplace. WestJet helped establish a new air travel alternative, expanded service to many Canadians for whom it was previously beyond their financial reach.

From 1996 through the early 2000s, WestJet remained largely in line with the LCC model and experienced substantial growth. This period of growth was driven primarily by network expansion on the foundation of having a lower cost structure than its competitors, which enabled WestJet first to grow to additional markets within Canada and later to high volume leisure markets in the U.S., Mexico, and Caribbean. During this period, a seasonal fleet deployment strategy was a further staple of WestJet's success; WestJet focused on domestic travel in the summer, when conditions in Canada are ideal, and then shifted to leisure sun destinations in the winter when Canadians naturally seek respite from frigid weather.

With a relatively small national population of 36 million spread across the second largest country in the world, 90% of Canadians reside in a long, slim band within 160Km of the U.S. border, and just 6 Canadian cities have a population exceeding one million. As a result, the applicability of the LCC model is inherently more limited within Canada than within the U.S. By the late 2000s it became increasingly clear that strict adherence to an LCC model was becoming a limiting factor and would eventually halt WestJet's further growth. Opportunities for organic network growth with a B737 single fleet type were largely exhausted. Low fare leisure travel demand had been well addressed, but WestJet lacked the products and services to effectively compete in the broader airline marketplace. WestJet's low-cost ticketless model was a technical barrier to airline partnerships and thereby the ability to capture demand beyond WestJet's own network. While WestJet's fortunes were tied almost exclusively to Canadian economic conditions, WestJet's competitors (particularly Air Canada) had a significant advantage from their diversified domestic and long-haul networks and global partnerships. WestJet's challenges were exacerbated by an unavoidably rising cost structure as the airline matured (tenured staff with rising pay scales, aging aircraft requiring incremental maintenance, declining marginal returns of new opportunities, and requirements for more sophisticated tools/systems to tap them, etc.).

All of these factors combined to make clear that the LCC-based success of WestJet's early years would not carry into the future without fundamental changes to WestJet's business model. Accordingly, WestJet took several strategic steps to evolve into a global carrier – including implementing the following initiatives:

- Multiple fleet types including B-737NG & MAX, Q400, B-767, and beginning in 2019, B-787 to address a wider range of markets. These WestJet operated fleet types are complemented by third party capacity purchase arrangements to address markets not large enough for efficient Q400 service.

- Expansion of service to points in Europe (CDG, DUB, GLA, LGW) from multiple points in Canada with both narrow and wide body aircraft to meet the needs of more travelers and further diversify the WestJet network.
- Owing to declining marginal point-to-point opportunities and the above related network and fleet diversification, a natural shift from a point-to-point model toward hub-and-spoke operations where smaller gauge, short haul aircraft connect traffic flows to larger aircraft serving lower-demand and more distant destinations.
- Product evolution to attract higher-yielding and feature-sensitive guests in new market segments, including well-appointed premium economy and bespoke business class cabins, state-of-the-art inflight entertainment with WiFi, lounges at larger Canadian airports, and a robust frequent flyer program complemented by an award winning co-branded credit card.
- The creation of a new subsidiary, which will operate as an ultra-low-cost carrier (Swoop), to address the highly fare sensitive market segment with an appropriate product and sustainable cost structure while the core WestJet product evolves to address a broader range of market segments.
- Transition to a traditional ticket-based reservations system (Sabre) which has enabled over 50 airline partnerships (interline, codeshare, frequent flyer) to be established. These relationships have both expanded WestJet's reach to global markets beyond North America and provided many new options to connect long-haul travelers to points within the WestJet network.

Today, WestJet is in the midst of a multi-year effort to transform into a high-value, full-service, hub-and-spoke global carrier, offering premium features and broad consumer benefits in order to appeal to premium guests, increasing market share through diversified products covering the range from the most fare sensitive to the most product/service sensitive, and generally more effectively competing with Air Canada and the many other carriers serving the Canadian market.

WestJet currently operates 169 aircraft serving 106 destinations in Canada, the United States, the Caribbean, Mexico, and Europe. In particular, since the onset of transborder operations in 2004, WestJet has grown its services to 25 U.S. destinations. Importantly, since WestJet's inception and throughout this period of growth and change, WestJet has maintained an unwavering commitment to customer service and responsiveness and continues to win accolades and awards as Canada's preferred airline.

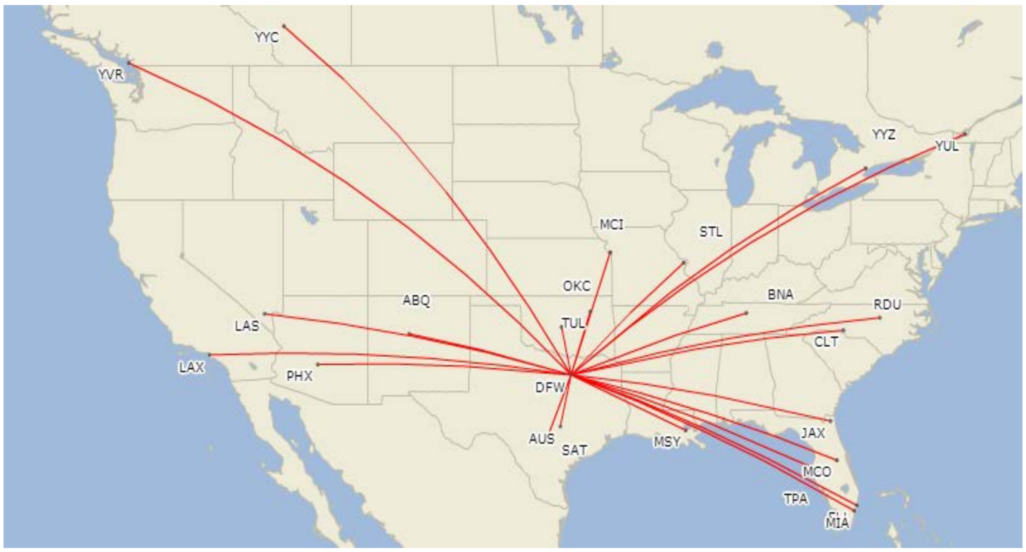
B. A JV with Delta is a Natural Fit for WestJet.

As part of its evolution, WestJet has made substantial investments in its fleet, product offerings, technology, and network and schedule depth. Despite these investments, WestJet's ability to grow its U.S.-Canada transborder service organically has largely plateaued. The leisure markets with large volumes of Canada point-of-sale traffic are already well-served by WestJet, and elsewhere WestJet's progress is constrained by its limited U.S. presence and lack of broad access to the U.S. market. These limiting factors make it very difficult to attract premium and corporate travelers, as well as U.S. point-of-sale travelers. This is especially true in an operating environment where the primary Canadian competitor, Air Canada, has a much larger route network and schedule offering, a larger frequent flyer program membership, well-established airline alliance relationships, and ATI with one of the largest U.S. carriers, United Airlines.

Beginning in 2010, WestJet has established a number of interline, codeshare, and frequent flyer relationships with U.S. airlines to better serve the transborder market. The most evolved of these relationships were those with Delta and American, both of which featured interline, codeshare, and reciprocal frequent flyer accrual. While both of these relationships were substantial, by 2017 both were reaching plateaus with limited future growth because these arm's-length relationships have inherent limitations which constrain WestJet's ability to access the broader U.S. marketplace. Two real-life examples of such constraints serve to illustrate the point that under arm's-length codesharing, the parties have limited incentives to provide each other the level of unrestricted network access that maximizes growth and consumer benefits:

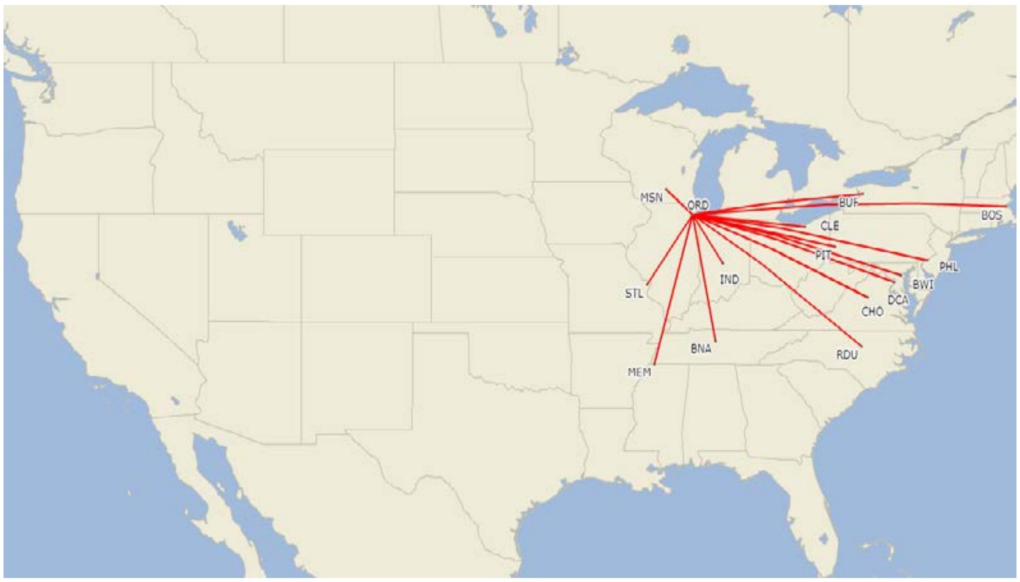
1. WestJet initiated Calgary (YYC) – Dallas/Ft. Worth (DFW) service in 2013. In the initial year of service, the WestJet operated flights had the support of both AA*WS codeshare on the WestJet YYC-DFW flight as well as broad WS*AA codeshare and interline access for connections over DFW to many U.S. destinations (*see* Figure 1 below). However, without an immunized JV under which to coordinate actions and share benefits, American subsequently determined that this level of support for the WestJet operated flights was not aligned with their interests, and beginning in the 2014 season, both the AA*WS codeshare on the WestJet YYC-DFW flight as well all codeshare and interline connectivity across DFW were removed. With reduced U.S. point-of-sale support combined with an inability to build connecting itineraries to U.S cities beyond DFW, the WestJet YYC-DFW service was not financially viable and WestJet was forced to cease the service in 2018.

Figure 1: **WestJet codeshare access to AA network via DFW circa 2013**



2. WestJet initiated service between Calgary (YYC) and Chicago (ORD) in 2013. Despite having a mature reciprocal codeshare relationship with American and despite ORD being one of 4 primary U.S. hubs of American, WestJet was only able to negotiate codeshare access to 14 of 117 American ORD-USA routes (*see* Figure 2 below). Once again, under arm's-length codesharing, American did not have sufficient financial incentive to broadly open its network to WestJet codeshare access, as it was viewed as diversionary to traffic movement on American's own metal across its DFW, MIA, and ORD hubs. Without broad access to build connecting itineraries, WestJet was ultimately forced to cease operations on this route in 2018 as well.

Figure 2: WestJet codeshare access to AA network via ORD circa 2017



As WestJet encountered these and other limiting scenarios, it became clear that WestJet's strategy of forming multiple arm's-length relationships with U.S. carriers had run its course. A deeper joint venture relationship with a primary U.S. partner would be required to enable WestJet to grow into an expanded transborder presence.

Delta is the most natural fit as the U.S. joint venture partner for WestJet for the following reasons:

- Delta and WestJet have many years of harmonious working history, albeit within the constraints of an arm's-length model.
- Delta has an extensive track record in successfully developing profit-sharing JV relationships that benefit both the airlines and consumers.

- WestJet's and Delta's transborder networks are highly complementary, with no airport-pair overlaps, and both carriers have extensive domestic networks connecting from their transborder services with which to generate carrier and consumer value under a JV.
- WestJet's and Delta's systems (reservations, revenue management, inventory management, revenue accounting, departure control, etc.) are fully compatible as evidenced by the current extensive reciprocal codeshare relationship. For example, WestJet uses a number of Sabre systems, highly analogous to the existing Delta-Aeromexico JCA.

From this strong foundation, the metal-neutral Delta/WestJet JV will give WestJet virtually unfettered access to Delta's hubs, focus cities, and extensive beyond network within the U.S. Additionally, Delta's U.S. point-of-sale strength will provide WestJet with a significantly enhanced presence in the U.S. to compete more effectively for U.S.-originating passengers, especially premium and corporate travelers. This JV relationship with Delta will unlock a new phase of transborder growth for WestJet and is a key component in WestJet's continued transition to a high-value, global network carrier.

C. Swoop: a ULCC within the Delta/WestJet JV

As an additional tool to support its evolution as an airline, WestJet created a new subsidiary operating as an ultra-low-cost carrier (ULCC), Swoop, which began service in June 2018, to provide a competitive offering for very price-sensitive travelers and with a low cost structure suited to compete more effectively with ULCCs serving Canada. Swoop provides a completely unbundled, no-frills, low-fare air travel option in point-to-point leisure markets for the price-sensitive traveler. Swoop recently announced it would offer its low-fare, point-to-point service from Canada to leisure-oriented/vacation destinations in the U.S. (e.g., Mesa/Phoenix, Las Vegas, Ft. Lauderdale, Orlando, and Tampa).[6]

Swoop's product is completely distinct and separate from WestJet and intentionally so, in order to avoid passenger confusion from the differing types and levels of service offered by the two carriers (a competing Canadian carrier created significant customer confusion by blending its mainline operations and in-house LCC) and to maintain the low-cost structure necessary for operation of a ULCC. Swoop has its own operating certificate, brand, website (no GDS offering), and a dedicated and liveried single fleet type of high density, all economy B-737-800. True to the ultra-low-cost model, Swoop does not offer connections across its own flights nor with any other carrier (including WestJet). Further, Swoop does not have a frequent flyer loyalty program.

WestJet and Delta agree that transborder ULCC operations should be fully within the scope of the JV. First and foremost, the ULCC will be an additional tool to advance the goals of the JV and enhance transborder competition by allowing the JV Partners to more effectively participate in transborder markets where a ULCC product is better suited to market conditions than other WestJet and Delta products.

Confidential Treatment Requested Under 14 C.F.R. 302.12

[redacted]

6 Swoop News Release, *U.S. Gets Service From Canada's Ultra-low-fare Airline* (Aug. 2, 2018) (announcing service to Mesa/Phoenix, Las Vegas, Ft. Lauderdale, Orlando, and Tampa), available at https://www.flyswoop.com/blog/us-gets-swoop-service.html.

Confidential Treatment Requested Under 14 C.F.R. 302.12

[redacted]

IV. The Joint Application Meets the Department's Legal Standards for Granting Immunity.

Because the Delta/WestJet JV will generate rich, sustainable consumer benefits and do so without substantially reducing competition, there is no question that this Joint Application meets the applicable statutory and policy standards for granting ATI. In considering applications for ATI, the Department engages in a two-part analysis: a "competitive analysis" and a "public benefits" analysis.[7] Under 49 U.S.C. § 41309(b), the Department will "approve an agreement . . . when the Secretary finds it is not adverse to the public interest and is not in violation of this part." If the Department approves an agreement under 49 U.S.C. § 41309, the Department has the discretion to grant ATI under 49 U.S.C. § 41308 "provided that [the Department determines] the exemption is required by the public interest."[8] When conducting this analysis, the Department will balance any anti-competitive effects of the proposed transaction against the expected public benefits. If it concludes that the public interest requires it, the Department is authorized to grant ATI to the extent necessary to allow the parties to proceed with the transaction.[9]

The Department's established policy is to approve and grant ATI for inter-carrier agreements if:

[7] *See* DOT Order 2011-11-16, at 5; DOT Order 2010-7-8, at 7-8.

[8] DOT Order 2011-11-16, at 5; *see also* 49 U.S.C. § 41308.

[9] 49 U.S.C. § 41308; DOT Order 2013-8-21, at 5; DOT Order 2011-11-16, at 5; DOT Order 2010-7-8, at 8.

(1) the agreements do not eliminate or substantially reduce competition and are not adverse to the public interest; and

(2) a grant of immunity is required by the public interest and for the parties to proceed with the transaction.[10]

For the reasons discussed below, the Joint Application meets these criteria.

V. The JV Will Enhance – Not Harm – Competition.

The JV will not substantially reduce or eliminate competition in any market. To the contrary, it will enhance competition – particularly in the U.S.-Canada transborder market. The JV will enable Delta and WestJet to form a more attractive joint network to compete more effectively with United and Air Canada – which together have a nearly 60% share of the U.S.-Canada market – and the cadre of rapidly expanding new entrant carriers serving transborder routes. Because the existing Delta and WestJet networks are highly complementary, the extent to which the two carriers directly compete today is very limited. Delta and WestJet do not operate overlapping service on any airport-pair, and they offer competitive nonstop service on only a single city-pair – New York City-Toronto. On that route, they fly to different airports in NYC: JFK for Delta and LGA for WestJet. The Delta/WestJet JV will not harm the robust nonstop competition that already exists and will continue to exist on this route. Six carriers currently serve it, and four nonstop competitors will remain after the JV is implemented (treating immunized United/Air Canada as a single competitor). Moreover, the New York City-Toronto market will continue to be available for new entry and expansion of service by other carriers in the Open Skies transborder U.S.-Canada environment.

