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-2018-0154

REPLY OF THE JOINT APPLICANTS

Communications with respect to this document should be sent to:

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

J. Scott McClain
Associate General Counsel
Christopher Walker
Director – Regulatory & 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

Counsel for Delta Air Lines, Inc. and
WestJet

December 23, 2019
I. The Evidence in the Record Demonstrates That the JVA Will Promote Competition and Generate Substantial Public Benefits, and That ATI is Required to Achieve Those Benefits................................................................................................................................. 2

II. The Objectors Have Failed to Carry Their Burden of Proving That the JVA Will Harm Competition and Their Arguments Do Not Justify the Remedies They Demand. ............... 5

A. The Objectors Have Failed to Demonstrate Any Potential Harm to Competition at LaGuardia (LGA) or Any New York City Market and Their Demands for LGA Slot Divestitures Should Be Rejected................................................................. 6

   1. The Proposed Slot Divestitures Are Not Justified by Any Plausible Claim of Harm to Competition on the New York City-Toronto City Pair or at LGA............................... 6
   2. Approval of the JVA Will Not “Undermine” the 2011 Slot Divestitures.............................. 8
   3. Approval of the JVA Will Not Harm Competition in New York as a Whole..................... 9
   4. The Proposed LGA Slot Divestitures Would Harm Competition on the NYC-Toronto Route, or Result in the Loss of LGA Service to Small and Medium-Sized Communities............................................................................................................. 12

B. The Objectors Have Failed to Refute the Extensive Evidence in the Record Demonstrating That the JVA Will Enhance Competition with the Immunized Air Canada/United Transborder Alliance................................................................. 16

C. The Other Recycled Arguments of the Objectors Are Meritless........................................ 19

   1. The Assertions by Alaska and JetBlue That the Department Has Failed to Conduct a “Probing Regulatory Scrutiny” of the JVA Are Without Merit..................................... 19
   2. Alaska’s Bald Assertion That the Joint Applicants Have Failed to Demonstrate Public Benefits That Can Be Achieved Only Through ATI Simply Ignores the Record........ 20
   3. Alaska Continues to Misconstrue the Findings of Brueckner & Singer............................ 23
   4. Alaska and JetBlue Have Failed to Raise Any Legitimate Concerns About the Competitive Impact of the JVA on U.S.-Canada Transborder Markets As a Whole...... 25
   5. Alaska and JetBlue Have Failed to Produce Evidence Justifying Any of the Other Remedies They Propose. .................................................................................. 26
   6. Alaska’s and JetBlue’s Calls for a Five-Year Time Limit and Other Conditions on the ATI Grant Are Contrary to Department Precedent, Wasteful, and Unnecessary........... 31
   7. JetBlue’s Insinuation That Delta’s Internal Documents Reveal Anticompetitive Actions or Intent is False and Reflects a Fundamental Misunderstanding of Basic Competition Law Principles......................................................................................................................... 32

III. The Joint Applicants Have No Objection to the Delta MEC’s Request for Periodic DOT Review of Labor Conditions, But Oppose the MEC’s Request for Access to the Annual Progress Reports......................................................................................................................... 32

IV. Conclusion......................................................................................................................................................... 35

CERTIFICATE OF SERVICE...........................................................................................................................................
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-2018-0154

REPLY OF THE JOINT APPLICANTS

Delta Air Lines, Inc. (“Delta”) and WestJet (collectively, the “Joint Applicants”) hereby reply to the answers filed on December 11, 2019 in this docket by Alaska, JetBlue, Southwest, and the Delta MEC.¹ The Department should promptly grant the Joint Application, allowing Delta and WestJet to implement their Joint Venture Agreement (“JVA”) and bring enhanced services and substantial public benefits to travelers and shippers in the U.S.-Canada transborder market. The extensive evidentiary record demonstrates that the Joint Application satisfies the Department’s standards for approval and grant of antitrust immunity (“ATI”): the JVA will not substantially reduce or eliminate competition in any relevant market, and it will deliver significant public benefits that cannot be achieved without ATI. The networks of WestJet and Delta are highly complementary, with almost no direct overlap (and no nonstop airport-pair overlap). Combining the networks will create an effective competitive alternative to antitrust-immunized Air Canada/United, and allow the Joint Applicants to deliver a broad range of improved services and other public benefits that would not be possible without ATI. The proposed joint venture has been carefully reviewed by the Canadian Competition Bureau,

¹ Common names are used for airlines and labor groups.
which issued a No-Action Letter in the matter on June 26, 2019.

It is telling that three of the four parties that filed objections to the Joint Application are competitors of the Joint Applicants. They complain that the JVA will enable the Joint Applicants to offer more attractive services to the traveling public, making it harder for these competitors to win customers in the marketplace. They demand that the federal government strip WestJet of valuable assets at LaGuardia Airport (LGA) and force WestJet to give any other carrier access to its network and frequent flyer program as if this privately-held Canadian carrier were a public utility. The federal intervention requested by the carriers objecting to the JVA has no legal basis and is inconsistent with the Administration’s pro-competitive and pro-consumer policies.

None of the objectors has met its burden to demonstrate that the JVA would harm or reduce competition on any route or in any relevant market. None has produced any evidence to refute the public benefits described in the Joint Application. The objectors seek to undermine the Joint Applicants’ innovation and block them from bringing important benefits to the traveling public, or failing that, make the delivery of those public benefits as expensive and difficult as possible through unjustified conditions. They want the Department to protect competitors, not competition, which is inconsistent with competition law principles. The Department should reject these cynical efforts to deny the traveling public the many benefits of this proposed joint venture and promptly approve the JVA.

I. The Evidence in the Record Demonstrates That the JVA Will Promote Competition and Generate Substantial Public Benefits, and That ATI is Required to Achieve Those Benefits.

The statutory standard governing the Department’s decision to approve and grant ATI for international airline joint ventures is well-established. The Department must first determine “whether the agreements are adverse to the public interest because they would substantially
reduce or eliminate competition.” 2 The parties opposing approval bear the burden of demonstrating competitive harm. 3 If the agreements are not adverse to the public interest, the statute directs the Department to approve them. 4 The Department will then conduct a public interest analysis to determine whether the grant of ATI is justified because the agreements would generate sufficient public benefits that can only be achieved with ATI. 5

The record in this case establishes that the JVA will enhance competition and that it will generate substantial public benefits that can be achieved only with ATI. As the Joint Applicants detailed in their Joint Application and responses to the Department’s request for additional information, the JVA will invigorate U.S.-Canada competition and deliver important benefits for air travelers and communities across the United States and Canada. Specifically, it will enable the Joint Applicants to offer seamless metal-neutral service in over 8,100 city pairs, including new or expanded service on at least 20 nonstop routes. It will also enable them to serve customers as if they were a single airline, providing increased service, more convenient schedules, seamless connections, and an enhanced airport experience. By cooperating on inventory availability and revenue management, Delta and WestJet will be able to offer customers more and better U.S.-Canada routing options, and lower fares.

By connecting their complementary networks, the JVA will enable Delta and WestJet to compete more effectively against the antitrust-immunized Air Canada/United alliance by offering more attractive services to the traveling public than either carrier can offer on its own.

2 Order 2011-11-16, at 8 (emphasis in original); see also Order 2013-8-21, at 4-5.
3 Order 2013-8-21, at 5; see also Order 2019-8-2, at 4.
4 49 U.S.C. § 41309(b) (the Department “shall approve an agreement…when the Secretary finds it is not adverse to the public interest and not in violation of this Part.”); see also Order 2019-8-2, at 4.
5 Order 2019-8-2, at 4.
in the absence of the joint venture ("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. 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 each airline will enjoy improved returns resulting from synergies and market growth.

