# COMPETITION IN THE AIRLINE INDUSTRY

## HEARING

BEFORE THE

## COMMITTEE ON THE JUDICIARY
## HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

JUNE 16, 2010

**Serial No. 111–107**

Printed for the use of the Committee on the Judiciary

Available via the World Wide Web: http://judiciary.house.gov

U.S. GOVERNMENT PRINTING OFFICE

56–954 PDF WASHINGTON : 2010

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

## COMMITTEE ON THE JUDICIARY

JOHN CONYERS, JR., Michigan, *Chairman*

HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
JERROLD NADLER, New York
ROBERT C. "BOBBY" SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
WILLIAM D. DELAHUNT, Massachusetts
STEVE COHEN, Tennessee
HENRY C. "HANK" JOHNSON, JR., Georgia
PEDRO PIERLUISI, Puerto Rico
MIKE QUIGLEY, Illinois
JUDY CHU, California
TED DEUTCH, Florida
LUIS V. GUTIERREZ, Illinois
TAMMY BALDWIN, Wisconsin
CHARLES A. GONZALEZ, Texas
ANTHONY D. WEINER, New York
ADAM B. SCHIFF, California
LINDA T. SANCHEZ, California
DANIEL MAFFEI, New York
JARED POLIS, Colorado

LAMAR SMITH, Texas
F. JAMES SENSENBRENNER, JR., Wisconsin
HOWARD COBLE, North Carolina
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
DANIEL E. LUNGREN, California
DARRELL E. ISSA, California
J. RANDY FORBES, Virginia
STEVE KING, Iowa
TRENT FRANKS, Arizona
LOUIE GOHMERT, Texas
JIM JORDAN, Ohio
TED POE, Texas
JASON CHAFFETZ, Utah
TOM ROONEY, Florida
GREGG HARPER, Mississippi

PERRY APELBAUM, *Majority Staff Director and Chief Counsel*
SEAN MCLAUGHLIN, *Minority Chief of Staff and General Counsel*

# CONTENTS

JUNE 16, 2010


Page

OPENING STATEMENTS

The Honorable Henry C. "Hank" Johnson, Jr., a Representative in Congress from the State of Georgia, and Member, Committee on the Judiciary ..... 1
The Honorable Lamar Smith, a Representative in Congress from the State of Texas, and Ranking Member, Committee on the Judiciary ..... 2

WITNESSES

Mr. Glenn F. Tilton, Chairman, President and CEO, UAL Corporation
Oral Testimony ..... 4
Joint Prepared Statement ..... 8
Mr. Jeffery Smisek, Chairman, President and CEO, Continental Airlines
Oral Testimony ..... 5
Joint Prepared Statement ..... 8
Mr. Darren Bush, Associate Professor of Law, The University of Houston
Oral Testimony ..... 18
Prepared Statement ..... 21
Mr. Jay Pierce, Captain, Chairman, Continental Master Executive Council, Air Line Pilots Association, International
Oral Testimony ..... 39
Prepared Statement ..... 41
Ms. Wendy Morse, Captain, Chairman, United Master Executive Council, Air Line Pilots Association, International
Oral Testimony ..... 45
Prepared Statement ..... 47
Mr. William S. Swelbar, Professor, Research Engineer, Department of Aeronautics and Astronautics, Massachusetts Institute of Technology
Oral Testimony ..... 51
Prepared Statement ..... 52
Mr. Robert Roach, Jr., General Vice President—Transportation, The International Association of Machinists and Aerospace Workers
Oral Testimony ..... 57
Prepared Statement ..... 59
Mr. Patricia A. Friend, International President, Association of Flight Attendants—CWA
Oral Testimony ..... 79
Prepared Statement ..... 81

# COMPETITION IN THE AIRLINE INDUSTRY

**WEDNESDAY, JUNE 16, 2010**

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
*Washington, DC.*

The Committee met, pursuant to notice, at 2:10 p.m., in room 2141, Rayburn House Office Building, the Honorable Henry C. "Hank" Johnson, Jr., presiding.

Present: Representatives Johnson, Scott, Jackson Lee, Cohen, Quigley, Chu, Deutch, Gutierrez, Polis, Smith, Coble, Issa, and Poe.

Staff Present: (Majority) Perry Apelbaum, Staff Director and Chief Counsel; Travis Chapman, Counsel; Elisabeth Stein, Counsel; Sam Sokol, Counsel; (Minority) Sean McLaughlin, Chief of Staff and General Counsel; Stewart Jeffries, Counsel; and Richard Hertling, Deputy Chief of Staff.

Mr. JOHNSON. This Committee will come to order. Good afternoon, everyone.

Today, we will examine a proposed merger between two equals, Continental Airlines and United Airlines. Continental had $12.5 billion in revenue in 2009, and United earned $16.3 billion in 2009; and as two of the five remaining legacy airlines in the United States, this merger raises concerns as to whether competition in the airline industry will be maintained in the face of continuing, widespread industry consolidation.

This is not a new situation. Back in 2008, Delta and Northwest merged to become the largest airline, which currently has an operating revenue of $28.1 billion. The merger we consider here today would rival that and, by some estimates, top it, creating the largest United States carrier in terms of revenue and available seat miles, the standard industry measure of size.

Let me say up front that I do not oppose this merger in its entirety. However, competition must be protected in the airline industry. While I understand that the parties to the merger have stated that the merger will create efficiencies and increase competition in the industry, I do have a few concerns about the impact of the proposed merger; and as Chairman of the Subcommittee on Courts and Competition Policy, I believe that conditions must be imposed to protect jobs and competition.

I would note for the record that this is a full Committee hearing, and I have been asked by Chairman Conyers to Chair the meeting until such time as he arrives.

As the economy slowly recovers, it is increasingly important that existing jobs not be lost. The Judiciary Committee asked Conti-

nental and United to provide guarantees that they will not reduce jobs. The parties have responded that they would be unable to provide such guarantees. This is not an acceptable answer, and I hope that both CEOs and the other witnesses will address the issue of how to ensure that jobs are not lost if the merger is approved by the Department of Justice. I understand that several of our witnesses today will address this issue.

I am also concerned that this proposed merger will result in the closing of hubs. The airlines have invested significant amounts of money in creating hubs, and local economies rely on the business created by those hubs. I hope that the CEOs will address this concern and make public comments and public commitments to this Committee today that they will not close any hubs if the merger is approved.

As most of you know, airline travel is increasingly difficult these days. So I am also concerned that the merged airlines will eliminate routes and result in fare increases. The companies have assured us they do not have significant overlapping routes and that low-cost carriers such as Southwest Airlines will keep ticket prices down. However, low-cost carriers operate largely on a point-to-point basis, and fares increased 10 percent in the wake of the Delta Northwest merger for routes where the companies had previously competed. I hope the witnesses today will address whether there will be competitive harm to smaller routes and an increase in ticket prices as a result of this merger.

The proposed merger appears to create efficiencies which will better serve the American public by creating a more competitive carrier that will allow the public to book seamless flights to more destinations, but it also raises serious concerns about the impact of the merger on competition and the risk of job loss. I look forward to the testimony from today's witnesses to address all of these concerns.

And now I recognize Ranking Member Lamar Smith for an opening statement.

Mr. SMITH. Thank you, Mr. Chairman.

Vigorous, unimpeded competition sustains our economy and keeps it going. It leads to innovative products that better our lives, give us more choices, and keep prices low.

The Judiciary Committee has a long history of oversight to ensure that American markets retain healthy competition. This hearing is evidence of the Committee's continued role in considering mergers of large companies that can affect American consumers.

Today's hearing gives us the opportunity to examine the proposed merger of United and Continental airlines. This combination would create one of the world's largest airlines but not one that would dominate the industry. The question that the Department of Justice must answer in reviewing this merger is whether the proposed transaction will lessen competition and harm consumers.

We will hear today from the CEOs of both Continental and United that this proposed deal does not raise significant competitive concerns because the two airlines do not have significant overlaps in the number of cities that they serve.

Two years ago, this Committee held a hearing on the now-consummated merger of Delta and Northwest Airlines. At the time,

there were fears that that combination would lead to a rash of merger filings of other carriers. That merger wave has failed to materialize.

This is the first major airline merger since the Delta-Northwest deal. Now news articles suggest that this merger will cause remaining carriers, American and US Airways to merge. I am wary of such consolidation and think it is something that the Committee should monitor closely. Nevertheless, each merger must be judged on its own merits. If anything, Continental and United seem to have even fewer overlaps and, thus, fewer competitive consequences than the Delta-Northwest deal did.

Based on what we have heard so far, this merger, on balance, does not appear to pose serious risk to the consumer. However, as a Texan, I am sorry to see one of our finest corporate citizens, Continental, depart for another State. I know that the combined airline has pledged to keep a significant presence in the Houston area.

Mr. Chairman, I look forward to our witnesses' views and yield back the balance of my time.

Mr. JOHNSON. Thank you, Congressman Smith; and, without objection, other Members' opening statements will be included in the record.

We have with us today a panel of distinguished witnesses.

First, we have Mr. Glenn Tilton. Mr. Tilton is the Chairman, President, and CEO of United Airlines Corporation, the parent of United Airlines. Is it UAL or United Airlines?

Mr. TILTON. UAL.

Mr. JOHNSON. UAL Corporation, the parent of United Airlines. Mr. Tilton joined United in 2002 after a distinguished career in the oil and gas industry.

Next, we have Mr. Jeffery Smisek. Mr. Smisek has been with Continental Airlines for over 15 years, serving first as General Counsel and has risen within the organization since then. He now serves as Chairman, President, and CEO of Continental.

We also have Professor Darren Bush. Professor Bush is an Associate Professor at the University of Houston Law Center. He was a consulting member of the Antitrust Modernization Commission, a bipartisan task force established by the Judiciary Committee to critically evaluate antitrust law. He is also on the advisory board of the American Antitrust Institute.

Next, we have Captain Jay Pierce. Captain Pierce, an Army veteran, has served as a pilot at Continental Airlines for over 20 years. He currently serves as the Chairman of the Continental Master Executive Council of the Airline Pilots Association.

We now come to Captain Wendy Morse. Captain Morse has been a pilot for over 30 years, the past 25 spent flying at United. She has been involved with the Airline Pilot's Association for over a decade and currently serves as the Chairman of its United Master Executive Council.

Next, Professor William Swelbar. Professor Swelbar is a research engineer at the Department of Aeronautics and Astronautics at the Massachusetts Institute of Technology's International Center for Air Transportation. Prior to his appointment at MIT, Professor Swelbar had a long history as an advisor and consultant on the airline industry.

Next, we have Mr. Robert Roach, Jr. Mr. Roach is the General Vice President for Transportation of the International Association of Machinists and Aerospace Workers. He joined IAM during his service at Trans World Airlines and has been involved in the union for over 3 decades.

Finally, we have Ms. Patricia Friend. Ms. Friend started her career as a flight attendant at United over four decades ago. She currently serves as the International President of the Association of Flight Attendants, CWA, a position she has held for the past 12 years.

On behalf of the Judiciary Committee, I would like to welcome all of you to this afternoon's hearing. You will each have 5 minutes to give your opening statement; and at the conclusion of all of the opening statements, the Members of the Committee will have an opportunity to ask questions.

Mr. Tilton, would you please begin.

**TESTIMONY OF GLENN F. TILTON, CHAIRMAN, PRESIDENT AND CEO, UAL CORPORATION**

Mr. TILTON. Thank you, Mr. Chairman. I appreciate the opportunity to testify today.

The status quo for our industry is clearly unacceptable. It is extraordinary and insightful that this industry has lost some $60 billion and 150,000 jobs in this country over the last 10 years, delivering inarguably the worst financial performance of any major industry, along with 186 bankruptcies over the past 30 years.

Both before and after deregulation, this industry has been systemically incapable of earning even a modest profit, let alone a reasonable return on the large investment that we have made in aircraft, facilities, and technology. It is ironic then that this industry, unable to cover its cost of capital, is expected to be and indeed must be a key enabler of the country's economic recovery.

As leaders, you all know the critical role that our industry plays nationally and in the communities that you represent in driving commerce, tourism, creating jobs, and contributing to the larger economy. Regardless of our personal perspectives, we can likely all agree that serial bankruptcy and the asset distribution of failed companies is not an acceptable strategy for an industry. We must create economic sustainability through the various business cycles; and, to that end, our objective at United has been very consistent, to put our company on a path to sustained profitability. Without profitability, we cannot provide a stable environment for employees. Without profitability, we cannot maintain service to communities large and small or invest in customers service, nor can we create value for our shareholders.

To be profitable, we must successfully compete in the global market as it is today, a very different market to that of 10 years ago or, indeed, that of 30 years ago. Today, across the U.S. market, low-cost carriers are very, very well established; and Southwest Airlines will continue to be the country's largest domestic airline in terms of number of passengers flown after our merger is concluded.

Today, international competitors have merged and powerful new entrants continue to gain ground. Today, the world's largest air-

lines, measured by revenue, are not United, not Continental, not American, but Lufthansa and Air France, KLM, with more than half of all transatlantic capacity and more than two-thirds of all transpacific capacity being provided by foreign carriers.

United and Continental have both taken significant actions to improve our performance, competing across both international and domestic markets and, at the same time, finding a way to connect small U.S. communities into our combined route networks. In this dynamic, highly competitive environment, however, those actions alone are not enough.

Our proposed merger is a logical and essential step toward our mutual objective of sustained profitability. To be clear, without this merger, we would not have the $1 to $1.2 billion in synergies to improve products and services for customers and the financial means to create better career opportunities for our employees. We will not be as effective a competitor as we need to be to be successful and enable economic development.

Our merger enhances and strengthens service for those who rely on our networks in nearly 148 small communities and metropolitan areas, providing business lifelines and collateral economic opportunities for those communities that are not traditionally served by low-cost carriers.

Carriers compete vigorously on both price and on service, and our merger will not change that reality. There is significant low-cost carrier competition at every single one of our hubs, including the 15 nonstop routes on which we overlap.

Over the last decade, ticket prices have declined by some 30 percent, adjusted for inflation, with fares to small communities also declining. Our expected revenue synergies are derived from better service and an expanded network. They are not based on fare increases. This represents excellent value and more destinations for consumers. Consumers will continue to benefit from intense price competition across this industry due to the prevalence of low-cost carriers.

Mr. JOHNSON. Mr. Tilton, your time has expired. But if you would sum up, I would appreciate it.

Mr. TILTON. Sure. Absolutely, the competitive landscape has changed; and to be a company that attracts and provides value for customers, shareholders, and employees, Continental and United also have to change. Thank you.

Mr. JOHNSON. Thank you, sir. And, pardon me, I did not tell you about the color system that we have on the little boxes down there. When you start your 5 minutes, it will show a green light. Then when you get down to 1 minute of time left, it will go to yellow. And then once it goes to red, that means time has expired. So if you would keep your comments within that time period, we would greatly appreciate it.

Mr. Smisek.

## TESTIMONY OF JEFFERY SMISEK, CHAIRMAN, PRESIDENT AND CEO, CONTINENTAL AIRLINES

Mr. SMISEK. Thank you. Appreciate the opportunity to be here today.

I want to make four main points. This merger is good for employees, it is good for communities, it is good for consumers, and it is good for competition.

I would like to start with employees.

The volatility and instability of the airline industry have had harsh effects on employment. Before 9/11, Continental had over 54,000 employees. Despite being the only network carrier to have grown since 9/11, we have less than 41,000 employees today. Before 9/11, United had over 100,000 employees. Today, United has about 46,000.

After we merge, our employees will be part of a larger, financially stronger, and more geographically diverse carrier. This carrier will be better able to compete in the global marketplace and better able to withstand the external shocks that hit our industry with disappointing regularity.

Because of how little we overlap, the merger will have minimal effect on the jobs of our front-line employees. We are committed to continuing our cooperative labor relations and integrating our work forces in a fair and equitable manner, negotiating contracts with our unions that are fair to the employees and fair to the company. United has two union members on its board of directors, and those union board seats will continue after this merger.

The merger will enable us to continue to provide service to small communities, communities many of you represent. The turmoil in our industry has been devastating to many small- and medium-sized communities. As you know, low-cost carriers have not and will not serve small communities, as such service is inconsistent with their point-to-point business models that rely largely on local traffic. As a result, over 200 small communities are served only by network carriers. As a merged carrier, we plan to continue to provide service to all of the communities we currently serve, including 148 small communities.

The merger will be good for consumers as well. The combined airline will offer consumers an unparalleled integrated global network and the industry's leading frequent flyer program. It will have the financial wherewithal to invest in technology, acquire new aircraft, and invest in its people and its product. We will have a young and fuel-efficient fleet, and our new aircraft orders will permit us to retire our older, less-fuel-efficient aircraft.

Continental brings to the merger its working-together culture of dignity and respect and direct, open, and honest communication. This culture creates a workplace where people enjoy coming to work every day and, thus, give great customer service.

United brings to the merger talented employees who are delivering industry leading, on-time performance.

The merger will also enhance competition. Continental and United have highly complementary route networks. Our networks are so complementary that we have only minimal nonstop overlaps, each of which faces significant competition after this merger. Over 85 percent of our nonstop U.S. passengers have a direct, low-cost carrier alternative.

Moreover, low-cost carriers compete at all of our hubs and at airports adjacent to our hubs. As a result of the robust competition

in the U.S., air fares have declined by over 30 percent over the past decade, adjusted for inflation.

We also face significant competition from foreign carriers, which themselves have merged to create attractive global networks such as Air France-KLM, the Lufthansa group of companies and British Airways Iberia. The merged Continental United will enable us, as a U.S. Carrier, to compete effectively against these large foreign airlines.

In sum, the merger will create a strong, financially viable airline that can offer good-paying careers and a secure retirement to our co-workers, great customer service, and an unparalleled network to our consumers and reliable service to communities. The merger will provide us with a platform for sustainable profitability and position us to succeed in the highly competitive domestic and global aviation industry, better positioned than either carrier would be alone or together in an alliance.

Thank you very much.

[The joint prepared statement of Mr. Tilton and Mr. Smisek follows:]

**JOINT STATEMENT OF GLENN F. TILTON, CHAIRMAN, PRESIDENT AND CEO, UAL CORP. AND JEFFERY SMISEK, CHAIRMAN, PRESIDENT AND CEO, CONTINENTAL AIRLINES, INC.**

**BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES**

**COMMITTEE ON THE JUDICIARY**

***"COMPETITION IN THE AIRLINE INDUSTRY"***

**JUNE 16, 2010**

Good afternoon Chairman Conyers, Ranking Member Smith, and members of the committee.

Thank you for the opportunity to discuss the benefits and answer any questions related to the planned merger of equals between Continental Airlines and United Airlines that we announced on May 3. As we said at the time, this transaction will enable us to provide enhanced long-term career prospects for our more than 87,000 employees and superior service to our customers, especially those in small communities throughout the United States. Our combined company will be well-positioned to succeed in an increasingly competitive global and domestic aviation industry – better positioned than either airline would be standing alone or as alliance partners.

This merger will provide consumers access to 350 destinations in 59 countries around the world. We will offer a comprehensive network in the United States, and we will have strategically located international gateways to Asia, Europe, Latin America, the Middle East and Canada from well-placed domestic hubs throughout the country. We will have 10 hubs, eight in the continental U.S. (Chicago, Cleveland, Denver, Houston, Los Angeles, New York/Newark, San Francisco and Washington Dulles) and two others in Guam and in Tokyo. We will continue to provide service to all of the communities that our companies serve today.

This merger comes at a critical juncture for the U.S. aviation industry, which has confronted extremely difficult business challenges for the last decade. During this time, our industry has lost over 150,000 jobs, and there have been nearly 40 bankruptcies since 2001. U.S. airlines have lost a total of $60 billion since 2001.

While the economy and our industry are beginning to slowly recover from the worldwide recession, we continue to be subject to the volatility of fuel prices and an intensely competitive environment in all of our markets.

As individual companies, we have taken significant steps to respond to these challenges. United went through a bankruptcy restructuring and both airlines have become more efficient and reduced our cost

structures. But to survive, we have also been forced to reduce the number of aircraft we fly, the number of destinations we serve and the number of people we employ.

At the same time, we have made significant operational improvements. United now ranks as the leading U.S. global airline in on-time performance as measured by the Department of Transportation, and Continental is regularly recognized in independent surveys for the high quality of its customer service. Through our joint venture and alliance relationships, we have provided enhanced benefits to our customers and achieved substantial synergies.

While we are proud of these recent improvements at our companies, we believe it is clearly in the best interests of our customers, employees, shareholders and the communities we serve to bring our two airlines together in a merger. This merger will provide a platform to build a more financially stable airline that can invest in our product and our people to succeed in a highly competitive environment and be better able to withstand future economic downturns and challenges. The fact is that sustained profitability is the only way to improve service and reward employees over the long term.

**The Merger Will Benefit Customers**

By bringing together two of the most complementary route networks of any U.S. carriers, the merger of Continental and United will give travelers expanded access to an unparalleled global network. It combines United's Midwest, West Coast and Pacific routes with Continental's service in New York/New Jersey, the East Coast, the South, Latin America and across the Atlantic.

Customers will have access to 116 new domestic destinations; 40 will be new to United customers, and 76 will be new to Continental customers. The merger will create more than 1,000 new domestic connecting city pairs served by the combined carrier, providing additional convenience to customers.

Our fully optimized fleets and routes will provide greater flexibility, options, connectivity and convenience for customers. This improved connectivity and direct service options, as well as improved service, are expected to enable the combined airline to generate $800-$900 million in annual revenue synergies – and these synergies are not dependent on fare increases.

Importantly, the combined airline will be better able to enhance the travel experience for our customers through investments in technology, the acquisition of new planes and the implementation of the best practices of both airlines. The new airline will be more cost effective; we expect to realize cost-savings synergies of $200-$300 million per year, mostly through reductions in overhead such as rationalizing our two information technology platforms, combining facilities and corporate functions such as finance, marketing, sales and advertising.

We will have one of the youngest and most fuel-efficient fleets among the major U.S. network carriers, as well as the flexibility to manage our fleet more effectively. With one of the best new aircraft order books in the industry, we will also be able to retire older, less efficient aircraft. This will result not only in greater efficiency but less environmental impact from our fleet.

Once the merger is complete, customers will also participate in the industry's leading frequent flyer program, which will give millions of members more opportunities to earn and redeem miles than ever before. Through Star Alliance, the leading global alliance network, our customers will also continue to benefit from service to more than 1,000 destinations worldwide.

**The Merger Provides Job Stability for Employees**

The past decade has been a tumultuous time for our employees. They have faced ongoing uncertainty as the industry has been forced to shed tens of thousands of jobs. In fact, in January 2009, the full time equivalent employees for the U.S. airline industry numbered 390,700 – that figure is 151,000 – or more than 25 percent – less than the all time high airline employment figure of 542,300. Employees have been forced to weather the volatility of oil prices and the challenges of terrorist attacks, increased security, a massive recession and unforeseen events such as SARS, H1N1 and volcanic ash. Through all of this, they have continued to perform at their best, providing our customers with clean, safe and reliable air travel.

We're proud of the work that our employees do every day. The merger will offer our employees improved long-term career opportunities and enhanced job stability by being part of a larger, financially stronger and more geographically diverse carrier that is better able to compete successfully in the global marketplace and withstand the volatility of our industry.

We will continue to serve all of the communities that we serve today and we expect that any necessary reductions in front line employees will come from retirements, normal attrition and voluntary programs. Our plan is to integrate our workforces in a fair and equitable way. Our focus will be on creating cooperative labor relations, including negotiating contracts with our collective bargaining units that are fair to the company and fair to our employees. United has two members of its collective bargaining units on its Board of Directors, and the seats allocated to the collective bargaining units will continue to be part of the Board of the combined company.

The merged company's headquarters will be in Chicago. In Houston, we will continue to have a significant presence and will remain one of Houston's largest private employers. Houston will be our largest hub and will continue be a premier gateway to Latin America for more travelers than ever before. Some corporate positions will remain in Houston and our CEO will have an office there as well as in Chicago. Over time, as our business grows as a result of the merger, we expect to see a net gain in jobs in Houston.

We expect to adopt the best aspects of each company's culture and practices. People at both companies have come to know, admire and learn from their counterparts in many functions due to our joint venture and Star Alliance relationships, and we are confident that we can integrate our organizations fairly, effectively, and efficiently.

**Service to Small Communities Will Be Enhanced**

As network carriers, we have a long history of serving small- and medium-sized communities. United is proud to fly passengers from places like Portland, Maine to Honolulu or Charleston, South Carolina to Chicago, while Continental's service to and from Houston has been instrumental to the growth of the 20 Texas communities served.

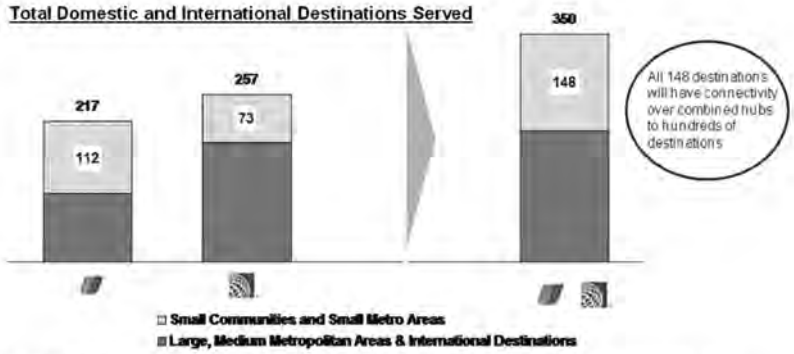
Air travel opens up the world and provides business and leisure opportunities to all Americans, no matter where they live. Airlines are often the lifeblood of small communities, not only because of the economic benefits they provide, but due to their civic and charitable contributions and the volunteer activities of their employees. Both of our companies are committed community partners with robust corporate contributions and responsibility programs and we strongly support our employees' volunteer activities.

The turmoil in our industry has been devastating to many small- and medium-sized communities. Since 2000, more than 100 small communities have lost all network carrier service. Approximately 50 more have seen their service levels cut, losing at least half of their seats.

Low cost carriers have not filled this void because service to these communities is typically inconsistent with their business model. They are more-often dependent on point-to-point, high-density routes and often have one-size aircraft, which makes it difficult for them to serve these small communities. As a result, approximately 200 of these small communities and metropolitan areas, many of which have fewer than 500 passengers traveling to or from their airports daily, are served only by network carriers.

When we announced our merger, we committed to continuing to provide service to all of the communities our airlines currently serve, including 148 small communities and metropolitan areas **(CHART ONE).** This service enables residents of small communities to connect through our eight mainland domestic hubs and travel on to hundreds of destinations on thousands of routes worldwide. The combined airline will offer these travelers access to 350 destinations in 59 countries.

**CHART ONE**
**THE MERGER MAKES A MORE EFFICIENT CARRIER, BETTER ABLE TO SERVE SMALL COMMUNITIES**




Source: OAG FY 2010.
Notes: Consolidated operations. Domestic destinations with at least one route served 20 times by either United or Continental during at least one month in 2010. International destinations with at least one route served 12 times by either United or Continental during at least one month in 2010. Bristol, UK is excluded for Continental as it will be cancelled in November. Moses Lake, WA and Oxnard, CA are excluded for United as they will be cancelled in June. Airports in the following major metropolitan areas are grouped: New York (JFK, LGA, EWR), Washington (DCA, IAD, BWI), San Francisco (SFO, OAK), Chicago (ORD, MDW), Houston (IAH, HOU), Dallas (DFW, DAL), Los Angeles (LAX, BUR, LGB) Cleveland (CLE, CAK), Tampa (TPA, PIE), Cincinnati (CVG, DAY), and Miami (MIA, FLL). In addition, the following small community airports are also not counted as separate destinations because they are adjacent to a larger airport – Bedford, MA; Carlsbad, CA; Houston/Ellington Field, TX; Mesa, AZ; Seattle/Boeing Field, WA; Wilmington, DE. Airports in major international cities are grouped.

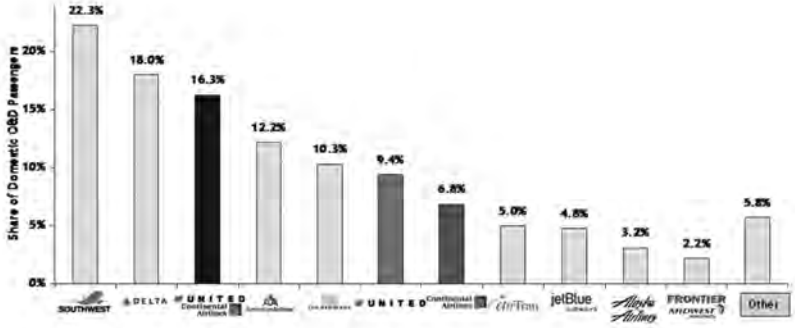
Following the merger, 93 of the 116 destinations that would be new to either Continental or United passengers would be small communities. As a result, a businessperson will be able to fly from Tyler, Texas to Sydney, Australia on a single airline.

**The Merger Will Enhance Competition**

The potential impact of this merger must be viewed in light of the fundamental changes that have occurred in our industry since 2000. The increased competition from low cost carriers (LCCs) has been dramatic as they have experienced tremendous growth over the past decade. They operate profitably at lower unit revenues than traditional network airlines, generally due to significant cost advantages related to less costly point-to-point business model. Consequently, their presence limits the ability of their competitors to increase fares.

Industry-wide, LCCs now compete for 80% of all domestic travelers. In fact, Southwest has grown to become the largest domestic airline in the U.S., in terms of passengers and will continue in that position after our merger **(CHART TWO).** Over 85% of passengers traveling non-stop on either Continental or United have an LCC alternative. LCCs compete on domestic city-pairs accounting for 77% of United and Continental's combined passengers, and 46 of each of Continental and United's top 50 routes, have LCC competition.

**CHART TWO**
**U.S. DOMESTIC PASSENGER SHARE: MERGED AIRLINE WILL BE ONLY THIRD LARGEST WITH 16%**




Source: U.S. DOT O&D Survey YE 2009 Q2.
Note: Frontier includes Midwest. Share of domestic O&D passengers. Largest Other carriers include Hawaiian (1.8%), Allegiant (1.2%), Spirit (1.1%), Virgin America (0.9%), and Sun Country (0.3%).

There once was an assumption that LCCs would have difficulty competing at the hubs of network carriers. This assumption has long since been disproven. LCCs directly compete at all of our hub airports and have very large presences at airports adjacent to our hubs, such as Hobby in Houston, Akron near Cleveland, BWI near Washington and Midway in Chicago. LCCs have market shares in our hub cities ranging from 28% in Cleveland to 50% in Denver and San Francisco.

LCCs are increasingly being used by business travelers and are targeting those travelers by providing amenities such as preferred seating and boarding access. They are also providing service from the United States to international destinations, including Mexico, the Caribbean, Latin America and Canada.

In addition to the growth of LCCs, competition from international carriers has increased. Mergers between Air France and KLM; Lufthansa, SWISS, bmi, Brussels Airlines and Austrian; British Airways and Iberia; and Cathay Pacific and Hong Kong Dragon Airlines have given these preeminent global carriers international networks and global reach that overshadow those of U.S. network carriers. In 2000, the top two airlines in terms of worldwide revenue, American Airlines and United, were both U.S.-based. Today, the top two are Lufthansa and Air France/KLM **(CHART THREE)**. In fact, more than half of all transatlantic capacity and more than two-thirds of all transpacific capacity is provided by foreign carriers. The merged carrier will be able to compete far more effectively with foreign carriers and to maintain competitive domestic service to cities large and small in the U.S.

## CHART THREE
## U.S. NETWORK CARRIERS HAVE LOST THEIR #1 AND #2 WORLDWIDE REVENUE RANKINGS

Top 10 Carriers Ranked by Revenue

| CY2000 | | | CY2009 | | |
|---|---|---|---|---|---|
| Rank | Airline | Operating Revenue ($B) | Rank | Airline | Operating Revenue ($B) |
| 1 | American | $19.7 | 1 | Lufthansa | $31.0 |
| 2 | United | $19.4 | 2 | Air France-KLM | $29.2 |
| 3 | Delta | $16.7 | 3 | Delta/NW | $28.1 |
| 4 | JAL | $15.4 | 4 | American | $19.9 |
| 5 | Lufthansa | $14.0 | 5 | JAL | $16.4 |
| 6 | British Airways | $13.7 | 6 | United | $16.3 |
| 7 | ANA | $11.5 | 7 | ANA | $12.9 |
| 8 | Northwest | $11.4 | 8 | British Airways | $12.6 |
| 9 | Air France | $11.1 | 9 | Continental | $12.6 |
| 10 | Continental | $9.9 | 10 | Emirates* | $11.2 |

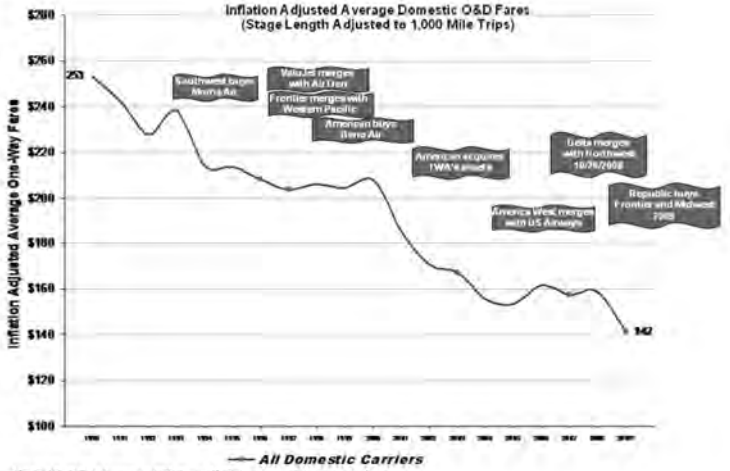
* Emirates 2009 is full year ending June 2009.
Source: For 2000 - Airline Business September 2001. For 2009: Domestic Carriers Company 10-Ks, Foreign Carriers Press releases and Annual Reports.
Notes: 2009 foreign carriers' operating revenues are calculated using the following exchange rates for 2009: 1USD=0.719055EUR; 1USD=0.641085GBP; 1USD=93.59817JPY; 1USD=3.67291AED.

Additionally, well-funded newcomers (such as Emirates and Jet Airways) are making inroads into U.S. international routes from emerging economies in the Middle East and South Asia. This trend will continue, and is a credit to the success of the Open Skies policy as these agreements expose U.S. carriers to more competition than ever before.

Price competition in our industry has also increased due to the ready availability and transparency of fare information to consumers through online sites such as Expedia and Orbitz. Consumers have become more savvy and sophisticated as they search for the fare that meets their needs. "[R]aising airfares isn't like raising the price of milk…the internet can hunt the cheapest fare worldwide in seconds. If one carrier has some empty seats to fill, it will have to cut the price because getting something for that seat is better than flying it empty" (Scott McCartney, "As Airlines Cut Back, Who Gets Grounded", *Wall Street Journal*, 6/5/08). Online sites have expanded their business models and now offer targeted services to corporations and business travelers.

In short, the changing dynamics of the airline industry have resulted in robust competition that maintains significant downward pressure on fares. As a result, airfare prices have declined by more than 30 percent over the last decade on an inflation adjusted basis **(CHART FOUR)**.

**CHART FOUR**
**DESPITE NUMEROUS MERGERS, AVERAGE PRICE* CONTINUES TO DECLINE**




Sources: US DOT O&D Survey, CPI from U.S. Bureau of Labor Statistics.

Especially given this landscape and the relative ease with which LCCs can enter into competition with network carriers and other LCCs, this merger will not result in a reduction in competition. There are only 15 overlapping non-stop domestic routes among the hundreds that we fly (and no overlapping international routes). The combined carrier's ability to raise prices on any individual overlapping route is constrained because each has current non-stop competitors. Moreover, extensive competitive connecting service further constrains pricing.

On each of these 15 non-stop overlapping routes, after the merger, travelers would be served by at least one other carrier, but more often two, three, four or five. All but two of the overlapping routes are served by an LCC and six are served by two LCCs **(CHART FIVE)**.

**CHART FIVE**
**NON-STOP OVERLAPS**

| | City-Pair | Non-Stop Competitors | Current LCC Non-Stop Competitors | UA/CO O&D Passenger Share (%) | LCC O&D Passenger Share (%) |
|---|---|---|---|---|---|
| | **Hubs** | | | | |
| 1 | Washington - Houston | 3 | Southwest | 62.6% | 27.0% |
| 2 | Los Angeles - Houston* | 3 | Southwest | 54.6% | 35.5% |
| 3 | Houston - San Francisco | 3 | Southwest | 57.5% | 38.4% |
| 4 | Denver - Cleveland | 3 | Frontier | 46.0% | 48.7% |
| 5 | Chicago - Houston | 4 | Southwest | 53.4% | 33.3% |
| 6 | Denver - Houston | 4 | Southwest and Frontier | 60.4% | 38.3% |
| 7 | Chicago - Cleveland | 4 | Southwest | 40.3% | 47.6% |
| 8 | Washington - Cleveland | 4 | Southwest | 40.4% | 53.0% |
| 9 | Denver - New York | 5 | Frontier and jetBlue | 62.7% | 26.1% |
| 10 | Los Angeles - New York | 6 | jetBlue and Virgin America | 24.3% | 38.0% |
| 11 | Chicago - New York | 6 | Southwest and jetBlue | 42.0% | 8.1%** |
| 12 | New York - San Francisco | 6 | jetBlue and Virgin America | 37.2% | 32.5% |
| 13 | Washington - New York | 7 | Southwest and jetBlue | 13.8% | 10.2% |
| | **Non-Hub-to-Hub** | | | | |
| 14 | Los Angeles - Kahului | 4 | — | 52.0% | — |
| 15 | Los Angeles - Honolulu | 5 | — | 29.6% | — |

*Reflects recently announced new service by United from LAX-IAH starting Aug 24.
** Does not fully reflect Southwest LGA-MDW service that began June 29, 2009. LCC share for Q1-Q4 2009 is 13.3%.
Source: OAG May 2010; U.S. DOT O&D Survey YE 2009 Q3.
Notes: Consolidated operations. Competitors with at least 5 roundtrips per week. Delta includes Northwest. Frontier includes Midwest. Airports in the following metropolitan areas are grouped: Chicago (ORD, MDW), Cincinnati (CVG, DAY), Cleveland (CLE, CAK), Dallas (DFW, DAL), Houston (HOU, IAH), Los Angeles (LAX, BUR, LGB), Miami (MIA, FLL), New York (LGA, JFK, EWR), San Francisco (SFO, OAK), Washington DC (DCA, IAD, BWI), and Tampa (TPA, PIE).

**The Merger is a Natural Extension of Our Current Relationship**

About two years ago, our companies began an extensive alliance relationship. We are both members of Star Alliance, the leading global alliance network. Domestically, we have a codeshare arrangement, frequent flyer reciprocity and shared lounge access.

We have antitrust immunity for international coordination including our A++ transatlantic joint venture that also includes Air Canada and Lufthansa. We have an immunity application pending with ANA that includes a transpacific joint venture, in connection with the Open Skies agreement initialed and soon to be implemented with Japan.

While these agreements have generated significant synergies and customer benefits, they do not provide the cost savings and employee and customer benefits of a merger. For example, following a merger, we can fully optimize our schedules and integrate our fleets. Our combined mainline fleet of more than 700 aircraft of a broad range of sizes and mission capabilities will enable the most efficient utilization of seat capacity. We will be able to reassign aircraft across the network to better meet demand on different routes, yielding a net increase in annual passengers and improving the business mix of those passengers through the appeal of our broad combined network.

The merger will also enhance our frequent flyer programs. Currently, it is sometimes difficult to obtain reciprocal benefits, elite recognition and awards. A combined program would offer more benefit to customers as they accrue and redeem awards across our combined network on a seamless frequent flyer program.

Our alliance relationship has given each airline the opportunity to know and partially integrate the systems, practices and procedures of the other. As a result, it gives us great confidence that we can successfully integrate our two companies once the merger closes.

**Conclusion**

Each of our companies has a long and proud history of independence. Continental and United are among the pioneers in the aviation industry and, in fact, have the same founder, Walter T. Varney.

Although our companies have been performing better since the economic recovery began, we analyzed the competitive environment and reflected on the volatility that has plagued our industry. As we looked ahead, we each strongly believed that our combined future was brighter than our standalone future, that this is the right time for a merger, and that we have found the right merger partner.

As we have talked to our customers, our employees and our shareholders, we have felt a great sense of excitement about this merger. By bringing the best of both organizations together, we believe we can not

only create a world-class airline with enduring strengths, but also serve our customers and communities better than ever, provide security and stability for our employees and benefit shareholders with a strong financial foundation.

We look forward to continuing to outline the benefits of this merger in Washington, D.C., and throughout the country and the rest of the world. But more importantly, we look forward to our people working together to create the world's leading airline.

###



---

Mr. JOHNSON. Thank you. Next we will hear from Mr. Bush.

**TESTIMONY OF PROFESSOR DARREN BUSH, ASSOCIATE PROFESSOR OF LAW, THE UNIVERSITY OF HOUSTON**

Mr. BUSH. Thank you, Mr. Chairman and Ranking Member Smith, from my home State, and other distinguished Members of this Committee. I want to thank you for giving me the opportunity to speak about the potential anticompetitive effects spurred by the

proposed merger of Continental Airlines and United Airlines. I speak today on my behalf and on behalf of the American Antitrust Institute.

Little has changed for the better in the airline industry in the past decade, except that the pressure to consolidate has increased in the wake of previous mergers, and the pending transaction reflects what I believe to be yet another cog in the merger wave.

Rather than rehash my written testimony fully, I want to signal to you not only the things that may be problematic with this merger but also the things that may be problematic with the Department of Justice's ultimate decision with respect to the merger. I do so to highlight larger issues in the world of antitrust that are in dire need of your attention.

With respect to anticompetitive harms, the DOJ, in the context of airline merger review, examines the following issues, all present in the pending transaction:

One, the effect of the merger on competition and nonstop city pair markets, typically routes between the hubs of the merging airlines. Two, the effect of the merger on competition and connection markets. Three, the potential competition between United and Continental in markets which they currently do not serve. Four, competition for contracts. Five, the diminishment of systems competition between the two networks. And, six, the combination effect on downstream and upstream markets.

These issues, at least as raised in the DOJ's excellent press release in the United/US Airways investigation, are fully understood by the agency staff. I reserve judgment as to whether such issues are fully understood by the current Administration in light of their decision and the previous Administration's decision with respect to the Northwest/Delta merger.

There are some other issues, however, that will cause DOJ staff some pause, both in terms of analysis and in terms of potentially bringing an action should this merger prove anticompetitive.

First and foremost, there will be follow-on mergers. This is a follow-on merger. Northwest/Delta could be considered a follow-on merger to the attempt of United/US Airways and US Airways and America West. Follow-on mergers occur because the competitors of the merging parties perceive that there is some potential advantage to merger and consolidation, regardless of the veracity of that notion. Follow-on mergers in times of industry distress, perceived or actual, are almost inevitable.

