

# Congress of the United States

Washington, DC 20515

June 22, 2023

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

Dear Secretary Buttigieg:

We write regarding JetBlue's reported attempt to rig the Department of Transportation's (DOT's) evaluation of JetBlue's application to consolidate with Spirit Airlines. A *Bloomberg* report revealed that JetBlue "orchestrated a campaign to flood the government with thousands of online comments from employees in favor of the airline's bid to merge with Spirit Airlines, Inc."<sup>1</sup> But it appears many of these employees "either didn't consent to having their names used publicly or didn't understand the form would lead to a public comment in support of the [acquisition]."<sup>2</sup> Some said they didn't believe they had completed a form," and one union leader stated directly that the comments were a result of JetBlue having "deceived their own workforce."<sup>3</sup>

In a letter shared with Sen. Warren's office on June 14, 2023, JetBlue called the reports about their collection of workers' comments "deeply flawed."<sup>4</sup> But they provided no substantive defense of their behavior other than noting that these campaigns have been heavily used by industry in the past - which does not explain or excuse their tactics. We believe DOT should scrutinize this dishonest and misleading Astroturf campaign as the agency reviews comments on the JetBlue-Spirit deal.

As the Department of Justice (DOJ) and the Attorneys General of California, Maryland, Massachusetts, New Jersey, New York, North Carolina, and D.C. recognized when they sued to block JetBlue's acquisition of Spirit, the deal would harm consumers by leading to higher fares

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<sup>1</sup> Bloomberg, "JetBlue Workers Surprised Merger Comments Made Public," Emily Birnbaum, Leah Nysten, May 9, 2023, [https://www.bloomberg.com/news/articles/2023-05-09/jetblue-workers-surprised-merger-comments-made-public?leadSource=uverify%20wall&utm\\_campaign=author\\_22796872&utm\\_medium=email&utm\\_source=newsletter&utm\\_term=230509](https://www.bloomberg.com/news/articles/2023-05-09/jetblue-workers-surprised-merger-comments-made-public?leadSource=uverify%20wall&utm_campaign=author_22796872&utm_medium=email&utm_source=newsletter&utm_term=230509).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Letter to Senator Warren from JetBlue CEO, June 14, 2023, p. 1.

and fewer seats.<sup>5</sup> We commend DOT for resisting industry pressure, and urge the agency to consider rejecting the airlines' request to consolidate.

Over the past thirty years, consolidation of the airline industry has resulted in higher fares, reduced options, endless fees, and worse customer service.<sup>6</sup> Today, the four largest airlines – American, Southwest, Delta, and United – control 80% of the domestic market, more than at any point in the modern history of commercial aviation.<sup>7</sup> This level of consolidation has harmed consumers and workers through higher prices, smaller seat sizes, reduced options, closed operations, employee layoffs, and closure of corporate headquarters.<sup>8</sup> In recent years, the emergence of ultra-low-cost-carriers (ULCC) like Spirit and Frontier has allowed passengers to pay only for the things they desire, such as seat assignment, baggage, and in-flight meals.<sup>9</sup> When a ULCC enters a route market, air fares across all flights in that market typically fall by 21%.<sup>10</sup>

The JetBlue-Spirit deal threatens these gains for consumers. JetBlue closed a deal to acquire Spirit for \$3.8 billion in July 2022.<sup>11</sup> Spirit and Frontier are currently the two largest ULCCs in the country, so if the acquisition proceeds, Frontier will be left in control of that market. Rather than creating a low-cost competitor for the big four,<sup>12</sup> this deal could simply bring ULCC's into a higher price tier, and reduce the number of options in a given location.

The federal government, state governments, and advocacy groups have all sounded alarms about the anticompetitive effects of the acquisition. DOJ, Massachusetts, New York, and Washington D.C. sued to block the acquisition in March 2023 and have since been joined by California, Maryland, New Jersey, and North Carolina, explaining that it would “result in higher fares and fewer choices for tens of millions of travelers.”<sup>13</sup> The acquisition would significantly harm

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<sup>5</sup> Department of Justice, Press Release, “Justice Department Sues to Block JetBlue’s Proposed Acquisition of Spirit,” March 7, 2023, <https://www.justice.gov/opa/pr/justice-department-sues-block-jetblue-s-proposed-acquisition-spirit>; Department of Justice, Press Release, “Four Additional States Join Justice Department’s Suit to Block JetBlue’s Acquisition of Spirit Airlines,” March 31, 2023, <https://www.justice.gov/opa/pr/four-additional-states-join-justice-department-s-suit-block-jetblue-s-acquisition-spirit#:~:text=Today%2C%20the%20Attorneys%20General%20of,proposed%20%243.8%20billion%20acquisition%20of>.

