

SECOND SUPPLEMENT TO MEMORANDUM 2025-41

**Draft Language for Single Firm Conduct Provisions, Legislative Findings and
Declarations, and Public Comment**

This supplement presents a public comment received by the Commission related to Memorandum 2025-41.¹ The public comment is attached as an Exhibit to this supplement.

<u>Exhibit</u>	<u>Exhibit page</u>
Airlines for America (9/17/2025)	1

As with prior memoranda, a brief description of the commentator is below.

Airlines for America

This comment was submitted by Sean Williams, Vice-President, State and Local Government Affairs for Airlines for America. According to their [website](#):

Airlines for America (A4A) is the trade association for the leading U.S. airlines, both passenger and cargo carriers, prioritizing safety and security during this time of record passenger volumes and increased reliance on air cargo shipments. Every day, U.S. airlines operate 27,000 flights carrying 2.7 million travelers and 61,000 tons of cargo while supporting 10 million U.S. jobs and 5 percent of GDP.

PUBLIC COMMENT

Airlines for America expresses general concerns about the staff recommendations on Single Firm Conduct, stating:

We write to express the industry's concern over the staff recommendations as currently written. We look forward to further engaging with the Commission on how each of the current proposals would undermine the legacy of sensible airline deregulation that has facilitated decades of competition, innovation and consumer benefits. (Footnote omitted).

...

¹ Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise. The Commission welcomes written comments at any time during its study process.

Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

The resounding success of competition in the airline business depends on both the once-in-a-generation reduction of regulation embodied in the ADA [Airline Deregulation Act of 1978], and on decades of sensible, incremental regulation under other laws. The antitrust laws are paramount among these; throughout the post-ADA period, U.S. antitrust law has provided a high degree of consistency, predictability, and structure to the analysis of competition in the airline industry. These benefits come from (1) a generally consistent framework for antitrust analysis between federal and state law (and, to some extent, consistency with international competition regulation); (2) decades of precedent allowing airlines and other industry participants to predict legal outcomes with relative efficiency and accuracy; and (3) relatively common-sense rules weighing the overall competitive effects of conduct and transactions and condemning only those behaviors and deals that are more likely to detract than to add to competition.²

Respectfully submitted,

Sharon Reilly
Executive Director

Sarah Huchel
Chief Deputy Director

² EX 2-3



September 17, 2025

The Honorable Xochitl Carrion, Chair
The Honorable Richard Simpson, Vice-Chair
California Law Revision Commission
c/o Legislative Counsel Bureau
925 L Street
Suite 275
Sacramento, CA 95814

Re: CLRC Single Firm Conduct Reform Recommendation (Antitrust Law, Study B-750)

Dear Chair Carrion, Vice-Chair Simpson and Members of the Commission:

Airlines for America (“A4A”) ¹, the trade association for the leading U.S. passenger and cargo airlines, appreciates the opportunity to comment on the California Law Revision Commission’s (“CLRC’s”) recommendations for potential amendments to California state antitrust laws regarding single-firm conduct – and the potential effects of such possible amendments on the competitive dynamics of the airline industry.

We write to express the industry’s concern over the staff recommendations as currently written.² We look forward to further engaging with the Commission on how each of the current proposals would undermine the legacy of sensible airline deregulation that has facilitated decades of competition, innovation and consumer benefits.

This letter briefly discusses the near-50-year history of increasing competition in the airline industry after the Airline Deregulation Act of 1978 (“ADA”), which should not be jeopardized by various proposals which could slow or even reverse that trend and its benefits for consumers.

Over the past few decades, airline deregulation has spurred diverse business models and greater consumer choice. Today, carriers transport record volumes while prioritizing safety and security. Every day, U.S. airlines operate 27,000 flights carrying 2.7 million travelers and 61,000 tons of cargo while supporting 10 million U.S. jobs and 5 percent of American GDP.

The ADA, championed by consumer advocates and economists, spawned a flurry of new entrants and diversification of business models in the airline industry. In turn, those dynamics drove airlines to compete not only on product but also on price. Prior to 1978, rigid U.S. regulation of airlines, via the Civil Aeronautics Board

¹ The members of the association are Alaska Airlines, Inc.; American Airlines Group, Inc.; Atlas Air, Inc.; Delta Air Lines, Inc.; Federal Express Corporation; Hawaiian Airlines; JetBlue; Southwest Airlines Co.; United Airlines Holdings, Inc.; and United Parcel Service Co. Air Canada is an associate member.

² See Cal. Law Revision Comm’n, Memorandum 2025-41: Draft Language for Single Firm Conduct Provisions, Legislative Findings and Declarations, and Public Comment (Sep. 11, 2025), <https://clrc.ca.gov/pub/2025/MM25-41.pdf>.

("CAB"), served as a highly effective barrier to entry. Markets were simply not contestable, because even in the face of high prices and market inefficiencies, an incumbent serving a route knew that a competitor could not enter that route overnight. This was good for aviation attorneys working on route cases, but not for consumers who could not afford to fly.

