

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**IN RE DOMESTIC AIRLINE TRAVEL
ANTITRUST LITIGATION**

MDL Docket No. 2656

Misc. No. 15-1404 (CKK)

This Document Relates To:

ALL CASES

**DEFENDANT SOUTHWEST AIRLINES CO.'S SUPPLEMENTAL BRIEF
IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS PLAINTIFFS'
CONSOLIDATED AMENDED COMPLAINT**

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Because the conclusory allegations in Plaintiffs' Consolidated Amended Complaint ("CAC") are insufficient to state a conspiracy claim, Southwest Airlines Co. ("Southwest") joins Defendants' Motion to Dismiss and supporting Memorandum. But this is not a matter of Plaintiffs simply having omitted details needed to assert a claim; the facts pled show it is particularly implausible that airlines with such widely divergent business models and such disparate recent track records as Southwest and the other airline defendants would (or even could) conspire in the vaguely conceived manner Plaintiffs describe. As Plaintiffs admit, Southwest's pricing structure, route map, and sales strategy all differ from those of American, Delta, and United—and Southwest has *boosted its capacity aggressively* as it implements its unique approach over a growing collection of markets and routes. Not only have Plaintiffs failed to plead that Southwest acted in concert with any other defendant, they have alleged a conspiracy that makes no sense.

I. Legal standard: Plaintiffs must satisfy the *Twombly* standard as to each defendant.

A defendant prevails on a motion to dismiss if the plaintiff fails to allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The "facial plausibility" standard requires the plaintiff to allege facts that add up to "more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). To state a claim against a defendant for involvement in a conspiracy, Plaintiffs must allege "that *each individual defendant* joined the conspiracy and played some role in it." *Jung v. Ass'n of Am. Med. Colls.*, 300 F. Supp. 2d 119, 164 (D.D.C. 2004) (emphasis added). This is because "at the heart of an antitrust conspiracy is an agreement and conscious decision by each defendant to join it." *In re Lithium Ion Batteries Antitrust Litig.*, No. 13-MD-2420, 2014 WL 309192, at *13 (N.D. Cal. Jan. 21, 2014). It is not enough to make a conclusory allegation that all defendants joined a conspiracy. Rather, the plaintiff must allege facts plausibly showing that *each defendant*

joined the conspiracy. Plaintiffs' inability to do so here is highlighted by the profound differences between Southwest and the other airline defendants.

In evaluating Plaintiffs' Complaint, the Court may consider not only the contents of the Complaint, but also the full contents of the documents Plaintiffs cite in their Complaint.¹ As described below, those documents show how implausible Plaintiffs' conclusions are.

II. Southwest employs a fundamentally different business model than do the legacy airlines.

As Plaintiffs' sources acknowledge, Southwest employs a "low-cost carrier" (LCC) model that "differ[s] significantly" from the business model followed by American, United, and Delta, airlines often referred to as the "legacy" airlines.²

First, Southwest's route map is different. While legacy airlines operate so-called "hub-and-spoke" route networks which connect domestic and international routes, Southwest operates a "point-to-point" network³ almost exclusively devoted to domestic travel.⁴ Southwest continues to seek opportunities to expand that point-to-point structure into additional U.S. cities where it does not yet operate,⁵ benefiting travelers in the areas and routes it targets.⁶ The result of

¹ *Twombly*, 550 U.S. at 568 n.13 ("[T]he District Court was entitled to take notice of the full contents of the published articles referenced in the complaint.").

² See Ex. 1 at 12 (Complaint filed in *United States et al. v. US Airways Group, Inc. et al.*, No. 13-1236 (D.D.C. Aug. 13, 2013)) (cited at CAC ¶ 38 n.7) (describing United, American, and Delta as "legacy" airlines based on their network structure, which includes connections to hundreds of U.S. and international destinations, and other characteristics); *id.* at 17 ("Southwest, the only major, non-network airline, and other smaller carriers have networks and business models that differ significantly from the legacy airlines."); Ex. 2 at 27 (Michael D. Wittman, *The Effects of Capacity Discipline on Smaller U.S. Airports: Trends in Service, Connectivity, and Fares* (June 2014)) (cited at CAC ¶ 37 n.6) (Wittman paper describing Southwest as a "low-cost carrier[]").