Of course, I am not saying that the peer pressure is warranted. In fact, we have had a tremendous amount of consolidation in this industry since the late 1970's. Is the industry more profitable? Are the flying consumers awash in improved service? Will fewer systems improve the situation or make it worse?

Even if an anticompetitive merger is flagged by staff and a recommendation to challenge the transaction is endorsed by the front office, there are many hurdles which make a merger challenge a daunting task for staff. To begin, courts, have in my opinion, made it abundantly clear that they no longer follow the incipiency standard in section 7 of the Clayton Act. Whether or not the transactions are likely to tend to lessen competition seems irrelevant in court. What only matters is tangible evidence that the merger will lessen

competition, a nearly impossible unspoken standard in a forward-looking analysis such as merger review.

Moreover, recent agency decisions and judicial decisions have made it clear, at least to me, that efficiencies, no matter how weak, ethereal, speculative, and illusive as they are in the airline industry, are the king of antitrust. Even when there is clear anticompetitive effects, as I believe there is in this instance, what matters appears to be whether there are some efficiencies to justify the transaction, even if the transaction is inherently anticompetitive.

Of course, this is not the proper standard for efficiencies, the purpose of which is not to act as a trump card but rather to act as an additional tool to determine whether or not the mergers are that anticompetitive. Thus, even where staff might want to challenge a merger, I worry that, in instances such as United/Continental, whether or not the merger will go unchallenged will depend on, one, whether there is a twinkling in the eyes of management with respect to efficiencies. No matter how—what the economic literature tells us about such twinkling, efficiencies in the airline industry traditionally do not pan out. However, the courts will view them as panning out and take them as gospel, even in view of serious anticompetitive effects.

With efficiencies trumping traditional antitrust analysis, the courts reluctance to examine difficult antitrust issues and ignoring consumer testimony, staff faces an uphill battle in bringing an action to enjoin an anticompetitive merger, should this in fact turn out to be one.

Thank you.

[The prepared statement of Mr. Bush follows:]

PREPARED STATEMENT OF DARREN BUSH

DARREN BUSH, Ph.D., J.D.
ASSOCIATE PROFESSOR OF LAW
UNIVERSITY OF HOUSTON LAW CENTER
HOUSTON, TEXAS, on behalf of
THE AMERICAN ANTITRUST INSTITUTE

Competition in the Airline Industry

BEFORE
THE HOUSE JUDICIARY COMMITTEE

ON

June 16, 2010

## I. INTRODUCTION

Mr. Chairman, Ranking Member Smith, and other distinguished members of the Judiciary Committee, I want to thank you for giving me the opportunity today to speak about competition in the airline industry in general and more specifically the potential anticompetitive effects inherent in a new wave of consolidation that may be spurred by the proposed merger of Continental Airlines and United Airlines. I speak today on behalf of myself and the American Antitrust Institute,[1] based upon my experience as an Antitrust Division trial attorney focused on deregulated industries, as an economist, and as a law professor whose research and writing has focused on antitrust issues arising in the context of regulated/deregulated industries, including airlines.[2]

The last mega-merger in this industry was the merger of Northwest Airlines and Delta Air Lines. Since that merger, little has changed for the better in the airline

[1] Per University of Houston guidelines, the views I express here do not purport to reflect those of the University of Houston system and should not be construed as reflecting the position of the University of Houston or the State of Texas. The American Antitrust Institute is an independent, non-profit 'virtual network of experts' whose website is www.antitrustinstitute.org.
[2] The term "deregulation" is a bit of a misnomer. *See* Harry First, *Regulated Deregulation: The New York Experience in Electric Utility Deregulation*, 33 LOY. U. CHI. L. J. 911 (2002)(noting that New York's electricity market was not deregulated, but in fact replaced "one regulatory system with another.").

industry, except that the pressure to consolidate has increased in the wake of this previous merger, and the pending transaction reflects what I believe to be the start of yet another airline merger wave.

The substance of my testimony is divided into four parts. Part II of my testimony examines what I think are the *potential* anticompetitive harms of the transaction. This section should be treated not as an indictment of the transaction, but as a guide to issues I think key in determining when the effect of such merger "may be substantially to lessen competition, or to tend to create a monopoly."[3] Part III addresses what I believe are the key *potential* benefits of the transaction. Part III strongly cautions against interpreting the antitrust laws as allowing mergers because of a wrongly yet widely held belief that efficiencies generally, even if not fully evidenced, somehow should be a trump card which enables a proposed merger to fly despite antitrust review even when the transaction raises serious anticompetitive issues. Part IV offers speculation as to the reason behind the transaction, and the problems associated with the mindset that mergers and acquisitions resolve issues caused by uncertainty in input markets and economic factors as a whole.

[3] 15 U.S.C. § 18.

## II. WHAT ARE THE ANTICOMPETITIVE EFFECTS OF THE MERGER?

### a. Nonstop Competition Is Potentially Injured

The first question that must be addressed is whether the proposed merger will be harmful to consumers. The standard antitrust answer to this question is a complicated analysis to determine the relevant market in which the merging parties overlap, the concentration within that market, the likely anticompetitive effects that arise due to the proposed merger within the relevant market, and whether entry mitigates the injury to consumers caused by those anticompetitive effects or whether efficiencies outweigh the anticompetitive effects to such a degree as to justify the transaction. This classic analysis embedded in the Department of Justice/Federal Trade Commission Horizontal Merger Guidelines is the standard tool of antitrust analysis within the agencies.[4]

The relevant market traditionally examined in airline mergers is the non-stop city-pair or airport-pair market. These routes are usually examined first in any merger of major carriers because hub-to-hub routes between competitors are commonly duopoly routes served only by the merging parties, or, in some circumstances, the routes are served by an additional nonstop competitor such as a low cost carrier. For example, in the Department of Justice's Press Release discussing the threatened challenge of the United's acquisition of U.S. Airways,[5] the press release noted that these two carriers, the second and sixth largest at the time, would create "a monopoly or duopoly on nonstop service on over 30 routes."[6] Additionally the press release stated that, "US Airways is

[4] U.S. Dep't of Justice & FTC, Horizontal Merger Guidelines (1992), *available* at http://www.usdoj.gov/atr/public/guidelines/hmg.htm (hereafter Horizontal Merger Guidelines). The recently published draft revised guidelines do not change this.
[5] http://www.usdoj.gov/atr/public/press_releases/2001/8701.htm. The proposed merger was abandoned due in large part to the Department of Justice's threatened suit.
[6] *Id.* The DOJ's analysis should be compared with its press release in the Northwest/Delta merger. This will be discussed infra.

United's most significant competitor on densely-traveled, high revenue routes between their hubs, such as Philadelphia and Denver, as well as for nonstop travel to and from Washington D.C. and Baltimore, and on many routes up and down the East Coast."[7]

Similarly there are issues with respect to nonstop routes served by Continental and United. For instance, at the very least, the Antitrust Division will likely examine the overlap between United and Continental on nonstop hub to hub routes. In particular, the routes that are problematic are: 1. Cleveland-O'Hare; 2. Cleveland-Denver; 3. Cleveland-Dulles; 4. Cleveland-San Francisco; 5. Cleveland-LAX; 6. Houston Intercontinental-Denver; 7. Houston Intercontinental – O'Hare; 8. Houston Intercontinental – Dulles; 9. Newark-O'Hare; 10. Newark-Denver; 11. Newark-Dulles; and 12. National Airport-O'Hare.[8] Hawaiian and international markets may be implicated as well in this transaction, in particular flights from Los Angeles to Honolulu.

**b. Competition on a Connection Basis May Be Potentially Injured**

The next issue typically raised by airline mergers is whether or not the combined firm will operate the bulk of hubs providing connecting service between cities in the Midwest and the Eastern United States. Only certain connections make sense, depending on geography. The more circuitous the route, the more expensive the ticket and the less likely that option will be chosen even among passengers who do not have the ability to enjoy nonstop service. For example, connections from origins or destinations east of

[7] *Id.*

[8] The airport pairs I list above have, in many instances, close-in airports which may serve as substitutes for *some* passengers. For example, Midway Airport may be a substitute for some classes of customers for flights to O'Hare. However, for some classes of customers, such as time-sensitive business passengers, such airports may not be acceptable substitutes. In some instances, however, close-in airports would need to be considered in the analysis. For example, Washington-Dulles and National Airport may be close substitutes. Thought would have to be given to JFK/La Guardia/Newark with respect to the New York City metropolitan area.

Colorado in the Midwest to East coast destinations may only have as reasonable connections options the hubs of the merging firms or the hubs of Northwest/Delta. In other words, after the merger of Northwest and Delta, consumers in the Midwest may face increasingly limited choices—mainly between Northwest/Delta and United/Continental in terms of connecting from the Midwest heading eastbound. These two entities would have hubs at O'Hare, Cleveland, Cincinnati, Minneapolis/St. Paul, Memphis and Detroit.

The potential injury to connection markets is also potentially true on the eastern seaboard, where reasonable connections up and down the east coast are potentially reduced to three airlines (U.S. Airways out of Charlotte and Philadelphia, United/Continental out of Newark and Dulles, and Delta/Northwest out of New York).

**c. The Two Carriers Are Potential Competitors**

In other markets, United and Continental may be potential competitors[9] in hub to hub routes. One example might be Los Angeles – Houston, where United might have provided nonstop service. The threat of that potential nonstop service may in some cases be sufficient to provide a competitive response on the route even though United is currently not providing the service. In addition, there are numerous potential competition opportunities in connection markets.

[9] *See* Darren Bush and Salvatore Massa, *Rethinking the Potential Competition Doctrine*, 2004 WIS. L. REV. 1035; John Kwoka, *Non Incumbent Competition: Mergers Involving Constraining and Prospective Competitors,* 52 CASE W. RES. L. REV. 173 (2001-2002).

**d. Competition for Contracts May Be Injured.**

As the government stated in its press release concerning United/U.S. Airways, major airlines bid for high volume contracts with large corporations, "negotiating discounts to their airfares in return for a corporation's commitment to concentrate travel on the airline."[10] United and Continental may compete vigorously with each other for these contracts, particularly when the corporation requires significant travel on nonstop routes where the companies compete. Moreover, the sheer size of the combined system may make it more difficult for smaller carriers to compete for those contracts.

**e. The Combination May Foreclose Downstream and Upstream Markets**

Airlines may be less vertically integrated than in the past, with airlines outsourcing maintenance and other items not core to their business. However, there are still vertical implications for any merger in the airline industry. Specifically, care must be taken to examine the nature of any contract vital to the core function of providing air passenger service. In particular, contracts between the merging parties and vendors and suppliers should be examined to determine whether there is the potential that the combined firm could foreclose competitors from obtaining vital services.

As an example, the combined firm would potentially have the ability to eliminate downstream marketers and other product offerings, focusing customer attention solely to its website. It could, for example, fully withdraw from offering products to Orbitz, Expedia, and other online travel sites, or at least secure more favorable terms from them. It could also, for example, eliminate bundled offerings with some partners (such as hotel-

[10] http://www.usdoj.gov/atr/public/press_releases/2001/8701.htm.

airfare vacation bundles), or at least renegotiate more favorable terms that might not have been obtained if competition had remained the status quo.

The upshot is that sellers in downstream and upstream markets will have fewer buyers to whom they can sell services. Hence, where buyers are few, they have reduced bargaining power, distorting market competition.

**f. Follow-on Mergers May Lead to Further Anticompetitive Issues**

At the time of announcement of the Northwest/Delta merger, it was thought by many that the merger may lead to follow-on mergers. The one most contemplated in the popular media at the time was a merger between United and Continental. Follow-on mergers occur because the competitors of the merging parties perceive that there is some potential advantage to merger and consolidation, regardless of the veracity of that notion.

Once an industry is concentrated, follow-on mergers raise serious issues, including further reduction in nonstop and connect service along the lines described above. While this hearing is not explicitly about mergers not yet announced, it is important to keep in mind that such mergers are likely. Follow-on mergers raise other concerns not previously addressed in this statement.

It is important that the Department of Justice and anyone wanting to understand antitrust law understand the plans and motivations for follow-on mergers. Follow-on mergers in times of industry distress (perceived or actual) are almost inevitable. Such an understanding is particularly important where the industry in question is a network industry such as airlines, where firms not only compete head to head on a nonstop basis, but where the systems as a whole serve the basis of competition. It is unclear to me how

five systems will offer consumers better service when it seems impossible in an already highly concentrated market for the airlines to do so.

**g. Entry by Low Cost Carriers Will Not Cure These Effects**

Low cost carrier [LCC] entry will be unlikely to cure the most egregious anticompetitive effects of the merger. As the American Antitrust Institute pointed out in its white paper concerning the Northwest/Delta transaction:

> Empirical evidence supports the notion that LCCs could be expected to serve as a competitive constraint only on high-density routes. LCC entry into smaller markets served more efficiently by hub-and-spoke networks of the legacy carriers like Delta and Northwest would undermine the cost-effectiveness of their existing point-to-point networks. Delta/Northwest are thus unlikely to face a competitive threat from LCCs on more thinly-traveled routes. And on high-density routes, the proposed merger creates the most egregious increases in concentration, making entry on a viable scale by LCCs that do not currently operate in those markets even less probable (and less attractive). Moreover, there is a compelling argument that because airlines face each other in several markets, the fear of retaliation in one market diminishes the incentive to compete vigorously in another.[11]

This argument applies with equal veracity to the United/Continental merger. Moreover, should an LCC enter a route in which the combined carrier holds monopoly power, there is great risk that the incumbent carrier will match the LCC's fares and add capacity to the route, eliminating the ability of the LCC to exceed or even achieve break even load factors such that the LCC will be profitable on the route.[12]

---

[11] AMERICAN ANTITRUST INSTITUTE, THE MERGER OF DELTA AIR LINES AND NORTHWEST AIRLINES: AN ANTITRUST WHITE PAPER 18 (2008).
[12] United States v. AMR Corp., 140 F. Supp. 2d 1141 (D. Kan. 2001), *aff'd*, 335 F.3d 1109 (10th Cir. 2003).

## III. WHAT ARE THE BENEFITS OF THE MERGER?

### a. Cost Savings or Market Power?

According to United and Continental's press release:

> The merger is expected to deliver $1.0 billion to $1.2 billion in net annual synergies by 2013, including between $800 million and $900 million of incremental annual revenues, in large part from expanded customer options resulting from the greater scope and scale of the network, and additional international service enabled by the broader network of the combined carrier. Expected synergies are in addition to the significant benefits derived from the companies' existing alliance and expected from their future joint venture relationships. The combined company is also expected to realize between $200 million and $300 million of net cost synergies on a run-rate basis by 2013. One-time costs related to the transaction are expected to total approximately $1.2 billion spread over a three-year period.[13]

The language of the press release is interesting. Ordinarily, one speaks of efficiencies in terms of reducing costs. However, the benefits arising from cost cutting are pegged by the companies at around $200- $300 million. By far the larger portion purportedly will arise from some revenue enhancements related to the scope and scale of operations.[14] It is difficult to determine from the press release how these efficiencies will miraculously appear, particularly as it does not appear from the merger website that the company anticipates closing any hubs.[15]

However, it is possible to speculate as to the efficiencies which might be obtained from the transaction. The first potential efficiency might arise from the rationalization of the combined firm's fleets. For example, Delta and Northwest argued that the nature of

---

[13] *Available* at http://www.unitedcontinentalmerger.com/press-release.
[14] *See* http://www.unitedcontinentalmerger.com/press-release.
[15] As I point out *infra*, the antitrust enforcement agencies do not view anticompetitive reductions in output or service and accompanying increases in fares as "efficiencies." Instead, they are redistributions of wealth from consumers to the firm with monopoly power.

Delta and Northwest's aircraft size were different, with Delta having more mid-range capacity and Northwest having low and large capacity aircraft. With complementary fleets, the merged firm could "right-size" aircraft on routes, allowing the proper capacity to meet demand.

More questions must be asked concerning this type of proposed efficiency. Have the airlines been buying the wrong gauge of equipment such that they have been mismanaging capacity on their routes? Is it not possible for the airline companies to rationalize their fleets absent the merger? In which routes are capacity mismatched with demand? With respect to the last question, one might argue that the greatest benefits might arise from international route capacity rationalization. However, such an efficiency gain does not cure a loss of competition in United States nonstop and connect markets.

A second potential efficiency, one seemingly argued in the United/Continental press release, arises from an airline industry specific phenomenon. It could be argued that network airlines are trying to reach optimum scope or "presence" not yet achieved by their already enormous size, allowing them to broaden their network in any given market so they can provide more destinations to the traveling public served by the system. The argument suggests both a gain in terms of presence within particular routes and over the system as a whole.[16]

[16] "As for service, [Continental CEO] Smisek said the new United will focus on increasing the number of business-class travelers, since they pay more for their airline tickets and bring in more revenue. But this will not be at the expense of the everyday people who fly coach, he said." *CEO: United-Continental Deal Won't Mean Fare Hikes, available* at http://cbs2chicago.com/business/united.continental.merger.2.1673675.html. This statement suggests that somehow the merged airline will be able to yield manage such that business passengers will elect to pay even higher fares without concern that those passengers will take advantage of other fare classes. Ordinarily, airlines limit lower classes of fares to avoid such "spill" from higher fare categories.

The problems with this assertion are manifold. To begin, it is not entirely clear how this strategy translates to any efficiencies or cost savings, apart from the fleet rationalization argument described above. To the extent that the argument involves tightly run hubs yielding efficiencies, the argument should be treated with caution. As the American Antitrust Institute properly pointed out in its white paper on the Northwest/Delta merger:

> Past a certain point . . ."hubbing" can neutralize or even negate economies of density. For example, bigger networks create peak-load problems because network effects encourage a hub carrier to bunch its flights at peak times. This increases the disparity during the day in the number of arrivals and departures and creates problems for efficient staffing of gate, ticket, and maintenance personnel. Bunching of flights at hubs occurs even at the cost of additional delays to a carrier's own flights and is the largest contributor to air traffic congestion. Indeed, empirical research demonstrates that as networks become larger (e.g., through merger), economies of scale and scope begin to diminish.[17]

In short, the efficiency argument here requires greater specificity. At its inception it is at best is illusory and ephemeral.

But the real concern is that the presence and accompanying revenue effect relates to the monopoly power of the combined entity post merger. With a reduction in network carrier competition, the only competitors capable of mitigating potential monopoly power on particular city-pair routes are low costs carriers.[18] The problem is that the very "efficiencies" described by this theory are substantial barriers to entry for any non-network competitor. [19] In other words, that which purportedly makes the airlines

---

[17] AMERICAN ANTITRUST INSTITUTE, THE MERGER OF DELTA AIR LINES AND NORTHWEST AIRLINES: AN ANTITRUST WHITE PAPER 14 (2008).

[18] *See* U.S. GEN. ACCOUNTING OFFICE, AIRLINE INDUSTRY: POTENTIAL MERGERS AND ACQUISITIONS DRIVEN BY FINANCIAL AND COMPETITIVE PRESSURES 39 (2008) [hereinafter AIRLINE INDUSTRY GAO REPORT.

[19] The carriers are asserting an economy of scope that is not exhausted unless a carrier gets at least as big as the combination of United and Continental. Moreover, the purported efficiency gain is not through direct cost reduction, but through enhanced benefits to consumers due to network interconnections that can only

stronger also kills competitors and presumably results in higher prices and less competition. Thus, such combinations do not yield "efficiencies" in the Department of Justice/Federal Trade Commission Horizontal Merger Guidelines sense of the term.[20]

As with all mergers, unless more concrete and tangible information is provided, the only realistic efficiency is the reduction in management and staff. The problem is that there is a rich history of airline mergers. There is little history of, in spite of these transactions in the past, the airline industry improving profitability.[21] The default position for the government, therefore, should be that efficiencies must be proven, not merely asserted.[22] As I will discuss in the next section, I have come to question whether that is what occurs in reality, particularly in industries which are prone to distress.

**b. "Efficiencies" Analysis Is King, To the Detriment of Consumers**

As the Department of Justice/ Federal Trade Commission Horizontal Merger Guidelines state,[23] merger specific efficiencies do not arise from anticompetitive reductions in output or service; and are cognizable.[24] If the efficiencies "likely would be

---

be captured if the carriers are merged (an alliance isn't enough). The empirical predicates for these claims are unproven and theoretically highly questionable for the reasons set forth in the prior discussion.

[20] My concern is exacerbated when competitors of the merging parties endorse the transaction. "'It makes the industry more efficient. We end up with less fragmentation. It makes the industry stronger and therefore makes US Airways stand-alone stronger,'' [U.S. Airways CEO] Parker said." *U.S. Airways CEO Supports UAL/CAL Merger, available* at http://news.airwise.com/story/view/1274229288.html. Efficiencies in one system do not transfer to that of a competitor. Therefore, the only benefit that U.S. Airways would obtain is from reduced competition and the associated reduction in capacity.

[21] *See* GAO REPORT at 1.

[22] While Delta operated at a loss in 2009, some other carriers are seeing a more rapid return to profitability. Southwest and Continental, for example, were reporting positive profits in the fourth quarter of 2009.

[23] "The Agency will consider only those efficiencies likely to be accomplished with the proposed merger and unlikely to be accomplished in the absence of either the proposed merger or another means having comparable anticompetitive effects. These are termed merger-specific efficiencies. Only alternatives that are practical in the business situation faced by the merging firms will be considered in making this determination; the Agency will not insist upon a less restrictive alternative that is merely theoretical." Horizontal Merger Guidelines, Section 4.

[24] *Id.*

sufficient to reverse the merger's potential to harm consumers in the relevant market, *e.g.*, by preventing price increases in that market,"[25] they are relevant for purposes of determining the net effect of the transaction. However, "the Agency will not simply compare the magnitude of the cognizable efficiencies with the magnitude of the likely harm to competition absent the efficiencies."[26]

This recitation of the Horizontal Merger Guidelines is important because, in my opinion, it has recently been the case in much of antitrust law that efficiencies have been a trump card, allowing transactions to proceed and anticompetitive conduct to continue even where efficiencies are speculative at best. It should not be the case, given the serious potential for anticompetitive harm in these markets that the purported efficiencies are taken at face value. Any purported efficiencies should meet the requirement that they are cognizable, verifiable, merger-specific, and not obtainable via alternatives less restrictive to competition.

As evidence to support my concern, one need only compare the Department of Justice's (DOJ) press release in the proposed United/U.S. Air merger to its press release in the Northwest/Delta merger. In the former case, the DOJ's concerns[27] were hub-to-hub nonstop markets, particularly DC/Baltimore nonstop markets, as well as east coast connect markets. The DOJ also raised concerns in the press release as well over

---

[25] Id.
[26] Id.
[27] Press Release, Department of Justice – Antitrust Division, Department of Justice and Several States Will Sue to Stop United Airlines from Acquiring US Airways: Deal Would Result in Higher Air Fares for Businesses and Millions of Consumers (July 27, 2001), *available* at http://www.usdoj.gov/atr/public/press_releases/2001/8701.htm.

international routes, corporate and business arrangements, and enhanced dominance in airline service in general.[28] The press release did not mention efficiency claims.

In contrast, in its press release in Delta/Northwest, the DOJ stated that the "two airlines currently compete with a number of other legacy and low cost airlines in the provision of scheduled air passenger service on the *vast majority of nonstop and connecting routes* where they compete with each other."[29] The implication of this statement was that in some markets there would be a substantial loss of competition, but the DOJ statement never identified how many or which markets were to be sacrificed for the sake of "efficiencies." The press release continued "In addition, the merger *likely* will result in efficiencies such as cost savings in airport operations, information technology, supply chain economics, and fleet optimization that will benefit consumers. Consumers are also likely to benefit from improved service made possible by combining under single ownership the complementary aspects of the airlines' networks."[30]

The difficulty with the press release is that it lacks sufficient information to determine upon what information the DOJ relied in rendering its decision. It also makes the efficiencies seem speculative and dubious, or at the very least vague. However, if the efficiencies were as purported by the CEOs of the companies in the press and to this Committee, there is much reason to believe that the DOJ's examination appears to have ignored anticompetitive effects that might occur in the remainder of the nonstop markets in which they compete and instead focused on the efficiencies that might never occur.

---

[28] *Id.*
[29] *Delta Airlines and Northwest Airlines Merger Approved*, Oct. 29, 2008, http://pressmediawire.com/article.cfm?articleID=19588.
[30] *Id.*

The result is an incipiency standard turned on its head.[31] In other words, instead of saying that a merger that might lead to less competition must be halted, the DOJ seems to be saying in some instances that a merger that might lead to more efficiency must be approved. Mergers in industries under distress or in the face of broader economic crisis appear to yield fewer questions from enforcement agencies in the moment about future anticompetitive effects while efficiencies are more heavily weighed. Yet the history of airline mergers already teaches us the outcome. Airlines have consolidated but have not improved profitability.[32] The passenger flying experience is at an all-time low,[33] and passengers are seeking legislative protections that might otherwise not be required were competition effective.[34] In short, the cycle of consolidation, crisis, consolidation continues in the airline industry.[35]

What may explain this apparently inconsistent result? If, as the foregoing analysis has demonstrated, the dominant incumbent airlines are able, by use of their networks and differential prices, to exclude more efficient new entrants, then, what we would observe is markets with firms, i.e., the dominant airlines, barely breaking even and more efficient rivals excluded. What this shows is that evidence of current or even

---

[31] *See* 15 U.S.C. § 18 (prohibiting acquisitions the effect of which "may be substantially to lessen competition or to tend to create a monopoly"). *See also* Robert H. Lande, *Resurrecting Incipiency: From Von's Grocery to Consumer Choice*, 68 ANTITRUST L.J. 875 (2001).

[32] Dempsey, *infra* note 35, at 432-34 (detailing the economic history of the airline industry and its corresponding lack of profitability).

[33] *See* http://businesscenter.jdpower.com/news/pressrelease.aspx?ID=2009121. *See also* Jad Mouawad, *In United-Continental Deal, Birth of A Behemoth*, available at http://www.nytimes.com/2010/05/04/business/04air.html. ("[CEO Smisek] has started charging for exit-row seats, eliminated Continental's free food on domestic flights and quickly matched a bag fee increase that Delta Air Lines introduced. He has also criticized as "inane" the new federal rule imposing fines for tarmac delays of more than three hours and compared Continental's previous membership in the SkyTeam alliance, where Delta Air Lines was the dominant carrier, as "a lot like being married to a woman who wants to poison your food.")

[34] *See id.*

[35] Paul Dempsey's work has demonstrated that, despite increased consolidation, the industry is worse off than ever. *See* Paul Dempsey, *The Financial Performance of the Airline Industry Post-Deregulation*, 45 HOUS. L. REV. 421 (2008).

projected price-cost relationships may not indeed reveal the likely competitive effects of a merger. In the case of airlines, to be specific, the continued mergers among the historic firms appear as much intended to concentrate market power among an increasing small group of inefficient firms as to advance any kind of legitimate goals. Yet, the potential for such firms to retain over a long period of time dominance is also a real and substantial risk because as dominance increases the capacity of potential entrants to enter and compete successfully will diminish.

**IV. WHAT IS THE REAL REASON FOR THIS MERGER?**

A second consideration that is not addressed seriously under modern antitrust analysis is the purpose of the merger. While outsiders lack the inside understanding of the United or Continental management, it should not be presumed that the merger's purpose is profit maximization and efficiencies. Mergers are marriages. People tend to get married for a variety of reasons. Many times, these reasons are bad. Often times, people do not want to be alone during the difficult times of their lives. Airlines, during a time of high fuel costs and a looming recession with associated reduced demand, perhaps sought out bad marriages out of fear and as a knee jerk reaction to increased difficulty. And when times are apparently better, they will assume that the marriage will make them even happier. It is difficult to see how two organizations in the same dire straits will, when combined, produce a better airline. But it is easy to see that a merger is more like a DeBeers diamond: *i.e.*, forever. Once the higher level of concentration is obtained, a growing economy may not yield additional competitive airlines.

Business as usual, albeit in a much-larger combined company, will apparently not translate into an improved customer experience. Business as usual has not been working, despite repeated previous eras of consolidation, and it should not be incumbent upon the airline passenger to subsidize a potentially anticompetitive merger because a dominant carrier has the ability to extract dollars from the wallets of consumers.[36]

The fear of the major carriers is understandable. Their business model has not proven to be all that profitable. However, it should not be the case that those factors are relevant to any antitrust analysis. These firms are not failing in any sense of the term, except perhaps failing to understand the nature of their own markets such that they continue to look towards consolidation as the answer to every challenge.

## V. CONCLUSION

For many years now I have been greatly concerned about the role of antitrust laws in deregulated industries. It is not a lack of faith in my former colleagues at the staff level at the Department of Justice, as they are hard-working and dedicated public servants who, when properly led, have served to protect competition and consumers. Rather, my concern is about the role of antitrust law in general, particularly where there are serious high-stakes mergers coming to the forefront, particularly in the airline industry.

First, antitrust law should take into account not only the obvious anticompetitive harms associated with a merger. In the case of airlines, nonstop competition is the obvious relevant analysis. However, other forms of competition are important in the

[36] *See, e.g.*, Gary Stoller, *Airlines Add $10-$30 fees for peak travel days in summer*, available at http://www.usatoday.com/travel/flights/2010-05-24-1Aairsurcharge24_ST_N.htm. Depending on the airline, fees have been charged to consumers for checked-in baggage, exit row seating or other premium seats, carry-on baggage, and food.

airline industry, a fact that the Department of Justice attempted to teach us in its United/U.S. Airways press release. Other important factors include connect competition, alliance competition, competition for business contracts, and the overall level of concentration in the number of systems available. It is my hope that the Department of Justice is as thorough in its analysis of this transaction as it was in that case.

The problem is that in recent time efficiencies analyses have become the end of the analyses. When efficiencies, real, potential, or imagined are present, it appears from recent antitrust lore, including some recent Department of Justice decisions, that antitrust should ignore the competitive issues underlying any transaction. That is not what antitrust law is about, it is not what the Horizontal Merger Guidelines teach us, and it is certainly not the way to run a competition policy. Efficiencies, even if proven, must mitigate anticompetitive harms caused in the relevant market due to the transaction's consummation.

This Committee can use the United/Continental transaction to examine these issues and restore antitrust law to its rightful place as the Magna Carta of free enterprise.[37] It can also use this merger to ask the harder questions as to the nature of antitrust analysis, even as such analysis has been eroded partly by certain recent Department of Justice investigations, but also by recent Supreme Court decisions, with one very recent exception.[38]

---

[37] United States v. Topco Assoc., 405 U.S. 596, 610 (1972).
[38] *See, e.g,* Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co., 127 S. Ct. 1069 (2007); Bell Atl. Corp. v. Twombly, 127 S. Ct. 1955 (2007); Credit Suisse Secs. (USA) LLC v. Billing, 127 S. Ct. 2383 (2007); Leegin Creative Leather Prods., Inc. v. PSKS, Inc., 127 S. Ct. 2705 (2007); Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, LLP, 540 U.S. 398 (2004); *c.f.* American Needle, Inc. v. National Football League, __ U.S. ___ (slip op. May 24, 2010).

Mr. JOHNSON. Thank you.
Mr. Pierce.

**TESTIMONY OF JAY PIERCE, CAPTAIN, CHAIRMAN, CONTINENTAL MASTER EXECUTIVE COUNCIL, AIR LINE PILOTS ASSOCIATION, INTERNATIONAL**

Mr. PIERCE. Good afternoon, Mr. Chairman, Ranking Member Smith, and Members of the Committee. Thank you for the opportunity to speak regarding the proposed Continental/United merger. I am particularly thankful that you have taken the time to consider the effect that this proposed merger may have on labor.

I tend to think of things in terms of opportunities, risks, and rewards. I believe that this merger will be an exercise in all three. The questions that have to be answered are: Will the opportunities produce success? Who will assume the risks? And, finally, who will reap the rewards?

To some, the initial value created by participating in the merger game will allow claims for success. However, if creating a story for Wall Street simply through participation is the goal, the bar is set too low. None of us should accept a philosophy of mediocrity as the standard for success.

If done correctly, this merger can strengthen our airlines and resurrect a failing industry. This is the opportunity.

Our merger partner's, United, financial performance has been in critical condition; and although ours is somewhat better, it could still be described as anemic. Over the last decade, network carriers have reported over $60 billion in net losses. Since deregulation, there have been over 180 airline bankruptcies. Historical greats such as Pan American, TWA, Eastern are extinct. Thousands of employees have lost their jobs, shareholder value has been erased, and communities have suffered. The industry is broken and badly in need of an overhaul. Continuing down the well-traveled path of economic irrationality does not bode well for the traveling public, shareholders, or for the long-term interests of airline employees. It is incumbent on us to find rational solutions.

I believe that a properly executed merger can be a better solution for the industry than consolidation by failure. Going third in this round of airline consolidation provides an opportunity to examine what has worked and what has failed. It is clear to see that the differences between marginal success and real success can be tied directly to labor and, more specifically, pilot labor.

In a merger, it is not the executives, the bankers, or the lawyers who assume the risk. It is the employees, and it is labor. If we must carry the risk, we must share in the rewards.

I cannot guarantee that this merger will be successful. But I can, with all certainty, predict its downfall if our pilots do not support the path our managements have chosen.

The merger is expected to produce over $1 billion in annual synergies. If the merger is successful, that success will be determined by the strength of the new entity, the value added to its shareholders and, even more importantly, by the pride of the airline's labor force. This pride can only be regained by first returning to labor what has been lost through years of concessions.

As irrational as it is to continue to foster a failing industry, it is equally as irrational to use the benefits derived from a merger to simply enrich those who put the deal together or to continue to throw good money after bad with ill-conceived business plans that reward only those at the top.

It is also important that this merger provide benefits for passengers. We should use this opportunity to reexamine subcontracting outsourcing. When a passenger books a trip with Continental from Houston to Newark and then beyond, they have an expectation that the entity they purchased the ticket from is responsible for their travel experience.

Network carriers should be operational airlines, not merely ticket agents. Our passengers have a right to receive one level of service and one level of safety from the beginning of their journey to their final destination. To achieve that single platform experience, flights must be under the operational control of the network carrier and, therefore, be crewed by pilots working under a contract with that carrier.

As Continental employees, we bring an award-winning culture of customer service to an industry marked with sharp declines in customer satisfaction. We bring strong job protections that limit the outsourcing of flying to the lowest bidder. If done in the right fashion, this merger can bring the best of Continental to the United name.

In closing, I would like to remind you that the Continental pilot group did not search out or solicit this merger. We are, however, cognizant of the fact that, if done correctly, there is an opportunity to create a great airline, one enriched by Continental's culture, with a route structure capable of transporting customers to almost anywhere in the world and a pilot group unmatched in professionalism and experience.

Thank you, and I look forward to your questions.

[The prepared statement of Mr. Pierce follows:]

PREPARED STATEMENT OF JAY PIERCE

STATEMENT OF

CAPTAIN JAY PIERCE

CHAIRMAN

CONTINENTAL MASTER EXECUTIVE COUNCIL

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL

BEFORE THE

COMMITTEE ON THE JUDICIARY

UNITED STATES HOUSE OF REPRESENTATIVES

WASHINGTON, DC

June 16, 2010

**Competition in the Airline Industry**

Air Line Pilots Association, International
1625 Massachusetts Avenue, NW
Washington, DC 20036
(202) 797-4033

STATEMENT OF
CAPTAIN JAY PIERCE
CHAIRMAN
CONTINENTAL MASTER EXECUTIVE COUNCIL
AIR LINE PILOTS ASSOCIATION, INTERNATIONAL
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON, DC

June 16, 2010

**Competition in the Airline Industry**

Good morning Chairman Conyers, Ranking Member Smith and Members of the Committee. I am Captain Jay Pierce, Chairman of the Continental Airlines Master Executive Council of the Air Line Pilots Association, International. My council represents almost 5000 pilots in the service of Continental Airlines. I would like to start today by thanking you for providing me the opportunity to speak regarding the proposed Continental – United merger and the possible effects on commerce and the industry. I am particularly thankful that this Committee has taken the time to consider the effect this proposed merger will have on labor. The majority of my comments will focus in that area. I have been a professional airline pilot for over 25 years and have served in the US Army prior to that. As a result, I tend to think of things in terms of threats and opportunities. As a labor leader, that risk/reward mentality has proven beneficial as well.

First, I believe the merger of these two companies provides opportunity for success. The larger question is the degree of success that will be achieved, given the trade-offs and risks inherent in the merger and the impact to shareholders, employees, passengers, and communities. To some, the uplift in value created simply by participating in the merger and acquisition game will allow for claims of success. However, if creating a story for Wall Street simply through participation is the goal, that bar is pretty low and easy to achieve. I hope none of us accepts a philosophy of mediocrity or of partial failures equating to success. We must aim higher; we must do better.

The difference between marginal success and real success can be tied directly to labor and more specifically pilot labor. This can be seen clearly in the dichotomy of the result obtained in two recent airline mergers. US Airways and America West were participants in the merger game. Delta and Northwest made the decision to try and win the game and did so by including their pilots in the process and properly rewarding them for the risks they incurred. The template for success is available for all to see – working alongside their pilots benefitted all players within Delta/Northwest merger. Going third in this round of airline consolidation

provides us the unique opportunity to examine what has worked and what has failed. While no two transactions are identical, our goal should be to improve the model - to exceed past successes and to mitigate the areas that proved to be problematic. To accept marginal success or in other words, partial failure, should be unacceptable to our executives and will be unacceptable to our pilots.

The merger of Continental and United has the potential to provide many opportunities. If done correctly, this merger can help resurrect an industry that is clearly failing. Over the last decade, network carriers have reported over 70 billion dollars in net losses. Since deregulation there have been over 180 airline bankruptcies. Historical greats such as Pan American, TWA and Eastern have become extinct. The industry is broken and badly in need of an overhaul. The fact is that as legacy carriers struggle to maintain market share, and seat capacity continues to exceed levels necessary for a reasonable rate of return on shareholder or stakeholder investment. In this environment, there has been little or no capacity discipline, which in turn results in yields that in any other industry would be considered abysmal. Yet in our business, modeling that produces yields of 2 to 3 percent is lauded as success. As a result, when looking at airline financial reports I am often drawn to the conclusion that the left side of the Balance Sheet has nothing right and the right side has nothing left. Continuing down the well traveled path of economic irrationality does not bode well for the traveling public, shareholders, or for the long term interests of airline employees. It is incumbent on us to find rational solutions. A properly executed merger can be a much better solution for the industry than consolidation by failure.

The merger of Continental and United is expected to produce approximately 1.2 billion dollars in annual cost and revenue synergies. I believe these estimates are obtainable for the new United. I am not worried about IF the synergies will be achieved; I am worried about how they will be used. As irrational as it is to continue to foster a failing industry with continued over capacity, it is equally irrational to use the benefits derived from a merger to simply enrich those who put the deal together or to continue to throw good money after bad with ill conceived business plans that reward only those at the top of the food chain. In the long run, success will be determined by the strength of the new entity, the value added to its shareholders and even more importantly, by the pride of the airline's labor force. This pride can only be regained by first ensuring that reparations are made to labor for their years of sacrifice. Having for years watched revenue flow in every direction except toward labor, and having experienced cost reductions that threatened our families' futures, we have become skeptical. Trickledown economics has left us empty handed. For this reason, our support, and therefore the ultimate success of the merger, is contingent on immediate and contractual assurances of wage rates, retirement, work rules, and job protections that are commensurate with our education, experience, and responsibilities. We deserve it, our passengers deserve it and our families deserve it. Let me be very clear – in order for this merger to be a true success, a commitment must be made to our pilots that they will share in the rewards. We have most assuredly had our share of risks.

I have talked about opportunities for our industry and opportunities for employees. I would be remiss if I did not also speak to the advantages for the traveling public. We all know that the level of customer satisfaction with airline travel has been in sharp decline, marked by reductions in the level of service provided, encounters with discontented airline employees, and the addition of new fees for just about everything as airlines struggle for profitability. Airlines have become flying kiosks. I believe that this merger, if done correctly, will provide gains toward much needed financial stability for network carriers in the industry. Financial stability is crucial to allowing network airlines to once again compete on service, giving customers greater choice in selecting airline travel based on a range of service attributes instead of merely the lowest price. More specifically, the revenue synergies anticipated by this merger are the product of a larger network and optimization of route and aircraft flows and usage. They are not solely a function of increased ticket prices. The market will determine ticket prices irrespective of the merger. And if executives correctly use the immediate and recurring financial benefits from the merger, they can begin to restore the goodwill of their employees. In a service industry, it is employees that ultimately deliver the level and quality of service provided, and no airline will succeed over the long term by neglecting their most valuable resource. For consumers to benefit, these two fundamental requirements—financial stability leading to increased service and consideration for employees—are necessary to reverse the downhill slide in airline travel. In this merger passenger benefits will be increased choice of service, as well as increases in the services provided and the quality of those services.

Consolidation also provides an opportunity to reexamine subcontracting and outsourcing of flying by network carriers. Simply put, I believe that when a passenger books a trip with Continental or United from Houston to Newark and then to Buffalo, they have an expectation that the entity they purchased the ticket from is ultimately responsible for their travel experience. I believe this is a reasonable expectation. Network carriers should be operational airlines, not merely ticket agents. Our passengers have a right to receive one level of service and one level of safety from the beginning of their journey to their final destination. I believe to achieve that single platform experience; flights must be under the operational control of the network carrier and, therefore, be crewed by pilots working under a contract with that carrier. Passengers do not want air travel that is provided by the lowest bidder. They want and deserve safe and reliable transportation provided by the network carrier of their choice.

In closing, I would like to remind you that the Continental pilot group did not search out or solicit this merger. We were quite content to continue as an independent carrier. We are, however, cognizant of the fact that if done correctly, this is an opportunity to create a great airline—one enriched by Continental's culture with a route structure capable of transporting customers to almost anywhere in the world they want to travel and a pilot group unmatched in professionalism and experience.

Thank you for your attention today. I look forward to your questions.



---

Mr. JOHNSON. Thank you, Mr. Pierce.
Ms. Morse.

**TESTIMONY OF WENDY MORSE, CAPTAIN, CHAIRMAN, UNITED MASTER EXECUTIVE COUNCIL, AIR LINE PILOTS ASSOCIATION, INTERNATIONAL**

Ms. MORSE. Good afternoon, Mr. Chairman, Ranking Member Smith, and other Members of the Committee. We have more than 7,700 active and laid-off pilots at United Airlines, and I appreciate the opportunity to speak before the Committee regarding the proposed United/Continental merger.

Over the past decade, the airline industry has experienced the worst economic storm in the history of commercial aviation. An unprecedented series of financial shocks have taken their toll on airline service and on employees. Bankruptcies, employee layoffs, contractual concessions, and outsourcing have all been well chronicled.

The proposed merger between United and Continental represents not only an opportunity for both airlines but a possible sea change in the economic direction and customer satisfaction for the airline industry. How this merger is handled will determine whether it is change for the better.

