

**Congress of the United States**  
Washington, DC 20510

March 9, 2022

The Honorable Jonathan Kanter  
Assistant Attorney General  
Antitrust Division  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530

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

Dear Assistant Attorney General Kanter and Secretary Buttigieg:

We write regarding our concerns about Frontier Airline’s proposed acquisition of Spirit Airlines, a \$6.6 billion deal that would, if consummated, create the fifth-largest airline and the single largest ultra-low-cost carrier (ULCC) in the United States.<sup>1</sup> For decades, the airline industry has been plagued by increasing consolidation, producing massive airline giants while leaving consumers and workers behind. Because the proposed Spirit-Frontier merger threatens to exacerbate these trends—including by potentially increasing prices during a period of high inflationary pressure—we urge the Department of Justice (DOJ) and the Department of Transportation (DOT) to closely review this mega merger for potential violations of the Clayton Act and for concerns under 49 U.S.C. § 41105 and to oppose it if you determine it will threaten competition in the airline industry or “the public interest.”<sup>2</sup>

As the DOJ stated last September, the airline industry is “an already highly concentrated industry.”<sup>3</sup> Before the deregulation of the industry in 1978, more than 400 airlines offered flights to millions of consumers in the United States.<sup>4</sup> Today, four airlines—American, Southwest,

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<sup>1</sup> Wall Street Journal, “Frontier to Buy Spirit Airlines in Cash-and-Stock Deal,” Alison Sider and Will Feuer, February 7, 2022, <https://www.wsj.com/articles/frontier-group-spirit-airlines-merge-in-6-6-billion-deal-11644236133>.

<sup>2</sup> 49 U.S.C. § 41105.

<sup>3</sup> Department of Justice, “Justice Department Sues to Block Unprecedented Domestic Alliance Between American Airlines and JetBlue,” press release, September 21, 2021, <https://www.justice.gov/opa/pr/justice-department-sues-block-unprecedented-domestic-alliance-between-american-airlines-and>.

<sup>4</sup> Dallas Business Journal, “How mergers have driven consolidation of the airline industry,” Bill Hethcock, April 6, 2017, <https://www.bizjournals.com/dallas/news/2017/04/06/how-mergers-have-driven-consolidation-of-the.html>.

Delta, and United—control 80% of the domestic market,<sup>5</sup> cementing their dominance through recent mergers including Delta-Northwest in 2008, United-Continental in 2010, and American-US Airways in 2013.<sup>6</sup>

Spirit and Frontier have claimed that their combined company will “drive competition” and “empower” them to “compete even more aggressively, especially against the dominant ‘Big Four’ airlines.”<sup>7</sup> But a closer look at how competition actually works in the airline industry quickly reveals the emptiness of these claims.

There are serious risks that a Spirit-Frontier combination would further concentrate and even monopolize the ultra-low-cost carrier segment of the industry, rather than create a meaningful fifth competitor to the “Big Four.” ULCCs operate on a completely different model than legacy carriers (such as American and Delta) and even low-cost carriers (such as Southwest and JetBlue); they offer exceptionally cheap base fares for no-frill flights and charge fees to travelers for basic amenities such as water, food, printed boarding passes, seat selection, and carry-on bags.<sup>8</sup> Notably, Spirit and Frontier are the two largest ULCCs by far: a merger between the two would result in a company that is four times larger than the nearest ULCC competitor, allowing Spirit-Frontier to dominate a sector that has grown significantly in recent years.<sup>9</sup> Furthermore, competition in the airline industry is regional and depends on specific airline destinations, and a merged Spirit-Frontier would become the dominant or second-most dominant carrier in eight of its top ten markets such as Orlando and Las Vegas.<sup>10</sup> The DOJ and the DOT should be extraordinarily concerned about this attempt to potentially forge a new ULCC monopolist in various markets around the nation.

As has often been the case with airline mergers, the resulting Spirit-Frontier carrier could hurt consumers in numerous ways, consolidating market power for the airlines and reducing choices for travelers.

First, the merger could lead to increased prices. Study after study has drawn links between reduced competition in the airline industry and higher fares for consumers.<sup>11</sup> For

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<sup>5</sup> New York Times, “Frontier and Spirit Airlines Plan to Merge,” Niraj Chokshi, February 7, 2022, <https://www.nytimes.com/2022/02/07/business/frontier-spirit-airlines-merger.html>.

<sup>6</sup> Business Insider, “The past 2 decades saw the number of major airlines in the US cut in half. See how consolidation in the 2000s left customers with fewer options as profits soared.,” Thomas Pallini, March 21, 2020, <https://www.businessinsider.com/airline-mergers-and-acquisitions-in-the-us-since-2000-2020-3>.

<sup>7</sup> Frontier Airlines, “FRONTIER AIRLINES AND SPIRIT AIRLINES TO COMBINE, CREATING AMERICA’S MOST COMPETITIVE ULTRA-LOW FARE AIRLINE,” press release, February 7, 2022, <https://ir.flyfrontier.com/news-releases/news-release-details/frontier-airlines-and-spirit-airlines-combine-creating-americas>.

