BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Joint Application of HAWAIIAN AIRLINES, INC. and JAPAN AIRLINES CO., LTD. under 49 U.S.C. §§ 41308 and 41309 for approval of and antitrust immunity for alliance agreements.	DOT-OST-2018-

[PUBLIC] JOINT APPLICATION FOR APPROVAL OF AND ANTITRUST IMMUNITY FOR ALLIANCE AGREEMENTS

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I. Introduction.

Hawaiian Airlines, Inc. ("Hawaiian") and Japan Airlines Co., Ltd. ("JAL" and together with Hawaiian, the "Applicants") jointly apply (the "Joint Application") under 49 U.S.C. §§ 41308 and 41309 for approval of and antitrust immunity ("ATI") for a Commercial Cooperation Agreement ("CCA") and Joint Venture Agreement ("JVA") (attached hereto as **Appendix 1** and **Appendix 2**, respectively), which the Applicants have executed to coordinate their passenger services on routes between and within Hawaii and Japan and beyond Japan to other Asian points (the "Proposed Alliance").[1]

The Proposed Alliance promises significant public benefits without a material lessening of competition in any relevant market. It also presents the Department of Transportation ("DOT" or the "Department") with a first-time opportunity. By approving the Joint Application, the Department can strengthen a smaller U.S. carrier, extending the benefits and efficiencies of

[1] Common names are used throughout the Joint Application.

immunized cooperation and allowing Hawaiian to continue to expand its distinctive model of high-quality yet affordable service to a larger footprint and more customers. Today, only the three largest U.S. network carriers enjoy the competitive advantages of immunized cooperation. In the Japan-Hawaii market, United and ANA, members of the Star alliance, and Delta and Korean Air, members of the SkyTeam alliance, operate immunized joint ventures. Conferring the advantages of joint venture antitrust immunity to another U.S. carrier will strengthen the competitiveness of the U.S. airline industry overall and benefit the traveling public. As shown below, the Proposed Alliance is in the public interest and the case for the grant of antitrust immunity is compelling. Hawaiian and JAL therefore respectfully request that the Department approve this Joint Application.

II. The Applicants.

A. Hawaiian.

Now in its 89th year of continuous service, Hawaiian is Hawaii's longest-serving airline. Hawaiian's core business has long been providing air service between the Hawaiian Islands, currently operating approximately 170 jet flights daily within the State of Hawaii. Consistent with this core business, Hawaiian has developed a unique model in the airline industry. It is a destination carrier that built its business bringing visitors to the State of Hawaii and sharing the Aloha spirit with its customers from the moment they board the aircraft. Toward that end, Hawaiian operates an extensive domestic long-haul network, including twelve routes between Hawaii and the mainland United States as well as American Samoa. Since emerging from bankruptcy in 2005, Hawaiian has invested heavily in expanding its international network and now serves Hawaii from Japan, South Korea, China, Australia, New Zealand, and Tahiti. After entering the Japanese market in 2010, Japan has become Hawaiian's most important international market. Hawaiian now flies between Honolulu (HNL) and Tokyo (Haneda (HND) and Narita (NRT) airports), Sapporo-Chitose (CTS), and Osaka (KIX) as well as between Kona (KOA) and Tokyo (HND).

Despite more than a decade of expansion, Hawaiian remains a smaller, independent U.S. carrier. By almost any measure, it is one-tenth the size of United, Delta, and American, which are mainstays of their respective global alliances. Hawaiian is not a member of any global alliance, and it has pursued the Proposed Alliance to allow Hawaiian to continue to compete, expand the scope of its service, and deliver benefits to the traveling public.

B. JAL.

JAL was established as a government-owned airline in 1951 and was known as Japan's flag carrier for decades. It was privatized in 1987. JAL began serving Honolulu in 1954, and the Japan-Hawaii market is of utmost importance to JAL and its customers. Honolulu is JAL's largest station outside Japan in terms of passengers.

When Hawaiian decided to enter the Japan-Hawaii market in 2010, JAL was approached by Hawaiian to consider teaming up for codesharing in the market and having JAL provide ground-handling services to Hawaiian in Japan. At the time, JAL was in the midst of reorganization proceedings in Japan under Japanese bankruptcy law due to financial difficulties (exacerbated by, among other things, the global economic downturn, the swine flu epidemic, and terrorist concerns). The restructuring of JAL involved very material downsizing and massive layoffs. As a result, JAL could not spare employees to work on ground handling for Hawaiian and to otherwise cooperate with Hawaiian. JAL was forced to reluctantly decline Hawaiian's offer. Hawaiian then turned to the other major Japanese carrier, ANA.

JAL successfully emerged from reorganization a year later (in 2011) and was re-listed on the Tokyo Stock Exchange in 2012. It has since regained its footing as one of the world's leading airlines.

III. Why the Proposed Hawaiian-JAL Partnership?

Several years after the aborted attempt at codesharing and ground-handling cooperation, JAL and Hawaiian are more than ready to establish a deep relationship with each other.[2] That is the underlying premise to the CCA and JVA. The principal reasons motivating the Proposed Alliance are outlined in this section.

a. The parties' most valuable stakeholders are their customers, who stand to benefit from the Applicants' revenue-sharing, metal-neutral joint venture ("JV") in a number of ways. Under the Proposed Alliance, the Applicants will closely integrate their operations and sell each other's flights as if they were their own. Deep integration and metal indifference redound to the benefit of customers. The Proposed Alliance will allow JAL and Hawaiian to (i) expand their networks, (ii) offer seamless online service to their customers on routes covered by the JV, (iii) provide more flight choices to their passengers, (iv) optimize their joint schedules, (v) reduce connecting times, (vi) harmonize and enhance their services and products, (vii) co-locate facilities to improve passenger convenience, (viii) reduce fares through the elimination of double marginalization, (ix) grow capacity, and (x) give their valued frequent flyer members the opportunity to earn and redeem frequent flyer miles on a much larger network.

b. The Proposed Alliance will expand and improve services, stimulate traffic, and bring additional visitors to the State of Hawaii to the benefit of the U.S. economy. Hawaiian and JAL project that the combination of the Hawaiian and JAL network, retiming of certain Hawaii-Japan nonstop flights to increase connectivity, and introduction of new services will stimulate between

[2] **[*See* HA-JAL-0000037 Confidential Treatment Requested Under § 302.12**

162,000 and 350,000 passengers per year. These improved services amount to between $56.3 million and $124.7 million worth of consumer benefits. Because the preponderance of this traffic is foreign-originating, the stimulation will increase the number of visitors to the United States. The money spent by these additional tourists is a U.S. export, which will have cascading benefits to the U.S. economy. Hawaiian and JAL project an economic impact of between $184.5 and $402.3 million, resulting in the creation of between 1,855 and 4,049 U.S. jobs.

c. The metal-neutral pricing that will be implemented by the Proposed Alliance has been shown to reduce fares on connecting itineraries by 8.4 percent on average compared to standard interline or codeshare itineraries.

d. Other listed benefits, although less susceptible to being quantified, are nevertheless very real. As an example of customer benefits flowing from the Proposed Alliance, JAL sees considerable value for its passengers in expanding its network to include Hawaiian's inter-island flights within Hawaii. JAL has experienced an increase in passengers visiting Hawaiian islands in addition to, or other than, Oahu, where HNL is located. That is, market trends indicate a growing interest among Japanese travelers to visit the neighbor islands of Hawaii (primarily flying to Hilo (ITO) and Kona (KOA) on the Big Island, Kahului (OGG) on Maui, and Lihue (LIH) on Kauai). The Proposed Alliance will improve the customer experience for the rising percentage of JAL customers wishing to travel to these neighboring islands. Among other things, JAL will be able to provide a seamless travel experience to these passengers all the way to their neighboring island destinations and coordinate flight schedules with Hawaiian to enhance connectivity.

e. While Hawaiian's international services have significantly increased over the last ten years, the inability to forge deep cooperative relationships for the exchange of traffic at international gateways has checked Hawaiian's growth. Because Hawaiian's garden-variety codeshare agreements have largely failed to generate significant traffic exchanges and because of the difficulty of marketing overseas, Hawaiian's services have been mainly limited to the local market at its international gateways. While Hawaiian has added international services between its home base in Hawaii and various points around the Pacific Rim, the opportunities for further growth as an independent carrier are limited absent deep cooperation with a foreign partner like JAL.

f. Hawaiian's customers will benefit from expanded travel options between Hawaii and points beyond the Japanese gateways, which will become part of Hawaiian's expanded network. For Hawaiian's customers, the partnership enhances access to more destinations in Japan (34 new domestic points) and Asia (eleven points beyond Japan). This is an increase of 26 destinations in Japan and eleven destinations in Asia compared to the limited number of points covered in Hawaiian's relationship with its previous Japanese codeshare partner. Gaining access to this beyond traffic is key for Hawaiian, but Hawaiian believes it can only tap into these additional markets through deep cooperation made possible by ATI.

g. JAL customers will benefit from the opportunity to fly on Hawaiian's Tokyo-Haneda (HND) flights. JAL does not operate between Haneda and Hawaii, but Hawaiian does (to/from both Honolulu and Kona).[3] The Proposed Alliance will give JAL's Tokyo customers the added option of using the close-in Haneda Airport (on a Hawaiian-operated flight) instead of Narita (on a JAL or Hawaiian-operated flight) when traveling nonstop to Honolulu or Kona. The Applicants will be indifferent as to which flight a customer chooses because of metal neutrality. The Proposed Alliance will also offer easier and shorter connections for JAL passengers to Hawaii originating in non-gateway cities. Many JAL passengers to Hawaii who start their journey from

[3] Hawaiian operates fourteen flights per week between HND and Hawaii (eleven flights HND-HNL and three flights HND-KOA).

regional areas in Japan fly first to Haneda and then take ground transportation to Tokyo Narita (NRT) to connect to a JAL flight to Honolulu or Kona. In contrast, under the Proposed Alliance, these customers would be able to enjoy significantly reduced connecting times and a smooth transfer at Haneda, without the need to change airports in Tokyo.

h. The JVA will enable JAL and Hawaiian to compete more effectively with the two immunized JVs currently operating in the Hawaii-Asia market, Star's United/ANA and SkyTeam's Delta/Korean Air. United/ANA have engaged in immunized JV cooperation in the market for many years; that immunized JV largely accounts for the fact that Hawaiian/ANA codesharing never reached Asian points outside Japan.[4] On May 1, 2018, Delta/Korean Air implemented a comprehensive revenue-sharing, metal-neutral JV, which has received approval from both the DOT and the Korean Ministry of Land, Infrastructure and Transport. The JAL-HA partnership will provide a competitive counterbalance to these two immunized JVs. Further, there will be no reduction in inter-alliance competition in the transpacific, as the third immunized transpacific JV alliance between American and JAL does not overlap with the Proposed Alliance. That is, American does not serve the Hawaii-Asia market. Approval of the Proposed Alliance would add a healthy dose of inter-alliance competition to the duopoly that exists today.

i. The Proposed Alliance will enable both Hawaiian and JAL to improve their respective services to compete with the Star alliance's significant increase in capacity between Japan and Hawaii. Last year ANA announced plans to more than double the capacity of its flights between Honolulu and Narita, beginning the spring of 2019. The addition of two A380s per day on the NRT-HNL route would increase ANA's capacity by 114 percent. The Applicants maintain that a competitive response is called for -- one that confers consumer benefits from an immunized metal-

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[4] *See* Exhibit 104.

neutral JV. The Applicants do not fear competition from anyone but respectfully submit that they should have the opportunity to competitively respond to the huge capacity surge by the immunized United/ANA JV, as well as to the newly-implemented Delta/Korean Air immunized JV. Passengers in the Hawaii-Asia market should be able to benefit fully from increasingly robust inter-alliance competition.

j. Competition in the Hawaii-Asia market has become even more vibrant with the recent entry of two low-cost Asian carriers into the market. On June 28, 2017, AirAsia X, a Malaysian low-cost carrier ("LCC"), launched service between Kuala Lumpur, Malaysia and Honolulu via Osaka, using fifth freedom rights to carry local Japan-Hawaii traffic. AirAsia X announced at the end of May that it would be increasing its flight service from four times per week to daily service, due to "robust demand."[5] On December 19, 2017, Scoot, a Singaporean LCC, began service between Singapore and Honolulu via Osaka, also using fifth freedom rights. The Proposed Alliance is a proportionate competitive response.

k. Hawaiian's partnership with JAL, an established and world-class carrier, will improve Hawaiian's global competitiveness. By partnering with JAL, Hawaiian will be able to sell more services due to Hawaiian's association with JAL's premier brand, JAL's extremely valuable expertise in marketing international services, and, crucially, JAL's extensive network within and beyond Japan. Hawaiian's prior codeshare partnership lacked the incentives for this type of cooperation. The Proposed Alliance will lift Hawaiian into a new class as a global carrier, making Hawaiian and the U.S. airline industry more competitive overall. For instance, it will give Hawaiian a strong marketing tool by opening the door to Hawaiian's inclusion in JALPAK packages.

[5] AirAsia X to increase flights from Honolulu to Kuala Lumpur, Airwaysmag.com (May 31, 2018), https://airwaysmag.com/airlines/airasia-x-to-increase-flights-to-honolulu-from-kuala-lumpur/ [hereinafter Airwaysmag.com (May 31, 2018).

JALPAK is a subsidiary of JAL that bundles and prepares tour packages for the Hawaii-Japan market and is a very important travel distribution outlet in Japan. JALPAK has marketed JAL flights almost exclusively since approximately 2010, but, as part of the Hawaiian-JAL partnership, JALPAK will market Hawaiian-operated flights under the Hawaiian brand as an option in its tour packages and brochures. This is a meaningful coup for Hawaiian, as it will dramatically expand Hawaiian's network as well as boost its profile and competitive position in Japan and beyond to other points in Asia. [**Confidential Treatment Requested Under § 302.12**

][6]

All of these reasons support grant of the Application.

IV. Components of the Proposed Alliance.

Hawaiian and JAL seek antitrust immunity for their comprehensive alliance and metal-neutral JV. While the Proposed Alliance contains many features similar to those of the numerous alliances previously approved and immunized by the Department, it is also unique. In the face of consolidation among U.S. international network carriers, the Proposed Alliance offers the Department the opportunity to improve the competitiveness of a smaller U.S. carrier within its region to compete at parity with global carriers – even though they are at least an order of magnitude larger by any metric.[7] The Proposed Alliance consists of the following agreements and

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[6] [**HA-JAL-0000255; *see also* HA-JAL-0000278 Confidential Treatment Requested Under § 302.12**
].

[7] The Department has recognized the value of having a variety of service forms in the industry, including global network carriers and "*regional niche carriers*," observing that such various service forms "can exist in the international aviation market and the competition among these services will enhance consumer benefits through efficient operations and low fares. Thus, our international aviation strategy should provide opportunities for all of these forms of service so that we realize the benefits from maximum competition among them." Statement of United States International Air Transportation Policy, 60 Fed. Reg. 21,841, 21,843 (May 3, 1995) ("Policy Statement") (emphasis added). In other words, regional niche carriers (like Hawaiian) were touted as providing benefits through competition with global networks.

undertakings.

A. Overview of the Commercial Cooperation Agreement.

The Applicants executed a CCA on February 28, 2018. Among other things, the CCA provides a framework for: bilateral codesharing; a revenue and cost sharing JV; a bilateral frequent flyer program ("FFP") agreement;[8] an amended Special Prorate Agreement[9] to cover the expanded relationship; reciprocal lounge sharing; exploration of opportunities to cooperate on ground handling; integration of information technology; Hawaiian's relocation to Terminal 2 at Tokyo Narita Airport to improve connection times, convenience, and efficiency; and Hawaiian's incorporation into JALPAK.

B. Overview of the Codeshare Agreement.

As part of their planned commercial cooperation, the Applicants executed a Codeshare Agreement on January 5, 2018 (attached hereto as **Appendix 5**), received approval from the Department for statements of authorization on February 8, 2018,[10] and agreed to implement codesharing by March 25, 2018.[11] As discussed in the Joint Application for Statements of Authorization, pursuant to the Codeshare Agreement, Hawaiian will initially display JAL's JL* designator code on: (i) certain Hawaiian flights within the State of Hawaii in connection with an itinerary in international air transportation; and (ii) certain Hawaiian flights between Hawaii and Japan. JAL will initially display Hawaiian's HA* designator code on: (i) certain JAL flights

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[8] *See* **Appendix 3**.

[9] *See* **Appendix 4**.

[10] Joint Application of Hawaiian Airlines, Inc. and Japan Airlines Co., Ltd. for Statements of Authorization & Application of Hawaiian Airlines, Inc. for Related Exemption Authority, DOT-OST-2018-0009 (Jan. 19, 2018); Notice of Action Taken, Docket DOT-OST-2018-0009 (Feb. 8, 2018).

[11] The Applicants commenced codesharing on March 25, 2018, with codeshare ticket sales beginning on March 22, 2018. Hawaiian Airlines, Inc., Press Release, Hawaiian Airlines and Japan Airlines to Commence Codeshare Ticket Sales (Mar. 22, 2018), https://newsroom.hawaiianairlines.com/releases/hawaiian-airlines-and-japan-airlines-to-commence-codeshare-ticket-sales.

between points in Japan in connection with an itinerary in international air transportation; (ii) certain JAL flights between Japan and Hawaii; and (iii) certain JAL flights behind and beyond Japan to additional Asian cities, including cities previously unserved by Hawaiian, in connection with an itinerary in international air transportation. The Codeshare Agreement also contemplates that JAL will codeshare on 'Ohana by Hawaiian-branded flights operated by Empire after Empire receives IOSA (IATA Operational Safety Audit) certification. The Codeshare Agreement <u>does not</u> include any codesharing on air service routes to or from mainland North America; indeed, such routes are not part of any aspect of the Proposed Alliance.

C. Overview of the Joint Venture Agreement.

The Applicants executed the JVA on February 28, 2018. The JVA is structured as a metal-neutral revenue-sharing agreement with elements of cost-sharing to maximize the benefits of cooperation. The JVA provides for metal-neutral pricing in the Hawaii-transpacific region and contemplates additional steps to ensure the robustness of metal neutrality, including the establishment of Key Performance Indicators ("KPIs") to motivate metal-neutral selling, exploring the creation of a single sales team comprised of employees of both companies, implementing a coordinated approach to travel distributors, and integration of revenue management functions (including creating joint pricing guidelines and coordinating on inventory management).

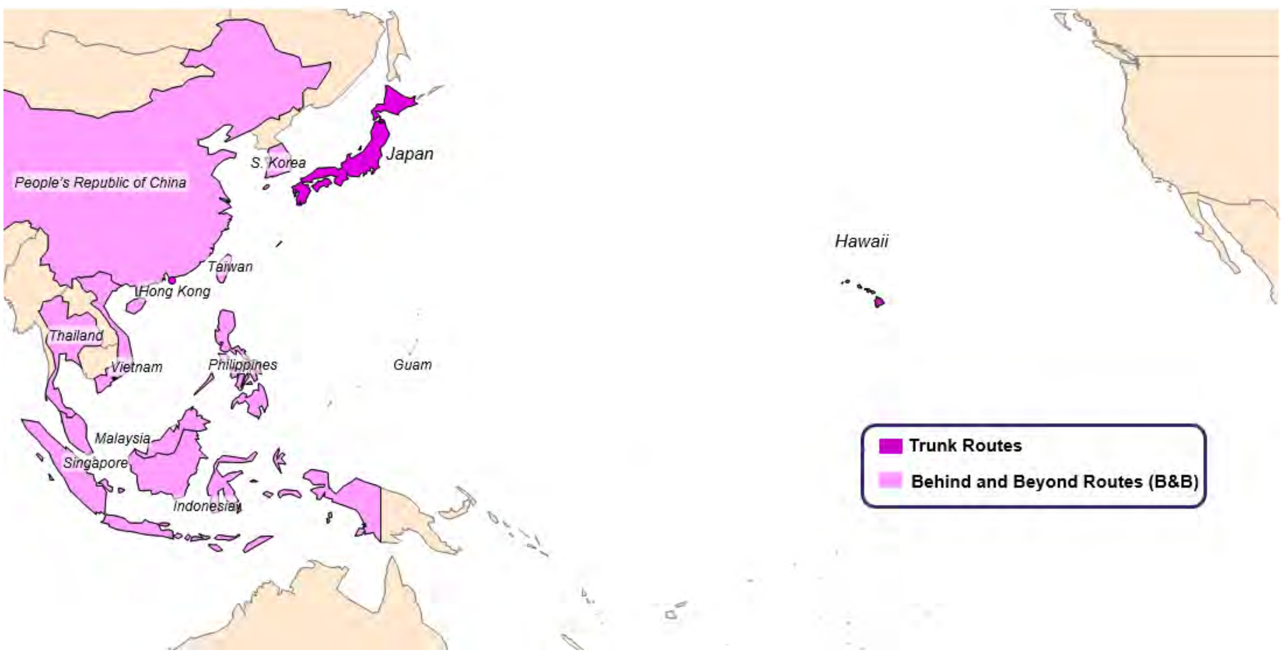
The Applicants structured the JVA without exclusivity clauses in part to address previous concerns raised by the Department in recent proceedings about exclusive agreements.[12] Without any exclusivity provision, the Applicants remain able to enter into interline, codeshare, and frequent

[12] *See, e.g.*, Joint Application of Delta Air Lines, Inc. and AeroMexico, Docket OST-2015-0070, Order to Show Cause 2016-11-2 at 28 (Nov. 4, 2016) ("Show Cause Order 2016-11-2") ("The Department tentatively determines that the Joint Applicants must remove these [exclusivity clause] provisions from the agreement"); Joint Application of American Airlines, Inc. and Qantas Airways Limited, Docket OST-2015-0129, Order to Show Cause 2016-11-16 at 18 (Nov. 18, 2016).

flyer relationships with other carriers.[13]

The scope of the JVA is the "Hawaii-Transpacific Region," consisting of all nonstop routes between Hawaii and Japan as well as connecting flights to Hawaiian's inter-island network within the State of Hawaii, JAL's domestic network within Japan, and the Asian countries behind Japan (as well as Guam), identified in **Figure 1**.[14] **Figure 2**[15] shows the Applicants' combined network under the Proposed Alliance.

Figure 1.

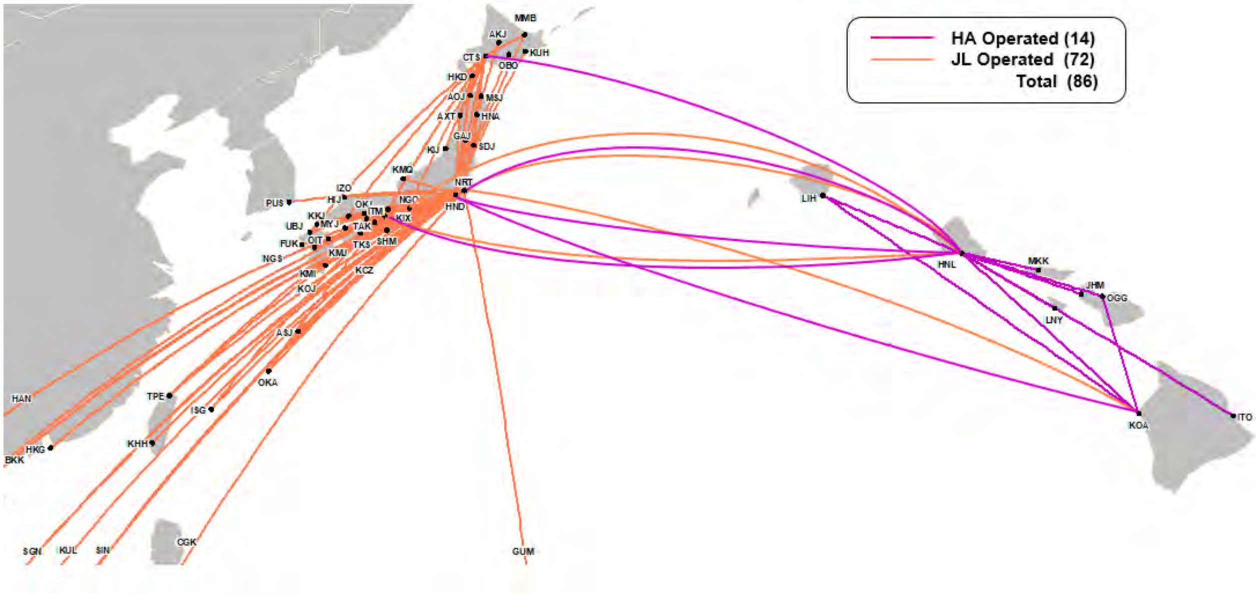


[13] Codesharing by Hawaiian with its previous Japanese codeshare partner is prohibited during the term of the Codeshare Agreement.

[14] Exhibit 101.

[15] *See* Exhibit 105.

__**Figure 2**__.



Note: Map not to scale.
Source: Appendix A from Joint Venture Agreement and Innovata Schedules from January 2018.

The JVA provides that, once the Applicants have secured ATI, the Applicants will cooperate to, among other things:

- establish agreements and procedures for sharing revenues and costs, according to formulae agreed to by the Applicants (JVA Schedule 1 § 1.3-1.6, JVA § 7.1);

- collaborate in marketing, advertising, distribution, and sale of passenger transportation, and develop joint sales policies and objectives to enhance sales and jointly promote the Applicants' services (JVA § 5, § 14.1.6);

- coordinate flight schedules to offer more flight options, expand feasible routings, and reduce passenger connecting times (JVA § 14.1.5);

- create joint pricing strategies, including coordinating fares, fare categories, fare rules and rates, and jointly developing pricing guidelines (JVA § 3.3.2, § 5.6, § 5.8);

- coordinate inventory control and revenue management practices and procedures, including systems to implement such practices and procedures (JVA § 14.1.4, § 5.7) ;

- collaborate with respect to capacity, including capacity growth and planning decisions (JVA § 3.3);

- develop joint distribution strategies, including strategies with respect to Internet and GDS distribution (JVA § 4.5, § 3.8);

- jointly determine travel agency and general sales agent ("GSA") commission levels and jointly develop override and incentive programs, standard form sales contracts for travel agents, GSAs, businesses, organizations, and individuals, and agreed services contracts for the Hawaii-Transpacific Region (JVA § 14.1.6);

- harmonize service and product standards to enhance the customer experience and provide a seamless product to customers, reflecting the cultural considerations of the Proposed Alliance's target customers (JVA § 3.6);

- seek to reduce costs and redundancies through coordinated or joint purchase of goods and services from third party suppliers and vendors (JVA § 3.8); and

- jointly develop policies, procedures, information technology systems and other programs to facilitate the Proposed Alliance, and share information technology systems and platforms relative to the Hawaii-Transpacific Region (JVA § 3.8).