The choice could not be clearer, and recent history of airline mergers provides a vivid picture of which path to choose. We are not traveling down uncharted territory. The obvious path to success, should it be selected, has already been established. The advantage of the knowledge of what has worked and what hasn't worked must be recognized.

The Delta/Northwest merger, in which the company worked out a mutually satisfactory contract with the pilots, has been a resounding success. It has exceeded initial estimates for financial synergies, leading to a more viable company that provides greater service for the flying public and provides greater employment certainty for its employees.

The America West/US Airways merger, in which management failed to negotiate contract terms in advance, is still run as two separate companies. Mired in lawsuits, America West/US Airways has failed to realize the advertised synergies, even though the merger took place more than 5 years ago, and continues to have its share of unresolved labor issues, which benefits neither the company nor the consumer.

One axiom in the service industry stands as a beacon of truth. Take care of your employees. Ultimately, they will take care of the customers, and the business will take care of itself.

It is imperative that the combined United/Continental establish a management team not only capable of running the airline well but one that also cultivates a culture where this combined entity provides a revenue and capital generation for a great product.

In order for this merger to be successful, there must be a joint collective bargaining agreement with assurances for wages, working conditions, and job protections that are commensurate with the professionalism that our pilots exhibit each and every day.

Thanks to the professionalism, commitment, and financial sacrifice of the pilots and other employees, our airline has weathered numerous challenges and now flourishes, but there are still challenges ahead.

One of the biggest for the pilots of United and Continental and, indeed, for the airline pilot profession is the industry's continued

drive to outsource as much flying as possible to an ever-shifting collection of below-cost subcontractors. Last year, United Airlines laid off 1,437 highly experienced pilots, their jobs outsourced to these low-cost subcontractors. The average United Airlines passenger has only a 50/50 chance that their flight is actually being operated by United Airlines. This philosophy which puts profit ahead of the safety of the traveling public must come to an end.

While airline executives have been on the Hill saying all the right things seeking approval, I speak for the United pilots when I tell you that our contributions must be recognized in order for this merger to be successful and the synergies to be realized. We ask that as you consider the benefits this transaction will have for the industry and for consumers you also measure whether managerial actions are consistent with their words.

United and Continental managements now stand at the threshold of what could be a great airline, one that sees sustainable profits and will also provide unmatched service to our customers. A combined United/Continental could establish a new paradigm in commercial aviation, one where management and labor work together to establish a solid, profitable airline where employees are properly compensated and where job security is not a constant concern.

As key stakeholders, the United pilots stand ready to embark on this new business opportunity. Our favorable participation will lead to a stable, sustainable airline. This, in turn, will produce an unprecedented level of success for United stakeholders and an exemplary level of service for the flying public.

Thank you.

[The prepared statement of Ms. Morse follows:]

PREPARED STATEMENT OF WENDY MORSE

STATEMENT OF

CAPTAIN WENDY MORSE

CHAIRMAN

UNITED MASTER EXECUTIVE COUNCIL

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL

BEFORE THE

COMMITTEE ON THE JUDICIARY

UNITED STATES HOUSE OF REPRESENTATIVES

WASHINGTON, DC

June 16, 2010

**Competition in the Airline Industry**

Air Line Pilots Association, International
1625 Massachusetts Avenue, NW
Washington, DC 20036
(202) 797-4033

STATEMENT OF
CAPTAIN WENDY MORSE
CHAIRMAN
UNITED MASTER EXECUTIVE COUNCIL
AIR LINE PILOTS ASSOCIATION, INTERNATIONAL
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON, DC

June 16, 2010

**Competition in the Airline Industry**

Good morning Chairman Conyers, Ranking Member Smith, Representatives Quigley and Gutierrez from my home state of Illinois and that of United Airlines headquarters, and other members of the Committee. I am Captain Wendy Morse, Chairman of the United Master Executive Council of the Air Line Pilots Association, International. We have more than 7700 active and laid off pilots at United Airlines. I have been flying for 33 years, and a pilot with United Airlines for 25 years. I appreciate the opportunity to speak before the Committee regarding the proposed United-Continental merger. I would like to thank the Committee for taking the time to consider the effects this merger will have on labor.

Over the past decade, the airline industry has experienced the worst economic storm in the history of commercial aviation. An unprecedented series of financial shocks have taken their toll on airline service and employees. Bankruptcies, employee layoffs, contractual concessions, and outsourcing all have been well chronicled in business sections of the nations' newspapers and at the kitchen table of every United employee.

The proposed merger between United and Continental represents not only an opportunity for both airlines, but a possible sea-change in the economic direction and customer satisfaction for the airline industry. How this merger is handled will determine whether it is change for the better.

The choice could not be clearer and the recent history of airline mergers provides a vivid picture of which path to choose. We are not traveling down uncharted territory; the obvious path to success, should it be selected, has already been established. The advantage of the knowledge of what has worked and what hasn't worked must be recognized.

The Delta/Northwest merger, in which the company worked out a mutually satisfactory contract with the pilots, has been a resounding success. It has exceeded initial estimates for financial synergies which led to a more viable company that provides greater service for the flying public and provides greater employment certainty for its employees. The America West/US Airways merger, in which management failed to negotiate contract terms in advance, is still run as two separate companies. Mired in lawsuits, America West/US Airways has failed to realize the

advertised synergies, even though the merger took place more than five years ago and continues to have its share of unresolved labor issues which benefits neither the company nor the consumer.

Today, we find ourselves at a crossroad. Through the extended Chapter 11 bankruptcy process, United Airlines management stripped significant scope protections thereby allowing them to outsource flying, and eliminate jobs as they deemed fit. The process allowed United Airlines to outsource approximately 50 percent of its domestic flying to low cost, subcontracted, often unknown carriers. This has resulted in savings through costs being cut in the area of wages, benefits, and work rules. These are causative factors that ultimately impact safety.

Currently, we have 1437 pilots on furlough while United Airlines continues to outsource to low-cost, subcontracted carriers, and foreign airlines. Today we have a foreign airline, Aer Lingus, using foreign crews that are based right here in Washington D.C., flying a route to Spain with United marketing and sales enabling this joint venture. Revenue earned by United Airlines should be generated by United Airlines pilots. This continued outsourcing has cost United pilot jobs. We concur with the bipartisan view that American jobs are of the utmost importance to the sustained recovery of our economy. The United pilots believe that if this merger is to be successful, United pilot jobs are of paramount importance; and therefore, strong scope protections are essential.

Now is the time to ensure that corporate America lives up to its responsibilities to its employees, customers and stakeholders. We would stand in opposition to this merger if it is to be used as a tool to continue the outsourcing of American jobs on a grander scale, and we are hopeful that will not be the case. Outsourcing has become the ultimate bait and switch where the passengers are often unaware of which airline is actually providing the service. When a passenger buys a ticket from United Airlines, they deserve to have United pilots at the controls. This merger presents the opportunity to put an end to management's preoccupation with outsourcing.

One axiom in this service industry stands as a beacon of truth: Take care of your employees. Ultimately, they will take care of the customers and the business will take care of itself. It is imperative that the combined United/Continental Airlines establish a management team not only capable of running the airline well, but one that also cultivates a culture where this combined entity provides the revenue and capital generation for a great product. In order for this merger to be successful, there must be a joint collective bargaining agreement with assurances for wages, working conditions and job protections that are commensurate with the professionalism that our pilots exhibit each and every day.

Thanks to the professionalism, commitment and financial sacrifice of the pilots and other employees, our airline has weathered numerous challenges, and now flourishes. Without the pilots' and other employees' sacrifices, the proposed United/Continental merger would be not be possible. Our pilots have made the sacrifices. It is now time we shared in the rewards.

While airline executives have been on the Hill saying all the right things seeking approval; I speak for the United pilots when I tell you that our contributions must be recognized in order for this merger to be successful and the synergies to be realized. We ask that as you consider the

benefit this transaction will have on the industry and on consumers, you also measure whether managerial actions are consistent with their words.

United and Continental managements now stand at the threshold of what could be a great airline, one that sees sustainable profits and will also provide unmatched service to our customers. A truly united airline; where passengers can depart from their hometown to virtually any corner of the world. A combined United/Continental could establish a new paradigm in commercial aviation, one where management and labor work *together* to establish a solid, profitable airline where employees are properly compensated and where job security is not a constant concern.

The correct path is easily recognizable and attainable if the new management team focuses on running the airline well and addresses our labor concerns prior to the approval of this merger. The new United management team must embrace the professional pilots as essential partners for this new venture to be truly successful.

As key stakeholders, the United pilots stand ready to embark on this new business opportunity. Our favorable participation will lead to a stable, sustainable airline. This, in turn, will produce an unprecedented level of success for United stakeholders, and an exemplary level of service for the flying public.



---

Mr. JOHNSON. Mr. Swelbar.

**TESTIMONY OF PROFESSOR WILLIAM S. SWELBAR, PROFESSOR, RESEARCH ENGINEER, DEPARTMENT OF AERONAUTICS AND ASTRONAUTICS, MASSACHUSETTS INSTITUTE OF TECHNOLOGY**

Mr. SWELBAR. Thank you.

Mr. Chairman, Members of the Committee, thank you for the opportunity to speak in support of the merger of Continental and United Airlines today. For the network carriers like United and Continental, this round of consolidation is as much about preparing to compete with the world's other big carriers for international traffic as it is about competing with low-cost carriers in the domestic market.

Despite the footprint established by the low-cost carriers that is now national in scope, it is the network carriers that connect the smallest U.S. markets to the globe's air transportation grid.

I am going to debunk five myths I have heard said about the merger of the United and Continental.

One, overlapping routes and higher fares. There are just 15 nonstop overlapping routes flown by United and Continental. None of the 15 routes would be a monopoly United route after the proposed merger. Numerous connecting options are present in each of the 15 routes as well. The U.S. market should not fear end-to-end network consolidation like Delta/Northwest in the proposed United/Continental merger.

The low-cost carrier segment of the U.S. airline industry would regale in the fact that the network carriers would price well above the market, as was the case in the late '90's and the early 2000's. Why? Because it would serve as the catalyst for their renewed growth that would come at the expense of the network carriers yet again.

The market has demonstrated time and again that where competition is vulnerable a new entrant will exploit that vulnerability. Where there are market opportunities, there will be a carrier to leverage that opportunity, and where there is insufficient capacity, capacity will find the insufficiency.

Two, start of another big merger wave. Each merger case should be considered on its own merits. Moreover, the concerns are most relevant in highly concentrated industries. The U.S. domestic airline industry will remain fragmented should the proposed merger be proposed, as seven airlines will have at least a 5 percent market share.

When thinking about airlines in a global context, no one firm has a 5 percent market share of the global market. The top 10 firms producing mobile handsets comprise 85 percent of their industry, the top 10 automotive manufacturers make up 76 percent of their industry, and the top 10 container shipping firms equal 63 percent of their industry. Yet the world's 10 largest airlines make up only 36 percent of the global airline industry. These define a fragmented industry prohibited from operating as other global industries, not a concentrated one.

Three, hub closures and flight reductions. The fear mongers would have us believe unequivocally that there will be reductions in flying, the dislocation of small communities from the global airline map, and even hub closures because of consolidation.

In the case of this merger, there has been much speculation about the future of Continental's Cleveland hub. There is nothing that I can see from this merger that would make Cleveland redundant. The answer to Cleveland remaining a critical point on the combined carrier map will have everything to do with the condition of the local Cleveland economy, as well as the price of oil, and, little, if nothing to do with the decision to merge.

Four, employee and employment disruptions. Since 2001, the industry has shed nearly 140,000 jobs. But 400,000 plus good jobs remain, where wages and benefits average over $81,000 per year per full-time equivalent.

Consolidation is not the culprit of lost airline jobs or declining airline wages. Airlines were left with little choice but to restructure, given the changed revenue environment. Unlike other rounds of consolidation that focus primarily on network scope, scale, revenue, and cost synergies, this round is different. Now the industry is also looking at the balance sheet. Consolidated carriers promise more stability to employees and communities that benefit from the combined strength of the respective balance sheets.

And, five, re-regulate. Some suggest that re-regulation of the industry will improve the economic well-being of certain stakeholders. Isn't a goal of policymakers to maximize the number of good-paying jobs?

The airline business is best characterized as a highly priced, elastic product. I firmly believe it would harm the industry by causing it to contract further as prices rise as inefficient costs are passed through to the consumer. Simply put, the network carrier model of the '80's and '90's does not work in today's environment. Consolidation is a logical step in this highly fragmented domestic and global airline industry to better weather the financial challenges that have caused years of economic pain for many stakeholders in a rising tide of red ink.

Thank you.

[The prepared statement of Mr. Swelbar follows:]

PREPARED STATEMENT OF WILLIAM S. SWELBAR

**STATEMENT OF WILLIAM S. SWELBAR, RESEARCH ENGINEER, MIT INTERNATIONAL CENTER FOR AIR TRANSPORTATION**

**BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES**

**COMMITTEE ON THE JUDICIARY**

***"COMPETITION IN THE AIRLINE INDUSTRY"***

**JUNE 16, 2010**

Good afternoon Chairman Conyers, Ranking Member Smith and members of the committee.

My name is William Swelbar. I am a Research Engineer with the Massachusetts Institute of Technology's International Center for Air Transportation. Our program is focused on the economic, financial, operational and competitive aspects of the global airline industry. I appreciate the opportunity to speak today in support of the merger of United and Continental Airlines. Whereas I have worked with each United and Continental in a consulting capacity in the past, I appear today as an independent expert on the U.S. and global airline industry.

Many see the global airline industry as somehow U.S.-centric. It is not. In aviation, the U.S. is but one piece of a big puzzle that is influenced by global economic interdependencies, just as the U.S. economic recovery could be affected by events in Greece, Portugal, Spain and Hungary.

United and Continental presented in their testimony before the Senate Committee on Commerce Science and Transportation an exhibit showing where U.S. airlines have fallen in their ranking among the globe's largest airlines. I am bothered by the fact that the U.S. carriers have been surpassed by Lufthansa/Swiss and Air France/KLM. This fact is but one reason that helps to explain why United and Continental are pursuing this merger.

For the network carriers like United and Continental, this round of consolidation is as much about preparing to compete with the world's other big carriers for international traffic as it is about competing with low cost carriers (LCCs) like Southwest, AirTran, jetBlue or Frontier in the domestic market. After all, it is the network carriers and not the low cost carriers that serve communities of all sizes. Despite the footprint established by the low fare carriers that is now national in scope, with their share of domestic traffic approaching 40 percent, it is the network carriers that connect the smallest U.S. markets to the globe's air transportation grid.

I would like to debunk some of the myths I have heard said about the merger of United and Continental.

1. **OVERLAPPING ROUTES/HIGHER PRICES:** There are just 15 nonstop, overlapping routes flown by each United and Continental. None of the 15 would be a monopoly United route after the proposed merger. Eleven of the 15 overlapping city pairs would have at least two competitors. Of the four routes that would have but one other nonstop competitor (Houston – Washington, Houston – Los Angeles, Houston – San Francisco and Cleveland – Denver), that other competitor is Southwest Airlines in three of the four and Frontier on the other. In each of the four routes, the LCC competitor has at least a 25 percent share of traffic.

   In addition to a nonstop competitor, two of the routes have four other carriers providing connecting service; one has three other carriers providing connecting service; and one has two other carriers providing connecting service. The airline industry is a network industry and connecting options for passengers must be taken into account when considering competitive impacts as they also work to discipline prices.

   The U.S. market should not fear the "end to end" network consolidation like Delta – Northwest and the proposed United – Continental merger. The low cost carrier segment of the US airline industry would regale in the fact that network carriers would price well above the market as was the case in the late 1990s and early 2000s as it would serve as the catalyst for growth at the

expense of the network carriers again. The market has demonstrated time and again that where competition is vulnerable, a new entrant will exploit that vulnerability. Where there are market opportunities, there will be a carrier to leverage that opportunity. And where there is insufficient capacity, capacity will find the insufficiency.

2. **START OF ANOTHER BIG MERGER WAVE:** Some predicted that the Northwest-Delta merger in 2008 would be the catalyst to a big merger wave. Two years later, we have a second merger announcement. That hardly seems to be a wave. Nonetheless, each merger case should be considered on its own merits, not based upon what someone speculates might happen. Moreover, the concerns are most relevant in highly concentrated industries. The U.S. domestic airline industry will remain fragmented should the proposed merger be approved as seven airlines will have at least a 5 percent market share.

   When thinking about airlines in a global context, no one airline has a 5 percent share of the global market. The top 10 firms producing mobile handsets comprise 85 percent of their industry; the top 10 automotive manufacturers make up 76 percent of their industry; and the top 10 container shipping firms equal 63 percent of their industry. Yet the world's 10 largest airlines make up only 36 percent of the global airline industry. These define a fragmented industry prohibited from operating as other global industries, not a concentrated one.

3. **HUB CLOSURES AND FLIGHT REDUCTIONS:** The fear mongers would have us believe unequivocally that there will be reductions in flying, the dislocation of small communities from the global airline map and even hub closures because of consolidation. Many use TWA and its St. Louis hub as an example. American Airlines did not merge with a failing TWA. Rather it acquired certain assets of a failed TWA. As a result it is a very poor example of what could happen to a hub.

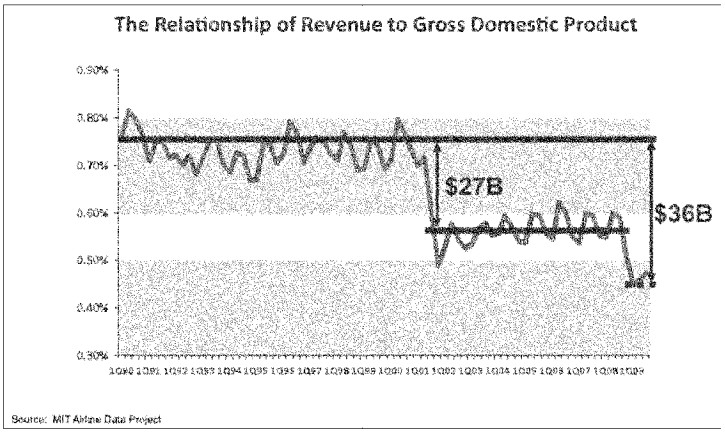
   But was it consolidation of the industry that ultimately caused American to downsize St. Louis or was it the events of 9/11 and the changed economics of the industry that followed that ultimately rendered St. Louis uneconomic? Might the local economy in St. Louis have contributed to the city no longer being an attractive hub city that produces significant local traffic to support the hub carrier? St. Louis is but one example of hub closures since September 2001 as US Airways/America West has in effect closed it Las Vegas hub and its Pittsburgh hub. Neither of the closures can be laid at the feet at the carrier's merger with US Airways. In fact if America West had not agreed to merge with US Airways it is highly likely that the old US Airways would have been liquidated.

   In the case of this merger, there has been much speculation about the future of Continental's Cleveland hub. There is nothing that I can see from this merger that would make Cleveland redundant. Without knowing what the internal data might say but being knowledgeable about airline planning models, I would guess that the modeling would suggest that Cleveland would be made stronger as a result of the merger and not weaker. The answer to Cleveland remaining a critical point on the combined carrier map will have everything to do with the condition of the

local Cleveland economy as well as the price of oil and little to nothing to do with the decision to merge.

4. **EMPLOYEE/EMPLOYMENT DISRUPTIONS:** Since 2001, the industry has shed nearly 140,000 airline jobs. But 400,000+ good jobs where wages and benefits average over $81,000 per year per full time equivalent remain. In fact, the average wage for airline employment reached its high point for the decade during the third quarter of 2009. This average employee cost comes after the significant concessions granted at each of the five remaining network carriers between 2002 and 2007. Headcount reductions were significant during the period as well as companies were forced to reduce their size in response to a changed revenue environment and increasing fuel prices. The reductions continued into 2008 as oil climbed to $147 per barrel and jet fuel to the equivalent of $172 per barrel. 2009 marked the second largest decrease in industry capacity since 1942.

   Susan Carey of *The Wall Street Journal* wrote an article titled: "Airline Industry Sees Pain Extending Beyond the Recession." In this critically insightful piece Carey examines the relationship of airline industry revenue to U.S. Gross Domestic Product. "For decades U.S. airlines could rely on a remarkably stable relationship between their revenue and gross domestic product. Year after year, domestic revenue came in at 0.73% of GDP on average, and total passenger revenue was equal to 0.95% of GDP. For the year ended March 31, domestic revenue was 0.54% of GDP, while total passenger revenue was 0.76% of GDP". What this means is that based on the historic norm of the revenue to GDP relationship, there is $27 billion less in revenue today to be shared among the industry's competitors than there was just 10 years ago.



Consolidation is not the culprit of lost airline jobs or declining airline wages. Airlines were left with little choice but to restructure given the changed revenue environment precipitated by the growth of the low cost carriers and the transparency in fares facilitated by the internet as a distribution vehicle.

What is clear to me is that no individual airline except possibly Southwest and Delta would have the financial wherewithal to withstand another geopolitical event similar to what occurred on September 11, 2001. Unlike other rounds of consolidation that focused primarily on network scope, scale, revenue and cost synergies, this round is different. Now the industry is looking at the balance sheet. Consolidated carriers promise more stability to employees and communities that benefit from the combined strength of the respective balance sheets.

5. **REREGULATION:** Some suggest that re-regulation of the industry will improve the economic well being of certain stakeholders. Isn't a goal of policy makers to maximize the number of good paying jobs? The airline business sells what is best characterized as a highly price elastic product. Only a segment of the buyers of airline services is less sensitive to price. Over the past 30 years, the industry has competed away the savings/benefits of nearly every innovation (ex. reduced commission expense) in the name of low and lower fares for consumers. Some think that reverting back to the days of a regulated industry will benefit certain segments of the industry. I firmly believe it would harm the industry by causing it to contract further as prices rise as inefficient costs are passed through to the consumer. A smaller industry would employ fewer workers.

Many government officials and certain industry watchers have instilled fear into the marketplace regarding the impact of current and prospective industry consolidation. Fears of higher prices, reduced service, more monopoly routes, and labor strife are not well founded. Their analysis of the industry today parallels an analysis appropriate in a regulated period.

Simply put, the network carrier model of the 1980's and 1990's does not work in today's environment. Consolidation is a logical step to position airlines in a highly fragmented domestic and global industry to better weather the financial challenges that have caused years of economic pain for many stakeholders and a rising tide of red ink.



---

Mr. JOHNSON. Thank you.
Mr. Roach.

**TESTIMONY OF ROBERT ROACH, JR., GENERAL VICE PRESIDENT—TRANSPORTATION, THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS**

Mr. ROACH. Thank you, Mr. Chairman and Ranking Member Smith, Members of the Committee, for the opportunity to speak to you today.

My name is Robert Roach, Jr., General Vice President, International Association of Machinists and Aerospace Workers, the largest airline union in North America.

The Machinists union represents more than 100,000 airline industry workers. Twenty-seven thousand would be affected by this merger. Employees at United, Continental, Air Micronesia, a regional partner, Express Jet could be adversely impacted.

We cannot look at the United/Continental transaction in isolation, as US Airways has already announced their merger hopes after this transaction is completed.

The airline industry has been in turmoil since the passage of deregulation in 1978. Since 1978, 150 low-cost carriers began operations, but less than a dozen are still providing service today.

More than 100 communities have lost all commercial service in the last 10 years. The industry is crying out for sane re-regulation. There are many who argue that re-regulation would be not in the best interest of the industry. But let's look at the banking industry, where lack of regulation almost caused the doom of our country. Let's look at the oil industry where there's millions of gallons of oil flowing in the Gulf of Mexico, and now Congress is debating re-regulation or better oversight. This industry is crying out for sane re-regulation. Maybe we should take a step back and not rush to judgment or consolidation.

Our concern is that we are creating airlines that are too big to succeed and once again resulting in taxpayer bailouts. It is time to seek a new vision for the future of air transportation in the United States.

Albert Einstein said insanity is doing the same thing over and over again, expecting a different result. We can close our eyes and believe that repeating the same mistake for 30 years will eventually bring different results or we can effect real change and have an efficient, competitive air transportation industry.

The long-term cost of underpricing tickets is too extreme. Pan American, TWA, Eastern, Northwest all survived for more than half a century but could not endure the insanity of cutting prices to eliminate competition.

We have met both airlines jointly and separately since the merger has been announced. However, IAM members still have many questions unanswered and concerns that need to be addressed. To the carrier's merit, they have indicated they are prepared to provide us all the information that we need, but at this point we do not have that information, and the information has not been forthcoming.

The merged carrier United and Continental will start out with a $13.8 billion debt. What is the business plan to deal with that debt structure? Will the merged carrier have any choice but to eliminate hubs in order to avoid competing with itself? What happens to Cleveland? What happens to Washington Dulles? Will the

merging of these carriers and wholesale reshaping of the industry destroy competition, harm consumers on routes throughout the United States? As details about the combined carrier's business plan emerge, it must be closely scrutinized.

The IAM believes that all employees deserve a defined benefit pension plan, but we are concerned that employees could lose defined benefit pension plans as a result of this merger. Carriers have admitted that homogenizing pensions are a complex issue; and although they have given it much thought, they did not know how it would be resolved.

The Machinists Union would not allow our members' retirement security to become a casualty of this merger. Some past versions have resulted in devastating effects for employees. US Airways and America West are still operating as two separate airlines. Although there are public reports to the contrary, Northwest and Delta are not fully integrated and having representation issues.

Myself personally worked for TWA, and as a result of the merger to America West I lost my seniority, along with tens of thousands of other employees; and those employees, unfortunately, do not have jobs today because they were placed on the bottom of the seniority list by American Airlines and the surviving union. And, today, those people have no health insurance, and they lost their pensions.

But the same remarks that were made to the employees of TWA have been made today by CEOs of United and Continental and the same remarks that were made by the CEOs of Northwest and Delta and the same remarks were made by the CEOs of US Air and America West.

As a result of this, as this proposal moves forward, the Machinists Union ask the regulators to take the merger's impact on the employees into consideration. The combined carrier must offer employees more stability and opportunity than there are available at the two independent airlines. The merger cannot be at the expense of workers who have already sacrificed to keep these companies afloat. United and Continental need to demonstrate how the proposed merger would benefit employees, consumers, and the cities and States the airlines currently represent.

Thank you for the opportunity to speak to you today. The Machinists Union recognizes that it is in the Nation's interest to have a safe, reliable, competitive, profitable air transportation industry; and we are committed to working with Congress, Departments of Justice and Transportation to achieve that goal.

I look forward to your questions.

[The prepared statement of Mr. Roach follows:]

PREPARED STATEMENT OF ROBERT ROACH, JR.

Testimony of
Robert Roach, Jr.
General Vice President

Before the
House Committee on the Judiciary

**"Competition in the Airline Industry"**

June 16, 2010

**The International Association of Machinists**
**and Aerospace Workers**
9000 Machinists Place
Upper Marlboro, MD 20772
301-967-4500

**Testimony of General Vice President Robert Roach, Jr.**
**International Association of Machinists and Aerospace Workers**
**Before the House Committee on the Judiciary**

**"Competition in the Airline Industry"**
**June 16, 2010**

Thank you, Chairman Conyers, Ranking Member Smith and members of this Committee for the opportunity to speak to you today. My name is Robert Roach, Jr., General Vice President of the International Association of Machinists and Aerospace Workers (IAM), the largest airline union in North America, which recently entered into an alliance with the Japan Federation of Aviation Workers' Unions (KOHKUREN).

The Machinists Union represents United Airlines and/or Continental Airlines workers in the flight attendant; ramp; customer service; reservation agent; fleet technical instructor; maintenance instructor; security guard; and food service employee classifications, plus customer service agents at United's frequent-flier subsidiary, Mileage Plus, Inc. The IAM also represents flight attendants at Continental's wholly-owned subsidiary Continental Micronesia and flight attendants at Continental and United regional partner ExpressJet Airlines. In total, the IAM represents more than 26,000 workers who will be affected by this proposed merger. Our bargaining relationship with each airline spans many decades.

**Perpetual Crisis**

The airline industry has been in continuous turmoil since the passage of deregulation in 1978. Merger proponents complain about overcapacity as a major reason for industry consolidation, but mergers will not address overcapacity. Braniff, Eastern, Pan Am, TWA, Northwest Airlines, People Express, Aloha Airlines and others have all disappeared from the industry landscape, but the problem of overcapacity remains.

We cannot look at the United-Continental transaction in isolation. As the Delta-Northwest merger moves toward its completion, the United-Continental merger takes center stage. Waiting in the wings is a possible third merger, perhaps between US Airways and American Airlines, each a product of recent consolidation with America West and TWA, respectively. We agree with House Transportation and Infrastructure Committee Chairman James Oberstar when he wrote the Department of Justice stating, "This merger will move the country far down the path of an airline system dominated by three mega-carriers... If United and Continental merge, another domino in a chain of mergers will fall, and there will be strong pressure for further consolidation[1]."

Does anyone really believe that having only a few major airlines in operation, each with immense market control and offering consumers fewer choices, will benefit the country? If one of these mega-carriers should fail, how would that impact the country?

---

[1] Chairman James Oberstar's letter to the Department of Justice, May 5, 2010

The Machinists Union has serious concerns not only about the viability of a combined United/Continental carrier, but also for the long-term sustainability of each carrier independently. In fact, our concern is for the entire industry, and we do not believe mergers alone provide the answers. Congress has spent a considerable amount of time debating the issue of entities that are too big to be allowed to fail. Our concern is we are creating airlines that are too big to succeed.

I am not advocating that we maintain the status quo in the airline industry. When there are problems, we must seek solutions. But perhaps we should take a step back and not rush to judgment or consolidation. It is time we seek a new vision for the future of air transportation in the United States.

It was clear to the Machinists Union in 1993 that deregulation had failed. The Clinton administration recognized the problems facing the air transportation industry and empanelled the National Commission to Ensure a Strong Competitive Airline Industry. One of my predecessors, IAM General Vice President John Peterpaul, served on the Commission. The Commissioners were charged with investigating and devising recommendations that would resolve the crisis in the industry and return it to financial health and stability.

The Committee essentially recommended no substantial regulatory changes and believed that market forces would stabilize the industry. The IAM's representative on the

Commission was the only dissenter, arguing that deregulation destabilized the industry and government intervention was necessary.

This country needs the major airlines, or so-called legacy carriers. While low-cost carriers fill an important niche, the air transportation system would collapse without traditional hub-and-spoke carriers. If you want to fly to Europe, Asia, South America or the Middle East you will be flying one of the legacy carriers, or another nation's airline. As John Peterpaul said, "Hubs serve as collection and distribution centers for air traffic, making it possible to serve many more communities than would be feasible with simple linear, point-to point service."[2] It is a mistake to think that as legacy airlines merge and hubs are eliminated that start-ups or low-cost carriers are capable of filling the void.

The Machinists Union's assertion that deregulation had failed to deliver on its promises was ignored in 1993 in favor of supporting airline industry executives who advocated staying the course. Congress now has another chance to make effective changes to this industry.

United and US Airways' pension terminations alone have cost the Pension Benefit Guaranty Board (PBGC) $10 billion and beneficiaries $5 billion[3]. Inflation-adjusted salaries for airline employees have grown less than 5% since 1979[3]. There have been

---

[2] *Dissenting Opinion*, by Commissioner John Peterpaul to the Report of the National Commission to Ensure a Strong Competitive Airline Industry, August 19, 1993

[3] *Airline Deregulation*, United States Government Accountability Office Report GAO-06-630, June 2006

162 airline bankruptcy filings since 1978[4], with bankruptcies accelerating in the last decade, including the liquidations of Aloha Airlines, ATA and Midway Airlines. Since 1978, 150 low-cost carriers began operations, with less than a dozen still providing service today.[4] More than 100 communities have lost all commercial air service in the last 10 years.[4] The industry has lost more than $60 billion in the last decade, and 163,000 industry jobs have disappeared since 2001. [5]

The so-called low-cost airlines are not immune to the industry's problems and are also looking for additional consolidation to help them survive. For example, US Airways, which became a low-cost carrier after two bankruptcies and a merger with America West Airlines, is now aggressively seeking a merger partner. "Further down the road there's a high probability that US Airways will wind up merging with either United, Delta or American," said US Airways President Scott Kirby.[6]

Even Alfred Kahn, the major architect of deregulation, has said, "I must concede that the industry has demonstrated a more severe and chronic susceptibility to destructive competition than I, along with the other enthusiastic proponents of deregulation, was prepared to concede or predict." [7]

This industry is crying out for limited re-regulation.

---

[4] *Flying Blind*, Dēmos, 2009

[5] Testimony by ATA President and CEO Jim May Before House Appropriations Subcommittee on Transportation, Housing, Urban Development and Related Agencies on Aviation Stakeholder Priorities for Maintaining a Safe and Viable Aviation System, March 18, 2010

[6] *US Airways: Merger Probability Is High*, by Ted Reed, TheStreet.com, June 1, 2010 http://www.thestreet.com/story/10771279/1/us-airways-merger-probability-is-high.html

[7] *Change, Challenge, and Competition: A Review of the Airline Commission Report"*, by Alfred E. Kahn, 1993

Deregulation in this industry – and others –has had disastrous effects. Left completely to their own devices, corporations put their profits first without regard to the impact it has on the nation.

The 2007 financial and housing meltdown was a result of unregulated corporate greed in the banking and mortgage industries. Instead of only traditional banks offering mortgages, non-banks were allowed to enter the mortgage market. Predatory lenders aggressively targeted unqualified borrowers. Investment banks sold mortgage packages to Wall Street – all largely unregulated. When the mortgages defaulted – because many should never have been made in the first place – Wall Street collapsed, and took the rest of the economy with it.

One only has to look at the news this evening to see the toxic results of energy industry deregulation suffocating our Gulf shores. Local fishing and tourism industries are being destroyed, not to mention the cataclysmic environmental impact. Oversight and enforcement of BP's operations were woefully inadequate, in spite of a decade of documented safety violations at BP locations across the United States. [8]

Some industries are too critical to the United States to be allowed to regulate themselves. The airline industry needs to be stabilized because it drives $1.4 trillion in

---

[8] *Reports at BP Over Years Find History of Problems*, By Abrahm Lustgarten and Ryan Knutson. Washington Post, June 8, 2010

economic activity and contributes $692 billion per year to the Gross Domestic Product (GDP).[9] It is too vital to the nation's commerce to be ignored, taken for granted or left to its own destructive ways.

Today, Congress is considering increased oversight of both the financial and oil industries to provide more regulation. Such action is necessary and long overdue, but it took catastrophes to prompt action. There have been three decades worth of evidence that airline deregulation has failed. At what point do we take another look at this beleaguered airline industry? We need to be forward-thinking before we are asked to bailout the airline industry – again.

It is clear that airline deregulation has failed to deliver on its promises of a stable and profitable industry, and staying the course will continue the industry's downward spiral. Airline bankruptcies will continue, more proud airlines will disappear, employees will continue to suffer and passengers will receive less service. Albert Einstein said, "Insanity is doing the same thing over and over again and expecting a different result." We can close our eyes and believe that repeating the same mistake for thirty years will eventually bring different results, or we can effect real change and have an efficient and competitive air transportation industry.

---

[9] *The World Airline Report*, Air Transport World, June 1, 2009
http://atwonline.com/eco-aviation/article/world-airline-report-0309

I do not propose a complete return to the days of the Civil Aeronautics Board and complete re-regulation, but some additional form of government involvement is necessary.

Although I do not agree with everything former American Airlines CEO Robert Crandall says about the airline industry, I share his opinion that, "market–based approaches alone have not and will not produce the aviation system our country needs" and that "some form of government intervention is required."[10]

The IAM believes fares need to be regulated. We must have fare minimums, because if an airline is allowed to charge less for a ticket than it costs to provide the service, we will have more airline bankruptcies and further consolidation until we have only a single airline left in the United States.

Airline business plans today focus on lowering standards, eliminating services and reducing ticket prices to the bone to put competitors out of business, making a profitable industry impossible. The GAO estimates that median ticket prices have dropped nearly 40% since 1980, although the costs of aircraft, airport leases and fuel have increased dramatically.[11] Employees have been subsidizing the low ticket prices. No business can survive if they sell their product for less than what it costs to deliver their goods.

---

[10] *Charge More, Merge Less, Fly Better,* by Robert Crandall, The New York Times OP-ED, April 21, 2008

[11] *Airline Deregulation*, United States Government Accountability Office Report GAO-06-630, June 2006

The long-term cost of under pricing tickets is too extreme. Pan Am, TWA, Eastern, Northwest and Aloha Airlines all survived for more than half a century, but could not endure the insanity of cutting prices to eliminate the competition.

**Merger Scrutiny**

Although we have met with United and Continental both separately and jointly, information has been slow in coming. The Machinists Union and our 26,000 members at the two airlines do not have enough details about the merger's impact on employees to determine if this merger would be in their best interests. The carriers admit that many of our most important issues, such as pensions, workforce integration, union representation, prevailing wages and working conditions will largely remain unresolved until after the Department of Justice rules on the merger. To the carriers' credit, they have agreed to a communication system through which we can obtain the information to address employee concerns, but that does not answer our questions today.

United Airlines has $8.5 billion in long-term debt[12], and Continental has $5.3 billion in long-term debt[13] – and they are considered healthy by industry standards. The merged entity would start out $13.8 billion in debt. What is their business plan to deal with the debt structure?

---

[12] Continental Airlines 10-K filing with the Securities and Exchange Commission, filed 2/17/10.
[13] United Airlines 10-K filing with the Securities and Exchange Commission, filed 2/26/2010.

Merging airlines is much more difficult than just painting planes and combining websites. American Airlines' 2001 acquisition of TWA's assets resulted in tremendous job loss, employee integration problems and the closing of a hub in St. Louis, Missouri. The America West-US Airways merger cost the city of Pittsburgh, Pennsylvania its hub, and employee integration problems for some classifications persist five years after the merger. The 2008 Delta-Northwest merger is still far from being completed and managements' promises to preserve all front-line jobs in the merger were quickly broken.

With tens of thousands of employees from two different corporate cultures involved, jobs are inevitably lost in mergers and integrating employees groups is never as smooth as management claims. As with any service industry, employees upset with management provide an inferior product. How employees are treated in this merger will ultimately determine its fate. Southwest Airlines founder Herb Kelleher has said, "Happy and pleased employees take care of the customers. And happy customers take care of shareholders by coming back.[14]" An airline merger that does not take employees into consideration has the potential to take two viable carriers and create a combined airline destined to fail.

---

[14] *From the Corner Office - Herb Kelleher*, by Mary Vinnedge, Retrieved from success.com on May 26, 2010, http://www.successmagazine.com/From-the-Corner-Office-Herb-Kelleher/PARAMS/article/390/channel/19

**Airline Alliances**

Several years ago, the IAM raised concerns with respect to airline alliances. In our opinion, these alliances served as a potential mechanism for allowing airlines a path around antitrust laws. Unfortunately, our concerns have been substantiated. In some cases, they have served as the foundation for airlines to consolidate their operations. Time and time again, consolidations are announced only after both airlines have operated in the same airline alliance structure.

Continental and United Airlines represent the latest consolidation of airlines in the same alliance. Continental's membership in the Star Alliance essentially started a merger on the installment plan. Given the prevalence of alliances here at home, what will alliances ultimately mean for the traveling public, particularly if they lead to further consolidation and route frequencies are cut, if not altogether abandoned?

The implications for worldwide air travel are even more profound, particularly for U.S. consumers. Given the rapid acceleration of outsourcing of most job classifications, will alliances result in the outsourcing of most domestic work on carriers to workers at airlines in other countries? We have already seen thousands of U.S. aviation jobs shifted to countries like China, Singapore, and the Philippines as U.S. air carriers outsource call centers and maintenance work. Given the lack of proper oversight by the FAA, as well as inadequate quality control mechanisms, this development should raise

alarms for any policymaker that sees domestic job security and consumer interests a priority.

**Effects of the Merger on Hubs**

The effects of a Continental/United merger would be felt most resoundingly in the upper Midwest and Mid-Atlantic states. The new carrier would mostly likely eliminate or downsize at least two of its hubs, in Cleveland, OH (CLE) and Washington-Dulles (IAD) in order to remove excess capacity. Closing hubs initiates a cascade of job loss that begins with airline employees and continues throughout the community to firms that provide services to the airline.

In the Midwest, United's leadership position at Chicago-O'Hare (ORD) could mean the elimination of Continental's CLE hub operation. CLE is only 307 miles from ORD. Continental's CLE hub is the smallest of their three hubs and has just recently started to grow again following post 9/11 downsizing. United is Chicago's hometown airline with unparalleled facilities and routes from ORD. CLE and the northern Ohio area have already been suffering greatly from the economic downturn and the mortgage crisis, and eliminating a major local employer would have drastic effects on the local economy.

Such a move would dramatically affect air service for the northern Ohio area, for which CLE serves as the closest major hub. Large corporations with their headquarters in CLE, such as National City Corporation, American Greetings, Eaton, Forest City

Enterprises, Sherwin-Williams Paints, Key Bank and Progressive Auto Insurance would lose access to direct domestic and international flights. Communities through Michigan, Kentucky, Tennessee, Ohio, Illinois, Wisconsin, and other states would lose their regional jet service operated by Continental Express, in many cases leaving them only with one airline alternative.

A different situation exists in the Northeast, where United's smaller IAD hub is only 215 miles from Continental's EWR "Global Gateway." EWR is Continental's primary international hub with nonstop service to nearly 100 destinations outside the United States. IAD serves as United's primary gateway to Europe, but its size and scope is nowhere near matching Continental's EWR operation.

Due to the large size of the local Washington, D.C. market, it is presumed that instead of a full-fledged hub closure, IAD would be downsized into a much smaller hub or a large focus city. IAD benefits from the fact that there is a perimeter restriction on flights from nearby Reagan National Airport (DCA) to destinations more than 1,500 miles away, which requires most flights to the West Coast to be operated out of IAD.

A Continental/United combination would also concentrate competition at many non-hub airports. They would be the largest carrier at Boston Logan (BOS), number 3 at New Your-LaGuardia (LGA), number 4 at New York–Kennedy (JFK), and the second largest carrier in Honolulu, Hawaii (HNL) after Hawaiian Airlines. At all of these airports it would be necessary to combine personnel and facilities, which would most likely result in

layoffs.

We have to ask ourselves if the merging of these carriers and wholesale reshaping of the industry will destroy competition and harm consumers on routes throughout the United States.

As details about the combined carriers' business plan emerge, it must be closely scrutinized to determine if a merger will result in a successful entity or not. We ask Congress to help us determine if this transaction will be good for employees and consumers.

**Pensions**

The Machinists Union is concerned that employees could lose defined benefit pension plans as a result of the merger. Continental ramp service, stock clerks and public contact employees all participate in a Continental company-sponsored single-employer defined benefit pension plan, while their IAM-represented counterparts at United participate in the multi-employer IAM National Pension Plan (NPP). Continental's IAM-represented flight attendants also participate in one of Continental's defined benefit pension plans and have negotiated the IAM NPP as a contingency plan. United flight attendants do not currently have a defined benefit pension plan, and the Pension Benefit Guaranty Corporation (PBGC) has prohibited United from sponsoring a single-employer pension plan.