<sup>6</sup> American Economic Liberties Project, “Comments Concerning the U.S. Airline Industry Response to “Request for Information on Merger Enforcement,” William McGee, pp. 1-2, <https://www.economicliberties.us/wp-content/uploads/2022/04/2022-04-20-AELP-DOJ-FTC-Airlines-McGee.pdf>.

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

<sup>8</sup> American Economic Liberties Project, “Comments Concerning the U.S. Airline Industry Response to “Request for Information on Merger Enforcement,” William McGee, pp. 2, 5-9, <https://www.economicliberties.us/wp-content/uploads/2022/04/2022-04-20-AELP-DOJ-FTC-Airlines-McGee.pdf>.

<sup>9</sup> Simple Flying, “Ultra Low-Cost Carriers: Who Are They & What Sets Them Apart?,” Arturo Weiss, February 15, 2023, <https://simpleflying.com/ultra-low-cost-carriers-guide/>.

<sup>10</sup> Journal of Air Transport Management, “The emergence and effects of the ultra-low cost carrier (ULCC) business model in the U.S. airline industry,” Alexander R. Bachwich and Michael D. Wittman, July 2017, <https://doi.org/10.1016/j.jairtraman.2017.03.012>.

<sup>11</sup> Quartz, “The Biden administration pulled the emergency brake on JetBlue’s \$3.8 billion takeover of Spirit airlines,” Diego Lasarte, March 7, 2023, <https://qz.com/jetblue-spirit-airline-deal-antitrust-lawsuit-1850196352>.

<sup>12</sup> JetBlue, “JetBlue and Spirit to Create a National Low-Fare Challenger to the Dominant Big Four Airlines,” July 28, 2022, <http://mediaroom.jetblue.com/investor-relations/press-releases/2022/07-28-2022-113040248>.

<sup>13</sup> Department of Justice, Press Release, “Justice Department Sues to Block JetBlue’s Proposed Acquisition of Spirit,” Attorney General Merrick B. Garland, March 7, 2023, <https://www.justice.gov/opa/pr/justice-department-sues-block-jetblue-s-proposed-acquisition-spirit>; Department of Justice, Press Release, “Four Additional States Join

consumers: as DOJ explained, “[i]f allowed to eliminate the Spirit option, JetBlue would likely increase prices on every route where Spirit flies today. The nation’s largest airline union, the Transport Workers Union (TWU), also warned that the deal would place “significant” and “undue burdens . . . on frontline workers at both JetBlue and Spirit Airlines, including the possibility that hard-fought collective bargaining agreements—which also enhances customer experience—may be at risk.”<sup>14</sup>

DOT has also recognized the anticompetitive risks of this acquisition. The agency announced its full support for DOJ’s lawsuit, noting that the deal would “substantially reduc[e] competition on a significant number of concentrated, overlapping routes that carry millions of passengers.”<sup>15</sup> JetBlue and Spirit filed a transfer application seeking permission to combine and operate their international routes under one certificate, or authorization.<sup>16</sup> They also sought an exemption to allow them to operate under common ownership prior to the requested transfer.<sup>17</sup> DOT announced on March 7 that it would deny the exemption application and would separately investigate<sup>18</sup> the transfer as part of its statutory mandate to block transfer of a route-operating certificate if such a transfer would not be “consistent with the public interest.”<sup>19</sup>

DOT encouraged the public to weigh in on the transfer application, but JetBlue took that as invitation to flood the agency with misleading pre-filled comments. The company submitted approximately 90% of the 10,000 total comments, allegedly from crew members praising the deal.<sup>20</sup> But reports from last month indicate that the JetBlue employees did not seek to submit public comments. Instead, JetBlue emailed employees a survey inviting them to express their support of the acquisition, but did not indicate that the results would be publicly disclosed or that their names would be published. Some employees said they didn’t recall expressing support for the acquisition at all. The leader of JetBlue’s unionized workforce stated that JetBlue “deceived their own workforce,” and that the comments collected under false pretenses by JetBlue “aren’t

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Justice Department’s Suit to Block JetBlue’s Acquisition of Spirit Airlines,” March 31, 2023, <https://www.justice.gov/opa/pr/four-additional-states-join-justice-department-s-suit-block-jetblue-s-acquisition-spirit#:~:text=Today%2C%20the%20Attorneys%20General%20of,proposed%20%243.8%20billion%20acquisition%20of>.