Specifically, the evidentiary record demonstrates that the JV will enable the Joint Applicants to:

- Produce more than $241 million in annual consumer benefits.
- Create a metal-neutral network covering all the Joint Applicants’ nonstop flights between the United States and Canada, linking over 8,100 U.S.-Canada city pairs.
- Implement 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. This will increase transborder capacity on the combined Delta/WestJet network by over 20% and add nonstop service on certain routes that currently do not have it.
- 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.
- 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.\textsuperscript{6}

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 certain reciprocal frequent flyer program benefits. In the absence of the JV, the Joint Applicants’ arm’s-length codesharing could not deliver these substantial new benefits, as they are the direct outgrowth of the closely integrated metal-neutral 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. These benefits can only be achieved with implementation of the ATI-enabled JVA. The evidence in the record meets the Department’s well-established standards for granting ATI.

II. The Objectors Have Failed to Carry Their Burden of Proving That the JVA Will Harm Competition and Their Arguments Do Not Justify the Remedies They Demand.

None of the objectors offers any evidence to refute the substantial benefits that the Joint Applicants have demonstrated will flow from approval of the JVA. More significantly, they have failed to carry their burden of demonstrating competitive harm. Indeed, no objector identifies any actual competitive harm likely to result from the JVA. They do not because they cannot.

\textsuperscript{6} For a more detailed description of the anticipated public benefits resulting from the JVA, see Section VI of the Joint Application, at 27-50.
A. The Objectors Have Failed to Demonstrate Any Potential Harm to Competition at LaGuardia (LGA) or Any New York City Market and Their Demands for LGA Slot Divestitures Should Be Rejected.

Instead of trying to demonstrate competitive harm from the JVA itself, Southwest and JetBlue treat this proceeding as an opportunity to relitigate the Department’s decision in conjunction with the FAA more than eight years ago to approve the Delta-US Airways slot swap transaction. The Department should reject this tactic because the JVA will have no adverse impact on competition at LaGuardia Airport (LGA). To the contrary, the slot remedies that Southwest and JetBlue propose would harm competition at that airport through the loss of the only direct nonstop competition between LGA and Toronto against Air Canada and American. Or, if the JV determined to retain that service, reallocation of the slots needed to fund that competition would force Delta to terminate LGA service that Delta currently provides to several small and medium-sized communities, most of which have no other nonstop service to LGA or the New York metropolitan area as a whole.

1. The Proposed Slot Divestitures Are Not Justified by Any Plausible Claim of Harm to Competition on the New York City-Toronto City Pair or at LGA.

The demands by Southwest and JetBlue for slot divestitures at LGA are not related to any alleged competitive harm that arises from the JVA. As detailed in the Joint Application, and in the supporting Declaration submitted by Dr. Bryan Keating, “the extent to which Delta and WestJet directly compete today is very limited.” There is no nonstop overlap airport pair and only a single nonstop city-pair overlap: New York City (“NYC”) - Toronto. The Joint

---


8 Bryan Keating, “An Economic Analysis of the Joint Venture between Delta and WestJet,” (October 9, 2018), (attached as Appendix 3 to the Joint Application) [“Keating Dec.”] ¶ 6.

9 Id.
Applicants’ combined share on this route is less than 25%, neither carrier has a share of 20% or greater, and they will continue to face nonstop competition from four airlines on this city pair, including Air Canada which will continue to have the largest share.10

Importantly, the NYC-Toronto city pair is not an airport-pair overlap for the Joint Applicants. Delta and WestJet serve this city pair through different New York City airports, with Delta operating its service to Toronto from John F. Kennedy Airport (JFK) and WestJet offering its service from LGA. Delta faces direct competition from American on services to/from JFK, and WestJet faces direct competition from Air Canada and American on services to/from LGA.11 Notably, WestJet does not currently use any of its LGA operating authorizations to compete with Delta on any LGA airport pair. The combination of their transborder networks will therefore not reduce competition in any LGA market. Thus, the proposal by these competitors that WestJet should be forced to divest its entire LGA slot holdings as a condition of implementing the JVA cannot be justified based on any claim of actual lost competition at LGA.

JetBlue’s assertion that Delta’s internal planning documents suggest any anticompetitive intent with respect to the use of these LGA slots is absolutely false, and contradicted by the documents that JetBlue cites for the claim. The internal Delta planning documents cited by JetBlue make clear that Delta intends to confer with WestJet as soon as ATI makes such joint network planning possible on strategies for using the relative efficiencies of their differing aircraft fleets to increase competition and improve the quality of service that the combined Joint Applicants will be able to offer on the NYC-Toronto route. Specifically,

10 Id. ¶ 7.
11 Id. ¶ 8.
Those are exactly the kinds of JV synergies that ATI is supposed to make possible.

Southwest and JetBlue do not even try to demonstrate any actual link between the JVA and harm to competition at LGA or in any relevant LGA market. They cannot, because WestJet has a tiny presence at LGA, and even if the transaction were treated as a transfer of the WestJet slots to Delta, it would only increase Delta’s overall slot holdings at the airport by 1%, from about 45 to 46%. Thus, there is no plausible basis for JetBlue and Southwest to claim that this JVA will actually harm competition at LGA.

2. **Approval of the JVA Will Not “Undermine” the 2011 Slot Divestitures.**

Nor will approval of the JVA “undermine” the 2011 slot divestitures as Southwest and JetBlue claim. The 2011 remedies never contemplated a perpetual restriction on the divested slots. To the contrary, DOT/FAA specifically rejected proposals that perpetual restrictions be
adopted.\textsuperscript{12} DOT/FAA instead provided that after five years, all restrictions on the winning bidders' use of these slots would expire, subject only to the FAA interim order governing all operating authorizations at the airport.\textsuperscript{13}

Importantly, WestJet did not receive its LGA slots for free. As JetBlue and Southwest are both well aware, WestJet was the winning bidder for the slots in a blind auction in which both JetBlue and Southwest participated. JetBlue and WestJet were the highest bidders, and both carriers paid millions of dollars for them. Southwest was not a winning bidder, because WestJet was willing to pay more than Southwest for the slots. After outbidding every other eligible bidder except JetBlue, WestJet put those divested LGA slots to valuable use, offering head-to-head competition with Air Canada and other carriers on the most important U.S.-Canada route it could serve from LGA: NYC-Toronto. The continued use by the JV partners of those operating authorizations to provide even more effective competition with Air Canada on that same route is entirely consistent with the goal of the 2011 divestitures.

3. Approval of the JVA Will Not Harm Competition in New York as a Whole.

JetBlue and Southwest have also failed to carry their burden of establishing that approval of the JVA would cause any harm to competition in the New York area as a whole. They have not even tried to establish any link between the JVA and their alleged lack of access to LGA. They simply complain that Delta's presence at LGA is too large. For that reason alone, they urge the Department to unwind WestJet's successful acquisition of slots in the DOT/FAA supervised auction a decade ago by forcing WestJet to divest slots for which it paid tens of millions of dollars as the arbitrary price of establishing a pro-competitive metal-neutral joint venture with Delta. This demand is flawed on many levels.