³ See, e.g., Ex. 3 at 12 (Diana L. Moss, *Delivering the Benefits? Efficiencies and Airline Mergers* (Nov. 21, 2013)) (cited in CAC ¶ 37 n.5) (referring to United, Delta and American as "hub-and-spoke" airlines); *id.* at 5 (describing how "point-to-point" routes do not fit within a "hub-and-spoke" system); Ex. 1 at 12 (describing "non-network airlines, including Southwest Airlines and a handful of smaller firms, which typically do not offer 'hub-and-spoke' service").

⁴ Ex. 4 at 6 (Southwest Airlines Co. Conference Presentation (Sept. 15, 2014)) (cited at CAC ¶ 106 n.103) (quoting Southwest CFO Tammy Romo as stating that, "international capacity represents about 1% to 2% of our system.").

⁵ Ex. 5 at 8 (Transcript of Southwest Airlines at Thomson Reuters Travel & Leisure Summit (Feb. 24, 2010)) (cited at CAC ¶ 91 n.69) (Southwest described in 2010 how "we're in 68 cities in the United States, and [in] the markets we don't serve ... we still see opportunities to bring Southwest service to more people in this country.").

⁶ Ex. 6 (Reuters, *Airline Shares Down After News of Southwest Capacity Expansion*, St. Louis Today, May 20, 2015) (cited at CAC ¶ 117 n.128) ("Local travelers have benefited from Southwest's plans to add capacity, including new

this unique business model is that Southwest’s network of flights is spread relatively evenly across cities throughout the United States compared to the networks of the legacy carriers, who concentrate the vast majority of their flights into a few large “hubs” which serve as connecting complexes for the “spokes.”⁷ Plaintiffs do not explain how airlines with fundamentally different distributions of assets throughout the country *could* effectively coordinate capacity decisions, much less do Plaintiffs allege facts (rather than conclusions) that the airlines did so here.

Second, Southwest’s pricing structure is fundamentally different. The Complaint includes allegations about the “collusive imposition of ancillary fees,” CAC ¶¶ 78-79, but Southwest cannot collude on fees it does not charge. The other defendants feature an unbundled pricing model, in which they charge a base fare plus fees for certain ancillary components of air transportation (such as bag checking, meals, preferred seating, and ticket change fees).⁸ Southwest, on the other hand, emphasizes an all-inclusive pricing model, a single class of service, few ancillary fees, and a well-publicized “bags fly free” policy which imposes no fees for checking

nonstop daily service to Austin, Texas, beginning next month. The low-cost carrier also is adding nonstop service to Orange County, Calif., starting in November [2015].”).

⁷ See, e.g., Ex. 7 at 51 (American Airlines Group Inc., Quarterly Report (Form 10-Q) (July 23, 2015)) (cited at CAC ¶ 126 n.137) (“[O]ur airlines operate an average of nearly 6,700 flights per day to nearly 350 destinations in more than 50 countries from our hubs in Charlotte, Chicago, Dallas/Fort Worth, Los Angeles, Miami, New York, Philadelphia, Phoenix and Washington, D.C.”); see *id.* at 88 (“We operate principally through hubs in Charlotte, Chicago, Dallas/Fort Worth, Los Angeles, Miami, New York City, Philadelphia, Phoenix and Washington, D.C. Substantially all of our flights either originate in or fly into one of these locations.”); Ex. 8 at 5-6 (United Continental Holdings Presentation at Deutsche Bank Airline Equity Conference (Sept. 13, 2011)) (cited at CAC ¶ 112 n.112) (showing United’s domestic route map, with nearly all flights emanating one of its hubs); Ex. 9 at 8 (United Airlines Presentation at Deutsche Bank Industrials Conference (June 14, 2013)) (cited at CAC ¶ 104 n.99) (showing 385 destinations, including 151 international destinations).

⁸ Ex. 10 at 3, 24 (Corrected Transcript of Delta Air Lines, Inc. Investor Day (Dec. 14, 2011)) (cited at CAC ¶ 82 n.48) (Delta stating at an investor conference “if [customers] just want a base fare with a seat and no check baggage, we have a product for them. If they want free drinks, if they want food, if they want to sit in first class, we have a product for those folks too” and “there [are] a lot of products in merchandising first-class up sell and the like that will create significant new streams of revenue”); Ex. 11 (Brian Naylor, *Justice Department Investigating Airlines for Possible Price Collusion*, National Public Radio (July 1, 2015)) (cited at CAC ¶ 130 n.143) (describing the revenues earned by legacy airlines from reservation-change fees and checked bag fees in recent years).

up to two bags.⁹ Plaintiffs do not explain how airlines with fundamentally different pricing models could coordinate pricing or align price-impacting conduct in any meaningful way.