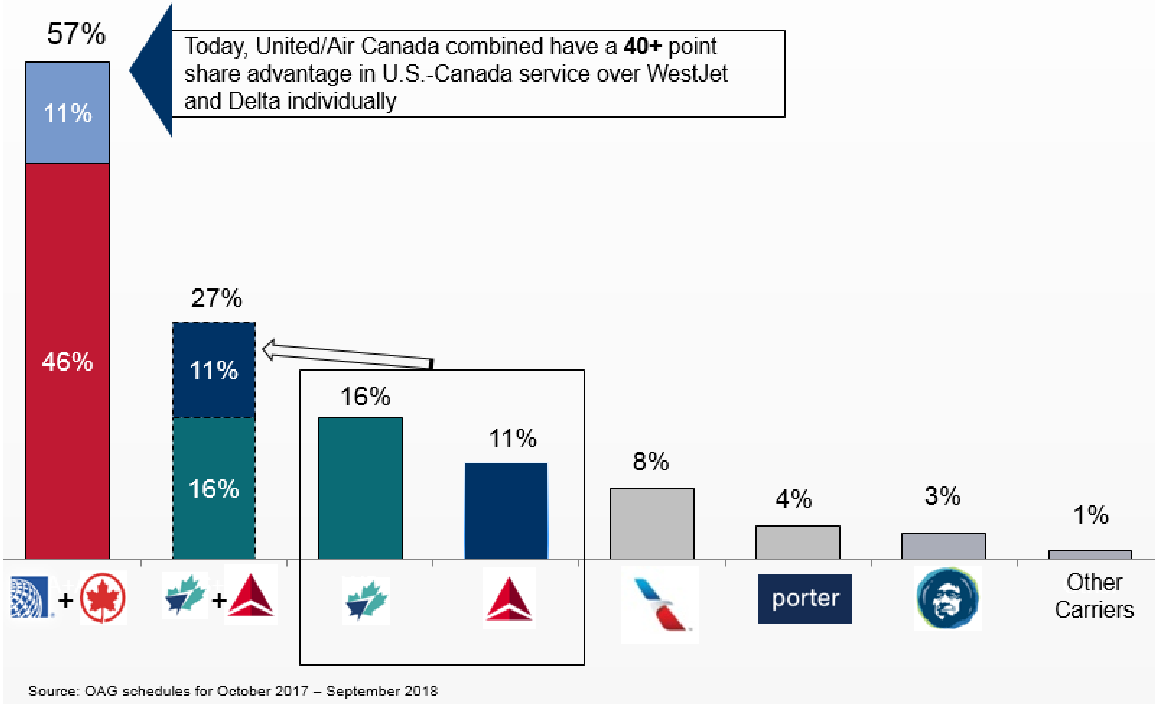
[10] DOT Order 2010-7-8, at 8.

A. Airline Competition Between the U.S. and Canada is Strong and Will Remain So After the JV is Implemented.

The Delta/WestJet JV will enhance competition for passenger air services between the U.S. and Canada – the second largest U.S. international air transportation market by passenger volume. The competitive landscape for air travel in the substantial U.S.-Canada market is strong and fertile for growth – attributable, in large part, to the Open Skies environment between the two countries. A liberalized transborder agreement with Canada has been in place for nearly 25 years, affording every U.S. and Canadian carrier the opportunity and flexibility to enter the market or add service in any transborder city-pair, either on a nonstop or connecting basis. The U.S. and Canada reached a full Open Skies agreement in 2007, which eliminated all restrictions on the operation of fifth- and sixth-freedom services and liberalized the cargo market. Consequently, competition in this transborder market is intense.

As shown in Figure 3 below, the U.S.-Canada marketplace is served by numerous U.S. and Canadian carriers. A total of 10 U.S. and Canadian carriers currently operate scheduled nonstop service between points in the U.S. and Canada including Air Canada, WestJet, United, American, Delta, Alaska, Porter Airlines, Frontier Airlines, Sunwing, and Air Transat. There is also a remarkably high frequency of transborder service, which ensures that the vast majority of transborder passengers can choose from a wide range of convenient nonstop and connecting service options.

Figure 3: U.S.-Canada Seat Share by Carrier



Despite the multitude of airlines that provide nonstop service between points in the U.S. and Canada, there is one Canadian carrier that stands head and shoulders above the rest in terms of market share. Air Canada has a 46% seat share of the U.S.-Canada market. It operates more nonstop flights on more routes between the U.S. and Canada than any other carrier, and directly serves an extensive 57 U.S. destinations – more than twice the number of U.S. destinations served by WestJet (25).

Air Canada's presence in the U.S. continues to grow; just last year, Air Canada launched nine new transborder routes to the U.S.[11] And this year, Air Canada has

[11] Air Canada's new U.S. flights in 2017 included Toronto-Savannah, Toronto-San Antonio, Toronto-Memphis, Vancouver-Dallas, Vancouver-Denver, Vancouver-Boston, Vancouver-Orlando, Montreal-Dallas and Montreal-Washington Dulles.

launched or plans to launch seven new nonstop U.S. flights.[12] Although WestJet's U.S.-Canada seat share has also grown, WestJet continues to trail Air Canada by nearly 30 percentage points.

United and its Star Alliance partner Air Canada are, by far, the largest U.S.-Canada competitors, with a combined 57% U.S.-Canada capacity share. United and Air Canada have broad and penetrating network coverage between the U.S. and Canada via United's Chicago, Denver, Houston, Los Angeles, New York, San Francisco, and Washington, D.C. hubs and Air Canada's Toronto, Montreal, Vancouver, and Calgary hubs.

The Delta/WestJet JV will improve the already robust playing field in the U.S.-Canada market by allowing Delta and WestJet to add capacity and compete more effectively against United/Air Canada. Delta and WestJet today, individually and combined, have substantially smaller market shares than Air Canada (or United/Air Canada combined) in the U.S.-Canada market. Individually, WestJet and Delta rank as a distant 2nd and 4th place compared to Air Canada, with 16% and 11% percent transborder seat capacity shares, respectively.[13] *See* Figure 3. Even on implementation of their JV, the joint Delta/WestJet network will still trail Air Canada by 19 percentage points (*i.e.*, 46% to 27%) and United/Air Canada combined by 30 percentage points (*i.e.*, 57% to 27%). Neither Delta nor WestJet individually has the ability to offer a single carrier network of comparable scope and scale to compete with United/Air Canada.

[12] Air Canada has announced plans to launch, or otherwise has launched, in 2018 new flights on the following Canada-U.S. routes: Montreal-Phoenix, Edmonton-San Francisco, Toronto-Omaha, Toronto-Providence, Montreal-Baltimore, Montreal-Pittsburgh, and Vancouver-Sacramento. *See* Air Canada News Releases, *Air Canada Completes Inauguration of 25 New Non-Stop International, Transborder and Domestic Routes This Summer* (July 2, 2018), https://aircanada.mediaroom.com/2018-07-02-Air-Canada-Completes-Inauguration-of-25-New-Non-Stop-International-Transborder-and-Domestic-Routes-This-Summer.

[13] OAG Seat Shares, October 2017 – September 2018.

A Delta/WestJet JV creates a strong (albeit smaller) second network competitor to United/Air Canada. WestJet's hubs at Toronto Pearson International Airport, Vancouver International Airport, and Calgary International Airport provide broad coverage of interior Canada, enabling the JV to offer a transborder network that rivals that of the leading competitors. And the JV will provide a platform allowing WestJet to expand into Delta's hubs. WestJet currently serves 25 U.S. destinations but not the Delta hubs in Atlanta, Detroit, Minneapolis, Seattle, and Salt Lake City. Once the JV is implemented, and Delta and WestJet are able to cooperate more deeply on pricing, scheduling, fleet optimization, and other activities, WestJet will have the necessary support to successfully inaugurate service to more of Delta's hubs to access Delta's comprehensive U.S. network. Without the support of an ATI grant, this service expansion would not be feasible for WestJet.

Not only will the Delta/WestJet JV face extensive existing competition, it will face extensive potential competition. The geographic proximity and short-haul nature of the U.S.-Canada transborder market, combined with the mature Open Skies environment, create a highly competitive air travel market between the U.S. and Canada with low barriers to entry. Shorter geographic distances facilitate quick growth with less expensive narrowbody aircraft, making barriers to entry in these markets remarkably low. Airlines like Southwest, JetBlue, Spirit, and Allegiant, for example, which currently do not serve Canada, could very well enter the market soon; indeed, Southwest recently indicated at a shareholders meeting that it is considering flights to Canada in the near future.[14]

[14] Amanda Yeager, *Southwest Airlines Eyes New International Routes*, ORLANDO BUSINESS JOURNAL (May 18, 2018), https://www.bizjournals.com/orlando/news/2018/05/18/southwest-airlines-eyes-new-international-routes.html.

The Department aptly characterized the intense competitive environment in the U.S.-Canada transborder market when it granted expanded ATI to the Star Alliance carriers in 2009:

> "In transborder markets, the competitive structure resembles the U.S. domestic market in several important ways. Significantly shorter stage lengths create a less costly and commercially risky environment, because the markets can be readily served by narrow-body or regional aircraft. Consequently, low-cost carriers and major airlines based on both sides of the border have introduced new services, and are poised to introduce more in the future, from primary or secondary airports."[15]

The Department was prescient when it predicted in 2009 that LCCs and other competitors would introduce new transborder service between the U.S. and Canada. Since that time, airlines other than the Star alliance carriers have increased transborder seat capacity by nearly 25%. Low cost carriers in Canada are flourishing – and several have already launched (or soon will be launching) transborder service to the U.S. Air Canada's LCC subsidiary, Rouge, began operations in 2013 and now provides competitive, low-cost nonstop service to U.S. destinations such as San Diego, Palm Springs, Las Vegas, Phoenix, Honolulu, Los Angeles, Maui, and Kona.[16] Fast-growing Canadian ULCC Flair Airlines, in addition to serving popular domestic routes in Canada, recently announced that it will inaugurate 11 new nonstop transborder flights to the U.S. for the upcoming winter season, including service between: Edmonton and Las Vegas, Phoenix, Palm Springs, Orlando, and Miami; Winnipeg and Las Vegas, Phoenix, Orlando, Miami, and St. Petersburg; and Toronto and Miami.[17] Jetlines is another start-up

[15] DOT Order 2009-4-5 at 13.

[16] Air Canada Rouge, Route Map, https://flyrouge.com/ca/en/index.html.

[17] Mark Nensel, *Canada's Flair Airlines Plans 11 US Flights*, (Aug. 20, 2018), AIR TRANSPORT WORLD, http://atwonline.com/airports-routes/canada-s-flair-airlines-plans-11-us-flights. *See also* DOT Order 2018-1-23 (granting Flair an amended foreign air carrier permit authorizing it to provide scheduled and charter service to the U.S. to the full extent permitted by the U.S.-Canada Open Skies Agreement).

Canadian ULCC that will add to the competitive mix. Based in Vancouver, Jetlines' planned route map includes service to U.S. destinations such as Las Vegas, Phoenix, Orlando, Tampa, Fort Myers, and Fort Lauderdale.[18]

In sum, the U.S.-Canada transborder market has exhibited steady growth over the past decade – and, with the U.S.-Canada Open Skies Agreement in place, this market still has plenty of room to grow.

B. The JV Will Not Substantially Reduce Competition on Any U.S.-Canada City-Pair

In ATI cases, the Department typically considers the effect of a proposed immunized joint venture on competition at the city-pair level. Here, the JV will not substantially reduce competition on any U.S.-Canada city-pair. Because the networks of Delta and WestJet are highly complementary, the extent to which the two carriers directly compete today on nonstop routes between the U.S. and Canada is minimal. In fact, as noted above, the combination of the highly complementary Delta and WestJet networks will likely result in over 8,100 available non-stop and connecting transborder routings for consumers.

There are no transborder airport-pairs on which Delta and WestJet offer overlapping nonstop service. And, there is only one transborder city-pair on which Delta and WestJet offer overlapping nonstop service – New York City-Toronto.[19] The JV will not reduce competition on this route; to the contrary, it will increase competition by enabling additional/enhanced service and more attractive schedules. Competition on this

[18] Jetlines, Planned Route Map, https://jetlines.ca/strategy/planned-route-map/.

[19] Delta and WestJet previously both offered service between Los Angeles-Vancouver and were two of five carriers on this route. However, this service was unprofitable for Delta and, as of February 28, 2018, Delta no longer operates on this route. WestJet continues to provide nonstop service on this route.

route will remain robust, with four nonstop competitors, including Delta/WestJet, after the JV is implemented (treating immunized United/Air Canada as a single competitor in this context). *See* Figure 4 below.

Figure 4: Current New York City-Toronto Nonstop Service Options

Airline	Daily Flights between NYC and YTO
Air Canada	19
Porter	12
WestJet	7
American	6
United	4
Delta	3

Source: OAG schedules for October 2017 – September 2018.

Seat shares are also highly competitive in the New York City-Toronto market. As indicated in Figure 5 below, six carriers currently serve this route and the JV Partners' joint seat share (24.7%) is considerably lower than Air Canada's (45.5%). Delta's seat share (5.5%) is less than that of Porter Airlines (18.5%) and American Airlines (6.8%) and only slightly greater than that of United (4.4%), which holds an advantage in Canada over other U.S. airlines on this route by virtue of its immunized alliance with Air Canada.

Figure 5: NYC-Toronto Seat Shares

New York City-Toronto	
Airline	**Share Estimate (%)**
Delta	5.5
WestJet	19.2
Combined	**24.7**
Air Canada	45.5
Porter Airlines	18.5

American Airlines	6.8
United Airlines	4.4
TOTAL	100%

Source: OAG schedules for October 2017 – September 2018.

The JV Partners' seat share on this route, whether considered individually or on a combined basis, is well below any level that could give rise to competition concerns.

And while Delta and WestJet both operate service in the broader New York City-Toronto market, they serve different airports in New York City: Delta's service between New York City and Toronto is limited to JFK, whereas WestJet's service on this city-pair is limited to LGA. In this respect, WestJet's service offering is more directly competitive with both Air Canada and American, which also offer New York (LGA)-Toronto service, while Delta's offering is more directly competitive with American, which also offers New York (JFK)-Toronto service.

Consequently, given the level of existing and potential competition, Delta and WestJet will not be able to "impose and sustain supra competitive prices or reduce service levels below competitive levels."[20] Rather, given the increased competition and capacity on the route, consumers will benefit.

It bears emphasis that even upon approval and immunization of the JV Agreement, Air Canada will remain, by far, the largest competitor in the New York City-Toronto market, representing almost double the total capacity that WestJet and Delta offer on a combined basis (*i.e.*, 45.5% to 24.7%). Additionally, Porter Airlines, American, and United also offer nonstop service on this route – making New York City-Toronto the most competitive of any U.S.-Canada transborder city-pair (as measured by number of airline competitors).

[20] DOT Order 2008-4-17, at 12.

Since several major U.S. and Canadian airlines already hold slots and facilities in Toronto and New York (and Newark is no longer slot constrained), there are no entry barriers that would prevent additional competitive service from being offered on this city-pair – either in terms of new nonstop frequencies or in terms of additional seats being offered by carriers. Indeed, the Department reached this very conclusion in the 2009 Star ATI Show Cause Order, explaining that in the event "new entrants encounter difficulties in obtaining slots at New York or Canadian airports, incumbent carriers are well positioned to launch competing services should the proposed [Air Canada/United] alliance attempt to increase prices above, or reduce service levels below, competitive levels."[21]

Given the highly complementary nature of the Delta and WestJet route networks, the competitive effects analysis required by this Joint Application is far simpler – and even more favorable – than previous ATI cases that the Department has approved. With only one Delta-WestJet overlapping nonstop city-pair, there are fewer overlaps than were involved in other alliances for which ATI was granted. As shown in Figure 6 below, the oneworld carriers had eight nonstop overlapping routes when the Department granted oneworld ATI. See *2010 oneworld ATI*, DOT Order 2010-2-8, at 21 (Table 5) (DFW/BOS/ORD/MIA/LAX/NYC-London, MIA-Madrid, NYC-Paris). The Star Alliance carriers had six nonstop overlapping routes to/from Tokyo when the Department granted ANA, United, and Continental ATI, and the oneworld Alliance carriers had three nonstop overlapping routes to/from Tokyo when the Department granted American and Japan Airlines ATI. *See 2010 U.S.-Japan Alliance Case*, DOT Order 2010-10-4, at 9 (Table 3) (Star: WAS, CHI, SFO, HNL, NYC, LAX; oneworld: CHI, NYC, LAX). More recently, Delta and Aeromexico had two nonstop overlapping routes (JFK-MEX and LAX-GDL) when the

[21] DOT Order 2009-4-5, at 13.

Department granted their ATI application. *See Delta/Aeromexico ATI Proceeding,* DOT Order 2016-11-2, at 13.

Figure 6: Nonstop City-Pair Overlaps in Approved ATI Cases

	No. of Overlapping Nonstop City-Pair Routes	**DOT Order**
2010 oneworld ATI	8	2010-2-8
2010 U.S.-Japan Alliance (UA/ANA - Star)	6	2010-10-4
2010 U.S.-Japan Alliance (AA/JAL - oneworld)	3	2010-10-4
2016 DL/AM ATI	2	2016-12-13
Delta-WestJet	1	

Moreover, in both the 2010 oneworld ATI and 2010 U.S.-Japan Alliance cases, the grant of ATI reduced the number of competitors to four or fewer on each nonstop overlap route. Here, by contrast, there would still be at least four competitors on the New York City-Toronto city-pair (treating immunized United/Air Canada as a single competitor).

VI. The Delta/WestJet JV Will Generate Substantial Consumer Benefits.

The JV is carefully and deliberately structured to produce substantial benefits, and the JV Partners desire to begin delivering them to the traveling public as soon as all regulatory approvals have been secured. Together, Delta and WestJet will offer consumers lower fares, more routing options, more convenient connections, better time-of-day coverage, augmented reciprocal frequent flier benefits, and enhanced customer service offerings in over 8,100 U.S.-Canada markets. Under the JV, Delta and WestJet will be able to introduce new nonstop services that would not otherwise be achievable as two standalone competitors, increase service on hub-to-hub pipeline routes, and offer more frequencies and superior products and services on the largest and most important transborder routes: New York-Toronto, Chicago-Toronto, Los Angeles-Toronto, and Los Angeles-Vancouver.