\textsuperscript{12} DOT/FAA Notice, at 63711.
\textsuperscript{13} Id., at 63712.
First, JetBlue and Southwest ignore that there are several alternative airports for serving the New York area, including Newark and JFK. It is particularly ironic that Southwest complains about Delta holding 45% of the slots at LGA, when Southwest controls 90% of the gates at Dallas Love Field airport, an airport with unique gate constraints imposed by the Wright Amendment Reform Act.\textsuperscript{14} Southwest constantly insists no one should be concerned about this because new entrants can always choose to fly to DFW Airport instead.\textsuperscript{15}

JetBlue and Southwest ignore the fact that Delta and WestJet do not compete with each other on any LGA city pair, so they are not even competitors in New York unless the relevant market is the NYC metropolitan area as a whole. In that case though, the relevant metric for assessing airport concentration is Delta’s share of operations at the NYC area airports as a whole, not just at LGA. Delta’s share of operations to/from all of the NYC airports is not concentrated: Delta operated only 28% of the flights to/from New York City during the twelve months ending October 2019. That is no basis for forcing a divestiture of 100% of WestJet’s slots at LGA as the price of implementing a pro-competitive joint venture.

Second, when the focus is properly placed on New York City as a whole, it is clear that LCCs are able to enter and compete in these markets. LCC competition has materially increased at the NYC airports since 2011 when the Delta-US Airways slot transaction was approved. JetBlue operates a large hub at JFK, with about 175 daily departures scheduled from that airport during Summer 2020. JetBlue and other LCC carriers have also significantly expanded their service at the three major NYC airports since 2011, with Spirit having grown


\textsuperscript{15} Southwest has been engaged in a legal battle in federal court in Texas since 2014, trying to prevent Delta from being able to offer its five daily flights that currently compete with Southwest at Love Field. See City of Dallas vs. Delta Airlines, Inc., et al., 2016 WL 98604 (N.D. Tex. 2016), aff’d in relevant part, 843 F.3d 279 (5th Cir. 2017).
by 111%, Southwest by 42%, and JetBlue by 19%, as reflected in Figure 1:

**Figure 1**

Even at LGA alone, U.S. LCC growth has been robust during this same period, with JetBlue and Southwest leading the expansion story. As detailed below in Figure 2, JetBlue has increased its presence at LGA by 87% since October 2011, and Southwest has grown by 30% - higher than the LCC average of 20%:
These statistics reveal the demands of JetBlue and Southwest for what they are: a self-serving attempt to force the confiscation of valuable assets of WestJet – for which it paid millions of dollars, and with no plausible justification in competition law principles – as the arbitrary price of implementing a procompetitive joint venture.

4. The Proposed LGA Slot Divestitures Would Harm Competition on the NYC-Toronto Route, or Result in the Loss of LGA Service to Small and Medium-Sized Communities.

There is no question that imposing the proposed slot divestitures would cause significant harm to the public interest. It would either reduce competition on the NYC-Toronto city pair or result in the loss of LGA service to several small and medium-sized communities that currently receive it.

As noted above, WestJet currently uses its LGA slots to compete head-to-head with Air Canada between LGA and Toronto – the most important U.S.-Canada transborder market.
No recipient of slot divestitures would replace the eight daily nonstop flights that WestJet currently operates on this route. To the contrary, it is a virtual certainty that none of the slots would continue to be used for transborder service at all. Southwest does not serve Canada. Spirit does not serve Canada. JetBlue does not serve Canada. Frontier and Alaska do not serve Canada from New York. Even in the unlikely event that these carriers would choose to provide LGA-YYZ service with divested WestJet slots as transborder new entrants, it is implausible that any of them could sustainably compete on the highly contested NYC-Toronto route against the mature and immunized Air Canada/United transborder relationship. Thus, the proposed divestitures would result in a significant loss of competition in the largest U.S.-Canada transborder market, unless Delta chooses to reallocate some of its other LGA slots to maintain the current level of competitive service WestJet operates on this airport pair. The primary beneficiaries of the lost competition would be Air Canada and American, which would no longer be disciplined by WestJet’s competitive nonstop LGA-Toronto service, to the detriment of the traveling public.

If, on the other hand, the Joint Applicants choose to maintain the current level of nonstop competition that WestJet injects into this airport pair, the slot divestitures would damage the public interest in a different and equally serious way. Like every other carrier that serves LGA, Delta holds a finite number of operating authorizations. Repurposing Delta slots to replace those that WestJet currently uses to compete on LGA-Toronto is a zero-sum game. Delta would have to cancel other LGA services it currently offers to small and medium-sized communities, most of which have no other nonstop service options to LGA or even to the New York City metropolitan area as a whole. As reflected in Figure 3, chief among the communities that would most be at risk of losing their current Delta-operated LGA service are REDACTED.
Thus, in addition to being completely unjustified from a competition policy perspective, the slot divestitures that these competitors are demanding will cause substantial harm to competition and service levels in the NYC-Toronto market and/or small and medium-sized communities throughout the Eastern United States.

For the same reason, the Department should reject Southwest’s claim that Delta is
misusing or underutilizing its portfolio of LGA operating authorizations.\textsuperscript{16} Delta does not underutilize its LGA slots. To the contrary, it schedules between 90% and 98% usage of its LGA operating authorizations, far above the regulatory minimum of 80%. What Southwest is really challenging is Delta’s hub-and-spoke business model, based on the flawed premise that no carrier should be permitted to conduct hub operations at a slot-restricted airport.

At the outset, it is again ironic that Southwest would criticize the fact that 14% of Delta’s passengers at LGA are making connections when fully 36% of Southwest’s passengers at Love Field are connecting at that uniquely access-restricted airport in Dallas where Southwest controls 90% of the gates.\textsuperscript{17} But more importantly, the hub synergies created by Delta’s operations at LGA generate important public benefits for small and medium-sized communities throughout the eastern United States. The DOT/FAA expressly recognized and affirmed these important public benefits when they rejected these same arguments made by Southwest in 2011:

“[W]e are most convinced…that development of a LGA hub will lead to enhanced service to small communities (even with the small aircraft that Southwest contends would be used) and improved competition versus other east coast hubs, including United’s Newark hub and US Airways [now American’s] hub in Philadelphia.”\textsuperscript{18}

As the DOT/FAA correctly observed when approving the slot swap transaction in 2011, the network synergies of Delta’s hub operations at LGA make it possible for Delta to offer the LGA service that it does to small and medium-sized communities. Operating LGA service to these communities is a significant public benefit which JetBlue and Southwest ask the Department

---

\textsuperscript{16} Southwest Answer, at 8.

\textsuperscript{17} U.S. O&D survey data for year ending 1Q 2019 (accessed via Diio Mi).

\textsuperscript{18} DOT/FAA Notice, at 63705.
simply to ignore.

Delta’s substantial operations at this airport are also what makes it feasible for Delta to make massive infrastructure investments, such as the $3.4 billion in direct financing that Delta is contributing to build a new state-of-the-art terminal at LGA. The new facility will feature 37 gates across four concourses connected by a centralized check-in lobby, security checkpoint, and baggage claim; dual taxiways that will help reduce hold outs and taxi times; a new, larger Delta Sky Club with a Sky Deck; larger gate areas and more concessions space; and more efficient airport roadways. Delta’s investment represents one of the largest private investments in a public asset in New York State. Delta’s first new LGA concourse opened in the fall of 2019 – a major milestone in the airline’s history of investment in New York and LGA.19 The significant public benefits of these investments in airport infrastructure are a direct result of – and are only possible because of – Delta’s hub operations and substantial local presence at this airport. The Department should reject the objectors’ efforts to undermine Delta’s hub, just as the DOT/FAA rejected those same arguments in 2011.