Third, Southwest's approach to ticket sales is different. The Complaint—though never explaining what this has to do with capacity issues—contends that airlines are coordinating efforts in unstated ways to restrict the manner in which Online Travel Agencies (OTAs) do business. CAC ¶¶ 137-41. But Southwest does not utilize OTAs, and instead distributes its tickets almost exclusively through its own website, www.Southwest.com, and its own telephone reservation agents. Unlike the legacy carriers, which sell a significant portion of their tickets through third-party OTAs (such as Orbitz) and metasearch sites (such as Kayak),¹⁰ Southwest has for many years independently—and successfully—fought the efforts of third parties, such as OTAs, to publish Southwest's schedules and fares without permission.¹¹ Indeed, Southwest considers OTAs, and the fees they charge, as competitors to its own lower-cost, direct internet sales strategy.¹² Any notion that Southwest is using participation in OTAs as an element of a capacity-related conspiracy is belied by the fact that, as indicated in Plaintiffs' own materials, Southwest has not partnered with OTAs or metasearch sites for 15 years.¹³

⁹ See Ex. 12 at 1 (Corrected Transcript of Southwest Airlines at JP Morgan Aviation & Transportation Conference (Mar. 10, 2009)) (cited at CAC ¶ 88 n.61) (Southwest describing its approach to fees as “an element of our low fare leadership”); Ex. 1 at 17 (“Southwest does not charge customers for a first checked bag or ticket change fees.”); Ex. 4 at 6 (Southwest CFO stated that “with respect to charging for bags, our customers don’t like bag fees, therefore, we don’t like bag fees, and so we have no plans today to charge for bag fees”).

¹⁰ See Ex. 13 at 16 (Final Transcript of UAL Corporation at Thomson Reuters Travel & Leisure Summit (Feb. 23, 2010)) (cited at CAC ¶ 91 n.68) (UAL stated in an earnings call that “online travel sites absolutely are the number one way that we now distribute our product.”); Ex. 14 at 2 (Fiona Scott Morton, *Benefits of Preserving Consumers’ Ability to Compare Airline Fares* (Charles River Assocs. May 19, 2015) (cited at CAC ¶ 137 n.148) (44% of travelers booking through online sources book through a metasearch site or OTA).

¹¹ See, e.g., *Southwest Airlines Co. v. BoardFirst, LLC*, No. 06-CV-0891-B, 2007 WL 4823761, at *19 (N.D. Tex. Sept. 12, 2007) (permanently enjoining online travel site from offering competing product based on unauthorized use of pricing information from Southwest.com); *Southwest Airlines Co. v. FareChase, Inc.*, 318 F. Supp. 2d 435, 441 (N.D. Tex. 2004) (rejecting argument that online fare search company couldn’t be sued for misappropriating Southwest’s pricing information because it wasn’t a competitor of Southwest’s).

¹² See Ex. 15 (Salina Khan, *Southwest Pulls Data from all Web Sites but Own*, USA Today, July 6, 2001) (cited at CAC ¶ 54 n.27) (Southwest spokesman stating in 2001 that “[w]e do not trust our competitors to provide the public with information about our fares.”).

¹³ See *id.*

Fourth, Southwest's fleet is different. Legacy airlines fly aircraft as small as 50 seats to more than 350 seats.¹⁴ But to reduce costs, Southwest flies only one aircraft—the Boeing 737, with seat capacity ranging from 122 to 175 seats.¹⁵ Flying only one type of plane means Southwest cannot fine-tune its capacity on each flight.¹⁶ Plaintiffs do not explain how Southwest, with its uniquely homogenous aircraft fleet, and with its *smallest* aircraft having 122 seats, could reach agreements on capacity coordination with airlines that employ such different and varying types of aircraft across their route networks.

The profound differences between Southwest and the three legacy airlines highlight the absence of relevant facts in the Complaint. Plaintiffs are claiming in the most conclusory of terms that there is a conspiracy among airlines to impose fees Southwest does not charge, control the practices of travel agents Southwest does not use, adjust capacity in ways that Southwest is less able to accomplish, all to coordinate effects in route networks that are not even similar to one another. This is hardly an allegation that the four defendants reached an agreement and aligned their conduct; it is simply a blanket assertion that “defendants conspired” to do whatever Plaintiffs find objectionable about air transportation.