Dr. Bryan Keating has analyzed the consumer benefits expected to be generated by the JV using economic modeling based on Delta's internal Quality of Service Index forecasting tool (which the Department has found reliable and persuasive when analyzing previous joint ventures).[22] As Dr. Keating describes in more detail in his Report, this economic modeling of the expected benefits implicitly captures and quantifies the consumer benefits arising from the service quality improvements that the JV is expected to generate: expanded codesharing and network improvements; reductions in double marginalization that benefit consumers by providing the most attractive offerings in terms of price and schedule; improved customer service experience; frequent flyer program enhancements; and so on. Dr. Keating estimates that implementation of the JV will generate over $241 million in annual consumer benefits for passengers.[23] These benefits will be achieved through enhanced codesharing opportunities, improved routing options, reduced costs, and increased synergies.

While Delta and WestJet will soon be entering the eighth year of their codeshare partnership, the lack of metal neutrality between them has limited their ability to reach agreement on expanded codesharing, limited their willingness to engage in joint corporate and agency sales contracting with each other, and limited their commercial incentives to cooperate with each other in joint purchasing opportunities or to offer the kinds of extensive mutual frequent flyer benefits to each other's loyalty program members that true metal neutrality brings. It has also limited their willingness to make the kinds of

[22] *See, e.g.,* DOT Order 2013-8-21, at 14-15.

[23] Keating Report, at 3.

investments in airport co-location, product design, and information technology that long-term metal-neutral joint venture partners are willing to make. Implementation of the metal-neutral JV will eliminate the commercial impediments to realizing the full potential public benefits of their alliance.

A. The Substantial Public Benefits of Metal-Neutral Joint Ventures are Well-Established in the Department's Precedent and the Economic Literature.

The Department and academic researchers have documented the extensive benefits that antitrust immunized alliances – and particularly metal-neutral joint ventures – create for the traveling public. These joint ventures are in the public interest because they produce myriad consumer benefits, including reduced fares, increased capacity, and seamless joint networks.

> "Antitrust immunity is well suited to enable carriers to achieve merger-like efficiencies and deliver benefits that would not otherwise be possible."[24]

****

> "The likelihood that these proposed benefits [e.g., the creation of a meaningful competitive alternative to the oneworld JV, optimized scheduling, full metal-neutral codesharing, elimination of double marginalization, efficiencies from joint sales forces and co-location] will be realized is supported by the Department's historical experience in reviewing antitrust immunity cases and annual reports submitted by certain immunized carriers, which have allowed the Department to monitor the extent to which consumer benefits have materialized."[25]

****

> "Past experience with other integrated and immunized alliances (such as that between United/Lufthansa, Delta/Air France, and Northwest/KLM) shows that benefits from new direct routes, increased frequencies, greater capacity on hub-to-hub and other routes linking the airlines' networks and

[24] DOT Order 2008-4-17, at 15.

[25] DOT Order 2013-8-21, at 15.

associated increases in passenger volumes may be expected to develop over time as synergies from the integrated joint venture are facilitated."[26]

****

Researchers have confirmed these benefits. A 2011 study concluded that greater cooperation among airlines generally resulted in lower fares:

"Overall, the results show that airline cooperation reduces the fares for interline passengers below the levels paid by passengers using traditional service, where cooperation is absent. In addition, the results show that incremental increases in cooperation, where codesharing or antitrust immunity is added to basic alliance service, yield incremental reductions in the fare . . . ."[27]

A more recent and comprehensive 2017 study on international cooperation among airlines analyzed passenger, capacity, and fare data over nearly two decades and concluded:

"`Metal neutral' joint ventures (JVs) lead to substantially larger fare reductions, similar to those associated with online service in which a single carrier serves the entire connecting itinerary. For nonstop passengers we find that the formation of an ATI or JV between two or more airlines serving a route does not generate higher fares. Finally, we find that ATIs and JVs are associated with increased segment traffic and net entry on routes. Our results collectively demonstrate that, on the whole, ATI grants—particularly when coupled with the formation of JVs—have been strongly procompetitive, generating lower fares on connecting routes and increased traffic on segments served by multiple alliance partners, with no associated increase in nonstop fares where partner airlines overlap operations."[28]

Even skeptics of ATI, like Hawaiian Airlines, have come to realize that joint ventures are pro-competitive and pro-consumer. In Hawaiian's own words:

"The Department has generally found that metal-neutral, revenue-sharing JV agreements are procompetitive and beneficial for consumers because the JV partners have "common economic incentives to promote the

[26] DOT Order 2009-7-10, at 14 (footnotes omitted).

[27] J. Brueckner, D. Lee, and E. Singer, Alliances, Codesharing, Antitrust Immunity, and International Airfares: Do Previous Patterns Persist?, 7 Journal of Competition Law & Economics 573, 594 (2011).

[28] R. Calzaretta, Y. Eilat, and M. Israel, *Competitive Effects of International Airline Cooperation*, 13 Journal of Competition Law & Economics 501 (2017).

> success of the alliance over their individual corporate interests." Indeed, the Department seemed prescient when it predicted 25 years ago that, as the industry and regulatory practices continued to evolve, airlines would develop closer partnerships yielding benefits greater than simple codesharing. ATI allows such partners to "achieve merger-like efficiencies and deliver public benefits that would not otherwise be possible." The Department has recognized that metal-neutral JVs may, among other things, reduce fares, grow capacity, and promote a seamless joint network."[29]

B. The Recently Implemented Delta/Aeromexico Transborder U.S.-Mexico Joint Venture Has Already Delivered Robust Consumer and Competitive Benefits, Proving that the Virtues of Immunized Joint Venture Cooperation Are Not Limited to Transoceanic Flying.

In December 2016, Delta and Aeromexico received a grant of ATI from the Department for their metal-neutral Joint Cooperation Agreement ("JCA") covering routes between the U.S. and Mexico.[30] In granting ATI, the Department predicted that the Delta/Aeromexico JCA would generate substantial public benefits to the traveling public, "including broader connectivity between the United States and Mexico, improved network coordination, reduced travel times, and improved efficiency."[31] The Department was prescient. In just its first year of operation, the JCA has already generated the important public benefits that the Department correctly predicted would arise from pro-competitive metal-neutral joint ventures, including new and expanded service, increased capacity, significant increases in the scope of the combined networks, and more convenient schedule offerings and airport connections for the traveling public. Provided below, in Figure 7, is a graphical snapshot of the benefits to consumers, competition, and communities resulting from the JCA partnership in the first year alone.

[29] Joint Application of Hawaiian Airlines, Inc. and Japan Airlines Co., Ltd. for Approval of and Antitrust Immunity for Alliance Agreements, Docket DOT-OST-2018-0084 (June 14, 2018), at 17 (internal citations omitted).

[30] *See* DOT Final Order 2016-12-13, at 2.

[31] *See id*. at 1.

Figure 7: Year 1 Highlights of the Delta/Aeromexico JCA Partnership

Since the JCA was implemented in May 2017, more than 7 million passengers have enjoyed improved connectivity, more convenient schedules, and increasingly seamless service between the two carriers.[32] Today, Delta and Aeromexico together offer more than 1,100 weekly flights on 64 routes between 10 cities in Mexico and 33 in the

[32] Delta News Hub, *Delta and Aeromexico Celebrate Successful First Year of Joint Cooperation Agreement* (May 8, 2018), https://news.delta.com/delta-and-aeromexico-celebrate-successful-first-year-joint-cooperation-agreement.

U.S.[33] Delta/Aeromexico's U.S.-Mexico capacity increased 11 percent between June 2017 and June 2018.[34] And the Delta/Aeromexico JCA has launched entirely new nonstop service on six U.S.-Mexico routes, including:

- Atlanta-Queretaro
- Atlanta - Mérida
- Portland-Mexico City
- Seattle-Mexico City
- San Jose-Guadalajara
- Detroit - León

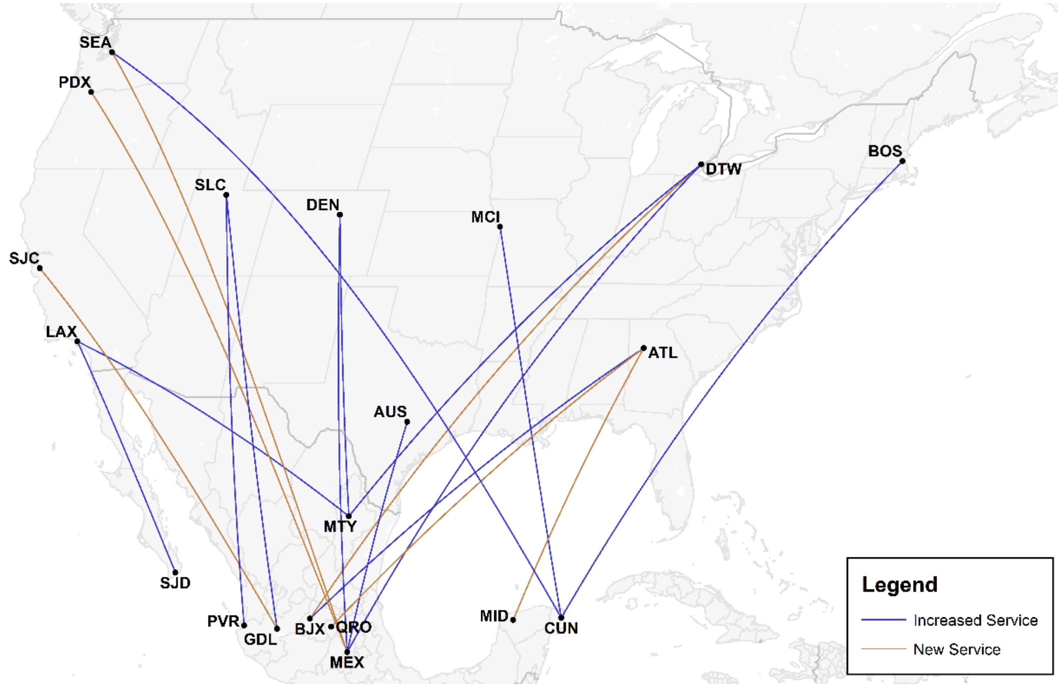
Remarkably, Delta and/or Aeromexico are the only carriers on five of these six new routes, providing consumers with a significant improvement in flight options.

In addition to these new markets, Delta and Aeromexico significantly expanded service (*i.e.,* added at least 25% more combined seats per day each way) on 13 additional routes, including Los Angeles-San Jose del Cabo, Los Angeles-Monterrey, Salt Lake City-Puerto Vallarta, Salt Lake City-Guadalajara, Seattle-Cancun, Denver-Mexico City, Denver-Monterrey, Austin-Mexico City, Kansas City-Cancun, Detroit-Monterrey, Detroit-Mexico City, Atlanta-León, and Boston-Cancun. *See* Figure 8 below.

[33] *Id*.

[34] *Id*.

Figure 8: Transborder Capacity Expansion Following JCA Implementation

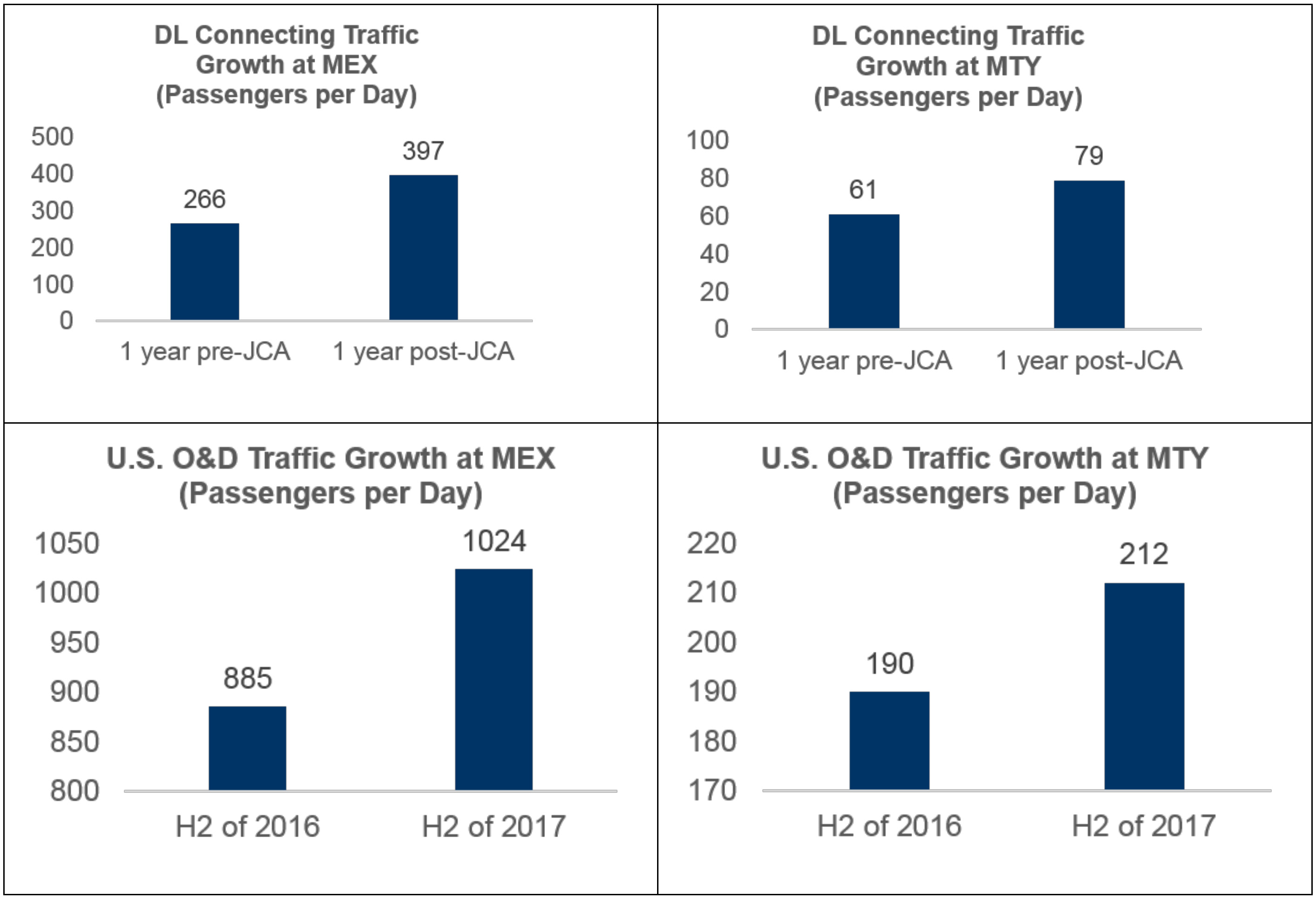


Source: OAG data for May 2016 – June 2018. [35]

The Department's prediction that metal neutrality would expand network connectivity over the combined Delta/Aeromexico transborder network was also proven to be correct. JCA-enabled activities such as enhanced coordination in revenue management and codesharing have led to a 45% increase in connecting JCA traffic at Mexico City (MEX) and Monterrey (MTY). This was accomplished in addition to substantial origin and destination (O&D) traffic growth. Joint Aeromexico/Delta U.S.-MEX O&D traffic rose 16% and U.S.-MTY traffic rose 12% in the last half of 2017 versus the last half of 2016. As reflected in Figure 9 below, Delta and Aeromexico have significantly increased their connections at Mexico City and Monterrey while simultaneously expanding O&D traffic.

[35] Map reflects U.S.-Mexico routes where Delta and Aeromexico introduced new service or increased their combined number of seats by at least 25 percent, when comparing the May 2016 – April 2017 period to the May 2017 – April 2018 period.

Figure 9: Growth in Network Connectivity at MEX and MTY



Source: Delta internal data & DOT O&D Survey via Diio mi.

Between April 2017 and May 2018, the weekly Delta and Aeromexico codeshare segments grew by more than 70%, from 8,269 to 14,370.[36]

The Department also astutely predicted that passengers would benefit from improved schedule offerings and airport convenience. Delta and Aeromexico have adjusted schedules to offer more convenient schedule alternatives and better time-of-day coverage, including for example on New York City-Mexico City and Los Angeles-Mexico

[36] Diio Mi OAG Codeshare Summary Data.

City. Similarly, local passengers on several routes now enjoy significantly reduced travel times. This is especially true on routes where the JCA has launched new nonstop service where only connecting service existed before. For example, local passengers now enjoy significant travel time savings on Seattle-Mexico City (65 minutes); Portland-Mexico City (70 minutes); Atlanta-Queretaro (90 minutes), and Atlanta-Merida (101 minutes).

Passengers on connecting itineraries have also benefited from the expanded service. For example, the minimum travel time fell by 60 minutes on Portland-Oaxaca, and by 56 minutes on Washington (DCA)-Queretaro. Similarly, the JCA Partners have already launched airport co-location projects with combined check-in counters in twelve airports: Atlanta (ATL), Austin (AUS), Detroit (DTW), Los Angeles (LAX), Miami (MIA), New York (JFK), Salt Lake City (SLC), San Antonio (SAT), and Seattle (SEA) in the U.S.; and Guadalajara (GDL), Mexico City (MEX), and Monterrey (MTY) in Mexico.

Several intrinsic characteristics of the transborder environment (characteristics applicable to the U.S.-Canada transborder market) have contributed to the success of the Delta/Aeromexico JCA. Shorter stage lengths and smaller gauge operational flexibility have allowed Delta and Aeromexico to nimbly and capably serve consumer demand in key U.S.-Mexico markets. The proximity of Delta's and Aeromexico's respective U.S. and Mexican hub airports allows the carriers to utilize hundreds of aircraft with dozens of configurations to serve consumer demand at almost any level. Using this flexibility, Delta and Aeromexico can take advantage of varied short haul aircraft rotational patterns to minimize ground time and offer more flights to consumers. For example, Delta aircraft that had previously been reserved for transcontinental flying, which might otherwise sit overnight at West Coast airports waiting to fly a return flight to the East in a high demand time channel, are now used for new flights into Mexico without impacting their rotation. Small gauge aircraft and shorter stage lengths, combined with metal-neutral enabled efficiencies like coordinated sales forces and co-location, allow Delta and Aeromexico to serve routes with lesser demand that neither Aeromexico nor Delta would otherwise be able to serve on its own.