<sup>8</sup> USA Today, “Frontier and Spirit airlines are merging: What it all means for travelers’ fares and fees,” Dawn Gilbertson, February 7, 2022, <https://www.usatoday.com/story/travel/airline-news/2022/02/07/spirit-airlines-frontier-airlines-merger/6689637001>.

<sup>9</sup> Simple Flying, “What Does The Frontier Spirit Merger Mean For US Connectivity?,” James Pearson, February 7, 2022, <https://simpleflying.com/spirit-frontier-network-analysis>.

<sup>10</sup> *Id.*

<sup>11</sup> See, e.g., Avi Grunfeld, *An Analysis of the Effect of Airline Mergers on Airfares: A Case Study of Delta-Northwest and Continental-United*, 10 Penn Journal of Philosophy, Politics & Economics 39 (2015), <https://repository.upenn.edu/cgi/viewcontent.cgi?article=1050&context=spice>; John Kwoka and Evgenia

example, the 2010 United-Continental merger led to fare increases as high as 57% for key routes.<sup>12</sup> And if Spirit-Frontier ever decided to abandon the ULCC model, the airline industry as a whole would lose an important check on prices: one MIT study found that ULCC presence in a market pushed ticket fares down by 21%.<sup>13</sup> The DOJ has repeatedly opposed anticompetitive behavior in the airline industry because of its potential to hike prices, and it—along with the DOT—should scrutinize this deal for similar concerns.<sup>14</sup>

Second, the merger could worsen the customer experience on these carriers. Spirit and Frontier are already the two least-liked airlines in America, ranking in the bottom two spots for customer satisfaction annually since 2017.<sup>15</sup> Last year, Spirit drew more customer complaints than any airline in the country, with Frontier close behind.<sup>16</sup> On the day of the merger’s announcement, Frontier canceled 22% of its flights due to “automation issues.”<sup>17</sup> Allowing the two carriers to merge could further insulate them from the concerns of their customers, leaving mistreated ULCC travelers with no alternatives.

Third, the merger could incentivize coordinated behavior. The highly consolidated airline industry is already ripe for anticompetitive actions. In 2018, American Airlines and Southwest paid \$45 million and \$15 million respectively to settle a lawsuit accusing the carriers of illegally colluding to drive up fares for consumers.<sup>18</sup> Given the structure of the airline industry, new entrants face numerous barriers to entry, including the “risk of aggressive responses to new entry by the dominant incumbent carrier.”<sup>19</sup> A combined Spirit-Frontier carrier could increase both the risk of coordination among a small group of dominant airlines and the possibility that the merged carrier could more easily stamp out competition and block new entrants (especially ULCCs).

On top of these potential harms to consumers, there are real reasons to be concerned that Frontier’s acquisition of Spirit would negatively impact workers. Pilots, flight attendants, and

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Shumilkina, *The Price Effect of Eliminating Potential Competition: Evidence from an Airline Merger*, 58 *Journal of Industrial Economics* 767 (2010), [https://www.jstor.org/stable/40985720?seq=1#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/40985720?seq=1#metadata_info_tab_contents).

<sup>12</sup> Wall Street Journal, “Past Airline Mergers Haven’t Lived Up to Promises,” Scott McCartney, August 13, 2013, <https://www.wsj.com/articles/SB10001424127887324769704579010832802658974>.

<sup>13</sup> Alexander R. Bachwicha and Michael D. Wittman, *The Emergence and Effects of the Ultra-Low Cost Carrier (ULCC) Business Model in the U.S. Airline Industry*, 62 *Journal of Air Transport Management* 155 (2017), <https://dspace.mit.edu/bitstream/handle/1721.1/104869/ulcc-paper-draft-revFINAL.pdf;jsessionid=4ECD75453AE931612B8EAD88DA9609C4?sequence=1>.

<sup>14</sup> Department of Justice, “Justice Department Files Antitrust Lawsuit Challenging Proposed Merger Between US Airways and American Airlines,” press release, August 13, 2013, <https://www.justice.gov/opa/pr/justice-department-files-antitrust-lawsuit-challenging-proposed-merger-between-us-airways-and>.

<sup>15</sup> Statista, “American customer satisfaction index scores for airlines in the United States from 1995 to 2021,” <https://www.statista.com/statistics/194941/customer-satisfaction-with-us-airlines-since-1995>.

<sup>16</sup> Wall Street Journal, “The Best and Worst U.S. Airlines of 2021,” Allison Pohle, January 28, 2022, <https://www.wsj.com/articles/the-best-and-worst-u-s-airlines-of-2021-11643374802>.

<sup>17</sup> USA Today, “Bad timing: Frontier Airlines cancels 1 in 5 flights on day merger with Spirit announced,” Dawn Gilbertson, February 7, 2022, <https://www.usatoday.com/story/travel/airline-news/2022/02/07/frontier-flight-cancellation-spirit-merger/6691543001>.

