

**TESTIMONY OF**

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**BEFORE THE**

**SENATE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION  
SUBCOMMITTEE ON AVIATION OPERATIONS, SAFETY AND SECURITY**

**“QUESTIONS, ANSWERS, AND PERSPECTIVES ON THE CURRENT STATE  
OF AIRLINE TRAVEL”**

**MAY 4, 2017**

Good morning Chairman Blunt, Ranking Member Cantwell and members of the subcommittee. My name is Sally Greenberg and I am the Executive Director of the National Consumers League (“NCL”). Founded in 1899, NCL is America’s pioneering consumer advocacy organization. Our nonprofit mission is to promote social and economic justice for consumers and workers in the United States and abroad. On behalf of NCL and the millions of Americans who travel by air every year, thank you for inviting me to testify today.

Three weeks ago, America saw in the shocking video of Dr. David Dao’s violent removal from United Flight 3411, the predictable result of the lack of effective competition and consumer protection in the U.S. airline industry. To be clear, what happened on that flight symbolizes a problem that is not unique to United. Indeed, as subsequent incidents on American Airlines<sup>1</sup> and Delta<sup>2</sup> and countless others before which did not “go viral” demonstrate, consumers are increasingly forced to choose between giving up their basic rights or not traveling by air.

In a country where millions of consumers regularly depend on airlines to get them to business and family obligations, not traveling is simply not an option. So, consumers subject themselves to the whims of an industry that routinely demonstrates that customer service is a luxury that only the well-heeled can afford. The rest of us are relegated to “cattle class,” paying

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<sup>1</sup> Rosenberg, Eli. “American Airlines Suspends Flight Attendant After Altercation Over Stroller,” *New York Times*. April 22, 2017. Online: <https://www.nytimes.com/2017/04/22/business/american-airlines-video-stroller.html>

<sup>2</sup> Stingl, Jim. “Stingl: Urgent trip to restroom gets man kicked off Delta flight,” *Milwaukee-Wisconsin Journal Sentinel*. April 26, 2017. Online: <http://www.jsonline.com/story/news/columnists/jim-stingl/2017/04/26/stingl-need-pee-gets-man-kicked-off-delta-flight-milwaukee/100885528/>

exorbitant fees for “privileges” like bringing a carry-on bag onboard or sitting in an actual, guaranteed seat and, in some cases, risking involuntary ejection from the airplane by the airline’s version of a bouncer.

It is time for Congress to step in and restore consumers’ rights in the airline industry. Only through Congressional action can American consumers be assured that the next time they fly, they won’t become the unwitting star of their own viral airline video.

## I. UNCHECKED CONSOLIDATION IN THE AIRLINE INDUSTRY HAS LED TO HIGHER PRICES, FEWER FLIGHTS, AND WORSE SERVICE

There is a lack of effective competition to hold down the cost of flying and promote good customer service. Since deregulation in the late 1970s, there have been no fewer than 40 airlines mergers. In the last decade alone, mergers have reduced 9 large airlines to 4 -- American, Delta, Southwest, and United.<sup>3</sup> Together, these 4 control more than 80% of all domestic flights.<sup>4</sup> At 40 of the 100 largest U.S. airports, a single airline controls a majority of the market, as measured by the number of seats for sale, up from 34 airports in 1995. At a staggering 93 of the top 100 airports one or two airlines control a majority of the seats, an increase from 78 airports in 1995.<sup>5</sup>

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<sup>3</sup> Airlines for America. “U.S. Airline Mergers and Acquisitions.” Online: <http://airlines.org/dataset/u-s-airline-mergers-and-acquisitions/>

<sup>4</sup> Martin, Hugo. “Justice Department approves Alaska Airlines’ acquisition of Virgin America,” *Los Angeles Times*. December 6, 2016. Online: <http://www.latimes.com/business/la-fi-alaska-virgin-20161206-story.html>

<sup>5</sup> Associated Press. “Airlines carve U.S. into markets dominated by 1 or 2 carriers.” July 14, 2015. Online: <http://www.chicagotribune.com/business/ct-airlines-local-monopolies-20150714-story.html>

This lack of competition has had negative impacts on consumers and communities across America. One reason that Dr. Dao may have been so insistent on not being bumped from United 3411 is that his was the last available flight from Chicago to Louisville that day. Decreasing competition is a big reason why Louisville, like so many other small and mid-sized cities, is underserved by the network airlines. According to the Government Accountability Office, from 2007 to 2013 -- a period that coincided with major mergers between Southwest and AirTran, Delta and Northwest, United and Continental, and USAirways and American<sup>6</sup> -- 1.2 million scheduled domestic flights were eliminated. Smaller communities in particular were hit hard by the adverse effects of airline consolidation. Scheduled departures at medium and small hub airports decreased by nearly 24% and 20%, respectively.<sup>7</sup>