B. The Objectors Have Failed to Refute the Extensive Evidence in the Record Demonstrating That the JVA Will Enhance Competition with the Immunized Air Canada/United Transborder Alliance.

The Joint Applicants have produced extensive evidence demonstrating that one of the key benefits of the JVA will be enhanced competition by the combined Delta-WestJet network offering a credible competitive alternative to Air Canada/United in the U.S.-Canada transborder markets. This critical competitive benefit is ignored by two of the three competitor-objectors. The only exception is Alaska, which claims incorrectly that “enabling more effective

19 Delta News Hub, Coming Into View: Delta’s First New LaGuardia Concourse to Open This Fall (June 27, 2019), https://news.delta.com/coming-view-delta-s-first-new-laguardia-concourse-open-fall.
competition with other immunized alliances is not a basis for granting ATI."  

To the contrary, that pro-competitive result has repeatedly been a key factor justifying ATI in past proceedings, including for example the following:

- **U.S.-Japan Alliance Case (Docket DOT-OST-2010-0059)**
  - "Based on our evaluation of the Star Application and oneworld Application, we tentatively determine that, overall, each alliance will be procompetitive. In reaching this conclusion, we make the following tentative findings: (1) inter-alliance competition would likely be strengthened in U.S.-Asia and U.S.-Japan markets as result of immunizing the Star applicants and the oneworld applicants and (2) market forces are likely to address potential competitive effects in the six city-pair markets, including Washington-Tokyo and Chicago-Tokyo, in which multiple members of one or both ATI Applicants currently provide nonstop service."  

  - "Additionally, we tentatively find that a grant of immunity will be beneficial by enhancing inter-alliance competition across the Pacific. Delta and Korean Air currently operate with immunity, have a strategically placed immunized connecting hub in Seoul, and have a sizable presence in the U.S.-Asia market. Without immunity, the Star applicants and oneworld applicants would likely not be able to match the size and scope of SkyTeam in the transpacific market. We believe that competition among the three alliances is important to consumer benefits in the short and long term: immunizing the oneworld applicants and Star applicants would help prevent any single competitor from gaining a share of the market that would diminish competition."  

- **Star Alliance/A++ ATI (Docket DOT-OST-2008-0234)**
  - "The Department must analyze both data sources to better assess country-market shares among alliances. We tentatively determine that the proposed alliance is likely to enhance competition in several important markets. With Continental, Star becomes a more competitive alliance in markets where oneworld or SkyTeam have a strong presence. For all U.S.-EU markets, the proposed alliance increases inter-alliance competition in five of the ten largest country-pair markets."  

- **American/British Airways ATI (Docket DOT-OST-2008-0252)**

---

20 Alaska Answer, at p. 8 n.14.

21 Order 2010-10-4, at 2 (emphasis added).


23 Order 2009-4-5, at 9 (emphasis added).
“According to the booking data, the proposed alliance establishes oneworld as a strong third alliance competitor. It makes oneworld more competitive, and thus enhances inter-alliance competition, in eight of the top 10 markets: U.S. to Germany, Italy, France, the Netherlands, Switzerland, Ireland, Belgium, and Denmark.”

“We have carefully analyzed the impact of the proposed alliance at the network, country-pair, and city-pair level. On the one hand, the proposed alliance will provide a third global network that can better discipline the fares and services offered by the Star and SkyTeam alliances. The enhanced inter-alliance competition is beneficial for consumers across many markets, in particular the hundreds of transatlantic markets in which the applicants become more competitive as a direct result of the alliance. Travelers in those markets instantly gain new competitive options.”

- Blue Skies ATI (Docket DOT-OST-2013-0068)

“The SkyTeam alliance would remain the third-largest alliance at LHR and continue to face competition from alliances with larger slot portfolios, particularly the OneWorld alliance.”

- Delta/Virgin Atlantic ATI (Docket DOT-OST-2013-0068)

“Based on our evaluation and analysis of the present application, we tentatively conclude that, overall, the alliance will be procompetitive. In reaching this conclusion, we make the following tentative findings: (1) inter-alliance competition will likely be strengthened in the U.S.-Europe and U.S.-United Kingdom markets.”

“The proposed Delta-Virgin Atlantic Joint Venture would enable the two carriers to offer a pattern of service more competitive with that of the OneWorld Joint Venture for travelers in Boston and London and thus strengthen inter-alliance competition.”

---

24 Order 2010-2-8, at 17 (emphasis added).
25 Id., at 28 (emphasis added).
26 Order 2019-8-2, at 7.
27 Order 2013-8-21, at 2 (emphasis added).
28 Id., at 13 (emphasis added).
• Delta/Aeromexico ATI (Docket DOT-OST-2015-0070)
  o “We have also tentatively concluded that a grant of ATI is required by the public interest because the proposed JV would provide a number of valuable public benefits including a third network competitor on par with the current first and second largest competitors….”

As these many Department precedents make clear, “enabling more effective competition with other immunized alliances” is indeed one of the most common and powerful public benefits justifying a grant of ATI. None of the objectors has provided any basis for the Department to conclude that a different result is appropriate in this case.

C. The Other Recycled Arguments of the Objectors Are Meritless.

The remaining arguments raised by the objecting competitors largely recycle the same unpersuasive arguments they have made in other recent ATI proceedings. These objections are all meritless.

1. The Assertions by Alaska and JetBlue That the Department Has Failed to Conduct a “Probing Regulatory Scrutiny” of the JVA Are Without Merit.

Alaska does a disservice to the Department’s ATI process by suggesting that the Department would engage in a “box checking” review of their Joint Application. JetBlue’s insinuation that the Department has not conducted a “probing regulatory scrutiny” of the Joint Application is equally meritless. The Joint Applicants submitted a 100-plus page Application in the public docket more than a year ago, and have produced tens of thousands of documents in the confidential docket in response to DOT evidence requests. They have complied with the Department’s request for additional information, including detailed narrative responses and data productions in response to more than thirty probing questions posed by the

29 Order 2016-11-2, at 2 (emphasis added); see also id., at 11.
30 Alaska Answer, at 2.
31 JetBlue Answer, at 2.
Department more than six months ago. The Department and interested parties have had more than a year to carefully review the Joint Application and initial tranche of supporting materials the Joint Applicants voluntarily submitted with it, plus more than five months to review the enormous volume of documents, data, and other information the Joint Applicants produced in response to the Department’s request for additional information. The Canadian Competition Bureau conducted its own thorough review of this same transaction during the same time period, resulting in a No-Action Letter more than five months ago. For JetBlue and Alaska to criticize the Department’s careful scrutiny of this and every other application for approval of international airline joint ventures as a “box-checking” exercise is an affront to the Department’s thorough and comprehensive ATI review process.

2. Alaska’s Bald Assertion That the Joint Applicants Have Failed to Demonstrate Public Benefits That Can Be Achieved Only Through ATI Simply Ignores the Record.

Alaska asserts without any evidence that the Joint Applicants have failed to establish sufficient public benefits to justify a grant of ATI. Alaska fails, for example, to present any evidence to contradict the Joint Applicants’ showing, based on well-established, reliable QSI modeling that has been repeatedly accepted by the Department as persuasive in past proceedings, that the JVA will result in approximately $241 million in annual consumer benefits as a direct result of new service, capacity expansion on existing routes (i.e., additional flights and seats), more convenient connections, additional codesharing opportunities, a more seamless customer experience, the elimination of double-marginalization in codeshare pricing (resulting in lower fares), improved routing options, reduced costs, and increased synergies. Nor does Alaska produce any evidence to refute the fact that immunized cooperation between

32 Alaska Answer, at 7.
Delta and WestJet will benefit consumers by enabling them to offer a more competitive network alternative to Air Canada/United. Those facts alone satisfy the applicable statutory standard for ATI.

