



June 19, 2015

Dr. Richard Chadwick  
General Manager, Adjudication Branch  
Australian Competition and  
Consumer Commission  
23 Marcus Clarke Street  
Canberra ACT 2601

**Re: Qantas Airways Limited and American Airlines application for revocation of authorisations A91265 & A91266 and substitution of new authorisations A91502 & A91503**

Dear Dr. Chadwick:

On behalf of the nearly 17,000 crewmembers of JetBlue Airways, New York's Hometown Airline™, JetBlue appreciates the opportunity to provide you with its comments on the above-referenced Applications of American Airlines and Qantas Airways (the Joint Applicants) that are currently being evaluated by the U.S. Department of Transportation (DOT or the Department) and the Australian Competition and Consumer Commission (ACCC).

JetBlue applauds the process by which the ACCC grants immunity from the Australian antitrust laws. Specifically, JetBlue supports the principle behind the mandate that parties receiving antitrust immunity seek reauthorization via revocation and substitution pursuant to section 91C of the Competition and Consumer Act 2010 every three to five years. We believe this process ensures that the consumer benefits promised by antitrust immunity actually occur and that the immunized alliances are truly benefitting the travelling public.

JetBlue has urged DOT to adopt a similar practice when issuing grants of immunity in the United States (*see* comments filed in DOT-OST-2015-0129, attached as **Exhibit 1**) and we support this practice being implemented on an international basis.

Thank you for your consideration of our views.

Respectfully submitted,

Robert C. Land  
Senior Vice President Government Affairs  
and Associate General Counsel  
JetBlue Airways Corporation

# **Exhibit 1**



June 19, 2015

Susan Kurland  
Assistant Secretary for Aviation and  
International Affairs  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC 20590

**Re: Joint Application of American Airlines, Inc. and Qantas Airways Limited  
for Approval of and Antitrust Immunity for Proposed Alliance**

Dear Assistant Secretary Kurland:

On behalf of the nearly 17,000 crewmembers of JetBlue Airways, New York's Hometown Airline™, JetBlue appreciates the opportunity to provide its comments on the U.S. Department of Transportation's (DOT or the Department) review of the above-referenced Application of American Airlines and Qantas Airways (the Joint Applicants).

Pursuant to JetBlue's recently-filed comments in the Department's *Information Docket on Claims Raised about State-Owned Airlines in Qatar and the UAE* proceeding (attached as **Exhibit 1**), JetBlue respectfully requests that if DOT ultimately enters a Final Order granting antitrust immunity for the Joint Applicant's proposed alliance, such grant should be limited to a three year period, and renewed only upon a further showing by the Joint Applicants that the consumer benefits described in the Joint Application have been realized.

Other jurisdictions, including most notably the Commonwealth of Australia, condition grants of antitrust immunity and require renewal every three to five years to ensure that consumer benefits promised by the applicants actually occur within the marketplace and that the immunized alliances are truly benefitting the travelling public.<sup>1</sup> As noted in JetBlue's prior comments, this approach was recently proposed in Congress whereby grants of antitrust immunity would sunset after three years unless reviewed by the Department.<sup>2</sup> JetBlue encourages DOT to incorporate a periodic review of grants of antitrust immunity into its antitrust immunity review process and condition any grant of immunity in the above-referenced case to a three-year period.

Thank you for your consideration of our views.

Respectfully submitted,

Robert C. Land  
Senior Vice President Government Affairs  
and Associate General Counsel  
JetBlue Airways Corporation

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<sup>1</sup> Authorization for aviation alliances in Australia are initially sought under sections 88(1) and 88(1A) of the Competition and Consumer Act 2010 (Cth). Authorization is time limited. At the end of the period for which authorization is granted (usually 3, 5 or 10 years) the parties can seek reauthorization via revocation and substitution pursuant to section 91C of the Competition and Consumer Act 2010 (Cth). See Australian Competition and Consumer Commission, Authorisation Guidelines, June 2013.

<sup>2</sup> See H.R. 831, 111<sup>th</sup> Cong. (2009).

{N0215258.3}

# **Exhibit 1**



June 2, 2015

The Honorable John F. Kerry  
Secretary of State  
U.S. Department of State  
2201 C Street, NW  
Washington, DC 20520

The Honorable Anthony Foxx  
Secretary of Transportation  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC 20590

The Honorable Penny S. Pritzker  
Secretary of Commerce  
U.S. Department of Commerce  
1401 Constitution Avenue, NW  
Washington, DC 20230

**Re: United States Department of Transportation, Department of Commerce and  
Department of State: Stakeholder Engagement on Gulf Carrier Subsidy  
Claims**

Dear Secretary Kerry, Secretary Foxx, and Secretary Pritzker:

On behalf of the nearly 17,000 crewmembers of JetBlue Airways, New York's Hometown Airline™, JetBlue appreciates the opportunity to provide its perspective on the allegations submitted by Delta, United and American in this matter. While JetBlue will leave a direct rebuttal to the allegations submitted by Delta, United and American to the airlines and governments the allegations have been levied against, this submittal is to support the Open Skies policies of the United States government.