III. Regulators recognize Southwest as an aggressive, disruptive competitor.

Lacking factual allegations to support their claims of conspiracy, Plaintiffs rely heavily on the overarching premise that the airline industry is allegedly prone to collusion. But the differences between Southwest and the legacy airlines belie Plaintiffs’ theory. Plaintiffs ignore

¹⁴ See Ex. 9 at 11 (showing United’s fleet including at least 10 different types of aircraft ranging in size from approximately 50 to 350 seats); see also Ex. 10 at 10 (describing Delta’s use of 50-seat regional jets and 350-seat jets).

¹⁵ Ex. 16 at 45 (Southwest Airlines Co., Quarterly Report (Form 10-Q) (July 31, 2015)) (cited at CAC ¶ 126 n.137) (detailing the capacity of Southwest’s fleet of Boeing 737 aircraft).

¹⁶ See Ex. 12 at 7 (Southwest CEO Gary Kelly responding to a question about the “one aircraft type mantra of Southwest Airlines” by saying, “It would be wonderful to match the seat capacity to the size of the market by time of day.... But there’s a lot of consequences [W]e have no interest in looking at smaller aircraft with the attendant higher unit cost. And that’s not speaking to the complexity that it adds to our operation by having multiple aircraft fleet types. So other airlines have obviously taken a different approach and may have a different view of that.”).

how the very DOJ documents on which Plaintiffs rely as the basis for their claims of airline industry concentration actually single out Southwest as a uniquely aggressive competitor that reduces fares and benefits consumers.¹⁷

For example, Plaintiffs rely on the DOJ’s complaint in the 2013 litigation over the U.S. Airways/American Airlines merger to allege that the structure of the airline industry is conducive to coordinated behavior. CAC ¶¶ 38-39. What Plaintiffs omit is that the DOJ viewed Southwest’s unique competitive position as a *counterweight* to concentration, and conditioned approval of the merger on Southwest’s being allowed to acquire divested assets to better compete with the legacy carriers in key markets. *See United States v. US Airways Grp., Inc.*, 38 F. Supp. 3d 69, 72, 79 (D.D.C. 2014) (approving merger on the condition that, *inter alia*, defendants divested to Southwest and other LCCs takeoff and landing slots that represented “substantial assets at key airports”). As the DOJ said, Southwest and the other LCCs focus on value pricing as part of their strategy.¹⁸ The DOJ’s view on divestiture to Southwest was “founded on past experience and research,” including the effects of the 2010 divestiture of slots to Southwest at Newark Airport as a condition of the Continental-United merger—a divestiture that reduced prices and increased passenger volumes in the Newark markets that Southwest subsequently entered using the divested slots.¹⁹

¹⁷ See Ex. 17 (U.S. Dep’t of Justice, Press Release, Justice Department Files Antitrust Lawsuit Challenging Proposed Merger Between US Airways and American Airlines (Aug. 13, 2013)) (cited at CAC ¶ 38 n.7) (DOJ stating in 2013 that “Southwest and JetBlue offer consumers many benefits.”); Ex. 18 at 9 (Complaint, *United States v. United Continental Holdings, Inc. et al.*, No. 15-7992 (D.N.J. Nov. 10, 2015)) (cited at CAC ¶ 61 n.29) (DOJ stated in its 2015 complaint opposing the proposed sale of slots by United to Delta at EWR how when “United divested 36 slots to Southwest in 2010 to address the Department of Justice’s concerns with the United/Continental merger, Southwest initiated low fare service out of Newark. United was forced to compete and fares dropped significantly.”).

¹⁸ Ex. 19 at 5 (Competitive Impact Statement, *US Airways Grp.*, No. 13-1236 (D.D.C. Nov. 12, 2013) (Dkt. 148)) (describing how Southwest and other low-cost carriers “tend to focus more heavily on lower fares and other value propositions”).