These service reductions have negative impacts not just on consumers, but also on the communities who lose service. For example:

- In 2008, San Antonio lost approximately 600 jobs when AT&T relocated its corporate headquarters to Dallas, citing the need for access to more direct flights as a key reason for the move.<sup>8</sup> In its press release announcing the move, AT&T stated that “[b]eing headquartered near leading air transportation facilities is critical

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<sup>6</sup> Airlines for America. “U.S. Airline Mergers and Acquisitions.” Online: <http://airlines.org/dataset/u-s-airline-mergers-and-acquisitions/>

<sup>7</sup> United States Government Accountability Office. *Airline Competition: The Average Number of Competitors in Markets Serving the Majority of Passengers Has Changed Little in Recent Years, but Stakeholders Voice Concerns about Competition*, GAO-14-515. June 2014. Pg. 35. Online: <http://www.gao.gov/assets/670/664060.pdf>

<sup>8</sup> Poling, Travis and Pack, William. “AT&T leaving San Antonio for Dallas,” *San Antonio Express-news*. June 28, 2008. <http://www.chron.com/business/article/AT-T-leaving-San-Antonio-for-Dallas-1758611.php>

to global companies like AT&T as the airline industry continues to consolidate and reduce hubs and flights amid higher fuel prices and industry economic pressures.”<sup>9</sup>

- In 2013, Decatur, Illinois lost 75 jobs when Archer Daniels Midland moved its headquarters to Chicago, citing the need for “efficient access to global markets,” and “better access to transportation” for its top executives.<sup>10</sup>
- Veritiv, a Fortune 500 distributor of packaging, print, and publishing products and solutions, moved 50 high-paying jobs from Cincinnati to Atlanta in 2015 after Delta abandoned Cincinnati/Northern Kentucky International Airport. “The airport here is not suitable for business travel,” said Veritiv CEO Mary Lasching at the time.<sup>11</sup>

As if fewer flights to fewer cities by a dwindling number of competitors wasn’t enough, the industry has also sought to generate profits by squeezing ever more passengers in its planes’ limited space. Fifteen years ago, average load factors for domestic flights on U.S. airlines was 70.42%. Last year, thanks to consolidation, the increasing use of small-capacity planes, and advanced

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<sup>9</sup> “AT&T Corporate Headquarters to Move to Dallas,” AT&T press release. June 27, 2008. Online: <https://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=25882>

<sup>10</sup> Polansek, “Archer Daniels Midland pricks Chicago for new headquarters,” Reuters. December 18, 2013. Online: <http://www.reuters.com/article/adm-headquarters-chicago-idUSL2N0JX13X20131218>

<sup>11</sup> Hussein, Fatima and Williams, Jason. “Fortune 500 boss: CVG reason for leaving,” *Cincinnati Enquirer*. October 16, 2015. Online: <http://www.cincinnati.com/story/money/2015/10/16/fortune-500-boss-cvg-reason-leaving/73605974/>

technology, average load factors again topped 80% for the 8th consecutive year.<sup>12</sup>

The airlines are also shrinking seat size in an effort to cram more customers into their planes. The average distance between rows of seats has dropped from 35 inches before airline deregulation in the 1970s to about 31 inches today. The average width of an airline seat has also shrunk from 18 inches to about 16 ½ inches.<sup>13</sup> The shrinking seat size has caused many medical professionals to raise the alarm over adverse health problems related to squishing yourself into an ever shrinking seat like deep vein thrombosis.<sup>14</sup> To add insult to injury, airlines are even reducing the size of on-board bathrooms. The reduced size has created significant concerns for the safety of crew and passengers as well as accessibility concerns for passengers with disabilities.<sup>15</sup> With shrinking seats, aisles, and bathrooms, fuller planes, and adverse health effects and boarding delays due to overcrowding, is it any wonder that consumers and crew are increasingly at the end of their collective ropes when it comes to air travel?