In sum, the JVA integrates the Applicants' networks, operations, and services in the Hawaii-Transpacific Region as if the two airlines were a single entity, in a manner that is as close as legally permissible under existing applicable law.

V. The Joint Application Meets the Department's Standard of Review.

The Department's long-established policy has been to approve and grant antitrust immunity for alliance agreements if the two-step framework set out in 49 U.S.C. §§ 41308 and 41309 is met. The Department's two-step analysis to review an application for antitrust immunity involves both a (i) "competitive effects analysis" and (ii) "public benefits analysis."[16]

Under the first prong of the analysis – the competitive effects analysis – the DOT determines under § 41309(b) whether the agreements are adverse to the public interest because they would substantially reduce or eliminate competition.[17] The analysis involves a "broad assessment" of the agreement's competitive effects on several levels: network, country, and city-pair.[18] That there

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[16] *See, e.g.*, Show Cause Order 2016-11-2 at 8.

[17] 49 U.S.C. § 41309(b).

[18] Joint Application of American Airlines, Inc., et al, Docket OST-2008-0252 and OST-2002-13861, Final Order 2010-

might be some competitive concerns in certain specific nonstop overlaps markets is not sufficient for outright disapproval of an application.[19]

Any party opposing the application "has the burden of proving that it substantially reduces or eliminates competition and that less anticompetitive measures are available."[20] Only if the agreement is found to substantially reduce competition does the Department then seek to determine whether the agreement is necessary to meet a serious transportation need or to achieve important public benefits. If so, the Department may still approve the agreement if those public benefits cannot be met or achieved by reasonably available and materially less anticompetitive alternatives. Thus, even if the § 41309 analysis results in a finding that the agreement in some respects lessens competition, the Department may still approve it if it is necessary to meet a transportation need or achieve public benefits. "If we determine that the transaction *would* substantially reduce or eliminate competition, yet meets the test for approval under section 41309(b)(1), then we *must* exempt the parties to the transaction, pursuant to 49 U.S.C. § 41308(c)."[21]

If the agreement is approved per § 41309, then under the second prong – the public benefits analysis – the Department determines under § 41308(b) whether antitrust immunity is required by the public interest. The applicants must also demonstrate that they would not move forward with the proposed agreement without antitrust immunity. Once the agreements are approved, the Department has the "authority to exempt airlines from the antitrust laws to the extent necessary to allow the transaction to proceed, provided . . . that the exemption is required by the public

7-8 at 9 (July 20, 2010) ("Final Order 2010-7-8").

[19] *Id.*

[20] Joint Application of Alitalia-Linee Aeree Italiane-S.p.A., et al. (SkyTeam), Docket OST-2007-28644, Order to Show Cause 2008-4-17 at 5 (Apr. 9, 2008) ("Show Cause Order 2008-4-17").

[21] Final Order 2010-7-8 at 8.

interest."[22] This determination "entails a comparison of anti-competitive effects and public benefits," and the Department has granted ATI upon a finding that the agreement meets the requirements of § 41309.[23]

In this case, as will be discussed below, the Proposed Alliance meets the statutory standards for granting antitrust immunity – it is necessary "to achieve important public benefits" and does not "substantially reduce[] or eliminate[] competition."[24] Moreover, the Applicants will not move forward with the JV absent the grant of antitrust immunity.

VI. The Proposed Alliance Will Result in Substantial Public Interest Benefits.

The Proposed Alliance satisfies the "public interest benefits" prong of the Department's analysis. The Proposed Alliance promises a range of public interest benefits, such as increased online behind and beyond service for consumers, improved schedules for consumers through schedule coordination, retiming and expanded options, beneficial fare effects from metal-neutral pricing, product improvements, capacity increases, and the potential for new routes.

A. Metal-Neutral JVs Like the Proposed Alliance Have Been Shown to Produce Substantial Benefits.

The JVA will create a metal-neutral, revenue-sharing JV that aligns the Applicants' economic incentives. Under the JV, the Applicants will be "indifferent as to which of them operates the 'metal,' or aircraft, when they market and sell their services on a joint network."[25] Such metal-indifference causes JV partners to open their inventory to sales by the other partner, since each partner knows that it stands to benefit through the revenue-sharing arrangements.[26] As the

[22] Show Cause Order 2008-4-7 at 5.

[23] Final Order 2010-7-8 at 8.

[24] Show Cause Order 2008-4-7 at 5.

[25] Joint Application of Delta Air Lines, Virgin Blue, et al., Docket OST-2009-0155, Show Cause Order 2011-5-8 at 2 n.4 (May 11, 2011) ("Show Cause Order 2011-5-8").

[26] *See, e.g.*, U.S.-Japan Alliance Case, Docket OST-2010-0059, Show Cause Order 2010-10-4 at 14 (Oct. 6, 2010)

Department has recognized, absent a metal-neutral sales environment, alliance partners "have a strong economic incentive to book passengers on their own aircraft in order to retain a larger share of the revenue for themselves, which may not be in the best interest of the consumer or the alliance as a whole."[27]

The Department has generally found that metal-neutral, revenue-sharing JV agreements are procompetitive and beneficial for consumers because the JV partners have "common economic incentives to promote the success of the alliance over their individual corporate interests."[28] Indeed, the Department seemed prescient when it predicted 25 years ago that, as the industry and regulatory practices continued to evolve, airlines would develop closer partnerships yielding benefits greater than simple codesharing.[29] ATI allows such partners to "achieve merger-like efficiencies and deliver public benefits that would not otherwise be possible."[30] The Department has recognized that metal-neutral JVs may, among other things, reduce fares, grow capacity, and promote a seamless

("Show Cause Order 2010-10-4").

[27] Joint Application of American Airlines, Inc., et al., (**one**world), Docket OST-2008-0252, Show Cause Order 2010-2-8 at 4 n.6 (Feb. 13, 2010) ("Show Cause Order 2010-2-8").

[28] Joint Application of Air Canada, Continental Airlines, et al., Docket OST-2008-0234, Show Cause Order 2009-4-5 at 4 (Apr. 7, 2009).

[29] In its Statement of United States International Air Transportation Policy, the Department observed: "Although code sharing has become a widely-used marketing device for airlines and is currently the most prevalent form of commercial arrangement, further evolution of the industry and its regulatory environment may lead to new marketing practices that could supplement or supplant codesharing." Policy Statement, 60 Fed. Reg. at 21,842. The Applicants believe that metal-neutral joint ventures are just the kind of cooperative partnership device that the Department alluded to in the Policy Statement.

[30] Joint Application of Air Canada, Continental Airlines, et al., Docket OST-2008-0234, Show Cause Order 2009-4-5 at 19 (Apr. 7, 2009). *See also* Joint Application of American Airlines, British Airways, et al., Docket OST-2008-0252, Show Cause Order 2010-2-8 at 32 (Feb. 13, 2010) (metal-neutral joint ventures incentivize the joint venture partners "to offer customers the best available products and services, without regard to which partner owns and operates the aircraft"); Joint Application of Delta Air Lines, Virgin Australia, et al., Docket OST-2009-0155, Final Order 2011-6-9 at 4, n.15 (June 10, 2011) (joint venture partners operating in a metal-neutral sales environment "can balance risks and benefits for the benefit of the consumer and the alliance as a whole … because they share the same incentive to make the sale and share the revenues); Application of Virgin Atlantic, Delta Air Lines, et al., Docket OST-2013-0068, Show Cause Order 2013-8-21 at 16 (Aug. 30, 2013) ("Show Cause Order 2013-8-21") (because "both carriers become indifferent as to which carrier operates the flight, focusing instead on maximizing traffic flows across combined networks," metal-neutral joint ventures reduce "inefficiencies that burden consumers").

joint network.[31]

The Applicants are joining together through their JV to align their economic incentives by sharing revenues and certain costs, optimize their joint services, generate additional consumer benefits and achieve better profit outcomes. The close cooperation contemplated under the Applicants' JVA removes incentives for Hawaiian and JAL to act opportunistically in ways that inure to the short-term financial benefit of one carrier but that also reduce the efficiency and consumer benefits of the alliance as a whole. By virtue of the carriers' common economic interest, the JVA will significantly benefit consumers through greater service options, improved elapsed times, increased flight routings, expanded availability of discount seats, and lower fares due to the elimination of incentives for each carrier to build in separate profit markups on codeshare flights.[32]

Hawaiian's documents contain many references to the benefits that can be realized due to metal-neutrality: **[Confidential Treatment Requested Under § 302.12**

].[33]

B. The Proposed Alliance Significantly Expands the Applicants' Networks.

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[31] Delta-Virgin Blue Group, Docket OST-2009-0155, Show Cause Order 2011-5-8 at 13 (May 10, 2011) (immunized alliances "may enable airlines to achieve merger-like synergies, boost capacity, and deliver lower prices for some itineraries. These benefits are possible because immunity may align economic incentives affecting separate carriers and allow for the cooperating carriers to increase economies of density."); SkyTeam II, Docket OST-2009-0155, Show Cause Order 2011-5-8 at 2 (May 10, 2011) (metal-neutral joint ventures "offer consumers a more seamless network on which to travel").

[32] **[HA-JAL-0000178 at 6 Confidential Treatment Requested Under § 302.12**
]

[33] [**HA-JAL-0000279-83; HA-JAL-0000246**].

The Proposed Alliance will dramatically increase seamless service options for the traveling public through the Applicants' cooperation, including an expanded network and broad codesharing. With the grant of ATI, the Applicants will be able to link together their operations in the Hawaii-Transpacific Region and offer new online service in city-pairs that they do not presently serve on an online basis. As has been noted by the Department,[34] passengers prefer online service, which offers increased convenience through features such as sole source baggage responsibility, one-stop check-ins, and frequent flyer benefits.[35] [**Confidential Treatment Requested Under § 302.12**

].[36] The Proposed Alliance will open thirty-four new Hawaiian online points, including six new Asian points behind/beyond Japan and 28 new points within Japan, and six new JAL online points in the Hawaiian inter-island network. *See* **Figure 3**[37] and **Figure 4**.[38]

[34] Joint Application of Delta Air Lines, Inc., et al., Docket OST-2004-19214 at 29-30 (Sept. 24, 2004).

[35] As discussed below, the Applicants have agreed to frequent flyer integration as part of their joint venture.

[36] [**HA-JAL-0000557**].

[37] Exhibit 102.

[38] Exhibit 103. Codesharing to JHM, LNY and MKK on 'Ohana by Hawaiian-branded flights operated by Empire will commence after Empire receives IOSA certification.

Figure 3.

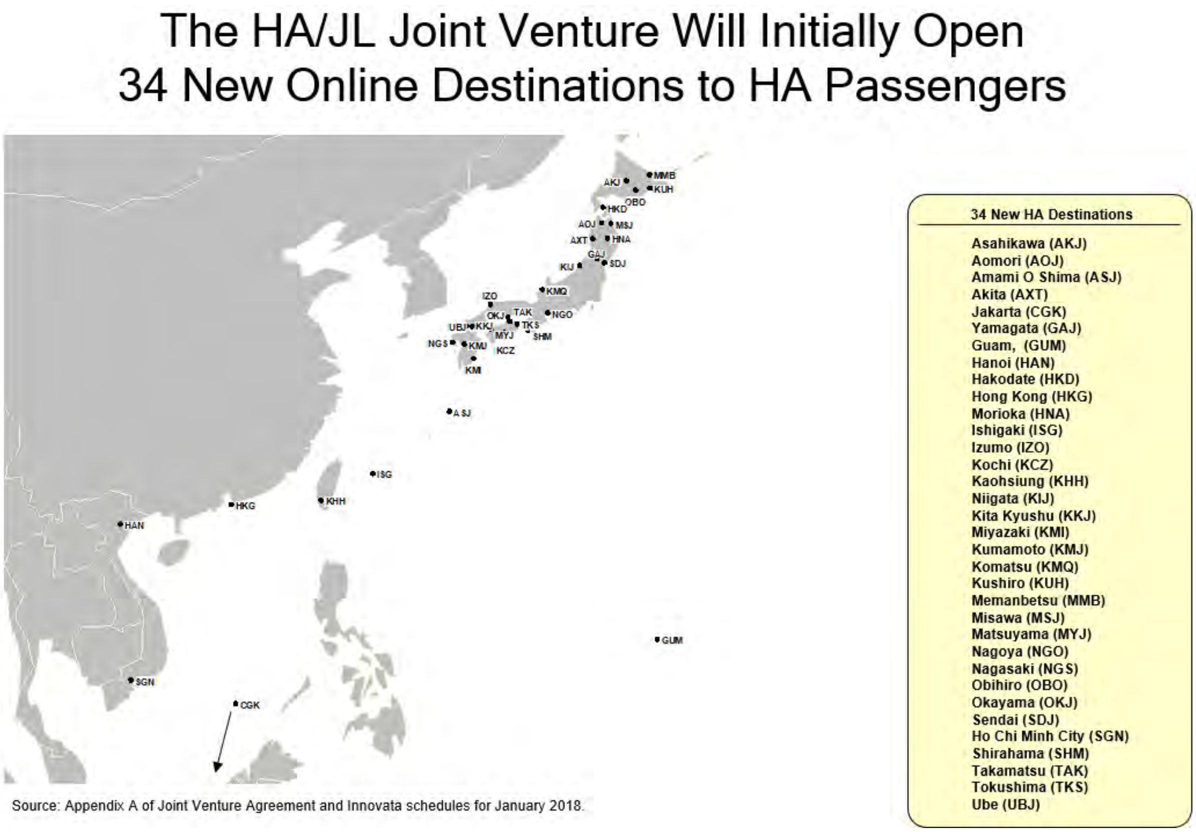
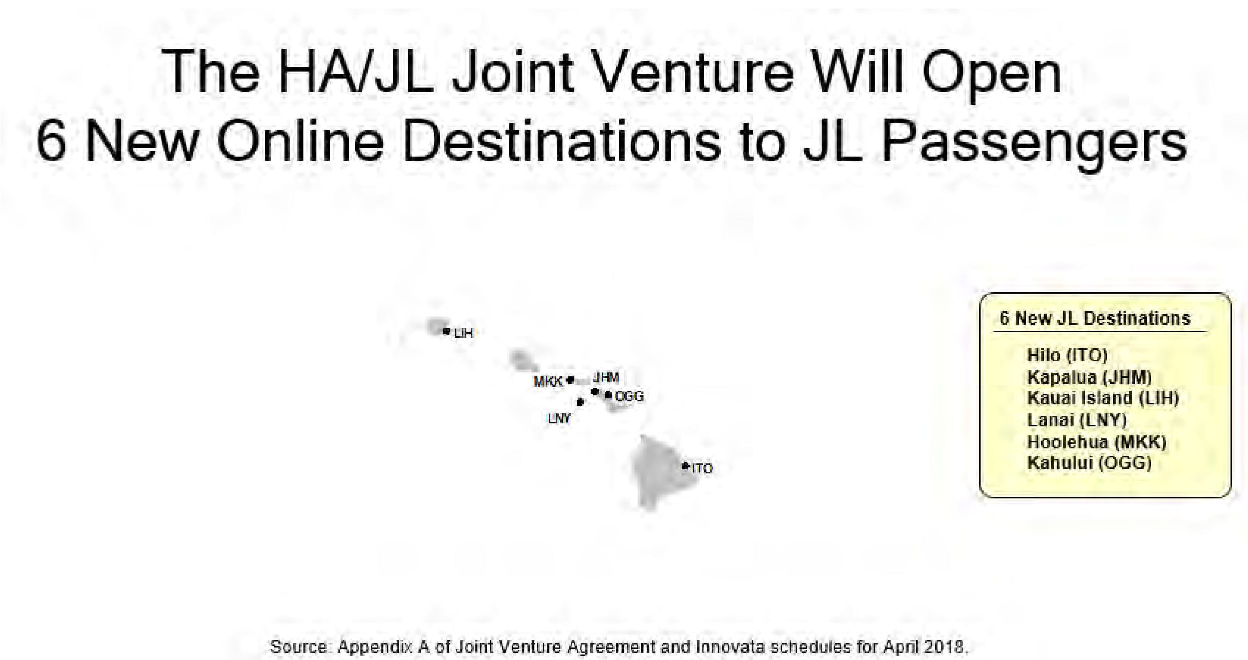
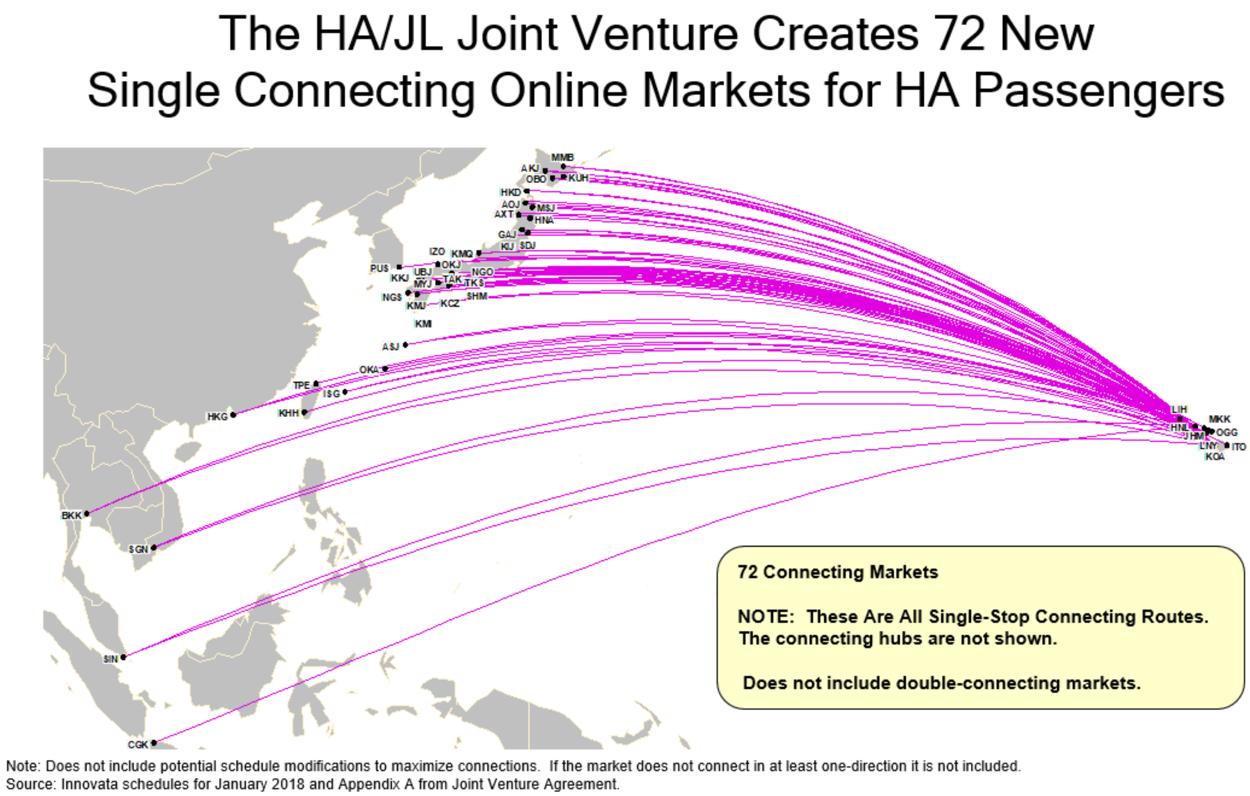


Figure 4.



The Proposed Alliance will also create 72 new single-connection online markets for Hawaiian passengers and 82 new single-connecting online markets for JAL passengers. *See* **Figure 5**[39] and **Figure 6**.[40]

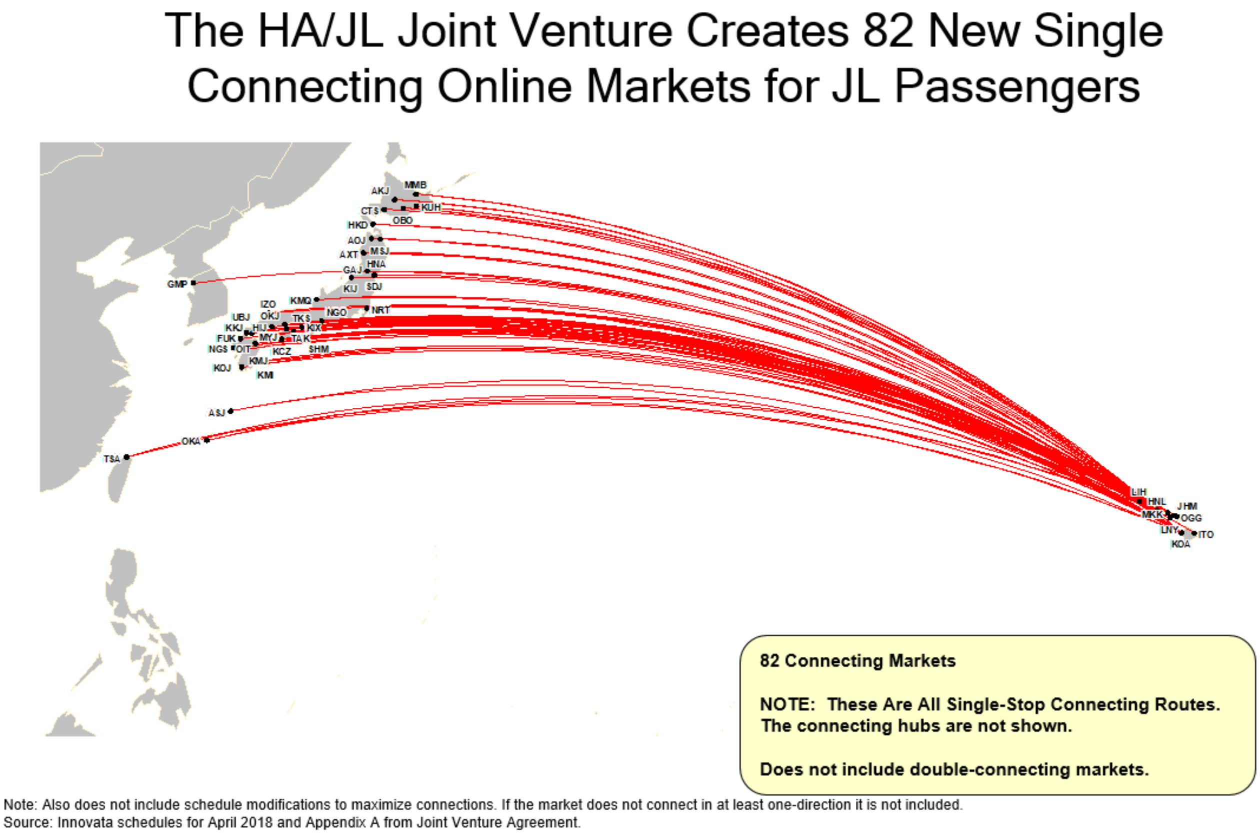
Figure 5.



[39] Exhibit 106.

[40] Exhibit 107.

Figure 6.

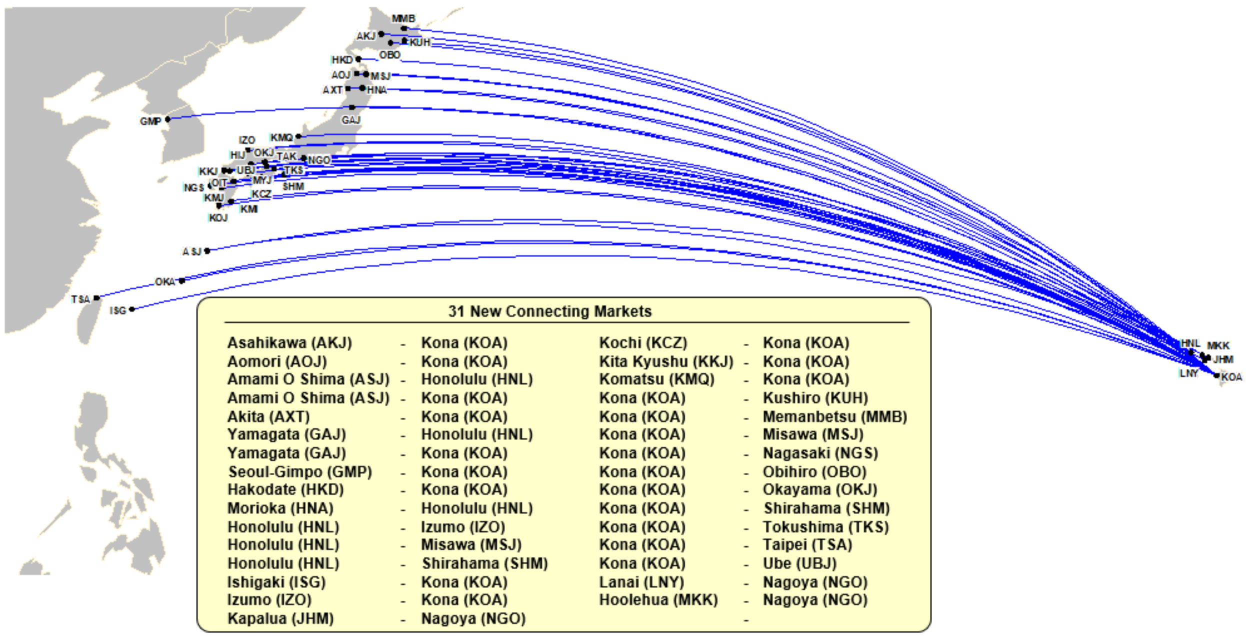


Further, the Proposed Alliance will bring online service to thirty-one single-connection markets that are not currently served by any one airline. *See* **Figure 7**.[41]

[41] Exhibit 108. In addition to the creation of 31 new online single-connection markets, the Proposed Alliance will offer new competitive service in 18 markets (14 new one-way markets and 4 roundtrips) where there is only monopoly service today.