The IAM believes that all employees deserve defined benefit pension plans. The carriers acknowledged that harmonizing pensions would be a complex issue, and although they have given it much thought, they did not know how it would be resolved.

In spite of United abandoning its pension obligations in bankruptcy, the IAM fought hard and ensured our members would have a replacement defined benefit plan. Just as we did in United's bankruptcy, the IAM will not allow our members' retirement security to become a causality of this merger.

**Collective Bargaining**

The Machinists Union is currently in contract negotiations for all eight classifications where we have members at the two carriers - seven at United plus Continental flight attendants. United negotiations have been ongoing for more than a year, and bargaining with Continental began late in 2009.

Regulatory and shareholder approval are far from certain at this point, and the Machinists Union is committed to negotiating new agreements to cover our members at each airline. It is premature for anyone to talk about combining the carriers' employees, and each airline must recognize their responsibility to continue bargaining in good faith.

**Seniority**

Seniority integration is always a major concern in mergers. Although airlines often promise fair and equitable integration of seniority, fair and equitable is a very subjective term and should not be left up to the carriers to decide. Some past mergers have resulted in employees losing decades of seniority – I am one of them. My seniority date was changed from 1975 to 2001 after American Airlines purchased TWA's assets in bankruptcy.

Continental Airlines is the product of many past mergers in the wake of deregulation, and in some cases seniority was integrated unilaterally by the then Frank Lorenzo-led carrier. The Machinists will ensure seniority is protected in this merger, but again, this is an issue to be addressed after representation issues are resolved. At the IAM's insistence, both airlines have agreed not to engage in workgroup integration discussions until representation issues are resolved.

**History of Sacrifice**

United Airlines employees have suffered greatly through the carrier's bankruptcy, the longest and most expensive airline bankruptcy in history.

Immediately after its Chapter 11 filing, United Airlines asked a bankruptcy judge to impose 14% "emergency" pay cuts on IAM members. More long-term cuts in pay and

benefits cost IAM members $460 million a year (or $2.644 billion over the life of the agreement). United then took steps to cut health benefits for existing retirees and filed a motion in court to ask a judge to impose further cuts if agreements could not be reached with the retirees' representatives

In the summer of 2004 United ceased funding its pension plans, the first in a series of steps which ultimately led to the termination of its company-sponsored pension plans.

In January 2005, United once again sought and received "emergency" pay cuts from the bankruptcy court - this time it was 11%. Six months later IAM members gave up another $176 million a year to save United. Savings attributable to the termination of IAM member's pensions saved United an additional $217 million a year.

In total, IAM members were forced to sacrifice more than $4.6 billion for United Airlines. United employees have been subsidizing the airline since 2003, and each day without a new contract that sacrifice continues.

Continental Airlines' employees also sacrificed more the $500 million a year to keep their airline out of bankruptcy during their last round of collective bargaining.

So, employees have the right to question the motives behind this merger and fear they would be forced to subsidize it.

**Conclusion**

The business plan for the proposed airline must receive close scrutiny. The IAM is concerned that the new entity may be too big to succeed without some form of industry re-regulation, and failure of such a large entity could be disastrous to employees, the industry and the general economy.

As this merger proposal moves forward, the Machinists Union asks regulators to take the merger's impact on employees into consideration. A combined carrier must offer employees more stability and opportunity than are available at the two independent airlines. The merger cannot be at the expense of workers who have already sacrificed to keep their airlines aloft. United and Continental employees did not accept job cuts and wages and benefit changes when their employers restructured just to lose out again in a merger.

The Machinists Union believes that airline mergers should have conditions, including requirements that protect employees, consumers and taxpayers – all of whom have been hurt by this unregulated industry. Employees must have their jobs, wages, benefits and pensions protected. If the architects of a merger can guarantee themselves bonuses and lucrative severance packages, then they can do the same for front-line employees. All cities that the airlines currently serve, not just profitable ones, must continue to be served. Pension obligations should be upheld in mergers, and consolidation should not be a vehicle for airlines to dump their pensions on the PBGC.

United and Continental would not be seeking to merge today if employees had not stepped up to save them in the past. United and Continental need to demonstrate how the proposed merger would benefit employees, consumers, and the cities and states the airlines currently serve.

Thank you again for the opportunity to speak with you today. The Machinists Union recognizes it is in the nation's interest to have a safe, reliable, competitive and profitable air transportation industry. We are committed to working with Congress, the Departments of Justice and Transportation, and the air carriers to achieve that goal.

I look forward to your questions.



---

Mr. JOHNSON. Thank you.
And last but not least, Ms. Friend.

**TESTIMONY OF PATRICIA A. FRIEND, INTERNATIONAL PRESIDENT, ASSOCIATION OF FLIGHT ATTENDANTS—CWA**

Ms. FRIEND. Thank you, Mr. Chairman and Ranking Member Smith, for giving us the opportunity to testify here today.

The voices of the workers often take a back seat in these hearings and in public pronouncements about the benefits of airline mergers. I am here today to give those workers a voice.

As a United flight attendant for 43 years and the President of AFA-CWA for 15 years, I have had a unique perspective on the dramatic changes that have reshaped the commercial aviation industry and eliminated thousands of jobs.

Lately, I have listened to airline CEOs testify before this Congress about the need to consolidate the industry in order to achieve a sustainable business model. After hundreds of airline bankruptcies, thousands of employee furloughs, devastating pay and benefit cuts, the destruction of pensions, and 32 years of deregulation, it seems that airline management has finally figured it out, albeit in the worst possible fashion, that our Nation needs a stabilized and a rational aviation industry.

Mr. Chairman, the Nation's flight attendants and all aviation workers also need a stable industry. Consumers are rightfully concerned that airline mergers will lead to higher fares and reduced service. We agree. But we also recognize the reality that airline fares must increase in order to stabilize this industry, provide a robust air transportation system, and provide more stable employment for thousands of aviation workers.

To strike this balance between a stable industry and reliable air service, we assert today that the increase in consolidation activity requires appropriate regulatory oversight to protect the interests of employees and passengers.

While some protections are in place today for consumers and communities, since deregulation, there are virtually no protections for airline workers. Of all the well-developed, pre-deregulation rules of the Allegheny Mohawk Labor Protective provisions, only one exists today, a provision establishing basic seniority protections in the event of a merger.

After deregulation, Congress was concerned that the massive post-deregulation restructuring of the industry would displace large numbers of employees, so in order to assist laid-off employees, they added the Airline Employee Protection Program to the Deregulation Act. Unfortunately, the almost 40,000 employees who lost their jobs in the wake of deregulation never received the benefits that Congress promised, since funding was never authorized for the benefits.

As Congress looks into the impact of mergers on employees, we hope it will look at the failed EEP as a framework to provide meaningful protections to workers in the future.

As we have testified in the past, we are not proposing to re-regulate the industry, but we do think, at a minimum, something needs to be done to shield workers from the harshest effects of this merger and future mergers.

So what can the workers at United and Continental expect as they combine their work force and route structure?

While management has provided information to us that is otherwise publicly available, management has not been so forthcoming about critical and future business plans. I call on this Committee to compel United and Continental management to provide the information on their plans for current United/Continental employee base and hub operations.

We also ask the Committee to consider the impact this merger may have on the contract negotiations under way between the Association of Flight Attendants—CWA, and United Airlines. For almost 6 years, the flight attendants at United have been working under a collective bargaining agreement negotiated while the company was in bankruptcy. They sacrificed nearly $2.7 billion in salary and benefit concessions, in addition to the loss of their pension.

We ask your help to ensure that the current contract negotiations are satisfactorily resolved before this merger is finalized. We will not allow the negotiation process at United to be delayed as a result of this merger. The employees at United made deep sacrifices to keep the company flying, and it is time for the workers to share in the rewards.

While much will be made over the coming months about the impact of this merger on consumers and communities, I urge you to remember the hundreds of thousands of airline employees across this country. Keep us in mind as you review this merger and the impact it will have on our lives and our families. We are the ones who have the most to lose, and we have the least protections.

I thank you for your time and look forward to your questions.

[The prepared statement of Ms. Friend follows:]

# TESTIMONY OF

# PATRICIA A. FRIEND
# INTERNATIONAL PRESIDENT
# ASSOCIATION OF FLIGHT ATTENDANTS – CWA, AFL-CIO

# BEFORE

# THE COMMITTEE ON THE JUDICIARY

# "COMPETITION IN THE AIRLINE INDUSTRY"

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC

JUNE 16, 2010

Association of Flight Attendants – CWA, AFL-CIO
501 Third St. NW
Washington, DC 20016
202-434-1300

Thank you for holding this vital and timely hearing on the proposed merger of United and Continental Airlines. My name is Patricia Friend and I am the International President of the Association of Flight Attendants – CWA, AFL-CIO (AFA-CWA). AFA-CWA represents over 50,000 flight attendants at 22 U.S. airlines and is the largest flight attendant union in the world. We especially thank the Committee for inviting us to testify today and giving voice to the concerns of the working women and men of these two great airlines about what this merger could mean to them.

As a front line employee in the airline industry for over 40 years, I have had a unique perspective on the cyclical and dramatic changes that have reshaped the commercial aviation industry and impacted thousands of jobs. As the President of a union representing employees from legacy or network carriers such as United, US Airways and Northwest (Delta); low cost carriers such as Air Tran Airways and Spirit; charter carriers such as Miami Air, Ryan International and USA 3000; to large majors and regional carriers such as Hawaiian, Alaska, American Eagle, Mesa and Mesaba, I am here to testify today about an aviation industry that is transforming in ironic fashion from a post deregulation industry to a consolidated industry that will look like a pre-deregulation industry. Seismic changes brought on by airline deregulation in the late 1970's caused endless bankruptcies and the end to historic airlines such as Pan Am, Eastern, TWA, Northwest and soon Continental. Each bankruptcy spelled disaster for airline employees who were left behind in the so-called rush to a market based airline industry. Thirty-two years later after the 1978 Airline Deregulation Act, I testify today about an industry that is in a swift consolidation mode. In just five short years, we have now witnessed two

major mergers at US Airways and America West and at Delta and Northwest. The United and Continental merger, if approved, will mean that we have almost cut in half the number of major legacy network carriers. Credible news reports point to further consolidation on the horizon if the United-Continental merger is approved. Mr. Chairman, as I indicated, I began my flight attendant career 44 years ago and worked under a regulated industry that was stable and provided middle class jobs to thousands of workers.

When Congress voted in 1978 to deregulate the industry, the Association of Flight Attendants, and other unions, warned of the catastrophic results that would soon follow rapid and uncontrolled expansion of the airline industry. We knew that airlines would slash fares to remain competitive and that employees would be the one group who would subsidize the fare reductions through pay cuts, wage stagnation and furloughs.

Lately, I have listened intently to airline CEO's testify before this Congress about the drastic need to consolidate the industry in order to achieve a sustainable business model. After hundreds of airline bankruptcies, thousands of employee furloughs, devastating pay and benefit cuts, and 32 years of deregulation experience, it seems that airline management has figured it out, albeit in the worst fashion, that our nation needs a stabilized and rational aviation industry. The irony is that AFA-CWA - for decades - has been the leader in calling for a national and rational aviation policy that recognizes the vital role the aviation industry plays in our nation's economy and the middle class jobs.

Mr. Chairman, the nation's flight attendants and all aviation workers need a stable industry as well. My experience has taught me that airline management is transient in nature with airline management coming and going and exiting our industry with a bountiful payoff while airline workers, who have truly invested in our industry, are left with a declining standard of living. Unfortunately one thing has remained constant during my career - corporate greed. If anything in that category has changed, it's that the amounts that CEOs reward themselves every year grows more and more excessive while employees earn less.

The voices of the workers often take a back seat in these hearings and in public pronouncements about the benefits of airline mergers. I'm here today to give those of us most invested in this industry – the true stakeholders – a voice.

I have opened my testimony with this perspective because it is a story that must be told and it is entirely relevant to the discussion topic today.

As in the case of the mega merger between Delta and Northwest, this merger between United and Continental has drawn significant attention from the media, communities served by both carriers and once again, here on Capitol Hill. The attention focused on what will become the world's largest airline, for the time being, is appropriate . . . and as before necessary. Once again this merger has led to speculation about which airlines will merge next. The remaining airline CEOs continued to call for greater consolidation in light of the anticipated rises in the cost of fuel. We would like to point out that the merger

drumbeat started years earlier as airline executives sought greater profits following the epidemic of bankruptcies.

Consumers are rightfully frightened that another airline merger in particular, and anticipated consolidation of the industry as a whole, will lead to much higher fares and reduced service. We recognize the reality that airline fares must increase in order to stabilize this industry and provide more stable employment for thousands of aviation workers. In order for this industry to survive and stabilize, airlines must be able to charge a realistic fare. Airfares in the U.S. have fallen from a 1978 average of 10.08 cents per mile to 4.2 cents per mile in 2006, adjusted for inflation.[1]

To strike this balance between a stable industry and reliable air service, we assert today that the increase in consolidation activity requires appropriate regulatory oversight to protect the interests of employees and passengers. Federal regulators need to consider the impact that mega mergers have on the consumers and communities. We hope that this Committee and other Congressional Committees will exercise vigorous oversight responsibilities as well.

It is unfortunate that while some protections are in place today for consumers and communities, there are virtually no protections for airline workers in this merger. There has been little attention paid to the extreme upheaval that mergers create for the thousands of airline employees who find themselves unemployed or whose lives are disrupted.

[1] James Larder and Robert Kuttner "Fling Blind: Airline Deregulation Reconsidered"; Dēmos 2009

This loss of protections has been yet another result of the market driven industry. There were many important protections in place for airline workers prior to the Airline Deregulation Act of 1978; the Allegheny-Mohawk Labor Protective Provisions (commonly know as the LPPs) were made a condition of government approval of virtually every airline merger. The LPPs contained extensive and specific protections – like displacement and relocation allowances, wage protections, transfer and seniority protections, layoff protection, and others – as part of a standardized set of provisions designed to shield workers from an unfair share of the burden resulting from corporate mergers.

But since deregulation there are no real protections from our federal government to cushion airline workers involved in mergers. After Deregulation, airline management successfully lobbied for an end to the LPPs, arguing that those matters are "better left to the collective bargaining process". And while union contracts did provide a level of protection for employees covered by collective bargaining agreements, a series of industry bankruptcy filings have severely reduced negotiated protections in today's contracts and there remains little to no protection for non-union airline employees.

Additionally the very employers, who argued to leave these merger protections to the bargaining process, now spent millions of dollars on union busting – through bankruptcy or other venues - trying to strip the provisions in place for decades. And today, as those same employers hold press conferences to trumpet the fact that the merger impact on

employees will be minimal, they often refuse to provide information about the impact on the workers in writing.

Of all the well-developed pre-deregulation rules of the Allegheny-Mohawk Labor Protective Provisions, only one exists today – a provision establishing basic seniority protections in the event of a merger. And that provision was only resurrected a couple years ago with the advocacy of AFA-CWA and the strong support of Representative Russ Carnahan, Senator Claire McCaskill and the 110th Congress.

After deregulation, Congress was concerned that the massive post deregulation restructuring of the airline industry would displace large numbers of employees and therefore added the Airline Employee Protection Program (EPP) to the Airline Deregulation Act of 1978 in order to assist laid-off employees. Unfortunately the almost 40,000 employees who lost their jobs in the wake of Deregulation never received the benefits Congress promised since funding was never authorized for the benefits, turning the whole program into a cruel joke for airline employees in desperate need of a life line.

Congress has recognized the need to assist airline employees facing the traumatic effects of industry consolidation in the past; we need a federal effort in what is shaping up to be another significant era of airline consolidation. As Congress looks into the impact of mergers on employees, it should look at the failed EEP as a framework to provide meaningful protections to workers in the future.

Unfortunately, there seems to be more concern for the consumer and even the airports, building and route structures of these two airlines then there is for the concern of the workers. As we have testified in the past, we are not proposing to re-regulate the industry today; but we do think that – at a minimum – something needs to be done to shield workers from the harshest effects of this merger and future mergers.

It seems reasonable to assume that within any airline merger there will be consolidation: blending corporate offices, the elimination of competing of hubs and overlapping routes networks may potentially lead to crew base closures. It seems that for airline workers consolidation likely translates to unemployment for far too many.

When Delta merged with Northwest in 2008 the CEOs of both corporations testified before this committee that disruptions to communities, consumers and employees would be minimal. Yet a mere two years later flight operations at Cincinnati, a former Delta hub, has been reduced from 600 flights in 2005 to between 160-170 flights now, cutting more than 840 jobs.[2] Not only has the number of flights been cut, there has also been a reduction in seat capacity. Routes once flown by aircraft with 150 seats – or more - are now being reduced to aircraft with 50 seats. Since the FAA mandates that there must be at least one flight attendant for each 50 passengers seats using smaller aircraft translates to a loss of two flight attendant jobs.

[2] Dan Monk and Lucy May, "Delta to cut 840 jobs at Cincinnati airport, reduce flights", Dayton Business Journal, March 16, 2010.

We can also look to the America West and US Airways merger to learn lessons from past mistakes. The synergies promised by this merger and consolidation have not occurred as promised or anticipated. Nearly 5 years after the America West/US Airways merger the two sides are still operating as separate entities. The "new" US Airways has closed four crew domiciles and displaced several hundred flight attendants, and workers at both carriers fly under separate contracts. America West flight attendants have not received a wage increase in over seven years and US Airways flight attendants are working under a concessionary agreement from previous bankruptcies. What has failed these employees is the lack of regulatory oversight in negotiating a combined contract.

So what can the workers at United and Continental expect as they combine their workforce and route structure? While management has provided information that is otherwise publicly available, management has not been forthcoming about critical and future business plans. Accordingly, we are seeking additional detailed information from management about the impact this merger will have on our members and our Collective Bargaining Agreement at United.

As witnessed in previous mergers, base or domicile closures can be extremely traumatic to employees and their families. Even though airlines may offer assistance, the stress of being displaced and forced to move to another location can be devastating. These are workers with families and homes and who are part of communities. I call on this committee to compel United and Continental management to provide more information on their plans for current United and Continental base or domicile operations.

United and Continental are partners in Star Alliance, a global network of airlines. The Star Alliance, and other alliances, is using revenue sharing agreements, code share agreements and joint venture schemes to increase their global presence. Traditionally, global alliances incorporated an incentive for each airline to provide flying using one or the other's aircraft and ground equipment and employees. As the operator of a route, the airline collects the majority of passenger and freight revenue. In this scenario, employees benefited from the arrangement. However, a new type of joint venture goes far beyond the typical code share agreements that are prevalent today. These new joint ventures threaten the long-term job security of flight attendants.

United is the architect of a new global alliance revenue sharing scheme. They have contracted with Aer Lingus to operate a route between Dulles International Airport in the Washington, DC area and Madrid, Spain using Aer Lingus aircraft but employing flight attendants from a third party operator. This has displaced United flight attendants from operating this route and United is threatening to expand this type of joint venture to other markets.

We call on this Congress to stop this type of so-called joint venture operations by passing H.R. 4788. Do not let United and Continental management use this merger as a vehicle to outsource more middle class jobs.

While we are on the subject of globalized networks and alliances, its time to have a discussion on recent international treaties and negotiations between our country and the European Union and China. These treaties may have far reaching implications in the United-Continental merger, as both carriers provide significant service to Atlantic and Pacific markets.

In the spring of this year, the U.S. and the European Union (EU) concluded talks on stage two of the U.S.-EU Open Skies Agreement (Open Skies). As this committee is aware, the U.S. and EU reached a comprehensive Open Skies Agreement in 2007 and the parties agreed to further talks, called stage two. The premise of Open Skies was to liberalize flying between any city in the U.S. and any city in the EU, including the United Kingdom. Notably, stage two of the Open Skies negotiations resulted in landmark labor protection language in that treaty that should provide workers some protections in a more liberalized environment.

However, AFA-CWA remains concerned and vigilant that the U.S.-EU Open Skies treaty must not provide the framework for the outsourcing of U.S. aviation jobs. We were encouraged that our U.S. negotiators and this Congress reaffirmed existing U.S. aviation law on foreign ownership and control. Those laws must remain in place and protected by Congress and the Administration.

Last week, U.S. and China negotiators began talks for a U.S.-China Open Skies-type treaty as well. The talks concluded on June 10, 2010 at the U.S. State Department in

Washington. While no agreement was reached, talks will continue and AFA-CWA's concerns about protecting existing U.S. aviation laws and preventing the outsourcing of good paying middle class aviation jobs remains front and center. I call on this committee to remain vigilant as well.

We view these treaties today in much the same way we viewed the deregulation of our industry in 1978. International flying provides thousands of good paying jobs for U.S. aviation workers and we must not allow management to use these foreign treaties as a mechanism to outsource jobs.

We also ask this Committee to consider the impact this merger may have on the contract negotiations underway between the Association of Flight Attendants - CWA and United management.

For almost six years the Flight Attendants at United have been working under a collective bargaining agreement negotiated while the company was in bankruptcy. The flight attendants at United sacrificed nearly $2.7 billion in salary and benefit concessions, and that doesn't take into consideration effects of the termination their defined benefit pension plan that was turned over to the PBGC during United's bankruptcy.

Under the terms of the current agreement, United Flight Attendants have received four meager pay increases. The last raise, a modest 1%, was awarded on December 31,

2008. Meanwhile, United's CEO, Glenn Tilton, received compensation that increased from $1.7 million to $3.9 million.

We are here today to ask this committee to help to ensure that the current contract negotiations, governed by Section 6 of the Railway Labor Act are completed in some manner before this merger is finalized.

Already there have been discussions that the current contract negotiations be set aside, since ultimately a new contract will need to be negotiated for the combined work group. Unfortunately we have had a front row seat and have witnessed what can happen when Section 6 negotiations are set aside in a merger. When US Airways and America West merged in September 2005, the America West flight attendants were two years into their Section 6 negotiations. Section 6 is a section of the Railway Labor Act (RLA) and it means that a current airline contract becomes amendable and negotiations begin to reach a new agreement. The current contract remains in place until a new contract is agreed to by the parties and members vote to ratify or approve that agreement. The RLA provides a mediation process to guide negotiations. The America West flight attendant contract talks were under the guidance of a federal mediator prior to the merger. When the merger was announced, the America West negotiators were requested by the National Mediation Board to set aside those negotiations and to focus on negotiating a combined contract with US Airways. Negotiations to combine contracts between unionized work groups are not governed by the RLA or the National Mediation Board.

After five years of negotiations, a combined contract between America West and US Airways has not been achieved. As I mentioned earlier, America West flight attendants have not received a wage increase in seven years and US Airways flight attendants work under a concessionary agreement that cut their wages and benefits.

We cannot allow the negotiation process at United to get delayed as a result of this merger. The employees at United made deep sacrifices to keep the company flying. It's time for the workers to share in the rewards. We must have resolution to the United contract negotiations that is satisfactory to the workers there.

Labor relations at United have been combative. Management insists that flight attendants must accept additional concessions to their current contract. This is entirely unacceptable to the United flight attendants. If the focus of this hearing is on the possible effects for consumers - you only have to observe how United is treating its workers to understand how the passengers at the "new" United will fare; when you treat workers as commodities can you really expect a corporation to treat their passengers (and customers) as anything other than a commodity?

When this merger of two airlines with very different styles of labor relations is approved, there will be representational elections between the various work groups at these two companies including the flight attendants. United flight attendants are represented by AFA-CWA and Continental flight attendants are represented by the International Association of Machinists and Aerospace Workers (IAM). These elections will be

conducted under the procedures defined by the National Mediation Board. However, without an open dialog with management, contract negotiations that are satisfactorily completed and support from labor groups, the integration of these two airlines will not go as smoothly as promised by management.

While much will be made over the coming months about the impact of this merger on consumers and communities, I urge you to remember the hundreds of thousands of airline employees across this country. Keep us in mind as you review this merger and the impact that it will have on our lives and our families. We are the ones who have the most to lose; and we have the least protection.

Mr. JOHNSON. Thank you, Ms. Friend.

Now we will have a round of questions for the witnesses from the panel, starting with myself.

Mr. Tilton and Mr. Smisek, my first question is for you two to explain. You have represented that this merger is not necessary for your companies but will increase efficiencies and competition and provide a platform to build a financially stable company. What is the profitability of your respective airlines, and has it increased or decreased over the last decade? And how much do we expect your revenue to increase as a result of the merger?

Mr. SMISEK. Let me start, please.

At Continental, we've lost over a billion dollars since 9/11. Last year, we lost $282 million. This merger is necessary for Continental.

Our board examined this merger, taking a look at our future as a stand-alone entity and our future combined with United Airlines. Our future as a stand-alone entity is one in which we will, as far as we can see, eke out a hand-to-mouth existence. That is not a future I want for my co-workers. That is not a future I want for the consumers. That is not the future want for communities. That is certainly not the future I want for my shareholders.

So this merger is indeed necessary for Continental; and it will provide us a platform, we believe between $1 and $1.2 billion of synergies, principally revenue synergies, with which to achieve and sustain profitability.

Mr. JOHNSON. So are you saying that you expect the combined airline to generate a profit of about $1.2 billion?

Mr. SMISEK. No. No. It will generate a set of synergies, both revenue and cost efficiencies, that we estimate between $1 and $1.2 billion. We would anticipate and hope that the carrier becomes profitable. There are one-time merger costs, of course, to do a transaction like this. But you take a look from where you would be on a steady state basis and add between $1 and $1.2 billion of additional value on an annual basis.

Mr. JOHNSON. How would that be generated?

Mr. SMISEK. Principally, it would be generated through between 800 and $900 million of revenues, principally from increasing the business mix, that is, the number of business passengers on the aircraft. It is not predicated on fare increases. It is not predicated on capacity reductions. It is predicated on increasing the business mix and also optimizing the fleet across our network of 10 hubs.

United has optimized its aircraft for its route structure. We have optimized ours for ours. When you put them together, you can reallocate those aircraft and generate additional revenues.

There will also be about $2 to $300 million a year in cost savings. Those will come from a unified marketing budget, savings in information technology, reductions of redundant overhead in corporate headquarters.

Mr. TILTON. Let me take sort of a different side of the question, Mr. Chairman. As a number of the witnesses have suggested, the industry has experienced shock after shock after shock. The industry hasn't been profitable. Our two companies haven't been profitable.

Mr. JOHNSON. What about United? Has it been profitable?

Mr. TILTON. No. No. So our last year of profitability, Mr. Chairman, was 2007. So it is a very comparable situation to Continental.

This year, on the basis of the work that Mr. Smisek identified a moment ago, mentioned a moment ago, both companies are benefiting from the improvement in the economy which is offset a good bit by the high price of oil. But, nevertheless, we are experiencing some return of revenue performance but not a return in revenue performance at the levels of 2007 for the financial crisis.

Mr. JOHNSON. How much do you expect revenues to increase as a result of the merger?

Mr. TILTON. So, Mr. Chairman, a good way of looking at that was, of the $900 million that Mr. Smisek mentioned, 55 percent of that would be for my company's account and 45 percent of it would be for his company's account for the shareholders of the two companies. And, of course, after the new company is created, the $900 million is for the new company.

Mr. JOHNSON. You put two companies together, one $16 billion, the other $12 billion; $28 billion. Now you are talking that you will generate $900 million, approximately, in profits, and that will come from increased first-class business and through other means. Is it just the fact that it is bigger means it will generate more money, or is it the economy will improve? What is it that is going to cause the profits to go up.

Mr. TILTON. First of all. That $900 million that Mr. Smisek spoke to is not profit. That is revenue. That is revenue improvement that has to find its way to the bottom line before it becomes profit.

Mr. JOHNSON. Revenue improvement.

Mr. TILTON. It is simply improvement in revenue driven by, to your question, the flexibilities that we will now have to offer corporate customers, the combined network that we can compete upon. So said simply, in New York where United previously would find it very difficult to compete for corporate customers such as the financial institutions, against a company such as Delta, the newly created Delta, with the creation of the new United—because we didn't have a significance presence—United in New York bringing Continental and its hub in Newark together with our hubs in Chicago, in Denver, in Washington, in San Francisco and L.A., will allow us to compete for that business which gives us a higher level of revenue.

It will also allow us to take our 700 aircraft and fly them on the appropriate routes across the new network.

Mr. JOHNSON. All right. Thank you.

Professor Bush, what are the key lessons that should be taken from the competitive impact of the 2008 Delta-Northwest merger and how can those lessons be applied to ensure that competition in the airline industry is not harmed by this proposed merger?

Mr. BUSH. I think there are a couple things that we need to keep in mind with respect to the Northwest-Delta merger; and in fact, this one as well. First of all, when we look at airline competition, it is not just about the nonstop city-pair anymore. In fact, these two gentlemen have spoken about competition for corporate contracts and network effects among the carriers in this industry that are as important as nonstop city-pair competition.

So when we look at these mergers, we need to look at nonstop city-pair competition, connect competition, network competition—and that includes competition for corporate contracts and things of that sort. And in that context, low-cost carriers cannot mitigate anticompetitive effects from those transactions from these mergers because they aren't due any large degree network carriers and their frequent fliers programs are not as robust, their networks are not as robust, and things of that sort.

And when we talk about things of revenue synergies of 800 to 900 million and we are talking about a more robust customer demand, in order to get that revenue enhancement, that has to come on the back of either a reduction in some capacity or in some increase in fare classes, and that means to the detriment of those who of us who sit in the back of the airplane.

So we have to look at these in terms of network effects and not just nonsubisdy pair competition.

Mr. JOHNSON. Thank you. My time has expired.

I will now turn to Mr. Smith for his questions.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. Smisek, you may have already answered this question implicitly, but I would like to ask it more directly. And that is, do you think that Continental is big enough today to compete with other airlines like British Air Iberia? You have implicitly answered that question because of your losses, but I would like you to elaborate a little bit on that.

Mr. SMISEK. Congressman, this merger will permit us to be big enough to succeed. We compete on a global scale, on a global stage. Many people think of the U.S. airlines as competing just, for example, with Southwest—which we do; Jet Blue, Frontier, airlines like that. But we at Continental are a global airline. We compete on a global scale with not only the British Airways Iberias, Air France, Lufthansas, the Singapores. Everyone. It is across the globe we compete.

Mr. SMITH. You can compete as a merger but not alone.

Mr. SMISEK. We can be a much more effective competitor on a global scale with an integrated global network where we can attract and retain business travelers, we can attract and retain leisure travelers. We can offer industry-leading frequent flier programs. We will be a much more effective competitor as a larger carrier than we would be on a stand-alone basis.

Mr. SMITH. Mr. Smisek, the big question everyone has is how do the consumers come out of it? What benefits do you see for consumers if the merger were to take place? And Mr. Tilton, if you will go first.

Mr. TILTON. Thank you. As we have said, we have seen consumers benefiting from the continued service to the 148 small communities that we are going to be able to continue to be able to serve. We hope to be able to serve even more small communities by virtue of the combination of our hubs. By having the flexibility to fly more and more consumers directly connected, seamlessly affected by one carrier across—now, in addition to the hubs that I described a moment ago, the addition of Newark and Cleveland and Houston to that U.S. hub structure, we really think the efficiencies

that we are going to gain with those eight hubs across the United States will be an enormous benefit to consumers.

Mr. SMITH. Mr. Smisek?

Mr. SMISEK. With a combined airline, we will have the financial capability to continue to invest in our product, things like audio/video on demand, flatbed seats, DIRECTV, in-seat power, modern fuel-efficient aircraft, better for the environment. We will be able to offer a broad network so there will be one-stop shopping for consumers.

We are in an alliance. We are a very proud member of the Star Alliance, and the Star Alliance has been very good for us. It has been necessary to restore us to profitability.

But again with an alliance, there are seams and there are different carriers taking the passengers and not necessarily consistency of service. With one carrier, it will have consistency of service and it will be excellent service.

The other thing we will offer is an industry-leading frequent flier program so there will be more ways to earn miles, more ways to redeem miles for the consumer, which is also a consumer benefit.

Mr. SMITH. Mr. Smisek, those of us from Texas worry, of course, about jobs. As a result of this merger, can you make a calculated guess as to how many downtown Houston jobs we might lose? I know there is going to be some shuffling around.

Mr. SMISEK. We haven't determined that. We are early in the integration planning process. There will be some job loss in downtown jobs in Houston, just as there will be some headquarters losses in Chicago. And we haven't determined that. I can tell you that I would anticipate the total number of job losses, which are headquarters jobs, in this merger will be relatively small compared to the 86,000 people that will be with the combined carrier.

Mr. SMITH. When you say "relatively small," do you mean less than a hundred people?

Mr. SMISEK. We haven't determined that, but I would suspect it will be bigger than a small bread box. Maybe not less than a hundred jobs. I can't tell you right now. Compared to the total jobs that we have at the carrier, it will be a relatively modest number of jobs.

Mr. SMITH. May I ask unanimous consent to put into the record a number of letters that I received? In fact, I received more than 250 letters of support for this transaction, and I would like the official suppliers, customers, businesses, and service organizations from around the country—but rather than submit all of these for the record, I would like to just submit those from five Governors from California, Colorado, Illinois, Hawaii and West Virginia, and 20 mayors of major cities, including 9 in Texas for the record.

Mr. JOHNSON. Without objection.

[The information referred to follows:]

May 27, 2010

Honorable Kay Bailey Hutchison
United States Senator
284 Russell Senate Office Building
Washington, DC 20510-4304

Honorable John Cornyn
United States Senator
517 Hart Senate Office Building
Washington, DC 20510

Dear Senators Hutchison and Cornyn:

I am writing to express my support for the proposed merger of United Airlines and Continental Airlines because it will benefit the businesses and residents of Amarillo, the employees of the combined airline, and our local economy.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. And for businesses and residents in Amarillo, this means we can look forward to the combined airline providing access to 370 destinations around the globe.

United and Continental have very little overlap on routes. By coming together, they will offer a seamless global network with eight hubs across the country. Corporate travelers will have an easier time making connections, reaching customers and doing business, while tourists will find it more convenient to visit our city. This is exactly what we need to keep our economy on the right path.

With the combined airline's increased financial strength will also provide enhanced job stability for the 18,400 Texas employees of the combined airline. The companies have said that they believe the impact of the merger on frontline employees will be minimal and that they will offer performance-based incentive compensation programs. This kind of commitment to the employees who have seen them through recent challenges shows good faith, and it's important to our economy.

United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.

I urge you to support a fair, expeditious and ultimately favorable regulatory review so that our businesses are able to realize the benefits of the merger without delay.

Sincerely,

Debra McCartt
Mayor

Cc: Honorable Eric H. Holder, Jr.
Attorney General
Department of Justice
950 Pennsylvania Ave, NW
Washington, DC 20530

Honorable Ray LaHood
Secretary of the Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

City of Corpus Christi

**OFFICE OF THE MAYOR**
Joe Adame

PO Box 9277
Corpus Christi
Texas 78469-9277
Phone 361-826-3100
Fax 361-826-3103
www.cctexas.com

May 28, 2010

Honorable Kay Bailey Hutchison
United States Senator
284 Russell Senate Office Building
Washington, DC 20510-4304

Honorable John Cornyn
United States Senator
517 Hart Senate Office Building
Washington, DC 20510

Dear Senators Hutchison and Cornyn:

I am writing to express my support for the proposed merger of United Airlines and Continental Airlines because it will benefit the businesses and residents of Corpus Christi, the employees of the combined airline, and our local economy.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. And for businesses and residents in Corpus Christi, this means we can look forward to the combined airline providing access to 370 destinations around the globe.

United and Continental have very little overlap on routes. By coming together, they will offer a seamless global network with eight hubs across the country. Corporate travelers will have an easier time making connections, reaching customers and doing business, while tourists will find it more convenient to visit our city. This is exactly what we need to keep our economy on the right path.

With the combined airline's increased financial strength will also provide enhanced job stability for the 18,400 Texas employees of the combined airline. The companies have said that they believe the impact of the merger on frontline employees will be minimal and that they will offer performance-based incentive compensation programs. This kind of commitment to the employees who have seen them through recent challenges shows good faith, and it's important to our economy.

United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.

I urge you to support a fair, expeditious and ultimately favorable regulatory review so that our businesses are able to realize the benefits of the merger without delay.

Sincerely,

Joe Adame
Mayor

Cc: Honorable Eric H. Holder, Jr.
Attorney General
Department of Justice
950 Pennsylvania Ave, NW
Washington, DC 20530

Honorable Ray LaHood
Secretary of the Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

CITY OF COLLEGE STATION
*Office of the Mayor*

May 24, 2010

Honorable Kay Bailey Hutchison
United States Senator
284 Russell Senate Office Building
Washington, DC 20510-4304

Honorable John Cornyn
United States Senator
517 Hart Senate Office Building
Washington, DC 20510

Dear Senators Hutchison and Cornyn:

I am writing to express my enthusiastic support for the proposed merger of United Airlines and Continental Airlines because it will benefit College Station, provide enhanced job stability for the airline's employees and offer expanded service for the people of our city/state.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation environment.

With the combined airline's increased financial strength will also provide enhanced job stability for the 18,400 Texas employees of the combined airline. The companies have said that they believe the impact of the merger on frontline employees will be minimal and that they will offer performance-based incentive compensation programs. This kind of commitment to the employees who have seen them through recent challenges shows good faith, and it's important to our local economy.

In the last ten years, airlines have cut back on service, especially to small communities. The combined carrier will remain a crucial economic link for the businesses and people of College Station. United and Continental will maintain service to all the communities they currently serve and offer a route network that will open a world of possibilities for our city/state. The combined airline will offer Texas residents better access to 370 destinations around the world.

United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.

I urge you to support a fair, expeditious and ultimately favorable regulatory review so that our community is able to realize the benefits of the merger without delay.

Sincerely,

Nancy Berry

Nancy Berry
Mayor

P.O. BOX 9960 • 1101 TEXAS AVENUE
COLLEGE STATION • TEXAS • 77842
979.764.3511

www.cstx.gov

Cc: Honorable Eric H. Holder, Jr.
Attorney General
Department of Justice
950 Pennsylvania Ave, NW
Washington, DC 20530

Honorable Ray LaHood
Secretary of the Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

# CITY OF LAREDO

LAREDO, TEXAS
1755

**RAUL G. SALINAS**
Mayor

June 7, 2010

The Honorable Kay Bailey Hutchison
United States Senator
284 Russell Senate Office Building
Washington, DC 20510-4304

The Honorable John Cornyn
United States Senator
517 Hart Senate Office Building
Washington, DC 20510

Dear Senators Hutchison and Cornyn:

I am writing to express my support for the proposed merger of United Airlines and Continental Airlines because it will benefit the businesses and residents of Laredo, the employees of the combined airline, and our local economy.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. And for businesses and residents in Laredo, this means we can look forward to the combined airline providing access to 370 destinations around the globe.

United and Continental have very little overlap on routes. By coming together, they will offer a seamless global network with eight hubs across the country. Corporate travelers will have an easier time making connections, reaching customers and doing business, while tourists will find it more convenient to visit our city. This is exactly what we need to keep our economy on the right path.

With the combined airline's increased financial strength will also provide enhanced job stability for the 18,400 Texas employees of the combined airline. The companies have said that they believe the impact of the merger on frontline employees will be minimal and that they will offer performance-based incentive compensation programs. This kind of commitment to the employees who have seen them through recent challenges shows good faith, and it's important to our economy.

1110 Houston P.O. Box 579 Laredo Texas 78042-0579 (956) 791-7400 Fax (956) 791-7314

United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.

I urge you to support a fair, expeditious and ultimately favorable regulatory review so that our businesses are able to realize the benefits of the merger without delay.

Sincerely,

Raul G. Salinas

Cc: The Honorable Eric H. Holder, Jr.
Attorney General
Department of Justice
950 Pennsylvania Ave. NW
Washington, DC 20530

The Honorable Ray LaHood
Secretary of the Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

**Tom Martin ★ Mayor**

June 9, 2010

Honorable Kay Bailey Hutchison
United States Senator
284 Russell Senate Office Building
Washington, DC 20510-4304

Honorable John Cornyn
United States Senator
517 Hart Senate Office Building
Washington, DC 20510

Dear Senators Hutchison and Cornyn:

I am writing to express my support for the proposed merger of United Airlines and Continental Airlines because it will benefit the businesses and residents of Lubbock, the employees of the combined airline, and our local economy.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. And for businesses and residents in Lubbock, this means we can look forward to the combined airline providing access to 370 destinations around the globe.

United and Continental have very little overlap on routes. By coming together, they will offer a seamless global network with eight hubs across the country. Corporate travelers will have an easier time making connections, reaching customers and doing business, while tourists will find it more convenient to visit our city. This is exactly what we need to keep our economy on the right path.

With the combined airline's increased financial strength will also provide enhanced job stability for the 18,400 Texas employees of the combined airline. The companies have said that they believe the impact of the merger on frontline employees will be minimal and that they will offer

City Hall ★ 1625 13th Street ★ P.O. Box 2000 ★ Lubbock, Texas 79457 ★ (806)775-2010 ★ Fax (806)775-3335
Email: tmartin@mylubbock.us

performance-based incentive compensation programs. This kind of commitment to the employees who have seen them through recent challenges shows good faith, and it's important to our economy.

United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.

I urge you to support a fair, expeditious and ultimately favorable regulatory review so that our businesses are able to realize the benefits of the merger without delay.