Just as Delta and Aeromexico have successfully identified ways to leverage the geographic proximity of their respective U.S. and Mexico hubs to improve their joint network and deliver benefits to consumers, so too will Delta and WestJet capitalize on the proximity between their U.S. and Canadian hubs to provide the substantial public benefits that the Department and the traveling public have come to expect from immunized joint venture cooperation. *See* Section VI.C. below.

Delta's JCA with Aeromexico also exemplifies how profit sharing and other enhanced commercial cooperation enabled by ATI are essential to unlocking deeper codeshare cooperation. Delta and Aeromexico began their traditional codeshare relationship in 1994. In 2011, they entered into an enhanced commercial agreement providing for more arm's-length codesharing, but their codeshare arrangement remained limited until they implemented a profit sharing JCA in May 2017. From May 2017 to May 2018, Delta nearly tripled the number of codeshare markets offered to Aeromexico (115 to 327), and Aeromexico added 11 new codeshare markets for Delta.[37] This substantial increase in codesharing is attributable to metal neutrality, which incentivizes the partners to support each other's trunk routes by offering its JCA partner full access to the other's network and inventory. For the first time in its 20+ year commercial cooperation with Delta, Aeromexico was fully committed to allowing Delta to codeshare on Aeromexico's U.S.-Mexico trunk and beyond routes, and vice versa. Aeromexico was willing to do this because it knew Delta, in exchange, would allow Aeromexico to codeshare more

[37] Source: OAG data.

extensively on Delta's trunk and beyond routes and the parties would share the incremental profits derived from the expanded cooperation – and that is exactly what happened.

Between May 2017 and April 2018, JCA cooperation generated significant increases in connecting traffic for both interior U.S. connections and interior Mexico connections. On connecting U.S.-Mexico itineraries where Delta operated the trunk segment, Delta codeshare passenger volume beyond Mexican gateway points increased by 38% year over year. On such itineraries where Aeromexico operated the trunk segment, Delta codeshare passenger volume beyond Mexican gateway points increased by 87%. The statistics for Aeromexico codesharing are even more striking. On connecting U.S.-Mexico itineraries where Aeromexico operated the trunk segment, Aeromexico codeshare passenger volume beyond U.S. gateway points increased by 630% year over year. And on such itineraries where Delta operated the trunk segment, Aeromexico codeshare passenger volume beyond U.S. gateway points increased by 350%.[38]

Delta's JCA with Aeromexico validates that an ATI-enabled joint venture aligns incentives for codesharing and network growth on transborder flying. Without an ATI-enabled joint venture, Delta and Aeromexico would have had virtually no incentive to increase their cooperation and codesharing. The same principles are true with respect to the Delta/WestJet JV. Codeshare cooperation between Delta and WestJet has reached its limits without ATI; their relationship has essentially plateaued. The counterfactual scenario (*i.e.*, maintaining the status quo level of Delta/WestJet cooperation without ATI) would likely lead to a prolonged period of stagnation in terms of the carriers' cooperative disposition. Only an ATI-enabled joint venture will sufficiently incentivize the carriers to

[38] Source: Delta internal data.

fully unleash the robust consumer and competitive benefits detailed in this Joint Application. Just as the Delta/Aeromexico JCA created powerful incentives for each carrier to open up its inventory to and enhance connectivity with the other, so too will the Delta/WestJet JV create a seamless and deeply integrated joint transborder network that will increase capacity, add new JV-enabled service, optimize connectivity over the hub networks, and improve service and consumer choice on the largest and most important transborder routes.

C. The Metal-Neutral Profit- and Cost-Sharing Joint Venture Proposed by the Joint Applicants Will Fully Align Their Incentives to Ensure the Delivery of Substantial Benefits to the Traveling Public.

The Department has observed that "an integrated economic benefit sharing arrangement is needed to provide the incentive for the carriers to invest the significant resources necessary to create additional consumer benefits."[39] That is what the Delta/WestJet JV will do. The JV Agreement builds upon Delta's two decades of experience in establishing metal-neutral joint ventures which includes detailed governance and settlement mechanisms among the JV Partners for sharing profits/losses, coordinating their commercial activities, and implementing coordinated sales and strategies pursuant to which the JV Partners are fully incentivized to (i) flow traffic to one another without regard to which JV Partner is operating the flight; and (ii) take advantage of new market opportunities.[40] It thereby "encourage[s] the participating carriers to set aside their parochial commercial interests in favor of selling the joint network and offering the customer the most desirable itinerary at the best price, regardless of which carrier would use its "metal" to operate the service."[41] As Dr. Keating's report describes in greater

[39] DOT Order 2009-4-5, at 19.

[40] These governance and settlement mechanisms are described in Appendix 2.

[41] DOT Order 2011-11-16, at 10.

detail, the Delta/WestJet JV will link the carriers' highly complementary networks, align their incentives through a true profit/loss sharing JV, eliminate the well-documented pricing inefficiencies of double marginalization, and create the incentive and ability for the JV Partners to invest together to improve their joint frequent flyer program offerings, enhance the customer experience, and create a larger and more sustainable transborder network.

1. The Delta/WestJet JV Will Result in Expanded Capacity and Enhanced Service on U.S.-Canada Transborder Routes.

The synergies facilitated by the JV will enable Delta and WestJet to join their networks to provide customers with more service options, including new nonstop routes, increased frequencies, greater capacity on hub-to-hub and other routes linking the airlines' networks, and associated increases in passenger volumes between the U.S. and Canada. While Delta and WestJet currently codeshare on transborder routes, the network is inherently limited by the lack of metal neutrality and incentives to cooperate. Because Delta and WestJet are competitors, neither carrier is willing to offer full access to the other's network and inventory.

Under the JV, however, Delta and WestJet will be able to adjust their schedules and inventory access to enhance connections between their respective comprehensive North American networks. This will allow WestJet to offer more services beyond WestJet's U.S. gateways and Delta to offer more services beyond Delta's Canadian gateways, with the net effect of improving the distribution and penetration of WestJet's and Delta's products between the U.S. and Canada. The increase in capacity, combined with the more convenient schedules that will result through both the increase in the number of nonstop options on certain routes and improvements in connection times on other routes, will substantially benefit consumers. Internal network planning models predict that there would be more than [redacted] more combined Delta and WestJet transborder passengers on an annual basis with the JV than without the JV.[42] This expansion in output translates to approximately $193 million in annual benefits to transborder passengers and over $241 million in annual consumer benefits overall.[43]

One of the key synergies of the JV is that it will enable WestJet to more efficiently connect to Delta's extensive U.S. network, and Delta to more efficiently connect to WestJet's Canadian network. Delta's and WestJet's respective hubs offer multiple pathways between the U.S. and Canada. Connecting the Delta and WestJet networks and hub structures will enable significant growth opportunities. For example, Delta's hubs at Seattle and Salt Lake City will give WestJet extensive access to the entire Western U.S. Delta's hub at Los Angeles will give WestJet expanded access to the second largest U.S. local market. Delta's hubs at Minneapolis-St. Paul and Detroit will provide WestJet efficient transborder access to the interior U.S. with extensive network coverage. Delta's growing hub at Boston will give WestJet better access to destinations in the East Coast and Florida. Delta's hub in New York City will give WestJet expanded access to the top U.S.-Canada market. And Delta's hub at Atlanta – the world's largest airline hub – will provide WestJet superior connectivity to the Southeast. Currently, WestJet operates only limited service to three of Delta's hub cities – Boston, New York City and Los Angeles. The JV will result in more comprehensive service to these cities, and offer a platform for future JV services at Atlanta, Salt Lake City, Detroit, Seattle, and Minneapolis.

On the other side of the equation, the JV will enable Delta to reach points in interior Canada served by WestJet over its hubs at Toronto, Calgary, and Vancouver which are impractical and/or inefficient for Delta to serve on its own. WestJet's largest hub, Calgary, will give Delta seamless access to over 30 Canadian points. WestJet's hub at Vancouver

[42] Keating Report, at 3.

[43] *Id*.

will give Delta expanded access to the second largest local Canadian market and provide complete coverage of Western Canada. And WestJet's hub at Toronto, which is Canada's largest local market and business capital, will give Delta seamless access to key markets in Eastern Canada. The creation of a highly integrated transborder Delta/WestJet network, facilitated by the carriers' highly complementary hub structures, will afford customers thousands of additional flight options and more competitive service alternatives to United/Air Canada.

The JV Partners expect that the lower fares resulting from their enhanced coordination (*see* Section V.B.4, *infra*) will stimulate passenger demand, which, in turn, will lead to increased output – both on existing routes and new routes. Based on QSI models, the JV Partners anticipate that their enhanced cooperation will generate:

- Over $241 million in annual consumer benefits.
- At least 6 new nonstop transborder routes, including [redacted] Confidential Treatment Requested Under 14 C.F.R. 302.12 [redacted]. *See* Figure 10 below.[44]
- Additional frequencies or enhanced service (*i.e.*, seasonal to year-round) on at least 14 existing nonstop routes.
- An overall increase of transborder capacity on the combined Delta/WestJet network of over 20%.
- Over 8,100 online, metal-neutral city-pairs through enhanced connectivity and route options.

[44] Keating Report, at 16.

Figure 10: JV-enabled new routes and additional frequencies

Confidential Treatment Requested Under 14 C.F.R. 302.12

[redacted]

Anticipated New Market
Anticipated Frequency Addition
Anticipated Enhanced Service (Seasonal to Year-round)

The improved schedules and network connectivity resulting from the JV will lead to increased traffic flowing across the joint network. The structure of the JV will allow Delta and WestJet to internalize the benefits of flow traffic that they create for one another. This internalization will create incentives for the carriers to stimulate more flow traffic via the expansion of transborder capacity that would not be profitable without the JV.[45]

The JV will also enable Delta and WestJet to take advantage of each other's unique fleet types to offer enhanced services. The carriers will coordinate on upgauging and right-sizing aircraft to tailor capacity to demand on key routes and offer improved products. Both carriers have a variety of narrowbody aircraft in their fleets and the capability to substantially increase capacity by upgauging to larger aircraft. Routes that have been identified as likely candidates for upgauging include, without limitation:

- Confidential Treatment [redacted]

[45] *Id.* at 2.

Confidential Treatment Requested Under 14 C.F.R. 302.12

- [redacted]
- [redacted]
- [redacted]

On certain other transborder routes, particularly in smaller short-haul markets, the JV Partners can replace Delta's regional jets with WestJet's efficient Q400 aircraft, which will maintain and ensure sustainable service in otherwise unprofitable markets like [redacted] Confidential Treatment

The JV will also allow Delta to reach numerous smaller and developing markets in Canada beyond Delta's Canadian gateways. It is not practical for Delta to serve many of these markets nonstop from its U.S. hubs. However, WestJet serves 41 cities in Canada from one or more of its hubs at Toronto, Calgary, and Vancouver. The expansion of service by Delta into these markets through the JV, and WestJet's improved ability to flow traffic between these cities and the United States, will significantly improve competition and consumer choice in these rapidly developing markets.

2. The JV Will Result in More Frequencies and Better Schedules.

The JV Partners anticipate that their JV will allow them to offer customers not only new transborder flight routes, but also increased frequencies on existing transborder routes. In particular, the JV will increase service and offer an improved schedule in at least 9 of the largest U.S.-Canada routes, including [redacted] Confidential Treatment Requested Under 14 C.F.R. 302.12

Because transborder routes can be served with narrowbody aircraft, the JV Partners can move even more quickly to take advantage of these opportunities than is possible with transoceanic alliances requiring widebody aircraft. The larger number and types of narrowbody aircraft will allow the JV Partners to quickly tailor capacity to demand.

Both carriers operate large hubs, providing the opportunity for increased frequencies on critical network pipeline routes. Additional point-to-point services are also possible. And, new schedule efficiencies will be created, allowing for increased service and improved aircraft utilization. Through metal neutrality, the JV provides the carriers with the incentives to offer the best and most attractive overall schedule. For all of these reasons, the cooperation between Delta and WestJet will generate important efficiencies and public benefits.

3. The JV Will Result in Expanded Codesharing, Increased Connectivity, and Greater Online Service Options.

A grant of ATI would allow Delta and WestJet to codeshare on a fully reciprocal, metal-neutral basis – enabling the JV Partners to offer consumers better hub connectivity on both sides of the border. This enhanced codeshare coordination will stimulate new service routings, further optimization of the JV Partners' combined networks with better connections, and more convenient travel options for consumers, including on over 8,100 available non-stop and connecting transborder routings from the combined Delta and WestJet networks. As the Department recognized in DOT Order 2009-7-10:

> "By implementing an economic benefit-sharing agreement, carriers within the alliance are motivated to perform alliance-focused network planning, sales, and management, thereby benefiting a broad range of consumers seeking a better, seamless transportation product. . . . By pooling resources to improve the overall service offering, and by sharing financial gains and losses, we find that the partners are able to harmonize the global network and become indifferent as to which of them collects the revenue or operates the aircraft over a given itinerary. They are thus able to focus their efforts on gaining the customer's business by providing the best available fare, schedule, and routing between two cities."[46]

The JV will enable improvements in frequencies, schedules, capacity, available nonstop routes, and behind-and-beyond connections. These enhancements mean that

[46] DOT Order 2009-7-10, at 15.

the JV Partners will be able to offer an integrated network of flights that is much more attractive and useful to consumers. As a result of the improvements in quality created by the JV, Delta and WestJet will be able to attract additional passengers. Moreover, Delta and WestJet will be able to offer new nonstop service and stimulate demand that would not be possible on a standalone basis.

Under the existing, arm's-length Delta/WestJet codeshare arrangement – where the operating carrier allows the marketing carrier to sell seats on the operating carrier's flights – the carriers cannot produce the same integrative efficiencies as a metal-neutral joint venture. Because Delta and WestJet do not currently share revenues or profits, each has an incentive to fill the seats on flights it operates, where it will receive the full fare instead of just the portion of a fare received from a codeshare passenger. This structural inefficiency limits their willingness to share capacity and fails to capture integrative efficiencies that are possible under a metal-neutral JV. The profit sharing, metal-neutral Delta/WestJet JV will rectify this inefficiency by maximizing incentives for the carriers to open their highly complementary networks and inventory to each other – unlocking flight options not economically feasible through simple codesharing.

4. The JV Will Result in Lower Fares Through Reduced Costs and the Elimination of Double-Marginalization.

Following a grant of ATI and the implementation of the metal-neutral JV, the Joint Applicants will each have the incentive and ability to consider the effects of their decisions on the combined networks. One consumer-friendly result of this alignment of incentives is the reduction in "double-marginalization".

Double marginalization, also called double mark-ups, is an inefficiency that occurs when two airlines have limited interline or codeshare arrangements to handle multiple segments but are unwilling to cooperatively price the combined itinerary for the consumer. This double mark-up occurs because, without an ability to collaborate on prices, each carrier has an independent incentive to charge a profit mark-up on its respective segments of the itinerary.[47] As a result, the consumer is ultimately not offered the most competitive fare or optimal routing. However, in a "metal-neutral" sales environment, with profit- and cost-sharing, the airlines can balance risks and benefits for the benefit of both the consumer and the alliance as a whole. The airlines are willing to cooperatively price itineraries because they share the same incentive to make the sale and share a common bottom line. This joint price-setting – which requires ATI – leads to lower combined prices for connecting service than can be obtained without such immunity.[48]

The economic literature has found that fares on connecting itineraries are approximately 8% lower under a metal-neutral joint venture as compared to what they would be under an interline agreement or limited codesharing agreement.[49] Applying this fare reduction to the annual revenue predicted for connecting itineraries operated by Delta and WestJet under the JV yields approximately $26 million in annual savings to consumers from the elimination of double marginalization alone.[50]

The Delta/WestJet JV will also generate lower fare opportunities for passengers through coordination of the yield management process. Today, the respective Delta and WestJet revenue management systems, which determine whether and how many seats are available at different fare levels, receive limited information about codeshare passengers. For example, under their current arm's-length codeshare arrangement, Delta

[47] *See* Keating Report, at 9.

[48] *See generally* W. Tom Whalen, A panel data analysis of codesharing, antitrust immunity, and open skies treaties in international aviation markets, 30 REV. IND. ORGAN 30 (2007).

[49] Robert J. Calzaretta Jr., Yair Eilat, and Mark A. Israel, Competitive Effects of International Airline Cooperation, 13 J. Comp. L. & Econ. 501 (2017), Table 4.

[50] The savings were calculated by multiplying the approximately 8% fare reduction rate from the economic literature by the post-JV revenue (which is the number of passengers multiplied by the average fare per passenger) predicted by Delta's Quality of Service Index model for connecting itineraries (with one or two connections) that are operated entirely by Delta and WestJet and where each carrier operates at least one leg.

does not know the connecting itineraries of, or fares paid by, the WestJet codeshare passengers. As a result, Delta treats the WestJet codeshare passengers like local passengers – ignoring the possibility that such passengers could be connecting from a more expensive long-haul flight and, consequently, missing an opportunity to offer those passengers a lower, bundled fare for the full connecting itinerary.