<u>Figure 7</u>.

The HA/JL Joint Venture Will Initially Create 31 New Single-Connection Markets Not Served Today by Any One Airline



31 New Connecting Markets

Asahikawa (AKJ)	-	Kona (KOA)	Kochi (KCZ)	-	Kona (KOA)
Aomori (AOJ)	-	Kona (KOA)	Kita Kyushu (KKJ)	-	Kona (KOA)
Amami O Shima (ASJ)	-	Honolulu (HNL)	Komatsu (KMQ)	-	Kona (KOA)
Amami O Shima (ASJ)	-	Kona (KOA)	Kona (KOA)	-	Kushiro (KUH)
Akita (AXT)	-	Kona (KOA)	Kona (KOA)	-	Memanbetsu (MMB)
Yamagata (GAJ)	-	Honolulu (HNL)	Kona (KOA)	-	Misawa (MSJ)
Yamagata (GAJ)	-	Kona (KOA)	Kona (KOA)	-	Nagasaki (NGS)
Seoul-Gimpo (GMP)	-	Kona (KOA)	Kona (KOA)	-	Obihiro (OBO)
Hakodate (HKD)	-	Kona (KOA)	Kona (KOA)	-	Okayama (OKJ)
Morioka (HNA)	-	Honolulu (HNL)	Kona (KOA)	-	Shirahama (SHM)
Honolulu (HNL)	-	Izumo (IZO)	Kona (KOA)	-	Tokushima (TKS)
Honolulu (HNL)	-	Misawa (MSJ)	Kona (KOA)	-	Taipei (TSA)
Honolulu (HNL)	-	Shirahama (SHM)	Kona (KOA)	-	Ube (UBJ)
Ishigaki (ISG)	-	Kona (KOA)	Lanai (LNY)	-	Nagoya (NGO)
Izumo (IZO)	-	Kona (KOA)	Hoolehua (MKK)	-	Nagoya (NGO)
Kapalua (JHM)	-	Nagoya (NGO)		-	

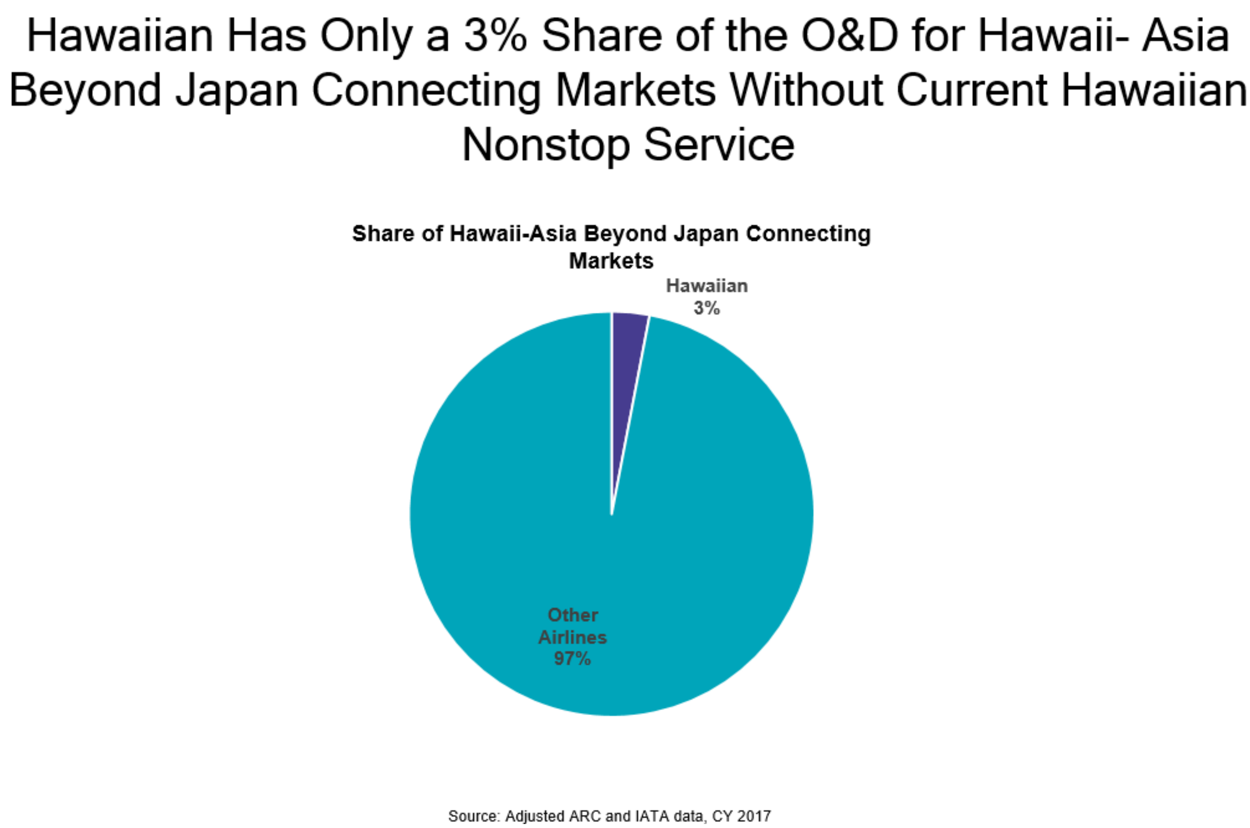
Note: These Are All Single-Stop Connecting Routes. The connecting hubs are not shown.
Source: Innovata schedules for January 2018.

i. The Proposed Alliance Will Expand Hawaiian's Network to Asia.

The Proposed Alliance gives Hawaiian the opportunity to expand its network beyond Japan to points in Asia. Hawaiian, a relatively small carrier, has encountered difficulties trying to break into international markets as a new entrant. The Department's grant of ATI in this proceeding would allow Hawaiian to overcome these obstacles, leading to increased competition and more choices for consumers.

Currently, Hawaiian's sales in beyond-Japan Asian markets are minimal.[42] Indeed, Hawaiian's total, aggregated revenues for sales in these markets in 2017 was approximately [Confide Confidential Treatme]. Hawaiian's market share is also minimal, as show in **Figure 8**:[43]

Figure 8.



Not surprisingly, Hawaiian's share in any of the beyond-Japan Asia connecting markets included within the scope of the JV does not exceed 5 percent.[44]

[42] These destinations include points in Taiwan, Hong Kong, Singapore, the Philippines, Malaysia, Thailand, Vietnam and Indonesia.

[43] Exhibit 712.

[44] *See* Exhibit 704 (1% share in Hawaii-Hong Kong); Exhibit 705 (1% share in Hawaii-Thailand); Exhibit 706 (5% share in Taiwan); Exhibit 707 (0% share in Hawaii-Vietnam); Exhibit 708 (0% share in Hawaii-Philippines); Exhibit 709 (1% share in Hawaii-Malaysia); Exhibit 710 (2% share in Hawaii-Singapore); Exhibit 711 (0% share in Hawaii-Indonesia)

Hawaiian believes its challenges stem from the following dynamics. First, in its international markets, the customer mix is heavily skewed towards foreign point-of-sale (POS). Passengers tend to prefer the established carrier. [**Confidential Treatment Requested Under § 302.12**

[46]]. As a destination carrier – approximately 90 percent of Hawaiian's international customers originate from a foreign destination – this preference poses a significant challenge, particularly to a carrier of Hawaiian's size that is attempting initial entry into these markets. Hawaiian's brand and product have limited market awareness and penetration, and therefore, the initial investment required for successful entry is significant.

Given these challenges, Hawaiian has partnered with third party general sales agents (GSAs) to establish its business, which takes a longer period of time and requires outsourcing many of Hawaiian's commercial functions. In Australia and Japan, for example, it took ten years and five years, respectively, after commencement of service before Hawaiian established its own, proprietary commercial offices. Hawaiian understands that maintaining sales structures such as sales and airport offices is more effective than GSAs,[47] but due to Hawaiian's very limited presence and revenues in beyond-Japan Asian markets, it is simply not economically viable for Hawaiian to do so.

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[45] [**HA-JAL-0000352-420**].

[46] [**HA-JAL-0000360-409**].

[47] [**HA-JAL-0000714-17. Confidential Treatment Requested Under § 302.12**

Second, Hawaiian lacks major carrier partnerships in the international markets. As a destination carrier, Hawaiian does not participate in any global alliance grouping and therefore has no partnerships to leverage in key international markets. By contrast, major U.S. carriers have alliance partnerships with non-U.S. airlines to provide leverage on a variety of commercial matters, including access to local customer databases and marketing expertise.

Without a grant of ATI for the Proposed Alliance, Hawaiian does not expect this situation to change. Overcoming these obstacles is not something Hawaiian can do on its own but instead requires partnering with a carrier that already possesses marketing resources, brand recognition, and access in these international markets together with an incentive to invest in the partnership. JAL is a natural fit for Hawaiian.

The association with an airline of JAL's caliber in Asia will boost Hawaiian's brand recognition in Asia. With JAL as a partner, Hawaiian gains credibility among Asian passengers. Unlike Hawaiian, JAL has an established marketing network and presence throughout Asia, including sales offices in each of Hong Kong, Thailand, Indonesia, Malaysia, Singapore, Vietnam, the Philippines, Korea, China, and Taiwan where Hawaiian's presence is extremely limited. JAL staffs these offices with between seven and more than thirty-five people and maintains relationships with hundreds of accredited agencies. In these Asian markets, JAL operates multiple daily frequencies to/from Japan. [**Confidential Treatment Requested Under § 302.12**

[48]] With the JVA, the Applicants will be able to leverage JAL's substantial sales resources and market presence – something Hawaiian could not feasibly do on its own given the relatively small market size of Hawaii and Hawaiian's lack of

[48] **[HA-JAL-0000297-319.**]

online service. Under the Applicants' revenue-sharing JVA, their sales teams will be motivated to sell flights without regard to which carrier operates the flight, meaning Hawaiian will be able to offer its Aloha hospitality to new passengers and also offer its current customers access to an expanded network.

Hawaiian believes grant of ATI for the Proposed Alliance will result in increased traffic in both existing and new destinations as well as brand-lift in Asia post-ATI. **[**Confidential Treatment Requested Under § 302.12

[50]]. Not only will Hawaiian offer U.S. carrier competition in the Asian network, and hence increased competition on fares and service enhancements, its presence means more choices for consumers. Indeed, compared to the current [Confidential Treatment Requested in revenues from beyond-Japan Asian points and [Confidential Treatm] passengers, Hawaiian estimates O&D traffic will more than double to **[**Confidential Treatment Requested Under § 302.12] with a corresponding increase in revenues due to post-ATI schedule changes and joint marketing efforts. *See* [Confidential Treatment Requested Under § 302.12

[51]].

49 **[HA-JAL-0000160-87.**]

50 [**HA-JAL-0000168.**]

51 Exhibit 713.

Confidential Treatment Requested Under § 302.12

Confidential Treatment Requested Under § 302.12

Hawaiian expects that a greatly-expanded Hawaiian network in Asia will increase not only Hawaiian sales in Asia but also Hawaii point-of-sale traffic. In short, the JVA enables Hawaiian to access a large and promising network that it would not be able to deploy alone, which means increased consumer choice among carriers and among destinations resulting in enhanced competition. Indeed, the Applicants estimate that combining the Applicants' respective networks, i.e., uniting the Applicants' networks based on current schedules and then acting as one carrier, will result in the stimulation of over 85,000 passengers annually.[52]

ii. The Proposed Alliance Will Expand Hawaiian's Network in Domestic Japan.

Japan is a key market for Hawaiian. Approximately 52 percent of international visitors (and 17 percent of visitors overall) to Hawaii come from Japan.[53] Through the Proposed Alliance, Hawaiian will gain access to JAL's extensive domestic network within Japan. Such access will initially consist of flights between 47 Japanese airport-pairs.[54] Most (32 out of 47) of these are between an interior point and Tokyo Haneda, where Hawaiian operates nonstop service to/from Honolulu and Kona (and JAL does not). The ability to choose to connect with Hawaiian's nonstop trunk route service at Haneda is an enormous benefit to passengers. Hawaiian's online service between Hawaii and non-gateway domestic points in Japan will also provide a host of other benefits, including easier check-ins, better connections, reduced fares and frequent flyer benefits.

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[52] *See infra* section VI.H.

[53] *See* Hawaii Tourism Authority, Historical Visitor Statistics, http://www.hawaiitourismauthority.org/research/reports/historical-visitor-statistics/ (reporting 2016 total visitor statistics).

[54] The Applicants have also already agreed that at some future date service between three additional airport-pairs in Japan (one of which includes Tokyo Haneda) will be added to Hawaiian's network.

iii. The Proposed Alliance Will Expand JAL's Online Network to Include Inter-Island Flights in Hawaii.

Just as Japan is a key market for Hawaiian, Hawaii is a critical market for JAL. The Proposed Alliance will give JAL far more effective access to Hawaiian's inter-island network.[55] Initially, such access will consist of flights between six airport-pairs in Hawaii. While that number may not seem large, the value that JAL sees for its passengers cannot be overstated. Hawaii is a huge tourist destination for Japanese travelers, who are increasingly visiting Hawaii's neighbor islands. New JAL online offerings utilizing Hawaiian inter-island service will allow its passengers to enjoy several advantages of JAL-Hawaiian cooperation, such as frequent flyer benefits, improved schedules, and lower fares.

C. The Applicants Will Optimize Their Joint Schedules Under the Proposed Alliance.

As part of their JV, the Applicants will work together to optimize their joint schedules, resulting in reduced connecting times, expanded connecting options and greater passenger convenience. The Applicants have already taken a huge step in this regard by moving Hawaiian's Narita operations to Terminal 2, where JAL operates. This move -- made in anticipation of broad JAL-Hawaiian coordination -- reduces connecting times and improves the overall experience for passengers connecting at Narita between JAL-operated and Hawaiian-operated flights. By locating their operations in the same terminal, passengers transferring to a Hawaiian flight can simply walk to their connection rather than taking a shuttle bus, which has allowed Hawaiian to reduce the minimum connect time at Narita. In addition, the carriers can offer more seamless service at Narita, particularly since co-location allows them to share resources and facilities at the terminal. The grant

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[55] **[HA-JAL-0000166 Confidential Treatment Requested Under § 302.12**

]

of ATI will enable further improvements. Even after the move to Terminal 2, Hawaiian uses a third-party baggage handler. With the grant of ATI and the alignment of incentives between Hawaiian and JAL, the parties are hopeful they can reach a baggage handling agreement that will reduce the minimum connecting times further and improve the quality of service.

The Applicants also see other potential opportunities to improve their joint services, including by adjusting the times of behind/beyond-gateway flights to create better connections. Hawaiian's inter-island flights between Honolulu and Kona, on the one hand, and Kahului, Maui and Lihue, Kauai, on the other hand, can be adjusted to significantly reduce the connecting time for passengers at Kona and even reduce some of the times at Honolulu. Such changes would be an important benefit to JAL passengers, particularly since Kahului is JAL's third largest demand market without JAL nonstop service, followed by Lihue.

For example, Hawaiian's flights between Maui and Kona present one such opportunity. As noted, Kahului, Maui is a very popular destination in Hawaii for JAL's passengers; however, there is no Hawaiian flight from Maui to Kona that connects to JAL's Kona-Narita nonstop flight. If Hawaiian's Maui-Kona flight were retimed, passengers returning from Maui would have the option to connect through Kona with a one and a half hour connection time. The below table shows current connecting flight times, and possible adjustments to improve those times relative to JAL's nonstop Narita-Kona service.

<Examples of Potential Flights to Maui from Narita via Kona>

	Departure City	**Operating Carrier**	**Arriving Kona**	**Operating Carrier**	**Departing Kona**	**Connecting Time**
Current	Narita	JL	10:05	HA	11:58	1:53
After Adjustment	Narita	JL	10:05	HA	11:35	1:30

<Examples of Potential Flights to Narita from Maui via Kona>

	Departure City	**Operating Carrier**	**Arriving Kona**	**Operating Carrier**	**Departing Kona**	**Connecting Time**
Current	Maui	HA	11:46	JL	12:05	N/A
After Adjustment	Maui	HA	10:35	JL	12:05	1:30

Based on April 2018 flight schedule

These adjustments would produce substantial benefits for JAL's Maui passengers, particularly on the return where such passengers would have the newly-created ability to connect in Kona to JAL's nonstop flight to Narita. Because these adjustments would allow Maui passengers to travel via Kona instead of Honolulu, they would not only offer an additional schedule option for passengers, they would also have the added benefit of relieving a portion of the crowding at Honolulu, improving the passenger experience at that busy airport.

The combined network will also give JAL passengers on domestic flights between interior Japanese points and Haneda the option to connect to Hawaiian's nonstop Haneda service, so they will no longer (as happens today) need to make the approximately two to three hour transfer between Haneda and Narita Airports. Absent JAL/Hawaiian cooperation, JAL customers residing in regional cities in Japan and wishing to visit Hawaii must fly in and out of Haneda and transfer by ground between Haneda and Narita (each way), a time-consuming and potentially stress-inducing process.[56] Under the JV, such customers will be able to connect to Hawaiian's flights at Haneda, greatly enhancing customer convenience. For example, customers traveling from Matsuyama and Kagoshima will experience a 4 hour and 5 minute reduction in their connecting time on the way to Honolulu, customers from Akita will save 3 hours and 55 minutes, and customers

[56] Ground transportation alone between Haneda and Narita can take between one and two hours, but passengers must reclaim and then recheck their luggage as well as clear security again.

from Oita will save 2 hours and 10 minutes. These times are based on existing schedules; the Applicants will work to further improve their joint schedules once the JV is implemented.

The Applicants also anticipate retiming trunk route flights to open up connecting opportunities. For example, Hawaiian currently operates daily service from Honolulu (HNL) to NRT, departing at 15:30 (Hawaii Standard Time) and arriving in NRT at 19:00 the next day. Based on the local Japanese market, many flights departing NRT to other points in Japan or elsewhere in Asia are timed to leave before Hawaiian's flight lands at NRT, closing off a wider network of potential connecting points. Indeed, there are currently *no* connection points for this Hawaiian flight.[57] With the grant of ATI, the Applicants will have the incentive to move Hawaiian's HNL-NRT arrival from the current time (19:00) to an earlier time such as 15:55, creating connections with flights to multiple points within Japan and other Asian countries. That retiming will open up thirteen connecting destinations beyond NRT. [**Confidential Treatment Requested Under § 302.12**

].[58] With the grant of ATI, Hawaiian has a greater incentive to retime its HNL-NRT flight, which is at a popular time for the HNL-NRT local market. *See* **Figure 9**.[59] And JAL has a greater incentive to facilitate a swap of slots to enable the retiming.

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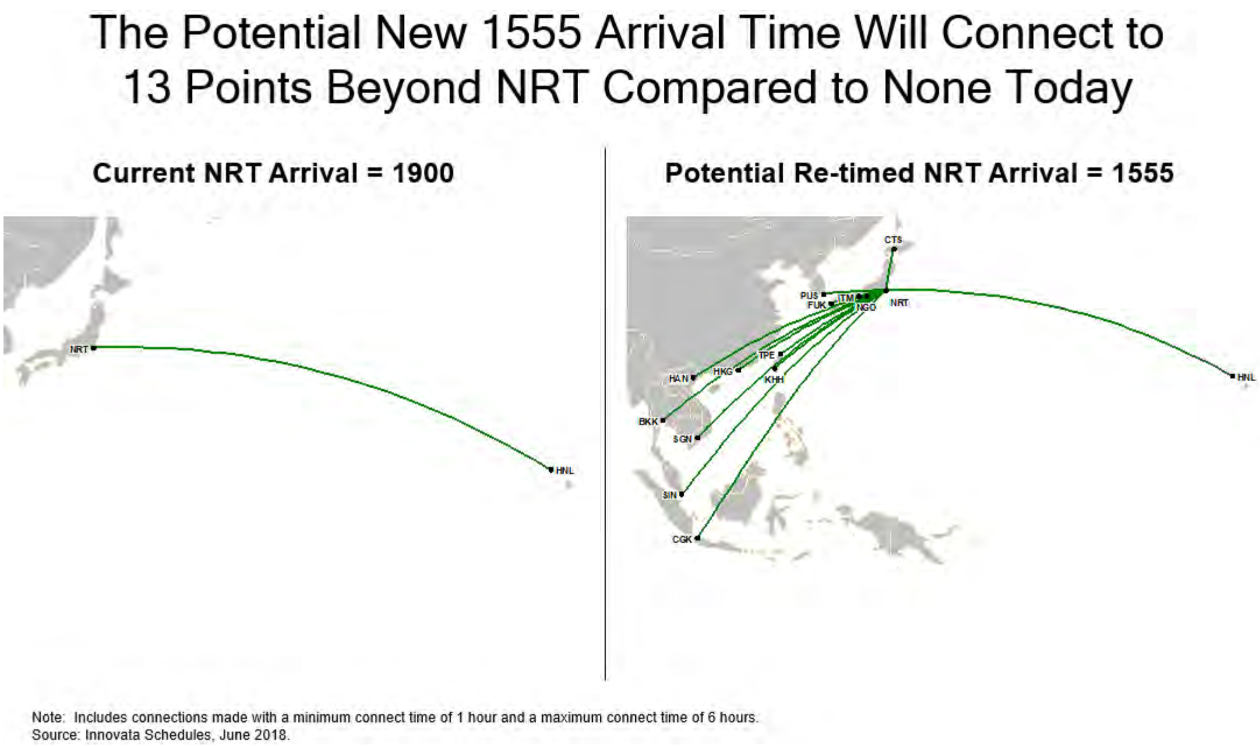
[57] [***See*** **HA-JAL-0000551-607** **Confidential Treatment Requested Under § 302.12** **]**.

[58] [***Id.*** **at 18, 22 HA-JAL-0000568-72**].

[59] Exhibit 204.

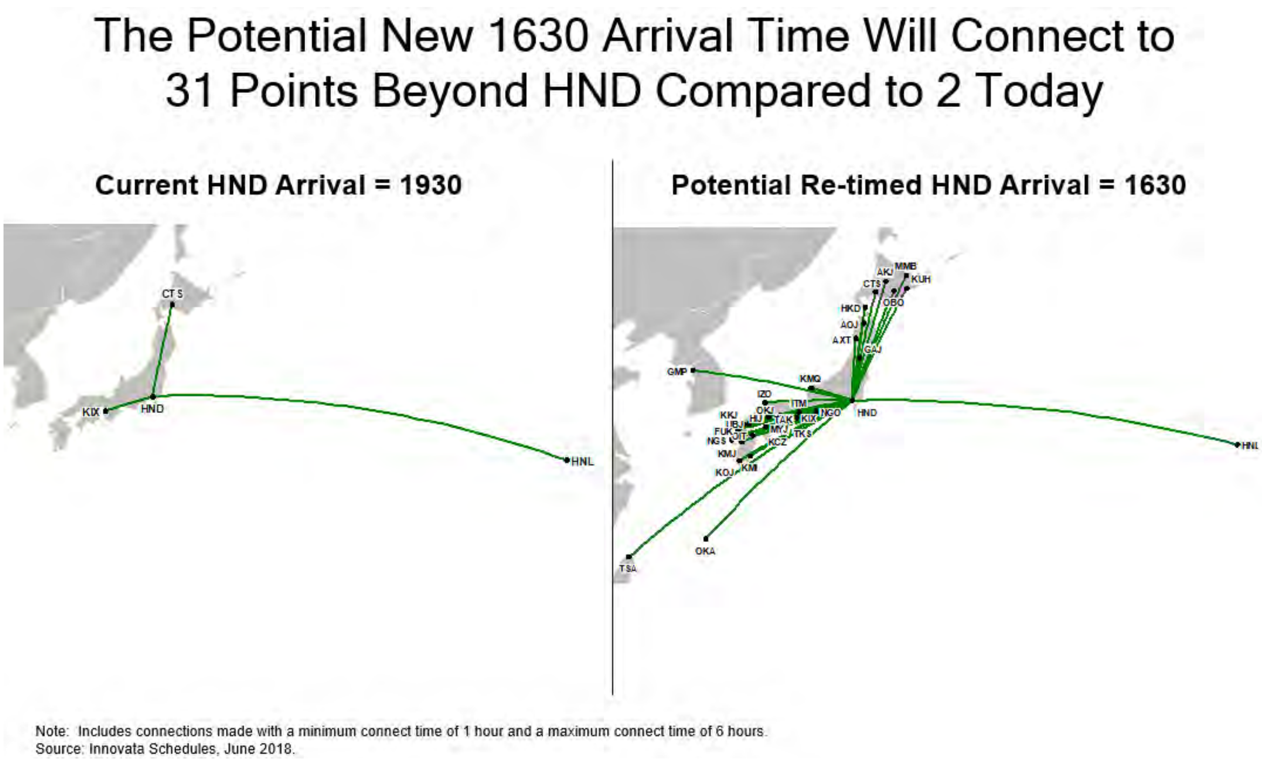
Figure 9.



Similarly, Hawaiian is considering retiming its daily Honolulu-Haneda flight, which currently arrives in Haneda at 19:30. If Hawaiian were able to adjust the arrival time into Haneda to an earlier hour (e.g., 16:30), this adjustment would create connections to 31 points in Japan and Asia, as opposed to only two today. *See* **Figure 10**.[60] This change would provide new flight options for consumers and would increase competition on the affected routes.

[60] Exhibit 204A.

Figure 10.



Once ATI has been granted, the Applicants will be able to work together to pursue these and other ways to optimize their joint schedules.

D. The Proposed Alliance Will Produce Benefits to Local Passengers on the Nonstop Trunk Routes.

The Applicants' existing trunk routes between Hawaii and Japan are shown in **Figures 11**[61] and **12**[62] below. As discussed below, the Applicants expect their metal-neutral, revenue-sharing JV to produce real benefits for local passengers on these routes by creating more options and more capacity for such passengers.