¹⁹ See Ex. 20, U.S. Dep’t of Justice, Press Release & Exhibits, Justice Department Requires US Airways and American Airlines to Divest Facilities at Seven Key Airports to Enhance System-Wide Competition and Settle Merger Challenge (Nov. 12, 2013) (map showing that the 2010 divestiture of slots to Southwest at Newark benefited travelers in 60 cities); *id.* (chart showing that entry of Southwest into five separate markets reduced costs to consumers by

Moreover, given that Plaintiffs' own sources confirm Southwest's disruptive competitive presence, and confirm that Southwest is the country's largest carrier of domestic passengers,²⁰ it is even less plausible that it could have colluded with the other airlines having such profoundly different business models and methods of operation.

Courts and antitrust agencies routinely recognize the importance of disruptive companies like Southwest in restraining prices and promoting competition.²¹ Plaintiffs cannot credibly premise their claims on an alleged industry-wide propensity to collusion when the DOJ documents on which they rely recognize Southwest as a uniquely disruptive competitor.

IV. The facts Plaintiffs allege about Southwest's capacity do not fit Plaintiffs' conclusions of conspiracy.

With dramatic flourish, Plaintiffs contend that in 2015, Southwest "broke ranks" and announced plans to increase capacity, but then "knuckled under pressure" after the International Air Transport Association (IATA) conference. CAC ¶¶ 5, 116-22. What Plaintiffs do not say is exactly how Southwest "knuckled under." Plaintiffs' implication that Southwest fell in line with some agreement to stop capacity growth is belied by the statements and documents on which Plaintiffs rely.

5%-27% and increased the number of passengers on the five routes from 35%-66%). Plaintiffs referenced the Department of Justice's challenge to the 2013 U.S. Airways-American Airlines merger extensively in their complaint. *See, e.g.*, CAC ¶¶ 38-39. Ex. 20 is a Department of Justice Press Release (and exhibits thereto) announcing the settlement in that merger. The Court can take judicial notice of these materials. *See, e.g., In re XM Satellite Radio Holdings Sec. Litig.*, 479 F. Supp. 2d 165, 174 & n.8 (D.D.C. 2007) (taking judicial notice of SEC filings, press releases, analyst reports and conference call transcripts); *Taleff v. Sw. Airlines Co.*, 554 F. App'x 598, 599 n.1 (9th Cir.) (taking judicial notice of a Department of Justice press release), *cert. denied*, 135 S. Ct. 231 (2014); *Buckley v. DIRECTV, Inc.*, 276 F. Supp. 2d 1271, 1272 & n.1, 1275 & n.4 (N.D. Ga. 2003) (taking judicial notice of press release by the Department of Justice when ruling on motion to dismiss).

²⁰ Ex. 21 (Doug Cameron & Jack Nicas, *Carriers Keep Capacity in Check*, Wall. St. J., Sept. 14, 2011) (cited at CAC ¶ 96 n.85).

²¹ *See, e.g., United States v. H&R Block, Inc.*, 833 F. Supp. 2d 36, 80 (D.D.C. 2011) (critical antitrust question with respect to defendant was whether it "consistently play[ed] a role within the competitive structure of [the] market that constrains prices"); *FTC v. Staples*, 970 F. Supp. 1066, 1083 (D.D.C. 1997) (expressing concern about "the elimination of a particularly aggressive competitor in a highly concentrated market, a factor which is certainly an important consideration when analyzing possible anti-competitive effects").

Southwest is a growth airline, and it grew aggressively in early 2015 in accordance with its pre-established plans.²² Plaintiffs cited a May 2015 *Forbes* article highlighting how Southwest, like other low-cost carriers, has been growing “aggressively”:

Contrary to large carriers, smaller airlines and *low-cost carriers aggressively added capacity* during the [first] quarter [of 2015]. The Seattle-based airline, Alaska Air, grew its capacity by 11% on a year-on-year basis, the highest rate of capacity expansion in the industry for the quarter. This was followed by low-cost carriers, JetBlue and *Southwest* that *recorded a capacity growth of 9.6% and 6%*, respectively. The rapid capacity increase by these airlines led to a surplus of seats in the market, *creating a pricing pressure for the large network carriers.*²³

A few days after *Forbes* described that capacity growth, according to Plaintiffs, Southwest’s chief financial officer stated publicly that Southwest’s capacity growth for the year would fall “in the 7% to 8% range.” CAC ¶ 116.