The JV will rectify this inefficiency by deeply integrating the carriers' transborder yield management systems. This will incentivize Delta and WestJet to give each other full access to their inventory and fully share information about connecting passengers' itineraries and connecting fares – making more seats, particularly those in the lower fare classes, available for codeshare passengers. The revenue management provisions of the JV Agreement are designed to ensure full access of each party's inventory to the other, and will eliminate "double marginalization" markups because both carriers share in the common bottom line of the entire journey.

5. The JV Will Provide A More Effective Sales Presence on Both Sides of the Border.

The JV will allow Delta and WestJet to benefit from each other's brand recognition, customer awareness, and overall sales presence on their respective sides of the border. Delta's sales performance in Canada is currently constrained by its weak sales presence and recognition in key Canadian cities like Toronto, Vancouver, and Calgary, among others. Delta also lacks expertise in dealing with unique distribution channels in Canada which rely heavily on relationships with local travel agents and other retail ticketing outlets.

With the JV, Delta will gain access to WestJet's strong presence in Canada, and, conversely, WestJet will gain access to Delta's U.S.-based sales presence and resources. This presence will strengthen the ability of the JV Partners to market their products – and thereby attract more customers who will enjoy the benefits of an improved network offering – in both the United States and Canada. The JV Partners will be able to compete more effectively with larger rival carriers – particularly United/Air Canada – and meet the strong and growing competitive challenge of other carriers on transborder routes including Porter, Frontier, Alaska, Air Transat, Flair, Sunwing, etc.

Consumers will directly benefit from the invigorated competition in U.S.-Canada markets that will result from the JV. One of the key attributes of the JV is its ability to elevate Delta/WestJet to become an effective competitor for corporate customers in Toronto – the most important corporate market, representing 50% of U.S.-Canada demand. Currently United and Air Canada combined have over 50% seat share in 12 of the top 15 corporate markets to/from Toronto. Under the JV, however, Delta and WestJet expect to launch new or expanded nonstop service in Confidential Treatment Requested Under 14 C.F.R. 302.12 [redacted]. Together, Delta and WestJet will create a more effective competitor to United/Air Canada in Toronto. Without ATI, Delta and WestJet would remain smaller, less effective players in Toronto relative to United/Air Canada.

6. The JV Will Result in Increased Airport Co-location, and Streamlined Service Will Improve the Customer Experience.

Under the JV, Delta and WestJet will be incentivized to jointly invest in the customer experience. They will seek to co-locate facilities at commonly served stations wherever possible. The carriers have already implemented co-location at certain commonly served airports. However, Delta and WestJet continue to operate out of separate terminals at important U.S.-Canada gateways.

The Joint Applicants view making the investment and devoting additional facilities to implement co-location as a top JV priority. Co-location will improve the customer experience and reduce minimum connect times.

7. The JV Will Facilitate Frequent Flyer Program Cooperation.

Chief among the benefits that will inure to consumers as a result of the JV is reciprocal frequent flyer program benefits. Although Delta and WestJet will maintain separate frequent flyer programs, they will implement and maintain full reciprocity between their respective loyalty programs. This means that members of the Delta SkyMiles and WestJet Rewards frequent flyer programs will get reciprocal benefits when flying with the other carrier, and mileage accrued on Delta may be used to achieve a higher tier of membership on WestJet (and vice versa). In particular, Delta and WestJet will provide reciprocal premium customer handling services, including priority airport check-in, baggage handling and excess baggage allowances to elite customers of each carrier, as well as reciprocal arrangements between their respective airport lounge programs for elite customers.

VII. ATI is Required to Generate the Substantial Public and Consumer Benefits of the JV.

ATI for the Alliance Agreements is necessary to achieve the substantial benefits described above. The JV Agreement expressly provides for coordinated scheduling, yield management, inventory allocation, and pricing, joint purchasing, joint decision-making on new routes, and profit- and loss-sharing – and these are precisely the aspects of the JV arrangement that will produce the largest consumer benefits. While the JV Partners are confident that their JV will be a procompetitive joint venture, they will not implement it without first securing the legal and regulatory certainty that ATI provides. In the absence of ATI, these activities would expose the JV Partners to the potential risk of prohibitively expensive antitrust litigation.[51]

VIII. The Joint Applicants Will Accept the Standard Conditions that Have Historically Accompanied Grants of ATI.

The Department has typically imposed several "standard" conditions on the approval of Alliance Agreements and grants of ATI relating to (a) non-participation in certain IATA-related tariff coordination activities, (b) O&D survey data reporting requirements, (c) operation under a common brand or common name; (d) the submission for prior review of subsequent subsidiary agreements implementing the Alliance Agreements; (e) the submission of undocketed, confidential annual progress reports to the Office of Aviation Analysis; and (f) the timely implementation of the JV Agreement (*e.g.*, within a few months of the issuance of a Final Order approving the Alliance Agreements and granting ATI).[52] The Joint Applicants would accept these "standard" conditions. The Department, however, should not impose any additional conditions on the JV.

IX. Conclusion

Approval of and ATI for the Alliance Agreements is in the public interest and will create important consumer benefits, including the introduction of new U.S.-Canada

---

[51] Airlines have had to defend themselves in multiple lawsuits driven by plaintiffs' counsel involving antitrust claims, regardless of the lack of merit. *See, e.g., In re Northwest Airlines Corp. Antitrust Litig.*, 208 F.R.D. 174 (E.D. Mich. 2002), *review denied*, 310 F.3d 953 (6th Cir. 2002), *cert. denied*, 539 U.S. 904 (2003); *In re Airline Ticket Commission Antitrust Litig.,* 268 F.3d 619 (8th Cir. 2001); *Hall v. United Air Lines, et al*, 296 F.Supp. 2d 652 (E.D. N.C. 2003) (granting summary for defendants after three years of litigation), *aff'd* 118 Fed. Appx. 680 (4th Cir. 2004). *In re Delta/Airtran Baggage Fee Antitrust Litigation*, 245 F. Supp. 3d 1343 (N.D.Ga. 2017) (granting summary judgment to defendants after eight years of litigation), *aff'd sub nom Siegel v. Delta Air Lines, Inc.*, 714 Fed. Appx. 986 (11th Cir. 2018). The risk of antitrust litigation remains a significant concern.

[52] *See, e.g.*, DOT Order 2013-8-21, at 17-21, *finalized by* DOT Order 2013-9-14.

services, improved schedules, and upgauging on numerous routes. ATI is essential for the full realization of the consumer benefits and procompetitive effects of the JV.

WHEREFORE, the Joint Applicants respectfully request that the Department approve, and grant ATI for, the Alliance Agreements pursuant to 49 U.S.C. §§ 41308 and 41309.

Respectfully submitted,

Barbara Munroe
Executive Vice President
& General Counsel
Andrew Kay
Director Legal

WestJet Airlines

J. Scott McClain,
Associate General Counsel

DELTA AIR LINES, INC.

Robert E. Cohn
Patrick R. Rizzi
Hogan Lovells US LLP

Counsel for Delta Air Lines, Inc. and
WestJet Airlines

APPENDIX 1: JV Agreement between Delta and WestJet dated July 18, 2018

Confidential Treatment Requested Under 14 C.F.R. 302.12

[redacted]

APPENDIX 2: Description of the JV Agreement and Other Alliance Agreements

The JV Partners have agreed to enter into a series of agreements, including the JV Agreement and certain other Alliance Agreements, reflecting their commitment to form a highly integrated, metal-neutral joint venture. The Alliance Agreements are founded on, and largely modeled after, the already approved and immunized alliance agreements between Delta and its other alliance partners. A grant of ATI by the Department, coupled with the approval or clearance of such a commercial arrangement by regulatory authorities in Canada and other relevant foreign jurisdictions, will enable the JV Partners to compete more effectively, provide new service, generate myriad consumer benefits, and capture significant efficiencies – all objectives for which the Department has granted ATI. If the Joint Application is approved and ATI granted, the Joint Applicants will proceed to coordinate and integrate their operations in areas such as network and scheduling planning, pricing and revenue management, reciprocal codesharing, sales, cargo cooperation, and related activities.

The JV Agreement is consistent with the alliance agreements that the Department has approved and immunized in other recent ATI cases.[53] The JV Agreement is detailed and provides for a great degree of cooperation, which helps ensure that the immunized JV will produce substantial consumer benefits.

A. JV Agreement

The JV Agreement between Delta and WestJet covers all nonstop flights operated by Delta and WestJet and their respective affiliated carriers between the United States and Canada, as well as their behind and beyond flights within the U.S. and Canada that connect to such transborder services.[54] The JV Agreement creates metal neutrality

---

[53] *See, e.g.,* DOT Order 2013-9-14; DOT Order 2010-7-8, at 22; DOT Order 2008-5-32, at 4; and DOT Order 2010-11-10, at 3.

[54] The JV Partners are submitting a copy of the JV Agreement to the Department on a confidential basis with their document production in accordance with 14 C.F.R. § 302.12.

between the two carriers and provides a detailed blueprint for how the JV Partners will implement and coordinate their operations on JV routes. It is also structured to ensure that each carrier is motivated to maximize the profitability of the JV as a whole. The integrated commercial activities contemplated by the JV create significant efficiencies that will be implemented only with ATI. Integrated commercial activities provided for in the JV Agreement include:

- 50-50 sharing of incremental profits and losses generated by the JV above baseline performance, ensuring that the JV Partners are fully incentivized to achieve shared goals and efficiencies.

- Network and scheduling decisions relative to the JV Partners' operations on JV routes will be planned for and made jointly to optimize the Delta/WestJet competitive offerings against rival carriers and alliances. This will allow the JV Partners to optimize frequencies and capacity and to promote connectivity between the JV Partners' operations.

- Metal neutrality, which ensures that the JV Partners will implement metal-neutral sales and distribution policies and programs with respect to service on JV routes without preference to a JV Partner's own operated flights.

- Reciprocal codesharing on U.S.-Canada services and, as required to achieve market coverage, beyond routes within the respective countries. Delta/WestJet codesharing will entail seamless interactive inventory availability and favorable special prorate terms, which will eliminate double-marginalization pricing mark-ups.[55]

- Joint sales and marketing cooperation, which will maximize local point-of-sales strength and allow the JV Partners to present a single sales face to customers.

- Complementary product development and service enhancements.

- Airport co-location opportunities and joint purchasing strategies.

[55] Delta and WestJet have structured their JV Agreement, in general, and their JV codeshare cooperation, in particular, to ensure that each carrier will gain ample access to the other's inventory. They will also maintain a sufficient supply of marketing carrier flight numbers to enable robust reciprocal codesharing within the scope of the JV. WestJet has an abundant supply of flight numbers for allocation given the relatively modest scope and scale of its existing codeshare relationships. Delta codeshares more extensively than WestJet and, therefore, has a more limited availability of flight numbers available for allocation, but Delta has nonetheless reserved a sufficient amount of marketing carrier flight numbers for WestJet codesharing by adopting innovative techniques to efficiently allocate the numbers across all Delta codeshare partners.

The JV Partners are presenting the JV Agreement for the Department's review and approval. Delta and WestJet are ready to move quickly and anticipate implementing the JV promptly after receiving regulatory approvals. The JV provides the Department with certainty that substantial consumer benefits and efficiencies of the JV will be immediate and proximate to the grant of ATI approval.

The JV will be managed by a CEO Committee that will meet at least once per year and a Leadership Team consisting of senior leaders from each carrier that will meet at least four times per year. The day-to-day commercial and integration activities of the JV will be managed by a number of working groups including: (1) network, (2) revenue management, (3) information technology, (4) sales, (5) finance, (6) operations, (7) alliances, (8) cargo, and (9) customer experience. Decisions by these nine working groups will be made by consensus. Where consensus cannot be achieved at the working group level, matters will be elevated to the Leadership Team, ultimately to be resolved by the CEO Committee when necessary.

1. Network Working Group

The Network Working Group will coordinate the network and capacity planning and scheduling activities with respect to the JV, including the process for assigning the most efficient aircraft from the JV Partners' combined fleets to each route.

The JV Partners will move rapidly to realize the substantial public benefits of the joint network plan soon after ATI approval. To that end, within [redacted] after implementation of the JV, the Network Working Group will develop a [redacted] for the JV Partners, which will be reviewed by the Leadership Team and updated from time to time.

2. Revenue Management and Pricing Working Group

The Revenue Management and Pricing Working Group will manage the coordinated pricing and revenue management functions of the JV and the delegation of responsibility for implementing the JV's pricing strategies and activities, which is intended to maximize each carrier's point of sale expertise. The JV Partners intend to achieve a high degree of integration and cooperation of their respective revenue management systems and processes with respect to itineraries over JV routes and relevant beyond routes in order to maximize profits. The JV Partners will manage their own flights with respect to revenue management activities; however, the JV Partners' revenue management strategies and policies with respect to such routes will be aligned.

Reciprocal codesharing is already supported by the JV Partners' GDS platforms, and the JV Partners are committed to putting additional systems and technology in place to support additional revenue management coordination following implementation of the JV. Alignment and cooperation of the JV Partners' inventory management systems and processes will be accomplished through: Confidential Treatment Requested Under 14 C.F.R. 302.12 [redacted]

3. Information Technology Working Group

The Information Technology Working Group will coordinate the significant investments and activities among the JV Partners relating to information technology, network and system deployment, integration, connectivity and related improvements to provide seamless services to the JV Partners' joint customers.

4. Sales Working Group

The Sales Working Group will coordinate the sales and distribution policies and programs with respect to the JV. The JV Partners have committed to implement a "metal-neutral" sales policy under which each JV Partner will implement sales and distribution programs and policies with respect to JV routes without preference to its own flights on routes operated by the other JV Partner. Upon implementation of the JV, the JV Partners will seek to present a common "face" to the customer using seamless tools, processes, and support.

The JV sales teams will coordinate with the JV pricing teams with respect to establishing discount policies for corporate and agency accounts. The JV Partners will implement common strategies and tactics for selling JV products and services and will maintain a coordinated approach to JV accounts and coordinated sales communications in order to minimize conflict and maximize cooperation of sales activities.

5. Finance Working Group

The Finance Working Group monitors and reports on JV financial performance and determines the financial settlement between the JV Partners.

6. Operations Working Group

The Operations Working Group will facilitate more seamless passenger connections, baggage transfer, check-in and harmonization of customer service policies. The JV Partners agree to coordinate their schedules and operations with respect to JV routes and related beyond routes in order to maximize connections between the JV Partners' flights and to reduce minimum connection times. The JV Partners will also pursue co-location opportunities at airports where flights are operated on JV routes at common airports. The JV Partners will seek to address any customer service "seams" that may exist or arise in such processes and procedures.

7. Alliances Working Group

The Alliances Working Group will coordinate decisions regarding codeshare optimization on the JV Partners' operations on JV Routings, and proposals for third-party codeshare arrangements that require the consent of the JV Partners.

8. Cargo Working Group

The Cargo Working Group will coordinate mutually agreed commercial cooperation activities by the JV Partners with respect to belly cargo operations on JV routes.

9. Customer Experience Working Group

The Customer Experience Working Group will coordinate marketing, e-commerce, customer experience, product planning, loyalty programs, corporate communications, and joint branding, advertising and promotions with respect to the JV.

B. Consensus Decision-Making

The JV Agreement includes provisions providing for consensus decision-making on key matters affecting the JV, including capacity and network-related decisions on JV routes and cooperation with third-party carriers within the scope of the JV. While the JV Agreement contemplates extensive grandfathered third-party cooperation that may be done on a unilateral basis, similar to capacity and network-related decisions pertaining to JV routes, the JV Agreement provides for additional third-party cooperation that may occur when the JV Partners determine it is in the interests of the JV.[56] The Joint Applicants recognize that the Department has recently conditioned its approval of certain joint venture or joint cooperation arrangements on the elimination or modification of so-called exclusivity provisions.[57] However, the Department should not impose any similar condition on approval of the JV Agreement in this case given that such provisions are narrowly tailored to permit the aligned incentives required for the operations of a metal-neutral JV.

[56] *See* JV Agreement, § 5.3.

[57] *See* DOT Order 2016-12-13, at 28, 32 (Delta/Aeromexico); Letter from T. Homan, DOT, to Messrs. Cohn and Rizzi, counsel to Korean Air Lines, and Ms. Wilson and Mr. Krulic, Delta, dated November 17, 2017 (Docket DOT-OST-2002-11842) (Delta/Korean Air).

The JV will require Delta and WestJet to make substantial investments in order to realize fully its potential and to bring about many of the consumer benefits resulting from the JV. Any condition to eliminate or modify the third-party cooperation provisions would undermine the incentives for the JV Partners to invest in the JV and the scale of that investment, which – in turn – would erode the fully aligned incentives created by the metal-neutral JV Agreement and the resulting consumer benefits otherwise generated by the JV. For example, it would not make commercial sense for Delta to make metal-neutral decisions in support of WestJet's operations or investments that Delta's competitors could take advantage of, free-of-charge, such as through a new codeshare with WestJet but without having to share the costs of such operations by making any investment of its own. In addition, it would undermine the core principle of the JV – a sharing of incremental profits and losses generated by the JV between the JV Partners and their mutual commitment to maximize revenues and profits for the JV as a whole.

The JV Partners have agreed to this consensus decision-making process as part of their negotiations. Any requirement to modify or eliminate this consensus decision-making process within the JV would jeopardize many of the very significant consumer benefits that the JV is otherwise going to generate. Accordingly, the Department should not condition any ATI approval on changes to, or elimination of, the consensus decision-making provisions concerning third-party cooperation in the JV Agreement.

C. Term of the JV Agreement

The JV Agreement is evergreen with an initial term of at least [redacted]. Either partner may terminate the JV Agreement thereafter with at least [redacted] notice.