Similarly, Alaska baldly asserts, without any evidence, that the Joint Applicants can achieve all of the substantial public benefits that will flow from the JVA without a grant of ATI with existing arm’s-length commercial cooperation. That claim ignores the evidence submitted by the Joint Applicants showing that arm’s-length codesharing is ineffective to produce the projected benefits because of the inability to gain full network access to the other carrier’s system.33 Moreover, Alaska’s argument ignores the decades of experience the Department now has with pro-competitive metal-neutral joint ventures. Alaska cites the Department’s recent decision denying ATI for the Hawaiian/JAL JV, but the fact-specific finding in that case is completely inapposite here.

The proposed Hawaiian/JAL JV focused on a single trans-oceanic market, Honolulu-Tokyo, which, the Department found in the Show Cause Order, “undermines the potential for capacity benefits solely attributable to ATI by obviating the need to add additional capacity to carry large numbers of connecting passengers across the immunized network.”34 Hawaiian and JAL produced no evidence to establish that any material network growth was tied specifically to implementation of the JV.

In contrast, the Joint Applicants’ JV is a much broader joint venture than what Hawaiian-JAL proposed. Rather than relying on a single trunk route, as Hawaiian-JAL did, WestJet and

33 See Joint Application at 12-14 (detailing the termination of WestJet’s Calgary (YYC)–DFW and YYC–ORD services after its codeshare partner American significantly limited beyond-DFW and beyond-ORD codesharing and removed its code from the YYC–DFW flight).
34 Order 2019-10-5, at 12.
Delta propose a broad network-to-network transborder JV. And, the Joint Applicants have produced extensive evidence identifying specific additional transborder markets that are likely to receive new or expanded service when the JV is implemented. They also produced economic testimony demonstrating that the combination of the networks together with fully coordinated metal-neutral cooperation across the combined networks will generate more than $240 million in annual consumer benefits. That does not account for the intangible public benefits that will flow from the creation of a more effective competitive challenger to Air Canada/United, nor does it account for the additional public benefits that will flow from the Joint Applicants' planned investments in their common product.

The joint transborder network planning, metal-neutral profit-sharing, and coordinated JV pricing and revenue management between Delta and WestJet that are essential to the delivery of the significant public benefits that the JV offers cannot be implemented without ATI. The fact that WestJet has unilaterally announced some new services and capacity growth that it determined were in its independent commercial interests during the past fourteen months since the Joint Application was filed to respond to competitive circumstances does not in any way contradict the overwhelming evidence in the record that there are many more benefits that the JVA will generate that can only be achieved when the JVA itself is fully implemented.

Neither WestJet nor Delta will be able to achieve the expected benefits of the JVA nor even to sustain some of the recent WestJet growth in the U.S.-Canada transborder markets without the resources and shared incentives of a metal-neutral joint venture. The viability of some of the growth that WestJet has independently launched is dependent upon the JV eventually being implemented. Chief among the likely route casualties of an ATI denial would be **********
Similarly meritless is Alaska’s assertion, in a footnote, that the Joint Applicants have failed to provide sufficient information concerning how WestJet’s Swoop subsidiary would be integrated into the joint venture.\textsuperscript{35} The Joint Applicants devoted nearly eight pages in their response to the Department's requests for additional information providing a detailed explanation of the origins of Swoop, its strategic purpose and role in the combined Delta-WestJet network, and its treatment under the JVA.\textsuperscript{36} The Joint Applicants also produced a large volume of internal Delta and WestJet documents relating to Swoop. After a careful consideration of Joint Applicants’ responses and the thousands of documents in the record, the Department has already correctly concluded that the record is complete.

3. **Alaska Continues to Misconstrue the Findings of Brueckner & Singer.**

Also flawed is Alaska’s reliance once again upon its misreading of the Brueckner & Singer study to support an allegation of competitive harm. Just as it did recently in the Aeromexico proceeding, Alaska misstates the conclusions of this study.\textsuperscript{37} The Brueckner &

\textsuperscript{35} See Alaska Answer, at 8, n. 25.

\textsuperscript{36} See Joint Applicants’ Response to Order Requesting Additional Information, filed July 2, 2019, at 18-26.

\textsuperscript{37} Alaska Answer, at 12.
Singer study focuses, in pertinent part, on fare effects in gateway-to-gateway \textit{overlap} routes.\textsuperscript{38} As noted above, Delta and WestJet do not overlap on any gateway-to-gateway airport pair, and the single city-pair overlap is in a city-pair market that will continue to enjoy multiple nonstop competitors after the JVA is implemented. Given those facts, there is no legitimate basis for concluding that the JVA creates any risk of higher fares, and certainly the Brueckner & Singer study provides no basis for that concern.

To the contrary, as the Department recognized in the Blues Skies ATI Final Order, the Brueckner & Singer study confirms what other prior published analyses of the pricing effects of ATI-enabled cooperation has found: that ATI-enabled cooperation in international air carrier alliances results in significantly \textit{lower} fares for the traveling public on connecting itineraries as a result of the elimination of double marginalization, consistent with what economic theory predicts.\textsuperscript{39} The study further supports the proposition that immunized joint ventures such as the one proposed by Delta and WestJet produce significant consumer benefits in the form of consumer surplus and increased service offerings. In summarizing the findings of the Brueckner & Singer study in the Blue Skies Final Order, the Department noted that “removing joint ventures in two representative gateway-to-gateway markets would harm overall consumer welfare.”\textsuperscript{40} In the words of Brueckner & Singer in their Conclusion: “the downside of alliances is dominated by the upside.”\textsuperscript{41}

Alaska attempts to counter this obvious flaw in its argument by suggesting that the


\textsuperscript{39} Order 2019-11-14, at 6.

\textsuperscript{40} \textit{Id}.

\textsuperscript{41} Brueckner & Singer, at 38.
Department should consider not just actual overlaps, but even potential overlaps – in other words, Alaska suggests that the Brueckner & Singer findings of fare effects on actual nonstop overlap routes should be extrapolated to assume potential adverse fare effects on every possible gateway-gateway route. This is completely inconsistent with the Brueckner & Singer findings and conclusions. Brueckner & Singer did not find any adverse fare effects on gateway-to-gateway routes where the JV partners did not actually compete at the time of their JV approval. The fact that the Joint Applicants could theoretically create additional overlaps at some point in the future if they are denied the ability to implement their procompetitive joint venture now is speculative in the extreme. Such speculation has never been the basis for denial of ATI in any past proceeding.

Moreover, the U.S.-Canada transborder environment is fully Open Skies and consists primarily of short-haul markets easily entered and served by any Canadian or U.S. carriers that choose to serve them. It would therefore be equally plausible to speculate that any potential gateway-to-gateway route where WestJet and Delta do not now but might someday overlap will also be served then by any number of other U.S. or Canadian carriers, preventing any adverse fare effect. Such baseless speculation does not sustain Alaska’s burden as an objecting carrier to prove that the proposed JVA would cause competitive harm.

4. Alaska and JetBlue Have Failed to Raise Any Legitimate Concerns About the Competitive Impact of the JVA on U.S.-Canada Transborder Markets As a Whole.