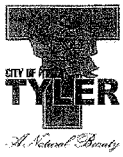
Sincerely,

Tom Martin
Mayor

Cc: Honorable Eric H. Holder, Jr.
Attorney General
Department of Justice
950 Pennsylvania Ave, NW
Washington, DC 20530

Honorable Ray LaHood
Secretary of the Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Barbara R. Bass
Mayor




The City of Tyler
Office of the Mayor
P.O. Box 2039
Tyler, Texas 75710-2039

Phone: (903) 531-1250
Fax: (903) 531-1166
www.cityoftyler.org

*June 8, 2010*

*Honorable Kay Bailey Hutchison*
*United States Senator*
*284 Russell Senate Office Building*
*Washington, DC 20510-4304*

*Dear Senator Hutchison:*

*I am writing to express my enthusiastic support for the proposed merger of United Airlines and Continental Airlines because it will benefit Tyler, provide enhanced job stability for the airline's employees and offer expanded service for the people of our city.*

*The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation environment.*

*With the combined airline's increased financial strength will also provide enhanced job stability for the 18,400 Texas employees of the combined airline. The companies have said that they believe the impact of the merger on frontline employees will be minimal and that they will offer performance-based incentive compensation programs. This kind of commitment to the employees who have seen them through recent challenges shows good faith, and it's important to our local economy.*

*In the last ten years, airlines have cut back on service, especially to small communities. The combined carrier will remain a crucial economic link for the businesses and people of Tyler. United and Continental will maintain service to all the communities they currently serve and offer a route network that will open a world of possibilities for our city. The combined airline will offer Texas residents better access to 370 destinations around the world.*

*United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.*

Barbara R. Bass
Mayor

The City of Tyler
Office of the Mayor
P.O. Box 2039
Tyler, Texas 75710-2039

Phone: (903) 531-1250
Fax: (903) 531-1166
www.cityoftyler.org

*I urge you to support a fair, expeditious and ultimately favorable regulatory review so that our community is able to realize the benefits of the merger without delay.*

*Sincerely,*

*Barbara R. Bass*
*Mayor*
*City of Tyler*

*Cc: Honorable Eric H. Holder, Jr.*
*Attorney General*
*Department of Justice*
*950 Pennsylvania Ave, NW*
*Washington, DC 20530*

*Honorable Ray LaHood*
*Secretary of the Department of Transportation*
*1200 New Jersey Avenue, SE*
*Washington, DC 20590*

**CITY OF VICTORIA**
Established 1824, Founded By Congress, Republic of Texas, 1839

OFFICE OF MAYOR WILL ARMSTRONG
City Hall Square, Main at Juan Linn

June 7, 2010

Honorable Kay Bailey Hutchison
United States Senator
284 Russell Senate Office Building
Washington, DC 20510-4304

Honorable John Cornyn
United States Senator
517 Hart Senate Office Building
Washington, DC 20510

Dear Senators Hutchison and Cornyn:

I am writing to express my enthusiastic support for the proposed merger of United Airlines and Continental Airlines because it will benefit Victoria, provide enhanced job stability for the airline's employees and offer expanded service for the City of Victoria.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation environment.

The increased financial strength from this merger will also provide enhanced job stability for the 18,400 Texas employees of the combined airline. The companies have said that they believe the impact of the merger on frontline employees will be minimal and that they will offer performance-based incentive compensation programs. This kind of commitment to the employees who have seen them through recent challenges shows good faith, and it's important to our local economy.

In the last ten years, airlines have cut back on service, especially to small communities. The combined carrier will remain a crucial economic link for the businesses and people of Victoria. United and Continental will maintain service to all the communities they currently serve and offer a route network that will open a world of possibilities for our city. The combined airline will offer Texas residents better access to 370 destinations around the world.

United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.

P. O. BOX 1758 • VICTORIA, TEXAS 77902-1758 • (361) 485-3030 • FAX (361) 485-3534

I urge you to support a fair, expeditious and ultimately favorable regulatory review so that our community is able to realize the benefits of the merger without delay.

Sincerely,

Will Armstrong
Mayor
City of Victoria

xc: Honorable Eric H. Holder, Jr.
Attorney General
Department of Justice
950 Pennsylvania Ave, NW
Washington, DC 20530

Honorable Ray LaHood
Secretary of the Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

CITY OF WACO

Office of the Mayor
Jim Bush
P.O. Box 2570
Waco, Texas 76702
254 / 750-5750
Fax: 254 / 750-5748
www.waco-texas.com

June 7, 2010

Honorable Kay Bailey Hutchison
United States Senator
284 Russell Senate Office Building
Washington, DC 20510-4304

Dear Senator Hutchison:

I am writing to express my support for the proposed merger of United Airlines and Continental Airlines, because it will benefit the businesses and residents of Waco, the employees of the combined airline, and our local economy.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. For businesses and residents in Waco, this means we can look forward to the combined airline providing access to 370 destinations around the globe.

United and Continental have very little overlap on routes. By coming together, they will offer a seamless global network with eight hubs across the country. Corporate travelers will have an easier time making connections, reaching customers and doing business, while tourists will find it more convenient to visit our city. This is exactly what we need to keep our economy on the right path.

The combined airline's increased financial strength will also provide enhanced job stability for the 18,400 Texas employees of the combined airline. The companies have said that they believe the impact of the merger on frontline employees will be minimal and that they will offer performance-based incentive compensation programs. This kind of commitment to the employees who have seen them through recent challenges shows good faith, and it's important to our economy.

United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa, and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.

I urge you to support a fair, expeditious, and ultimately favorable regulatory review so that our businesses are able to realize the benefits of the merger without delay.

Sincerely,

Jim Bush
Mayor

tm

cc: Honorable Eric H. Holder, Jr., Attorney General, Department of Justice
Honorable Ray LaHood, Secretary of the Department of Transportation

Mayor

W. Wesley Perry

P.O. BOX 1152
Midland, Texas 79702

May 25, 2010

Honorable John Cornyn
United States Senator
517 Hart Senate Office Building
Washington, DC 20510

Dear Senator Cornyn:

I am writing to express my support for the proposed merger of United Airlines and Continental Airlines because it will benefit the businesses and residents of Midland, the employees of the combined airline, and our local economy.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. And for businesses and residents in Midland, this means we can look forward to the combined airline providing access to 370 destinations around the globe.

United and Continental have very little overlap on routes. By coming together, they will offer a seamless global network with eight hubs across the country. Corporate travelers will have an easier time making connections, reaching customers and doing business, while tourists will find it more convenient to visit our city. This is exactly what we need to keep our economy on the right path.

With the combined airline's increased financial strength will also provide enhanced job stability for the 18,400 Texas employees of the combined airline. The companies have said that they believe the impact of the merger on frontline employees will be minimal and that they will offer performance-based incentive compensation programs. This kind of commitment to the employees who have seen them through recent challenges shows good faith, and it's important to our economy.

United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.

I urge you to support a fair, expeditious and ultimately favorable regulatory review so that our businesses are able to realize the benefits of the merger without delay

Sincerely,

W. Wesley Perry

Cc: Honorable Kay Bailey Hutchison
United States Senator
284 Russell Senate Office Building
Washington, DC 20510-4304

Honorable Eric H. Holder, Jr.
Attorney General
Department of Justice
950 Pennsylvania Ave. NW
Washington, DC 20530

Honorable Ray LaHood
Secretary of the Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

# City of Santa Barbara

Office of Mayor

HSchneider@SantaBarbaraCA.gov
www.SantaBarbaraCA.gov

May 26, 2010

Helene Schneider
*Mayor*

City Hall
735 Anacapa Street
Santa Barbara, CA
93101-1990

Mailing Address:
P.O. Box 1990
Santa Barbara, CA
93102-1990

Tel: 805-564-5323
Fax: 805-564-5475

RECEIVED
JUN 0 2 2010
CITY OF SANTA BARBARA
AIRPORT DEPARTMENT

The Honorable Nancy Pelosi
Office of the Speaker
US House of Representatives
H-232 US Capitol Building
Washington, DC 20515

Re: Support United Airlines Merger With Continental Airlines

Dear Madame Speaker:

On behalf of the City of Santa Barbara, I am writing to express enthusiastic support for the proposed merger of United Airlines and Continental Airlines which will benefit the customers utilizing Santa Barbara Airport (SBA).

The merger of United and Continental will create a financially stronger, sustainable airline that will better serve our region, and succeed in an increasingly competitive domestic and international aviation environment.

So far in 2010, United Airlines has carried 42% of the passengers using SBA. The combined airline would be better positioned to maintain, and possibly improve, both flight and destination options for local travelers utilizing SBA. Robust airline service assists in funding Airport capital projects which improve the safety and convenience for passengers and visitors using the Airport's facilities. Projects that benefit directly from passengers utilizing SBA include the Airfield Safety Project and the new Airline Terminal.

In addition to the direct benefit to passengers, the reinvigorated airline would provide positive benefits from the substantial regional economic impact of its passengers and economic support for the region in the form of jobs.

Please let Attorney General Holder and Transportation Secretary LaHood know of my support for the merger and I hope you will support it too.

Sincerely,

Helene Schneider
Mayor

cc: Melinda Yee Franklin, Government and Public Affairs
Jim Armstrong, City Administrator, City of Santa Barbara
Karen Ramsdell, Airport Director, City of Santa Barbara
Nina Johnson, Assistant to the City Administrator, City of Santa Barbara

OFFICE OF THE MAYOR

CITY OF CHICAGO

RICHARD M. DALEY
MAYOR

June 1, 2010

The Honorable Valerie B. Jarrett
Senior Advisor and Assistant to the President
Eisenhower Executive Office Building
1650 Pennsylvania Avenue, N.W., Room 130
Washington, D.C. 20501

Dear Ms. Jarrett:

As Mayor and on behalf of the citizens of Chicago, I write to express my support for the proposed merger of United Airlines and Continental Airlines. This merger will benefit the businesses and residents of Chicago and strengthen our local and state economies.

The merger will create a financially stronger, sustainable airline whose corporate and operational headquarters will remain in Chicago. This will further strengthen O'Hare International Airport and Chicago's reputation as an important global center for business, trade and tourism. Combined with our ongoing efforts to expand our city's air travel capacity under the O'Hare Modernization Program, we are well-positioned to maintain our leading position in international aviation and accommodate future growth.

Chicago has always been at a center of transportation for the nation. Businesses and residents in Chicago can look forward to the combined airline continuing to provide broad access and convenient service to destinations around the globe.

Thank you in advance for your consideration of this matter.

Sincerely,

Richard M Daley

Mayor

Office of the Mayor
City of Springfield, Illinois

Timothy J. Davlin
Mayor

May 21, 2010

The Honorable Richard J. Durbin
309 Hart Senate Bldg.
Washington, DC 20510

RE: Proposed United Airlines and Continental Airlines Merger

Dear Senator Durbin:

I am writing to express my strong support of the proposed merger of United Airlines and Continental Airlines. Such a merger will benefit the businesses and residents of the City of Springfield, Illinois, the employees of the combined airline, and our local/state economy.

United and Continental have very little overlap on routes. By coming together, they will offer a seamless global network with eight hubs across the country. Corporate travelers will have an easier time making connections, reaching customers and doing business, while tourists will find it more convenient to visit our city/state. This is exactly what we need to keep our economy on the right path.

Moreover, the merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. And for businesses and residents in Springfield, this means we can look forward to the combined airline providing access to 370 destinations around the globe.

The combined airline's increased financial strength will also provide enhanced job stability for the 13,600 Illinois employees of the combined airline. The companies have said that they believe the impact of the merger on frontline employees will be minimal and that they will offer performance-based incentive compensation programs. This kind of commitment to the employees who have seen them through recent challenges shows good faith, and it's important to our economy.

300 Municipal Center East • Springfield, Illinois 62701 • (217) 789-2200 • Fax (217) 789-2109

United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.

I ask that you let Attorney General Holder and Transportation Secretary LaHood know of my support for the merger and hope you will support it, too.

Sincerely,

Timothy J. Davlin

Timothy J. Davlin
Mayor

300 Municipal Center East • Springfield, Illinois 62701 • (217) 789-2200 • Fax (217) 789-2109

CITY OF
PEORIA

OFFICE OF THE MAYOR
JIM ARDIS

May 28, 2010

The Honorable Richard J. Durbin
Assistant Majority Leader
309 Hart Senate Bldg.
Washington, DC 20510

Dear Senator Durbin:

I am writing to express my support for the proposed merger of United Airlines and Continental Airlines, because it will benefit the businesses and residents of Peoria, Illinois, the employees of the combined airline, and our local/state economy. The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. As for businesses and residents in Peoria, this means we can look forward to the combined airline providing access to 370 destinations around the globe.

United and Continental have very little overlap on routes. By coming together, they will offer a seamless global network with eight hubs across the country. Corporate travelers will have an easier time making connections, reaching customers, and doing business, while tourists will find it more convenient to visit our city and state. This is exactly what we need to keep our economy on the right path.

The combined airline's increased financial strength will also provide enhanced job stability for the 13,600 Illinois employees of the combined airline. The companies have said that they believe the impact of the merger on frontline employees will be minimal, and they will offer performance-based incentive compensation programs. This kind of commitment to the employees who have seen them through recent challenges shows good faith, and it is important to our economy.

United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa, and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.

I ask that you please let Attorney General Holder and Transportation Secretary LaHood know of my support for the merger and hope you will support it, too. Thank you for your consideration.

Sincerely,

Jim Ardis
Mayor

JA/sm/kc

Peoria City Hall
419 Fulton Street, Room 207, Peoria, IL 61602
Phone 309.494.8519 Fax 309.494.8559

***Donald P. Welvaert***
Mayor

619 – 16th Street
Moline, Illinois 61265

Phone:

(309) 524-2001

Email:

dwelvaert@moline.il.us

May 18, 2010

The Honorable Richard Durbin
525 South Eighth Street
Springfield Illinois 62703

Dear Senator Durbin:

I am writing to express my support for the proposed merger of United Airlines and Continental Airlines because it will benefit the businesses and residents of Moline, Illinois, the employees of the combined airline and our local/state economy.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. And for businesses and residents in Moline, Illinois, this means we can look forward to the combined airline providing access to 370 destinations around the globe.

United and Continental have very little overlap on routes. By coming together, they will offer a seamless global network with eight hubs across the country. Corporate travelers will have an easier time making connections, reaching customers and doing business, while tourists will find it more convenient to visit our city/state. This is exactly what we need to keep our economy on the right path.

The combined airline's increased financial strength will also provide enhanced job stability for the 13,600 Illinois employees of the combined airline. The companies have said that they believe the impact of the merger on frontline employees will be minimal and that they will offer performance-based incentive compensation programs. This kind of commitment to the employees who have seen them through recent challenges shows good faith, and it's important to our economy.

United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.

I ask that you let Attorney General Holder and Transportation Secretary LaHood know of my support for the merger and hope you will support it, too.

Sincerely,

Donald P. Welvaert

Donald P. Welvaert, Mayor
City of Moline

John W. Hickenlooper
MAYOR

City and County of Denver
OFFICE OF THE MAYOR
CITY AND COUNTY BUILDING
DENVER, COLORADO • 80202-5390
TELEPHONE: 720-865-9000 • FAX: 720-865-9040
TTY/TTD: 720-865-9010

May 24, 2010

The Honorable Mark Udall
United States Senate
317 Hart Senate Office Building
Washington, DC 20510

Dear Senator Udall:

I am writing to express my support for the proposed merger of United Airlines and Continental Airlines because it will benefit the businesses and residents of our state, the employees of the combined airline and our Colorado economy.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. And for businesses and residents in Denver this means we can look forward to the combined airline providing access to 370 destinations around the globe.

United and Continental have very little overlap on routes. By coming together, they will offer a seamless global network with eight hubs across the country. Corporate travelers will have an easier time making connections, reaching customers and doing business, while tourists will find it more convenient to visit our city/state. This is exactly what we need to keep our economy on the right path.

The combined airline's increased financial strength will also provide enhanced job stability for the nearly 5000 Colorado employees of the combined airline. The companies have said that they believe the impact of the merger on frontline employees will be minimal and that they will offer performance-based incentive compensation programs. This kind of commitment to the employees who have seen them through recent challenges shows good faith, and it's important to our economy.

United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.

I ask that you let Attorney General Holder and Transportation Secretary LaHood know of my support for the merger and hope you will support it, too.

Sincerely,

John W. Hickenlooper
Mayor

June 16, 2010

The Honorable Nick J. Rahall II
United States House of Representatives
301 Prince Street
Beckley, West Virginia 25801

Dear Congressman Rahall:

I am writing to express my support for the proposed merger of United Airlines and Continental Airlines. This merger will provide travelers using the Raleigh County Memorial Airport more choices when they consider travel arrangements.

Currently, the Raleigh County Memorial Airport is served by Colgan Air which offers code sharing through United Airlines. The addition of Continental will provide access to approximately 370 destinations around the world.

United and Continental have very little overlap on routes. By coming together, they will offer a seamless global network with eight hubs across the country. Corporate travelers will have an easier time making connections, reaching customers, and doing business, while tourists will find it more convenient to visit our city and state. This is exactly what we need to keep our economy on the right path.

The combined airline's increased financial strength will also provide enhanced job stability for the West Virginia employees of the combined airline. The companies have said that they believe the impact of the merger on frontline employees will be minimal, and that they will offer performance-based incentive compensation programs. This kind of commitment to the employees who have seen them through recent challenges shows good faith and is important to our economy.

United and Continental are well suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa, and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.

I ask that you let Attorney General Holder and Transportation Secretary LaHood know of my support for the merger and hope you will support it also.

Sincerely,

Emmett S. Pugh III

MAYOR
CITY OF BECKLEY

ESP:llc

OFFICE OF
BUDDY DYER
MAYOR

June 11, 2010

Honorable Bill Nelson
United States Senator
716 Hart Senate Office Building
Washington, DC 20510

Honorable George LeMieux
United States Senator
356 Russell Senate Office Building
Washington, DC 20510

Dear Senators Nelson and LeMieux:

I am writing to express my support for the proposed merger of United Airlines and Continental Airlines because it will benefit the businesses and residents of Orlando, the employees of the combined airline, and our local economy.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. And for businesses and residents in Orlando, this means we can look forward to the combined airline providing access to 370 destinations around the globe.

United and Continental have very little overlap on routes. By coming together, they will offer a seamless global network with eight hubs across the country. Corporate travelers will have an easier time making connections, reaching customers and doing business, while tourists will find it more convenient to visit our city. This is exactly what we need to keep our economy on the right path.

With the combined airline's increased financial strength will also provide enhanced job stability for the 1,600 Florida employees of the combined airline. The companies have said that they believe the impact of the merger on frontline employees will be minimal and that they will offer performance-based incentive compensation programs. This kind of commitment to the employees who have seen them through recent challenges shows good faith, and it's important to our economy.

United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.

I urge you to support a fair, expeditious and ultimately favorable regulatory review so that our businesses are able to realize the benefits of the merger without delay.

Sincerely,

Buddy Dyer
Mayor

CITY HALL • 400 SOUTH ORANGE AVENUE • P.O. BOX 4990 • ORLANDO, FLORIDA 32802-4990
PHONE (407) 246-2221 • FAX (407) 246-2842 • http://www.cityoforlando.net

**Craig Cates**
**Mayor**

THE CITY OF KEY WEST
P.O. BOX 1409
KEY WEST, FL 33041-1409

525 Angela Street
(305) 809-3840
FAX 809-3886
ccates@keywestcity.com

June 7, 2010

Honorable Bill Nelson
United States Senator
716 Hart Senate Office Building
Washington, DC 20510

Honorable George LeMieux
United States Senator
356 Russell Senate Office Building
Washington, DC 20510

Dear Senators Nelson and LeMieux:

I am writing to express my support for the proposed merger of United Airlines and Continental Airlines because it will benefit the businesses and residents of Key West, the employees of the combined airline, and our local economy.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. And for businesses and residents in Key West, this means we can look forward to the combined airline providing access to 370 destinations around the globe.

United and Continental have very little overlap on routes. By coming together, they will offer a seamless global network with eight hubs across the country. Corporate travelers will have an easier time making connections, reaching customers and doing business, while tourists will find it more convenient to visit our city. This is exactly what we need to keep our economy on the right path.

With the combined airline's increased financial strength will also provide enhanced job stability for the 1,600 Florida employees of the combined airline. The companies have said that they believe the impact of the merger on frontline employees will be minimal and that they will offer performance-based incentive compensation programs. This kind of commitment to the employees who have seen them through recent challenges shows good faith, and it's important to our economy.

United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.

I urge you to support a fair, expeditious and ultimately favorable regulatory review so that our businesses are able to realize the benefits of the merger without delay.

Sincerely,

Craig Cates
Mayor

Cc: Honorable Eric H. Holder, Jr.
Attorney General
Department of Justice
950 Pennsylvania Ave, NW
Washington, DC 20530

Honorable Ray LaHood
Secretary of the Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

**City of Fort Walton Beach**

***America's Most Beautiful Beaches***

107 Miracle Strip Parkway, SW * Fort Walton Beach, Fl 32548

(850) 833-9510 * Fax (850) 833-9640 *

www.fwb.org

TDD (850) 833-9925

***Mike Anderson***
***Mayor***
*fwbmayor@fwb.org*

June 15, 2010

Honorable Bill Nelson
United States Senator
716 Hart Senate Office Building
Washington, DC 20510

Honorable George LeMieux
United States Senator
356 Russell Senate Office Building
Washington, DC 20510

Dear Senators Nelson and LeMieux:

I am writing to express my support for the proposed merger of United Airlines and Continental Airlines because it will benefit the businesses and residents of Fort Walton Beach, the employees of the combined airline, and our local economy.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. And for businesses and residents in Fort Walton Beach, this means we can look forward to the combined airline providing access to 370 destinations around the globe. United and Continental have very little overlap on routes. By coming together, they will offer a seamless global network with eight hubs across the country. Corporate travelers will have an easier time making connections, reaching customers and doing business, while tourists will find it more convenient to visit our city. This is exactly what we need to keep our economy on the right path.

With the combined airline's increased financial strength will also provide enhanced job stability for the 1,600 Florida employees of the combined airline. The companies have said that they believe the impact of the merger on frontline employees will be minimal and that they will offer performance-based incentive compensation programs. This kind of commitment to the employees who have seen them through recent challenges shows good faith, and it's important to our economy. United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.

I urge you to support a fair, expeditious and ultimately favorable regulatory review so that our businesses are able to realize the benefits of the merger without delay.

Sincerely,

Mike Anderson
Mayor

Cc: Honorable Eric H. Holder, Jr., Attorney General, Department of Justice, 950 Pennsylvania Ave, NW, W.DC 20530
Honorable Ray LaHood, Secretary of the Dept of Transportation, 1200 New Jersey Avenue, SE, W. DC 20590

**MICHAEL C. WIGGINS**
*Mayor*

*America's First Settlement*
*Established 1559*

June 7, 2010

The Honorable Bill Nelson
United States Senator
716 Hart Senate Office Building
Washington, DC 20510

The Honorable George LeMieux
United States Senator
356 Russell Senate Office Building
Washington, DC 20510

Dear Senators Nelson and LeMieux:

I am writing to express my support for the proposed merger of United Airlines and Continental Airlines because it will benefit the businesses and residents of Pensacola, the employees of the combined airline, and our local economy.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. For businesses and residents in Pensacola, this means we can look forward to the combined airline providing access to 370 destinations around the globe.

United and Continental have very little overlap on routes. By coming together, they will offer a seamless global network with eight hubs across the country. Corporate travelers will have an easier time making connections, reaching customers and doing business, while tourists will find it more convenient to visit our city. This is exactly what we need to keep our economy on the right path.

The combined airline's increased financial strength will also provide enhanced job stability for the 1,600 Florida employees of the combined airline. The companies have said that they believe the impact of the merger on frontline employees will be minimal and that they will offer performance-based incentive compensation programs. This kind of commitment to the employees who have seen them through recent challenges shows good faith, and it's important to our economy.

United and Continental are well-suited to combine. They have the most complementary route networks of any U. S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.

*222 West Main Street P.O. Box 12910 Pensacola, Florida 32521 Telephone (850) 435-1609*
*www.ci.pensacola.fl.us*

The Honorable Bill Nelson
The Honorable George LeMieux
June 7, 2010
Page two

I urge you to support a fair, expeditious and ultimately favorable regulatory review so that our businesses are able to realize the benefits of the merger without delay.

Sincerely,

Michael C. Wiggins
Mayor

cc: Honorable Eric H. Holder, Jr.
Honorable Ray LaHood

# City of Minot

Office of the Mayor

June 11, 2010

Honorable Kent Conrad
United States Senate
U.S. Federal Building, Room 228
220 East Rosser Avenue
Bismarck, ND 58501

Dear Senator Conrad,

As the Mayor of the City of Minot and a frequent air traveler, I strongly support the merger between United Airlines and Continental Airlines and ask that you support this merger on behalf of the Minot community.

Commercial air service and connecting networks play an important role in providing support to business, government, education, and leisure travel to/from the area. Future growth and serviceability depends, in part, on the ability to meet the needs of our clients, customers and the community. This airline merger would provide more options to everyone.

Additionally, the combined carrier will create a world-class global airline with expanded reach and superior service while building a financially stronger and sustainable airline to succeed in an increasingly competitive domestic and international environment.

We appreciate the support you have provided to the Minot community and ask that you support this request as well.

Sincerely,

Curt Zimbelman
Mayor
City of Minot

Office of the Mayor

James E. Tipple

June 4, 2010

The Honorable Herb Kohl
330 Hart Senate Office Building
Washington, DC 20510

Dear Senator Kohl,

I am writing to express my support for the proposed merger of United Airlines and Continental Airlines because it will benefit the businesses and residents of Wausau, Wisconsin, the employees of the combined airline and our local/state economy.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. And for businesses and residents in Wausau, Wisconsin, this means we can look forward to the combined airline providing access to 370 destinations around the globe.

United and Continental have very little overlap on routes. By coming together, they will offer a seamless global network witb eight hubs across the country. Corporate travelers will have an easier time making connections, reaching customers and doing business, while tourists will find it more convenient to visit our city/state. This is exactly what we need to keep our economy on the right path.

The combined airline's increased financial strength will also provide enhanced job stability for the Wisconsin employees of the combined airline. The companies have said that they believe the impact of the merger on frontline employees will be minimal and that they will offer performance-based incentive compensation programs. This kind of commitment to the employees who have seen them through recent challenges shows good faith, and it's important to our economy.

United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.

I ask that you let Attorney General Holder and Transportation Secretary LaHood know of my support for the merger and hope you will support it, too.

Sincerely,

James E. Tipple

James E. Tipple
Mayor, City of Wausau

CITY OF WAUSAU·CITY HALL·407 GRANT STREET·WAUSAU, WI 54403-4783·(715)261-6800·TDD (715)261-6770

GOVERNOR ARNOLD SCHWARZENEGGER

May 25, 2010

Dear Members of the California Congressional Delegation,

I am writing to express my support for the merger of United Airlines and Continental Airlines for its potential benefit to California businesses and residents, the employees of the combined airline and our economy. The merger stands to create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. This would also mean that Californians can look forward to the combined airline providing access to 370 destinations around the globe.

United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers with very little overlap and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. By coming together, they will offer a global network with eight hubs across the country. The two companies have also worked together as members of the Star Alliance, and this merger will take their partnership to the next level. Corporate travelers could have an easier time making connections, reaching customers and doing business, while tourists will find it more convenient to visit. This is exactly what we need to keep our economy on the right path.

The combined airline's increased financial strength will also enhance job stability for its Californian employees. The companies have said that the impact of the merger on frontline employees will be minimal and that they will offer performance-based incentive compensation programs.

I encourage your support for the proposed merger.

Sincerely,

Arnold Schwarzenegger

/la

cc: The Honorable Eric Holder
The Honorable Ray LaHood
Ms. Valerie Jarrett

STATE CAPITOL • SACRAMENTO, CALIFORNIA 95814 • (916) 445-2841

STATE OF ILLINOIS
**OFFICE OF THE GOVERNOR**
SPRINGFIELD, ILLINOIS 62706

**Pat Quinn**
GOVERNOR

May 21, 2010

The Honorable Richard J. Durbin
Assistant Majority Leader
309 Hart Senate Building
Washington, DC 20510

Dear Senator Durbin:

I am writing to express my support for the proposed merger of United Airlines and Continental Airlines because it will benefit Illinois businesses, residents and visitors, the employees of the combined airline and our state's economy.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. And for Illinois businesses, residents and visitors, this means we can look forward to the combined airline providing access to and from 370 destinations around the globe.

United and Continental have very little overlap on routes. By coming together, they will offer a seamless global network with eight hubs across the country. Corporate travelers will have an easier time making connections, reaching customers and doing business across our state and around the world, while tourists will find it more convenient to visit cities throughout Illinois. In 2008, domestic and international visitors spent almost $31 billion in Illinois, which supports more than 300,000 Illinois jobs. This is an enormous economic engine that will greatly benefit from this productive partnership.

The combined airline's increased financial strength will also provide enhanced job stability for the 13,600 Illinois employees of the combined airline. The companies have said that they believe the impact of the merger on frontline employees will be minimal, and that they will offer performance-based incentive compensation programs. This kind of commitment to the employees who have seen them through recent challenges shows good faith, and it's important to our economy.

United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level, while helping U.S. companies compete in this global economy.

I would very much appreciate it if you let Attorney General Holder and Transportation Secretary LaHood know of my support for the merger, and I hope you support it, too.

Sincerely,

Pat Quinn

Pat Quinn
Governor

cc: Attorney General Holder
Transportation Secretary LaHood
Senior Advisor Jarrett
Illinois Congressional Delegation

# STATE OF COLORADO

**OFFICE OF THE GOVERNOR**
136 State Capitol Building
Denver, Colorado 80203
(303) 866 - 2471
(303) 866 - 2003 fax

Bill Ritter, Jr.
Governor

May 24, 2010

The Honorable Ray LaHood
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, SE, 9th Floor
Washington, DC 20590

Dear Secretary LaHood:

I am writing to let you know of my support for the proposed merger of United Airlines and Continental Airlines. I believe this merger will benefit Colorado citizens and businesses, the employees of the combined airline and the overall economy of our state.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. And for businesses and residents in Colorado this means we can look forward to the combined airline providing access to 370 destinations around the globe.

United and Continental have very little overlap on routes. By coming together, they will offer a seamless global network with eight hubs across the country. Corporate travelers will have an easier time making connections, reaching customers and doing business, while tourists will find it more convenient to visit Colorado. This is exactly what we need to keep our economy on the right path.

The combined airline's increased financial strength will also provide enhanced job stability for the nearly 5000 Colorado employees of the combined airline. The companies have indicated to me that they believe the impact of the merger on frontline employees will be minimal and that they will offer performance-based incentive compensation programs. This kind of commitment to the employees who have seen them through recent challenges shows good faith, and is also important to our economy.

United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.

Sincerely,

Bill Ritter, Jr.
Governor

EXECUTIVE CHAMBERS

HONOLULU

LINDA LINGLE
GOVERNOR

May 21, 2010

The Honorable Ray LaHood
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue SE, 9th Floor
Washington, DC 20590

Dear Secretary LaHood:

On behalf of the people of Hawai'i, I write in support of the proposed merger of United Airlines and Continental Airlines.

Airlines and a stable airline industry are very important to our island economy and the quality of life for Hawai'i's residents. Both United and Continental provide domestic and international service to our islands. The merger would continue to provide our State with access to a global network through eight hubs across the U.S., allowing the opportunity for improved connections and increased options for both business and leisure travelers. The financial strength resulting from the unification of both companies should also provide enhanced job stability for the employees of the combined airline in its Hawai'i operation.

I will be informing House Speaker Pelosi, Senate Majority Leader Reid, Attorney General Holder and the White House of my support for the merger, a change that I believe will he in the best interest of the people of Hawai'i.

Sincerely,

LINDA LINGLE

*State of West Virginia*
*Joe Manchin III*
*Governor*

Office of the Governor
State Capitol
1900 Kanawha Boulevard, East
Charleston, WV 25305

Telephone: (304) 558-2000
Toll Free: 1-888-438-2731
FAX: (304) 342-7025
www.wvgov.org

June 4, 2010

The Honorable Robert C. Byrd
United States Senate
311 Hart Senate Office Building
Washington, DC 20510

The Honorable John D. Rockefeller IV
United States Senate
531 Hart Senate Office Building
Washington, DC 20510

Dear Senator Byrd and Senator Rockefeller:

I am writing to express my support for the proposed merger of United Airlines and Continental Airlines because it will benefit the businesses and residents of West Virginia, the employees of the combined airline and our state economy.

We can look forward to the combined airline serving six airports across the Mountain State, providing access to 222 domestic and 148 international destinations around the globe. United and Continental have very little overlap on routes. By coming together, they will offer a seamless global network with eight hubs across the country, and will have the industry's leading frequent flyer program. Corporate travelers will have an easier time making connections, reaching customers and doing business in our state, while tourists will find it more convenient to visit our state. This is exactly what we need to keep our economy on the right path.

The combined airline's increased financial strength and sustainability will also provide enhanced job stability for the West Virginia employees of the combined airline. The companies have said that they believe the impact of the merger on frontline employees will be minimal and that they will offer performance-based incentive compensation programs. This kind of commitment to the employees who have seen them through recent challenges shows good faith, and it's important to our economy.

**OFFICE OF THE GOVERNOR**

United-Continental
June 4, 2010
Page 2

United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.

With warmest regards,

Joe Manchin III
Governor

cc: Attorney General Eric Holder
Transportation Secretary Ray LaHood
Senior Advisor Valerie Jarrett

---

Mr. JOHNSON. We will next proceed to Congressman Scott.

Mr. SCOTT. Thank you. Mr. Tilton, there are a number of carriers that are considered low-cost carriers. How does your cost structure and that of Continental differ from the low-cost carriers' cost structure that allows them to provide much lower fares compared to yours?

Mr. TILTON. Congressman, in many instances, actually, we match their fares, as you are probably aware. So in markets, let's

say in Denver where across certain routes we are competed directly by companies as good as Southwest Airlines—and incidentally, Southwest Airlines is getting into the business of frequent flier participation, into the business of code-sharing with a Mexican partner. So they are adding a little bit of complexity to their business model as well, so their cost structure is going up a little bit.

That having been said, as Jeff and I have often said, a hub-and-spoke structure is an intrinsically costly structure. And the maintenance of a hub, if you in fact have one in the system, is probably the most significant cost differentiator for a hub-and-spoke carrier relative to a point-to-point carrier where you don't have the responsibility for the maintenance, the management, the stewardship of something, such as Newark or Houston or Chicago or San Francisco.

We also fly, as you know, significantly offshore. So a significant part of our respective businesses is the international operations. And those wide-bodied aircraft and those long-haul flights are by their very nature much more expensive than Southwest.

So as Jeff said a little while ago, only a segment of our business competes directly with Southwest, but it is an important segment of our business and we try to be as cost competitive there as we can so we can offer services to our markets that are competitive with Southwest.

Mr. SCOTT. Are your costs lower when you are competing with Southwest, or does the competition bring down your costs?

Mr. TILTON. No. Our costs are the same.

Mr. SCOTT. And the prices are lower when you have competition?

Mr. TILTON. Wherever we have competition, we try to remain relevant in the marketplace.

Mr. SCOTT. Why should we not suspect that prices might not go up when you lose competition through the merger?

Mr. TILTON. That is an excellent question. We are not going to actually lose competition. We and Continental overlap a little. In very, very rare instances we compete directly. One of the points that we made about this merger is the complementary nature of these networks. In my answer to the Chairman a moment ago, I was saying that we have very little presence that is competitive with Continental's in metropolitan New York. Continental has a very modest presence in Chicago. So in that regard, neither one of us is going to lessen competition.

Mr. SCOTT. Mr. Roach, what will this merger do to the union contracts, jobs, and seniority?

Mr. ROACH. It can create a lot of turmoil. We represent eight different classifications on the combined carriers, and those have to be integrated—seniority integration, which is very difficult; contracts have to be negotiated. There are pension issues that have to be resolved, different pension plans, some are defined contributions.

All of our members of the IAM have defined benefit plans. It is very difficult to put these—as America West-U.S. Air, we are still not fully integrated, as I said. Northwest-Delta is still not not fully integrated. It is very difficult to put these airlines together from an employee standpoint. And, again, we certainly want to argue or stand up for good contracts.

I think the issue beyond a good contract is survivability, and that is the information we are requesting from the combined carriers, because having a good contract, as I said before, and no job, really doesn't mean anything. So we want to make sure the carrier is going to be around. And we have asked for information. They said the information was forthcoming.

But merging America West-U.S. Airways 5 years after the fact are still apart, Northwest-Delta, 2 years, and TWA has disappeared totally and employees are gone.

Mr. SCOTT. Mr. Smisek, you talked about keeping the jobs alive. Both United and Continental have had financial problems in the past. Why would we think that a combined combination of the two would make it financially more reliable?

Mr. SMISEK. We expect this merger to generate, as I said earlier, between $1 and $1.2 billion of net annual synergies. That is a considerable amount of money. And we believe that this merger will put us in a position to be profitable.

I have also made it clear to all of the work groups that I intend to share appropriately in the synergies of this merger with the workers whether they are represented by unions or not.

Mr. JOHNSON. Thank you, Mr. Scott.

Next we will hear from Mr. Poe.

Mr. POE. Thank you, Mr. Chairman. I appreciate you all being here.

Mr. Smisek, the four things you mentioned are exactly the four issues that concern me. Having represented probably 14,000 of the employees in the Houston area that have worked with Continental, I am concerned about the employees, the consumers, the competition, and of course the community, exactly on point with you. I hope we resolve and come up with the same answers as a solution.

Flying Continental, I think it is a great airline, wonderful customer service. The employees are great. New airplanes, clean airplanes. I had the opportunity to fly United. Don't want to be too offensive, but I don't like flying United. No good customer service, old planes, dirty planes. If I had a choice, I would rather take a stagecoach than fly United.

My choice—this is my opinion. You got Continental, you have got United. How do we know we are going to keep the same level of expertise and confidence with a merger that I think Continental has right now?

Mr. SMISEK. Well, Congressman, look. We are very proud of the airline we have built at Continental, Congressman. And from Houston's perspective and from Cleveland's perspective, we need to look at this from where we would be on a stand-alone basis. What would the future be? People tend to take us and project us out from our past and expect that to be the future. That isn't the case as we become more globalized, and more of our business travelers are being stolen away by large global competitors.

Houston will be better off in the long run with a merged Continental than it would have been had we stood alone. And in terms of the service levels, we intend—the management team, it will be a joint management team of Continental and United. We intend to inculcate at the combined carrier a culture of dignity and respect and direct and open and honest communication—what we call

working together at Continental. And we have proven at Continental over the past 15 years that works, that generates great customer service.

What you will find, Congressman, over time is this carrier is going to have a great product, great service brought to you by employees who are very proud to work at the new combined United. And I think you will be very satisfied with the product after we have merged, after we have integrated these two carriers. That will take some time. That will take 14-16 months. When we have got these two carriers integrated, I am confident that we are going to have a great carrier that will have great service.

Mr. POE. How come Star Alliance won't work?

Mr. SMISEK. The Star Alliance has been very good for us. It is, however, insufficient. The revenues that we are generating from the Star Alliance are insufficient to restore us to profitability. All of the good things in life, all of the things that I want for Houston, all of the things that I want from my co-workers, all of the things I want from my communities that I serve throughout the world, and all of the good things I want for my consumers come from profitability.

We have failed over the past decade at Continental. We lost over a billion dollars. That can't continue. And this merger will help us to restore profitability and to be able to invest in the product to provide great service.

Mr. POE. We want you to stay in business.

Did you have a comment?

Mr. TILTON. I do. There is no question that Continental among the carriers has the best level of customer service and they have for quite some time. And it is the target for all of us to aspire to. This last year, our company improved in customer service better than any of the other networks. It improved by some seven points. We have also been number one on-time airline across the United States for at least 8 consecutive months, and we were for the year in 2009.

So we are very proud of our improvements. And there is no question but that Continental is going to bring a level of service, over time, better than we have had over that same time, but it is going to give United a target to shoot for.

Mr. POE. Maintenance. Maintenance facilities if there are a merger. Where is the maintenance going to be? Mr. Tilton.

Mr. TILTON. So our principal maintenance facilities, across the United States. Our line maintenance is associated with all of our hubs and our spokes and stations.

Mr. POE. Let me ask you this, because we have a time constraint.

Will there be more, less, or about the same maintenance at the Houston hub, if there is a merger?

Mr. SMISEK. I don't anticipate any changes to the maintenance, to either the heavy checks that we do for our 757/200 fleet. As a matter of fact, we will be adding 757s, a considerable number, with United and the line maintenance that we do.

Mr. POE. One last question. Frequent flier miles. That is all the calls we get from the fliers. How is this going to affect frequent fliers?

Mr. SMISEK. I think that will be an improvement in the program because we are going to have a much larger frequent flier program. I think we will have new ways to earn miles, new ways to redeem miles. We haven't determined that because we are not merged yet, and so we haven't had the discussions that you would have to harmonize the frequent flier program.

But we realize how important frequent flier miles are to customers. We realize how valuable they are to us in retaining customers. Our frequent flier program at Continental has won numerous awards. I would anticipate that the combined frequent flier program will be superb.

Mr. POE. That is what makes me nervous. Then there is the merger and then there is the decision on what to do with current frequent fliers and their miles and how you merge two different complete systems. So that is what makes me a little bit nervous.

Mr. TILTON. We are going to have to compete with Delta in the context of their frequent flier program, which is a real beneficiary of the combination of Northwest and Delta, just as we compete with them in customer service in our transportation. We really want to create—and I don't think there is anything for a consumer to worry about with respect to the combining of the two frequent flier programs, because we want to be as good as the alternative, which would be Delta.

Mr. POE. I yield back, reluctantly.

Ms. JACKSON LEE. The gentleman's time has expired. I thank the gentleman for his line of questioning.

Let me thank all of the witnesses who are here. This is an important process of oversight that our Committee has, and so each of you are appreciated for your presence here today.

I want to particularly thank Mr. Smisek and Mr. Tilton because it is important to note that you have business decisions to make, and I appreciate you taking the line of questioning from Members in the spirit in which you are doing.

I also appreciate our representatives from the different unions, our professor, and certainly two professors. I think one comes from the perspective of this Committee and one comes from a more policy-oriented position, and that is the right thing to do.

What I do note, however, and it is the limitations of our Committee and it is not the fault of anyone, but as my colleague from Houston noted, the consumer is not at this table, the traveling public, nor do we have at this table the many municipalities who are frightened of what they might expect. Many of them, or some, have chosen not to be present, although I note one of my colleagues submitted some letters from a number of municipalities. But others who are directly in the line of fire are not present because they are waiting with bated breath to see who is going to be the winner in this process that we are moving forward on.

Let me just indicate, as a matter of background to my questions, that we are developing a record that will be utilized or could be utilized by the Department of Justice, where they will be investigating whether the merger will limit competition and raise prices for customers as required under section 7 of the Clayton Act. But the Clayton Act has provided a degree of jubilation, because recent history has shown that findings of anticompetitive effects may still

not be enough to stop the merger, to the dismay of the late President, Teddy Roosevelt.

As the Department of Justice Federal Trade Commission horizontal guidelines have allowed potential increase efficiencies for mergers to trump the anticompetitive effects, I consider that to trump the real-life human effect.

And it is clear, for example, that there are a total of 13 nonstop routes where Continental and United overlap. If the merger goes through, 7 of those 13 will have no other competitor. With the reduced competition on those routes, passengers will have practically no alternatives, and the carriers with the near or actual monopoly will be able to increase prices with no consequences.

So let me pose these questions and there is some industry language that I think is being used, might be financial language, and it is this whole question of annual revenues.

So in your press release, in your testimony, you claim in your previous press release that the merger will create 800 to 900 million in incremental annual revenues.

How is it possible to achieve such an increase in revenues without doing one of the following: increasing fares for at least some of the classes of customers, while eliminating lower-fare offerings or reducing capacity, either by eliminating flights or reducing the gauge of the aircraft, or eliminating employees?

Mr. Tilton.

Mr. TILTON. Thank you, Congresswoman.

As we have said, there are probably two significant components to the opportunity that combining our hub structure, our network and our fleets will provide us. We will be able to take the 700 aircraft of the combined fleet, including, beyond that 700, the aircraft that both companies have available to them through their partner relationships with regional carriers, to have our network planners position those aircraft on routes and the assignments of the aircraft, business assignments for the aircraft that are better than we are currently able to do by virtue of the limitations of our retrospective fleets.

