



Principal Deputy Assistant Attorney General Doha Mekki Delivers Remarks on the Justice Department's Suit to Block JetBlue's Proposed Acquisition of Spirit

Washington, DC ~ Tuesday, March 7, 2023

Good morning. Thank you, Attorney General Garland and Associate Attorney General Gupta.

This morning, we filed a lawsuit to block JetBlue's proposed acquisition of Spirit. Spirit is a disruptive, low-cost airline. It is also the largest and fastest-growing ultra-low-cost carrier in the United States. As we allege in the complaint, JetBlue itself has recognized that "competition from Spirit lowers its fares more than competition from other ultra-low-cost carriers."

Indeed, under federal antitrust law, the transaction is presumptively illegal on more than 150 routes and markets where JetBlue and Spirit fly today.

For years, Spirit's unique business strategy has earned it a reputation for being a disruptor – a maverick – in a commercial airline industry beset by high concentration and oligopolistic practices. Customers throughout the United States benefit from an independent Spirit. Simply put, where Spirit competes, other airlines – including JetBlue – respond by competing vigorously and lowering the price of airfare to attract customers.

After spending many years criticizing consolidation in the airline industry, JetBlue appears to have changed its tune. JetBlue has previously warned that "all that power in the hands of a few very deep-pocketed airlines has implications for consumers in the form of reduced options, high fares, and often poor service."

Rather than compete to win share, JetBlue has chosen to consolidate and cooperate instead of compete.

In 2020, JetBlue committed to what Spirit has previously described as a "de facto merger" with American Airlines, which you may know is the country's biggest commercial airline. Today, JetBlue has already devoted 75% of its capacity to American Airlines, which we believe comes at a harm to passengers. But JetBlue wasn't done. JetBlue engaged in a public courtship of Spirit, which was rejected more than once until Spirit finally accepted its offer.

We agree with JetBlue's diagnosis, but not with its proposed cure. The best way to address consolidation is not more consolidation – it is competition.

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As we allege in the complaint, flyers of all types benefit from competition that both JetBlue and Spirit offer. JetBlue often touts "its JetBlue Effect" – but it also has recognized that its own fares and revenues drop significantly when Spirit enters the market. This means that the Spirit Effect happens on routes that JetBlue already serves – so that whatever benefit JetBlue entry and the "JetBlue Effect" offer, there are additional "Spirit Effects" when Spirit enters. We filed this lawsuit because the federal antitrust laws protect this competition between JetBlue and Spirit and because travelers should not have to make false choices between the two airlines.

The complaint details the many ways this acquisition threatens competition. Some of those ways are obvious:

- Travelers will no longer benefit from the head-to-head competition between Spirit and JetBlue that drives down air
- In an airline industry beset by high concentration, travelers will no longer benefit from the fact that Spirit has "no obligation" to "follow the herd" when it comes to the airline industry's too-frequent efforts to coordinate their price increases.

- Travelers who are looking for the lowest fare and more control over how they spend their money will no longer have a chance to choose Spirit's low-priced, unbundled fares.

There are some less obvious ways that this acquisition threatens competition and they are no less important. The low-priced, "basic economy" options that nearly all airlines offer today did not happen by accident – they came from disruptive choices Spirit made that the other airlines had to respond to. That innovation – and the chance for others that Spirit would bring to the market in the future – will be lost unless this acquisition is blocked.

JetBlue's acquisition also stops competition we can't see yet today. Spirit has grown significantly and had planned to continue doing so. Spirit is already six times larger today than it was in 2010. Even while the pandemic went on, Spirit stayed focused on its growth plans – it planned to double its fleet of airplanes by the end of 2025. Absent this acquisition, Spirit had expected to add flights to five new cities just this year. And it expected to offer more flights from four important JetBlue focus cities. All that growth would have meant more competition for JetBlue and other airlines. And if this acquisition is completed all that growth will be over before it even has a chance to start. Travelers know – now and in the future – they will be better off if JetBlue and Spirit remain independent competitors.

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In closing, I want to thank the tremendous team of lawyers, economists, paralegals, and professional staff at the Antitrust Division who investigated this merger and filed today's lawsuit. They are exceptional public servants, and I am so proud of them. We owe them a debt of gratitude.

I also want to thank and acknowledge our co-plaintiffs and law enforcement partners: the Commonwealth of Massachusetts, the State of New York, and the District of Columbia, who are once again working alongside us to ensure that consumers in those jurisdictions and around the country benefit from vibrant, free markets.

Finally, I want to thank our colleagues at the Department of Transportation. As in prior matters, we have worked closely with them throughout our investigation to determine how to use our respective enforcement authorities to best protect competition and consumers.

Speaker:

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Topic(s):

Antitrust

Component(s):

Antitrust Division

Updated March 7, 2023