The growth in the competitiveness of the airline industry since the ADA speaks for itself. Post-deregulation, the U.S. has benefited from a plethora of differing business models from global network carriers and lower cost network carriers to low-cost carriers and even ultra-low-cost carriers. Domestic deregulation has spurred diverse business models and greater consumer choice and value.

Today, travelers flying within the United States or abroad can choose from a wide range of airlines—including foreign-flag airlines on international routes, thanks in large part to deregulation of international air travel via U.S. government-led "Open Skies" agreements—providing a broad array of pricing and service options. These include full-service global network carriers (e.g., American, Delta, United), low-cost network carriers (e.g., Alaska/Hawaiian), low-cost carriers (e.g., Breeze, JetBlue, Southwest) and ultra-low-cost carriers (e.g., Allegiant, Avelo, Frontier, Spirit, Sun Country). Carrier business models differ primarily by (1) network scope and product and (2) operational complexity. In general, as network scope (i.e., breadth of destinations served, fleet diversity required to serve those destinations) and product differentiation grow—along with the benefits consumers derive from those attributes—so too do the complexity and associated costs of providing air service.

Since 2000, lower cost carriers have been an engine of growth in the industry and taken a significant share of passengers away from the global network carriers ("GNCs"). In 2000, GNCs carried 73% of origin-and-destination ("O&D") passengers. By the first half of 2024, that share had fallen to just 52%, meaning that lower-cost carriers now carry nearly half of all domestic passengers. Moreover, the share of domestic U.S. passengers with access to lower-cost carriers has soared from 62% in 2000 to 90% in 2024. In fact, more than 50% of domestic O&D passengers now have access to ultra-low-cost carriers ("ULCCs"), up from 26% just a decade ago, and have benefited from the arrival of two lower-cost startups—Avelo Airlines and Breeze Airways—in spring 2021. As lower-cost carriers grew rapidly, the growth of complementary GNC airline networks facilitated their ability to offer competitive connecting service on more O&D city pairs, expand nonstop service into new markets and serve more travelers overall. The combination of these developments resulted in more competition and choice than ever for flyers, with the average number of competitors on domestic city pairs rising from 3.33 in 2000 to 3.39 in 2010 and to 3.49 in 2024.

It is also worth noting that in 2023, about 50% of U.S. domestic passengers traveled in city pairs with at least four effective competitors, 28.5% in markets with three competitors and 16.8% in markets with two competitors. U.S. passengers have also benefited from a proliferation of nonstop service in more markets over time. Notably, in 2023 about 57% of U.S. domestic passengers traveled in markets with at least three nonstop competitors, compared with 41% of the market in 2004. In 2023, only about 13% of the U.S. passengers traveled in markets without a nonstop service option, compared with 21% of the U.S. passenger market in 2004. Net new nonstop domestic service (i.e., new routes minus discontinued routes) by major carriers began on 459 nonstop O&D airport pairs between 2004 and 2024.

Airlines adapt services and develop products and technologies that meet customer demands. Choices have broadly expanded for consumers during the period since consolidation began (and new entry continued), and the airlines created significant new service products, including basic economy and premium economy while upgrading business class. And despite the pandemic setback, airline capacity has increased. As evidenced by the American Customer Satisfaction Index and other independently conducted surveys, airline industry customer satisfaction ratings are at record levels. Unbundling has given consumers a greater choice, including very-low-fare basic economy. Including ancillary fees, real fares have continued to decline, due in large part to the low barriers to market and route entry.

The resounding success of competition in the airline business depends on both the once-in-a-generation reduction of regulation embodied in the ADA, and on decades of sensible, incremental regulation under other laws. The antitrust laws are paramount among these; throughout the post-ADA period, U.S. antitrust law has provided a high degree of consistency, predictability, and structure to the analysis of competition in the airline industry. These benefits come from (1) a generally consistent framework for antitrust analysis between federal and state law (and, to some extent, consistency with international competition regulation); (2) decades of precedent allowing airlines and other industry participants to predict legal outcomes with relative efficiency and accuracy; and (3) relatively common-sense rules weighing the overall competitive effects of conduct and

transactions and condemning only those behaviors and deals that are more likely to detract than to add to competition.

A radical change to California's antitrust laws has the potential to upend the competitive progress made in the airline industry since the passage of the ADA and should be approached carefully.

Competition in the airline industry is robust, and travelers benefit from improved experience and connectivity at the same time they enjoy lower fares. Existing antitrust law has proven a useful tool to ensure that the competition unleashed by airline deregulation continues to increase to this day and exerts a meaningful and ongoing constraint on industry structure and conduct. Uncertainty from a change in the law, and abandonment of existing standards and precedents, has the potential to chill innovation by the airline industry, disincentivize competitive thinking by its key partners and raise costs.

Airlines for America is interested in a continuing dialogue with the CLRC and the opportunity to detail our concerns with respect to these draft provisions. We will supplement our expression of concern with more fully formed comments on the specific proposals and look forward to speaking further with you about them.

Sincerely,

A handwritten signature in blue ink, appearing to read 'S Williams', is positioned above the typed name.

Sean Williams
Vice-President, State and Local Government Affairs
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