Alaska and JetBlue both raise vague complaints about the “concentrated” nature of the U.S.-Canada transborder markets, but they ignore the fact that these are Open Skies markets, so that any U.S. or Canadian carrier that chooses to operate transborder service is free to do so. In an attempt to manufacture the appearance of “concentration,” Alaska lumps together Air Canada/United’s and WestJet/Delta’s combined share of U.S.-Canada transborder
available seat miles, as if these carriers reflected a single economic entity.\textsuperscript{42} This analysis is meaningless because Delta/WestJet and Air Canada/United are not a single economic entity. To the contrary, one of the primary public benefits of the proposed JVA is that while Air Canada is currently much larger than any competitive challenger in the U.S.-Canada transborder markets, the JVA will finally give Delta and WestJet the scale to compete more effectively with it, and with the immunized Air Canada/United alliance. JetBlue and Alaska simply ignore this undisputed fact.

Alaska and JetBlue also ignore the fact that, as demonstrated above, at the city-pair level, the JVA will have no adverse impact on competition. Delta and WestJet have highly complementary route networks, with zero airport-pair overlaps, and just one city-pair overlap (which, as previously discussed, is fiercely competitive and will remain so after the JV is implemented). Accordingly, while the JVA will intensify transborder competition with Air Canada, it will have no adverse impact on competition in any individual city pair. The vague assertions by Alaska and JetBlue concerning market concentration in general are insufficient to carry their burden to prove anticompetitive impact of the JVA.

5. **Alaska and JetBlue Have Failed to Produce Evidence Justifying Any of the Other Remedies They Propose.**

As is typical now in these proceedings, Alaska and JetBlue present the Department with a long wish list of remedies that they demand as a condition of approving this pro-competitive joint venture. They have failed to present evidence sufficient to justify any of them. The proposed remedies would impede the ability of the Joint Applicants to implement their JV and achieve its public benefits.

Alaska and JetBlue demand that the Department require the Joint Applicants to strike

\textsuperscript{42} Alaska Answer, at 14-15.
what they incorrectly refer to as the “exclusivity clauses” in the JVA. Contrary to the allegations of these competitors, the JVA is not “exclusive” but rather it is permissive with respect to third-party cooperation. As the Joint Applicants explained in their Joint Application and subsequent response to the Department’s request for additional information, fundamental to the effective working of a joint venture, the JVA provides for consensus decision-making on core matters affecting the JV, including capacity and network-related decisions on U.S.-Canada transborder JV routes. It is impossible to operate a joint venture without agreed governance provisions and consensus decision-making. But the JVA is not exclusive: to the contrary, it contemplates extensive grandfathered third-party cooperation that may be done on a unilateral basis. It also provides for additional third-party cooperation that may occur when the Joint Applicants determine together that such cooperation is in the best interests of the JV.\footnote{See JVA, § 5.3.} For codesharing and other alliance cooperation outside the scope of the JV – such as to Europe or Asia – the JVA imposes no restrictions at all on the ability of either carrier to cooperate with whomever it chooses.

These consensus decision-making provisions are not, as Alaska insinuates, merely “artful semantics”\footnote{Alaska Answer, at 21.} or an attempt at “misdirection.”\footnote{Id., at 20.} In the same vein, Alaska is incorrect in claiming that the JVA somehow gives Delta “power over” or a “veto right over” WestJet.\footnote{Id., at 6.} To the contrary, the JVA requires consensus decision-making and also has provisions for resolving disputes between the parties. No party has control or veto power over the other. Indeed, over the years, the Department has approved and granted ATI to numerous joint

\begin{itemize}
\item[43] See JVA, § 5.3.
\item[44] Alaska Answer, at 21.
\item[45] Id., at 20.
\item[46] Id., at 6.
\end{itemize}
venture agreements with substantially similar consensus decision-making provisions and has never found that such agreements give one of the parties control or veto rights over the other party.

Consensus decision-making provisions form the basic pillars of any successful JV cooperation. They reflect a carefully negotiated balancing of interests between the desire for flexibility to engage in potential cooperation with third parties and the need for each JV Partner to be able to trust that the investments it makes in the JV will not be misappropriated or diverted from the JV to the benefit of the other JV Party and/or third-party free riders.

Against this backdrop, it is preposterous for Alaska to urge the Department to “impose a condition prohibiting Delta/WestJet from using ‘consensus’ decision-making.” Alaska’s request is even more preposterous considering that, in the very same paragraph of its answer, Alaska concedes “it is common for parties to an immunized JV to use ‘consensus’ or committee-based decision making for purposes of implementing core elements of their JV, such as route planning, scheduling, pricing, inventory management, airport co-location, and sales/marketing initiatives.”

The requests of Alaska and JetBlue that the Department impose mandatory interlining, codesharing, and other cooperation conditions on WestJet are also unjustified. Alaska’s unprecedented mandatory access condition would essentially convert WestJet’s network and frequent flyer program into a virtual public utility for all U.S. carriers. It would force WestJet to engage in unlimited codesharing, interlining, frequent flyer program participation, and presumably any other kind of cooperation with any U.S. carrier that wants it – no matter how

\[47\] Id., at 20, n.70.
\[48\] Id.
little value the U.S. carrier can offer WestJet, nor how damaging such activity may be to WestJet or to the ability of the Joint Applicants to deliver the many public benefits of the JVA.

The Department should reject this bid to force WestJet to engage in interline or codeshare arrangements with Alaska, JetBlue and other U.S. carriers on Government-mandated terms. WestJet is not a public utility responsible for supplying the beyond Canadian-gateway traffic for any U.S. carrier with an interest in serving Canada no matter how little value that U.S. carrier can offer WestJet, and the Department should not condition its approval of a pro-competitive metal-neutral joint venture on WestJet becoming one. Neither JetBlue nor Alaska can offer WestJet any material scope that Delta does not already provide. If they did, then the consensus decision-making provisions of the JVA provide a mechanism for allowing WestJet to exploit them.

The American-Qantas precedent cited by Alaska in an attempt to justify this intrusion into WestJet’s commercial decision-making is inapposite. The U.S.-Canada transborder markets stand in stark contrast to the markets covered by the American-Qantas ATI application, which involved very thin, ultra-long-haul routes, where there are few trunk operators. In such contexts, the Department has found it necessary to take steps to give other new entrant carriers the opportunity to gain interline access to these markets. But the concerns relevant to the thin, ultra-long-haul transpacific U.S.-Australia/New Zealand markets have no applicability here and cannot justify forced access provisions as a condition to approval of the JVA. The U.S.-Canada transborder routes are overwhelmingly short-haul routes, and this close geographic proximity combined with the mature Open Skies environment creates a highly competitive air travel market between the U.S. and Canada characterized by low barriers to entry. As the Department observed when tentatively granting ATI to the Star Alliance A++ joint venture 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.”

In other words, the conditions applicable in American-Qantas are not applicable to the highly competitive U.S.-Canada transborder market and cannot justify imposing mandatory codeshare or interline cooperation terms upon this independent Canadian carrier.

Alaska’s request that the Department require FFP cooperation is also unprecedented. The Department has never required a foreign air carrier to make its FFP available to unaffiliated third-party carriers. Such a coerced arrangement is not workable. If such cooperation were required by the Department, third-party carriers would be able to dictate terms to WestJet, and yet would have no requirement to reciprocate or incentive to maximize the consumer benefits the JV would otherwise produce.