Over the past several decades, against the backdrop of multiple filings for Bankruptcy protection by each of the three US carriers making unfair subsidy allegations in this matter, JetBlue has observed a tightening of the domestic airline industry's competitive landscape.

The Department of Transportation ("DOT") has shown its steadfast support for consumers since JetBlue's earliest days, supporting our right as a new entrant carrier to compete freely and deliver low fares and more choices, beginning with our award of slot exemptions at John F. Kennedy International Airport ("JFK") in 1999. Since that time, JetBlue has competed vigorously, provided low fares and award-winning customer service<sup>1</sup> and become the largest domestic airline in New York and the largest airline at Boston's Logan International Airport ("BOS").

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<sup>1</sup> See press release announcing JetBlue's 11th JD Power & Associates Award.

JetBlue's success in delivering low fare competition across our network of 90 markets, including more than two dozen international destinations, has not only been enabled by our deregulated domestic aviation market but also by America's liberalized and innovative Open Skies aviation policy which is intended to foster the same competitive benefits in the international aviation arena.

## **I. Open Skies**

JetBlue supports our nation's nearly quarter-century old, successful Open Skies aviation policy, now in effect through bilateral agreements with more than 100 nations. This liberalized aviation framework has fostered innovative competition, produced lower fares for consumers and enabled JetBlue's growth. Despite our beginning as a small domestic airline, JetBlue now operates its own flights to nearly 30 international markets and has entered into more than 40 partnership agreements with international carriers. These partnership relationships provide important feed traffic throughout our network from our largest focus cities, especially JFK and BOS. While our international partners, including some of our largest partners such as Emirates, Turkish Airlines and Aer Lingus, all benefit from connecting their US bound customers to our growing network, so too does JetBlue benefit.

Each week, thousands of customers from our partner airlines board JetBlue flights – which helps support JetBlue's aggressive growth, bring much needed competition to North American markets, keep fares low and stimulate demand from customers who otherwise couldn't afford to travel. In fact, over the past fifteen years since our first flight, traffic at our largest focus city airport, JFK, has increased from 30 million annual passengers to more than 50 million – all of which has meant increased employment and economic activity here in the United States. JetBlue is proud to have played a large part in this traffic increase and hopes to help facilitate similar increases in other US cities. In short, as our 40 international partners grow, many through liberalized Open Skies agreements, JetBlue grows and the US economy grows.<sup>2</sup>

Recently the three largest US legacy carriers have joined together to take a stand against Open Skies-facilitated growth by one particular set of successful competitors. Indeed, it is important to note that each of the three legacy carriers has benefitted from the indirect subsidies associated with bankruptcy protection.

For many years, Delta, United and American have urged Congress and DOT to adopt more airline-friendly tax and regulatory policies, which in turn allow them to better compete with international carriers. Delta, United and American now allege that the governments of Qatar and the United Arab Emirates have, through their own policies, given "unfair" favor and subsidies to Emirates, Qatar and Etihad. These allegations were detailed in a well-publicized but secretive report shared with Congress and DOT. The allegations were followed with a request by Delta, United and American that their allegations result in a "voluntary" freeze on lawful, Open Skies enabled growth. Such a policy, if it were to be imposed, would not only harm the travelling public but also JetBlue and its nearly 17,000 Crewmembers, all of whom rely on the United States' current liberalized Open Skies policies.

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<sup>2</sup> See Grounded: The High Cost of Air Traffic Congestion, Partnership for New York, Feb. 2009.

It is ironic that Delta, United and American have complained about the growth of these Gulf nation carriers given that the US carriers have largely ignored serving this entire region. While the Gulf carriers have actively grown their networks across the Middle East, Africa and India, Delta, United and American have chosen to only serve a combined four markets in the Middle East and four in Africa. Further, in India and Pakistan, where the Gulf carriers have extensive networks that feed their hubs and flow traffic to the US, Delta, United and American provide just two daily flights combined. Although they have elected not to provide meaningful service levels or competitive services to these growing regions, which are and have been available for them to serve under existing Open Skies agreements, they now complain about the success of those who do compete in these markets under the premise that it is somehow wrongly achieved.