Given the extensive and enduring nature of the commercial relationship between Delta and WestJet memorialized in the JV Agreement, and the significant investments the carriers will be making in the JV to ensure its success, the Department should not impose any limit on the duration of the ATI. With one limited, distinguishable exception, all existing grants of ATI have an indefinite duration, subject only to the Department's perpetual authority to reexamine ATI grants at any time should circumstances warrant doing so. *See, e.g.,* DOT Order 2013-9-14 (Delta/Virgin Atlantic); DOT Orders 2002-1-6, 2008-5-32, 2014-9-14 (Delta/Air France/KLM/Alitalia/Czech); DOT Orders 2007-2-16, 2009-7-10 (Star Alliance); DOT Order 2010-7-8 (oneworld). Limiting the duration of the ATI for the JV would place Delta and WestJet at a competitive disadvantage against the other transborder ATI-approved alliance (United/Air Canada) and undermine the pro-consumer actions and benefits made possible by the JV. In addition, a limited duration on the grant of ATI would erode the incentives of the JV Partners to make longer-term investments in the JV given the uncertainty created by the limited term of ATI. A durational limit would effectively eliminate many of the key benefits for travelers that would otherwise have resulted from the JV.

D. Implementing Agreements

The JV contemplates that the JV Partners will enter into a number of implementing agreements, including a Codesharing Agreement, Frequent Flyer Agreement, Passenger Handling Services Agreement, Special Prorate Agreement, and Data Security and Processing Agreement.[58] These agreements, together with the JV Agreement, represent the Alliance Agreements for which approval and ATI is sought.

[58] *See* JV Agreement, Exhibit A. The Joint Applicants will submit any such implementing agreements to the Department on a confidential basis in accordance with 14 C.F.R. § 302.12.

APPENDIX 3: An Economic Analysis of the Joint Venture Between Delta and WestJet

AN ECONOMIC ANALYSIS OF THE JOINT VENTURE BETWEEN DELTA AND WESTJET

Bryan Keating*

October 9, 2018

* Executive Vice President, Compass Lexecon
(See http://www.compasslexecon.com/professionals/bio?id=123 for CV and biography).

CONTENTS

I. INTRODUCTION

1. I have been asked by Delta Air Lines, Inc. ("Delta" or "DL") to analyze, from an economic perspective, the effects of the Joint Venture ("JV") between Delta, WestJet, and WestJet Airlines Ltd. (collectively, WestJet and WestJet Airlines Ltd. are "WestJet" or "WS") covering U.S.-Canada trans-border routes ("trans-border routes").[1]

2. The Applicants seek to establish a metal-neutral JV for the provision of trans-border passenger air transportation services. The Applicants first publicly announced their intentions to pursue a JV agreement on December 6, 2017.[2] The Applicants signed the Joint Venture Agreement on July 18, 2018.[3] I discuss the economic implications of the terms of the JVA in greater detail in Section III.

3. The Applicants have had an arms-length codeshare agreement since 2011, initially with respect to a limited number of trans-border routes and domestic routes in the U.S. and Canada. The metal-neutral JV will substantially increase the level of cooperation between the Applicants, allowing for joint decisions on capacity, scheduling, and pricing

---

1 Joint Venture Agreement Dated as of July 18, 2018 Among Delta Air Lines Inc., WestJet and WestJet Airlines Ltd. (hereinafter *JVA*).

I will collectively refer to Delta and WestJet as the "Applicants."

2 See "Delta and WestJet agree to form joint venture," Delta Press Release, December 6, 2017 (available at https://news.delta.com/delta-and-westjet-agree-form-joint-venture).

3 See "Delta and WestJet to create new transborder joint venture," Delta Press Release, July 18, 2018 (available at https://news.delta.com/delta-and-westjet-create-new-transborder-joint-venture).

and also including provisions for profit sharing. This greater coordination will generate substantial consumer benefits, as described further in Section III below.

4. Based on my review of documents and data and interviews with company personnel as well as my own economic analysis, I reach the following conclusions:

- *The proposed JV will not harm competition*: Delta and WestJet do not provide overlapping regularly scheduled non-stop service on any airport-to-airport route. On a city-to-city basis, there is a single overlap: New York City-Toronto (NYC-YTO). Six carriers currently serve this route and the Applicants' joint seat share (24.9 percent) is considerably lower than Air Canada's (45.0 percent). In addition, Delta's seat share (5.6 percent) is less than that of Porter Airlines (18.8 percent) and American Airlines (6.7 percent) and only slightly greater than that of United Airlines (4.5 percent). Substantial competition in the form of five independent airlines would continue to exist on this route following implementation of the JV.
- *The JV will increase the Applicants' trans-border capacity on the combined Delta/WestJet network by more than 20 percent.* As I describe in more detail below, the structure of the proposed JV allows the Applicants to internalize the benefits of flow traffic that they create for one another. This internalization will create incentives for the Applicants to generate more flow traffic via the expansion of trans-border capacity that would not be profitable without the JV.[4]

[4] For purposes of this analysis, "trans-border" refers to itineraries that originate in the United States and terminate in Canada or vice versa.

- *The increase in trans-border capacity and associated improvements in scheduling will lead to approximately $241 million in annual benefits to passengers, roughly 80 percent of which will accrue to passengers on trans-border routes*: The increase in capacity, combined with the more convenient schedules that result through both the increase in the number of non-stop options on certain routes and the improvement in connections on other routes, would substantially benefit consumers. Delta's internal network planning model predicts that there would be more than [redacted] more combined Delta and WestJet trans-border passengers on an annual basis with the JV than without the JV. Applying standard economic models to the predictions generated by Delta's internal planning model indicates that the JV would lead to approximately $193 million in benefits annually to trans-border passengers and approximately $241 million in annual benefits overall. Most of the $48 million in benefits outside of trans-border routes accrue on intra-U.S. and intra-Canada routes where the Applicants' improved network and service offerings attract additional passengers. In addition, the Applicants expect the JV to result in additional operational and non-network efficiencies that will benefit consumers through higher-quality and more seamless travel experiences.

5. The remainder of this report documents and quantifies the consumer benefits and lack of competitive harm from the transaction as follows. Section II demonstrates that the JV will not harm competition. Section III demonstrates that the JV will lead to substantial consumer benefits. Section IV provides evidence that previous JVs have benefited

consumers. Section V explains why the JV is necessary to achieve the benefits to consumers.

II. THE PROPOSED JOINT VENTURE WOULD NOT HARM COMPETITION

6. The extent to which Delta and WestJet directly compete today is very limited. As discussed further below, there are no regular-service non-stop overlaps on any U.S.-Canada airport pairs and there is a non-stop overlap on only one city-pair route, which is and will remain competitive after implementation of the JV.

7. Delta and WestJet do not operate regular non-stop overlapping service on any airport pairs.[5] There is a single non-stop overlap at the city level, with both Applicants offering service on NYC-YTO. However, as shown in Table 1 below, their combined seat share on this route is less than 25 percent, neither Applicant has a share of 20 percent or greater, and the Applicants will continue to face competition from four airlines that

[5] Delta has operated a limited number of flights for a single week every January on Las Vegas – Toronto and Las Vegas – Vancouver to serve the annual Consumer Electronics Show. According to OAG data for January 6-12, 2018, Delta offered three roundtrips on Las Vegas – Toronto and three roundtrips on Las Vegas – Vancouver. WestJet operates regular non-stop service on these routes. The JV will not significantly impact competition on these routes because Delta does not offer regular service on either of these routes, Air Canada operates regular non-stop service on each of these routes (with more than 50 percent seat share on both routes for the week that Delta operated service), and other competitors such as American Airlines and United Airlines would face no significant limitations to also providing service on these routes at least on the same limited basis as Delta currently serves them (as I understand that there are no significant slot constraints at any of the airports).

Delta and WestJet previously both offered service between Los Angeles-Vancouver and were two of five carriers on this route. However, this service was unprofitable for Delta and, as of February 28, 2018, Delta no longer operates on this route.

currently offer service on this city pair, including Air Canada which will continue to have the largest share.[6]

Table 1: Seat Shares on NYC-YTO

Carrier	*Seats*	*Share of Seats*
Delta Air Lines	186,405	5.5%
WestJet	656,724	19.2%
DL-WS Combined	**843,129**	**24.7%**
Other Carriers:		
Air Canada	1,559,719	45.6%
Porter Airlines	631,960	18.5%
American Airlines	232,614	6.8%
United Airlines	149,580	4.4%
Other Carriers Combined	**2,573,873**	**75.3%**
Total	***3,417,002***	***100.0%***

Source: OAG data, October 2017 - September 2018.

8. In addition, Delta and WestJet serve this route through different airports in the New York City area, with Delta operating from Pearson International Airport (YYZ) to John F. Kennedy Airport (JFK) and WestJet operating from YYZ to LaGuardia Airport (LGA). For those passengers with a specific airport preference in New York City, Delta and WestJet are not close competitors. Instead, Delta faces more direct competition from American Airlines on service to/from JFK and WestJet faces more direct competition from Air Canada and American Airlines on service to/from LGA. Porter also services Newark (EWR) from Toronto Island Airport (YTZ). As a result, customers without strong airport preferences can choose between Air Canada, Porter, American, and United, in addition to Delta and WestJet.

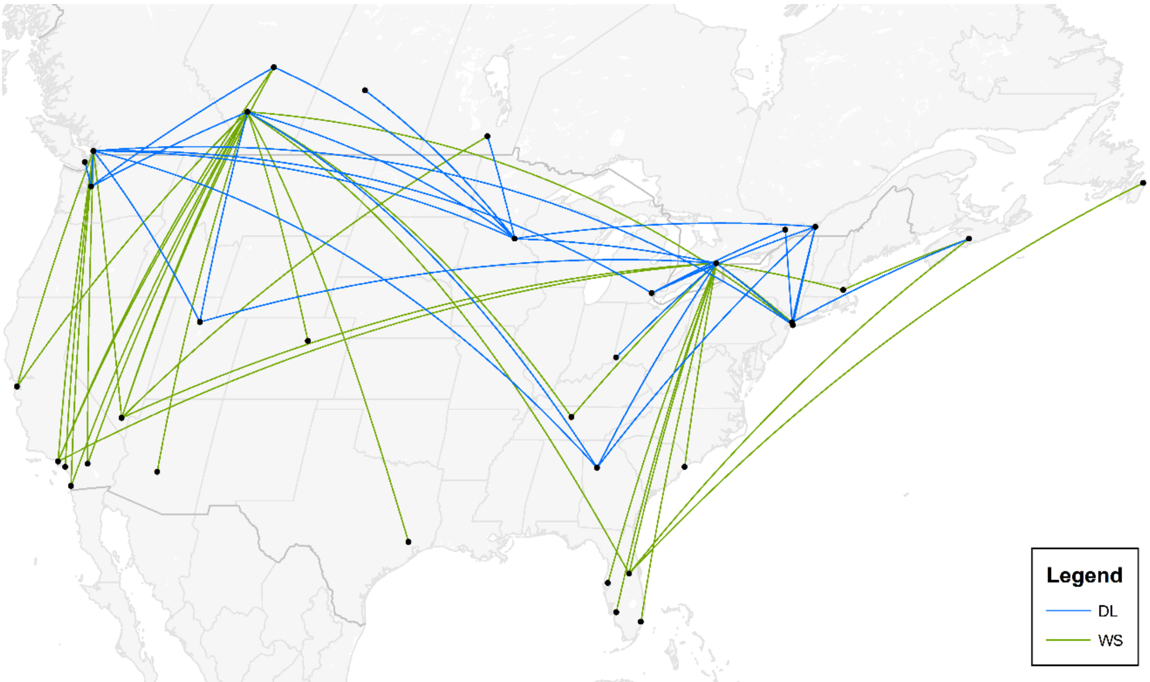
6 I understand that United and Air Canada have antitrust immunity to engage in extensive commercial cooperation on U.S.-Canada trans-border routes, but that the carriers have not implemented a joint venture.

III. THE PROPOSED JOINT VENTURE WOULD CREATE SUBSTANTIAL BENEFITS FOR CONSUMERS

9. While the proposed JV will not harm competition, it will create economic incentives to enhance cooperation to the substantial benefit of consumers as I describe further below.

10. These incentives arise primarily because the proposed JV will link two highly complementary networks. Figure 1 below shows the Applicants' trans-border route maps. While both Delta and WestJet operate on trans-border routes, the JV would enable WestJet more efficiently to connect to Delta's extensive U.S. network and Delta more efficiently to connect to WestJet's Canadian network.

Figure 1: Delta and WestJet Trans-Border Route Map[7]



A. **THE METAL-NEUTRAL JOINT VENTURE CREATES ECONOMIC INCENTIVES TO INCREASE CAPACITY AND LOWER FARES TO THE BENEFIT OF CONSUMERS**

11. Because the Applicants' networks, and thus the services that they offer to consumers, are largely complementary in the sense that an increase in the value of one network makes the other network more valuable, aligning Delta's and WestJet's economic incentives generates economic efficiencies that benefit consumers.

---

[7] The route map excludes routes to/from Hawaii and Alaska and intra-U.S./intra-Canada routes.

12. The JVA aligns such incentives by implementing metal-neutral profit sharing. Specifically, the JVA defines a profit-sharing mechanism whereby the Applicants split incremental profits (defined relative to a pre-JV benchmark period).[8] Such profit-sharing creates the incentive and ability for the Applicants to work together to maximize the combined value of their overall network to the benefit of consumers in terms of both prices and quality of service.

13. In contrast, without the full cooperation between carriers that the metal-neutral JV will create, the incentives of the Applicants will not be fully aligned, which leads to inefficiencies. These inefficiencies arise from the fact that airlines offer complementary inputs (flight segments) for a product that a customer purchases (an itinerary). Each input (flight segment) adds value to the ultimate product. Without each flight segment, the itinerary would not exist. Under codeshare agreements, each carrier will seek to maximize the benefits to itself without regard to carriers operating other segments on an itinerary. Absent a profit-sharing mechanism, this creates an incentive for carriers to price

---

8 Confidential Treatment Requested Under 14 C.F.R. 302.12 [redacted]

inefficiently (too high) because pricing will not reflect the potential for decreased demand on complementary flight segments. Carriers only have an incentive to invest in their own networks and systems and not in the combined network.

14. The JV will benefit consumers because the economic incentives that the profit-sharing mechanism creates lead to a "reduction in double marginalization," which creates an incentive to lower fares below levels that would prevail in the absence of the JV. This incentive to lower fares arises because each carrier internalizes the full profit from any passengers that are attracted to a JV itinerary via lower fares, rather than only the profit on the carrier's own portion of the combined network. Hence, the joint price-setting enabled by a metal-neutral JV generally leads to lower combined prices for connecting service than can be obtained without the JV in place.[9]

---

9 The literature has generally concluded that immunized, metal-neutral JVs help to solve the double marginalization problem by enabling harmonized carrier decisions on pricing and capacity deployment on complementary segments, and that, as a result, fares on such JV itineraries are generally lower than fares for comparable codeshare (or interline) service. *See*, e.g., Jan Brueckner and W. Tom Whalen (2000), "The Price Effects of International Alliances," *Journal of Law and Economics*, 43(2), pp. 503-545; Jan Brueckner (2003), "International Airfares in the Age of Alliances," *Review of Economics and Statistics*, 85(1), pp. 105-118; W. Tom Whalen (2007), "A panel data analysis of code-sharing, antitrust immunity, and open skies treaties in international aviation markets," *Review of Industrial Organization*, 30(1), pp. 39-61; Jan K. Brueckner, Darin N. Lee, and Ethan S. Singer (2011), "Alliances, Codesharing, Antitrust Immunity, and International Airfares: Do Previous Patterns Persist?," *Journal of Competition Law and Economics*, 7(3), 573-602. *See* William Gillespie and Oliver M. Richard (2012), "Antitrust immunity grants to joint venture agreements: evidence from international airline alliances," *Antitrust Law Journal*, 78, pp. 443-469 for an alternative viewpoint. However, a more recent paper by Calzaretta et al. (2017) finds, contrary to Gillespie and Richard (2012) and consistent with the rest of the literature, that international joint ventures have lowered fares on connecting itineraries and have not increased fares on non-stop overlap routes. *See* Robert J. Calzaretta Jr., Yair Eilat, and Mark A. Israel

15. Fuller alignment of partner carriers' incentives creates maximum benefits for consumers. Partner carriers can be expected to pool the collective network resources to offer potential passengers the most attractive offerings (both in terms of price and schedule). Metal-neutral JV carriers offer nearly the same degree of efficiency (and prices) as a single carrier.[10]

B. THE JOINT VENTURE WILL CREATE THE INCENTIVE AND ABILITY TO INVEST IN HIGHER QUALITY PRODUCTS

16. In addition to the consumer benefits arising from a reduction in double marginalization, the economies of scale and scope associated with a larger network provide incentives for the Applicants to make other investments that benefit consumers.

- *Customers will benefit from a more valuable frequent flyer program*. Stronger alignment of the Applicants' frequent flier programs will make it easier for customers to earn points on either airline. In addition, those frequent flyer points will be more valuable because they can be used on an improved combined network. One immediate benefit following implementation of the JV is the introduction of reciprocal benefits for elite flyers, including priority check-in, security screening, baggage handling, and boarding, extra baggage allowance,

---

(2017), "Competitive Effects of International Airline Cooperation," *Journal of Competition Law & Economics*, 13(3): 501–548.

10 *See* Robert J. Calzaretta Jr., Yair Eilat, and Mark A. Israel (2017), "Competitive Effects of International Airline Cooperation," *Journal of Competition Law & Economics*, 13(3): 501–548, p. 517.

premium cabin upgrades, and lounge access.[11] I understand that the Applicants will also develop the ability for Delta passengers to access WestJet seat maps (and vice versa).