[61] Exhibit 109.

[62] Exhibit 110.

Figure 11.

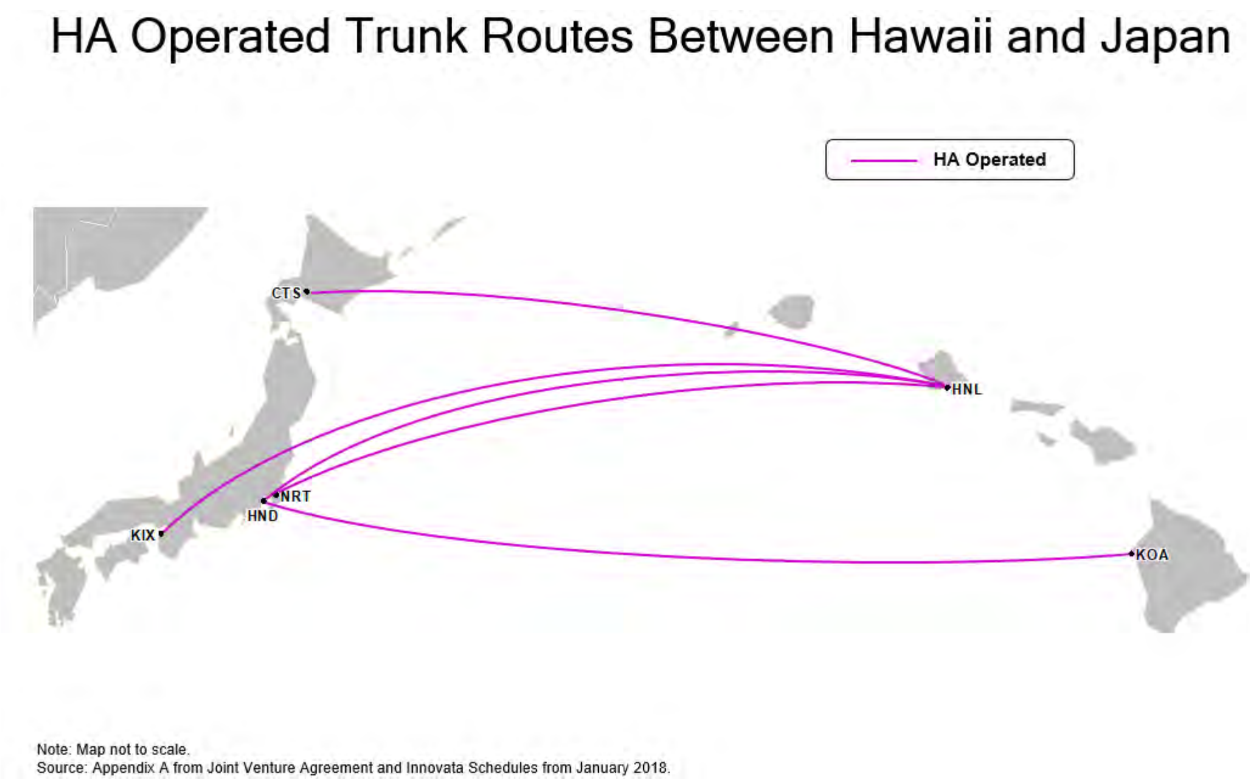
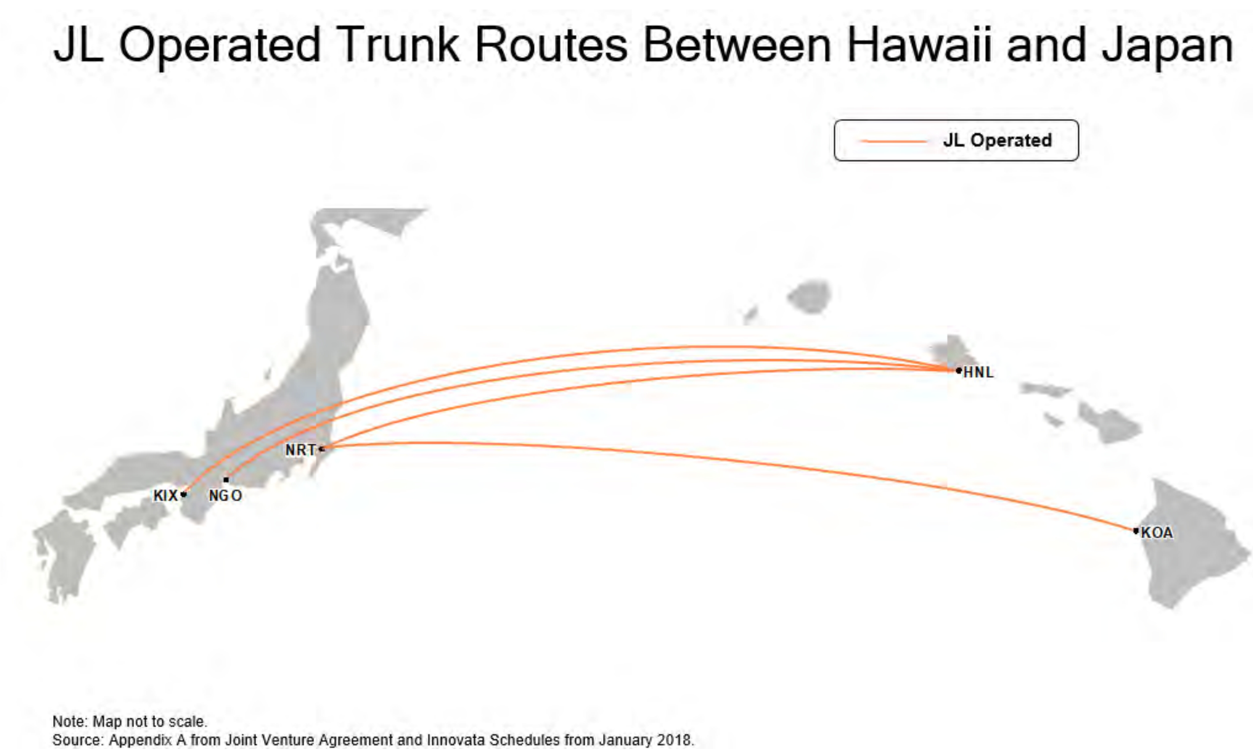


Figure 12.



i. Haneda.

The joint venture provides a substantial and immediate benefit to JAL passengers traveling between Tokyo and Honolulu or Kona by giving such passengers the ability to choose between Narita and the closer-in Haneda Airport in Tokyo. As shown in Figure 12 above, JAL does not currently operate flights between Hawaii and Tokyo Haneda, but Hawaiian does. Hawaiian's services between Haneda and each of Honolulu and Kona offer a new choice for these passengers. Haneda is substantially closer to downtown Tokyo and thus may be a significantly more convenient option for many passengers. In the past, JAL operated service between Honolulu and Haneda; however, it made a commercial decision to use that authority for another destination. JAL is happy to again be able to offer its customers service between Haneda and Hawaii through metal-neutral arrangements with Hawaiian.

ii. Narita.

The JV will also expand options for passengers by creating incentives for JAL and Hawaiian to spread out their flight times on trunk routes served by both airlines. Absent the JV, each of JAL and Hawaiian has the incentive to schedule its flights at the peak travel time for local passengers in order to maximize its own profit. Under the JV, the carriers will pool their revenue, making them indifferent as to which carrier operates a particular trunk route flight and incentivizing both carriers to seek to maximize overall revenues. Therefore, JAL and Hawaiian will no longer have the incentive to operate such flights at the same (or nearly the same) time but instead will jointly seek opportunities to improve service and grow total revenue by retiming their flights.

For example, as shown in the below table, Hawaiian's current seven-hour flight from Narita to Honolulu departs within 15 minutes of a JAL flight between those same points, and within 20 minutes of another JAL flight. If, for example, Hawaiian were to retime that flight so that it departs two hours earlier (e.g., departing NRT at 19:00), local passengers would have a significant new flight option that would allow them to arrive in Honolulu much earlier than existing options. In addition to expanding choices for local passengers, retiming would also increase the possibilities for connecting flights for flow passengers. Similarly, if Hawaiian were to retime its flight from Honolulu to Narita (e.g., arriving NRT at 15:55, instead of arriving at exactly the same time as a JAL flight, as it does now), such retiming would create a new flight option for local passengers and would produce 13 new connecting flight choices (compared to none today). Notwithstanding these substantial passenger benefits from retiming, absent the JV and revenue-sharing with JAL, Hawaiian lacks the incentive to move the flight from the peak travel time for local traffic. The JV provides the incentive for JAL and Hawaiian to create passenger benefits by optimizing their services jointly, including by retiming trunk route flights that currently limit passenger options because the flights operate at almost the same time.

<Examples of Potential Flights to Honolulu from Narita>

	Operating Carrier	Departing from Narita	Arriving in Honolulu
Current	HA	21:00 (HA822)	9:00
	JL	20:00 (JL786) 20:40 (JL780) 21:15 (JL784) 22:00 (JL782)	8:20 8:50 9:35 10:05
After Adjustment	HA	19:00 (HA)	7:00
	JL	20:00 (JL786) 20:40 (JL780) 21:15 (JL784) 22:00 (JL782)	8:20 8:50 9:35 10:05

<Examples of Potential Flights to Narita from Honolulu>

	Operating Carrier	**Departing from Honolulu**	**Arriving in Narita**
Current	HA	15:30 (HA821)	19:00
	JL	10:15 (JL785) 12:10(JL781) 13:00(JL783) 15:00 (JL789)	14:30 16:10 17:15 19:00
After Adjustment	HA	12:25 (HA)	15:55
	JL	10:15 (JL785) 12:10(JL781) 13:00(JL783) 15:00 (JL789)	14:30 16:10 17:15 19:00

Based on March 2018 Schedules

iii. Sapporo Chitose.

Hawaiian's nonstop service between Sapporo and Honolulu offers an important new choice for JAL passengers. JAL does not operate nonstop service between Sapporo and Hawaii. Its customers traveling to or from the Hokkaido region[63] must connect via a JAL gateway; for example, such customers may fly through Nagoya and connect with JAL's nonstop Nagoya-Honolulu services. Under the Proposed Alliance, these customers will have the option to fly nonstop between Honolulu and the Sapporo Chitose Airport on a Hawaiian-operated flight. JAL has many loyal frequent flyer members in the Hokkaido region and views this new nonstop flight option as a substantial benefit, particularly for those valued frequent flyers. This flight also offers a new nonstop option for JAL passengers originating in Honolulu who are traveling to the Hokkaido region.

[63] The Hokkaido region consists of the island of Hokkaido and several smaller islands in northern Japan.

iv. Nagoya.

JAL's nonstop service between Honolulu and Nagoya provides a convenient new flight option for Hawaiian passengers traveling between these points. Under the JV, such passengers will not need to connect via Osaka, Chitose, or Tokyo but instead will have the option to fly nonstop on a JAL-operated flight.[64]

E. The Proposed Alliance Will Lead to Reduced Fares Through the Elimination of Double Marginalization.

The Applicants expect that the JV will reduce fares on connecting routes involving both carriers. The Department's precedent supports the conclusion that metal-neutral, revenue-sharing JVs like the Proposed Alliance lower fares by eliminating double marginalization (i.e., the tendency of one carrier to charge a full mark-up on a segment sold in connection with a connecting itinerary with an arm's-length codeshare partner). The Department has long recognized the benefits of metal-neutral joint ventures like the Proposed Alliance in this respect. For example, in the Delta-Virgin Atlantic-Air France-KLM-Alitalia proceeding, the Department observed:

> As the Department has noted in the past, the economic incentives of non-immunized codesharing encourage each carrier to maximize its own profit without regard to the financial position of the other carrier. In an immunized joint venture, both carriers become indifferent as to which carrier operates the flight, focusing instead on maximizing traffic flows across combined networks. This dynamic may eliminate double marginalization pricing and other inefficiencies that burden consumers.[65]

The Department has made similar statements in other proceedings, including in the **one**world transatlantic proceeding: "we tentatively find that the following public benefits are likely: … lower

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[64] As Hawaiian pointed out in analyzing a possible joint venture with JAL, **Confidential Treatment Requested Under § 302.12**

HA-JAL-0000281.]

[65] Show Cause Order 2013-8-21 at 16.

fares resulting from the reduction in double marginalization on multi-segment itineraries."[66]

Recent economic analysis shows that metal-neutral, revenue-sharing JVs like the one contemplated in the JVA achieve these benefits. Economists at Compass Lexecon examined the empirical evidence and found that JVs are strongly pro-competitive because, among other things, JVs reduce fares on connecting routes involving both carriers.[67] To support its fare-reduction finding, Compass Lexecon studied the effect of different forms of international airline cooperation, including JVs, on connecting fares (the "CEI Study"), based on worldwide quarterly data from the lengthy period of 1998 through 2015. The CEI Study found that:

- "[A]s the degree of airline cooperation intensifies, fares incrementally decrease. In particular, alliances reduce fares by about 4.5 percent, with ATIs reducing fares by an additional one percent on top of alliances without ATIs (that is, a total effect of about 5.6 percent)."[68]

- "JVs have a stronger impact on fares, reducing fares by about eight percent relative to simple interline/codeshare, which is nearly as much as the reduction associated with online itineraries. Hence, it appears that, while ATIs, absent a JV, do not allow realization of the full benefits of airline cooperation, JVs allow carriers to internalize the externalities that each carrier's decisions have on its partner, such that they approximately replicate the fare benefits of online service."[69]

In connection with the Proposed Alliance, Compass Lexecon updated the CEI Study's results for connecting fares using more current data (the "Updated CEI Study"), which added information for 2016 and the first three quarters of 2017. The Updated CEI Study produced results that were not materially different from the CEI Study. Compass Lexecon found that, compared to simple interline/codeshare, alliances reduce fares by 4.76 percent; the grant of ATI reduces fares

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[66] Show Cause Order 2010-2-8 at 30.

[67] Compass Lexecon, Economic Analysis of the Effects of the Proposed Hawaiian Airlines – Japan Airlines Joint Venture, June 13, 2018 (the "Compass Report"), attached hereto as **Appendix 6**. The Compass Report also concluded that such joint ventures do not raise fares on nonstop overlap routes.

[68] Compass Report at 5.

[69] Compass Report at 5.

by an additional about one percent (i.e., a total effect of about 5.88 percent); and JVs reduce fares by about 8.41 percent (similar to online service). *See* **Figure 13**.

Figure 13.

Variables	**Baseline**
Online	-8.52%***
Alliance	-4.76%***
ATI	-5.88%***
JV	-8.41%***
Coupons	-6.70%***
US POS	2.00%***
Foreign Connection	1.81%***
Distance	0.00%***
Log(Distance)	-5.76%***
Observations	13,998,528
R-squared	0.725
Adj. R-squared	0.720
F-statistic	8,660
Prob > F	0.000

Statistical significance of underlying coefficients: *** p<0.001, ** p<0.01, * p<0.05.
Note: The reported F-statistic and associated p-value are calculated for the joint significance of the parameters indicated in the regression table and exclude the fixed effects applied to the regression.

The Compass Lexecon analysis controlled for a number of different factors that have been shown to impact airline pricing, including segments (“coupons”) on the itinerary for a particular origin and destination (“O&D”) route, controlling for the tendency of prices on a particular itinerary to fall as the number of segments increases; whether the roundtrip originated in the United States (“US POS”), which has been associated with higher fares; whether an itinerary for the particular O&D contained a foreign connection; and the total distance and the log of the total distance of the itinerary within a particular O&D, another measure (in addition to number of coupons) for the relative inconvenience of a particular routing on an O&D.[70] By incorporating these controls into the regression and the richness of the multi-year, worldwide data set that was used, Compass Lexecon expressed a high degree of confidence in its conclusion that the grant of ATI and formation of revenue-sharing JVs are associated with a reduction in fares on connecting itineraries.[71]

The CEI Study also analyzed the effect of a grant of ATI or the implementation of a JV on nonstop fares on overlapping routes, finding that "neither ATI nor JV is associated with increases in nonstop fares."[72] The Updated CEI Study produced similar results: "we find that neither the presence of overlapping ATI, nor overlapping JV partners on a nonstop route has a statistically significantly effect on nonstop fares."[73] *See* **Figure 14**.

[70] *See* Compass Report at 5-6.

[71] *Id.* at 6. While Hawaiian has questioned whether the grant of ATI will eliminate double marginalization in a prior proceeding, *see* Answer of Hawaiian Airlines, Inc. [to Application of American & Qantas], Docket DOT-OST-2015-0129 (Feb. 22, 2016), at 63-71, Hawaiian submits that the market conditions and competitive landscape of the Proposed Alliance distinguish it from the proposed alliance in that prior proceeding. First, the Compass Report reflects the findings of a worldwide study relying on current data to support the conclusion that immunized alliances reduce fares by 8.4% on connecting routes. Second, the Proposed Alliance will operate in an intensely competitive market with increasing alliance capacity – compared to the long, thin routes at issue in the prior proceeding. Third, the air service routes between Hawaii and Japan and beyond to Asia are open to new entry, as demonstrated by the routes' longstanding history of fifth freedom operations by China Airlines and Korean Air as well as more recent fifth freedom LCC entry by AirAsia X and Scoot.

[72] *Id.* at 7.

[73] *Id.* at 8.

Figure 14.

Variables	Baseline
ATI on Route	2.88%
JV on Route	0.01%
LCC on route	-10.09%***
Adding 2nd Carrier	-4.72%***
Adding 3rd Carrier	-4.14%***
Adding 4th Carrier	-0.94%
Observations	139,114
R-squared	0.922
Adj. R-squared	0.919
F-statistic	16.47
Prob > F	0.000

Statistical significance of underlying coefficients: *** p<0.001, ** p<0.01, * p<0.05.

Note: The reported F-statistic and associated p-value are calculated for the joint significance of the parameters indicated in the regression table and exclude the fixed effects applied to the regression.

As will be discussed below, historical experience with JVs has shown that they increase capacity on nonstop trunk routes, which exerts downward pressure on prices.

F. The Proposed Alliance Promises Capacity Growth.

The JVA, structured as a metal-neutral, revenue-sharing JV, promises significant capacity effects in the transpacific network. For one, with metal neutrality, there is a strong and proven incentive for the Applicants to expand capacity on connecting trunk routes. In addition, the Applicants believe there are additional opportunities to increase capacity based on longer-term service expansions.

i. Economic Analysis Shows the Proposed Alliance Will Result in Increased Capacity.

Economists at Compass Lexecon studied recent and updated data regarding the effects of JVs and, as explained more fully in the Compass Report, both the CEI Study and the Updated CEI

Study support the proposition that the grant of ATI and JVs generally lead to larger increases in segment traffic – and therefore capacity – compared to non-ATI and non-JV airlines. *See* **Figure 15** below.[74]

Figure 15.

Window Length	Change in ATI Member Traffic	Change in non-ATI Member Traffic	Change in JV Member Traffic	Change in non-JV Member Traffic
1 Year	3.7%	1.3%	0.7%	2.6%
2 Year	9.1%	6.5%	11.2%	5.3%

Notes: ATI events include ATI formations among carriers that may also be JV partners. Non-member traffic changes are measured on routes which experience an ATI or JV event.

Despite the elimination of an independent fare setter through the coordination authorized by ATI, the incentive to increase capacity overwhelms any potential negative effect on pricing, leading to more traffic and nonstop prices that are at parity with those offered prior to ATI. Indeed, the Compass Report finds that the creation of immunized JVs is associated with an increase in the number of competitors on overlap nonstop routes, as "the ratio of entries to exits on these routes was greater than the ratio of entries to exits across all routes."[75] *See* **Figure 16**.[76]

Figure 16.

Window Length:	One Year		Two Years	
	# of Routes		# of Routes	
Change in Carriers:	Overall	JV Members	Overall	JV Members
Increase	31	19	39	29
No Change	99	115	90	107
Decrease	16	12	17	10
Total:	146	146	146	146
Entry/Exit Ratio:	1.9 : 1	1.6 : 1	2.3 : 1	2.9 : 1

Notes: The table classifies specific route-JV events. If a route experiences multiple different JV events it will be counted more than once, even if the events occur in the same quarter.

[74] Table 4 in the Compass Report.

[75] *Id.*

[76] Table 3 of the Compass Report.

The Compass Report further observes that market conditions in the Tokyo-Honolulu route underscore the potential for JVs to increase capacity, as ANA and the Star alliance propose to substantially increase capacity by introducing twice-daily A380 service on the route. ANA's decision demonstrates both the tendency of immunized JVs to grow capacity on an overlap nonstop route and the extreme competitiveness of the Tokyo-Honolulu route in particular – "creating benefits for consumers flying between the United States and Japan."[77] Accordingly, the Compass Report concludes that "the proposed Hawaiian/JAL JV would allow the partners to compete more effectively with the increased service offered by the United Airlines/ANA JV, further benefiting consumers."[78]

The CEI Study and the Updated CEI Study provide strong support for the proposition that the Proposed Alliance will be procompetitive. In summary, the Compass Report finds that:

- the proposed JV will reduce connecting fares;
- the proposed JV will not lead to higher fares on nonstop routes; and
- JVs lead to greater output on the segments that are primarily affected.

The Compass Report concludes that these "findings indicate that the proposed Hawaiian/JAL JV will be procompetitive."[79]

ii. Like Other Metal-Neutral, Revenue-Sharing JVs, the Hawaiian-JAL JV Will Grow Capacity, and the Applicants' Longer-Term Opportunities Will Lead to Additional Increased Capacity.

As the Department knows, history shows that metal-neutral, revenue-sharing JVs grow capacity on trunk routes. For instance, American recently stated that its transatlantic joint business

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[77] *Id.* at 13.

[78] *Id.*

[79] Compass Report at 12.

with British Airways and Iberia has seen dramatic growth since receiving ATI in 2010.[80] The JV increased the number of codeshare flights by five times from about 1,200 to over 6,000, and increased the number of codeshare destinations by 85 percent.[81] Capacity even increased on the one overlapping route that went from two competitors to one (Dallas to London), where capacity has grown by almost 50 percent.[82] The JV has launched 36 new transatlantic routes from 2010 to 2016, an increase of 157 percent compared to the number of transatlantic routes launched in the six years prior to the joint business.[83]

For instance, JAL added its own daily flight between Tokyo and Dallas/Ft. Worth, augmenting multiple daily American-operated flights on the route. Also, since implementation of the joint venture, JAL launched new nonstop service between Tokyo and Boston and between Tokyo and San Diego, added a second daily flight between Tokyo and New York, and recommenced daily nonstop service between Osaka Kansai and Los Angeles. In addition, American started new service between Dallas/Ft. Worth and each of Beijing, Hong Kong and Shanghai and between Los Angeles and Beijing. Indeed, as noted above, JVs are expanding capacity in the Hawaii market, where ANA/United are adding a huge number of seats on the Honolulu-Narita route next year. The Department too has acknowledged that JVs result in increased passenger volumes.[84]

While the Applicants have not held detailed discussions about their future network plans

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[80] Joint Application of American Airlines and Qantas Airways at 5, Docket OST-2018-0030 (Feb. 26, 2018).

[81] *See id.*

[82] *See id.*

[83] *See id.*

[84] *See, e.g.*, Show Cause Order 2010-10-4 at 13 ("The likelihood that these proposed benefits will be realized is supported by both our historical experience reviewing antitrust immunity cases and several independent third-party studies of immunized alliances" citing a study that showed immunized alliances "are associated with 50 percent higher passenger volumes…").

prior to the grant of ATI, the Applicants see potential opportunities for additional service expansion and increases that would lead to market stimulation, such as:[85]

1. Adding additional frequencies in the CTS-HNL market (where Hawaiian currently operates three weekly flights without synergies from JAL) due to the synergies from its joint venture relationship with JAL;

2. Adding an additional Hawaiian service on the HNL-NRT route;

3. **[Confidential Treatment Requested Under § 302.12**

4. **Confidential Treatment Requested Under § 302.12**
]

The Applicants believe the service expansion at CTS can be achieved in the near-term following the grant of ATI. Also, consistent with prior experience involving JVs, the Applicants expect capacity increases over time on their trunk routes.

In addition to the above, the Proposed Alliance also creates the opportunity for nonstop service between city-pairs that currently have no such service. The Applicants believe that a grant of ATI will lead to such new nonstop routes, once the parties are able to coordinate and exchange information freely, enabling both carriers to share the risk of introducing new services and cooperate with respect to sales and marketing.

Capacity increases may also result from upgauging aircraft. For example, Hawaiian plans to acquire B787 aircraft in 2021, which will have a greater seating capacity than the 278 seats on Hawaiian's long-haul mainstay aircraft, the A330-200.

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[85] [***See*** **HA-JAL-0000552** **Confidential Treatment Requested Under § 302.12**

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G. The Proposed Alliance Will Deliver Significant, Quantifiable Traffic Stimulation and Passenger Benefits.

Granting ATI for the Proposed Alliance will lead to significant stimulation of passengers in the transpacific region. In this section, the Applicants outline the potential impact on passenger stimulation based on several enhancements: (1) network synergies from combining the Applicants' networks; (2) retiming the HNL-NRT flight; (3) retiming the HNL-HND flight; and (4) service expansion in Sapporo-Chitose (CTS) (together, the "Base Case Scenario" in Campbell-Hill's analysis). Consistent with the observed experience of other immunized JVs, the Applicants expect capacity increases over time, and they see potential opportunities for service expansion in NRT, Sapporo-Chitose (CTS), [**Confidential Treatment Requested Under § 302.12**] (the "Longer-Term Opportunities Scenario" in Campbell-Hill's analysis).

i. The Proposed Alliance Will Create Substantial Network Synergies.

The Proposed Alliance is far more beneficial for consumers than Hawaiian's prior arrangements with another Japanese carrier. Compared to the network that existed under the Hawaiian/ANA arm's-length codesharing agreement, which was limited to just a few Japanese destinations beyond Haneda, the network under the Proposed Alliance is much more expansive, *compare* **Figure 17**[86] with **Figure 18**,[87] and will produce greater benefits for consumers due to the metal-neutral and revenue-sharing aspects of the JV.[88]

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[86] Exhibit 104.