The views of Delta, United and American do not represent the views of all US airlines nor the entire US aviation community. As the US Travel Association stated, “With their efforts to reduce competition in the aviation marketplace having become so aggressive—and the negative impact of these policies upon consumers so abundantly clear—we simply cannot sit idly by.”<sup>3</sup>

JetBlue applauds the Departments of Transportation, State and Commerce for opening an investigation and seeking public comments through the establishment of a public docket. The governments and carriers alleged to have engaged in unfair actions will now have the opportunity to offer their rebuttal to the very public allegations presented. Only then should our government rightly determine if the allegations merit further government to government review. This is precisely the process called for in all of our Open Skies agreements and this is the process JetBlue supports. Notably, many nations support their state-owned or state subsidized airlines with assistance in purchasing aircraft, construction of modern airport facilities and through other means. This global trend is evident in key markets like China and even Western Europe, where Delta, United and American all have close alliance partnerships. If the three largest US carriers desire unfair subsidy allegations to be reviewed by DOT with regard to the three Gulf carriers, would it not be appropriate for DOT to conduct similar investigations into Chinese carriers?

According to Alfred Kahn, noted economist and considered the father of airline deregulation, “Whenever competition is feasible it is, for all its imperfections, superior to regulation as a means of serving the public interest”.<sup>4</sup> As the public docket process unfolds, JetBlue urges the Department to keep this principle in mind and continue its support for fair and open competition and an unbiased review of the facts. JetBlue strongly opposes a unilateral freeze on new services, as requested by Delta, United and America, as this will directly and immediately harm JetBlue, US airports, and the US economy in general, all of which depend on international flights for continued job growth.

## **II. Joint Ventures**

Through multiple bankruptcy filings and consolidation with other carriers, Delta, United and American have grown to dominate the domestic aviation landscape in an unprecedented manner, where they now control 65 percent of the domestic flights and 80 percent of the flights in the New

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<sup>3</sup> US Travel Association press release, March 19, 2015.

<sup>4</sup> Alfred E. Kahn, *The Economics of Regulation: Principles and Institutions*, xxiii (1988 ed.).

York City market. Today, there are only a handful of domestic carriers like JetBlue left to compete against these carriers with low fares, quality service and other consumer benefits. Internationally, the three large US carriers are all founding members of global airline alliances which likewise dominate international travel.<sup>5</sup> By combining their own and their partner networks, each of the big three US carriers have formed global networks similar to what JetBlue has created with its 40 international partners with one glaring exception – DOT has granted Delta, United and American, along with many of their international alliance partners, immunity from US antitrust laws so they can coordinate on pricing, scheduling and marketing matters. Left unchecked, this US government-sanctioned collusion will continue to stifle innovation and competition in international aviation and will directly harm JetBlue and consumers.

Delta, United and American have a history of overcharging consumers whenever the opportunity arises. Absent the entry of a low fare competitor like JetBlue in a market, the three have routinely provided services at extremely high fares, only to lower fares upon entry of a disruptive competitor. When a low fare competitor exits a market, they again raise fares. For example, before JetBlue entered the Washington – Boston market, only two airlines “competed”, Delta and US Airways (now American). However, after JetBlue brought competition to this legacy duopoly, fares dropped by nearly one third and passenger traffic nearly doubled. Similarly, in the New York City – Richmond market, when JetBlue entered the market, fares fell by 45 percent and passenger traffic increased by 76 percent. However, after JetBlue left the market leaving only legacy “competition”, fares rose 130 percent and traffic fell by nearly 60 percent.

Just as the three US legacy carriers currently alleging unfair subsidies have exhibited anti-consumer behavior domestically, they have relied upon their immunization from antitrust laws, granted by DOT, to thwart competition internationally. DOT has found that although more than twenty airlines offer trans-Atlantic flights, the three alliance groups comprised of antitrust immunized airlines carry more than 82 percent of the US-EU traffic.<sup>6</sup> Fares in nonstop trans-Atlantic markets were “significantly higher” with fewer independent nonstop competitors.<sup>7</sup> This should not be surprising. Despite the routine claims to the contrary put forth in each and every joint venture application for antitrust immunity presented to DOT, allowing competitors to evade consumer protection antitrust laws naturally lessens competition which is harmful to consumers. Similarly, although the procedural schedule for the recently submitted Delta – AeroMexico antitrust immunity application was suspended, due to the lack of a US-Mexico Open Skies agreement, Delta, Aeromexico and their SkyTeam partners already dominate the aviation landscape at Mexico City.<sup>8</sup>

Since DOT’s first grant of antitrust immunity more than twenty years ago to Northwest (now Delta) and KLM, following the first US Open Skies agreement with the Netherlands, the existence of an Open Skies agreement has been a prerequisite for DOT to even consider a grant of antitrust immunity.<sup>9</sup> Yet Delta, United and American are now urging Congress and DOT to ignore the very

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<sup>5</sup> Delta is a member of SkyTeam, United is a member of Star and American is a member of oneworld.