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<sup>12</sup> Bureau of Transportation Statistics. "Load Factor (passenger-miles as a proportion of available seat-miles in percent (%)) All U.S. Carriers - All Airports," Online:

[https://www.transtats.bts.gov/Data\\_Elements.aspx?Data=5](https://www.transtats.bts.gov/Data_Elements.aspx?Data=5)

<sup>13</sup> Congressman Steve Cohen. "Reps. Cohen and Kinzinger, Senators Blumenthal, Schumer, Markey, Menendez and Feinstein Introduce Bipartisan, Bicameral SEAT Act," Press release. March 9, 2017. Online:

<https://cohen.house.gov/media-center/press-releases/rep-cohen-and-kinzinger-senators-blumenthal-schumer-markey-menendez-and>

<sup>14</sup> "Safety risk of shrinking airline seats questioned," Los Angeles Times. April 14, 2015. Online:

<http://www.latimes.com/business/la-fi-airline-seat-risks-20150414-story.html>

<sup>15</sup> Eng, Dinah. "Smaller Bathrooms on Planes Pose Challenges for Passengers," *New York Times*. December 23, 2016. Online: <https://www.nytimes.com/2016/12/23/travel/smaller-airplane-bathrooms-challenges-for-passengers.html>

Unsurprisingly, fewer flights on fewer airlines with more passengers competing for limited space has resulted in higher prices for consumers. Over 10 years, average domestic fares climbed 5% after adjusting for inflation according to an Associated Press analysis.<sup>16</sup> Even that number excludes the record revenues that airlines have reaped from so-called “unbundling,” a phenomenon consumers experience in the form of a litany of baggage fees, cancellation fees, standby fees, seat reservation fees and other forms of nickel-and-diming. In 2015 alone, American, Delta and United brought in \$14.69 billion in ancillary revenue, a staggering 177% increase from the \$5.3 billion they collected from such fees in 2008.<sup>17</sup> A *Wall Street Journal* analysis of airfares, including add-on fees, found that from 2007 to 2014 -- a period coinciding with the worse economic crisis since the Great Depression -- the price of the average round-trip domestic flight increased nearly 16% to \$291.30.<sup>18</sup> These independent analyses stand in stark contrast to industry claims that it has never been a better and cheaper time to fly.

The increasing cost of flying is felt even more acutely by consumers in cities where consolidation has left only one or two dominant carriers. For example:

- Indianapolis was left with just two dominant airlines after ATA was bought by Southwest and Northwest was absorbed by Delta.

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<sup>16</sup> Koeing, David and Mayerowitz, Scott. “U.S. airports increasingly dominated by 1 or 2 carriers,” USA Today. July 15, 2015. Online: <https://www.usatoday.com/story/todayinthesky/2015/07/15/us-airports-increasingly-dominated-by-1-or-2-carriers/30152927/>

<sup>17</sup> IdeaWorks. *2016 Yearbook of Ancillary Revenue*. September 2016. Page 4. Online: <http://www.ideaworkscompany.com/wp-content/uploads/2016/09/2016-Ancillary-Revenue-Yearbook-R.pdf>

<sup>18</sup> Nicas, Jack. “Airline Consolidation Hits Smaller Cities Hardest,” *Wall Street Journal*. September 10, 2015. Online: <https://www.wsj.com/articles/airline-consolidation-hits-smaller-cities-hardest-1441912457>

The two airlines now control 56% of the seats and airfares are 6% above the national average.

- In 2005, US Airways controlled nearly 66% of the seats in Philadelphia. After its merger with American, the combined airline had 77% percent of the seats. After the merger, airfares there went from 4% below the national average to 10% above it.
- From 2005-2015, Delta's control of its Atlanta hub increased from 78% to 80% of the available seats. At the same time, AirTran merged with Southwest, which subsequently reduced its presence there. As a result, domestic airfares to Atlanta went from nearly 6% below average to 11% above.<sup>19</sup>

Conversely, when competition increases, fares tend to go down and service improves. For example:

- Prices in Denver were once 5.6% higher than the national average. When United's market share there dropped from 56% to 41%, fares plunged to levels almost 15% lower than the overall average.
- In Seattle, where Delta is aggressively competing with Alaska Airlines, average fares are \$18 below the national average and Alaska added service to compete.<sup>20</sup>

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<sup>19</sup> Associated Press. "Analysis sheds light on the impact of airline consolidation," July 14, 2015. Online: <http://www.cbsnews.com/news/analysis-sheds-light-on-impact-of-airline-consolidation/>

<sup>20</sup> *ibid.*

## II. LACK OF EFFECTIVE COMPETITION REQUIRES ACTION BY CONGRESS TO RESTORE PASSENGER RIGHTS

The negative effects of unchecked consolidation in the airline marketplace has been decades in the making and is unlikely to be solved by a single piece of legislation, regulation, or the airlines themselves. However, there are steps that Congress can take in the near term to address the worst impacts of a lack of competition and restore balance to the relationship between airlines and their passengers.