<sup>18</sup> Dallas Morning News, “American Airlines to pay \$45 million to settle fare collusion lawsuit,” Conor Shine, June 15, 2018, <https://www.dallasnews.com/business/local-companies/2018/06/15/american-airlines-to-pay-45-million-to-settle-fare-collusion-lawsuit>.

<sup>19</sup> Complaint, p. 33, *United States of America v. US Airways Group, Inc.*, No. 1:13-cv-01236 (D.D.C. Aug. 13, 2013), <https://www.justice.gov/atr/case-document/file/514531/download>.

other workers in the airline industry would lose an alternative employer, and Spirit-Frontier would face less competitive pressure to offer better compensation and labor conditions to their employees. And historically, airline mergers have led to job losses, including the 2013 American-US Airways merger and the 2016 Alaska-Virgin merger.<sup>20</sup> As one expert recently noted: “[T]here has never been a merger or an acquisition of an airline in the United States that has not led to layoffs. There is always, always fallout on the labor side. Always.”<sup>21</sup>

The Biden Administration has consistently demonstrated its desire to address anticompetitive behavior in the airline industry. President Biden’s Executive Order on Promoting Competition in the American Economy specifically highlights some of the problems presented by a highly consolidated airline industry.<sup>22</sup> In September 2021, the DOJ sued American Airlines and JetBlue over its “Northeast Alliance” to consolidate the two carriers’ operations in Boston and New York City, citing “higher fares, fewer choices, and lower quality service” for travelers resulting from the consolidation.<sup>23</sup> And as the DOJ affirmed in response to Senator Warren’s letters dated November 22, 2021<sup>24</sup> and February 7, 2022,<sup>25</sup> “the Department will give considerable weight to a market’s history of prior coordinated activity when determining whether a market might be vulnerable to coordinated conduct,”<sup>26</sup> which accords with Section 7.2 of the *Horizontal Merger Guidelines*<sup>27</sup> and applies with special force in the airline industry. These actions build upon the core insight that excessive market concentration hurts consumers, workers, and small businesses and threatens to corrupt our economy and democracy.

Consistent with the Biden Administration’s commitment to promoting competition and protecting consumers and workers, the DOJ and DOT should thoroughly review the proposed Spirit-Frontier merger and oppose this mega merger if it violates antitrust law or is inconsistent with the public interest under 49 U.S.C. § 41105. The American public deserves no less.

Thank you for your attention to this important matter.

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<sup>20</sup> CNBC, “American Airlines plans manager layoffs, buyouts to slim down 5 years after US Airways merger,” Leslie Josephs, June 19, 2018, <https://www.cnbc.com/2018/06/19/american-airlines-plans-for-layoffs-buyouts-due-to-us-airways-merger.html>; San Francisco Business Times, “Alaska Air slashing Virgin America management jobs following purchase,” Mark Calvey, August 29, 2016,

<https://www.bizjournals.com/sanfrancisco/news/2016/08/29/alaska-air-virgin-america-airlines-job-cuts-alk-va.html>.

<sup>21</sup> NPR, “Frontier-Spirit merger promises better deals and service; critics aren’t so sure,” David Schaper and Joe Hernandez, February 7, 2022, <https://www.npr.org/2022/02/07/1078842162/spirit-frontier-spirit-airlines-merger>.

<sup>22</sup> The White House, “Executive Order on Promoting Competition in the American Economy,” July 9, 2021, Section 5, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy>.

<sup>23</sup> Department of Justice, “Justice Department Sues to Block Unprecedented Domestic Alliance Between American Airlines and JetBlue,” press release, September 21, 2021, <https://www.justice.gov/opa/pr/justice-department-sues-block-unprecedented-domestic-alliance-between-american-airlines-and>.


<sup>24</sup> Letter from Senator Elizabeth Warren to Assistant Attorney General Jonathan Kanter, November 22, 2021, <https://www.warren.senate.gov/imo/media/doc/2021.11.22%20Letter%20to%20DOJ%20re%20Rising%20Poultry%20Prices%20.pdf>.


<sup>25</sup> Letter from Senator Elizabeth Warren to Attorney General Merrick Garland and Deputy Attorney General Lisa Monaco, February 7, 2022, <https://www.warren.senate.gov/imo/media/doc/2022.02.07%20Letter%20to%20DOJ%20re%20Price%20Fixing.pdf>.


<sup>26</sup> On file with the Office of Senator Warren.

<sup>27</sup> Department of Justice and Federal Trade Commission, “Horizontal Merger Guidelines,” August 19, 2010, <https://www.justice.gov/atr/horizontal-merger-guidelines-08192010>.

Sincerely,

  
Elizabeth Warren  
United States Senator

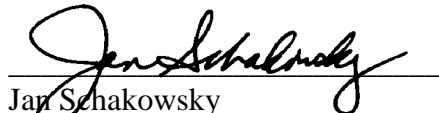
  
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Ben Ray Luján  
United States Senator

  
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