- *The proposed JV will improve the customer service experience*. All customers will benefit from better customer care from local support staff and aligned customer service policies across the Applicants, which reduces uncertainty regarding policies and may lead to expedited handling of customer service issues.[12] The Applicants anticipate greater alignment of products and services, including ground services, inflight services, sales and after-sales services and travel policies.[13] The Applicants will also have greater incentives to integrate and share customer service best practices. The metal neutrality between Delta and WestJet resulting from implementation of the JV will create financial incentives enabling both carriers to offer customers a single corporate contract for the JV trans-border routes, which benefits corporate customers by reducing contracting costs.

---

11 Confidential Treatment Requested Under 14 C.F.R. 302.12 [redacted]

12 Confidential Treatment Requested Under 14 C.F.R. 302.12 [redacted]

13 Confidential Treatment Requested Under 14 C.F.R. 302.12 [redacted]

- *The proposed JV will create incentives to invest more in the Applicants' networks*. Implementation of the proposed JV will lead to a larger and more sustainable network. The economies of scale and scope associated with a larger network provide incentives for the Applicants to make costly aviation infrastructure investments that would not be undertaken otherwise. Consumers will benefit from this increased investment in joint products. For example, WestJet is in the process of developing its own airport lounges at its main Canadian hubs. By taking into account the increased traffic generated by the JV, WestJet will have an incentive to invest in larger and better equipped lounges. The Applicants can also operate more efficiently once they further integrate operations, including sharing tools and best practices for sales and marketing and co-location of revenue management teams.[14]

C. THE JOINT VENTURE WILL INCREASE COMPETITION ON TRANS-BORDER ROUTES

17. By creating incentives to increase quality and decrease fares, the JV will enhance competition on trans-border routes and put increased competitive pressure on rival airlines to improve their own offerings. Thus, the JV will benefit all trans-border passengers by increasing competition on these routes. The JV will allow the Applicants to

---

14 Confidential Treatment Requested Under 14 C.F.R. 302.12 [redacted]

compete more effectively with Air Canada, which, as shown in Table 2 below, accounts for approximately 45 percent of current trans-border air travel.

Table 2: Trans-Border Seat Shares

Carrier	*Seats*	*Share of Seats*
Delta Air Lines	4,128,676	10.8%
WestJet	6,218,496	16.2%
DL-WS Combined	**10,347,172**	**27.0%**
Other Carriers:		
Air Canada	17,466,023	45.5%
United Airlines	4,245,613	11.1%
American Airlines	3,117,688	8.1%
Porter Airlines	1,376,770	3.6%
Alaska Airlines	1,043,183	2.7%
Other	766,654	2.0%
Other Carriers Combined	**28,015,931**	**73.0%**
Total	***38,363,103***	***100.0%***

Source : OAG Data, October 2017 - September 2018.

D. The Joint Venture will Create Operational Efficiencies

18. Implementation of the JV is also likely to create operational efficiencies as WestJet gains access to Delta's considerable JV expertise. WestJet has traditionally offered a uniform product, built from a low-cost platform. In recent years, to attract more premium customers, WestJet has developed a frequent flyer program and invested in revenue management systems in an effort to better compete with Air Canada and legacy carriers. By sharing best practices and coordinating policies, WestJet will improve its offerings more quickly and efficiently as a result of the JV. In addition, I understand that the Applicants envision deeper coordination on sales efforts, with joint incentive programs and technology cooperation at the business-to-business level, which will generate benefits for corporate and agency customers by ensuring a seamless experience for these customers.

E. EMPIRICAL ANALYSIS DEMONSTRATES THAT THE JOINT VENTURE WILL BENEFIT CONSUMERS

19. To quantify the extent of these consumer benefits arising from the JV, a necessary initial step is to specify the "but-for" flight service that would be provided by Delta and WestJet absent a metal-neutral JV. I rely on announced schedules supplemented with Delta network planners' projected changes over the next five years, which are meant to reflect the Applicants' likely plans in the absence of the JV.[15]

20. I then compare the "but-for" flight service that would be offered absent the JV with the flight service that would be offered with the JV in place.[16] I use projections from Delta's internal Quality of Service ("QSI") planning model to determine how many more passengers Delta and WestJet would attract to their U.S.-Canada service under a metal-neutral JV.[17] I then use established methods to estimate the consumer welfare effects of the changes in quality and price that drive this demand expansion. In this way, I measure

---

[15] Confidential Treatment Requested Under 14 C.F.R. 302.12 [redacted].

[16] Confidential Treatment Requested Under 14 C.F.R. 302.12 [redacted]

[17] Confidential Treatment Requested Under 14 C.F.R. 302.12 [redacted]

the incremental consumer benefits from the establishment of the proposed JV relative to the but-for case of limited code-sharing.

1. Summary of Post-JV Network Plans

21. As discussed above, the proposed JV will create incentives for the Applicants to add capacity to existing trans-border routes and to introduce new trans-border routes. Delta's internal network plans reflect these incentives. Specifically, as Table 3 demonstrates, Delta's internal network planning projects combined trans-border Delta and WestJet seats to increase by approximately [redacted] (associated with approximately [redacted] more flights) with the implementation of the JV.[18]

[redacted]

22. Table 4 reports the specific trans-border routes where Delta's network planning team anticipates changing capacity as a result of the JV. The Applicants' combined frequency will not decrease on any trans-border route. Overall, Delta's network planning team anticipates adding seats on at least [redacted] routes and adding at least one daily flight each

---

18 [redacted]

19 Trips refer to flights per day each way and SDEW stands for seats per day each way.

way on [redacted] different routes.[20] They plan to launch six new trans-border routes that neither carrier currently serves.[21] Confidential Treatment Requested Under 14 C.F.R. 302.12 [redacted]. On three of these new routes, only one carrier currently offers non-stop service, so the JV would create significant new competition for non-stop service on the route.[22] On the remaining two new routes, at least two carriers currently offer non-stop service.[23]

---

20 Confidential Treatment Requested Under 14 C.F.R. 302.12 [redacted]

21 Confidential Treatment Requested Under 14 C.F.R. 302.12 [redacted]

22 Confidential Treatment Requested Under 14 C.F.R. 302.12 [redacted].

23 Confidential Treatment Requested Under 14 C.F.R. 302.12 [redacted].

Confidential Treatment Requested Under 14 C.F.R. 302.12

[redacted]

23. [redacted]

Confidential Treatment Requested Under 14 C.F.R. 302.12

[redacted]. Consequently, the increase in capacity on many of these conduit routes benefits not only local non-stop passengers on these routes, but also connecting passengers who flow over those hubs and thus benefit from improved connection times and/or less circuitous and therefore shorter trips.

2. Benefits Based on Delta's QSI Model

24. QSI (or closely related "logit") models forecast carriers' shares of passengers on routes based on historic patterns of preferences for itinerary and airline characteristics and the characteristics of itineraries in airlines' actual or proposed schedules. The models apply these estimated shares to an actual or projected volume of demand (*i.e.*, the total number of passengers traveling on each route) to forecast the number of passengers that will be served by each carrier on each itinerary, segment, and origin-destination pair. It is common for carriers to use QSI models to assist in their network planning decisions.

25. Delta's network team has used QSI analysis to model the traffic expected on each trans-border O&D for Delta, WestJet, and other carriers in the absence of a metal-neutral JV between Delta and WestJet (i.e., under the existing arms-length codeshare cooperation). It has also used QSI analysis to model the traffic expected on each trans-border O&D under a metal-neutral JV between Delta and WestJet. The QSI-based benefits that I calculate below employ the O&D-by-O&D differences in passengers flown between the two scenarios.

26. The QSI model predicts that the establishment of a metal-neutral JV will increase the number of trans-border passengers carried by Delta and WestJet collectively by more

than [redacted][24] This projected net increase in Delta's and WestJet's passengers provides direct evidence that, as a result of the metal-neutral JV, the carriers will offer a combination of lower prices and improved service that together increase the demand for their products. In other words, the model predicts that customers value the lower prices and improved service generated by the JV and are consequently more likely to choose to fly on Delta and/or WestJet.

27. This projected increase in the number of passengers indicates that the establishment of a metal-neutral JV improves the overall quality of air travel options available for U.S.-Canada travel, thus increasing consumer welfare. It shows that, as a result of the metal-neutral JV, Delta and WestJet will, on net, attract passengers away from competing airlines, indicating that the overall quality of their service is enhanced by the JV.[25]

28. In the remainder of this section, I calculate the associated benefits to consumers in dollar terms.[26] To do so, I ask what reduction in fares paid by Delta and WestJet travelers on each affected route would generate an equivalent increase in demand on that route. I

---

[24] For purposes of the calculations reported in this section, the carrier for any given O&D is defined as the carrier operating the trans-border flight segment.

[25] The JV may also stimulate additional demand for air travel on the relevant routes as a result of the improved options available to customers. However, Delta's QSI modeling conservatively assumes no demand stimulation. To the extent that demand stimulation would occur, consumer benefits would be even higher than those estimated here.

[26] Section VI provides further explanation of this analysis.

compute the equivalent fare reduction on a route-by-route basis, summing across routes to compute overall benefits.

29. This methodology implies that the total consumer benefits from creation of a metal-neutral JV—due to the stimulation of demand through a combination of lower prices and higher service quality—are approximately $193 million per year for U.S.-Canada flights (and $241 million for all flights). Most of the $48 million in benefits outside of trans-border routes accrue on intra-U.S. and intra-Canada routes where the Applicants' improved network and service offerings draw additional passengers from competitor carriers. Table 5 shows the route-level estimated consumer benefits on the 25 trans-border routes with the largest estimated benefits. Not surprisingly, consumer benefits are largest on routes where Delta and/or WestJet would offer non-stop service only with the JV in place ([redacted] or would add service as a result of the JV ([redacted]). In total, the top-25 trans-border O&Ds account for almost $70 million in annual consumer benefits (approximately 36 percent of the total benefits on all trans-border O&Ds).

[redacted]

IV. DELTA'S TRANS-BORDER JOINT VENTURE WITH AEROMEXICO BENEFITED CONSUMERS

30. Delta has substantial experience forming metal-neutral JVs with partner carriers around the world. These JVs include Northwest (a predecessor to Delta)/KLM (1993), Delta/Air France/KLM (2008), Delta/Virgin Atlantic (2013), Delta/Aeromexico (2016),

[27] In Table 5, "Pax" is shorthand notation for number of passengers.

and Delta/Korean Air (2018). Given Mexico's proximity to the United States, Delta's recent metal-neutral JV with Aeromexico ("AM") is perhaps most analogous to the JV with WestJet. Below, I show that JV has already led to a substantial increase in trans-border service with Mexico to the benefit of consumers.

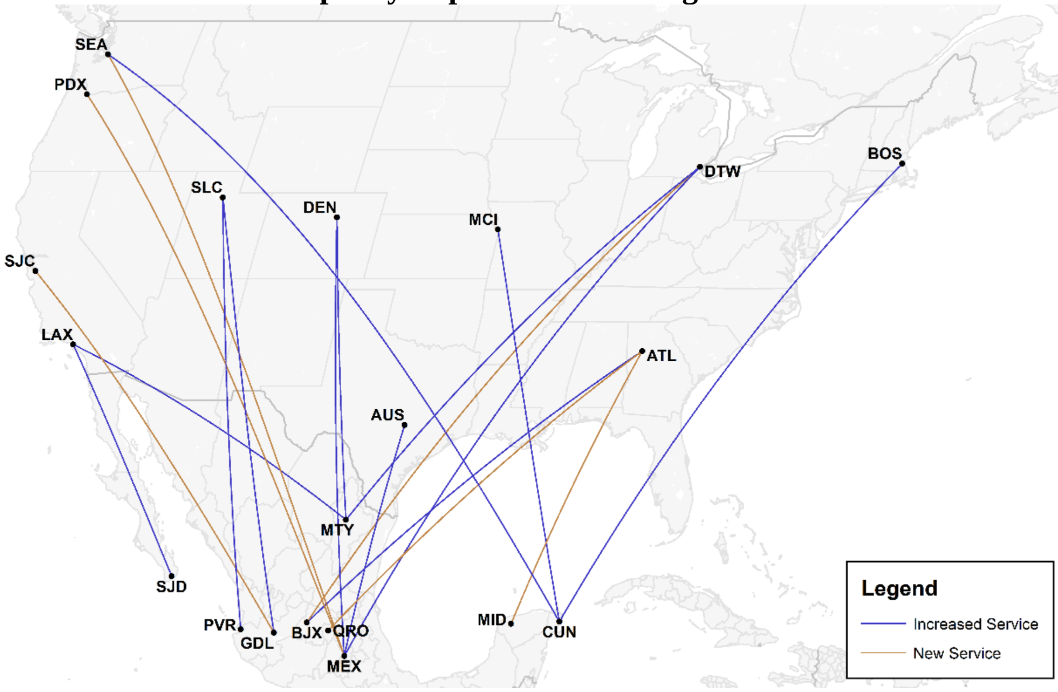
31. On December 14, 2016, Delta and Aeromexico received a grant of antitrust immunity from the DOT for their metal-neutral JV for routes between the U.S. and Mexico. The Department recognized that the JV would "not substantially reduce or eliminate competition" on U.S.-Mexico routes.[28]

32. Since the implementation of the Delta and Aeromexico JV, DL and AM have increased service on U.S.-Mexico routes significantly. Delta and Aeromexico now operate almost nine additional flights per day each way. Figure 2 shows that they have introduced new service on six routes between the U.S. and Mexico since the JV was approved. The DL/AM JV is the only carrier on five of the six new routes, providing passengers with a significant improvement in flight options over existing service. Delta and Aeromexico also expanded service on existing U.S.-Mexico routes, adding at least 25 percent more combined seats per day each way on thirteen routes between the U.S. and Mexico.

---

[28] *See* DOT Final Order 2016-12-13 (Dec. 14, 2016), Docket DOT –OST-2015-0070, p. 2. The Department imposed conditions on the NYC-MEX route due to unique infrastructure constraints and slot conditions at MEX.

Figure 2: Trans-Border Capacity Expansion Following Delta/Aeromexico JV[29]



33. The expansion in U.S.-Mexico service by Delta and Aeromexico described above has also shortened travel times and led to better connections. For example, prior to the launch of non-stop service on MEX-SEA, all local passengers on this route required at least one stop and the minimum travel time was 390 minutes. With the introduction of a non-stop flight on the route, local passengers can make the trip in 325 minutes, a reduction in travel time of more than an hour. Similar time savings arise on the other new routes where Delta or Aeromexico are the only carriers offering non-stop service: MEX-

---

29 Source: OAG data for May 2016 – June 2018. Notes: The map presents U.S. –Mexico routes where Delta and Aeromexico introduced new service or increased their combined number of seats by at least 25 percent, when comparing the May 2016 – April 2017 period to the May 2017 – April 2018 period.

PDX (70 minutes), AUS-MEX (95 minutes), MEX-SJC (120 minutes), ATL-QRO (90 minutes), and ATL-MID (101 minutes). Passengers on connecting itineraries have also benefited from the expanded service. For example, the minimum travel time fell by 60 minutes on OAX-PDX and by 56 minutes on DCA-QRO.

V. THE PROPOSED JOINT VENTURE IS NECESSARY TO ACHIEVE THE BENEFITS TO CONSUMERS

34. In prior JV applications, some commentators have advocated for restrictions on the terms of the JV agreements and/or certain contractual terms. As I explain in more detail below, these terms create important economic incentives for the Applicants to invest in the JV to the benefit of consumers, and restrictions on such contractual terms would reduce the positive benefits for consumers that the JV will create.

A. THE LONG-TERM NATURE OF THE AGREEMENT REDUCES UNCERTAINTY AND CREATES INCENTIVES TO MAKE RELATIONSHIP-SPECIFIC INVESTMENTS IN THE JOINT VENTURE

35. The certainty provided by a long-term contract is an important prerequisite for realizing the full benefits of the JV. This certainty creates incentives for the Applicants to make relationship-specific investments in the JV, because they understand that the JV will be in place long enough to realize the full returns from any such investments. Investments that facilitate closer cooperation, including revenue management, technology improvements, and closing seams between customer service policies, typically involve large fixed or upfront costs and require a longer time horizon to fully realize the returns. Furthermore, some efficiencies and synergies do not materialize (or even become apparent) immediately because it takes time to build the relationship.

B. THE CONSENSUS DECISION-MAKING PROVISIONS ARE NECESSARY TO ALIGN THE ECONOMIC INCENTIVES OF THE APPLICANTS

36. Certain terms of the JVA provide for consensus decision making on codesharing cooperation with third parties, which might harm the JV by diverting traffic to third parties that would otherwise be carried by the JV. The JVA establishes a lengthy list of "Grandfathered Carriers" with whom such third-party cooperation is pre-approved by the Applicants, but provides that further third-party codesharing cooperation will be decided by consensus of the Applicants to ensure that it is in the interest of the JV as a whole.

37. While such decision-making by consensus may limit the unilateral ability of each Applicant to cooperate with other carriers in some cases, such provisions have significant pro-competitive benefits.[30] Specifically, access rules enhance the efficiency of JVs by deterring free-riding[31] and increasing coordination.

38. Free-riding arises when individuals or firms are able to take advantage of costly assets without paying for them. The ability to do so lessens the incentives to invest in those assets in the first place. Provisions requiring that third party cooperation be decided by consensus ensure that such decisions are made in the interest of the JV as a whole and consequently prevent such free-riding. In the context of the JVA, when the Applicants are considering making relationship-specific investments in the JV (e.g., investing in infrastructure, customer service, and networks), they may have less incentive to do so if

---

30 *See*, e.g., Dennis W. Carlton and Steven C. Salop (1996), "You Keep on Knocking but You Can't Come In: Evaluating Restrictions to Input Joint Ventures," *Harvard Journal of Law and Technology*, 9(2):319-352.