Said very simply, Jeff may well have the opportunity for larger aircraft out of Newark, but Jeff doesn't have aircraft of sufficient size in his current fleet to be able to take advantage of that. It may well be that I have a larger aircraft that I am using in another hub and flying it because I have it, but not actually taking full advantage of it. That aircraft might be moved to Jeff's employ out of Newark and we take the benefit of that.

Ms. JACKSON LEE. And increase the size of passengers that may be on the flight, increase the revenue?

Let me move, then, to Jeff and ask a question. There is reference to incremental annual revenues of 200 million and 300 million of net-cost synergies. So let me go back to the last part of my first question.

I assume that these costs mean layoffs to some degree. How many do you expect to lose their jobs, and where?

Mr. SMISEK. Congresswoman, we have not determined the number of headquarters jobs that will be affected either in Houston or Chicago. There will be reductions in headquarters jobs. The vast majority of our employees will be effectively untouched by this

merger, because we have so little overlap that some of my employees are not affected by this. We have not determined that yet.

When we do determine it, because of our culture, we will tell our employees first and then we will tell the rest of the world. And we will be happy to inform all people.

Ms. JACKSON LEE. Can you explain the role of Continental's Cleveland hub and the optimizing of your fleet? Is it not the case that you will be reducing the number of routes at Cleveland?

Mr. SMISEK. All routes, including Cleveland, are subject to market conditions and traffic flows. I understand how important good air service is to the city of Cleveland. I have spoken with Mayor Jackson. I have met with him. I am going up again to meet with him and various members of the business community to see what we can do to maximize the demand for air travel in Cleveland.

Recognize, as Professor Swelbar mentioned, when it comes to any hub, whether it is Houston or Cleveland or New York or Denver or San Francisco or L.A., it is a matter of the traffic flows, the local demands.

Ms. JACKSON LEE. So there would be a possibility of reducing routes at Cleveland.

Mr. SMISEK. There is a possibility of increasing routes in Cleveland or New York. It depends upon the economy. This is a dynamic business. There is change every day in this business. It is impossible to predict this business.

Ms. JACKSON LEE. With it being dynamic, you have the option of reducing routes.

Mr. SMISEK. Reducing and increasing.

Ms. JACKSON LEE. Mr. Bush, how would you respond to the explanation that has been given on, if you will, the incremental revenues and no possibilities or rare possibilities of layoffs under the $2 to $300 million proposal of synergistic savings?

Mr. BUSH. Well, there are a couple of important considerations.

When we are talking about efficiencies in the merger of context, the efficiencies that the Department of Justice considers are those that are related to the merger. They are merger-specific. They cannot be achieved by other means without serious cost occurrences. I am not quite sure how the flight repositioning or the removing of aircraft from one hub to another is merger-related. I suppose you could lose aircraft. I suppose you could have some repositioning of aircraft within your fleet. I am not entirely sure how that by itself yields incremental revenue to the proportion that they purport.

I am little troubled by the notion that they haven't thought about what jobs to cut yet they are claiming they can have 200 to 300 million in cost savings. It seems to me in order to make a claim that you are saving some money in efficiencies, let us get this right. Efficiencies are job losses. Cost savings, things of that sort. I don't see how you can claim you are going to have 200 and 300 million million in savings if you don't know where they are coming from.

With respect to the Cleveland hub, I suppose it is true that city demand and market conditions locally do affect the traffic through a hub. But let us keep in mind that we have some idea about these kinds of things from prior mergers.

You can look at what happened with American and TWA and the St. Louis hub and how well that hub is doing. We can keep track

of what happens in Northwest and Delta and what happens in Cincinnati. It has not been the case that I can think of where we have actually seen large-scale improvements in these hubs that have competitive.

Ms. JACKSON LEE. Let me wrap up with these two questions. I hope to be able to pose these questions more extensively further, after my colleagues.

But let me just ask all of the union persons, have you been engaged in any discussions with either United or Continental about your plans and your layoffs?

Can I get a yes or no? Captain Pierce.

Mr. PIERCE. Yes, we have.

Ms. JACKSON LEE. And are those plans final and public?

Mr. PIERCE. They are not final nor public. We are negotiating as we speak.

Ms. JACKSON LEE. Are you comfortable with the progress? Are there concerns?

Mr. PIERCE. Cautiously, cynically optimistic.

Ms. JACKSON LEE. Captain Morse, excuse me.

Ms. MORSE. I would respond in the identical way.

Ms. JACKSON LEE. Mr. Roach.

Mr. ROACH. We have not had those discussions. We have requested that information, and we are hopeful that they are forthcoming.

Ms. JACKSON LEE. Ms. French.

Ms. FRENCH. We have not had those conversations, and we are not that comfortable that they will be forthcoming.

Ms. JACKSON LEE. Mr. Smisek, this is directed to you. Will you personally commit to do anything you can to minimize the impact of a merger on your downtown employees and the hub employees at IAH?

Mr. SMISEK. There should be little to no impact on hub employees at IAH. As for downtown, I have made it clear to my employees that I understand not only job loss but moving, moving to Chicago, that I want to minimize that consistent with the needs of the enterprise. There are some jobs that need to be in Chicago, face-to-face jobs. I am, for example, moving to Chicago. Others where people work, for example, from home. We have a very large number of people who work from home at Continental. Also jobs that are principally computer-related jobs that can be done from anywhere. And I do not—I want to disturb as few lives as possible. I know how disruptive it can be. That said, there are some jobs that will —there are some that will need to be moved.

Ms. JACKSON LEE. Can you personally commit that you will minimize?

Mr. TILTON. Yes.

Mr. SMISEK. Yes, of course I will.

Ms. JACKSON LEE. Mr. Tilton and Mr. Smisek, I would like you to provide us with your employee plan and their hub closing plan to this Committee.

[The information referred to follows:]

**Response to Hearing Question from the Honorable Sheila Jackson Lee**
**"Competition in the Airline Industry"**
**Judiciary Committee**
**U.S. House of Representatives**
**Hearing held on June 16, 2010**
**Question for Jeffery A. Smisek**
**Continental Airlines**

**Question asked by Congresswoman Sheila Jackson Lee**

**And as I conclude, I just like to ask both Mr. Tilton and Mr. Smisek to provide us with their employee plan and their hub closing plan to this Committee.**

CONTINENTAL RESPONSE:

Employee Plan: We have about 30 separate groups comprised of Continental and United leaders who have been meeting to discuss the integration planning process. While our leaders' role in successfully integrating the two companies is critical, there are labor related aspects to the integration that require the full engagement of the employees and their union representatives. Continental and United understand that management's role in the integration of Railway Labor Act employee groups is very limited; it is purely an employee decision to be represented by a union, and where comparable employee groups are represented by different unions, to decide which shall be the surviving representative. We are committed that all labor integrations be done in a fair and equitable manner, in accordance with the RLA, the McCaskill-Bond Amendment, and with all applicable collective bargaining agreements and company policies. We have already begun formal discussions with several of our unions to find the best ways to achieve these goals with the least amount of disruption. While we recognize that it is a difficult and often contentious process, we plan to follow the successful examples already established; the ultimate goal is, working with the unions and our employees, to finalize integration in a fair and expeditious manner.

Hub Closing Plan: There is no hub closing plan. As more fully explained in the written testimony submitted to the House Judiciary Committee, we will continue to provide service to all of the communities our airlines currently serve, including 148 small communities and metropolitan areas. This service enables residents of small communities to connect through eight mainland domestic hubs (Chicago, Cleveland, Denver, Houston, Los Angeles, New York/Newark, San Francisco and Washington Dulles) and two others in Guam and in Tokyo. The combined airline will offer travelers access to 350 destinations in 59 countries.

---

Ms. JACKSON LEE. I now will yield to Mr. Coble for 5 minutes.

Mr. COBLE. Thank you, Madam Chairman. I had to go to the floor so I missed a good portion of this hearing but it is good to see Mr. Tilton and Mr. Smisek again. I saw them at Transportation and Infrastructure earlier this morning.

Gentlemen, as I said to you this morning, I represent Greensboro, North Carolina, which includes the Piedmont International Airport. Let me ask you this: Will this merger—how will this merger affect airports that have seen a decrease in passenger service as a result of the dismal economy? And if approved, would this merger provide the opportunity for communities like the one I represent to attract additional service?

Mr. TILTON. Congressman, I see two potential benefits to communities the size of Greensboro, where perhaps neither of us today serve it as consistently or as often as the community might warrant. When we put the combined network together, we have the opportunity to fly the people of Greensboro over the combined hub structure as opposed to individually only those hubs that we had available to us previously, which gives us a much larger footprint and more efficiency and flexibility to connect the people of Greensboro against eight hubs, rather than five and three. I think that is significant.

I also think that as the enterprise, the new company, becomes more cost effective, it may well be that the margin that Greensboro can afford us can be more attractive to us than it can be independently today.

Mr. COBLE. I am pleased to announce, as no surprise to either of you, that United and Continental provides service there now.

Maybe you all touched on this already. How will the proposed merger affect the employees of the two companies? Wages, jobs, has that already been discussed today?

No need to repeat that, then.

Let me ask you one more question if I may. If the United-Continental merger is approved, there will be just a handful of so-called U.S. Network airlines remaining. How will further consolidation of the Nation's other airlines affect competition and pricing in the airline industry?

Mr. SMISEK. Let me begin, Congressman.

This merger will permit us to compete on a global scale and compete more effectively than we can today. You have to look at this where we would each be individually if we were not to merge. I think this will strengthen competition. It will permit us to compete with large foreign airlines which now control more than half of the trans-Atlantic traffic and more than two-thirds of the trans-Pacific traffic. There is material competition in the U.S. Segment today. That competition will continue after this merger.

This merger is not predicated on any price increases whatsoever. We do not even—I wish we could set prices. We don't. The market sets prices. And we do not set prices. And this merger will not affect prices. Despite my friend to my left, I think Mr. Swelbar has talked as well about how there is a significant amount of competition in this business, and there will be significant competition going forward.

Mr. COBLE. One final question. Which type of airline serves more small- and medium-sized communities? Discount airlines or network airlines, and why is this the case?

Mr. SMISEK. Congressman, network airlines are the only airlines that serve small communities. The reason for that is low-cost carriers rely on a very simplified fleet and they rely on point-to-point, largely local traffic base. And small communities do not have the local traffic base to support service of a larger aircraft. And so low-cost carriers do not serve, and I suspect will never serve small communities.

The only carriers that serve small communities are network carriers like Continental and United. After this merger—we serve 148 small communities today, and after the merger we will serve 148

small communities. And there are 200 small communities throughout the United States that are served only by network carriers.

Ms. JACKSON LEE. I yield to the gentleman from Chicago, Mr. Gutierrez, for 5 minutes.

Mr. GUTIERREZ. I am going to ask questions of the two CEOs.

I would first like to ask about United. What is the total worth to your consumers in your frequent flier miles? If I were to sell them on the market, what would they be worth, approximately? A million? Ten million? A hundred million?

Mr. TILTON. There is not a liquid market.

Mr. GUTIERREZ. I understand that. You are the CEO. What are they worth?

Mr. TILTON. I would say that—well, I do have a way of looking at it.

So a frequent flier program exists——

Mr. GUTIERREZ. What I want to get to—it is only 5 minutes. What is it worth? What is it worth if you had to limit it tomorrow?

Mr. TILTON. A hypothetical; a billion dollars.

Mr. GUTIERREZ. Thank you very much. Continental?

Mr. SMISEK. I have no idea.

Mr. GUTIERREZ. You should know what something is.

Mr. SMISEK. There is not a liquid market so the question is a very difficult one to answer. I will tell you that the program is valuable to us.

Mr. GUTIERREZ. You said we are going to find more ways to earn and more ways to use. Is it worth the same billion dollars as United Airlines?

Mr. SMISEK. I don't know.

Mr. GUTIERREZ. Hundreds of millions of dollars? Thank you. It is amazing that you know the value of everything, I am sure, in your airline except frequent flier miles.

Let me tell you why I am asking that question. I am asking that question because when I went to look up the mileage-plus rule summary for United Airlines, United Airlines reserves the right to terminate the mileage program without notice or regardless of how much you participate. You have the right of cumulative—boom. You have the right to eliminate a billion dollars of the consumer. It is a billion dollars. You stated that it was worth a billion dollars. I looked it up on United Airlines.

Mr. TILTON. If I were to sell it for a billion dollars, it wouldn't be eliminated.

Mr. GUTIERREZ. Let's not get cute here. You have a billion-dollar asset.

Mr. TILTON. I don't have that.

Mr. GUTIERREZ. Yes, you do. You said the value to the American consumer was a billion dollars. That is on the record. I don't want them to go back and read what you said. You said it was worth a billion dollars. That is what you said. I said? What is this worth to the consumer? Something that you can terminate.

Mr. TILTON. Right.

Mr. GUTIERREZ. Fine.

So why is it—because I think it is important that we don't like—before we allow you to merge, we don't protect the American consumer and their right to what you have stated is a billion dollars.

See, those are the questions that I have as I look at this merger, because I know that people will come here and say well, Luis, it is good for Chicago, United is from Chicago. You know what I am interested in? I am interested in what is good for the American consumer. And we have just heard, Madam Chair, and we will hear from others, that the number-one complaint we get about the airlines is access to frequent flier.

So when you come and you tout the great benefit, which you have stated is worth a billion dollars to the consumers, should they actually go about the business of using them, I think it is important that we discuss that area.

The fact remains, Madam Chair, is that it is next to impossible to get a frequent flier use when you really need it.

I know that the 5 minutes are up. So you guys took a lot of time just giving a value to something. I know. It is a good ploy on your part.

But let me ask you another question, Mr. Tilton. Maybe you know this. Is part of your salary structure at United Airlines stock in United Airlines?

Mr. TILTON. Ninety-five percent.

Mr. GUTIERREZ. Ninety-five percent. So that means you made a lot of money in the last year. You are worth a lot more today than you were 52 weeks ago, and I only get that because I downloaded it off the Internet. That is, that the value of stock in United Airlines has increased 112 percent during the last 52 weeks.

Mr. TILTON. To get to the point of origination of $3, it had to go down dramatically.

Mr. GUTIERREZ. It was $6 a share 52 weeks ago. It is over $24 a share today. I mean, I looked it up. You could tell me that it is not so, but it is so.

So let me ask you something. You really have a great motivation to make sure that that stock increases in value, right?

Mr. TILTON. That would be true.

Mr. GUTIERREZ. So you see, we are always talking about Members of Congress and our conflicts of interest, Mr. Chairman, or Mr. CEO of United, we are always talking about ours. You, too, I think, have a conflict also because when you make decisions about who you are going to cut and what salaries you are going to cut and what frequent flier miles you are going to cut and what pensions you will not—how would I say, to enter into agreement but then not pay out. The fact is that the CEO, the bottom line, since 95 percent, he has stated, of his salary is stock, I think that those decisions should be made by us also. I think we have a right to also intervene.

You can laugh. You can laugh and you can think that it is not serious, because I know that you probably feel that you have got this one in the bag. But let me tell you something. At least one person will stand up here today on behalf of the machinist, on behalf of the pilots, on behalf of the flight attendants, and on behalf of the consumers of America. This isn't just about what is good for corporate America and the bottom line of what is good for the CEO of a particular airline. I think it is what is good for all of us together.

I want United to prosper, to grow, and be strengthened, but I also want the workers and the consumers to be respected in their profit. And I would just love to see that their salaries, their pensions, would equal your salary and your pension, not in terms of the totality of the money—we will pay you more—but at least they would see a 100 percent increase in their value in their pension and in their future.

Ms. JACKSON LEE. Mr. Issa.

Mr. ISSA. I hope the gentleman is not leaving. I am going to try to get him an answer.

Mr. Tilton, you provide seats in return for miles for frequent fliers who use credit cards. Those are purchased from credit card companies for a price. If I have a 25,000-point redemption, and I get a ticket, what did the credit card company pay for those 25,000 points that were awarded?

Mr. TILTON. It varies, credit card company by credit card company.

Mr. ISSA. Just give me the ballpark, so the ballpark is only for the record. Is it $200 or so, roughly? You are selling seats essentially in your mileage program and you are selling them for a price that probably——

Mr. TILTON. We try to get it as close to market as we probably can.

Mr. ISSA. But it is a mean market because it is sort of an economy price. So there is a value. And that also fills seats for you because you charge double that later in the flight. So if it is not a very available flight, you double it. You get 50,000 points for the same seat. So it is part of filling your seats sufficiently with a fixed amount of money per points, but twice as many points if you are down to the last few seats that both of your airlines want to fill more profitably, right?

Mr. TILTON. That is correct.

Mr. ISSA. So you can't really price the frequent flier flights, you can't price it as much as show it is part of your revenue of filling your seats profitably.

Mr. TILTON. That is correct. And its utility has an upgrading instrument and that type of thing.

Mr. ISSA. Mr. Tilton, you are going to become the non-executive chairman and, Mr. Smisek, you are going to become president and CEO, right? So Mr. Poe is going to get the guy he likes running the company. I just want to make sure we have made it clear for the record how corporate mergers work, no matter who takes over who. We know who is going to be running the company.

I am concerned about a few things.

First of all, I look at the hub structure and I don't think there is a snowball's chance in the south of the center of the Earth that Cleveland survives. I think Cleveland gets phased out over time. You are not closing Chicago. So if you had to close one hub of nine or so major hubs, are you going to tell me here that it wouldn't be one of those in that concentration? Because you are not closing San Francisco, you are not closing L.A. You are not closing Denver. And the acquisition of a southern hub is crucial to the network, and United never had a New York hub of any substantial amount, so those are all staying.

So what do I have left and which one would close?

Mr. SMISEK. Congressman, we don't have any intention of closing any hubs but that is going to be dependent on market demands.

Cleveland actually has significant local demand for a city of its size. The future of Cleveland is tied very much to the future of Cleveland's economy. Cleveland will always have very good air service. Think of the flows west. We are very——

Mr. ISSA. I happened to have bought my Red Carpet membership initially when I was a Clevelander. I am well aware that United walked away and gave you those gates; that in fact you did a trade where you got Cleveland, which you wanted a lot of concentration in. They got the hell out. So it is basically prop service in there or light jet, and there was a separation because there wasn't enough room for two of you. I am just concerned there won't be enough room for one of you.

Mr. SMISEK. There are very few hubs in the United States where there is room for two. O'Hare is a hotly contested hub between American and United. L.A. Is quite fragmented for that matter, so is San Francisco, with low-cost carriers, I think, have close——

Mr. ISSA. I am going to get to low-cost carriers in a moment, or what I call value carriers. And I do 200,000 miles a year with one of your airlines, United. You have got the nonstop.

The fact is that Southwest has been kicking your ass. You are both losing market share. They are picking it up, they have a lower cost point-to-point than you do hub-and-spoke.

How can we be assured that by allowing you a domestic merger that you are going to be—you are going to gain global capability? And oh, by the way, you are going to deliver the kind of service domestically that could be delivered if you were able to really wring out cost efficiencies? I looked through your proposal and looked on line. I didn't see that you were going to reconcile a rather confusing array of aircraft that you both own. If there is an airplane made and still in service, one of you owns it right now; is that pretty much right?

Mr. SMISEK. Let me deal with that multipart question. Southwest is an excellent carrier.

Mr. ISSA. Their sales approach shows it.

Mr. SMISEK. They are very good, and I have nothing but respect for Southwest. We will always have significant domestic service because we need to gather those passengers through our hubs. If you are flying regularly between Cleveland and Houston, for example, we want for the presence of mind that when you do want to take your trip to Beijing or Shanghai or Delhi, or wherever, that you will choose Continental or the new United. So we will always have significant presence domestically. And I believe that we will be better, stronger competitors to Southwest Airlines with this merger.

Mr. ISSA. The question about your frequent fliers. The two of you, between you today, can you make a commitment to Members of Congress that frequent flier miles will be available, legacy miles will be available, to every frequent flier to buy as much value after the marriage with their legacy miles as before?

Mr. SMISEK. The frequent flier programs will continue. Congressman Gutierrez' concern about terminating the frequent flier program?

Mr. ISSA. No, No, I apologize. I was not quite asking his question. I was simply saying from a standpoint of legacy miles. You have got reserves on your books.

Mr. SMISEK. Of course. The legacy miles will continue. Our competitors will be doing handsprings were we ever to terminate.

Mr. ISSA. So your combination of these two programs is mostly about competing against the remaining carriers and how you are going to structure your combined for competition. From a legacy standpoint, you can guarantee all of us that the value in our, quote, respective banks would be maintained.

Mr. SMISEK. Yes.

Ms. JACKSON LEE. Votes are to be called around 4.

The gentlelady from California, Ms. Chu, is recognized for 5 minutes.

Ms. CHU. I have questions about jobs and outsourcing.

First of all, Mr. Tilton and Mr. Smisek, you argue that there will be significant synergies from this combination to the tune of over $1 billion. And in materials that are provided by your lawyers, you argue that they will be synergies from renegotiating the labor contracts. Yet you argue that there will be no frontline job loss as a result of the merger.

So what synergies do you see from renegotiating the labor contracts?

Mr. SMISEK. There will not be synergies from negotiating. They will be what we call "dyssynergies." There will be wage-and-benefit improvements across the workforces. As I have made clear earlier, I intend to share an appropriate amount in the synergies of the combined care with all of the workers, whether they are unionized or not. We anticipate increased costs of our co-workers in terms of their wages and benefits, and not decreases.

Ms. CHU. And can you be precise in terms of where the savings will be?

Mr. SMISEK. Those aren't savings, ma'am. Those are additional costs. And we will be negotiating joint collective bargaining agreements with each of our work groups, and, of course, that is an outcome that, one, we leave at the negotiating table; and secondly, it is difficult for me to guess as to the outcome at this point.

Mr. TILTON. To be clear, the savings that you mentioned, the 300 million, none of that presumes to come from the renegotiation of any labor contracts. All of that comes from the elimination of redundant departments that Jeff has mentioned a couple of times. One accounting department, one IT department.

Mr. SMISEK. Additionally, there are significant savings in one advertising budget, one marketing budget, sales, redundant technology, having one type of technology. So within those $2 to $300 million are savings from a large number of other areas.

Ms. CHU. Well, I want to go on then to the outsourcing issue.

Clearly, when management works with its employees, there are positive results that can be beneficial to both sides, and certainly your co-chair agreement with Lufthansa between O'Hare and Frankfurt, for example, does work. United does some of the flying, Lufthansa does some of the flying. The planes are full. Both carriers make money based on the amount of flying that they do.

But now you are beginning to enter into uncharted territory. And on March 28, you flew an inaugural flight from Washington-Dulles to Madrid, marketed by United and transporting United passengers, but flown by an Air Lingus plane that was staffed by non-union labor.

This joint venture ends up shipping jobs overseas and forcing lower wages onto workers who have given up over 40 percent of their wages over the past 6 years. So the code shares are one thing and outsourcing is another.

Do you plan to continue this agreement with Air Lingus after Continental and United merge?

Mr. TILTON. Congresswoman, that venture is a 5149 venture between the two companies. To be clear, it created jobs on the ground in Dulles, that otherwise would not have been created, that are United jobs and are represented jobs.

The driving force behind that joint venture company, where one company is responsible for the operation and the other company is responsible for the marketing, was made possible by the open skies negotiation with the European Union. We would not have been able at the economic values—one of your colleagues in the former hearing made mention of the fact that you could fly to Madrid from the United States for $375. We would not have been able to fly that route if it were not for the joint venture.

So we created the joint venture to fly routes where the economics would justify either of the two parties taking the risk alone. It has worked reasonably well, but we have no plans to expand it at this point.

Ms. CHU. I would like to hear a response from Captain Morse and Ms. French.

Ms MORSE. Since it is our flying, I would like to speak to it first.

Those are jobs that could have been created for United pilots. The wages that are being paid to the Air Lingus pilots are almost identical to the wages that United pilots are paid. So we firmly and strongly believe that those should have been United pilot jobs and flown by United pilots.

Mr. PIERCE. From a Continental perspective, we completely support Captain Morse and the United pilots in this.

I think, quite honestly, to compare this to a typical code-share kind of discounts the word "share." It is simply to provide some benefit to one side without sharing any of the other job opportunities to the United pilots.

Our scope agreement at Continental would not allow such an agreement and, quite honestly, it gives us great pause to enter into or to support a merger agreement with a company that thinks this kind of business is acceptable to its employees.

Ms. CHU. Because it is my understanding that the way it worked with this Air Lingus, United just does the marketing but the entire flying route is done by Air Lingus, right?

Ms. MORSE. That is correct.

Ms. CHU. Ms. Friend?

Ms. FRIEND. United management has tried to persuade us all that it is just another code share, but in fact it is not; because they share equally in the risk and they share equally in the reward, which is not the same as their Star Alliance code shares.

It is our work. And to add further to the very difficult labor-management relations, we have at United, they are forcing us through a very expensive arbitration process to enforce our contract language that says, in fact, that it is our work.

Ms. JACKSON LEE. The gentleman from Florida is recognized for 5 minutes.

Mr. DEUTCH. I had a question or two about the integration planning process. And if either of you could explain the way the process works and whether it is in that planning process that you develop the synergy, the annual synergies that you have totaled that around $1.2 billion.

Mr. SMISEK. We have done extensive modeling of the synergies through the process that we undertook with United 2 years ago and the most recent talks with United. And we are comfortable with the synergy numbers.

The integration planning process is quite detailed, consists of about 30 different groups of our employees and their employees working through the details of the effectuation of that model. That is, taking step by step each group of synergies, and working through how we will actually put those into effect and the time when we can.

Mr. DEUTCH. So there are 30 different groups of employees?

Mr. SMISEK. Thirty different groups of Continental employees and 30 different groups of United employees working together in the integration planning process, yes.

Mr. DEUTCH. Are your numbers involved in that process?

Mr. ROACH. No, we are not involved in that.

Mr. DEUTCH. Ms. Friend.

Ms. FRIEND. No, we are not.

Mr. DEUTCH. Ms. Morse? Mr. Pierce?

Ms. MORSE. No, that is a management integration process.

Mr. DEUTCH. There are 30 groups of employees that are looking at how to integrate. What types of employees and how are these discussions being—how are they taking place, since the most significant integration is not ultimately going to be where the hubs are but who is going to be working for your airlines?

Mr. TILTON. So, Congressman, one way to look at it, we have a group of people who are now working on the discussions that our colleagues have mentioned on labor integration and labor integration issues. There are two phases of integration. We are really permitted to do precious little because we remain competitors now. That would be anticompetitive. So this phase is referred to as integration planning, and I think that is why we frustrate a number of people when they ask us for specifics. Have you considered this? Have you considered this? We have to be very careful what it is that we share at this juncture.

So both—and as one of our labor colleagues said, both companies have open negotiations with their labor groups ongoing; and we continue to meet on those negotiations. We are not going to—just to be clear, we only have so much bandwidth. We are not going to interrupt those conversations with a hypothetical now, if you see my point.

Mr. DEUTCH. Okay. I suppose, the question, though, is at what point—I mean, in the oversight role that we play, trying to deter-

mine whether this all makes sense under the antitrust laws and whether it is good for consumers, at what point does the integration of the workforce actually happen? And how——

Mr. SMISEK. We are currently in discussions with our pilots union. They are in a far more advanced stage because they have dealt with each other. They have had a number of discussions with each other as well. They are far in advance of the other work groups.

We have many work groups who are represented by one union at Continental and a different union at United; and the first thing that those workers will have to do, and only work groups can do this, is select their union. We don't know who to negotiate with until we know who the union will be.

Mr. DEUTCH. But are any of those groups, those unions or their members, involved in the planning process? They are not.

Mr. SMISEK. We are in discussions with our work groups at Continental who have open contracts. We are in negotiations currently with our flight attendants, with our mechanics, with our pilots.

Mr. DEUTCH. I am sorry. I just want to make sure I understand, since we are running out of time.

The groups who are participating in this process, this integration planning process, are those groups who are responsible for negotiating with Ms. Friend's organization and Mr. Roach's organization?

Mr. SMISEK. No. We have people who are management people who are in the integration planning process. We have some people who are doing the planning work as well, but mostly we have people who are not doing the planning work who are also currently in negotiations, the open collective bargaining agreements. Those people will also be negotiating the joint collective bargaining agreements with each of our work groups.

Mr. DEUTCH. Ms. Friend, you look puzzled, as I am. Can you speak to your role in this or help shed some light on this?

Ms. FRIEND. Well, Mr. Smisek is correct as far as the flight attendants are concerned. I represent the flight attendants at United. Mr. Roach represents the flight attendants at Continental. So an actual integration cannot take place until we have resolved the representation issue.

But there is a lot of work that can be done. There are a lot of discussions separately that can be done about how we are going to proceed. And meaningful negotiations to conclude the open bargaining that is ongoing could also take place, and that is not taking place.

We have not—and I will let my friend Robert here speak for himself—but we have not been consulted on even a plan for future integration. We have not been consulted, and we have not reached agreement on what we refer to in airline negotiations as a "fence agreement" which does not require the resolution of the representation issue or the expense reimbursement that we anticipate will take place for the costs associated to our members for this merger. So that does not need resolution of representation.

Mr. DEUTCH. Thank you.

Madam Chairman, I just hope that as these discussions go forward that the integration process can really only take place, obviously, with people who are most important to us, to the consumers,

the people we see every day. My hope is that that can actually take place on a going-forward basis, rather than coming back and dealing with all these issues at a much later date.

Ms. JACKSON LEE. The gentleman's time has expired. Thank you.

The gentleman from Colorado is recognized for 5 minutes.

Mr. POLIS. Thank you.

Of course, being our custom to save the best for last, I am excited to have my opportunity to address you here today. Madam Chair and Ranking Member, thank you for convening this important hearing on competitiveness in the airline industry.

As the representative of a western State, the State of Colorado, I am keenly sensitive to the importance of a healthy and efficient airline industry in our country. The ability to travel regionally and internationally is critical to both the lifestyle and commercial interests of Coloradans and westerners.

My district is served not only by Denver International Airport, which is a regional hub that offers direct service to most places in the country in 4 hours or less, but also by several regional airports like the Rocky Mountain Airport, which bolsters business travel in the Denver metropolitan region, and the Eagle County Airport that serves business and recreational travelers to some of our incredible tourist destinations like Vail, Beaver Creek, and Copper Mountain.

Because of the ease of air travel, Colorado has become a regional center. This is clear every time I drive to DIA every week and I see many license plates from Nebraska, Wyoming, and Kansas in our parking lot at DIA. It shows our role as a regional transportation hub is also critical to our entire region.

In this context of any merger that serves Denver or our States many regional airports, of course, it is of interest to our political and business leaders; and my office has received letters from the office of Governor Ritter, Mayor Hickenlooper, the President of the State Senate, the President of the Denver Metro Chamber of Commerce, along with representatives of regional airports and municipalities and chambers of commerce across the district in Colorado expressing their support for the merger of United Airlines and Continental Airlines. And with unanimous consent, I would like to submit those to the record.

Ms. JACKSON LEE. Without objection, so ordered.

[The information referred to follows:]

# STATE OF COLORADO

**OFFICE OF THE GOVERNOR**
136 State Capitol Building
Denver, Colorado 80203
(303) 866 - 2471
(303) 866 - 2003 fax

Bill Ritter, Jr.
Governor

May 24, 2010

The Honorable Ed Perlmutter
United States House of Representatives
415 Cannon House Office Building
Washington, D.C. 20515-0607

Dear Representative Perlmutter:

I am writing to let you know of my support for the proposed merger of United Airlines and Continental Airlines. I believe this merger will benefit Colorado citizens and businesses, the employees of the combined airline and the overall economy of our state.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. And for businesses and residents in Colorado this means we can look forward to the combined airline providing access to 370 destinations around the globe.

United and Continental have very little overlap on routes. By coming together, they will offer a seamless global network with eight hubs across the country. Corporate travelers will have an easier time making connections, reaching customers and doing business, while tourists will find it more convenient to visit Colorado. This is exactly what we need to keep our economy on the right path.

The combined airline's increased financial strength will also provide enhanced job stability for the nearly 5000 Colorado employees of the combined airline. The companies have indicated to me that they believe the impact of the merger on frontline employees will be minimal and that they will offer performance-based incentive compensation programs. This kind of commitment to the employees who have seen them through recent challenges shows good faith, and is also important to our economy.

United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.

I ask that you let Attorney General Holder and Transportation Secretary LaHood know of my support for the merger and hope you will support it as well.

Sincerely,

Bill Ritter, Jr.
Governor

John W. Hickenlooper
MAYOR

City and County of Denver
OFFICE OF THE MAYOR
CITY AND COUNTY BUILDING
DENVER, COLORADO • 80202-5390
TELEPHONE: 720-865-9000 • FAX: 720-865-9040
TTY/TTD: 720-865-9010

May 24, 2010

The Honorable Mark Udall
United States Senate
317 Hart Senate Office Building
Washington, DC 20510

Dear Senator Udall:

I am writing to express my support for the proposed merger of United Airlines and Continental Airlines because it will benefit the businesses and residents of our state, the employees of the combined airline and our Colorado economy.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. And for businesses and residents in Denver this means we can look forward to the combined airline providing access to 370 destinations around the globe.

United and Continental have very little overlap on routes. By coming together, they will offer a seamless global network with eight hubs across the country. Corporate travelers will have an easier time making connections, reaching customers and doing business, while tourists will find it more convenient to visit our city/state. This is exactly what we need to keep our economy on the right path.

The combined airline's increased financial strength will also provide enhanced job stability for the nearly 5000 Colorado employees of the combined airline. The companies have said that they believe the impact of the merger on frontline employees will be minimal and that they will offer performance-based incentive compensation programs. This kind of commitment to the employees who have seen them through recent challenges shows good faith, and it's important to our economy.

United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.

I ask that you let Attorney General Holder and Transportation Secretary LaHood know of my support for the merger and hope you will support it, too.

Sincerely,

John W. Hickenlooper
Mayor

**BRANDON C. SHAFFER**
SENATE DISTRICT 17
brandon@brandonshaffer.com

STATE CAPITOL BUILDING, ROOM 257
200 E. COLFAX AVENUE
DENVER, COLORADO 80203
(303) 866-5291

**SENATE**
**STATE OF COLORADO**
**DENVER**

PRESIDENT OF THE SENATE

May 25, 2010

The Honorable Mark Udall
United States Senate
317 Hart Office Building
Washington, D.C. 20510

We are writing to express our support for the proposed merger of United Airlines and Continental Airlines because it will benefit the businesses and residents of our state, the employees of the combined airline and our Colorado economy.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. For businesses and residents in the Denver metro area, this means we can look forward to the combined airline providing access to 370 destinations around the globe.

United and Continental have very little overlap on routes. By coming together, they will offer a seamless global network with eight hubs across the country. Corporate travelers will have an easier time making connections, reaching customers and doing business, while tourists will find it more convenient to visit our city/state. This is exactly what we need to keep our economy on the right path.

The combined airline's increased financial strength will also provide enhanced job stability for the nearly 5000 Colorado employees of the combined airline. The companies have said that they believe the impact of the merger on frontline employees will be minimal and that they will offer performance-based incentive compensation programs. This kind of commitment to the employees who have seen them through recent challenges shows good faith, and it's important to our economy.

United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.

We ask that you let Attorney General Holder and Transportation Secretary LaHood know of our support for the merger and hope you will support it, too.

Sincerely,

Brandon C. Shaffer
President

Michael Johnston
Senator

Pitkin County

530 E. Main Street · Aspen, Colorado 81611-1948

June 9, 2010

To: All Members of the Colorado Congressional Delegation

We are writing to offer thoughts on the proposed merger between United Airlines and Continental Airlines, but more specifically on the need for high quality commercial airline service to protect the economic future of our State and our region.

As you know, communities need access to the national air transportation system to connect with the world's markets. The proposed merger of United Airlines and Continental Airlines has the potential to improve access. Should the merger expand the route system to the current 370 destinations around the world that are part of the United and Continental flight schedules, then the merger will be a positive one for our community.

We have long enjoyed a successful and productive relationship with United Airlines and we look forward to that continued relationship in the years to come. As a resort community, we clearly understand the importance of and value a healthy aviation industry.

In closing, we believe the proposed merger has the potential to benefit not only our community, but the region and State of Colorado as well. We encourage you to share your support of this proposal with Attorney General Holder and Transportation Secretary LaHood.

Sincerely,

BOARD OF COUNTY COMMISSIONERS

George Newman

George Newman, Chair

Administration
Suite 301
(970) 920-5200
fax 920-5198

County Commissioners
Suite 301
(970) 920-5200
fax 920-5198

County Attorney
Suite 302
(970) 920-5190
fax 920-5198

Finance and Use Tax
Suite 201
(970) 920-5220
fax 920-5230

May 24, 2010

The Honorable Michael Bennet
United States Senate
702 Hart Senate Office Building
Washington DC, 20510

Dear Senator Bennet:

I am writing to express the Colorado Competitive Council's (C3) support for the proposed merger of United Airlines and Continental Airlines.

This new company will benefit Colorado by creating a financially stronger, sustainable airline. As Denver International Airport (DIA) continues to grow, stability in the aviation industry will be key to DIA's future success. For businesses in Colorado, that stability means we can look forward to the combined airline providing access to 370 destinations around the globe and better business access for Colorado companies.

The combined airline's increased financial strength will also provide enhanced job stability for nearly 5,000 employees. We continue to have confidence that the impact of the merger on frontline employees will be minimal and that the new company will offer performance-based incentive compensation programs. This kind of commitment to the employees who have seen them through recent challenges shows good faith, and it is important to our local economy.

United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.

I ask that you let Attorney General Holder and Transportation Secretary LaHood know of C3's support for the merger and hope you will also support it.

Best regards,

Perry Pearce
Chairman

1445 Market Street, Denver, CO 80202 Phone 303.620.8071 Fax 303.534.3700 www.coloradocompetes.org
An Affiliate of the Denver Metro Chamber of Commerce

COLORADOCONCERN

Don Kortz
Co-Chairman, Colorado Concern
Chairman, Fuller Real Estate

Dan Ritchie
Co-Chairman, Colorado Concern
Chairman and CEO, Denver Center for the Performing Arts

Buck Hutchison
Treasurer, Colorado Concern
President, Hutchison-Western

Janice Sinden
Executive Director
Colorado Concern

Joe Blake
President
Colorado State University

Jeff Dorsey
President and CEO
HealthONE

Steve Farber
President
Brownstein Hyatt Farber Schreck

Pat Hamill
Chairman and CEO
Oakwood Homes

Barry Hirschfeld
President
A.B. Hirschfeld

Bill Hybl
Vice Chair
Broadmoor Hotel

Walt Imhoff
Retired
Stifel Nicolaus and Co.

Walter Isenberg
President and CEO
Sage Hospitality

David McReynolds
President
Columbine Health Plan

Larry A. Mizel
Chairman and CEO
M.D.C. Holdings

Kay Norton
President
University of Northern Colorado

Blair Richardson
Managing Partner
Bow River Capital

Dick Robinson
Co-CEO
Robinson Dairy

Richard M. Sapkin
Managing Principal
Edgemark Development

May 24, 2010

The Honorable Mark Udall
317 Hart Senate Office Bldg.
Washington, DC 20510

The Honorable Michael Bennet
702 Hart Senate Office Bldg.
Washington, DC 20510

The Honorable Diana DeGette
2335 Rayburn House Office Bldg.
Washington, DC 20515

Dear Senator Udall, Senator Bennet and Congresswoman DeGette,

We are writing to express our strong support for the proposed merger of United Airlines and Continental Airlines, because United Airlines is an important member of the business community in our state. We are confident that this merger will benefit the many businesses and workers in Colorado and provide support for our valued local economy.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. And for businesses in Colorado this means we can look forward to the combined airline providing access to 370 destinations around the globe.

United and Continental have very little overlap on routes. By coming together, they will offer a seamless global network with eight hubs across the country. Corporate travelers will have an easier time making connections, reaching customers and doing business, and that is exactly what we need in Colorado to keep our economy on the right path.

The combined airline's increased financial strength will also provide enhanced job stability for nearly 5000 employees of the combined airline. The companies have said they believe the impact of the merger on frontline employees will be minimal and that they will offer performance-based incentive compensation programs. This kind of commitment to the employees who have seen them through recent challenges shows good faith, and it's important to our local economy.

United and Continental are well-suited for this merger. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.

I ask that you let Attorney General Holder and Transportation Secretary LaHood know of the Denver Metro Chamber's support for the merger and hope you will support it, too.

Don Kortz
Co-Chairman

Colorado Concern | 140 East 19th Avenue, Suite 400, Denver, CO 80203
303.860.1201 | www.ColoradoConcern.com

DENVER METRO CHAMBER OF COMMERCE

May 24, 2010

The Honorable Diana DeGette
United States House of Representatives
2335 Rayburn House Office Building
Washington, D.C. 20515

Dear Representative DeGette:

I am writing to express the Denver Metro Chamber of Commerce's support for the proposed merger of United Airlines and Continental Airlines.

This new company will benefit Colorado by creating a financially stronger, sustainable airline. As Denver International Airport (DIA) continues to grow, stability in the aviation industry will be key to DIA's future success. For businesses in Colorado, that stability means we can look forward to the combined airline providing access to 370 destinations around the globe and better business access for Colorado companies.

The combined airline's increased financial strength will also provide enhanced job stability for nearly 5,000 employees. We continue to have confidence that the impact of the merger on frontline employees will be minimal and that the new company will offer performance-based incentive compensation programs. his kind of commitment to the employees who have seen them through recent challenges shows good faith, and it is important to our local economy.

United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.

I ask that you let Attorney General Holder and Transportation Secretary LaHood know of the Denver Metro Chamber's support for the merger and hope you will also support it.

Best regards,

Kelly J. Brough

Kelly J. Brough
President & CEO

Metro Denver
1445 Market Street, Denver, CO 80202 · 303 534-8500 · fax 303 534-3200 · www.denverchamber.org

Metro Denver
Economic Development Corporation

May 27, 2010

The Honorable Mark Udall
United States Senate
317 Hart Office Building
Washington, D.C. 20510

Dear Senator Udall:

On behalf of the Metro Denver Economic Development Corporation, I am writing to express support for the proposed merger of United Airlines and Continental Airlines.

The Metro Denver EDC's strategy in crafting the region's economic development efforts focuses on the types of industries to target for growth and retention. The aviation industry is one of our seven major industry clusters in the nine-county Metro Denver and Northern Colorado region key to our economic base.

The nine-county region ranked 10th out of the 50 largest metro areas for aviation employment concentration in 2009. With direct employment of about 15,690 aviation employees, the region ranked 11th out of the 50 largest metro areas in absolute employment. United and Continental Airlines employ approximately 4,600 people in Colorado,

We believe that a successful merger of United and Continental Airlines will result in a financially stronger and sustainable airline that will contribute to the continued growth and success of DIA.