<sup>14</sup> Transport Workers Union of America, “America’s Largest Airline Union Calls on DOJ, DOT to Stop JetBlue/Spirit Deal,” February 23, 2023, <https://twu.org/americas-largest-airline-union-calls-on-doj-dot-to-stop-jetblue-spirit-deal/>.

<sup>15</sup> Department of Transportation, “USDOT Statement on the Justice Department’s Lawsuit to Block Proposed JetBlue-Spirit Merger,” March 7, 2023, <https://www.transportation.gov/briefing-room/usdot-statement-justice-departments-lawsuit-block-proposed-jetblue-spirit-merger>.

<sup>16</sup> U.S. Department of Transportation, “USDOT Statement on the Justice Department’s Lawsuit to Block Proposed JetBlue-Spirit Merger,” press release, March 7, 2023, <https://www.transportation.gov/briefing-room/usdot-statement-justice-departments-lawsuit-block-proposed-jetblue-spirit-merger>.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

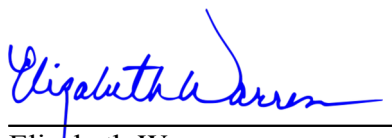
<sup>19</sup> 49 U.S.C. 41105(a).

<sup>20</sup> Bloomberg, “JetBlue Workers Surprised Merger Comments Made Public,” Emily Birnbaum, Leah Nysten, May 9, 2023, [https://www.bloomberg.com/news/articles/2023-05-09/jetblue-workers-surprised-merger-comments-made-public?leadSource=uverify%20wall&utm\\_campaign=author\\_22796872&utm\\_medium=email&utm\\_source=newsletter&utm\\_term=230509](https://www.bloomberg.com/news/articles/2023-05-09/jetblue-workers-surprised-merger-comments-made-public?leadSource=uverify%20wall&utm_campaign=author_22796872&utm_medium=email&utm_source=newsletter&utm_term=230509).

an accurate gauge of the temperature of the JetBlue employees.”<sup>21</sup> In fact, TWU, which represents more than 6,800 flight attendants... and more than 250 gate agents...<sup>22</sup> has opposed the deal because it puts existing collective bargaining agreements at risk and is likely to result in more than 9,300<sup>23</sup> workers experiencing job loss or displacement.<sup>24</sup>

We urge DOT not to be pressured by misleading comments generated through JetBlue’s Astroturf campaign, and to continue its careful scrutiny of the JetBlue-Spirit deal. DOT should focus on genuine public input, not duplicative comments collected by a mendacious Astroturf campaign. Thank you for your continued leadership protecting consumers and competition, and for your full and fair consideration of this matter.

Sincerely,



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Elizabeth Warren  
United States Senator



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Katie Porter  
Member of Congress



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Pramila Jayapal  
Member of Congress



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Greg Casar  
Member of Congress


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<sup>21</sup> *Id.*

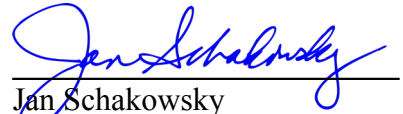
<sup>22</sup> Transport Workers Union of America, “America’s Largest Airline Union Calls on DOJ, DOT to Stop JetBlue/Spirit Deal,” February 23, 2023, <https://twu.org/americas-largest-airline-union-calls-on-doj-dot-to-stop-jetblue-spirit-deal/>.

<sup>23</sup> Airways Magazine, “Transport Union Aims to Quash JetBlue-Spirit Deal,” Joshua Eldridge, February 25, 2023, <https://airwaysmag.com/transport-workers-union-jetblue-spirit-deal/#:~:text=%E2%80%9CWorkers%20and%20Passengers%20Will%20be%20Harmed%E2%80%9D&text=Not%20only%20has%20the%20TWU,even%20lay%20offs%20firings.>

<sup>24</sup> *Id.*



Jesús G. "Chuy" García  
Member of Congress



Jan Schakowsky  
Member of Congress



Summer Lee  
Member of Congress



Alexandria Ocasio-Cortez  
Member of Congress



Jim Tokuda  
Member of Congress

CC:

Lina Khan, Chair – Federal Trade Commission

Jonathan Kanter, Assistant Attorney General – Antitrust Division, Department of Justice