What is clear is that mandated interline, codeshare, or FFP cooperation in the highly liberalized, Open Skies transborder market would represent unprecedented levels of government regulation of and intervention in the economic behavior of private, unregulated companies that the industry has not seen since the implementation of the Airline Deregulation Act in 1978.

49 Order 2009-4-5, at 13.

50 The Department should also reject Alaska’s proposal that the Department include a vague condition prohibiting the Joint Applicants from engaging in so-called “exclusionary” conduct in the abstract. Despite the obvious legal and due process concerns that would arise from injecting such vagueness into a DOT order, the Department’s ongoing oversight authority and inherent power to amend, modify, or revoke ATI at any time is more than sufficient to address any speculative or hypothetical future competitive harm that might arise.
6. Alaska’s and JetBlue’s Calls for a Five-Year Time Limit and Other Conditions on the ATI Grant Are Contrary to Department Precedent, Wasteful, and Unnecessary.

Both Alaska and JetBlue propose an arbitrary expiration of ATI after five years, a condition that would inject harmful uncertainty into the Delta/WestJet commercial relationship and jeopardize their ability to deliver the public benefits that the JVA is poised to generate. It would discourage the Joint Applicants from making the necessary long-term investments in their JV together. It would create a burdensome procedure for the Department, requiring a lengthy and expensive public proceeding relitigating the benefits of ATI beginning just a few years after the Department initially approves it. Limiting the duration of ATI would also place Delta and WestJet at a competitive disadvantage against Air Canada/United which face no similar condition on their own ATI.

Neither Alaska nor JetBlue presents any basis for concluding that the Department’s ATI oversight and authority to modify or revoke ATI at any time is not sufficient to address any speculative or hypothetical future competitive harm. The Department considered and rejected similar requests from JetBlue in the recent American/Qantas and Air France-KLM and Virgin Atlantic (“Blue Skies”) ATI proceedings, opting instead to subject the parties to a periodic self-assessment and review process. In justifying its decision to install the self-assessment approach rather than JetBlue’s harsh time-limit approach, the Department correctly observed that “firms need certainty about antitrust reviews to execute their business plans.”51

While they believe it is unnecessary, the Joint Applicants do not object to a condition similar to that recently adopted in the final order approving and granting ATI for the Blue Skies JV, which requires the JV partners to submit to a periodic self-assessment and review process

51 Order 2019-5-23, at 15.
several years after JV implementation. If the Department concludes that some formal periodic self-assessment and review process is required in this docket, Delta/WestJet respectfully suggest that such reviews should occur no more frequently than every 10 years. A self-assessment and review process would be consistent with the process the Department adopted in the American-Qantas and Blue Skies ATI proceedings, and would be far less wasteful and commercially disruptive than the rigid five-year time limit and de novo review proposed by JetBlue and Alaska.

7. JetBlue’s Insinuation That Delta’s Internal Documents Reveal Anticompetitive Actions or Intent is False and Reflects a Fundamental Misunderstanding of Basic Competition Law Principles.

JetBlue cites one of Delta’s confidential documents in its answer as presenting evidence that Delta has an “anticompetitive mindset” and/or has engaged in anticompetitive conduct with respect to JetBlue.52 This characterization is scurrilous and absolutely false. In fact, the document JetBlue cites reflects exactly the opposite: an intent by Delta to vigorously compete with JetBlue. Specifically, the document reflects an internal decision by Delta to respond quickly with competitive service in a market it believed JetBlue was also considering serving. That reflects vigorous competition. It is not “anticompetitive” to compete. The antitrust laws encourage competition; they don’t punish it. JetBlue may wish the antitrust laws required Delta to coddle JetBlue, but that is not the way it works.

III. The Joint Applicants Have No Objection to the Delta MEC’s Request for Periodic DOT Review of Labor Conditions, But Oppose the MEC’s Request for Access to the Annual Progress Reports.

The Joint Applicants appreciate the Delta MEC’s interest and participation in this proceeding, and its acknowledgment that “immunized alliances like the JV have the potential

52 JetBlue Answer, at 10.
to grow both US carrier capacity and US aviation jobs.”53 The Delta MEC urges the Department to impose conditions analogous to those specified in the Department’s decision in the Blue Skies ATI final order. Specifically, the MEC asks that the Department condition a grant of ATI to the Delta/WestJet JVA on the requirement that Delta and WestJet include in their annual progress reports information on the impact of the JV on U.S. aviation jobs and the balance of flying and growth in joint venture markets.54

Delta understands and respects that increasing flying opportunities for member pilots is of prime concern to the MEC. The Delta/WestJet JV is not an attempt to outsource Delta’s flying, as the MEC speculates, but rather to provide enhanced and expanded service between the U.S. and Canada. Such expansion will inure to the benefit of Delta (and WestJet) pilots through service to new destinations and expanded service to existing destinations.

The Joint Applicants have no objection to the MEC’s request that the Joint Applicants include in their annual progress reports specific details on the JV’s impact on the balance of flying, growth, and U.S. aviation jobs in joint venture markets. They do object, however, to MEC’s request that the annual progress reports be made available to third parties under the Department’s confidentiality procedures.

The Department has, since 2009, been requiring immunized alliances to submit confidential annual progress reports. These reports cover a range of topics and are filled with highly confidential, proprietary, business-sensitive internal materials validating alliance implementation across a variety of commercial activities, including revenue management, network planning, revenue sharing, competitive strategy, marketing coordination, alignment

53 Delta MEC Answer, at 1.
54 Id., at 3.
of customer service policies, and employee training related to the provision of seamless travel. The Department’s review of these reports serves as the core of the Department’s monitoring efforts and provides Department staff with extensive information on the implementation details of the immunized agreements. Public disclosure of these highly confidential reports would be severely damaging to the carriers; accordingly, they must be treated by the Department with the strictest confidence. The Department has duly acknowledged this important responsibility, noting in a letter to the GAO that it implements internal controls to safeguard competitively sensitive information.55

The Department has correctly observed that its ability to conduct confidential reviews is critical to its oversight authority, and that if the Department “were to release any additional materials beyond what [the Department already releases], it could have a chilling effect, not just on competition by revealing proprietary information and insight on the real-time commercial strategies of a particular alliance, but also on carriers’ willingness to share detailed and sensitive information with DOT that is necessary to conduct oversight.”56 For this reason, the Department has never allowed third parties to review the confidentially submitted annual progress reports.

The Joint Applicants firmly support the Department’s vigilant, effective system of ATI oversight and submit that the Delta MEC has not demonstrated any need for a deviation from longstanding procedures, or why the Department has suddenly become less capable in its oversight of immunized alliances. Balancing the importance of transparency, on the one hand, with the Department’s statutory obligation to protect commercially sensitive information, on

56 Id., at 30.
the other hand, the Department must err on the side of protection.

IV. Conclusion

For the reasons stated in this Reply and in the Joint Applicants’ previous filings in this docket, the Joint Applicants urge the Department to promptly approve the Joint Application.