Plaintiffs claim that this announcement led to an “instantaneous” reaction of “concern,” and that the legacy airlines, needing “to ensure that Southwest did not break ranks on the capacity issue,” CAC ¶¶ 117-18, put intense pressure on Southwest at the IATA conference, CAC ¶ 120. (It is puzzling that Plaintiffs would rely on IATA meetings as presenting “opportunities for the Defendants’ executives to meet face to face and conspire” and would assert that the alleged conspiracy at issue was facilitated in part “at meetings of the [IATA],” CAC ¶¶ 3, 114, when Plaintiffs acknowledge that Southwest is *not a member of IATA*. *Id.* ¶ 86.)

The result of this pressure, according to Plaintiffs, is that Southwest “knuckled under to the collusive capacity discipline requirements imposed by its competitors.” CAC ¶ 122. But Plaintiffs do not say what Southwest actually did. As it turns out, the supposed surrender cited by Plaintiffs

²² See Ex. 16 at 27 (showing that Southwest’s capacity grew at a 7% annualized basis in the three months ended June 30, 2015) (cited at CAC ¶ 126 n.137).

²³ Ex. 22 (*Why Did US Airlines Deliver Record Profits in the Seasonally Weak First Quarter?*, Forbes, May 13, 2015) (cited at CAC ¶ 80 n.42) (emphasis added).

was that Southwest's CEO, Gary Kelly, stated publicly on May 28, 2015 that Southwest's capacity would increase "around 7 percent" in 2015.²⁴ He reiterated that guidance two weeks later.²⁵ In other words, he reiterated that Southwest was still going to grow in the 7% to 8% range that prompted the alleged backlash.

Very little of Plaintiffs' twenty-page narrative about so-called "capacity discipline" among the airlines mentions Southwest. Yet the linchpin allegation in the Complaint is that Southwest "knuckled under" to "pressure" from the legacy carriers not by cutting capacity, and not even by slowing its growth to match them, but by growing capacity in line with the plans Southwest had itself made public before other airlines supposedly applied "pressure"—a growth rate that was *more than twice as high* as any of the legacy carriers were projecting for the year.²⁶ Southwest simply stuck to its previously-announced industry-leading capacity growth plan notwithstanding any actions of the legacy carriers. Plaintiffs cannot explain what the legacy carriers would gain from a conspiracy that left their single biggest competitor free to grow two times or more as fast as they did.

Given these facts, it is implausible to assert, without a whit of relevant factual detail, that Southwest was conspiring with the legacy carriers to limit capacity. Plaintiffs' own documents show Southwest was competing. Plaintiffs cannot explain what plausible conspiracy could produce that result.

²⁴ Ex. 23 (Abigail Stevenson, *Southwest Airlines CEO: Ramping Up the Competition* (CNBC television broadcast May 28, 2015), <http://www.cnbc.com/2015/05/28/southwest-airlines-ceo-ramping-up-the-competition.html>). The Court may consider Mr. Kelly's May 28 statement because Plaintiffs relied on a document that quotes Mr. Kelly making the same assertion and because the statement is central to Plaintiffs' allegations about Southwest's 2015 capacity growth. *See, e.g., Scowcroft Grp., Inc. v. Toreador Res. Corp.*, 666 F. Supp. 2d 39, 45 (D.D.C. 2009); *Condit v. Dunne*, 317 F. Supp. 2d 344, 357 (S.D.N.Y. 2004); *see also Rivera-Torres v. Castillo*, 109 F. Supp. 3d 477, 482 (D.P.R. 2015).

²⁵ Ex. 24 (James B. Stewart, "*Discipline*" for Airlines, *Pain for Fliers*, N.Y. Times, June 11, 2015) (cited at CAC ¶¶ 120-22 & n.131-34).

²⁶ See CAC ¶ 108 (stating that Delta planned to grow 2015 capacity at 3% vs. 2014, United planned to grow no more than 2.5%, and American planned to grow 1.5% internationally and 3% domestically).

CONCLUSION

For the foregoing reasons, Southwest Airlines requests pursuant to Fed. R. Civ. P. 12(b)(6) that this Court dismiss the Consolidated Amended Complaint against Southwest.

Respectfully submitted,

/s/ Alden L. Atkins

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of May, 2016, I caused the foregoing Defendant Southwest Airlines Co.'s Supplemental Brief in Support of Defendants' Motion to Dismiss Plaintiffs' Consolidated Amended Complaint using the Court's CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Alden L. Atkins

Alden L. Atkins