[87] Exhibit 105.

[88] **[See HA-JAL-0000161Confidential Treatment Requested Under § 302.12**

HA-JAL-0000174).

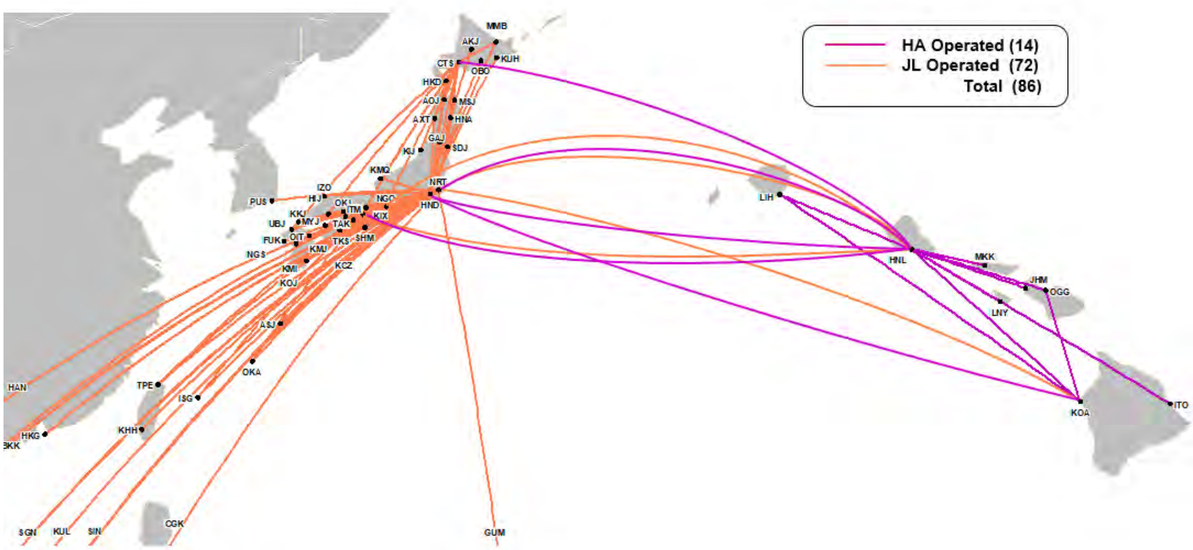
<u>Figure 17</u>.

The HA/NH Codeshare Agreement Was Limited to Relatively Few Markets Beyond HND

Source: Innovata schedules for January 2018.

<u>Figure 18</u>.

The HA/JL Joint Venture is Much More Comprehensive and Beneficial to Passengers



Note: Map not to scale.
Source: Appendix A from Joint Venture Agreement and Innovata Schedules from January 2018.

The Proposed Alliance will substantially expand the options for the traveling public and open up new gateways and connecting markets. The potential for stimulation is significant, and the full potential will only be realized through immunized cooperation. Hawaiian and JAL were able to negotiate broad codesharing only in the context of agreeing to pursue an immunized JV that would greatly increase the scope of their networks.[89] Indeed, the arms-length codeshare agreement between ANA and Hawaiian struggled to gain traction even on its limited scale. Without the ability to share revenues on the trunk route, neither party had the incentive to make inventory fully available to the other to reach the full potential of the cooperative relationship. As a result, the relationship was stunted, and consumers did not enjoy the benefits of expanded networks.

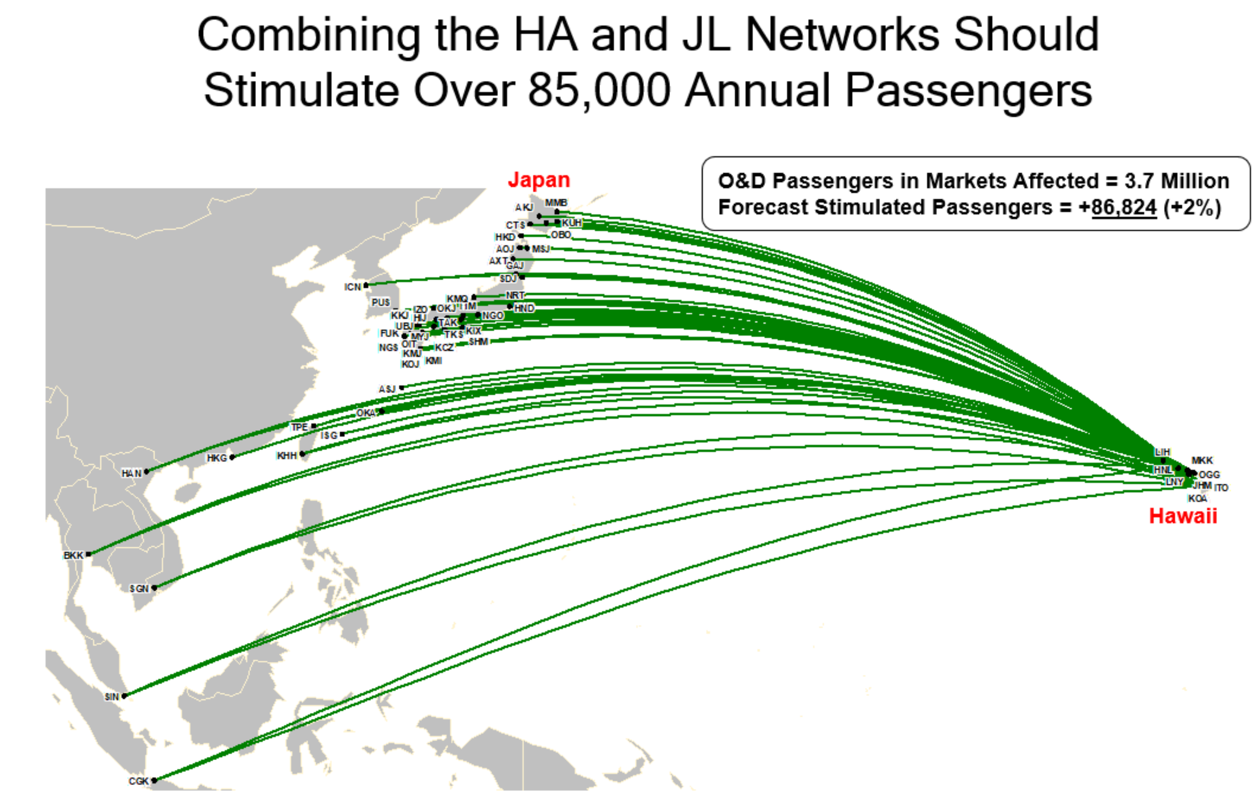
The Hawaiian-JAL JV would overcome this problem. First, both Hawaiian and JAL will have the incentive to open their respective inventory to the other carrier's connecting traffic because both will receive a portion of the joint revenue. Second, with that increased incentive to sell Hawaiian-operated flights, JAL will also have the incentive to apply its sales and marketing expertise in Japan and across Asia to itineraries involving Hawaiian-operated flights, as well as its own. A key difference between garden-variety codesharing and an immunized JV is not just the expanded opportunity for higher traffic flows but also the enhanced incentive to open inventory and make joint itineraries available to the traveling public.

The Applicants estimate that combining their respective networks, i.e., uniting the Applicants' networks based on current schedules and then acting as one carrier, will result in the stimulation of over 85,000 passengers annually. The stimulation stems from synergies that will be realized from merging the two networks and from the ability to sell tickets through both carriers'

[89] [**HA-JAL-0000576** **Confidential Treatment Requested Under § 302.12**

marketing channels, including JALPAK distribution. *See* **Figure 19**.[90]

<u>Figure 19</u>.



Note: Includes no schedule changes (no frequency additions or timing changes).
Measures the effects of combining the networks and being able to sell each other's services.
Source: Campbell-Hill Aviation Group Analysis using ARC/IATA data from CY 2017. Uses adjustment factor of 1.38 to agency passengers to account for direct bookings.

ii. Retiming the Applicants' Flights at NRT and HND Will Increase Stimulation and Produce Significant Consumer Benefits.

The Applicants anticipate that increased stimulation will be driven by retiming certain of Hawaiian's trunk route flights. As discussed above, with the grant of ATI, the Applicants will have the ability and incentive to move Hawaiian's HNL-NRT arrival from the current time (19:00) to an earlier time, such as 15:55, resulting in an immediate increase in connecting flights to beyond points in Japan and Asia from zero to 13. Absent ATI, Hawaiian lacks the incentive to retime its HNL-NRT flight because it is scheduled at a peak time for local traffic. Pre-ATI, JAL does not have a

[90] Exhibit 202.

strong incentive to facilitate a swap with one of its slots so Hawaiian can move to the earlier time, but the Applicants believe they can effect such a swap during the first scheduling meeting following the grant of ATI. Applicants believe that grant of ATI would make possible schedule changes, with corresponding consumer benefits achievable in the near term, subject to the slot coordination process (including slot swap arrangements).

Similarly, as discussed above, Hawaiian could retime its daily Honolulu-Haneda flight to create multiple connecting opportunities. If, for example, Hawaiian were to change the arrival time from 21:30 to 16:30, the number of connecting flights would increase from two to 31. The Applicants understand that additional international slots at Haneda are reasonably likely to become available in 2020, but it has not been determined how those slots will be awarded, to which carriers, and whether a slot swap will be feasible.

Economists retained by the Applicants at Campbell-Hill Aviation Group, LLC analyzed the potential service stimulation based on retiming at NRT and HND and the network synergies (Base Case Scenario) and estimate that over 60,000 passengers could be stimulated, including 202 passengers per day each way (PDEW).[91]

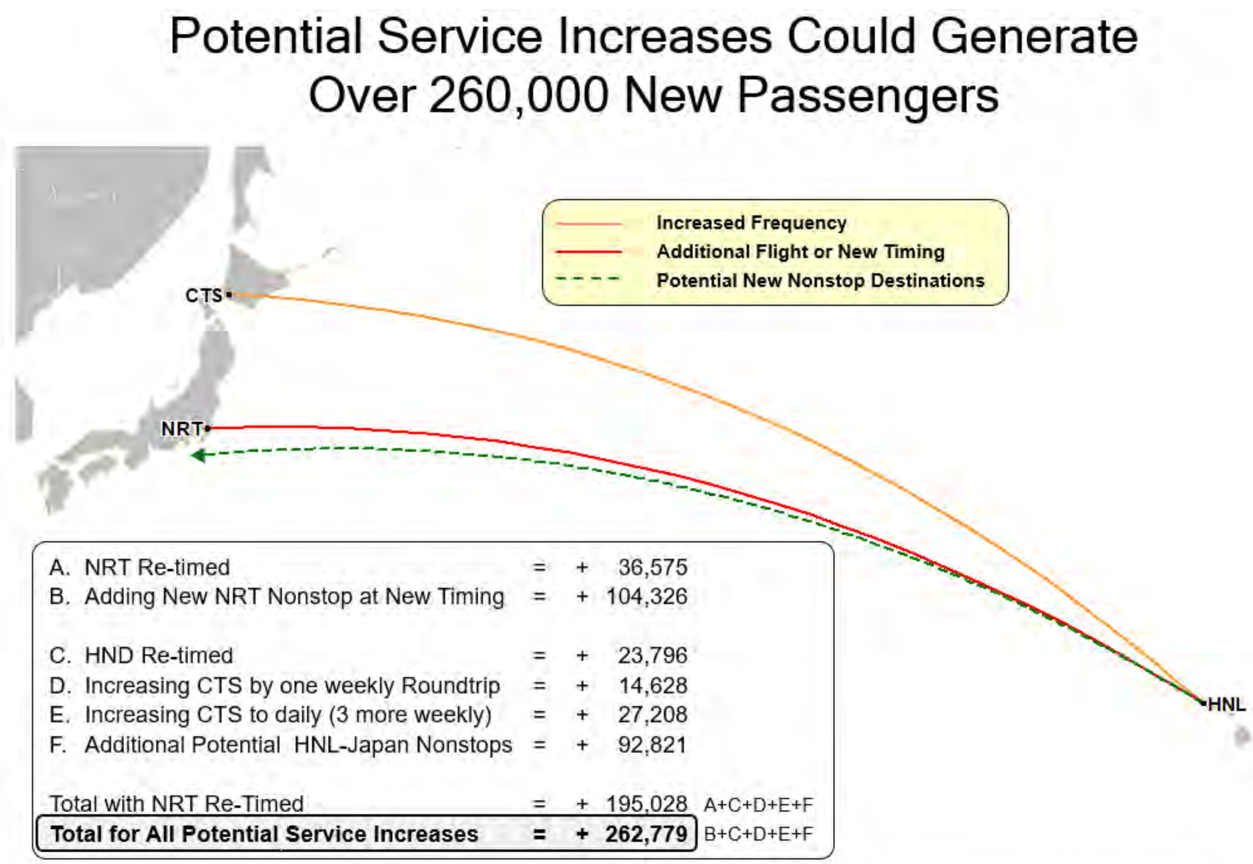
iii. The Applicants' Longer-Term Opportunities Will Result in Significant Additional Passenger Stimulation.

As discussed *supra* in Part VI.F.ii, the Applicants anticipate increased capacity in the transpacific network as a result of the Proposed Alliance and see opportunities for expanded service at NRT, CTS, [Confidential Treatment Requested Under § 302.]. The Applicants believe they can add an additional frequency at CTS shortly after the grant of ATI. While the timing of the other additional capacity increases is uncertain – especially in the absence of detailed discussions pre-ATI, Campbell-Hill analyzed the

[91] Exhibit 205.

estimated service stimulation based on the opportunities listed above (Longer-Term Opportunities Scenario). The potential public benefits from these service expansions are projected to generate over 260,000 new passengers (*see* **Figure 20**[92]).

<u>Figure 20</u>.



Source: Campbell-Hill Aviation Group Analysis using ARC/IATA data from CY 2017. Uses adjustment factor of 1.38 to agency passengers to account for direct bookings.

Taking into account all of the possible sources of stimulation, the Applicants project total stimulation of between 162,000 and 350,000 passengers, including 479 PDEW. Confidential Treatment Re

[93]].

[92] *See* Exhibit 203.

[93] *See* Exhibit 205A.

Confidential Treatment Requested Under § 302.12

H. The Network Synergies, Retiming of Connections, and Service Expansions Will Result in Substantial Economic Benefits.

Campbell-Hill estimated the economic benefits from the Base Case Scenario and the Longer-Term Opportunities Scenario, taken together. Using a consumer surplus model, these benefits can be quantified into monetary benefits for consumers, in the form of lower fares, elapsed time savings, better time of day coverage, and/or reduced travel times.[94] The estimated benefits

[94] *See* "FAA Airport Benefit-Cost Analysis Guidance", Office of Aviation Policy and Planning, Federal Aviation Administration, December 15, 1999.

for consumers range from $56.3 million to $124.7 million:[95]

	Base Case	Longer-Term Opportunities
Service Stimulated Passengers	161,823	349,603
Total Passengers Before Stimulation	3,709,502	3,711,792
Total Passengers After Stimulation	3,871,325	4,061,396
% Service Stimulation	4.4%	9.4%
Estimated Current Fare	$579	$579
Price Elasticity	-1.7	-1.7
Equivalent Price Change (%)	-2.6%	-5.5%
Equivalent Price Change ($)	-$14.86	-$32.08
Equivalent Consumer Benefits (Millions)	**$56.3**	**$124.7**

Moreover, as Hawaiian has stated in prior proceedings[96] and as JAL well knows, Hawaii is a very popular travel destination in Japan – having been ranked the #1 preferred U.S. destination for Japanese visitors each consecutive year from 2011-2016,[97] as well as in other Asian nations. Economic analysis of the Proposed Alliance based on the Base Case Scenario indicates that approximately 89 percent of passengers originate in Japan (or other Asian countries), and this number increases to 92 percent non-U.S. originating passengers in the Longer-Term Opportunities Scenario.[98] Campbell-Hill estimates that the Proposed Alliance could produce between nearly 72,000 and over 161,000 new annual visitors to Hawaii, which will lead in turn to additional substantial economic benefits.[99] These tourists spend money on hotels, restaurants, rental cars, tours, and retail purchases, all of which generates significant U.S. economic activity and jobs. Indeed, survey data indicates that Japanese visitors spend an average of $1,347 in Hawaii, including

[95] Exhibit 206.

[96] *See, e.g.*, Application of Hawaiian Airlines, Inc., DOT-OST-2016-0048 (Apr. 21, 2016).

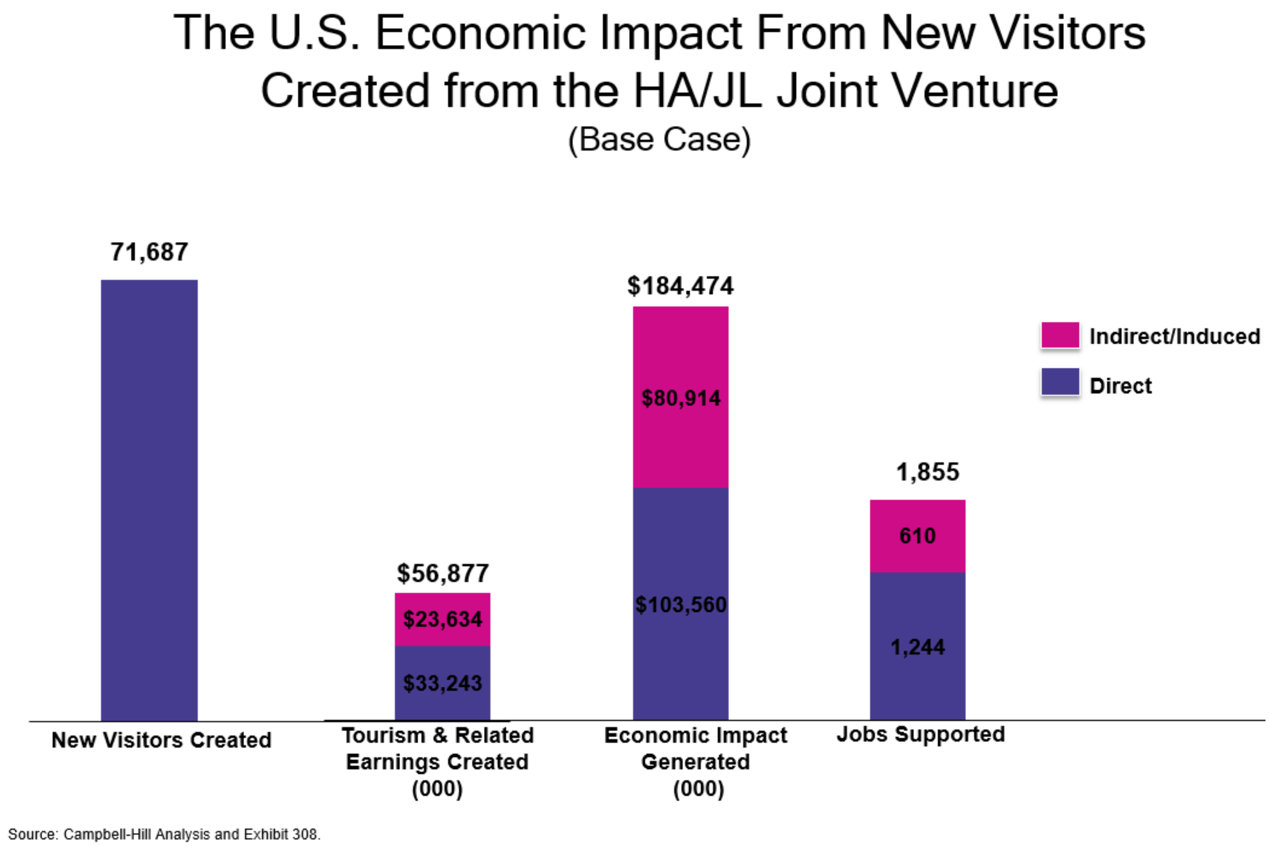
[97] U.S. Department of Commerce Office of Travel and Tourism Industries, Japan Market Profile (2016).

[98] Exhibit 304.

[99] Exhibit 306.

lodging, shopping, food and beverage, entertainment, and transportation, which supports local businesses and job growth in the United States.[100] The money spent by foreign visitors is a U.S. export with cascading benefits to the U.S. economy. The economic impact of these new visitors is illustrated below in **Figure 21**[101] (Base Case) and **Figure 22**[102] (Longer-Term Opportunities).[103]

Figure 21.



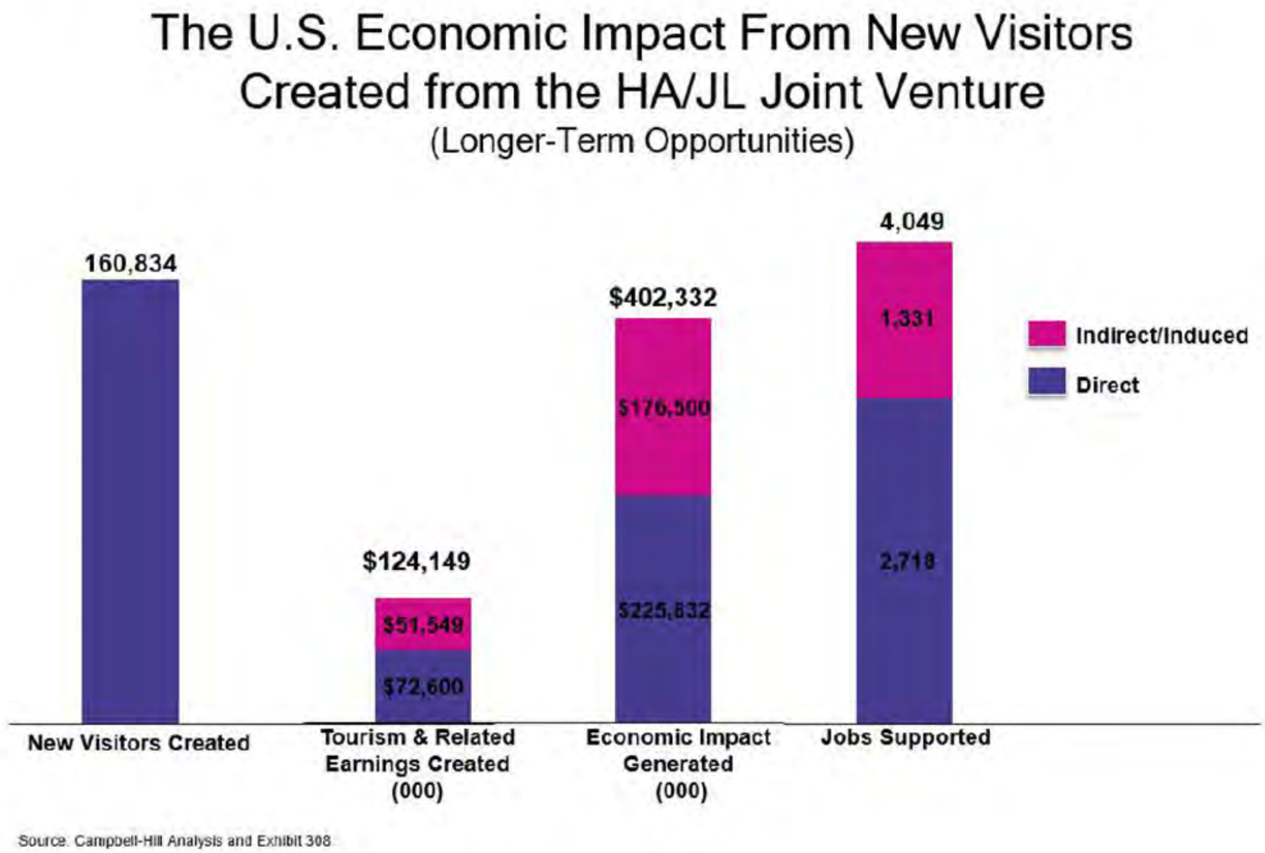
[100] *See* Exhibit 301, based on 2016 Annual Visitor Research Report, State of Hawaii, Department of Business, Economic Development & Tourism.

[101] Exhibit 306.

[102] Exhibit 307.

[103] Campbell-Hill explanation of economic impact method: 1. Direct Japanese Visitor Expenditures by visitor were broken down into expense categories using Hawaii Economic Development & Tourism's 2016 Annual Visitor Research Report ($1,347 per visitor). 2. Multiplied Visitor Expenditures per Japanese visitor broken down by expense type by the estimated incremental visitors. 3. Induced impacts that estimate the multiplier effects of new spending on the Hawaiian economy were based on state-level output, earnings and employment multipliers broken down by industry from IMPLAN's IRIMS database.

Figure 22.



The total potential economic impact is summarized below:[104]

	Base Case	Longer-Term Opportunities
Consumer Benefits from Improved Service (Exhibit 2016)	$56.3 million	$124.7 million
Economic Impact Benefits (Exhibits 306 and 307)	$184.5 million	$402.3 million
Total	**$240.8 million**	**$527.0 million**

The Department has already acknowledged Hawaiian's service as beneficial to the local Hawaiian economy: "we tentatively find that, in addition to the service and competitive benefits outlined above, Hawaiian's service would benefit the local Hawaiian economy. Tourism is the dominant

[104] Exhibit 309.

industry in the local economy, and Japan-originating visitors comprise a significant percentage of travelers to Hawaii. The Department has previously found benefit to the Hawaiian economy to be an affirmative public interest factor worthy of decisional weight in our regulatory proceedings**.**"[105]

I. The Proposed Alliance Will Enhance Hawaiian's Marketing Capabilities, Leading to a "Brand Halo" Effect That Will Result in Increased Passenger Flows

Hawaiian has built a successful business by using modern aircraft appropriately-sized for affordable, yet comfortable, service with its welcoming Aloha hospitality. In international markets, however, Hawaiian has been at a disadvantage with respect to the marketing and sales of its services. Incumbent international carriers and their alliance partners always have an advantage when it comes to brand awareness, market relevance, and their larger loyalty programs. The Proposed Alliance will level the playing field and enable Hawaiian to compete with established carriers that have received ATI, making the market more competitive overall to the benefit of passengers.