First, as the United 3411 incident vividly illustrated, airline overbooking policies, and the resulting bumping practices, can lead to shockingly negative outcomes for passengers. Overbooking is a vestige of a time when consumers could make multiple reservations to maximize their travel flexibility and cancel their flights without penalty. To account for this, airlines began overbooking their flights to ensure that they flew with as few empty seats as possible. Airlines were safe in assuming that this practice would not actually overbook them as their planes regularly flew at less than half capacity.<sup>21</sup>

Fast forward to today and airlines no longer offer such conveniences and customer service. Average load factors are regularly above 80%<sup>22</sup> and planes often reach full capacity. Yet, as the Dao incident highlighted,

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<sup>21</sup> Hargreaves, Steve. "Why planes used to fly half full," CNN Money. April 29, 2015. Online: <http://money.cnn.com/2015/04/29/news/economy/planes-half-full/>

<sup>22</sup> Waitzman, William. "No Room on the Plane: Why Airlines Are So Crowded," *Barron's*. April 15, 2017. Online: <http://www.barrons.com/articles/no-room-on-the-plane-why-airliners-are-so-crowded-1492232384>

overbooking continues to be a standard operating practice in the industry. In 2016, because of airline overbooking practices, more than 430,000 passengers were voluntarily bumped. And while the industry likes to point to the low rates of involuntary bumping, many of the 40,629 consumers who were involuntarily bumped in 2016 almost certainly ended up losing hotel reservations and missing weddings, funerals or important meetings.<sup>23</sup> That first class ticket holders are typically last in line while those like Dr. Dao who try to save money get chosen first for involuntary bumping is just salt in the wound for the vast majority of consumers who can't afford to fly luxury class.

Involuntary bumping should never occur in a competitive market. Airlines should be competing for customers by offering enticing compensation to encourage volunteers to take flights that aren't overbooked. Airlines should be required to maintain interline agreements with other airlines to ensure that paying passengers who are bumped (whether voluntarily or involuntarily) make it to their final destination with as little delay as possible. United's decision in the wake of the Dao incident to offer up to \$10,000 in compensation for voluntary bumping is to be commended.<sup>24</sup> Hopefully it won't take another David Dao incident to get the other airlines to follow suit and eliminate the need for involuntary bumping altogether. If the airlines fail to heed the lessons of the United 3411, Congress and the Department of Transportation ("DOT") must step in to make sure that overbooking never results in a paying passenger being violently removed from a plane against

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<sup>23</sup> United States Department of Transportation. *Air Travel Consumer Report*. Pg. 35. April 2017. Online: <https://www.transportation.gov/sites/dot.gov/files/docs/resources/individuals/aviation-consumer-protection/278481/2017-april-atcr.pdf>

<sup>24</sup> Wise, Alana. "United to offer passengers up to \$10,000 to surrender seats," Reuters. April 27, 2017. Online: <http://www.reuters.com/article/us-ual-passenger-idUSKBN17T0HC>

her or his will when he or she poses no safety or security risk. NCL supports, for example, Sen. Hassan's TICKETS Act of 2017, which would prohibit involuntary bumping after a passenger has boarded, eliminate limits on compensation for involuntary bumping, limit carrier overbooking practices, and require prominent disclosure of carriers' overbook policies.<sup>25</sup>

Second, the power in the relationship between airlines and their passengers can no longer lie solely with the airlines. It has been well-documented that the airlines' Contracts of Carriage are indecipherable legal tomes that are not read or understood by consumers, but which nonetheless absolve the airlines of practically all responsibility when things go wrong.<sup>26</sup> They are in all senses Contracts of Adhesion. This works against consumer protections. We propose instead that consumers must be made aware in clear and conspicuous language of their rights at the time of purchase, on their tickets, and via posters at the gate and ticket counters. When airlines abuse the trust their customers place in them, passengers need to regain access to the legal system to hold airlines accountable for their promises.

Third, the inexorable march of unbundling -- charging for basic necessities such as a guaranteed seat, a piece of luggage, or the need to reschedule a flight - must be curtailed. Thanks to the rampant growth in add-on fees, the cost of "airfare" is becoming an increasingly irrelevant metric. Because the major network airlines are in relative lockstep when it comes to

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<sup>25</sup> Online: <https://www.congress.gov/bill/115th-congress/senate-bill/947/cosponsors?q=%7B%22search%22%3A%5B%22s+947%22%5D%7D&r=1>

<sup>26</sup> See, e.g. Testimony of William J. McGee Before the House Committee on Transportation and Infrastructure Concerns "Oversight of U.S. Airlines Customer Service." Pg. 5. May 2, 2017. Online: [https://transportation.house.gov/uploadedfiles/2017-05-02\\_-\\_mcgee\\_testimony.pdf](https://transportation.house.gov/uploadedfiles/2017-05-02_-_mcgee_testimony.pdf)

ancillary fees like baggage, (Southwest alone among the Big Four airlines doesn't charge cancellation or checked luggage fees, to their credit) cancellation, standby and other fees,<sup>27</sup> competition among the large airlines to offer the best fare is unlikely to have a significant impact on the overall cost of flying.