<sup>6</sup> See Antitrust Immunity and International Airline Alliances by William Gillespie and Oliver Richard, EAG 11-1, February 2011, citing DOT Order 2010-2-8 at 14.

<sup>7</sup> *Id.*

<sup>8</sup> Delta, AeroMexico and their SkyTeam partners operate 47 percent of the ASMs at MEX. JetBlue will inaugurate new service between MEX and both MCO and FLL later this year.

<sup>9</sup> See Notice Suspending the Procedural Schedule, Docket DOT-OST-2015-0070 (April 8, 2015).

foundation of their global dominance, the liberalized language of our Open Skies agreements which makes possible their immunized alliances, and seek an immediate freeze on new Open Skies services before the Gulf carriers or their governments can even respond to the allegations set forth. As recently observed “the big three airlines hate competition and rather than cope with it in the marketplace they will undertake extreme means to stamp it out politically.”<sup>10</sup>

The aviation landscape is vastly different and far less competitive today than in 1999 when JetBlue applied for an operating certificate. There are fewer US airlines operating and far fewer airlines dominating the marketplace.<sup>11</sup> Delta, United and American also dominate the international aviation marketplace in large part through their antitrust immunized joint ventures with foreign airline partners. Each grant of DOT immunity was predicated in part on pro-consumer promises being realized such as more competition and lower fares. This simply has not proven to be the case, to the detriment of consumers who are forced to endure higher ticket costs and fewer non-stop choices in certain market sectors dominated by immunized airline alliances or legacy carriers.

Thus, JetBlue urges the Department to review every grant of airline antitrust immunity on a regular three to five year basis, as is currently the policy in other parts of the world, to ensure that promises made by immunized airlines are kept and that the immunized alliances are truly benefitting the travelling public.<sup>12</sup> This type of approach was proposed in 2009,<sup>13</sup> and we encourage the Department to again consider the periodic review and evaluation of grants of antitrust immunity. As long as competitive benefits remain, so too should the immunity from US antitrust laws. However, as it appears to be the case in the north Atlantic marketplace, and perhaps elsewhere, when consumers lose through reduced competition and higher fares, immunity should be withdrawn.

## **Conclusion**

JetBlue has proven itself to be a unique success in the post-deregulation US airline sector that has safely and profitably avoided bankruptcy, layoffs and consolidation while at the same time continually growing, innovating and bringing price discipline and award-winning customer service enhancements to the markets we serve. JetBlue has added international flights throughout the Americas on its own aircraft and around the globe through our partnerships with international airlines. Our partners’ growth equates to JetBlue’s growth and their success is our success. It is alarming and disappointing that Delta, United and American’s marketplace dominance is being utilized to further suppress competition. Regular antitrust immunization reviews and subsequent asset divestitures are a long overdue action needed to protect the travelling public.

JetBlue urges the Department to reject the legacy carriers’ call for a freeze on international airline growth to the United States and supports the Department’s establishment of a lawful process for gathering all the facts, not merely select accusations. Finally, JetBlue calls upon the Department,

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<sup>10</sup> US Travel Association press release, April 8, 2015.

<sup>11</sup> Delta, United, American and Southwest control nearly 85% of the US domestic marketplace.

<sup>12</sup> Authorization for aviation alliances in Australia are initially sought under sections 88(1) and 88(1A) of the Competition and Consumer Act 2010 (Cth). Authorization is time limited. At the end of the period for which authorization is granted (usually 3, 5 or 10 years) the parties can seek reauthorization via revocation and substitution pursuant to section 91C of the Competition and Consumer Act 2010 (Cth). See Australian Competition and Consumer Commission, Authorisation Guidelines, June 2013.

<sup>13</sup> In February 2009, Congressman James L. Oberstar, Chairman of the Committee on Transportation and Infrastructure, introduced H.R. 831, which among other issues proposed a three year review for all grants of antitrust immunity. See H.R. 831, 111<sup>th</sup> Cong. (2009).

long a champion of increased competition in aviation, to mandate a periodic review of consumer benefits as a condition for allowing joint ventures to continue their immunization from US antitrust laws.

Thank you for your consideration of our views.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert C. Land". The signature is written in a cursive, flowing style with a large initial "R".

Robert C. Land  
Senior Vice President Government Affairs  
and Associate General Counsel  
JetBlue Airways Corporation