JAL is equipped with a formidable marketing and sales team. JAL's marketing presence is obviously strong within Japan, but its presence extends throughout Asia. [Confidential Treatment Requested Under § 302.12

[106]] JAL's skilled marketing and sales team will be motivated through the metal-neutral JV to sell Hawaiian flights just as they would JAL flights, allowing Hawaiian to benefit

[105] In the Matter of 2010 U.S.-Haneda Combination Services Allocation Proceeding, Docket OST-2010-0018, Order to Show Cause 2010-5-7 at 9 (May 7, 2010) ("Show Cause Order 2010-5-7") (citing Expanded Air Services at Hawaii International Airports, Docket OST-99-5723, Order 99-12-10, issued December 10, 1999).

[106] [**Confidential Treatment Requested Under § 302.12**]

from JAL's established presence in Japan and Asia.

Hawaiian believes the close association with a world-class carrier like JAL will lift the profile of Hawaiian's brand within Japan and throughout Asia. [**Confidential Treatment Requested Under § 302.12**

108 Confidential Treatment Requested Under § 302.12

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Moreover, the Proposed Alliance will directly enhance the marketing of Hawaiian's service through an important channel. In Japan, travel is very frequently sold as a package, inclusive of flights, accommodations, ground transportation, and recreational activities;[109] this is different from how passengers generally book travel in the United States and transatlantic markets. Travel wholesalers develop, negotiate, and market the packages, which are either sold through travel agencies or directly to consumers. Each wholesaler's "brochure" is a major component of this marketing channel. The wholesaler creates brochures for each destination that contain dozens of pages of explanatory pictures and information about the features of the travel package, including flight schedules and amenities as well as the specific rental cars, hotel rooms, and entertainment options. By the same token, JALPAK also benefits because its customers would have yet another travel option through Hawaiian.

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[107] [**HA-JAL-0000255.**]

[108] [**HA-JAL-0000361-409.**]

[109] **[HA-JAL-0000282 Confidential Treatment Requested Under § 302.12**

HA-JAL-0000371.]

The three largest wholesalers are JTB, H.I.S., and JALPAK.[110] For years, Hawaiian has sold flights as part of JTB and H.I.S. tour packages, which offer flights from multiple carriers. However, since 2010, JAL's subsidiary JALPAK has sold only JAL flights between Japan and Hawaii, [**Confidential Treatment Requested Under § 302.12**

[111] **Confidential Treatment Requested Under § 302.12**

] As part of the negotiation of the Proposed Alliance, Hawaiian and JAL agreed that Hawaiian-operated and Hawaiian-marketed flights would be included in JALPAK brochures and sold through JALPAK at parity with JAL flights.[112] The inclusion of Hawaiian flights in JALPAK is akin to a retail product being distributed through Japan's third largest retailer for the first time; the increased distribution will lead to higher sales. As the alternative brand offered through JALPAK, Hawaiian expects to get a meaningful percentage of JALPAK bookings. [**Confidential Treatment Requested Under § 302.12**

].[113] With the grant of ATI and moving from an arm's-length commercial relationship to the metal-neutral relationship contemplated under the JV, Hawaiian anticipates that JALPAK will be even more incentivized to sell HA flights.

The JALPAK relationship will boost Hawaiian's distribution in trunk route and connecting markets. Hawaiian will not only gain access to a critical, additional distribution channel,[114] but

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[110] **[HA-JAL-0000282.**]

[111] [**HA-JAL-0000282 Confidential Treatment Requested Under § 302.12**]

[112] [**HA-JAL-0000282 Confidential Treatment Requested Under § 302.12** ***see also*** **HA-JAL-0000249 Confidential Treatment Requested Under § 302.12**]

[113] [**HA-JAL-0000089.**]

[114] [**HA-JAL-0000058 Confidential Treatment Requested Under § 302.12 HA-JAL-0000280. Confidential Treatment Requested Under § 302.12**

Hawaiian's brand will also benefit from the direct association with the JAL brand, thereby raising Hawaiian's profile in the transpacific region. As discussed *supra* in Part IV.B.i, the distribution network within Japan and Asia is difficult to break into as an independent, relatively small U.S. carrier, especially the markets characterized by a high foreign point of sale. The JVA will help Hawaiian overcome this significant barrier to expansion, allowing Hawaiian to offer services in more markets.

Indeed, the potential benefits from Hawaiian's inclusion in JALPAK serve two objectives: a policy objective and a commercial objective. From a policy standpoint, the Applicants anticipate increased traffic to Hawaii on Hawaiian metal due to the JALPAK offering and associated brand lift, [**Confidential Treatment Requested Under § 302.12**

][115] In analyzing the potential [**Confidential Treatment Requested Under § 302.12**

].[116] As discussed above, this increased traffic means increased export dollars for the State of Hawaii and the overall U.S. economy.[117]

From a commercial standpoint, JALPAK will enable Hawaiian to better cater to the interests of Japanese tourists, who are accustomed to using brochures in booking their travel. JALPAK

Confidential Treatment Requested Under § 302.12

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[115] [**HA-JAL-0000249*; see also* "HA-JAL-0000032.**]

[116] **HA-JAL-0000557-62.**]

[117] *See* Task Force on Travel & Competitiveness, National Travel & Tourism Strategy at 3, n.4 (2012).

reflects both the language and cultural preferences of Japanese tourists. Considering that approximately 90 percent of the passengers on Japan-Hawaii routes are Japanese, the ability to cater to Japanese tourists effectively is an important consideration for Hawaiian, which believes its inclusion in JALPAK will allow it to do so.[118] [**Confidential Treatment Requested Under § 302.12**

[119]] In a presentation to its senior officers, Hawaiian specifically noted "Guest Benefit" as a feature of the JVA, stating: [**Confidential Treatment Requested Under § 302.12**

][120]

Finally, and relatedly, Hawaiian expects enhanced tourism opportunities based on its planned inclusion in JALPAK and endorsement by a strong local carrier in Japan. Hawaiian anticipates a significant positive "brand halo effect" due to its cooperation with a carrier of JAL's caliber, especially in Japan and Asia. Today, Hawaiian's international services focus on local

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[118] **Confidential Treatment Requested Under § 302.12**

HA-JAL-0000200

Confidential Treatment Requested Under § 302.12

[119] [**HA-JAL-0000361.**]

[120] [**HA-JAL-0000283.**]

markets and point-to-point services. With its raised profile in Asia and using Japan as an entry gateway, Hawaiian will be able to bring more passengers to and from Hawaii than previously possible. [**Confidential Treatment Requested Under § 302.12**

].[121]

J. Enhanced Ability to Compete Against Existing Immunized Alliances

The Proposed Alliance will enhance the Applicants' ability to compete head-to-head against the already-immunized United-ANA and Delta-Korean Air JVs. The United-ANA JV also involves a partnership between a U.S. airline – a considerably larger one – and a Japanese airline with a Tokyo hub. The Delta-Korean Air JV naturally has a Seoul hub; but it also has a Tokyo hub (established by Delta many years ago) from which passengers can travel to/from Hawaii and elsewhere. Korean Air has fifth freedom rights to carry local traffic between Tokyo and Hawaii.

With the mounting competition from United and ANA's rising capacity and Delta/Korean Air's increasing cooperation, the requested grant of antitrust immunity will allow the Proposed Alliance to effectively compete and on equal terms. The Applicants' ability under the Proposed Alliance to sell each other's beyond-gateway networks, grow traffic, lower prices, and improve service will sharpen the competition to the benefit of the traveling public. Without the alliance, Hawaiian would be disadvantaged from a competitive standpoint as a substantially smaller U.S. carrier, without an immunized partner, competing against much larger carriers that enjoy the benefits of immunized cooperation. With a U.S. partner based in Hawaii and focused on the Hawaii market, JAL too will be better able to compete against the United-ANA and Delta-Korean Air JVs for all-important Hawaii traffic.

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[121] [**HA-JAL-0000552.**]

K. Frequent Flyer Enhancements

As part of their JV, JAL and Hawaiian are forging a frequent flyer partnership under which their valued frequent flyer members can earn and redeem frequent flyer miles on flights operated by the other carrier.[122] JAL and Hawaiian are willing to enter into this relationship because the JV will align their economic incentives. This relationship will provide substantial benefits to the Applicants' frequent flyer members by increasing options for such members, enhancing the appeal of the airlines' frequent flyer programs, and improving customer convenience. For example, JAL Mileage Bank members who live in Hokkaido currently have to fly to Honolulu through cities where JAL operates flights, such as Tokyo, Osaka and Nagoya, to earn JAL miles and use award tickets to Hawaii. Through the frequent flyer partnership with Hawaiian, these customers will be able to earn miles and obtain award tickets by flying Hawaiian nonstop from Sapporo to Honolulu, substantially improving the customer experience. HawaiianMiles members likewise will have access to significantly expanded award travel possibilities.

L. Co-Location of Facilities and Lounge Access

The JV will generate consumer benefits through co-location of the Applicants' facilities and sharing of lounges and other facilities. For example, until very recently, JAL and Hawaiian have operated in separate terminals at Narita Airport. In anticipation of the JV, Hawaiian relocated to Terminal 2 at Narita, where JAL operates, on March 25, 2018.

This move has substantially shortened connecting times and improved convenience for passengers using JAL/Hawaiian services because it has eliminated the need for connecting

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[122] [Hawaiian notes that **Confidential Treatment Requested Under § 302.12**
HA-JAL-0000280; ***see also*** **HA-JAL-0000058** **Confidential Treatment Requested Under § 302.12**
].

passengers to take a shuttle bus between two terminals. Co-location at Narita will also enable more connections once the Applicants have the incentive, following the grant of ATI, to re-time Hawaiian's arrival at Narita to an earlier time period. [**Confidential Treatment Requested Under § 302.12**

123

Confidential Treatment Requested Under § 302.12

].[124] Hawaiian and JAL are hopeful that further improvements are possible post-ATI when their aligned incentives facilitate a baggage-handling agreement and even closer cooperation.

As the partnership progresses, Hawaiian and JAL also see an opportunity for Hawaiian to relocate from the North to the South terminal at Osaka (KIX) to co-locate their facilities at that airport. Other facilities such as lounges, check-in counters and boarding gates may be combined under the JV, creating a more uniform experience for passengers and greatly improving passenger convenience and efficiency.

As to lounges, the Applicants are now offering passengers access to both of their lounges at Honolulu Airport (JAL's Sakura Lounge and Hawaiian's Plumeria Lounge) in anticipation of their JV.[125] Hawaiian's business class passengers also will gain access to JAL's Sakura Lounge at

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[123] [**HA-JAL-0000080-88.**]

[124] [**HA-JAL-0000280.**]

[125] [***See, e.g., Id.*** **Confidential Treatment Requested Under § 302.12** **-0000281** **Confidential Treatment Requested Under § 302.12**

Narita, and Hawaiian and JAL expect Hawaiian's business class passengers to eventually have access to JAL's Sakura Lounge at Haneda. The Applicants will continue to explore opportunities to share facilities as part of their JV.

M. Product and Service Enhancements

With the prospect of ATI, the Proposed Alliance is considering investments in significant customer service improvements, designed to make the customer experience more enjoyable, efficient, and seamless. For example, the Applicants are considering implementing joint support services for passengers transferring at Honolulu Airport to connecting flights within Hawaii post-ATI. [**Confidential Treatment Requested Under § 302.12**

][126] The Applicants intend to continue to pursue additional passenger service enhancements after implementing their JV.

N. Information Technology Integration and Enhancement

The Applicants recognize that integration of their information technology platforms, which allows for the quick and effective exchange of information necessary to implement a JV in a timely and smooth manner, is an important component of the public benefits analysis.[127] The Applicants understand that the coordination of revenue management systems is integral to achieving benefits, including the elimination of double marginalization, which relies on the principle that the parties are neutral as to which metal is being used. [**Confidential Treatment Requested Under § 302.12**

Confidential Treatment Requested Under § 302.12

[126] [**HA-JAL-0000278.**]

[127] *See* Delta Air Lines, et al., Order to Show Cause, Docket OST-2009-0155, Order 2010-9-4 at 6-7 (Sept. 8, 2010).

Confidential Treatment Requested Under § 302.12].[128]

From a passenger-service standpoint, IT integration also assures consumers that the passenger name record (PNR) information in each party's computer reservation system (CRS) is aligned and consistent. Having the same PNR in each Applicant's CRS would enable the Applicants to efficiently process passengers, improve ticket counter efficiency, and enhance responsiveness and accountability to passengers ticketed by, or traveling under the designator code of, an alliance partner. The parties have already started planning for this integration, and, as an initial step toward facilitating integration, JAL has already migrated to the Amadeus platform to facilitate critical communications with Hawaiian's CRS, Sabre.[129]

O. Baggage Policies and Handling

After obtaining antitrust immunity for their JV, JAL and Hawaiian plan to work toward standardizing and simplifying their baggage policies such as baggage allowances and overweight/oversize baggage fees for JV flights. Applying standardized baggage policies will allow travelers to enjoy the same baggage service on all JV flights regardless of which carrier is operating the flight, eliminating the inconvenience and confusion caused by different baggage policies.[130] In addition, and as contemplated by the CCA, the parties have agreed to consider opportunities for cooperating with respect to baggage handling. Without the prospect of sharing revenues and costs, any such cooperation will be arm's-length – a typical vendor/supplier relationship. Indeed, Hawaiian continues to use third-party baggage handling at Narita even following its move to JAL's Terminal 2. The formation of a partnership changes that incentive, and the parties will consider

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[128] [**HA-JAL-0000612-13.**]

[129] [***See*** **HA-JAL-0000474-504** **Confidential Treatment Requested Under § 302.12**
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[130] The Applicants also intend to pursue other opportunities to harmonize their passenger handling policies.

investments following the grant of ATI to improve efficiency and reduce the frequency of lost baggage.

P. Mutual Sales on Websites

JAL and Hawaiian are exploring a system that would allow them to sell all JV flights on either carrier's website. This would enable passengers to purchase both carriers' products on a website that they are familiar with, enhancing the purchasing experience for passengers and improving the carriers' marketing capabilities. Further, for the convenience of customers from various backgrounds, the Applicants are considering making the websites available in multiple languages: Japanese, English, Portuguese, Korean, Traditional Chinese, Simplified Chinese, French, German, Italian, Russian, Spanish and Thai.

Both carriers' websites are already able to calculate the lowest fares of the carriers' flights; allowing passengers to purchase the flights on either website will enhance passenger convenience significantly. Once the JV is approved, the carriers contemplate displaying their JV flights on both carriers' websites with no preference given to either carrier's flights. Further, Hawaiian and JAL plan to build a system that, when a customer views a reservation page from the website the customer is most familiar with, will preferentially display the most convenient flights for the customer.

In sum, the Proposed Alliance will generate substantial consumer and other public benefits and is in the public interest.

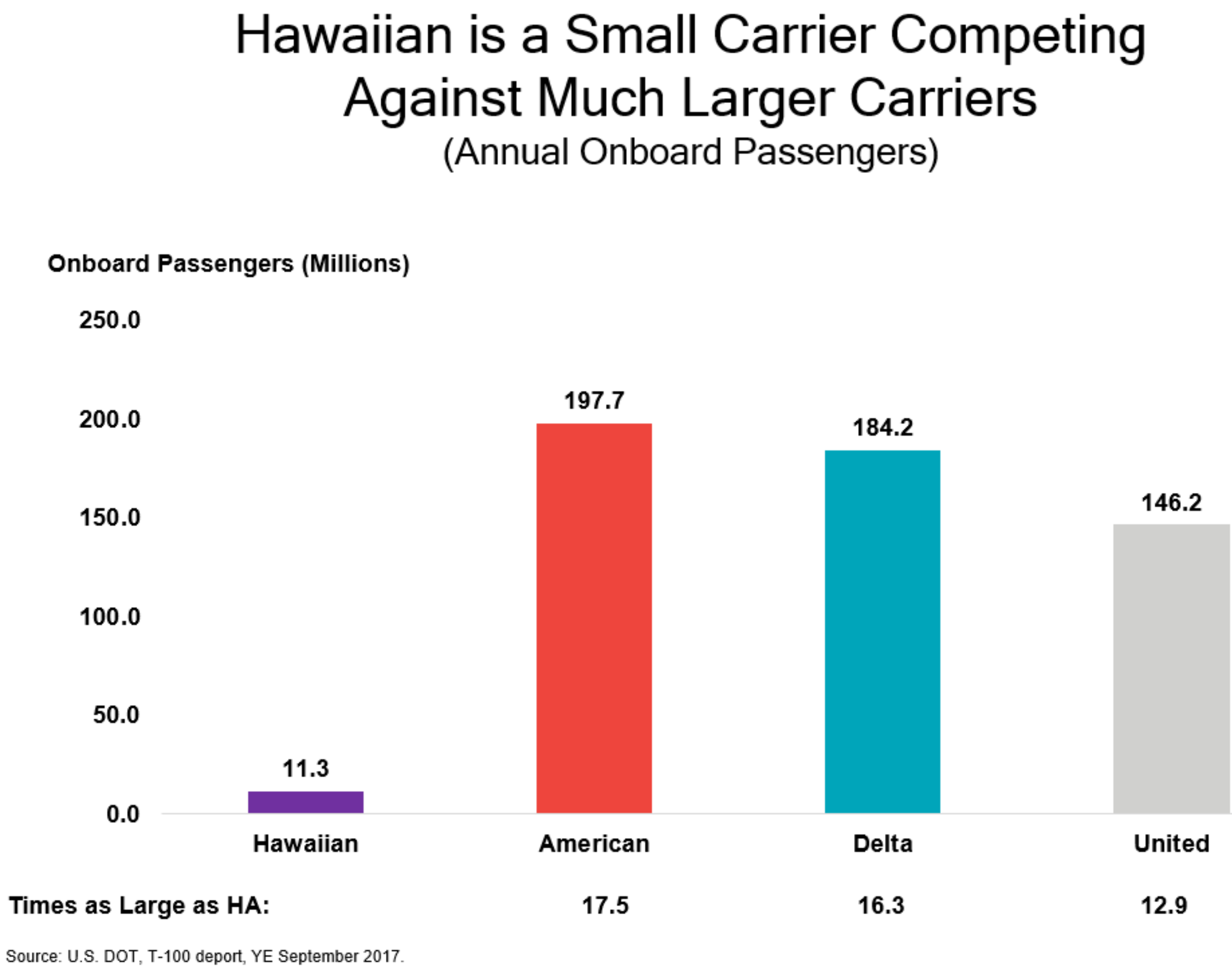
VII. By Enabling a Smaller Carrier to Reap the Benefits of Immunized Cooperation, the Proposed Alliance Provides a New Model for Immunized Alliances.

Hawaiian remains a small carrier relative to the other U.S. carriers that participate in immunized alliances, as depicted in **Figure 23**,[131] and lacks any immunized partners today.

[131] Exhibit 601; *see also* Exhibit 602.

Hawaiian realizes that reliable, world-class partnerships bring important advantages, but until now, the opportunity to reap those benefits has been limited. By approving this Joint Application, the Department has a unique opportunity to extend the benefits and efficiencies of immunized cooperation to a smaller U.S. carrier.

Figure 23.



In Hawaiian's experience, arm's length relationships with other airlines often fall short of expectations. Hawaiian has experienced the "disbenefits" of being a smaller carrier, and some of its arm's-length codeshare relationships have produced unsatisfactory results.[132] Moreover,

[132] [*See, e.g.,* HA-JAL-0000286 **Confidential Treatment Requested Under § 302.12**

Hawaiian has had difficulty obtaining adequate airport access, often having to settle for poorly located facilities, access during non-sustainable operating hours, and an inability to acquire or trade for favorable slots. Hawaiian has argued in prior DOT proceedings that cooperative agreements between large carriers, especially if exclusive, can serve to limit the capability of smaller carriers to achieve access to beyond gateway feed. For example, Hawaiian's NRT flight is currently timed for local traffic, which precludes connecting flights into key Asian markets. Hawaiian has explored earlier arrival slots to allow for such connectivity, but Hawaiian has not been successful without a willing partner. The lack of any immunized alliance partners has also left Hawaiian at a disadvantage from a marketing perspective relative to its U.S. competitors, as the foreign incumbent carrier's motivation to engage in metal-neutral selling with its alliance partners has a powerful negative impact on the sales of a U.S. carrier like Hawaiian that is independent. Given a choice, the foreign carrier will sell a flight of its alliance partner where the foreign carrier shares in the revenue instead of a flight of an independent codeshare partner where the return from a prorate is much less. As described above in Section VI.I, Hawaiian expects to benefit significantly from the marketing expertise of JAL, making Hawaiian and U.S. airlines more competitive overall.[133]

The Proposed Alliance represents the first time that a smaller U.S. carrier may be able to obtain the benefits of immunized cooperation. This new model will enhance the competiveness of the Proposed Alliance against the existing immunized JVs operating between Hawaii and Asia. As United/ANA aggressively grows in the Hawaii-Japan market and Delta/Korean Air expands its

[133] The Department has recognized the significant challenges facing carriers that are seeking to develop international services (including with respect to access to behind/beyond points and traffic, access to airport facilities such as gates and slots, and the difficulty of quickly establishing a market presence in a new region) and that cooperative relationships help carriers to overcome these challenges. *See* Policy Statement, 60 Fed. Reg. at 21,842 (four bulleted points). The Proposed Alliance is designed to provide Hawaiian what it needs in order to quickly establish a successful international network in Asia.

immunized cooperation, the Proposed Alliance will increase competition with both alliances, resulting in significant consumer benefits, including lower fares and improved services. Additional public benefits include providing Hawaiian with improved access to behind gateway traffic and to airport facilities, and enhancement of the market presence, relevance, and brand of a smaller U.S. carrier, as discussed below.

1. Improved Access to Behind Gateway Traffic

One advantage of immunized cooperation is the ability to exchange behind gateway traffic. Hawaiian has grown, but its growth has been stymied by an inability to enter cooperative relationships for the robust exchange of traffic. JAL is a willing partner. JAL will gain online behind-gateway access to Hawaiian's inter-island network, which will greatly improve the quality of JAL's services for its customers in an important market. Hawaiian will gain online access to JAL's behind and beyond network across multiple gateways. **Confidential Treatment Requested Under § 302.12**

].[134] Hawaiian sees many benefits from these arrangements. As previously described, they will not only improve the quality and quantity of service offerings but will also help solve Hawaiian's longstanding problem of reaching mutually beneficial codesharing relationships on international routes. Indeed, the arm's-length codesharing relationships Hawaiian has implemented have often yielded disappointing results, *see, e.g.*, **Figures 17** and **18** *supra* and accompanying text. Without the incentive to sell on a metal-neutral basis, Hawaiian's existing codeshare agreements have not resulted in meaningful traffic flows across international gateways. The Proposed Alliance with JAL will allow a smaller U.S. carrier to overcome some of the

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[134] [**HA-JAL-0000280.**]

substantial problems of market access that Hawaiian has experienced first-hand.

2. Access to Airport Facilities

Hawaiian believes the Proposed Alliance will enable it to have better access to facilities in its largest international market, improving the quality of customer service. In the past, Hawaiian has encountered problems securing adequate facilities at the larger airports it serves. As a smaller carrier, Hawaiian generally has limited operations to any airport outside the State of Hawaii. Given its small footprint, airport authorities frequently either make inferior facilities available or require Hawaiian to move facilities to accommodate the operations of larger carriers. The Proposed Alliance and the partnership with JAL will help to alleviate this problem.

For example, with the prospect of an immunized alliance, Hawaiian moved its operations from Terminal 1 to Terminal 2 where JAL operates at Narita International Airport. Given the size of Narita, this move enabled a significant service enhancement. By transferring Hawaiian's operations to Terminal 2, passengers' need to take a shuttle bus was eliminated and walking distances (and hence minimum connecting times) between connecting flights were reduced. The reduction in connecting times is beneficial for the customer especially in the event of a delay or other disruption due to weather conditions, mechanical problems, or other factors.[135] Co-location will also enable more connections once the parties have the incentive, following the grant of ATI, to re-time Hawaiian's arrivals at NRT to an earlier time period (*see supra* part IV.A.(iii)). As the partnership progresses, Hawaiian and JAL also see an opportunity for Hawaiian to relocate from the North to the South terminal at Osaka (KIX).

VIII. The Proposed Alliance Will Not Significantly Reduce or Eliminate Competition.

The Joint Application also satisfies the "competitive effects" prong of the standard of review

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[135] *See* [**HA-JAL-0000080-88; HA-JAL-0000280**.]

because the Proposed Alliance does not eliminate or substantially reduce competition in any relevant market. In undertaking its competitive effects analysis, the DOT applies an analytical framework similar to that used to analyze mergers under Section 7 of the Clayton Act, 15 U.S.C. § 18 (the "Clayton Act § 7"). "The intended commercial effects of the ATI Applicants' respective joint business agreements are similar to those resulting from a merger. As part of our overall analysis, we apply the Clayton Act test, which is used to predict the competitive effects of a proposed merger."[136] The Department assesses whether the agreement will substantially lessen competition and facilitate the exercise of market power – i.e., the ability to profitably charge supra-competitive prices or reduce service – on routes (1) between the regions served by the joint venture alliance; (2) between the homeland countries of the parties; and (3) in specific city-pair markets.[137]

Determining if an alliance is likely to create or enhance market power may entail one or more of several considerations, including whether the alliance will result in increased market concentration or will cause potential competitive harm, and whether new entry into the market would be "timely, likely, and sufficient" in scope to deter or counteract any potential harm to competition.[138] In applying the Clayton Act § 7 framework to antitrust immunity applications, the Department has typically applied the *Horizontal Merger Guidelines* (the "*Guidelines*") to assess the competitive effects.[139] The *Guidelines* outline the analytical framework used by the antitrust authorities in reviewing the potential effects of a merger that involves actual or potential

[136] Show Cause Order 2010-10-4 at 5; Show Cause Order 2008-4-17 at 5.

[137] *See, e.g.*, Show Cause Order 2013-8-21 at 5.

[138] Show Cause Order 2010-2-8 at 11 (" . . . we primarily consider whether…new entry into the market would be timely, likely, and sufficient either to deter or counteract the potential competitive harm.").