Requiring airlines to justify the prices they set for ancillary fees is a logical first step in reining in this trend. NCL - along with 10 other major national consumer and passenger rights organizations - is a strong supporter of Senator Markey's and Senator Blumenthal's FAIR Fees Act.<sup>28</sup> The bill, which enjoyed bipartisan support in the Senate Commerce Committee, would prohibit airlines from charging cancellation, baggage or other ancillary fees that are "unreasonable or disproportionate to the costs incurred by the air carrier," under standards to be set by the DOT. The bill would not re-regulate the airlines, as the industry claims, but would remedy a systemic violation of the free market system that has been pointed out repeatedly by both DOT and Department of Justice.

Fourth, consumers must once again have the ability to compare apples to apples when it comes to finding the best deal for their desired flights. The growth in online travel agents ("OTAs") in the 1990s was a key driver in reducing the cost of flying because they for the first time enabled flyers to easily compare fare and schedule information across various airlines and choose the best deal for their needs. Unfortunately, as ancillary fees have

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<sup>27</sup> United States of America et al v. US Airways Group, Inc. and AMR Corporation. Complaint. Pg. 3, Para. 1. August 13, 2013. Online: <https://www.justice.gov/atr/case-document/file/514531/download>

<sup>28</sup> National Consumers League *et al.* "Consumer group letter to Sens. McConnell and Reid on FAIR Fees Act," April 5, 2016. Online: [http://www.nclnet.org/letter\\_fairfees#\\_edn9](http://www.nclnet.org/letter_fairfees#_edn9)

exploded, it has become increasingly difficult for consumers to compare true cost of flying from point A to point B. This is, in a word, anti-competitive.

Under the Obama Administration, the DOT initiated a proceeding to investigate whether airlines should be required to provide ancillary fee information to OTAs and metasearch websites. Unfortunately, Transportation Secretary Chao has put an indefinite hold on that proceeding.<sup>29</sup> Consumers should be able to input their specific requirements in a travel search engine (e.g. traveling from Washington to Chicago with one checked bag, bringing a pet, need extra legroom) and get an accurate listing of the costs for flying on various airlines. Given DOT's likely inaction without Congressional mandate, we would ask this committee to instruct DOT to promulgate rules requiring airlines to provide schedule, fare, and ancillary fee data to OTAs and metasearch sites on an open and non-discriminatory basis.

Fifth, the DOT should seek to strengthen its consumer protection policies to match or exceed those that are available to consumers in the European Union ("EU"). Under current law, airline passengers in the EU enjoy substantially stronger consumer protections. For example, for flights originating in the EU (including flights operated by a U.S. carrier), when a flight is delayed passengers are entitled to up to €600 in compensation, plus meals and refreshments, hotel accommodations, transport to and from the hotel.<sup>30</sup> By comparison, under U.S. law, airlines are under no obligation to

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<sup>29</sup> Jansen, Bart. "DOT to stop collecting comment on airfare, fee proposals," *USA TODAY*. March 2, 2017. Online: <https://www.usatoday.com/story/travel/flights/todayinthesky/2017/03/02/airline-fees/98654914/>

<sup>30</sup> Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding

offer compensation for delays, even when the delay is due to factors within the airline's control.

Finally, Congress should pass a comprehensive Passenger Bill of Rights addressing these and other pressing consumer protection priorities, such as minimum seat size standards. Such action would be an important step in addressing the significant imbalance of power that exists between consumers and the airlines.

In conclusion, I would like to again emphasize the urgent need for Congress to take action to address the lack of competition that inhibits free market forces from working effectively to discipline the airlines' unconscionable treatment of their customers. It should not require millions of views of a video of a passenger being assaulted on an airplane to galvanize Congress into taking action. Consumers have spoken and they are demanding stronger protections from abuses by the airline industry. American consumers desperately need members of the Senate Commerce Committee to be in their corner, to protect and promote consumer rights and protections and to restore some semblance of balance to airline passengers' relationships to the carriers.

Chairman Blunt, Ranking Member Cantwell and members of the subcommittee, I appreciate your including the consumer perspective in this hearing. I look forward to answering your questions.

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and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (Text with EEA relevance) - Commission Statement. Online: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1476179175834&uri=CELEX:32004R0261>

Thank you.