31 *Id.*, § II.B.

other carriers can benefit from those investments without incurring the costs to do so. For these reasons, access restrictions can be important for maintaining investment incentives, which create improved products for customers.

39. The well-defined profit-sharing mechanism laid out in the JVA creates beneficial economic incentives for the Applicants to act in the best interests of the JV rather than themselves. Consensus decision-making provisions are important to facilitating these beneficial economic incentives. If one Applicant were to engage in cooperation with non-JV carriers (by, for example, engaging in a codeshare arrangement) outside of the scope of the JVA, it would have the effect of loosening the bonds that cause each Applicant to act in the interest of the JV. One consequence of such loosening is that it would reduce the beneficial effects of the elimination of double marginalization and would, all else equal, lead to higher prices and/or lower quality for consumers relative to a metal-neutral JV with consensus decision-making provisions.

VI. TECHNICAL APPENDIX – DERIVATION OF CONSUMER BENEFITS

40. To demonstrate the method, note that I can express the number of passengers that choose a particular carrier for trans-border service (q) as a function of the carrier's price on the route and the quality of its offerings on the route, holding constant the price and quality levels of competing carriers' itineraries. That is

$$q = f(s, p),$$

where s denotes the carrier's service quality and p denotes the carrier's price. As a result of the establishment of a metal-neutral JV, Delta and WestJet will be able to offer both lower prices (lower p) and improved service quality (higher s), increasing their number of passengers carried, *q*. Different combinations of price reductions and increases in service quality could attract an equivalent number of passengers. However, my benefits calculation is based on the pure price reduction (which I denote as Δp) that would have generated an increase in *q* equivalent to that which we observe due to the combination of lower prices and improved service, multiplied by the number of passengers flying each carrier, yielding total benefits equal to $\Delta p*q$.

41. To implement this methodology, suppose travel on Delta or WestJet has price elasticity of demand equal to ε. Then, to the first order, the benefits ($\Delta p*q$) are given by: $(1/\varepsilon)\ p_0\ q_0\ (\%\Delta q)$ where p_0 and q_0 are the pre-JV fare and number of passengers on the route, while Δq is the projected increase in passengers, based on the QSI models described above. Because Delta's QSI model produces separate estimates for "low-yield" and "high-yield" passengers, I separately apply the model to each passenger type. I combine the projected passenger changes on each route with an estimate of the price elasticity of demand facing a particular carrier (-6.5 for low-yield passengers and -0.6 for high-yield passengers, drawn from Berry-Jia (2010)), and an estimate of the average fare charged on the route (taken from Delta's QSI data).[32]

---

[32] *See* Steven Berry and Panle Jia (2010), "Tracing the Woes: An Empirical Analysis of the Airline Industry," *American Economic Journal: Microeconomics*, 2(1), pp.1-43, Table 7B.) Berry-Jia (2010) estimate the elasticity facing a particular product, which in their model is a particular itinerary on a particular O&D sold by a given carrier. In contrast, the elasticity that should go into our estimates is that facing a particular carrier. One would expect the elasticity facing a carrier to be lower than the product-level elasticity that we are using from Berry-Jia, in which case the results reported here are conservative because, when benefits are given by $(1/\varepsilon)\ p_0\ q_0\ (\%\Delta q)$, a lower elasticity is associated with greater benefits.

APPENDIX 4: Additional Information

To expedite the Department's consideration of this Joint Application, Delta and WestJet are providing the Department with additional information and documents typically requested by the Department for purposes of evaluating applications for ATI.

A. Document Production.

The Joint Applicants have searched for and will produce under separate cover documents, including electronic files and paper documents, which include the following categories of documents:

- Documents addressing the strategic objectives or rationale in forming the JV
- Documents discussing anticipated effects of ATI for the JV on any carrier, other immunized alliances, other SkyTeam partners, competitors, or consumers
- Documents reflecting the structure and process for coordination of the JV
- Studies, analyses and reports completed by or for an officer, director, or other individuals exercising similar functions, in contemplation of or in connection with the JV
- Documents reflecting the anticipated effects or benefits of ATI and ATI-enabled coordination for the JV
- Documents discussing and quantifying the effects and benefits of the JV, for both the carriers and consumers
- Documents reflecting cost savings and efficiencies enabled through ATI for the JV
- Documents discussing cargo services and how they will be handled in the JV
- Documents about the impact on slot utilization at constrained airports
- General competitive analysis of the U.S.-Canada transborder market

These documents contain confidential, proprietary, and commercially-sensitive information and are being submitted on a confidential basis in accordance with 14 C.F.R. § 302.12. Indices of the documents being produced by each Joint Applicant will be included with the document production.

B. Transborder Routes and Services.

The transborder routes of Delta and WestJet between the United States and Canada are set forth in Exhibit A attached hereto.

C. Codeshare Partners.

A complete list of the codeshare partners of Delta and WestJet is provided as Exhibit B attached hereto.

D. Origin Destination Traffic Data.

The Joint Applicants are supplying MIDT market demand data source, for the most recent 12-month period, which provides directional net passenger bookings for any international itinerary that touches any part of the United States (including its territories and possessions), or that touches Canada for the one-year period ending July 31, 2018. The data include the following elements:

Field 1: Trip Originating Airport
Field 2: Booked Point-of-Sale Country Code
Field 3: Airport Path and Marketing Carrier Designator String by Leg.[59]
Field 4: Volume of Net Bookings

These data are being submitted on thumb drive to the Department in comma-separated values (CSV) format under separate cover.

E. Origin-Destination Fare Data

For all itineraries that Delta or current ATI partners operate (including all subsidiaries), the Joint Applicants are providing fare data for all itineraries that touch Canada and the United States. United States itineraries include both U.S. origins and destinations as well as those to and from U.S. territories and possessions. The O&D data represent an internal 100% census of itineraries meeting the above criteria. Data is being submitted on a quarterly basis for the most recent year ended period for which data are

[59] Example of a path: a Chicago O'Hare-Toronto-Frankfurt-Warsaw directional trip with segments marketed by United, Air Canada, and LOT respectively would be reported as "ORD UA YYZ AC FRA LO WAW". A "//" is used to represent the marketing carrier on ARNK (Arrival Not Known) segments.

available (ending July 31, 2018). This includes all information for any itinerary that began during the period described above irrespective of when the full itinerary was completed.

These itineraries are supplied in an origin-destination (by direction of travel) format, referred to as "market directional." The Joint Applicants provide the number of (1) passengers, (2) market fare, (3) purchase class, (4) period, (5) airport sequence, (6) operating carrier code sequence, (7) change in operating carrier flag, (8) ticketing/marketing carrier code sequence, (9) change in ticketing/marketing carrier flag, (10) origin, (11) destination, (12) number of market coupons, (13) sequence number of each market directional that makes a full itinerary, (14) total distance flown (all kilometres converted to miles), (15) distance between the origin and destination (all kilometres converted to miles), (16) unique itinerary identifier, (17) one-way / round-trip itinerary identifier, (18) reporting carrier, and a (19) full itinerary online identifier. Fares include all taxes, fees, and applicable surcharges (particularly any fuel surcharges paid). Passenger counts are summarized by the unique combination of period, flight sequence, ticketing / marketing carrier sequence, operating carrier sequence, reporting carrier, directional market fare, one-way / round-trip itinerary identifier, full itinerary online identifier, and purchase class value.

These data are being submitted on thumb drive to the Department in comma-separated values (CSV) format under separate cover.

F. Alliance Partners.

Delta is a founding member of the SkyTeam Alliance. SkyTeam has twenty member airlines providing access to over 1,000 destinations worldwide in more than 175 countries: Aeroflot, Aerolineas Argentinas, Aeromexico, Air Europa, Air France, Alitalia, China Airlines, China Eastern, China Southern, Czech Airlines, Delta, Garuda Indonesia, Kenya Airways, KLM, Korean Air, MEA, Saudia, TAROM, Vietnam Airlines, and Xiamen Air. However, only Delta and WestJet are parties to the JV Agreement.

G. Other Antitrust-Immunized Relationships.

WestJet does not have any immunized relationships with other carriers. Delta has received the following antitrust immunity for other alliance relationships:

- DOT Order 1993-1-11 (approving and granting antitrust immunity for alliance cooperation between KLM, prior to the Air France/KLM merger and Northwest, prior to the Delta/Northwest merger).
- DOT Order 2002-1-16 (approving and granting antitrust immunity for alliance cooperation between Delta, Air France, Alitalia, and Czech Airlines).
- DOT Order 2002-6-18 (approving and granting antitrust immunity for alliance cooperation between Delta, Air France, Alitalia, Czech Airlines, and Korean Air).
- DOT Order 2008-5-32 (approving and granting antitrust immunity for transatlantic alliance cooperation allowing Delta and Northwest to combine their preexisting European joint ventures into a single combined transatlantic joint venture after the merger of Air France and KLM).
- DOT Order 2009-1-8 (granting *de facto* transfer of pre-merger Northwest economic authorities, including antitrust immunity grants, to Delta after the Delta/Northwest merger).
- DOT Order 2011-6-9 (approving and granting antitrust immunity for North America-Australia/New Zealand joint venture between Delta and Virgin Australia, Virgin Australia International Airlines Pty. Ltd., Virgin Australia Airlines (SE Asia) Pty. Ltd., and Virgin Australia Airlines (NZ) Pty. Ltd.)
- DOT Order 2013-9-14 (granting antitrust immunity for North America-UK joint venture between Delta and Virgin Atlantic).

- DOT Order 2016-12-13 (granting antitrust immunity for a U.S.-Mexico transborder Joint Cooperation Agreement between Delta and Aeromexico).

H. Exchange of Equity or Ownership Interests.

The JV Partners are not exchanging any equity or ownership interests in connection with their JV.

I. Hub Airports for the Joint Applicants.

WestJet has hubs and key markets at the following airports: Calgary, Toronto, Vancouver, Edmonton, Halifax, and Winnipeg.

Delta has hubs and key markets at the following airports: Atlanta, Boston, Detroit, Los Angeles, Minneapolis-St. Paul, New York-JFK, New York-LaGuardia, Salt Lake City, Seattle, Amsterdam, London-Heathrow, Paris-Charles de Gaulle, and Tokyo-Narita.

The Joint Applicants request that the Department take official notice of published schedules for these hubs, pursuant to Rule 24 of the Department's Rules of Practice.

J. Competitive Access to Airports and Related Facilities.

Granting the Joint Application will not result in any reduction in the allocations or availability of slots or airport facilities.

K. Labor Issues.

The Joint Application raises no labor issues. The JV Partners believe that the long-term impact of the transaction will be positive for all existing employees and for the creation of new jobs, and no significant impact on unionized employees is anticipated.

L. Civil Reserve Air Fleet Commitments.

There will be no impact on Delta's CRAF commitments.

EXHIBIT A

Transborder U.S.-Canada Routes of Delta and WestJet (Sept. 2017-Sept. 2018)

Carrier	Orig	Dest
DL	ATL	YUL
DL	ATL	YVR
DL	ATL	YYZ
DL	CVG	YYZ
DL	DTW	YOW
DL	DTW	YUL
DL	DTW	YVR
DL	DTW	YYZ
DL	JFK	YHZ
DL	JFK	YQB
DL	JFK	YUL
DL	JFK	YVR
DL	JFK	YYZ
DL	LAS	YVR
DL	LAS	YYZ
DL	LAX	YVR
DL	LGA	YHZ
DL	LGA	YOW
DL	LGA	YUL
DL	MSP	YEG
DL	MSP	YUL
DL	MSP	YVR
DL	MSP	YWG
DL	MSP	YXE
DL	MSP	YYC
DL	MSP	YYZ
DL	SEA	YEG
DL	SEA	YVR
DL	SEA	YYC
DL	SEA	YYJ
DL	SLC	YVR
DL	SLC	YYC
DL	SLC	YYZ
WS	AZA	YEG
WS	AZA	YYC
WS	BNA	YYC
WS	BNA	YYZ

WS	BOS	YHZ
WS	BOS	YUL
WS	BOS	YYZ
WS	DEN	YYC
WS	DFW	YYC
WS	FLL	YUL
WS	FLL	YYC
WS	FLL	YYZ
WS	HNL	YVR
WS	HNL	YYC
WS	IAH	YYC
WS	JFK	YYC
WS	KOA	YVR
WS	LAS	YEG
WS	LAS	YHM
WS	LAS	YQR
WS	LAS	YVR
WS	LAS	YWG
WS	LAS	YXE
WS	LAS	YYC
WS	LAS	YYZ
WS	LAX	YEG
WS	LAX	YVR
WS	LAX	YYC
WS	LAX	YYZ
WS	LGA	YYZ
WS	LIH	YVR
WS	MCO	YEG
WS	MCO	YHM
WS	MCO	YHZ
WS	MCO	YOW
WS	MCO	YQM
WS	MCO	YQR
WS	MCO	YUL
WS	MCO	YVR
WS	MCO	YWG
WS	MCO	YXU
WS	MCO	YYC
WS	MCO	YYT
WS	MCO	YYZ
WS	MIA	YYZ
WS	MYR	YYZ
WS	OGG	YEG
WS	OGG	YVR

WS	OGG	YYC
WS	ORD	YYC
WS	PHX	YEG
WS	PHX	YLW
WS	PHX	YQR
WS	PHX	YVR
WS	PHX	YWG
WS	PHX	YXE
WS	PHX	YYC
WS	PHX	YYZ
WS	PSP	YEG
WS	PSP	YVR
WS	PSP	YWG
WS	PSP	YYC
WS	PSP	YYZ
WS	RSW	YOW
WS	RSW	YYZ
WS	SAN	YVR
WS	SAN	YYC
WS	SFO	YVR
WS	SFO	YYC
WS	SJU	YYZ
WS	SNA	YVR
WS	TPA	YOW
WS	TPA	YYT
WS	TPA	YYZ

EXHIBIT B

Delta’s codeshare partners

- Aeroflot (SU)
- Aerolineas Argentinas (AR)
- Aeromexico (AM)
- Air Europa (UX)
- Air France (AF)
- Alitalia (AZ)
- China Airlines (CI)
- China Eastern (MU)
- China Southern (CZ)
- Czech Airlines (OK)
- Garuda Indonesia (GA)
- GOL (G3)
- Hawaiian (intra-Hawaii only) (HA)
- Jet Airways (9W)
- Kenya Airways (KQ)
- KLM (KL)
- Korean Air (KE)
- Seaborne (BB)
- Shanghai Airlines (FM)
- Transavia (HV)
- Vietnam Airlines (VN)
- Virgin Australia (VA)
- Virgin Atlantic (VS)
- WestJet (WS)

WestJet’s codeshare partners

- Aeromexico (AM)
- Air France (AF)
- Cathay Pacific Airways (CX)
- China Airlines (CI)
- China Eastern (MU)
- China Southern (CZ)
- Delta Air Lines (DL)
- Emirates (EK)
- GOL (G3)
- Hainan Airlines (HU)
- Hong Kong Airlines (HX)
- Japan Airlines (JL)
- KLM (KL)
- Korean Air (KE)
- LATAM Airlines (LA / JJ)
- Philippine Airlines (PR)
- Qantas Airways (QF)
- Xiamen Airlines (MF)

CERTIFICATE OF SERVICE

A copy of the foregoing Joint Application has been served this 10th day of October, 2018, upon the following persons via email:

Air Carrier	Name	Email Address
Alaska	David Heffernan	dheffernan@cozen.com
Allegiant	Aaron Goerlich	agoerlich@ggh-airlaw.com
American	Robert Wirick	robert.wirick@aa.com
American	William Sohn	william.sohn@dechert.com
American	Paul Denis	paul.denis@dechert.com
Amerijet	Joan Canny	jcanny@amerijet.com
Atlas	Russ Pommer	rpommer@atlasair.com
Federal Express	Bailey Leopard	gbleopard@fedex.com
Federal Express	Nancy Sparks	nssparks@fedex.com
Frontier	Howard Diamond	howard.diamond@flyfrontier.com
Hawaiian	Parker Erkmann	perkmann@cooley.com
JetBlue	Robert Land	robert.land@jetblue.com
JetBlue	Reese Davidson	reese.davidson@jetblue.com
JetBlue	Evelyn Sahr	esahr@eckertseamans.com
JetBlue	Drew Derco	dderco@eckertseamans.com
Kalitta Air	Mark Atwood	matwood@cozen.com
National Airlines	Malcolm Benge	mlbenge@zsrlaw.com
National Airlines	John Richardson	jrichardson@johnlrichardson.com
Polar Air Cargo	Kevin Montgomery	kevin.montgomery@polaraircargo.com
Southwest	Bob Kneisley	bob.kneisley@wnco.com
Southwest	Leslie Abbott	leslie.abbott@wnco.com
Spirit Airlines	David Kirstein	dkirstein@yklaw.com
Spirit Airlines	Joanne Young	jyoung@yklaw.com
Sun Country	Brandon Carmack	brandon.carmack@suncountry.com
Sun Country	Victoria Palpant	victoria.palpant@suncountry.com
United	Dan Weiss	dan.weiss@united.com
United	Steve Morrissey	steve.morrissey@united.com
United	Abby Bried	abried@jenner.com
UPS	Anita Mosner	anita.mosner@hklaw.com
UPS	Jennifer Nowak	jennifer.nowak@hklaw.com
	Todd Homan	todd.homan@dot.gov
	Peter Irvine	peter.irvine@dot.gov
	Brian Hedberg	brian.hedberg@dot.gov
	Robert Finamore	robert.finamore@dot.gov
	Brett Kruger	brett.kruger@dot.gov
	Kathleen O'Neill	kathleen.oneill@usdoj.gov
	Caroline Laise	caroline.laise@usdoj.gov
	John Duncan	john.s.duncan@faa.gov
	Paul Brown	brownpa@state.gov
	Info	info@airlineinfo.com