The combined airline's access to 370 domestic and international destinations will play a key role in helping Colorado businesses stay competitive in today's global marketplace. Both companies have also worked together as Star Alliance members, and this merger will take that partnership to the next level.

We ask that you convey the Metro Denver Economic Development Corporation's support for the merger to Attorney General Holder and Transportation Secretary LaHood, and hope that you will also support it.

Sincerely,

Tom Clark

Tom Clark
Executive Vice President, Metro Denver EDC

1445 Market Street • Denver • CO, 80202
Tel: (303) 620 8083

VISIT DENVER
The Convention & Visitors Bureau

May 25, 2010

The Honorable Mark Udall
United States Senate
317 Hart Office Building
Washington, D.C. 20510

Dear Senator Udall,

On behalf of VISIT DENVER, The Convention & Visitors Bureau and our more than 1,200 business members, I am writing to express my support for the proposed merger of United Airlines and Continental Airlines. This merger will greatly benefit the businesses and workers in Denver and Colorado's tourism industry, currently the second largest industry in both the city and state. In Denver alone, the travel industry generates $3.1 billion in annual spending, while supporting 65,000 jobs.

United and Continental have very little overlap on routes. The merger of these two airlines will create a financially strong carrier providing access to 370 destinations around the globe.

Because of Denver's geographic isolation, 600 miles from another city our size, more than 50 percent of all Denver visitors arrive by air. This is twice the national average. Perhaps more than any other American city, Denver's economy depends on having good, accessible, convenient air service.

By coming together, Continental and United will offer a global network with eight hubs across the country. Corporate travelers, convention delegates and leisure visitors will have an easier time making connections, reaching customers, doing business, attending meetings, and enjoying vacations.

The combined airline will also provide job stability for its nearly 5000 Denver metro employees. The companies have said they believe the impact of the merger on frontline employees will be minimal and that they will offer performance-based incentive compensation programs.

1555 California Street, Suite 300, Denver, CO 80202-4264 | Main: 303.892.1112 | Fax: 303.892.1636

VISIT DENVER
The Convention & Visitors Bureau

From a tourism perspective, United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.

On behalf of Denver's tourism industry, we ask that you also let Attorney General Holder and Transportation Secretary LaHood know that VISIT DENVER strongly supports the merger and we hope that you will support it also.

Sincerely,

Richard W. Scharf
President & CEO

1555 California Street, Suite 300, Denver, CO 80202-4264 | Main: 303.892.1112 | Fax: 303.892.1636

DENVER
THE MILE HIGH CITY

May 24, 2010

The Honorable Michael Bennet
United States Senate
702 Hart Senate Office Building
Washington, DC 20510

Dear Senator Bennet:

I am writing to express my enthusiastic support for the proposed merger of United Airlines and Continental Airlines because of the benefits for the customers who use Denver International Airport.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation environment.

In the last ten years, turmoil in the airline industry has challenged airports large and small. The combined company will have the network breadth and financial strength to turn the tide. United and Continental will maintain service to all the communities they now serve with the possibility of adding domestic and international routes to their current 370 destinations around the world. This is good news for Denver International Airport and everyone who travels through our facility.

I ask that you let Attorney General Holder and Transportation Secretary LaHood know of DIA's support for the merger and hope you will support it, too.

Sincerely,

Kim Day
Manager of Aviation

DENVER
INTERNATIONAL
AIRPORT

Metro Denver
AVIATION COALITION

May 27, 2010

The Honorable Diana DeGette
United States House of Representatives
2335 Rayburn House Office Building
Washington, D.C. 20515

Dear Representative DeGette:

On behalf of the Metro Denver Aviation Coalition (MDAC), I am writing to express support for the proposed merger of United Airlines and Continental Airlines.

MDAC is a membership committee of the Metro Denver Economic Development Corporation dedicated to the continued growth of Metro Denver's aviation industry, and the success of Denver International Airport (DIA) and the region's general aviation and reliever airports. Its membership encompasses a broad spectrum of business leaders from both private and public sector who provide advocacy and support for aviation job growth planning, infrastructure development, and route expansion and retention.

We believe that a successful merger of United and Continental Airlines will result in a financially stronger and sustainable airline that will contribute to the continued growth and success of DIA. The new airline's increased financial strength will positively impact the job stability of nearly 5,000 employees, and we are also encouraged by the new company's intent to offer performance-based incentive compensation programs.

In this challenging economic environment, airline stability and access to key routes are increasingly important for business. The combined airline's access to 370 domestic and international destinations will play a key role in helping Colorado businesses stay competitive in today's global marketplace. Both companies have also worked together as Star Alliance members, and this merger will take that partnership to the next level.

We ask that you convey the Metro Denver Aviation Coalition's support for the merger to Attorney General Holder and Transportation Secretary LaHood, and hope that you will also support it.

Sincerely,

Michael J. Caflisch
Chair, Metro Denver Aviation Coalition

1445 Market Street • Denver • CO, 80202
Tel: (303) 620 8083

*1000 AIRPORT ROAD, BOX 1*
*DURANGO, CO* 81303
***Phone:*** 970-382-6069
***FAX:*** 970-247-8145
*DENTRB@ci.durango.co.us*

**Ron Dent, AAE**
**Director of Aviation**

June 4, 2010

The Honorable John Salazar
326 Cannon Office Building
Washington, DC 20515

Dear Representative Salazar:

I am writing to express my full support for the proposed merger of United Airlines and Continental Airlines because of the benefits for the customers who use Durango-La Plata County Airport.

The merger should create new opportunities for travel to and from Durango by both leisure and business travelers, stimulating economic growth for the Airport and the region. There is significant demand for better service to Texas destinations, driven primarily by the oil and gas industry in this area. We are optimistic that this merger will result in increased access both to our Texas markets to a larger number of international destinations. The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation environment.

The Durango-La Plata County Airport is currently one of the fastest growing airports in the region but continued growth will depend upon the continuing economic health of the airlines that service this market. Durango has experienced many recent disruptions in air service. In our opinion, the strength of the combined company will reduce the volatility of our air service and create new opportunities for growth. United and Continental will maintain service to all the communities they now serve with the possibility of adding domestic and international routes to their current 370 destinations around the world. This is good news for the Durango-La Plata County Airport and everyone who flies from here.

We request that you inform Attorney General Holder and Transportation Secretary LaHood of the Durango-La Plata County Airport's support for this merger and we hope you will support it, too.

Sincerely,

Ron Dent, A.A.E.
Director of Aviation

YAMPA VALLEY
REGIONAL AIRPORT
STEAMBOAT SPRINGS • HAYDEN • CRAIG

Board of County Commissioners
Nancy J. Stahoviak, Chairman/Diane Mitsch Bush/Douglas B. Monger

Airport Manager
D. E. Ruppel

June 8, 2010

The Honorable Michael Bennet
702 Hart Senate Office Building
Washington, DC 20510

Dear Senator Bennet

I am writing to express my support for the proposed merger of United Airlines and Continental Airlines because of the benefits for the customers who use Yampa Valley Regional Airport.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation environment. In the last ten years, airlines have cut back on service, which has harmed the operations of airports large and small. The combined company will have the network breadth and financial strength to better sustain operations during difficult economic times. United and Continental will maintain service to all the communities they now serve with the possibility of adding domestic and international routes to their current 370 destinations around the world. This is good news for the Yampa Valley Regional Airport and everyone who flies from here.

I ask that you let Attorney General Holder and Transportation Secretary LaHood know of our support for the merger and hope you will support it, too.

Sincerely,

D. E. Ruppel
Airport Manager

Cc: BCC
Tom Sullivan
File

P.O. Box 1060, 11005 RCR 51A, Hayden, Colorado 81639 970-276-5000 970-276-5030 FAX

June 2, 2010

The Honorable Mark Udall
317 Hart Senate Office Building
Washington, DC 20510

Dear Senator Udall:

I am writing to express my enthusiastic support for the proposed merger of United Airlines and Continental Airlines.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. The merger could allow us to build on our current relationship and become a stronger partner with the combined airline. Given the upheaval in the airline industry of the past decade, this is particularly good news for our company and our 350 employees in Miami, FL, Atlanta, GA and Dallas, TX.

United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level, and we want to be a part of their future success.

I urge you to support a fair, expeditious and ultimately favorable regulatory review so that our business is able to realize the benefits of the merger without delay. I ask that you let Attorney General Holder and Transportation Secretary LaHood know of the Aero Maintenance Group support for the merger and hope you will support it, too.

Sincerely,

Peter Metzger
Executive Vice President

2200 NW 84th Avenue, Miami, FL 33122 TEL (305) 436-5464 FAX (305) 436-6064 www.aerotechnologies.net

CONFIDENTIAL: DO NOT DISTRIBUTE

GAMBRO

June 3, 2010

Gambro
14143 Denver West Parkway
Lakewood CO 80401
USA
www.gambro.com

Tel (303) 222-6500

The Honorable Mark Udall
317 Hart Senate Office Building
Washington, DC 20510

Dear Senator Udall:

I am writing to express my support for the proposed merger of United Airlines and Continental Airlines because it will benefit Gambro and our employees.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. And for Gambro, this means we can rely on the combined airline to provide the foundation for opportunity that comes with access to 370 destinations around the globe.

United and Continental have very little overlap on routes and are well-suited to combine. By coming together, they will offer a seamless global network with eight hubs across the country and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. Corporate travelers will have an easier time making connections, reaching customers and doing business, which will benefit Gambro and the business travel industry.

The combined airline will also be positioned to continue its investment in globally competitive products, upgrade technology, refurbish and replace older aircraft, and implement best-in-class practices of both airlines. [It will also offer the industry's leading loyalty program, providing access to more benefits than any other program, with more ways to earn and redeem miles.] [As a member of the Star Alliance, the combined airline will provide loyalty program members with the opportunity to use miles for award travel with partner airlines to more than 1,000 destinations around the world.]

I urge you to support a fair, expeditious and ultimately favorable regulatory review so that our business is able to realize the benefits of the merger without delay. I ask that you let Attorney General Holder and Transportation Secretary LaHood know of our support for the merger and hope you will support it, too.

Sincerely,

Nick Mendez
President Global Acute & Americas

May 30, 2010

The Honorable Michael Bennet
702 Hart Senate Office Building
Washington, DC 20510

Dear Senator Bennet:

I am writing to express my enthusiastic support for the proposed merger of United Airlines and Continental Airlines because it will benefit Hunter Douglas and our employees.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. And for Hunter Douglas this means we can rely on the combined airline to provide the foundation for opportunity that comes with access to 370 destinations around the globe.

United and Continental have very little overlap on routes and are well-suited to combine. By coming together, they will offer a seamless global network with eight hubs across the country and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. Corporate travelers will have an easier time making connections, reaching customers and doing business, which will benefit Hunter Douglas and the business travel industry.

The combined airline will also be positioned to continue its investment in globally competitive products, upgrade technology, refurbish and replace older aircraft, and implement best-in-class practices of both airlines. [It will also offer the industry's leading loyalty program, providing access to more benefits than any other program, with more ways to earn and redeem miles.] [As a member of the Star Alliance, the combined airline will provide loyalty program members with the opportunity to use miles for award travel with partner airlines to more than 1,000 destinations around the world.]

I urge you to support a fair, expeditious and ultimately favorable regulatory review so that our business is able to realize the benefits of the merger without delay. I ask that you let Attorney General Holder and Transportation Secretary LaHood know of Hunter Douglas' support for the merger and hope you will support it, too.

Sincerely,

Cheryl Smith
Travel Manager, Hunter Douglas
One Duette Way
Broomfield, CO 80020

June 7, 2010

The Honorable Michael Bennet
United States Senate
702 Hart Senate Office Building
Washington, DC 20510

Dear Senator Bennet,

I am writing to express my support for the proposed merger of United Airlines and Continental Airlines because it will benefit the businesses and residents of our state, the employees of the combined airline and our Colorado economy.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. And for businesses and residents in Denver this means we can look forward to the combined airline providing access to 370 destinations around the glove.

United and Continental have very little overlap on routes. By coming together, they will offer a seamless global network with eight hubs across the country. Corporate travelers will have an easier time making connections, reaching customers and doing business, while tourists will find it more convenient to visit our city/state. This is exactly what we need to keep our economy on the right path.

The combined airline's increased financial strength will also provide enhanced job stability for the nearly 5000 Colorado employees of the combined airline. The companies have said that they believe the impact of the merger on frontline employees will be minimal and that they will offer performance-based incentive compensation programs. This kind of commitment to the employees who have seen them through the recent challenges shows good faith, and it's important to our economy.

United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.

I ask that you let Attorney General Holder and Transportation Secretary LaHood know of my support for the merger and hope you will support it, too.

Sincerely,

Jerre Stead
Chairman and CEO

Prospect Air

June 1, 2010

The Honorable Michael Bennet
702 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Bennet:

I am writing to express my enthusiastic support for the proposed merger of United Airlines and Continental Airlines.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. The merger could allow us to build on our current relationship and become a stronger partner with the combined airline. Given the upheaval in the airline industry of the past decade, this is particularly good news for our company and our employees in Denver, Colorado.

United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level, and we want to be a part of their future success.

I urge you to support a fair, expeditious and ultimately favorable regulatory review so that our business is able to realize the benefits of the merger without delay. I ask that you let Attorney General Holder and Transportation Secretary LaHood know of Prospect Airport Services, Inc. support for the merger and hope you will support it, too.

Sincerely,

Vicki L. Strobel
President

Tomkins

1551 Wewatta Street
Denver, Colorado 80202

Tel +1 303 744 5790
Fax +1 303 744 4464
jzimmerman@tomkins.co.uk
www.tomkins.co.uk

**John W. Zimmerman**
Chief Financial Officer

June 3, 2010

The Honorable Diana DeGette
2335 Rayburn House Office Building
Washington DC 20515

Dear Representative DeGette,

I am writing to express my enthusiastic support for the proposed merger of United Airlines and Continental Airlines because it will benefit Tomkins and our employees.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. And for Tomkins, this means we can rely on the combined airline to provide the foundation for opportunity that comes with access to 370 destinations around the globe.

United and Continental have very little overlap on routes and are well-suited to combine. By coming together, they will offer a seamless global network with eight hubs across the country and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. Corporate travelers will have an easier time making connections, reaching customers and doing business, which will benefit Tomkins and the business travel industry.

The combined airline will also be positioned to continue its investment in globally competitive products, upgrade technology, refurbish and replace older aircraft, and implement best-in-class practices of both airlines. It will also offer the industry's leading loyalty program, providing access to more benefits than any other program, with more ways to earn and redeem miles. As a member of the Star Alliance, the combined airline will provide loyalty program members with the opportunity to use miles for award travel with partner airlines to more than 1,000 destinations around the world.

I urge you to support a fair, expeditious and ultimately favorable regulatory review so that our business is able to realize the benefits of the merger without delay. I ask that you let Attorney General Holder and Transportation Secretary LaHood know of our support for the merger and hope you will support it, too.

Sincerely,

John W. Zimmerman
Chief Financial Officer

# STATE OF COLORADO

**OFFICE OF THE GOVERNOR**
136 State Capitol Building
Denver, Colorado 80203
(303) 866 - 2471
(303) 866 - 2003 fax

Bill Ritter, Jr.
Governor

May 24, 2010

The Honorable Ed Perlmutter
United States House of Representatives
415 Cannon House Office Building
Washington, D.C. 20515-0607

Dear Representative Perlmutter:

I am writing to let you know of my support for the proposed merger of United Airlines and Continental Airlines. I believe this merger will benefit Colorado citizens and businesses, the employees of the combined airline and the overall economy of our state.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. And for businesses and residents in Colorado this means we can look forward to the combined airline providing access to 370 destinations around the globe.

United and Continental have very little overlap on routes. By coming together, they will offer a seamless global network with eight hubs across the country. Corporate travelers will have an easier time making connections, reaching customers and doing business, while tourists will find it more convenient to visit Colorado. This is exactly what we need to keep our economy on the right path.

The combined airline's increased financial strength will also provide enhanced job stability for the nearly 5000 Colorado employees of the combined airline. The companies have indicated to me that they believe the impact of the merger on frontline employees will be minimal and that they will offer performance-based incentive compensation programs. This kind of commitment to the employees who have seen them through recent challenges shows good faith, and is also important to our economy.

United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.

I ask that you let Attorney General Holder and Transportation Secretary LaHood know of my support for the merger and hope you will support it as well.

Sincerely,

Bill Ritter, Jr.
Governor

John W. Hickenlooper
MAYOR

City and County of Denver
OFFICE OF THE MAYOR
CITY AND COUNTY BUILDING
DENVER, COLORADO • 80202-5390
TELEPHONE: 720-865-9000 • FAX: 720-865-9040
TTY/TTD: 720-865-9010

May 24, 2010

The Honorable Mark Udall
United States Senate
317 Hart Senate Office Building
Washington, DC 20510

Dear Senator Udall:

I am writing to express my support for the proposed merger of United Airlines and Continental Airlines because it will benefit the businesses and residents of our state, the employees of the combined airline and our Colorado economy.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. And for businesses and residents in Denver this means we can look forward to the combined airline providing access to 370 destinations around the globe.

United and Continental have very little overlap on routes. By coming together, they will offer a seamless global network with eight hubs across the country. Corporate travelers will have an easier time making connections, reaching customers and doing business, while tourists will find it more convenient to visit our city/state. This is exactly what we need to keep our economy on the right path.

The combined airline's increased financial strength will also provide enhanced job stability for the nearly 5000 Colorado employees of the combined airline. The companies have said that they believe the impact of the merger on frontline employees will be minimal and that they will offer performance-based incentive compensation programs. This kind of commitment to the employees who have seen them through recent challenges shows good faith, and it's important to our economy.

United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.

I ask that you let Attorney General Holder and Transportation Secretary LaHood know of my support for the merger and hope you will support it, too.

Sincerely,

John W. Hickenlooper
Mayor

**BRANDON C. SHAFFER**
SENATE DISTRICT 17
brandon@brandonshaffer.com

STATE CAPITOL BUILDING, ROOM 257
200 E. COLFAX AVENUE
DENVER, COLORADO 80203
(303) 866-5291

**SENATE**
**STATE OF COLORADO**
**DENVER**

PRESIDENT OF THE SENATE

May 25, 2010

The Honorable Mark Udall
United States Senate
317 Hart Office Building
Washington, D.C. 20510

We are writing to express our support for the proposed merger of United Airlines and Continental Airlines because it will benefit the businesses and residents of our state, the employees of the combined airline and our Colorado economy.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. For businesses and residents in the Denver metro area, this means we can look forward to the combined airline providing access to 370 destinations around the globe.

United and Continental have very little overlap on routes. By coming together, they will offer a seamless global network with eight hubs across the country. Corporate travelers will have an easier time making connections, reaching customers and doing business, while tourists will find it more convenient to visit our city/state. This is exactly what we need to keep our economy on the right path.

The combined airline's increased financial strength will also provide enhanced job stability for the nearly 5000 Colorado employees of the combined airline. The companies have said that they believe the impact of the merger on frontline employees will be minimal and that they will offer performance-based incentive compensation programs. This kind of commitment to the employees who have seen them through recent challenges shows good faith, and it's important to our economy.

United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.

We ask that you let Attorney General Holder and Transportation Secretary LaHood know of our support for the merger and hope you will support it, too.

Sincerely,

Brandon C. Shaffer
President

Michael Johnston
Senator

# Pitkin County

530 E. Main Street · Aspen, Colorado 81611-1948

June 9, 2010

To: All Members of the Colorado Congressional Delegation

We are writing to offer thoughts on the proposed merger between United Airlines and Continental Airlines, but more specifically on the need for high quality commercial airline service to protect the economic future of our State and our region.

As you know, communities need access to the national air transportation system to connect with the world's markets. The proposed merger of United Airlines and Continental Airlines has the potential to improve access. Should the merger expand the route system to the current 370 destinations around the world that are part of the United and Continental flight schedules, then the merger will be a positive one for our community.

We have long enjoyed a successful and productive relationship with United Airlines and we look forward to that continued relationship in the years to come. As a resort community, we clearly understand the importance of and value a healthy aviation industry.

In closing, we believe the proposed merger has the potential to benefit not only our community, but the region and State of Colorado as well. We encourage you to share your support of this proposal with Attorney General Holder and Transportation Secretary LaHood.

Sincerely,

BOARD OF COUNTY COMMISSIONERS

George Newman

George Newman, Chair

Administration
Suite 301
(970) 920-5200
fax 920-5198

County Commissioners
Suite 301
(970) 920-5200
fax 920-5198

County Attorney
Suite 302
(970) 920-5190
fax 920-5198

Finance and Use Tax
Suite 201
(970) 920-5220
fax 920-5230

May 24, 2010

The Honorable Michael Bennet
United States Senate
702 Hart Senate Office Building
Washington DC, 20510

Dear Senator Bennet:

I am writing to express the Colorado Competitive Council's (C3) support for the proposed merger of United Airlines and Continental Airlines.

This new company will benefit Colorado by creating a financially stronger, sustainable airline. As Denver International Airport (DIA) continues to grow, stability in the aviation industry will be key to DIA's future success. For businesses in Colorado, that stability means we can look forward to the combined airline providing access to 370 destinations around the globe and better business access for Colorado companies.

The combined airline's increased financial strength will also provide enhanced job stability for nearly 5,000 employees. We continue to have confidence that the impact of the merger on frontline employees will be minimal and that the new company will offer performance-based incentive compensation programs. This kind of commitment to the employees who have seen them through recent challenges shows good faith, and it is important to our local economy.

United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.

I ask that you let Attorney General Holder and Transportation Secretary LaHood know of C3's support for the merger and hope you will also support it.

Best regards,

Perry Pearce
Chairman

1445 Market Street, Denver, CO 80202 Phone 303.820.8071 Fax 303.534.3700 www.coloradocompetes.org
An Affiliate of the Denver Metro Chamber of Commerce

COLORADOCONCERN

Don Kortz
Co-Chairman, Colorado Concern
Chairman, Fuller Real Estate

Dan Ritchie
Co-Chairman, Colorado Concern
Chairman and CEO, Denver Center for the Performing Arts

Buck Hutchison
Treasurer, Colorado Concern
President, Hutchison-Western

Janice Sinden
Executive Director
Colorado Concern

Joe Blake
President
Colorado State University

Jeff Dorsey
President and CEO
HealthONE

Steve Farber
President
Brownstein Hyatt Farber Schreck

Pat Hamill
Chairman and CEO
Oakwood Homes

Barry Hirschfeld
President
A.B. Hirschfeld

Bill Hybl
Vice Chair
Broadmoor Hotel

Walt Imhoff
Retired
Stifel Nicolaus and Co.

Walter Isenberg
President and CEO
Sage Hospitality

David McReynolds
President
Columbine Health Plan

Larry A. Mizel
Chairman and CEO
M.D.C. Holdings

Kay Norton
President
University of Northern Colorado

Blair Richardson
Managing Partner
Bow River Capital

Dick Robinson
Co-CEO
Robinson Dairy

Richard M. Sapkin
Managing Principal
Edgemark Development

May 24, 2010

The Honorable Mark Udall
317 Hart Senate Office Bldg.
Washington, DC 20510

The Honorable Michael Bennet
702 Hart Senate Office Bldg.
Washington, DC 20510

The Honorable Diana DeGette
2335 Rayburn House Office Bldg.
Washington, DC 20515

Dear Senator Udall, Senator Bennet and Congresswoman DeGette,

We are writing to express our strong support for the proposed merger of United Airlines and Continental Airlines, because United Airlines is an important member of the business community in our state. We are confident that this merger will benefit the many businesses and workers in Colorado and provide support for our valued local economy.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. And for businesses in Colorado this means we can look forward to the combined airline providing access to 370 destinations around the globe.

United and Continental have very little overlap on routes. By coming together, they will offer a seamless global network with eight hubs across the country. Corporate travelers will have an easier time making connections, reaching customers and doing business, and that is exactly what we need in Colorado to keep our economy on the right path.

The combined airline's increased financial strength will also provide enhanced job stability for nearly 5000 employees of the combined airline. The companies have said they believe the impact of the merger on frontline employees will be minimal and that they will offer performance-based incentive compensation programs. This kind of commitment to the employees who have seen them through recent challenges shows good faith, and it's important to our local economy.

United and Continental are well-suited for this merger. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.

I ask that you let Attorney General Holder and Transportation Secretary LaHood know of the Denver Metro Chamber's support for the merger and hope you will support it, too.

Don Kortz
Co-Chairman

Colorado Concern | 140 East 19th Avenue, Suite 400, Denver, CO 80203
303.860.1201 | www.ColoradoConcern.com

DENVER METRO CHAMBER OF COMMERCE

May 24, 2010

The Honorable Diana DeGette
United States House of Representatives
2335 Rayburn House Office Building
Washington, D.C. 20515

Dear Representative DeGette:

I am writing to express the Denver Metro Chamber of Commerce's support for the proposed merger of United Airlines and Continental Airlines.

This new company will benefit Colorado by creating a financially stronger, sustainable airline. As Denver International Airport (DIA) continues to grow, stability in the aviation industry will be key to DIA's future success. For businesses in Colorado, that stability means we can look forward to the combined airline providing access to 370 destinations around the globe and better business access for Colorado companies.

The combined airline's increased financial strength will also provide enhanced job stability for nearly 5,000 employees. We continue to have confidence that the impact of the merger on frontline employees will be minimal and that the new company will offer performance-based incentive compensation programs. his kind of commitment to the employees who have seen them through recent challenges shows good faith, and it is important to our local economy.

United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.

I ask that you let Attorney General Holder and Transportation Secretary LaHood know of the Denver Metro Chamber's support for the merger and hope you will also support it.

Best regards,

Kelly J. Brough

Kelly J. Brough
President & CEO

Metro Denver
1445 Market Street, Denver, CO 80202 · 303 534-8500 · fax 303 534-3200 · www.denverchamber.org

Metro Denver
Economic Development Corporation

May 27, 2010

The Honorable Mark Udall
United States Senate
317 Hart Office Building
Washington, D.C. 20510

Dear Senator Udall:

On behalf of the Metro Denver Economic Development Corporation, I am writing to express support for the proposed merger of United Airlines and Continental Airlines.

The Metro Denver EDC's strategy in crafting the region's economic development efforts focuses on the types of industries to target for growth and retention. The aviation industry is one of our seven major industry clusters in the nine-county Metro Denver and Northern Colorado region key to our economic base.

The nine-county region ranked 10th out of the 50 largest metro areas for aviation employment concentration in 2009. With direct employment of about 15,690 aviation employees, the region ranked 11th out of the 50 largest metro areas in absolute employment. United and Continental Airlines employ approximately 4,600 people in Colorado,

We believe that a successful merger of United and Continental Airlines will result in a financially stronger and sustainable airline that will contribute to the continued growth and success of DIA.

The combined airline's access to 370 domestic and international destinations will play a key role in helping Colorado businesses stay competitive in today's global marketplace. Both companies have also worked together as Star Alliance members, and this merger will take that partnership to the next level.

We ask that you convey the Metro Denver Economic Development Corporation's support for the merger to Attorney General Holder and Transportation Secretary LaHood, and hope that you will also support it.

Sincerely,

Tom Clark

Tom Clark
Executive Vice President, Metro Denver EDC

1445 Market Street • Denver • CO, 80202
Tel: (303) 620 8083

VISIT DENVER
The Convention & Visitors Bureau

May 25, 2010

The Honorable Mark Udall
United States Senate
317 Hart Office Building
Washington, D.C. 20510

Dear Senator Udall,

On behalf of VISIT DENVER, The Convention & Visitors Bureau and our more than 1,200 business members, I am writing to express my support for the proposed merger of United Airlines and Continental Airlines. This merger will greatly benefit the businesses and workers in Denver and Colorado's tourism industry, currently the second largest industry in both the city and state. In Denver alone, the travel industry generates $3.1 billion in annual spending, while supporting 65,000 jobs.

United and Continental have very little overlap on routes. The merger of these two airlines will create a financially strong carrier providing access to 370 destinations around the globe.

Because of Denver's geographic isolation, 600 miles from another city our size, more than 50 percent of all Denver visitors arrive by air. This is twice the national average. Perhaps more than any other American city, Denver's economy depends on having good, accessible, convenient air service.

By coming together, Continental and United will offer a global network with eight hubs across the country. Corporate travelers, convention delegates and leisure visitors will have an easier time making connections, reaching customers, doing business, attending meetings, and enjoying vacations.

The combined airline will also provide job stability for its nearly 5000 Denver metro employees. The companies have said they believe the impact of the merger on frontline employees will be minimal and that they will offer performance-based incentive compensation programs.

VISITDENVER.com

1555 California Street, Suite 300, Denver, CO 80202-4264 | Main: 303.892.1112 | Fax: 303.892.1636

VISIT DENVER
The Convention & Visitors Bureau

From a tourism perspective, United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.

On behalf of Denver's tourism industry, we ask that you also let Attorney General Holder and Transportation Secretary LaHood know that VISIT DENVER strongly supports the merger and we hope that you will support it also.

Sincerely,

Richard W. Scharf
President & CEO

1555 California Street, Suite 300, Denver, CO 80202-4264 | Main: 303.892.1112 | Fax: 303.892.1636

DENVER
THE MILE HIGH CITY

May 24, 2010

The Honorable Michael Bennet
United States Senate
702 Hart Senate Office Building
Washington, DC 20510

Dear Senator Bennet:

I am writing to express my enthusiastic support for the proposed merger of United Airlines and Continental Airlines because of the benefits for the customers who use Denver International Airport.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation environment.

In the last ten years, turmoil in the airline industry has challenged airports large and small. The combined company will have the network breadth and financial strength to turn the tide. United and Continental will maintain service to all the communities they now serve with the possibility of adding domestic and international routes to their current 370 destinations around the world. This is good news for Denver International Airport and everyone who travels through our facility.

I ask that you let Attorney General Holder and Transportation Secretary LaHood know of DIA's support for the merger and hope you will support it, too.

Sincerely,

Kim Day
Manager of Aviation

DENVER
INTERNATIONAL
AIRPORT

Metro Denver
AVIATION COALITION

May 27, 2010

The Honorable Diana DeGette
United States House of Representatives
2335 Rayburn House Office Building
Washington, D.C. 20515

Dear Representative DeGette:

On behalf of the Metro Denver Aviation Coalition (MDAC), I am writing to express support for the proposed merger of United Airlines and Continental Airlines.

MDAC is a membership committee of the Metro Denver Economic Development Corporation dedicated to the continued growth of Metro Denver's aviation industry, and the success of Denver International Airport (DIA) and the region's general aviation and reliever airports. Its membership encompasses a broad spectrum of business leaders from both private and public sector who provide advocacy and support for aviation job growth planning, infrastructure development, and route expansion and retention.

We believe that a successful merger of United and Continental Airlines will result in a financially stronger and sustainable airline that will contribute to the continued growth and success of DIA. The new airline's increased financial strength will positively impact the job stability of nearly 5,000 employees, and we are also encouraged by the new company's intent to offer performance-based incentive compensation programs.

In this challenging economic environment, airline stability and access to key routes are increasingly important for business. The combined airline's access to 370 domestic and international destinations will play a key role in helping Colorado businesses stay competitive in today's global marketplace. Both companies have also worked together as Star Alliance members, and this merger will take that partnership to the next level.

We ask that you convey the Metro Denver Aviation Coalition's support for the merger to Attorney General Holder and Transportation Secretary LaHood, and hope that you will also support it.

Sincerely,

Michael J. Caflisch
Chair, Metro Denver Aviation Coalition

1445 Market Street • Denver • CO, 80202
Tel: (303) 620 8083

Durango La Plata County Airport

*1000 AIRPORT ROAD, BOX 1*
*DURANGO, CO* 81303
*Phone:* 970-382-6069
*FAX:* 970-247-8145
*DENTRB@ci.durango.co.us*

**Ron Dent, AAE**
**Director of Aviation**

June 4, 2010

The Honorable John Salazar
326 Cannon Office Building
Washington, DC 20515

Dear Representative Salazar:

I am writing to express my full support for the proposed merger of United Airlines and Continental Airlines because of the benefits for the customers who use Durango-La Plata County Airport.

The merger should create new opportunities for travel to and from Durango by both leisure and business travelers, stimulating economic growth for the Airport and the region. There is significant demand for better service to Texas destinations, driven primarily by the oil and gas industry in this area. We are optimistic that this merger will result in increased access both to our Texas markets to a larger number of international destinations. The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation environment.

The Durango-La Plata County Airport is currently one of the fastest growing airports in the region but continued growth will depend upon the continuing economic health of the airlines that service this market. Durango has experienced many recent disruptions in air service. In our opinion, the strength of the combined company will reduce the volatility of our air service and create new opportunities for growth. United and Continental will maintain service to all the communities they now serve with the possibility of adding domestic and international routes to their current 370 destinations around the world. This is good news for the Durango-La Plata County Airport and everyone who flies from here.

We request that you inform Attorney General Holder and Transportation Secretary LaHood of the Durango-La Plata County Airport's support for this merger and we hope you will support it, too.

Sincerely,

Ron Dent, A.A.E.
Director of Aviation

YAMPA VALLEY
REGIONAL AIRPORT
STEAMBOAT SPRINGS • HAYDEN • CRAIG

Board of County Commissioners
Nancy J. Stahoviak, Chairman/Diane Mitsch Bush/Douglas B. Monger

Airport Manager
D. E. Ruppel

June 8, 2010

The Honorable Michael Bennet
702 Hart Senate Office Building
Washington, DC 20510

Dear Senator Bennet

I am writing to express my support for the proposed merger of United Airlines and Continental Airlines because of the benefits for the customers who use Yampa Valley Regional Airport.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation environment. In the last ten years, airlines have cut back on service, which has harmed the operations of airports large and small. The combined company will have the network breadth and financial strength to better sustain operations during difficult economic times. United and Continental will maintain service to all the communities they now serve with the possibility of adding domestic and international routes to their current 370 destinations around the world. This is good news for the Yampa Valley Regional Airport and everyone who flies from here.

I ask that you let Attorney General Holder and Transportation Secretary LaHood know of our support for the merger and hope you will support it, too.

Sincerely,

D. E. Ruppel
Airport Manager

Cc: BCC
Tom Sullivan
File

P.O. Box 1060, 11005 RCR 51A, Hayden, Colorado 81639 970-276-5000 970-276-5030 FAX

June 2, 2010

The Honorable Mark Udall
317 Hart Senate Office Building
Washington, DC 20510

Dear Senator Udall:

I am writing to express my enthusiastic support for the proposed merger of United Airlines and Continental Airlines.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. The merger could allow us to build on our current relationship and become a stronger partner with the combined airline. Given the upheaval in the airline industry of the past decade, this is particularly good news for our company and our 350 employees in Miami, FL, Atlanta, GA and Dallas, TX.

United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level, and we want to be a part of their future success.

I urge you to support a fair, expeditious and ultimately favorable regulatory review so that our business is able to realize the benefits of the merger without delay. I ask that you let Attorney General Holder and Transportation Secretary LaHood know of the Aero Maintenance Group support for the merger and hope you will support it, too.

Sincerely,

Peter Metzger
Executive Vice President

2200 NW 84th Avenue, Miami, FL 33122 TEL (305) 436-5464 FAX (305) 436-6064 www.aerotechnologies.net

CONFIDENTIAL: DO NOT DISTRIBUTE

June 3, 2010

Gambro
14143 Denver West Parkway
Lakewood CO 80401
USA
www.gambro.com

Tel (303) 222-6500

The Honorable Mark Udall
317 Hart Senate Office Building
Washington, DC 20510

Dear Senator Udall:

I am writing to express my support for the proposed merger of United Airlines and Continental Airlines because it will benefit Gambro and our employees.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. And for Gambro, this means we can rely on the combined airline to provide the foundation for opportunity that comes with access to 370 destinations around the globe.

United and Continental have very little overlap on routes and are well-suited to combine. By coming together, they will offer a seamless global network with eight hubs across the country and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. Corporate travelers will have an easier time making connections, reaching customers and doing business, which will benefit Gambro and the business travel industry.

The combined airline will also be positioned to continue its investment in globally competitive products, upgrade technology, refurbish and replace older aircraft, and implement best-in-class practices of both airlines. [It will also offer the industry's leading loyalty program, providing access to more benefits than any other program, with more ways to earn and redeem miles.] [As a member of the Star Alliance, the combined airline will provide loyalty program members with the opportunity to use miles for award travel with partner airlines to more than 1,000 destinations around the world.]

I urge you to support a fair, expeditious and ultimately favorable regulatory review so that our business is able to realize the benefits of the merger without delay. I ask that you let Attorney General Holder and Transportation Secretary LaHood know of our support for the merger and hope you will support it, too.

Sincerely,

Nick Mendez
President Global Acute & Americas

May 30, 2010

The Honorable Michael Bennet
702 Hart Senate Office Building
Washington, DC 20510

Dear Senator Bennet:

I am writing to express my enthusiastic support for the proposed merger of United Airlines and Continental Airlines because it will benefit Hunter Douglas and our employees.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. And for Hunter Douglas this means we can rely on the combined airline to provide the foundation for opportunity that comes with access to 370 destinations around the globe.

United and Continental have very little overlap on routes and are well-suited to combine. By coming together, they will offer a seamless global network with eight hubs across the country and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. Corporate travelers will have an easier time making connections, reaching customers and doing business, which will benefit Hunter Douglas and the business travel industry.

The combined airline will also be positioned to continue its investment in globally competitive products, upgrade technology, refurbish and replace older aircraft, and implement best-in-class practices of both airlines. [It will also offer the industry's leading loyalty program, providing access to more benefits than any other program, with more ways to earn and redeem miles.] [As a member of the Star Alliance, the combined airline will provide loyalty program members with the opportunity to use miles for award travel with partner airlines to more than 1,000 destinations around the world.]

I urge you to support a fair, expeditious and ultimately favorable regulatory review so that our business is able to realize the benefits of the merger without delay. I ask that you let Attorney General Holder and Transportation Secretary LaHood know of Hunter Douglas' support for the merger and hope you will support it, too.

Sincerely,

Cheryl Smith
Travel Manager, Hunter Douglas
One Duette Way
Broomfield, CO 80020

IHS

June 7, 2010

The Honorable Michael Bennet
United States Senate
702 Hart Senate Office Building
Washington, DC 20510

Dear Senator Bennet,

I am writing to express my support for the proposed merger of United Airlines and Continental Airlines because it will benefit the businesses and residents of our state, the employees of the combined airline and our Colorado economy.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. And for businesses and residents in Denver this means we can look forward to the combined airline providing access to 370 destinations around the glove.

United and Continental have very little overlap on routes. By coming together, they will offer a seamless global network with eight hubs across the country. Corporate travelers will have an easier time making connections, reaching customers and doing business, while tourists will find it more convenient to visit our city/state. This is exactly what we need to keep our economy on the right path.

The combined airline's increased financial strength will also provide enhanced job stability for the nearly 5000 Colorado employees of the combined airline. The companies have said that they believe the impact of the merger on frontline employees will be minimal and that they will offer performance-based incentive compensation programs. This kind of commitment to the employees who have seen them through the recent challenges shows good faith, and it's important to our economy.

United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level.

I ask that you let Attorney General Holder and Transportation Secretary LaHood know of my support for the merger and hope you will support it, too.

Sincerely,

Jerre Stead
Chairman and CEO

Prospect Air

June 1, 2010

The Honorable Michael Bennet
702 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Bennet:

I am writing to express my enthusiastic support for the proposed merger of United Airlines and Continental Airlines.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. The merger could allow us to build on our current relationship and become a stronger partner with the combined airline. Given the upheaval in the airline industry of the past decade, this is particularly good news for our company and our employees in Denver, Colorado.

United and Continental are well-suited to combine. They have the most complementary route networks of any U.S. carriers and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. The two companies have also worked together as members of the Star Alliance. This merger will take their partnership to the next level, and we want to be a part of their future success.

I urge you to support a fair, expeditious and ultimately favorable regulatory review so that our business is able to realize the benefits of the merger without delay. I ask that you let Attorney General Holder and Transportation Secretary LaHood know of Prospect Airport Services, Inc. support for the merger and hope you will support it, too.

Sincerely,

Vicki L. Strobel
President

Tomkins

1551 Wewatta Street
Denver, Colorado 80202

Tel +1 303 744 5790
Fax +1 303 744 4464
jzimmerman@tomkins.co.uk
www.tomkins.co.uk

**John W. Zimmerman**
Chief Financial Officer

June 3, 2010

The Honorable Diana DeGette
2335 Rayburn House Office Building
Washington DC 20515

Dear Representative DeGette,

I am writing to express my enthusiastic support for the proposed merger of United Airlines and Continental Airlines because it will benefit Tomkins and our employees.

The merger of United and Continental will create a financially stronger, sustainable airline that will be better able to succeed in an increasingly competitive domestic and international aviation industry. And for Tomkins, this means we can rely on the combined airline to provide the foundation for opportunity that comes with access to 370 destinations around the globe.

United and Continental have very little overlap on routes and are well-suited to combine. By coming together, they will offer a seamless global network with eight hubs across the country and will offer convenient access to Asia, Europe, Latin America, Africa and the Middle East. Corporate travelers will have an easier time making connections, reaching customers and doing business, which will benefit Tomkins and the business travel industry.

The combined airline will also be positioned to continue its investment in globally competitive products, upgrade technology, refurbish and replace older aircraft, and implement best-in-class practices of both airlines. It will also offer the industry's leading loyalty program, providing access to more benefits than any other program, with more ways to earn and redeem miles. As a member of the Star Alliance, the combined airline will provide loyalty program members with the opportunity to use miles for award travel with partner airlines to more than 1,000 destinations around the world.

I urge you to support a fair, expeditious and ultimately favorable regulatory review so that our business is able to realize the benefits of the merger without delay. I ask that you let Attorney General Holder and Transportation Secretary LaHood know of our support for the merger and hope you will support it, too.

Sincerely,

John W. Zimmerman
Chief Financial Officer

---

Mr. POLIS. Our State's broad support for this merger is a result of the clear evidence that the net result for travelers to and from Colorado will likely be more routes, lower fares, increasing the competitiveness of Colorado and the region. My district in particular, the northwest suburbs of Denver, Broomfield, and Boulder, with its high concentration of tech companies who need reliable and cost-effective access to both coasts and international cities and our tourism industry is a major employer and economic driver for our mountain communities across Colorado. The increase in accessibility and the decrease in costs would help make our mountains

and Eagle Summit Grand counties even more attractive destinations, growing the market and growing jobs at the same time we make our business centers of Boulder and Broomfield more competitive for attracting regional, national, and international conferences.

I want to thank all of you for your thoughtful testimony this afternoon and want to close by expressing on behalf of my constituents our support for a thoughtful process that will preserve Colorado's aviation jobs and strengthen Colorado's role as a regional economic and transportation hub and tourism destination, and I yield back the balance of my time.

Ms. JACKSON LEE. The gentleman yields back and we thank him for his testimony today.