[139] U.S. Dep't of Justice & Fed. Trade Comm'n, Horizontal Merger Guidelines (Aug. 2010), http://www.justice.gov/atr/horizontal-merger-guidelines-08192010 (the "HMG"); Show Cause Order 2013-8-21 at 5 ("Because approval of the application would have intended commercial effects similar to those resulting from a merger, the Department also examines the application under the Clayton Act test.").

competitors. "The Clayton Act test is used to predict the competitive effects of a proposed merger, and requires us to consider whether a grant of ATI is likely to substantially reduce competition and facilitate the exercise of market power. The Department applies the Clayton Act test to determine whether approval of the application would allow the ATI Applicants to profitably charge supra-competitive prices or reduce service or product quality below competitive levels in any relevant market."[140]

With this framework in mind, the below analysis demonstrates that there is no substantial reduction or elimination of competition as a result of granting ATI for the Proposed Alliance in (A) transpacific; (B) country-pair; or (C) specific city-pair markets.

A. Network / Transpacific.

Grant of ATI for the Proposed Alliance will not result in a substantial reduction in competition in the transpacific market. A large number of carriers compete on U.S.-Asia routes across the Pacific, and no single carrier or alliance has a dominant share.

Table 1. U.S. - Asia Shares

Carrier	YE September 2017 Onboard Passengers Share	April 2018 Seat Share*	Estimated April 2019 Seat Share**
Star-ATI	27.2%	26.1%	26.8%
SkyTeam-ATI	18.6%	16.4%	16.2%
oneworld-ATI	9.5%	10.4%	10.3%
Hawaiian/JAL-ATI	**5.4%**	**5.6%**	**5.5%**
Other	39.4%	41.6%	41.2%
# Competitors Before / After ATI	30/29	29/28	29/28

* Adjusted to fully reflect additional JAL HNL-KIX daily nonstop added at the end of April 2018.
** Includes ANA upgauge to a 520-seat A380 in the HNL-NRT market in Spring 2019.
Note: Hawaiian/JAL ATI shares are for Hawaii routes only. Carriers with ATI are combined but other members of global alliances are considered unique carriers.
Source: U.S. DOT, T-100 Data, YE September 2017 and Innovata Schedules, April 2018.

[140] Show Cause Order 2016-11-2 at 9.

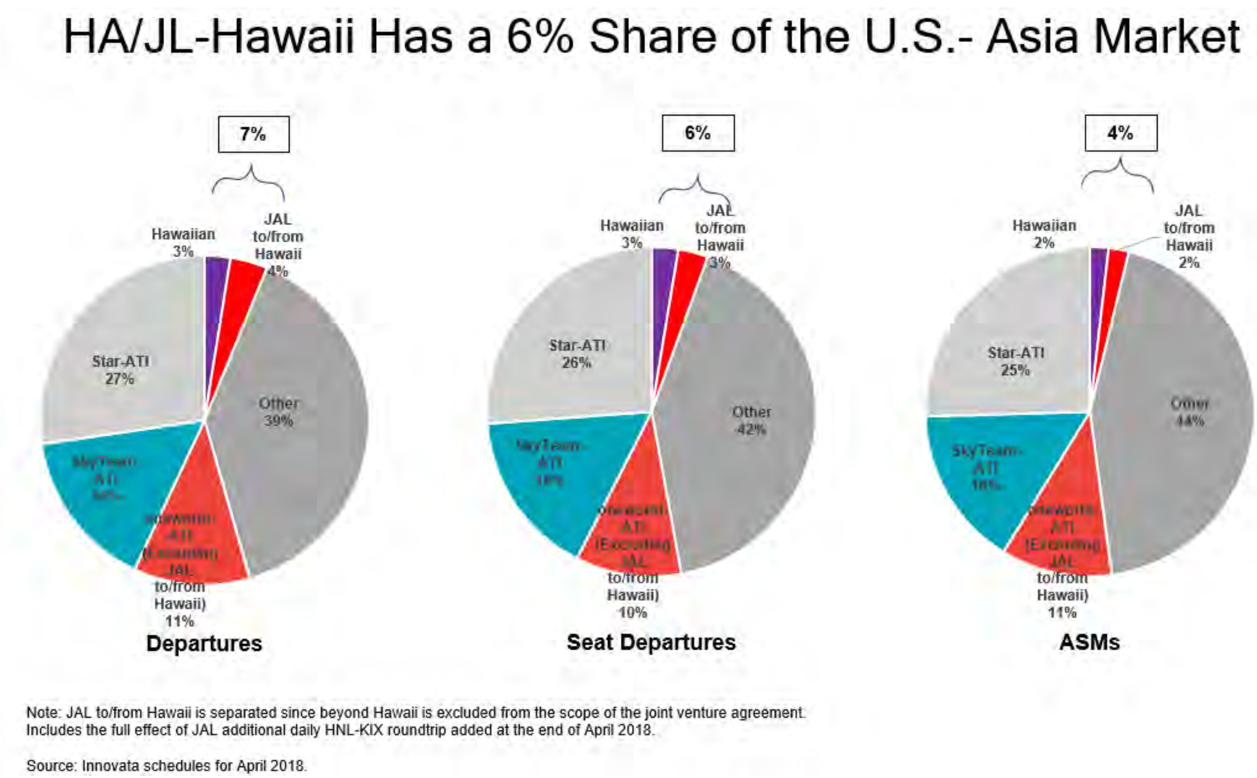
Table 2. Hawaii-Asia Shares

Carrier	YE September 2017 Onboard Passengers Share	April 2018 Seat Share*	Estimated April 2019 Seat Share**
Star-ATI	16.9%	18.7%	24.7%
SkyTeam-ATI	25.7%	18.4%	17.1%
Hawaiian/JAL-ATI	**44.5%**	**47.5%**	**44.0%**
China Eastern	2.6%	3.6%	3.3%
Philippine Airlines	2.5%	3.1%	2.9%
China Airlines	5.7%	1.3%	1.2%
Other	2.1%	7.4%	6.8%
# Competitors Before / After ATI	9/8	9/8	9/8

* Adjusted to fully reflect additional JAL HNL-KIX daily nonstop added at the end of April 2018.
** Includes ANA upgauge to a 520-seat A380 in the HNL-NRT market in Spring 2019.
Note: Hawaiian/JAL ATI shares are for Hawaii routes only. Carriers with ATI are combined but other members of global alliances are considered unique carriers.
Source: U.S. DOT, T-100 Data, YE September 2017 and Innovata Schedules, April 2018.

Together the Applicants will account for only 4-7 percent of the overall transpacific market, as shown in **Figure 24**[141] below, based on departures, seat departures, and available seat miles ("ASMs").

Figure 24.



The three largest U.S. network airlines operate scheduled nonstop passenger service across the transpacific, together with their non-U.S. airline ATI partners, as do several other international carriers, including AirAsia X, Scoot, Singapore Airlines, and China Airlines. The existing competition along transpacific routes from the global alliances and other carriers will prevent the Applicants from exercising market power. The transpacific market is not as concentrated as other global markets, and the Proposed Alliance will improve network competition along transpacific routes. Indeed, the Department recently concluded: "The U.S.-Asia market is competitive generally

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[141] Exhibit 604.

and it shows a long-term trend towards expansion, diversification, and more competition between large networks."[142] In fact, as this market continues to expand, new entry is not only likely but is actually occurring, especially from LCCs, demonstrating that there are no significant barriers to entry.

In the highly competitive and vibrant transpacific network, the Proposed Alliance will be a new and unique competitive option, and will be relatively small compared to the other alliances on a transpacific basis. Hawaiian has tried to partner before with the global alliance members but has had limited success, for reasons already noted. The model underlying the Proposed Alliance is the result of a thoughtful approach that reflects Hawaiian's special position with respect to its home State of Hawaii, enabling it to substantially extend its network from Hawaii to beyond-gateway points in Japan as well as the rest of Asia on a non-exclusive basis (permitting Hawaiian as well as JAL generally to cooperate with other carriers). In short, the presence of the Proposed Alliance will improve network competition in the transpacific and will not materially diminish competition.

B. Country-Pair.

In addition, the Proposed Alliance will not harm competition on a country-pair level. The market will remain competitive with the three major global alliances as well as independent competition continuing to serve routes between the U.S. and Japan.

[142] Joint Application of Delta Air Lines and Korean Air Lines, Docket OST-2002-11842, Order 2017-11-8 at 5 (Nov. 17, 2017).

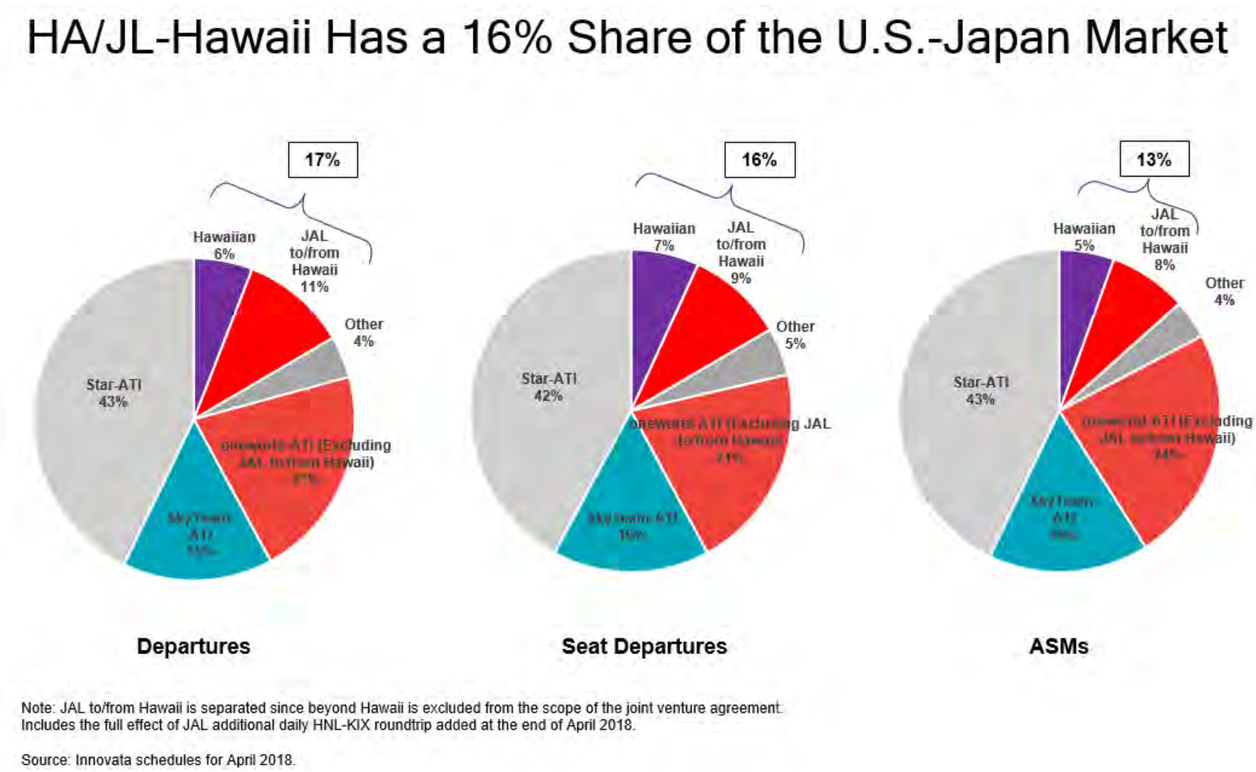
Table 3. U.S.-Japan Shares

Carrier	YE September 2017 Onboard Passengers Share	April 2018 Seat Share*	Estimated April 2019 Seat Share**
Star-ATI	41.0%	42.1%	43.9%
SkyTeam-ATI	20.9%	15.7%	15.3%
oneworld-ATI	19.2%	20.7%	20.1%
Hawaiian/JAL-ATI	**15.4%**	**16.6%**	**16.1%**
Singapore Airlines	1.5%	1.5%	1.4%
AirAsia X	0.3%	1.2%	1.2%
Scoot	0.0%	1.1%	1.0%
China Airlines	1.7%	0.0%	0.0%
Other	0.0%	1.1%	1.0%
# Competitors Before / After ATI	8/7	9/8	9/8

* Adjusted to fully reflect additional JAL HNL-KIX daily nonstop added at the end of April 2018.
** Includes ANA upgauge to a 520-seat A380 in the HNL-NRT market in Spring 2019.
Note: Hawaiian/JAL ATI shares are for Hawaii routes only. Carriers with ATI are combined but other members of global alliances are considered unique carriers.
Source: U.S. DOT, T-100 Data, YE September 2017 and Innovata Schedules, April 2018.

Together the Applicants will account for only 13-17 percent of the U.S.-Japan country-pair market, as shown in **Figure 25**[143] below, based on departures, seat departures, and ASMs.

<u>Figure 25</u>.



i. Star Alliance Competition.

The 28-member Star Alliance serves over 1,300 airports and includes United and ANA among its most prominent members. According to United, a founding member of Star, United "operates the most fuel efficient fleet among U.S. network carriers with the world's most comprehensive global route network, including world-class international gateways to Asia and Australia, Europe, Latin America and the Middle East. United, together with United Express, offers more than 4,500 flights a day to 339 destinations from hubs in Chicago, Denver, Guam, Houston,

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[143] Exhibit 603.

Los Angeles, New York, San Francisco, Tokyo and Washington, D.C."[144] ANA, "the largest airline in Japan," says it serves sixty-two airports and is the launch customer and biggest operator of the Boeing 787 Dreamliner.[145]

The Star Alliance includes Hawaii within its scope. As will be discussed below, the Star Alliance is aggressively expanding its capacity between Japan and Hawaii.

ii. SkyTeam Competition.

Formed in 2000, the SkyTeam Alliance has twenty member airlines and offers 1,074 destinations worldwide. Delta, a founding member of the alliance, says it serves more than 160 million customers each year across over 326 destinations and 59 countries.[146] Delta further notes that the SkyMiles frequent flyer program is in its 30th year and calls it "one of the longest-running and most successful loyalty programs in the travel industry."[147] Korean Air is another founding member of SkyTeam and is "the largest Asian airline in the Americas, flying from more cities in the Americas to more cities in Asia than any other airline" – currently flying to 129 destinations across 46 countries with 430 flights per day.[148]

On March 29, 2017, Delta and Korean Air announced a plan to implement a joint venture agreement "that will increase travel choices and boost competition between the U.S. and Asia."[149] In June 2017, Delta and Korean Air signed a transpacific joint venture agreement, which they characterize as "offering an enhanced and expanded network, industry-leading products and service

[144] http://www.staralliance.com/en/member-airline-details?airlineCode=UA.

[145] http://www.staralliance.com/en/member-airline-details?airlineCode=NH.

[146] https://www.skyteam.com/en/about/delta-airlines/.

[147] *Id.*

[148] https://www.skyteam.com/en/about/korean-air/.

[149] Trebor Banstetter, Delta and Korean Air to expand partnership, Delta News Hub (March 29, 2017), http://news.delta.com/delta-and-korean-air-expand-partnership.

and a seamless customer experience between the U.S. and Asia. The agreement [] deepens their historic partnership, which spans nearly two decades."[150] The JV serves more than 290 destinations in the Americas and more than 80 in Asia, and "will augment the two airlines' capabilities in the trans-Pacific market and provide the necessary scale and scope to compete in this market."[151] The Department issued an order in November 2017, finding that the recent amendments to the Delta/Korean Air JV will likely increase transpacific competition: "the evidence the Department has found generally supports the conclusion that the JV is likely to enhance, not diminish, competition and to produce substantial new consumer benefits."[152] A month later, Delta and Korean Air stated that the Department had approved the JV, with Delta's CEO Ed Bastian saying, "this world-class partnership [] will create more choices, frequencies and destinations for customers traveling between the key markets in the U.S. and Asia [and] we look forward to offering our customers the leading customer experience across the Pacific."[153] The South Korean Ministry of Land, Infrastructure and Transport granted approval for the transpacific JV in March 2018.[154] Delta and Korean Air implemented the JV on May 1, 2018.[155]

iii. No Competitive Overlap with the oneworld Alliance.

The **one**world alliance, formed in 1999, comprises thirteen member airlines and serves

[150] Delta Air Lines, Press Release, Delta and Korean Air Launch Trans-Pacific Joint Venture (June 23, 2017), https://pro.delta.com/content/agency/gb/en/news/news-archive/2017/june-2017/delta-and-korean-air-launch-transpacific-joint-venture html.

[151] *Id.*

[152] Order 2017-11-8 at 5.

[153] Delta Air Lines, Press Release, Delta, Korean Air Joint Venture Granted Approval by U.S. DOT (Dec. 13, 2017), https://pro.delta.com/content/agency/ch/en/news/news-archive/2017/november-2017/delta--korean-air-joint-venture-granted-approval-by-u-s--dot.html#.

[154] Staff Writer, Delta and Korean Air to launch world-class joint venture partnership, Delta.com (March 28, 2018), https://news.delta.com/delta-and-korean-air-launch-world-class-joint-venture-partnership.

[155] *See* Letter from Delta Air Lines, Inc. and Korean Air Lines, Co. Ltd., to T. Homan, Dir., Dep't of Transp., attaching Public Notice of Delta/Korean Air Joint Venture, DOT-OST-2002-11842 (Apr. 23, 2018).

1,012 destinations across 158 countries.[156] American Airlines, a founding member, is the biggest U.S. airline, serving 356 destinations worldwide; JAL, which joined **one**world in 2007, serves 80 destinations.[157] There is no overlap between the Proposed Alliance and the JAL-American Airlines transpacific JV alliance as American does not operate between Japan and Hawaii. [158]

iv. Independent, LCC Competition.

The intense competition currently existing between the U.S. and Japan is augmented by independent airline competition, including AirAsia X and Scoot, which are expanding rapidly and have introduced service to Honolulu via Osaka using fifth freedom rights. [**Confidential Treatment Requested Under § 302.12**

][159] The grant of ATI to the Proposed Alliance will not alter this competitive dynamic.

v. The Japan-Hawaii Market Will Remain Competitive.

The evidence is overwhelming that competition in the Japan-Hawaii market will remain robust, and in fact, Hawaiian believes that [**Confidential Treatment Requested Under § 302.12**

].[160] Hawaii-Japan includes some of

[156] https://www.oneworld.com/news-information/oneworld-fact-sheets/oneworld-at-a-glance.

[157] https://www.oneworld.com/news-information/oneworld-fact-sheets/oneworld-at-a-glance#corporate.

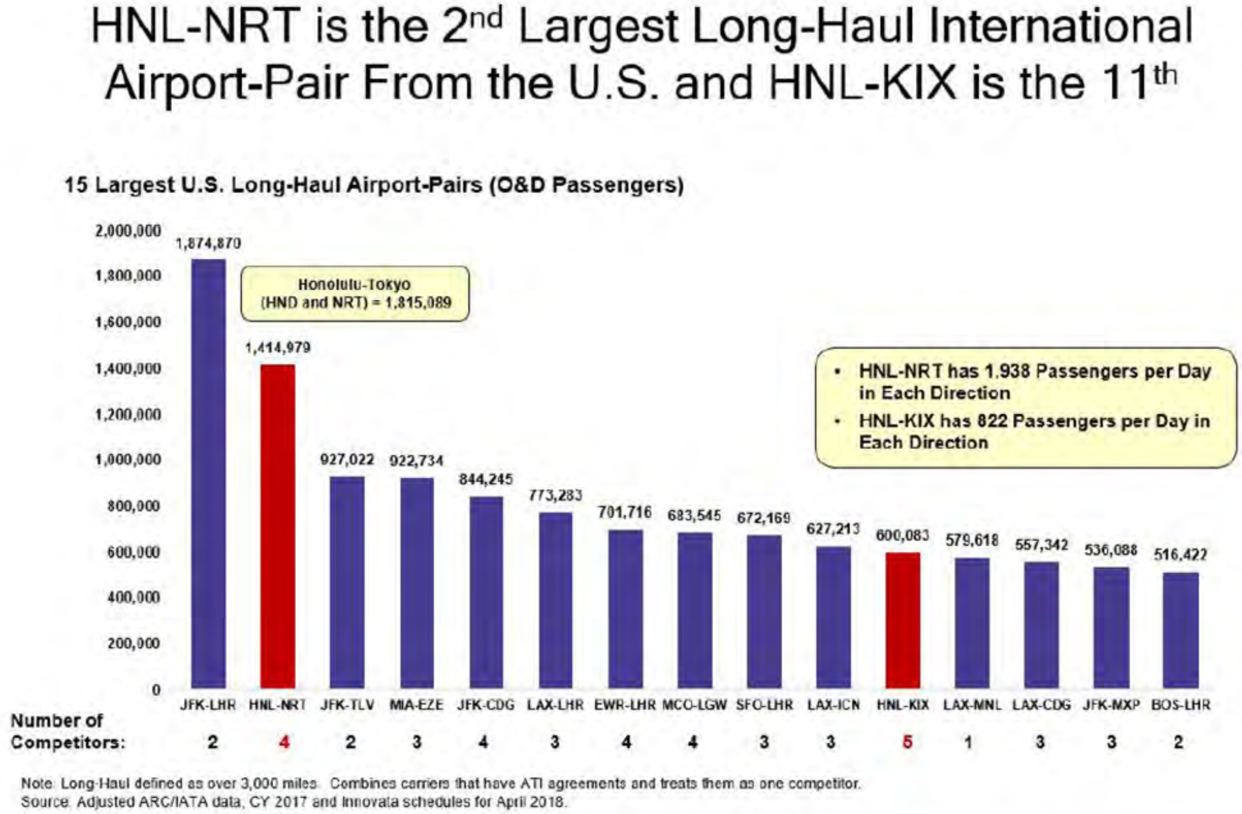
[158] The JAL/American joint venture specifically provides that the parties will not cooperate with respect to Hawaii-Japan/Asia markets unless and until American commences service between Hawaii and Japan/Asia. American has not announced plans to commence service between Hawaii and Japan/Asia, and JAL is not aware of any such plans. Additionally, the JAL/American joint venture and the Applicants' JV will not interact. As noted, the two joint ventures do not involve overlapping markets and the JAL/Hawaiian joint venture does not extend to air service routes to/from mainland North America. Moreover, JAL will keep the two joint ventures completely separate. As a participant in more than one joint venture arrangement, JAL has successfully "siloed" matters relating to one such arrangement from participants in the other.

[159] **[HA-JAL-0000252.**]

[160] **[HA-JAL-0000552.**]

the largest, most competitive international long-haul routes in the world, as shown in **Figure 26**.[161]

Figure 26.



Approval of this Joint Application will not substantially lessen the existing level of competition on the country-pair level, nor will the Applicants gain a competitive advantage over other carriers. Indeed, Hawaiian and JAL face formidable competition from rival alliances and new entrant LCCs.

Table 4. Hawaii-Japan Shares

Carrier	YE September 2017 Onboard Passengers Share	April 2018 Seat Share	Estimated April 2019 Seat Share
Star-ATI	17.8%	18.5%	26.2%
SkyTeam-ATI	25.2%	18.4%	16.7%
Hawaiian/JAL-ATI	**50.4%**	**55.5%**	**50.3%**

[161] Exhibit 401.

Carrier	YE September 2017 Onboard Passengers Share	April 2018 Seat Share	Estimated April 2019 Seat Share
AirAsia X	1.0%	4.0%	3.6%
Scoot	0.0%	3.6%	3.2%
China Airlines	5.5%	0.0%	0.0%
# Competitors Before / After ATI	6/5	6/5	6/5

* Adjusted to fully reflect additional JAL HNL-KIX daily nonstop added at the end of April 2018.
** Includes ANA upgauge to a 520-seat A380 in the HNL-NRT market in Spring 2019.
Note: Hawaiian/JAL ATI shares are for Hawaii routes only. Carriers with ATI are combined but other members of global alliances are considered unique carriers.
Source: U.S. DOT, T-100 Data, YE September 2017 and Innovata Schedules, April 2018.

The routes between Hawaii and Japan are open to competition, and that competition is increasing. As noted above, in March 2017, ANA announced it will be introducing the Airbus A380 aircraft on its route between Narita and Honolulu in the spring of 2019.[162] By using the A380, the world's largest passenger aircraft with 520 seats, on the Honolulu route, ANA is more than doubling its capacity on the route, which amounts to a 554-seat per day or an approximate 114 percent increase (*see* **Figure 27**[163]). The new A380 service will increase HNL-NRT capacity overall by 23 percent (*see* **Figure 28**[164]). After this capacity surge, Star-ATI capacity in the HNL-NRT market will exceed the current HA/JAL combined HNL-NRT capacity.[165]

[162] ANA's New A380 Cabins & Seatmap Revealed, One Mile at a Time (Apr. 25, 2018), https://onemileatatime.boardingarea.com/2018/04/25/ana-a380-seatmap/; *see also* Kyodo Jiji, ANA to introduce A380 for Honolulu routes, Japan Times (Mar. 7, 2017), https://web.archive.org/web/20170310211708/https://www.japantimes.co.jp/news/2017/03/07/business/corporate-business/ana-introduce-a380-honolulu-routes/#.WwR7uUgvyUk.

[163] Exhibit 501.

[164] Exhibit 502.

[165] *Id.*

Figure 27.