Respectfully submitted,

Robert E. Cohn
Patrick R. Rizzi
Hogan Lovells US LLP
Counsel for
delta Air Lines, Inc. and WestJet

J. Scott McClain
Managing Director, Regulatory and International & Associate General Counsel
DELTA AIR LINES, INC.
CERTIFICATE OF SERVICE

A copy of the foregoing document has been served this 23\textsuperscript{RD} day of December, 2019, upon the following persons via email:

<table>
<thead>
<tr>
<th>Air Carrier</th>
<th>Name</th>
<th>Email Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alaska</td>
<td>David Heffernan</td>
<td><a href="mailto:dheffernan@cozen.com">dheffernan@cozen.com</a></td>
</tr>
<tr>
<td>Allegiant</td>
<td>Aaron Goerlich</td>
<td><a href="mailto:agoerlich@ggh-airlaw.com">agoerlich@ggh-airlaw.com</a></td>
</tr>
<tr>
<td>American</td>
<td>Robert Wirick</td>
<td><a href="mailto:robert.wirick@aa.com">robert.wirick@aa.com</a></td>
</tr>
<tr>
<td>Amerijet</td>
<td>Joan Canny</td>
<td><a href="mailto:jccanny@amerijet.com">jccanny@amerijet.com</a></td>
</tr>
<tr>
<td>Atlas</td>
<td>Russ Pommer</td>
<td><a href="mailto:rpommer@atlasair.com">rpommer@atlasair.com</a></td>
</tr>
<tr>
<td>Atlas</td>
<td>Naveen Rao</td>
<td><a href="mailto:naveen.rao@atlasair.com">naveen.rao@atlasair.com</a></td>
</tr>
<tr>
<td>Federal Express</td>
<td>Ralph Carter</td>
<td><a href="mailto:rcarter@fedex.com">rcarter@fedex.com</a></td>
</tr>
<tr>
<td>Federal Express</td>
<td>Courtney Felts</td>
<td><a href="mailto:cefelts@fedex.com">cefelts@fedex.com</a></td>
</tr>
<tr>
<td>Frontier</td>
<td>Howard Diamond</td>
<td><a href="mailto:howard.diamond@flyfrontier.com">howard.diamond@flyfrontier.com</a></td>
</tr>
<tr>
<td>Hawaiian</td>
<td>Parker Erkmann</td>
<td><a href="mailto:perkmann@cooley.com">perkmann@cooley.com</a></td>
</tr>
<tr>
<td>JetBlue</td>
<td>Robert Land</td>
<td><a href="mailto:robert.land@jetblue.com">robert.land@jetblue.com</a></td>
</tr>
<tr>
<td>JetBlue</td>
<td>Reese Davidson</td>
<td><a href="mailto:reese.davidson@jetblue.com">reese.davidson@jetblue.com</a></td>
</tr>
<tr>
<td>JetBlue</td>
<td>Evelyn Sahr</td>
<td><a href="mailto:esahr@eckertseamans.com">esahr@eckertseamans.com</a></td>
</tr>
<tr>
<td>JetBlue</td>
<td>Drew Derco</td>
<td><a href="mailto:dderco@eckertseamans.com">dderco@eckertseamans.com</a></td>
</tr>
<tr>
<td>Kalitta Air</td>
<td>Mark Atwood</td>
<td><a href="mailto:matwood@cozen.com">matwood@cozen.com</a></td>
</tr>
<tr>
<td>National Airlines</td>
<td>Malcolm Benge</td>
<td><a href="mailto:mbenge@zsrlaw.com">mbenge@zsrlaw.com</a></td>
</tr>
<tr>
<td>National Airlines</td>
<td>John Richardson</td>
<td><a href="mailto:jrichardson@johnrichardson.com">jrichardson@johnrichardson.com</a></td>
</tr>
<tr>
<td>Polar Air Cargo</td>
<td>Kevin Montgomery</td>
<td><a href="mailto:kevin.montgomery@polaraircargo.com">kevin.montgomery@polaraircargo.com</a></td>
</tr>
<tr>
<td>Southwest</td>
<td>Bob Kneisley</td>
<td><a href="mailto:bkneisley@wnco.com">bkneisley@wnco.com</a></td>
</tr>
<tr>
<td>Southwest</td>
<td>Leslie Abbott</td>
<td><a href="mailto:leslie.abbott@wnco.com">leslie.abbott@wnco.com</a></td>
</tr>
<tr>
<td>Spirit Airlines</td>
<td>David Kirstein</td>
<td><a href="mailto:dkirstein@yklaw.com">dkirstein@yklaw.com</a></td>
</tr>
<tr>
<td>Spirit Airlines</td>
<td>Joanne Young</td>
<td><a href="mailto:jyoung@yklaw.com">jyoung@yklaw.com</a></td>
</tr>
<tr>
<td>Sun Country</td>
<td>Brandon Carmack</td>
<td><a href="mailto:brandon.carmack@suncountry.com">brandon.carmack@suncountry.com</a></td>
</tr>
<tr>
<td>Sun Country</td>
<td>Victoria Palpant</td>
<td><a href="mailto:victoria.palpant@suncountry.com">victoria.palpant@suncountry.com</a></td>
</tr>
<tr>
<td>United</td>
<td>Dan Weiss</td>
<td><a href="mailto:dan.weiss@united.com">dan.weiss@united.com</a></td>
</tr>
<tr>
<td>United</td>
<td>Steve Morrissey</td>
<td><a href="mailto:steve.morrissey@united.com">steve.morrissey@united.com</a></td>
</tr>
<tr>
<td>United</td>
<td>Amna Arshad</td>
<td><a href="mailto:amna.arshad@freshfields.com">amna.arshad@freshfields.com</a></td>
</tr>
<tr>
<td>UPS</td>
<td>Dontai Smalls</td>
<td><a href="mailto:dsmalls@ups.com">dsmalls@ups.com</a></td>
</tr>
<tr>
<td>UPS</td>
<td>Anita Mosner</td>
<td><a href="mailto:anita.mosner@hklaw.com">anita.mosner@hklaw.com</a></td>
</tr>
<tr>
<td>UPS</td>
<td>Jennifer Nowak</td>
<td><a href="mailto:jennifer.nowak@hklaw.com">jennifer.nowak@hklaw.com</a></td>
</tr>
<tr>
<td><a href="mailto:todd.homan@dot.gov">todd.homan@dot.gov</a></td>
<td>Peter Irvine</td>
<td><a href="mailto:peter.irvine@dot.gov">peter.irvine@dot.gov</a></td>
</tr>
<tr>
<td>Fahad Ahmad</td>
<td><a href="mailto:fahad.ahmad@dot.gov">fahad.ahmad@dot.gov</a></td>
<td></td>
</tr>
<tr>
<td>Brian Hedberg</td>
<td><a href="mailto:brian.hedberg@dot.gov">brian.hedberg@dot.gov</a></td>
<td></td>
</tr>
<tr>
<td>Robert Finamore</td>
<td><a href="mailto:robert.finamore@dot.gov">robert.finamore@dot.gov</a></td>
<td></td>
</tr>
<tr>
<td>Brett Kruger</td>
<td><a href="mailto:brett.kruger@dot.gov">brett.kruger@dot.gov</a></td>
<td></td>
</tr>
<tr>
<td>Kathleen O'Neill</td>
<td><a href="mailto:kathleen.oneill@usdoj.gov">kathleen.oneill@usdoj.gov</a></td>
<td></td>
</tr>
<tr>
<td>Caroline Laise</td>
<td><a href="mailto:caroline.laise@usdoj.gov">caroline.laise@usdoj.gov</a></td>
<td></td>
</tr>
<tr>
<td>John Duncan</td>
<td><a href="mailto:john.s.duncan@fao.gov">john.s.duncan@fao.gov</a></td>
<td></td>
</tr>
<tr>
<td>Info</td>
<td><a href="mailto:info@airlineinfo.com">info@airlineinfo.com</a></td>
<td></td>
</tr>
</tbody>
</table>