We think that we have had what I think has been a good overview. I think that is the challenge of this whole process of mergers, when regions believe that—and with good cause—that they have been blessed with a Christmas Day in June. Some of us, however, believe that we have some concerns; and I am going to ask a series of quick questions, quick-ended questions.

Because my disappointment, Professor Bush, is that this whole review of the Clayton Act, section 7, has becomes as difficult to oppose as Kobe Bryant on a good day when he makes a dunk. And most people are saying this is a slam dunk, and that saddens me because the heritage of this Nation is to ensure that monopolies do not provide an anticompetitive climate.

So would you quickly give me, to this Judiciary Committee, for our legislative action what do we need to do to ensure an effective and vigorous overview by the Department of Justice and what legislative fix do we need right now to give some strength and competence to the antitrust laws? And I need you to be as quick as possible.

Mr. BUSH. I will be very quick. I have pretty substantial faith in the actual staff of the DOJ. Some of them are friends of mine, and they work as hard as anybody else.

Ms. JACKSON LEE. And I do as well, but I want to make sure they have the right tools.

Mr. BUSH. That is the point I definitely want to address. The Clayton Act incipiency standard, for all intents and purposes in the courts, is a nonfunctioning creature. Courts really want to see some sort of tangible harm, and it is hard to focus on a tangible harm to a forward-looking prospect.

Second, efficiencies are talked about often, proclaimed often, frequently don't pan out, but they seem to get the benefit of the doubt. Whereas anticompetitive effects or theories of anticompetitive effects brought by the Department of Justice and the Federal Trade Commission are looked on dubiously. So that is a flipping of the incipiency standard where we——

Ms. JACKSON LEE. So do we need to write legislation that strengthens that standard?

Mr. BUSH. In my opinion, yes.

Ms. JACKSON LEE. All right. Would you provide this Committee with a list of the legislative fixes that are necessary and the right questions that this Committee might propose to the very effective

Department of Justice staff as they begin or continue their work? Would you do that for the Committee, please?

Mr. BUSH. Absolutely.

Ms. JACKSON LEE. Thank you.

[The information referred to follows:]

DARREN BUSH, Ph.D., J.D.
ASSOCIATE PROFESSOR OF LAW
UNIVERSITY OF HOUSTON LAW CENTER
HOUSTON, TEXAS[1]

Competition in the Airline Industry

BEFORE
THE HOUSE JUDICIARY COMMITTEE

ON

June 16, 2010

## SUPPLEMENTAL TESTIMONY: PROPOSED LEGISLATIVE FIXES AND AREAS IN NEED OF EXAMINATION IN RELATION TO DOJ MERGER ENFORCEMENT

Per the request of Representative Jackson Lee at the above-referenced hearing, what follows are potential areas within merger enforcement that I believe are in need of examination and legislative reform. Because these questions arise in the context of a hearing concerning competition in the airline industry, I have limited my remarks to the Department of Justice (DOJ) which is primarily responsible for antitrust matters in that industry.

### 1. Congress should restore the incipiency standard[2] to its proper place in merger enforcement by requiring more scrutiny and skepticism with respect to efficiency claims.

The faith which the DOJ places in efficiencies related to mergers and the demise of the incipiency standard are related concerns. Very recently, efficiencies appear able to

[1] For purposes of this supplemental testimony, I speak on my own behalf and not on behalf of the American Antitrust Institute.
[2] *See* 15 U.S.C. § 18 (prohibiting acquisitions the effect of which "may be substantially to lessen competition or to tend to create a monopoly").

justify almost any transaction.[3] In a paradigm in which efficiencies are viewed as prevalent and frequently occurring while anticompetitive harms arising from a transaction are viewed as rare and temporary, it is understandable that antitrust analysis would focus on whether or not the transaction promotes efficiencies and whether such efficiencies override potential anticompetitive effects. Efficiencies are, by Horizontal Merger Guidelines' definitions, cognizable and therefore something more tangible than theories of harm under an incipiency standard.[4] In other words, while theories of harm appear forward-looking and speculative, the claims of parties with respect to efficiencies do not appear so. With a skeptical view of antitrust enforcement as the polestar and a belief that firms engage in rational decision making, efficiencies become the king of antitrust, [5] while anticompetitive effects fall by the wayside.[6]

The faith which appears to be placed on efficiencies is a throwback to Chicago School theory, which suggests that firms seek to maximize profit. As Robert Pitofsky has lamented, "it never occurred to me that 75 percent mergers can be justified with

---

[3] *See Roundtable Discussion: Advice for the New Administration*, ANTITRUST, Summer 2008, at 8 (Robert Pitofksy states "I had a good deal to do with inserting an efficiency defense in the Merger Guidelines. But it never occurred to me that 75 percent mergers can be justified with efficiency claims. Efficiency claims seemed to me to be a tie-breaker for much smaller transactions.")

[4] *See* U.S. Dep't of Justice & Federal Trade Comm'n, Horizontal Merger Guidelines § 10 (2010), *available* at http://www.justice.gov/atr/public/guidelines/hmg-2010.html#10 (hereafter HMG).

[5] Courts have commenced use of this approach as well, to the detriment of those seeking to enjoin mergers. *See, e.g.*, M. Sean Royall et al., *Change? Merger Enforcement in the New Administration*, 47 ST. BAR LITIG. SECTION REPORT: THE ADVOC. (Texas) 54 (2009) (quoting FTC v. Foster, No. CIV 07-352 JB/ACT, 2007 U.S. Dist. LEXIS 47606, at *98 (D.N.M. May 31, 2007)("Thus, while the FTC has convinced the Court that the current market is concentrated, that the merger will increase market concentration, that Giant and Western are competitors, and that these circumstances give rise to a presumption of anti-competitive effect, *the presumption is a weak one*.")(emphasis added).

[6] The George W. Bush administration rarely met a merger it did not like, and the current administration does not appear to have improved that situation. *See* Jia Lynn Yang, *To Consumer Advocates, Obama's Antitrust Enforcement Looks Like More of the Same*, WASH. POST (Sep. 7, 2010), *available* at http://www.washingtonpost.com/wp-dyn/content/article/2010/09/07/AR2010090707245.html. *See* Jonathan B. Baker & Carl Shapiro, *Detecting and Reversing the Decline in Horizontal Merger Enforcement*, ANTITRUST, Summer 2008, at 29; *see also* John D. Harkrider, *Antitrust Enforcement During the Bush Administration—An Econometric Assessment*, ANTITRUST, Summer 2008, at 43.

efficiency claims. Efficiency claims seemed to me to be a tie-breaker for much smaller transactions."[7] Criticism of an approach that focuses to too great a degree on efficiencies is nothing new.[8] Such a focus emphasizes price-fixing conspiracies as the dominant goal of antitrust, while ignoring mergers and other practices which might stifle innovation or other types of efficiencies.[9] This result was observable not only in the 1980s, but also throughout the 2000s. Very few mergers have been challenged by the DOJ in the past decade, even to a consent decree.[10]

In the merger context, the notion of efficiencies weighs most heavily in Section 10 of the newly revised Horizontal Merger Guidelines.[11] Section 10 recognizes that substantial efficiencies might be gained from a merger, but that those efficiencies may be difficult to verify.[12] There are three inherent problems with the weight that may be placed on efficiency analysis. First, parties to a merger often describe "synergies" to a merger, but these synergies might very well arise from competitive overlap and not what antitrust

---

[7] Roundtable Discussion, *Advice for the New Administration*, ANTITRUST, Summer 2008, at 8, 17 (Robert Pitofsky comments).

[8] Professor Joseph Brodley wrote in a 1987 article that "present antitrust enforcement misallocates enforcement resources in terms of the importance of efficiency goals pursued. Current enforcement is directed mostly at practices that injure pricing efficiency in output markets." Joseph F. Brodley, *The Economic Goals of Antitrust: Efficiency, Consumer Welfare and Technological Progress*, 62 N.Y.U. L. REV. 1020, 1031 (1987).

[9] *See* John J. Flynn, *Antitrust Policy, Innovation Efficiencies, and the Suppression of Technology*, 66 ANTITRUST L.J. 487, 496 (1998).

[10] *See* Robert Pitofsky, *Some Predictions About Future Antitrust Enforcement*, 16 GEO. MASON L. REV. 895, 897 (2009). The FTC case statistics suggest more activity, but mostly in the pharmaceutical industry concerning agreements to defer entry of generic drugs. Some of these cases were cast as structural challenges, while others were cast as unreasonable restraints of trade. Regardless, the numbers are not staggering, totaling seven between the years 2001 and 2009. *See* Nonmerger Enforcement Actions, FTC Competition Enforcement Database, *available* at http://ftc.gov/bc/caselist/nonmerger/index.shtml.

[11] The new merger guidelines increase the concentration thresholds for challenging a merger.

[12] "Efficiencies are difficult to verify and quantify, in part because much of the information relating to efficiencies is uniquely in the possession of the merging firms. Moreover, efficiencies projected reasonably and in good faith by the merging firms may not be realized. Therefore, it is incumbent upon the merging firms to substantiate efficiency claims so that the Agencies can verify by reasonable means the likelihood and magnitude of each asserted efficiency, how and when each would be achieved (and any costs of doing so), how each would enhance the merged firm's ability and incentive to compete, and why each would be merger-specific." HMG, *supra* note 3 at §10.

enforcement officials view as "efficiencies."[13] While there may be cost savings related to such overlaps, they may not necessarily arise from a procompetitive origin. Nonetheless, such synergies might be given a post-hoc rationalization that parties strive to fit within the Merger Guidelines context. In other words, efficiencies do not always drive a merger.[14] And there is nowhere in the Guidelines where the purpose of the merger is given serious consideration.

Second, as the Horizontal Merger Guidelines point out, merger efficiencies, even if truly believed to be attainable by the parties, may not come to pass.[15] More often than not, the efficiencies turn out to be ethereal or ephemeral. In this sense, mergers are perhaps like their more economically benign relative, marriage. As often as not, marriages fail. The difference between mergers and marriages, however, is that mergers may have large secondary effects on the economy.

Third, little is done in the way of *ex post* examination of efficiencies claimed in merger investigations. Efficiencies that fail to prove out in a merger ought to be learning tool for scrutinizing future mergers. To the extent that DOJ fails to examine the effects of past transactions, there is the potential to repeat prior mistakes.[16]

---

[13] *See, e.g.*, H. Peter Nesvold, *Communication Breakdown: Developing an Antitrust Model for Multimedia Mergers and Acquisitions*, 6 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 781, 791 (1996).
[14] John B. Kirkwood & Richard O. Zerbe, Jr., *The Path to Profitability: Reinvigorating the Neglected Phase of Merger Analysis*, 17 GEO. MASON L. REV. 39, 83, n.238 (2009).
[15] HMG, *supra* note 3 at § 10 ("[E]fficiencies projected reasonably and in good faith by the merging firms may not be realized.")
[16] For example, an assertion that increasing consolidation optimizes performance would fly in the face of reason in an airline industry which has suffered increasingly turbulent business cycles with harsh losses and limited profits, even in the wake of increasing consolidation and where the merger efficiencies contemplated simply did not appear. Paul Dempsey, *The Financial Performance of the Airline Industry Post-Deregulation*, 45 HOUS. L. REV. 421, 432-34 (2008). *See also* AMERICAN ANTITRUST INSTITUTE, THE MERGER OF DELTA AIR LINES AND NORTHWEST AIRLINES: AN ANTITRUST WHITE PAPER 14 (July 10, 2008); Jan K. Brueckner and Eric Pels, European Airline Mergers, Alliance Consolidation and Consumer Welfare, CESIFO WORKING PAPER NO. 1154 (2004); Jan K. Bruckner, J. and Pablo Spiller, *Economics of Traffic Density in the Deregulated Airline Industry*, 37 J. LAW AND ECON. 379 (1994); Matthew J. Hergott, *Airport Concentration and Market Power: An Events Study Approach*, 12 REV. IND. ORG. 793

The result of an efficiencies-focused investigation is an incipiency standard[17] turned on its head.[18] The purpose of the incipiency standard is to allow a more forward looking analysis to halt anticompetitive conduct before it commences.[19] This process requires some speculation and forecasting into the future—an endeavor that seems to be on the decline in favor of efficiencies, no matter how short term and speculative those efficiencies may be.

Thus, I believe that Congress should be very clear in crafting statutory language which would resurrect the incipiency standard as set forth in the Clayton Act.[20] It should also craft a standard for examining efficiencies that contemplates more broadly the potential impacts of short-term efficiency gains on long-term competitive outcomes.[21]

---

(1997); E. Han Kim and Vijay Singal, *Mergers and Market Power: Evidence from the Airline Industry,* 83 AM. ECON. REV. 549 (1993); Frank R. Lichtenberg Moshe Kim, *The Effects of Mergers on Prices, Costs, and Capacity Utilization in the U.S. Air Transportation Industry*, 1970-84, NATIONAL BUREAU OF ECONOMIC RESEARCH, INC., NBER WORKING PAPER NO. 3197 (1989); Craig Peters, *Evaluating the Performance of Merger Simulation: Evidence from the U.S. Airline Industry*,49 J. LAW. AND ECON. 627 (2006); Oliver Richard, *Flight Frequency and Mergers in Airline Markets*, 21 INT'L J. OF IND. ORG. 907 (2002); Anming Zhang and Derek Aldridge, *Effects of Merger and Foreign Alliance: An Event Study of the Canadian Airline Industry*, 33 TRANSP. RES. PART E; LOG. AND TRANSP. REV. 29 (2006).

[17] *See* Robert H. Lande, *Resurrecting Incipiency: From* Von's Grocery *to Consumer Choice,* 68 ANTITRUST L.J. 875 (2001); J. Gregory Sidak and Hal J. Singer, *Evaluating Market Power with Two-Sided Demand And Preemptive Offers To Dissipate Monopoly Rent: Lessons For High-Technology Industries From The Antitrust Division's Approval of the XM-Sirius Satellite Radio Merger*, 4 J. COMPETITION L. & ECON. 697, 701 (2009)("The Division's decision to refrain from challenging the XM-Sirius merger, while consistent with the Division's recent reluctance to prosecute mergers, nevertheless deviates from the statutory language of Section 7 and the applicable case law interpreting it.").

[18] *See* 15 U.S.C. § 18 (prohibiting acquisitions the effect of which "may be substantially to lessen competition or to tend to create a monopoly"). *See also* Robert H. Lande, *Resurrecting Incipiency: From Von's Grocery to Consumer Choice*, 68 ANTITRUST L.J. 875 (2001).

[19] As the Fifth Circuit stated in Fort Worth Nat'l Corp. v. Fed. Sav. & Loan Ins. Corp., "... Congress provided [the Commission] authority for arresting mergers at a time when the trend to a lessening of competition was still in its incipiency. Application of this standard requires not merely an appraisal of the immediate impact of the merger upon competition, but a prediction of its impact upon competitive conditions in the future." 469 F.2d 47, 60-61 (5th Cir. 1972).

[20] Reinvigorating the Clayton Act's incipiency standard also enables the government to more easily prevail in antitrust litigation. I suspect that there are limited government litigation challenges in court due to unfavorable caselaw that has arisen in the past 25 years.

[21] As an example, I offer the following: DG COMPETITION DISCUSSION PAPER ON THE APPLICATION OF ARTICLE 82 OF THE TREATY TO EXCLUSIONARY PRACTICES § 5.5.3 (2005), *available* at ec.europa.eu/competition/antitrust/art82/discpaper2005.pdf. The efficiency defense in this discussion paper states:

**2. Congress should compel a more transparent merger review process within the DOJ and enable courts to refuse to enter consent decrees not within the public interest.**

Once the DOJ concludes a merger investigation, that typically concludes the matter, regardless of whether it ends with a closed investigation and no action or with a proposed consent decree. In the context of a consent decree, current caselaw mandates that the reviewing court enter the decree and not seek to question the wisdom of the remedies imposed therein. However, review of consent decrees to determine whether or not such decrees are in the public interest is precisely the role courts should play in merger review. Moreover, private litigation and litigation brought by state attorneys general seeking to enjoin mergers not challenged by the DOJ may suffer from judicial deference, whether recognized or not, to the DOJ's "expertise" in merger investigations.

The legislative history of the Tunney Act makes clear that the purpose of the Act was to confer upon the courts substantial power to review proposed consent decrees to determine whether or not they are in the public interest. This legislative history was specifically adopted and referenced in the 2004 amendments to the Tunney Act.

In the Tunney Act, Congress rejected the Supreme Court's notion that courts must defer to the DOJ when determining if a consent decree is in the public interest. Instead,

---

> For this defence the dominant company must demonstrate that the following conditions are fulfilled:
> i) that efficiencies are realised or likely to be realised as a result of the conduct concerned;
> ii) that the conduct concerned is indispensable to realise these efficiencies;
> iii) that the efficiencies benefit consumers;
> iv) that competition in respect of a substantial part of the products concerned is not eliminated.
> Where all four conditions are fulfilled the net effect of such conduct is to promote the very essence of the competitive process, namely to win customers by offering better products or better prices than those offered by rivals.

*Id.* The defense portrayed here is much more limiting in terms of accepted efficiencies. In part the defendant's purported efficiency must not injure competition and cannot be achieved by other means.

Congress wanted the courts to make an *independent, objective, and active determination without deference to the DOJ.*

The legislative history is replete with references to Congressional distaste for judicial rubber-stamping of consent decrees. Senator Tunney stated during hearings:

> [T]he concept that the trial court judge ought to be independently involved in making the determination that the proposed decree is in the public interest must be preserved. The purpose of section 2(d) is to insure that the court *shall exercise its independent judgment* in antitrust consent decrees--and not merely act as a rubberstamp upon out-of-court settlements.[22]

Senator Ed Gurney (a cosponsor of the bill) argued:

> The bill further requires that the court accept a proposed consent decree only after it determines that to do so is in the public interest. This is a particularly important provision, since after entry of a consent decree it is often difficult for private parties to recover redress for antitrust injuries.... In some cases, *the court may find that it is more in the public interest, for this reason and others, that the case go to trial instead of being settled by agreement.*[23]

Senator Tunney, in response to a proposal by Professor Harvey Goldschmid that the judicial review provision be excised, stated, "It is very important to me that the court not act as a rubber stamp, that it make an independent evaluation, *as it does in other kinds of cases.*"[24] He later added, "we certainly are intending to have the judges do more than they have done... because many judges just rubber-stamp the consent decree. That might be just fine for the Antitrust Division, but I am not convinced that it is fine for the public interest."[25]

---

[22] THE ANTITRUST PROCEDURES AND PENALTIES ACT: HEARINGS ON S. 782 AND S. 1088 BEFORE THE SUBCOMM. ON ANTITRUST AND MONOPOLY OF THE SENATE COMM. ON THE JUDICIARY, 93D CONG. 452 at 3-4 (1973)(emphasis added).
[23] *Id.* at 8 (emphasis added).
[24] *Id.* at 24 (emphasis added).
[25] *Id.* at 196.

This legislative history is important in determining the meaning and significance of the 2004 Tunney Act amendments.[26] The legislative history of the Tunney Act amendments makes clear that the purpose is to overrule cases like *Microsoft*[27] in which courts have held that a court essentially must enter a consent decree proposed by the DOJ except "if the enforcement mechanism is inadequate, if third parties will be positively injured, or if the decree otherwise makes a mockery of judicial power."[28]

As Senator Leahy asserted, "The amendments to the Tunney Act found in our bill will restore the original intent of the Tunney Act, and make clear that courts should carefully review antitrust consent decrees to ensure that they are in the public interest."[29] Senator Leahy continued:

> First, section 221(a) of our bill contains Congressional Findings and Declarations of Purposes. These provisions clarify that we are determined to effectuate the original Congressional intent of the Tunney Act. In other words, after the enactment of this legislation, courts will once again *independently review antitrust consent decrees to ensure that they are in the public interest*. The Congressional Findings expressly state that for a court to limit its review of antitrust consent decrees to the lesser standard of determining whether entry of the consent judgments would make a "mockery of the judicial function" misconstrues the meaning and intent in enacting the Tunney Act. The language quoted paraphrases the D.C. Circuit decisions in Massachusetts School of Law v. U.S., 118 F.3d 776, 783 (D.C. Cir. 1997) and U.S. v. Microsoft, 56 F.3d 1448, 1462 (D.C. Cir. 1995). To the extent that these precedents are contrary to section 221(a) of our bill regarding the standard of review a court should apply in reviewing consent decrees under the Tunney Act, these decisions are overruled by this legislation. While this legislation is not intended to require a trial de novo of the advisability of antitrust consent decrees or a lengthy and protracted review procedure, it is intended to assure that courts undertake meaningful review of antitrust consent decrees to assure that they are in the public interest and analytically sound.[30]

---

[26] A more detailed discussion of the legislative history and its implications can be found in John Flynn and Darren Bush, *The Misuse and Abuse of The Tunney Act in the Microsoft Cases: The Adverse Consequences of The "Microsoft Fallacies*," 34 LOY. U. CHI. L. J. 749 (2003).
[27] 118 F.3d 776, 783 (D.C. Cir. 1997).
[28] 118 F.3d at 783, quoting United States v. Microsoft Corp., 56 F.3d 1448, 1457-59 (D.C.Cir.1995)(internal quotations omitted).
[29] 150 CONG. REC. S3610-02 (Statement of Sen. Leahy).
[30] 150 CONG.REC. S3610-02 (Statement of Sen. Leahy)(emphasis added).

Senator Leahy stated further that the requirement that the courts shall look at the public interest factors enumerated was designed to eliminate judicial rubber stamping of consent decrees.

Recent decisions in the courts seek to ignore the will of Congress through a tortured analysis of the legislative history of the Tunney Act and undermine one potential key player in the oversight of antitrust enforcement agency action, particularly in the case of mergers. First, in U.S. v. SBC Comm., Inc.,[31] the court concluded that the 2004 amendments to the Tunney Act do not allow it discretion to address matters either within or outside the complaint. With respect to remedies for harms outside the scope of the complaint, the Court cited the D.C. Circuit in *Microsoft* for the proposition that allowing a court to do so would raise separation of powers concerns.[32] The court also held that the 2004 Amendments did nothing to assert that such a position would be required.[33]

The Court did not stop there. It argued that it lacked the ability to review the remedies proposed by the Department of Justice so long as they are reasonable. The Court stated, "the relevant inquiry is whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable."[34] While the Court noted that Congress mandated that the courts consider a multitude of factors, the Court essentially reduced those factors down to whether or not

---

[31] U.S. v. SBC Comm., Inc., 489 F. Supp. 2d 1 (D.D.C. 2007).
[32] 56 F.3d at 1458-60.
[33] The Court in *SBC* noted:

> Nothing in the text or legislative history of the 2004 amendments undermines this reasoning. While the drafters of the 2004 amendments stated that "mockery of judicial power" should not be the general standard of review under the Tunney Act, the *Microsoft* decision did not make it so. Rather, it is only if the complaint underlying the consent decree is drafted so narrowly as to make a mockery of judicial power can the district court reject a consent decree due to matters outside the scope of the underlying complaint. In all other cases, a court cannot do so.

489 F. Supp. 2d at 14.
[34] 489 F. Supp. 2d. at 15-16.

the DOJ's rationale is reasonable. In essence, the Court imposed an administrative law-like standard that confers undeserved deference upon the DOJ, a standard specifically contrary to the intent of Congress as described both in the original Tunney Act and the 2004 amendments. The result, particularly in the merger arena, is that antitrust law is now conducted behind the scenes, with little or no litigation challenges, very little sunlight on the process by which the DOJ determines whether or not to allow a merger to consummate unchallenged, and almost no oversight into the wisdom of DOJ settlement decisions.

Executive and judicial powers have been intermingled in the realm of government antitrust enforcement as a result of the widespread use of consent decrees as an enforcement tool in civil cases and *nolo contendere* pleas to settle criminal cases without formal litigation of the charges. Such a state of affairs is, of course, unavoidable because Congress has bestowed the executive branch with the power to *initiate* civil or criminal cases in order to enforce the antitrust laws and has endowed the judiciary with the power to *apply* criminal sanctions and equitable relief by entry of judgments of illegality and decrees imposing a remedy. The clear statutory scheme of both the Sherman Act and the Clayton Act leaves to the discretion of the Attorney General the power to initiate and voluntarily dismiss criminal or civil cases, while leaving to the judiciary the power to determine the appropriate remedy in criminal and civil cases--whether by a plea of *nolo contendere*, or a conviction upon trial in criminal cases, or entry of an injunction in a civil case by consent or by litigation. Consent decrees require a judicial act and become an injunction of a court once entered. As a judicial act imposing injunctive relief, consent decrees, like litigated injunctions, are subject to potential future judicial proceedings by

way of a contempt action. Both the act of deciding to enter a decree and the act of deciding whether to enforce the decree by a contempt citation are judicial functions and not executive branch functions entrusted solely to the discretion of the DOJ.

Although the DOJ certainly has the right to dismiss a civil or criminal antitrust complaint or negotiate a settlement with any party, the right of prosecutorial discretion ends when a court is asked to exercise its power to enter a consent decree. Entry of both the judgment and a remedy decree are judicial functions, subject to the court's full equitable powers, regardless of whether or not the decree is a consent decree within the meaning of the Tunney Act. Moreover, Congress specifically designed the Tunney Act to deal with the practice of excessive deference to the judgment of the DOJ in establishing the terms of a consent decree and to stop the practice of courts rubber-stamping the DOJ's proposed injunctive relief. Congress mandated that the courts consider the public interest, not whether the DOJ achieved what it considered to be in the public interest when designing the appropriate relief, when deciding whether or not to enter a decree.[35]

Because the entry of a decree is an inherently judicial function, it cannot be the case that the Court should be obligated to defer to the DOJ in terms of either the adequacy of the remedies proposed by the parties in the consent decree or in terms of the behavior restrained in light of the complaint. With respect to the former, the Tunney Act is quite clear in terms of form and substance that the Court is to make its own separate

[35] A parallel can be drawn to litigated cases wherein the parties propose a settlement. Congress specifically delegated the power of determining the equitable remedy in litigated government civil antitrust cases to the courts under § 4 of the Sherman Act. The wisdom, effectiveness, and necessity of specific remedies are choices Congress has reserved to the courts in litigated antitrust suits. Congress did not give the DOJ the right to determine the remedy in a litigated case by submitting a proposed consent decree in circumstances where a consent decree is entirely inappropriate. Although the DOJ and a defendant may propose a remedy in such circumstances, the court cannot abdicate its statutory responsibility to determine the appropriate remedy under § 4 of the Sherman Act in order to defer to the DOJ where the case is a fully litigated one.

determination as to whether the remedy is in the public interest. An independent determination of the adequacy of remedy cannot equate to deference and reliance upon the assertions of the DOJ.

Further, it cannot be the case that the Court is bound by the four corners of the complaint. While the Court cannot require the DOJ to prosecute a case brought under prosecutorial discretion, it can determine whether or not the remedies prevent and restrain violations of the Sherman Act. Moreover, a determination of whether or not a consent decree is in the public interest cannot be done in a vacuum. Such a determination must include consideration of "any . . . competitive considerations bearing upon the adequacy of the *judgment* that the court deems necessary to a determination of whether the consent judgment is in the public interest. . . ."[36]

In engaging in the public interest determination task, the Court may invoke broad powers as outlined in 15 U.S.C. § 15(f). These powers include the taking of testimony, appointment of a special master, and other procedural elements. These powers would be unnecessary if Congress merely sought to require the courts to defer to the DOJ's proposed remedies and analysis of competitive harm.

The separation of powers problem, therefore, is not the trampling of prosecutorial discretion. Rather, the problem is the trampling of the judicial function and Article III of the Constitution. As a couple of commentators have proclaimed in the context of the *Microsoft* cases:

> [A] denial of the court's power to refuse to enter decrees that do not protect the public interest could itself represent an unconstitutional infringement on judicial power. Such a

[36] 15 U.S.C. § 16 (c)(1)(A).

> denial would arguably prevent the court from accomplishing its constitutionally assigned function of enforcing the laws... as a court of equity.[37]

Concerning the "public interest" at stake, another commentator writes:

> [T]he argument for deference made by the Justice Department and Microsoft fails to consider the courts' inherent equitable power to reject the entry of judgments that contravene the public interest. Although negotiations involve administrative decisions by the government, a court's entry of a consent decree is a judicial act which is both constitutional and statutory in nature. Thus, an intensive review of a consent decree by a district court may be supported apart from the Tunney Act.[38]

In the *SBC* case, the DOJ, by arguing that the 2004 Amendments have created nothing new in the Tunney Act have in effect sought to trample the judicial function and ignore Congressional intent to provide active judicial review of proposed consent decrees. This is blatantly demonstrated by the fact that the DOJ allowed the parties to consummate their mergers prior to a judicial finding under the Tunney Act. And the Court in this instance completely abdicated its responsibility under the Tunney Act to engage in such review.

Because the will of Congress has been ignored, and because separation of powers issues are implicated that once again aggrandize the Executive Branch at the expense of the Judiciary, the Tunney Act issue is quite important. Congress should revisit the Tunney Act once again to make clear that the scope of judicial review includes the entirety of competitive analysis, not just the four corners of the complaint. Moreover, Congress should also make expressly clear that no deference ought to be given to the DOJ. Finally, Congress should bar the practice of allowing a merger subject to a proposed consent decree to consummate prior to entry of the final judgment.

---

[37] James Rob Savin, *Tunney Act '96: Two Decades of Judicial Misapplication*, 46 EMORY L.J. 363, 377 n. 102 (1997).

[38] Natalie L. Krodel, *Comment, The Tunney Act: Judicial Discretion in United States v. Microsoft Corporation*, 62 BROOK. L. REV. 1293, 1315 (1996). *See also* Lloyd C. Anderson, *United States v. Microsoft, Antitrust Consent Decrees, and the Need for a Proper Scope of Judicial Review*, 65 ANTITRUST L.J. 1, 6, 38-40 (1996)(arguing for more flexible judicial review of consent decrees).

### 3. Congress should compel the DOJ to engage in greater post-merger scrutiny of markets and provide greater insight into agency rationales for closing merger investigations with no remedy or with limited remedies.

One additional difficulty with current antitrust enforcement is that once an investigation is closed, it is usually the end of the matter, in spite of enforcement agency ability to pursue the matter. As a former DOJ official has pointed out, "the government can challenge a transaction at any time, even after it has been consummated."[39] However in reality, the government is unlikely to challenge any acquisition after the close of the Hart-Scott-Rodino (HSR) process, *unless* the merger was not subject to HSR review in the first instance.[40]

Nonetheless, such post-merger examination of markets is important in determining a multitude of issues. First, whether or not the DOJ analysis of the potential anticompetitive effects (or lack thereof) of a transaction was correct could be examined. Second, such date would enable an ex-post examination of the merging firms' efficiency claims. Third, enabling and indeed requiring the DOJ to make such determinations, particularly on large mergers in highly consolidated industries, could serve to determine whether the DOJ is in fact enforcing the antitrust laws properly.[41] To the extent that such data does not exist, it is because there is little incentive to seek it. And there is little need

[39] Constance K. Robinson, *Mergers and Acquisitions*, 1738 PLI/CORP 363 (2009)(citing United States v. E.I. duPont de Nemours & Co., 353 U.S. 586, 597 (1957) and noting that the challenge occurred 30 years after stock acquisition).
[40] *See* Robert B. Bell, *Voluntary HSR Act Filings: A Modest Proposal*, ANTITRUST, Spring 2009, at 72 (noting 4 such challenges in fiscal years 2001-2007 out of 11,695 HSR filings).
[41] *See* Dennis Carlton, *The Need to Measure the Effect of Merger Policy and How to Do It*, ANTITRUST, Summer 2008, at 39 (advocating for systemic collection of data for purpose of quantitative study of merger policy).

for such data when there is clear reluctance to bring any sort of enforcement case, even where there may be clear harm *ex post.*

A related concern is that, with the bulk of antitrust enforcement conducted in secret, with the bulk of merger enforcement conducted through otherwise unsupervised, behind-closed-doors agreements with merger defense counsel.[42] For larger cases, the DOJ may issue a cursory and often cryptic press release that offers little insight into the rationale for failing to challenge a merger. In short, there is tremendous need for sunlight[43] into the otherwise dark world of antitrust "fix it first" settlements between parties and the DOJ and the "second-request" investigations undertaken by the DOJ which end in no action. Congress should compel greater transparency from the DOJ.[44] While DOJ enjoys prosecutorial discretion, it also has an unavoidable duty to prosecute those laws for which it has responsibility. While it is free to pick its defendants, it satisfies its obligations only if it prosecutes those laws in a way that satisfies the Congressional intent. Without more information, it is impossible to determine whether the absence of action by the DOJ in the merger realm is injurious to competition in the national economy.

Finally, I should note that while these are in my opinion the most pressing antitrust issues currently raised by DOJ practices, other issues in merger enforcement may also be problematic. I would be honored to help this Committee in its continued discussion and investigation of these issues.

---

[42] In some instances, the DOJ agrees to a "fix it first" remedy which bypasses the Tunney Act process. Parties are given the opportunity to divest assets that the DOJ deems problematic to the transaction. Once these assets are sold, the DOJ closes its investigation.
[43] LOUIS D. BRANDEIS, OTHER PEOPLE'S MONEY 62 (1933)("Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.")
[44] Warren S. Grimes, *Transparency in Federal Antitrust Enforcement*, 51 BUFF. L. REV. 937 (2003).

Ms. JACKSON LEE. Let me pose these questions again to Mr. Smisek and Mr. Tilton. In planning for the merger among the jobs in downtown Houston, downtown Chicago, and Elk Grove, do you have a total of how many jobs you expect to eliminate? Chicago, Houston, and Elk Grove? Mr. Tilton?

Mr. TILTON. Congresswoman, we are going to effectively close Elk Grove.

Ms. JACKSON LEE. And how many jobs is that?

Mr. TILTON. Well, it is about 2,800 jobs, but they are going to be moved to Willis Tower.

Ms. JACKSON LEE. So you will keep your 2,000 jobs.

Mr. TILTON. Well, as Mr. Smisek said, until we are able to put the new organization together and size——

Ms. JACKSON LEE. But you expect that you will lose some jobs or keep the full 2,000?

Mr. TILTON. I would expect that there will be job loss, as Jeff said, both in Chicago and in Houston.

Ms. JACKSON LEE. And can you gauge how many they will be? And I will not do the billion dollars, but do you——

Mr. TILTON. Congresswoman, neither one of us know today.

Ms. JACKSON LEE. All right. Mr. Smisek, we are going to come again. How many people do you currently employ in downtown Houston?

Mr. SMISEK. We employ over 3,000 people.

Ms. JACKSON LEE. And how many people do you expect—100, 200, 300, 400—that will lose their jobs?

Mr. SMISEK. As I have said before, we have not determined the number. When we have gone through the integration planning process, we have determined the number of jobs, we will tell the employees first because of our culture; and then we will tell you.

Ms. JACKSON LEE. And do you have a range of how many jobs will be lost?

Mr. SMISEK. Well, it won't be zero, and it won't be 3,000.

Ms. JACKSON LEE. And do you have specific corporate functions that you would consider keeping in Houston?

Mr. SMISEK. We are working through that right now in our integration planning process.

As I said earlier, jobs that are not necessary to move to Chicago I want to do my best to keep in Houston, because I want to disturb people's lives as little as possible.

Ms. JACKSON LEE. And are you meeting with the various leadership of a Cleveland—it looks as if you have met with the leadership of a Colorado, but of a Cleveland, a Houston, and a Newark, have you sat down with the leadership, both business and city?

Mr. Tilton, it looks like you have, because they are shouting for joy in Chicago.

Mr. TILTON. Well, I think that Chicago, San Francisco, L.A., Denver, Dulles, Washington, D.C., are all very supportive of the benefits to those communities.

Ms. JACKSON LEE. Mr. Smisek, what kind of progress have you made?

Mr. SMISEK. I have met with Mayor Jackson. I am going up in a couple of weeks to meet not only with Mayor Jackson but members of the business community as well. In Houston, I have met

with Mayor Parker. I have also met with the Greater Houston partnership as well, and we continue to have an open dialogue with the Greater Houston.

Ms. JACKSON LEE. It makes it very difficult when they cannot operate with specific numbers. And I imagine that this has been announced more than 2 months ago. There has to be some synergism to know just how many jobs we are going to lose in Houston. Do you know when you will know those numbers?

Mr. SMISEK. I don't, but as soon as I know them I will tell the employees.

Ms. JACKSON LEE. But I do have you on the record and I do appreciate it that you are going to do everything personally to minimize the loss of jobs in Houston, Texas.

Mr. SMISEK. Yes, I will.

Ms. JACKSON LEE. And you will continue a meeting with all of us who are interested in meeting.

Mr. SMISEK. I am always interested in a dialogue.

Ms. JACKSON LEE. Let me ask the question before I move quickly, Mr. Tilton and Mr. Smisek, why have you not met with the machinists? And I understand the integration question of who is the personal representative. But, Ms. Friend, why have they not had meetings and been able to sit down at the table?

Mr. TILTON. Well, as Mr. Roach said, we have met. We haven't fully satisfied Mr. Roach's requests for information, but as we develop the information we will make it available to all of our unions, and that is actually what the responsibility is of the integration team that is responsible for sharing information with our respective unions.

Ms. JACKSON LEE. Do you intend to have the labor groups as a partner in this merger?

Mr. TILTON. We certainly expect to have all of our labor groups as partners in this merger. And, as a matter of fact, as Jeff said a moment ago, without actually knowing, Congresswoman, who eventually is going to be the successful representing group of a particular workforce, it makes it more difficult than it is but still achievable, but more difficult than it is with the——

Ms. JACKSON LEE. How do you intend to implement this partnership? And I want Mr. Smisek—Mr. Smisek, do you intend to have the labor groups as a partner?

Mr. TILTON. Sure. I would use the pilots, as Mr. Smisek said a moment ago, and, frankly, the testimony of Captain Pierce and Captain Morse as a good example. Both of them have met with the companies, their respective companies.

The other thing I would add, Madam Chairwoman, is the fact that the IAM is represented on the board of directors of United Airlines, and the ALPA is represented on the Board of Directors. Both of them have seats on our current board. And, as Mr. Smisek mentioned, both of those unions are going to have seats on the board of the new company.

Ms. JACKSON LEE. Mr. Smisek, do you intend to have the labor groups as a partner in this merger?

Mr. SMISEK. Congresswoman, I think that our labor relations at Continental speak for themselves. We value all of our co-workers, whether they are represented by unions or not.

Ms. JACKSON LEE. And how do you plan to implement their participation?

Mr. SMISEK. We will have—we are undergoing discussions currently with the pilots. We have got open contracts, and we have discussions with the IAM, with the IBT, with all of our unions. We will continue those discussions as the groups select their union representation because we have different representation in different groups. We want to negotiate. I want to negotiate as the CEO of the combined company. I want to negotiate joint collective bargaining agreements promptly that are fair to the employees and fair to the company. I intend to do so.

Ms. JACKSON LEE. Thank you, Mr. Smisek.

As we have in the United States Congress amendments and suspensions and only we know the inside ball game, Mr. Roach, just clarify all of this about groups and other groups and who is represented and tell me what your problem is with this merger and are you represented and have you been able to sit down and do you have your group together? And clarify for the record so we can understand why all groups have not met.

Mr. ROACH. The Machinists union represents groups from both Continental and United.

Ms. JACKSON LEE. And have you had your opportunity to sit down?

Mr. ROACH. We had a meeting. We have had three meetings, one separately with Continental, one separately with United, and a joint meeting. There is no information. We had a meeting so they could tell us they don't have any information, just like they are saying right here.

Ms. JACKSON LEE. So the presence of IAM on the board does not counter the need for information and participation.

Mr. ROACH. No, the board of directors on the IAM does not represent the labor groups.

Ms. JACKSON LEE. Do you expect to have a loss of jobs?

Mr. ROACH. Certainly. In a merger? We have no information to the contrary.

Ms. JACKSON LEE. And what do you want the Committee to know and how do you want us to act in light of that?

Mr. ROACH. Again, we think there are two areas. We need to have information. They need to give us the information, sit down with us, and tell us what the information is.

I understand there are certain confidential requirements, and we have advised United yesterday and we are going to advise Continental today we are prepared. We have people, professional people, who will sit down and sign a confidentiality agreement, get the information we need so that decisions can be made and we can move forward.

Ms. JACKSON LEE. Mr. Smisek and Mr. Tilton, can you do that, sign the confidentiality agreement so that they can have the information necessary?

Mr. SMISEK. Congresswoman, we do that regularly.

Ms. JACKSON LEE. And you will do that in this instance?

Mr. SMISEK. Yes.

Ms. JACKSON LEE. Ms. Friend, how can we help provide a smooth path for your engagement?

Ms. FRIEND. Well, I won't repeat what Mr. Roach said, but we have the same problem with getting information.

But, additionally, as my testimony says, we believe that the Congress needs to impose some labor protections because we don't know how many, if not job losses, we don't know what the displacements might be, and there are no economic protections any longer for workers that suffer in these mergers.

Ms. JACKSON LEE. And, Captain Pierce, you will be the last witness. Can you explain what your concerns are representing the Continental pilots? I have heard from Captain Morse. Any comment you may have on this outsourcing of pilots on these smaller flights?

Mr. PIERCE. Thank you, Congresswoman. I will speak to both.

The major concern we have and the first concern we have is that the entity that is being created must be a viable entity. It must be a strong entity or as strong and as viable as the two that are being dismantled. I mean, that is a core necessity for the pilot group to support or not to oppose this merger, is that it has to be a good business plan. A viable entity has to be created so that it can support the employees, the consumer, and the traveling public.

I have always had long-standing concerns about subcontracting. As I said in my opening statement, I believe that when a passenger goes to continental.com or united.com or picks up the phone and calls our res centers and they buy a ticket from Houston to Newark to Rochester, that they expect one level of safety, one level of service throughout that travel experience. And I believe that the network carrier that sells that ticket should provide one level of service; and I firmly believe that, in order to do so, it should be the network carrier's pilots flying the equipment providing the service. Whether that equipment be a 70-seat airplane, a 90-seat airplane, or a 256-seat airplane, we all have the ability, both United pilots and Continental pilots, to fly any piece of aircraft that our companies purchase.

Ms. JACKSON LEE. Let me thank all of the witnesses for both their patience and the attentiveness they have given this very important hearing.

Without objection, Members have 5 legislative days to submit any additional written questions for you which we will forward and ask that you answer as promptly as you can to be made part of the record.

The Committee has made several requests, and we would appreciate if the witnesses who have been asked to provide the information will provide it in writing.

We ask the witnesses that are representing the employees to provide the Committee with a status report of the questions that have been asked here today and also the commitments that have been made on future meetings that you have requested.

The record will remain open for 5 legislative days for the submission of any other additional materials.

This has been a very important hearing. I thank the witnesses for their demeanor and the recognition of the responsibility of the United States Congress to have serious oversight over these issues.

With that, the hearing is adjourned.

[Whereupon, at 4:32 p.m., the Committee was adjourned.]

○