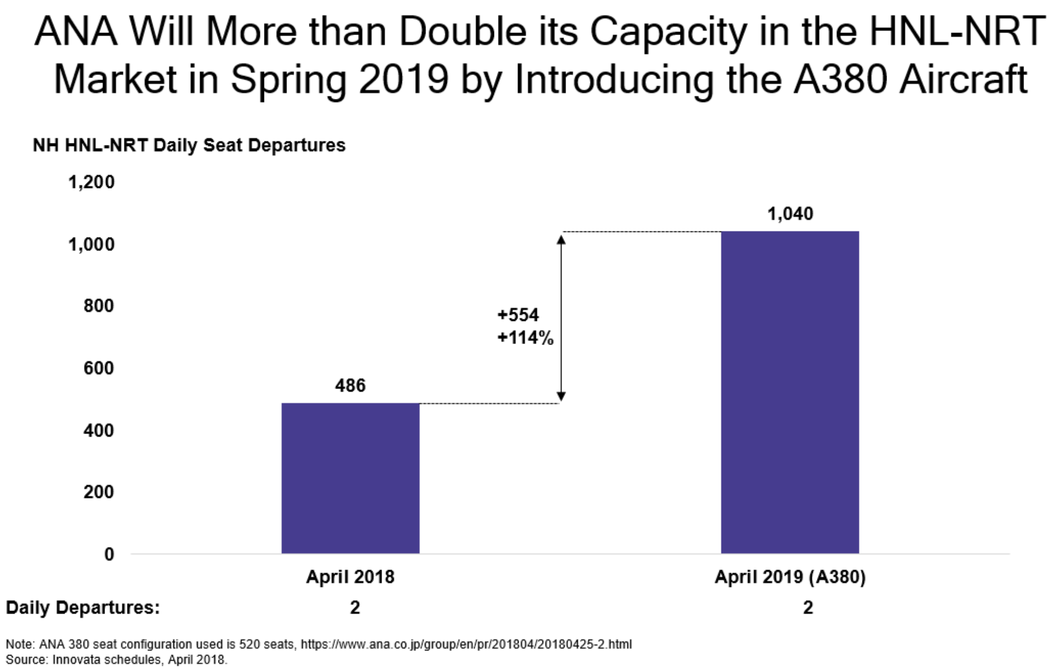
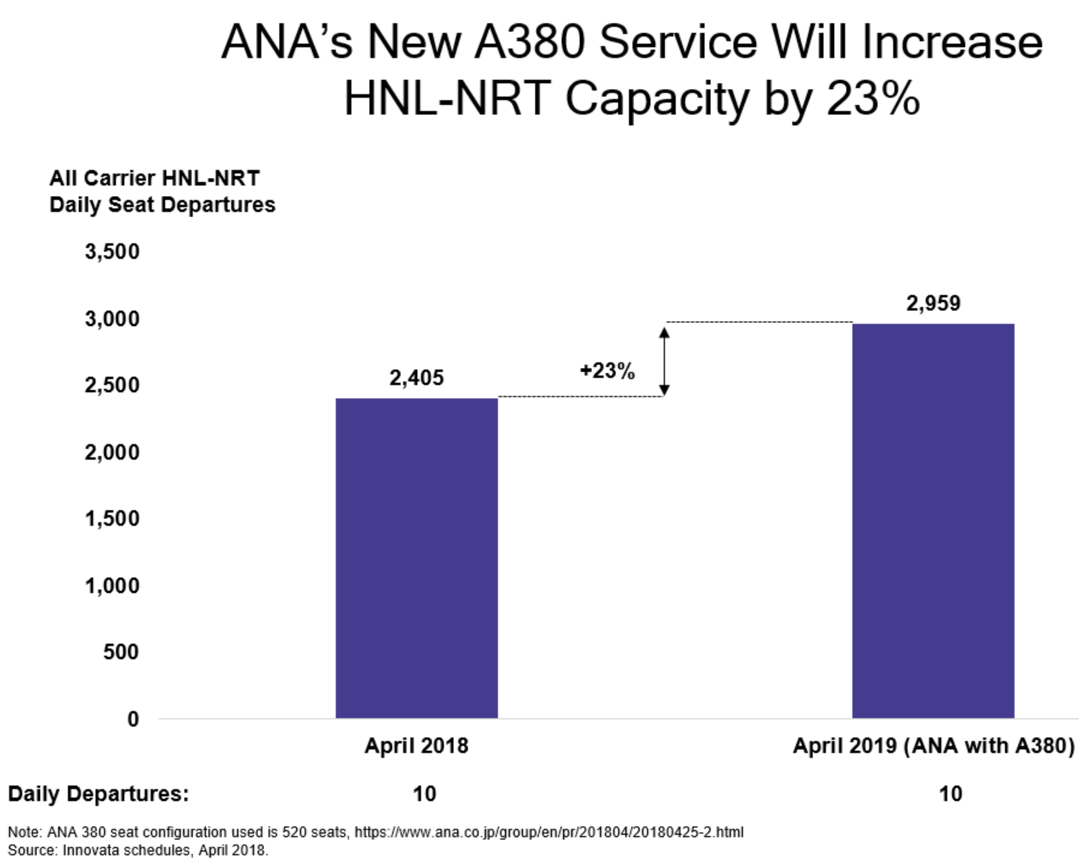


Figure 28.



ANA former President and CEO Osamu Shinobe stated at a news conference that the introduction of the larger A380 would not likely lead to an excess supply of seats because the Narita-Honolulu and Haneda-Honolulu routes have seat-occupancy rates of 90 percent and Hawaii is one of the most popular destinations for Japanese tourists.[166] In connection with these plans, ANA has started to build their own lounge on the Ewa concourse (where the gates capable of accommodating the A380 are located) at HNL,[167] further demonstrating ANA's and Star's commitment to increase capacity between Japan and Hawaii.[168]

The proposed capacity increase will add over 410,000 new seats to the HNL-NRT route annually, as shown in **Figure 29**[169] below, and the Proposed Alliance will represent a procompetitive counter force against the Star Alliance (*see* **Figure 30**[170]).[171]

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[166] *Id.*

[167] Currently, ANA uses the UA Lounge on the Diamond Head Concourse in HNL.

[168] Alexander Zannes, Upgrades will allow Honolulu airport to accommodate world's largest passenger airplane, KHON.COM (June 23, 2017), http://www.khon2.com/news/local-news/upgrades-will-allow-honolulu-airport-to-accommodate-worlds-largest-passenger-airplane_20180104063226961/901486924.

[169] Exhibit 503.

[170] Exhibit 504.

[171] [***See also*** **HA-JAL-0000043** **Confidential Treatment Requested Under § 302.12**

Figure 29.

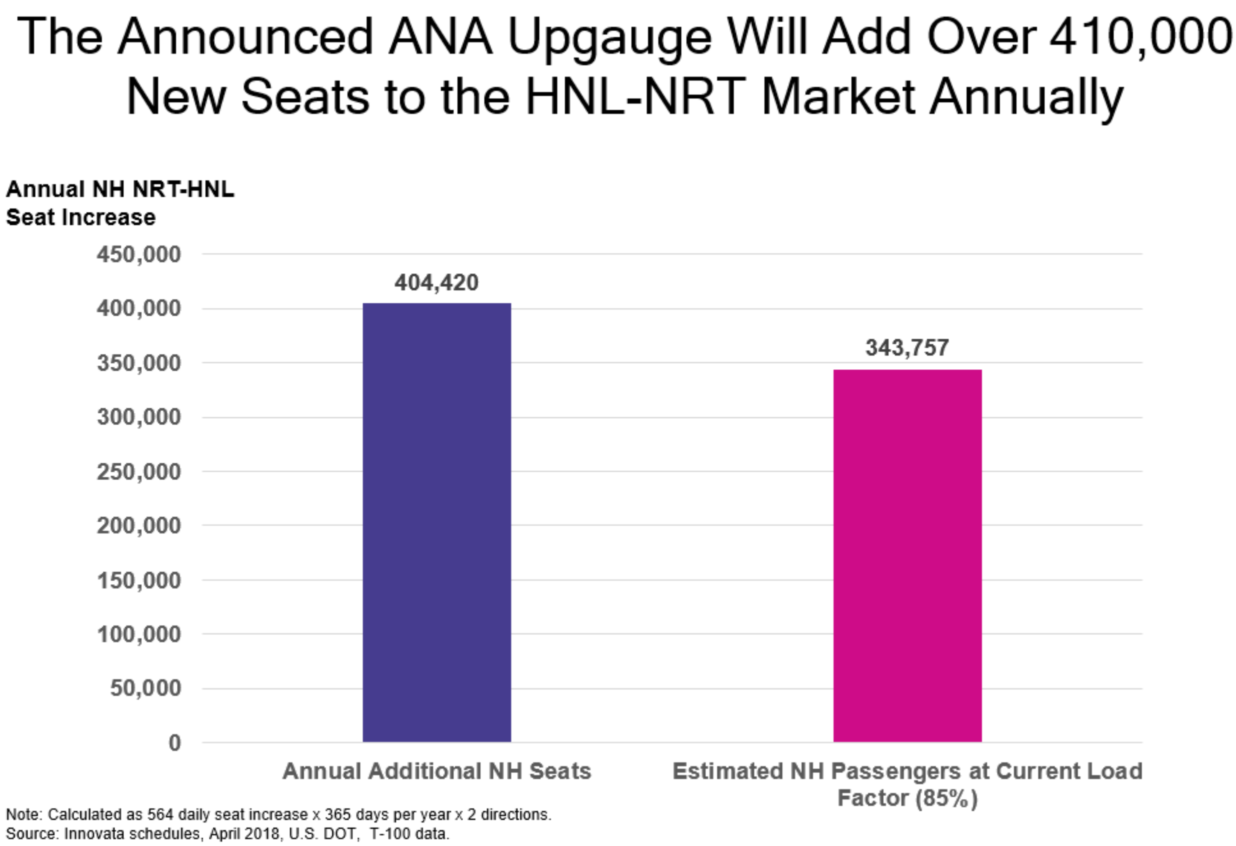
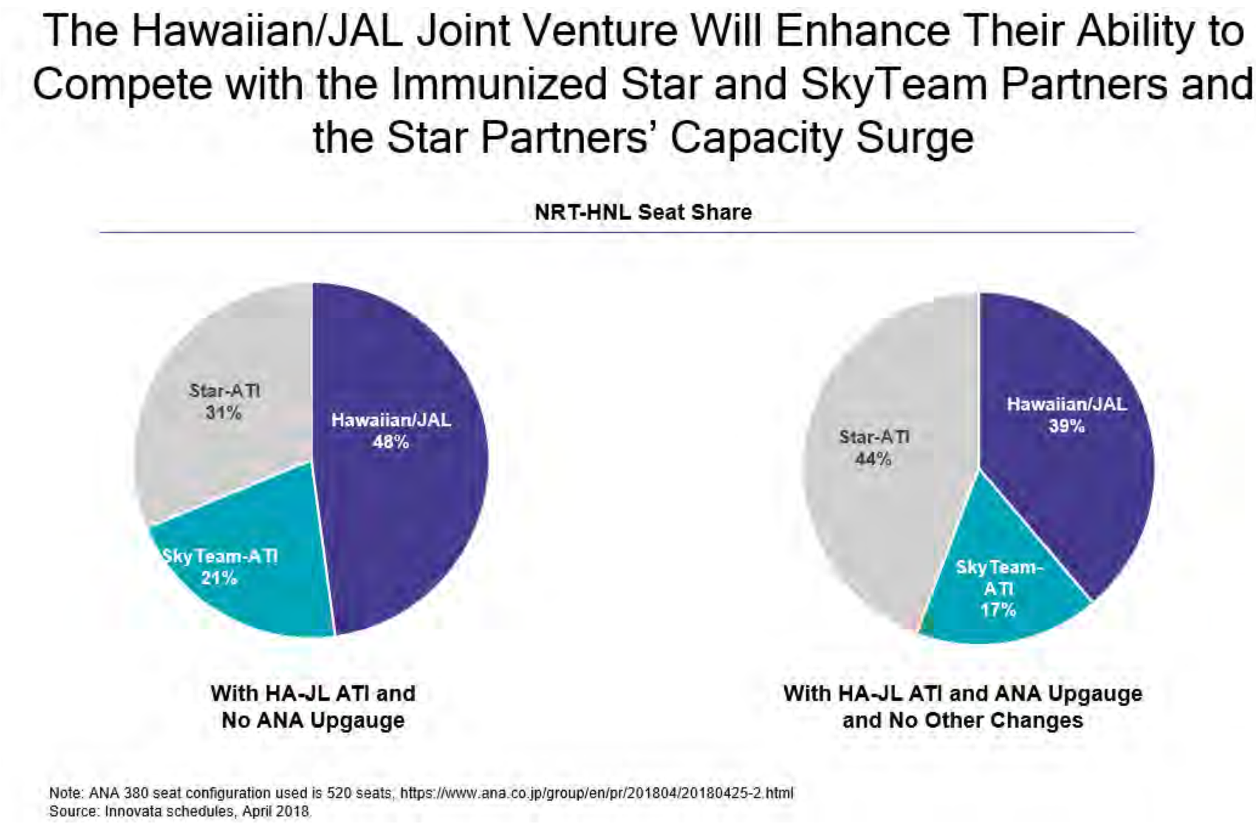

The Announced ANA Upgauge Will Add Over 410,000 New Seats to the HNL-NRT Market Annually
Annual NH NRT-HNL Seat Increase
450,000
400,000
350,000
300,000
250,000
200,000
150,000
100,000
50,000
0
404,420
343,757
Annual Additional NH Seats
Estimated NH Passengers at Current Load Factor (85%)
Note: Calculated as 564 daily seat increase x 365 days per year x 2 directions.
Source: Innovata schedules, April 2018, U.S. DOT, T-100 data.

Figure 30.



The increased capacity from the Star Alliance is far from the only data point evidencing robust competition in the Hawaii-Japan market. There is new competition from low cost carriers using fifth freedom rights to serve Japan-Hawaii markets. Carrying the local traffic of Japanese tourists traveling to Hawaii is vital for these LCCs.

In February 2017, AirAsia X, a long-haul, low cost affiliate carrier of the AirAsia Group, announced it would be launching service to Hawaii, a decision the AirAsia X Group CEO called, "the game-changing destination we have all been waiting for."[172] On June 28, 2017, AirAsia X made its inaugural flight from Kuala Lumpur, Malaysia to Honolulu, Hawaii via Osaka, Japan, with

[172] AirAsia X, Press Release, AirAsia X Says 'Aloha' to Hawaii! (Feb. 10, 2017), http://airasiax.listedcompany.com/newsroom/[final]_AirAsia_X_Press_Release_-_AIRASIA_X_SAYS_'ALOHA'_TO_HAWAII!.pdf.

a load factor of over 90 percent.[173] The flight, marking the airline's entry into the U.S., was initially offered four times a week, and AirAsia X Chairperson Tan Sri Rafidah Aziz said, "We are here to democratize air travel for everyone so flying long haul would no longer be a luxury only a few could enjoy. This landmark route to Hawaii is a bold new chapter in that quest to help more people travel farther for less."[174] The carrier announced in May 2018 that it would be increasing its flights to Honolulu to daily service, "follow[ing] a robust demand from Southeast Asia."[175] In 2017, the airline reported 12 percent year-on-year ("YoY") revenue growth, a 25 percent increase in passengers YoY, and a record load factor of 83 percent.[176] Earlier in June 2017, AirAsia X won the World's Best Low Cost Airline Premium Cabin and Premium Seat awards for the fifth consecutive year at the Skytrax World Airline Awards held at the Paris Air Show.[177]

Similarly, Scoot, which is part of the Singapore Airlines Group and was formed (in its current iteration) in 2012 when two of Singapore Airlines' LCC subsidiaries, Scoot and Tigerair, merged, announced in October 2017 that it was going to launch new service to Hawaii in 2017.[178] The new service started on December 19, 2017, and is being offered four times a week, departing from Singapore to Honolulu via Osaka, Japan.[179] Scoot is using a wide-body, twin-aisled Boeing

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[173] AirAsia X, Press Release, AirAsia X touches down in Honolulu, Hawaii (June 28, 2017), https://www.airasia.com/ot/en/press-releases/airasia-x-touches-down-in-honolulu-hawaii.page.

[174] *Id.*

[175] AirwaysMag.com (May 31, 2018).

[176] AirAsia X, Press Release, AirAsia X Posted Fourth Quarter Net Operating Profit for RM100.1 Million (Feb. 21, 2018), http://airasiax.listedcompany.com/newsroom/3_Press__elease_4Q17.pdf.

[177] *Id.*

[178] HJ Mai, Low-cost airline Scoot to launch new Hawaii service later this year, Pacific Business News (Oct. 4, 2017), https://www.bizjournals.com/pacific/news/2017/10/04/low-cost-airline-scoot-to-launch-new-hawaii html.

[179] Dave Segal, Singapore's Scoot airline makes its debut flight to Honolulu, Honolulu Star Advertiser (Dec. 19, 2017), http://www.staradvertiser.com/2017/12/19/business/business-breaking/singapores-scoot-airline-makes-its-debut-flight-to-honolulu/.

787 Dreamliner to operate the flight.[180] This new service represents Scoot's entry into the U.S., and Scoot CEO Lee Lik Hsin stated, "Honolulu is chosen as our first U.S. destination because we believe there'll be a demand for the route as Hawaii is a popular destination for the sun, sand and sea lovers …. The market has been quite excited since we announced our service to Hawaii in July this year."[181] Scoot was voted the 2015, 2016, 2017, and 2018 Best Low Cost Airline (Asia/Pacific) by AirlineRatings.com, and ranked in the Top 10 of the World's Best Low-Cost Airlines in 2015 by Skytrax.[182] The increased competition provided by Scoot will continue to intensify. On December 5, 2017, Singapore Airlines and SilkAir, a regional carrier of Singapore Airlines, announced a new codeshare agreement with Scoot.[183] Under the agreement, customers of Singapore Airlines and SilkAir will be able to access over thirty codeshare destinations served only by Scoot within the Singapore Airlines Group, including Honolulu.[184]

Applying the Department's standards to the Proposed Alliance results in the inevitable conclusion that competition at the country-pair level will not be harmed. The Hawaii-Japan market is robust and growing and demonstrates actual, dynamic new entry. Also, the combined share of Hawaiian and JAL on Japan-Hawaii routes is lower than in country-pair markets where ATI has previously been granted. *See* **Figure 31**.[185]

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[180] *Id.*

[181] *Id.*

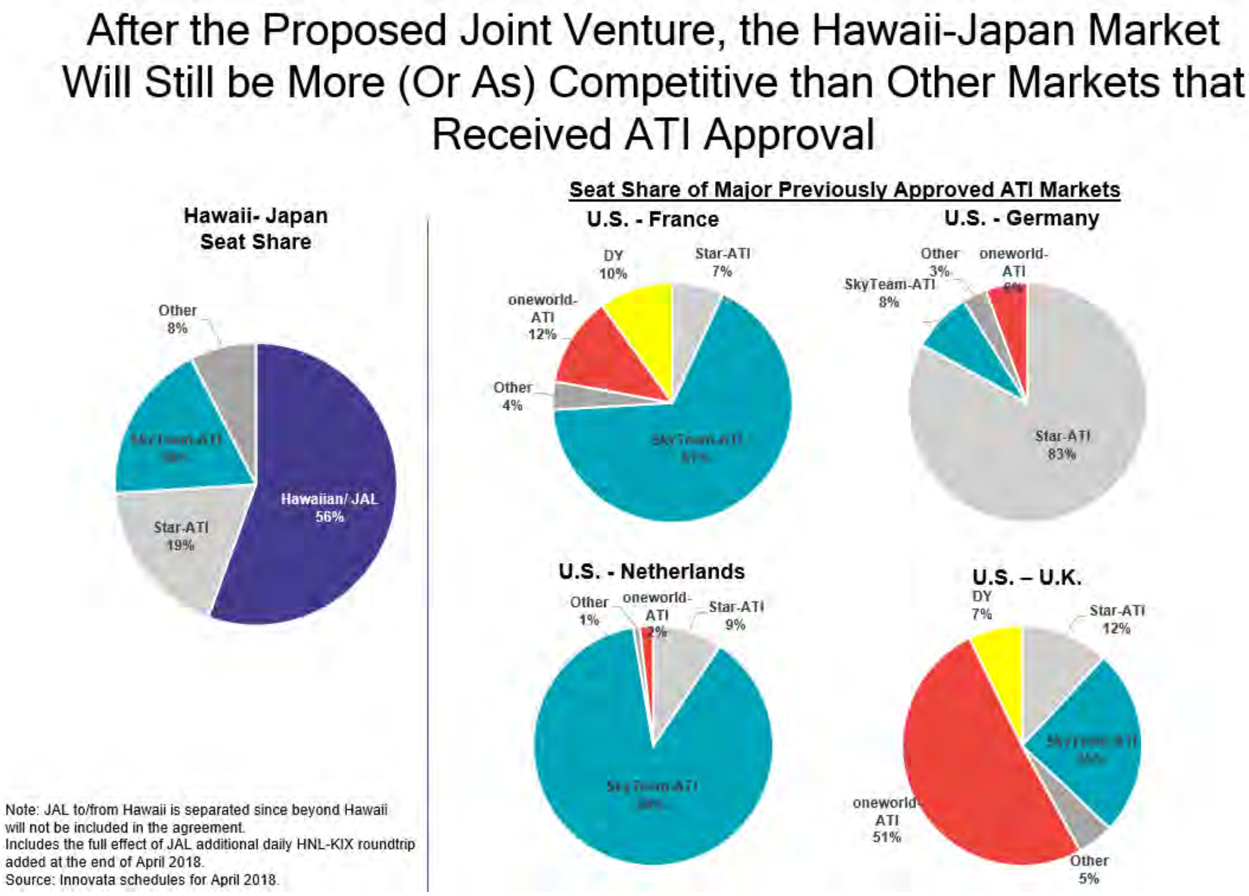
[182] Scoot, Press Release, Scoot's First U.S. Flight to Honolulu Takes Off (Dec. 19, 2017), https://cdn.flyscoot.com/prod/docs/default-source/doc-pr/19122017-media-release-scoots-first-us-flight-takes-off.pdf?sfvrsn=d61a0e23_8.

[183] Singapore Airlines, Press Release, Singapore Airlines And SilkAir To Codeshare On Scoot Flights (Dec. 5, 2017), https://www.singaporeair.com/en_UK/sg/media-centre/press-release/article/?q=en_UK/2017/October-December/jr1817-171205.

[184] *Id.*

[185] Exhibit 605. For example, in *SkyTeam II,* the Department granted antitrust immunity when the applicants' combined pre-transaction market shares were 67% in the U.S.-France market and 74%, in the U.S.-Netherlands market. Show Cause Order 2008-4-17 at 8-9.

__**Figure 31**__.



C. City-Pairs.

As shown below, there is no elimination of or substantial reduction in competition in specific city-pair markets as a result of the Proposed Alliance. The air service routes between Japan and Hawaii are some of the most competitive international long-haul routes in the world, and two of the JAL-HA overlap routes are and will remain among the most competitive worldwide.

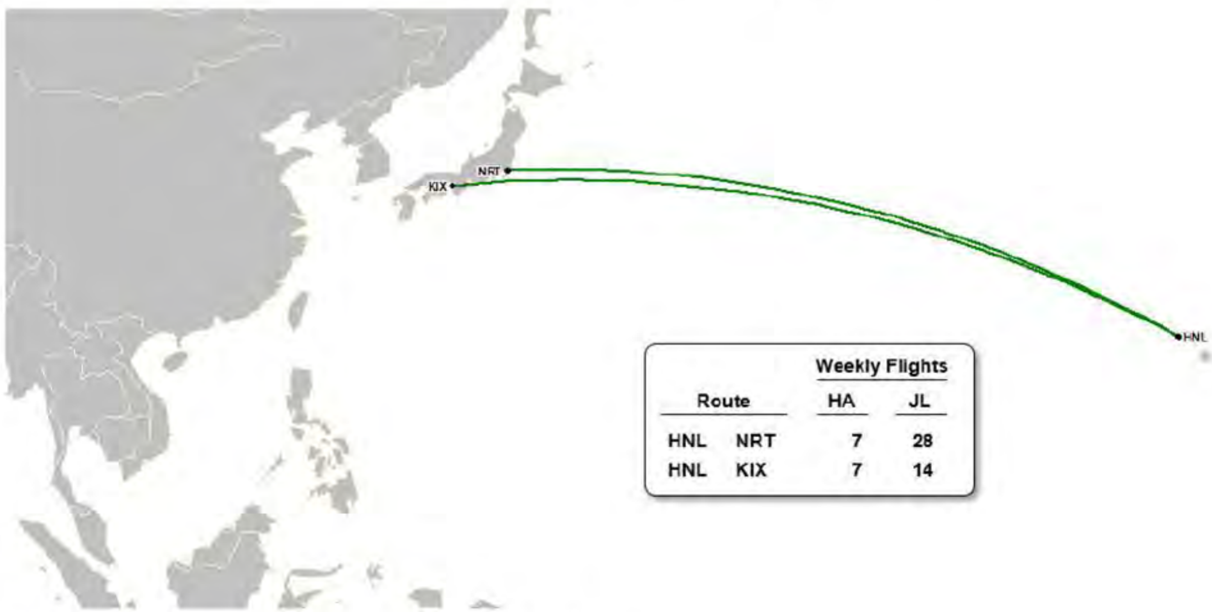
Hawaiian and JAL serve only two overlapping airport pairs: KIX-HNL and NRT-HNL, *see* **Figure 32**[186] below, and only three overlapping city pairs, Honolulu-Tokyo, Honolulu-Osaka, and

[186] Exhibit 402.

Kona-Tokyo, *see* **Figure 33**.[187]

Figure 32.

HA and JL Serve Only Two Overlapping Airport-Pairs
(NRT-HNL and KIX-HNL)



Note: Includes JAL additional daily HNL-KIX roundtrip added at the end of April 2018.
Source: Innovata schedules for April 2018.

Table 5. KIX-HNL Shares

Carrier	YE September 2017 Onboard Passengers Share	April 2018 Seat Share*
Star-ATI	0.0%	0.0%
SkyTeam-ATI	31.3%	14.7%
Hawaiian/JAL-ATI	**62.9%**	**54.5%**
AirAsia X	5.8%	16.3%
Scoot	0.0%	14.5%
Other	0.0%	0.0%
# Competitors Before / After ATI	4/3	5/4

* Adjusted to fully reflect additional JAL HNL-KIX daily nonstop added at the end of April 2018.
Note: Hawaiian/JAL ATI shares are for Hawaii routes only. Carriers with ATI are combined but other members of global alliances are considered unique carriers.
Source: U.S. DOT, T-100 Data, YE September 2017 and Innovata Schedules, April 2018.

[187] Exhibit 408.

Table 6. NRT-HNL Shares

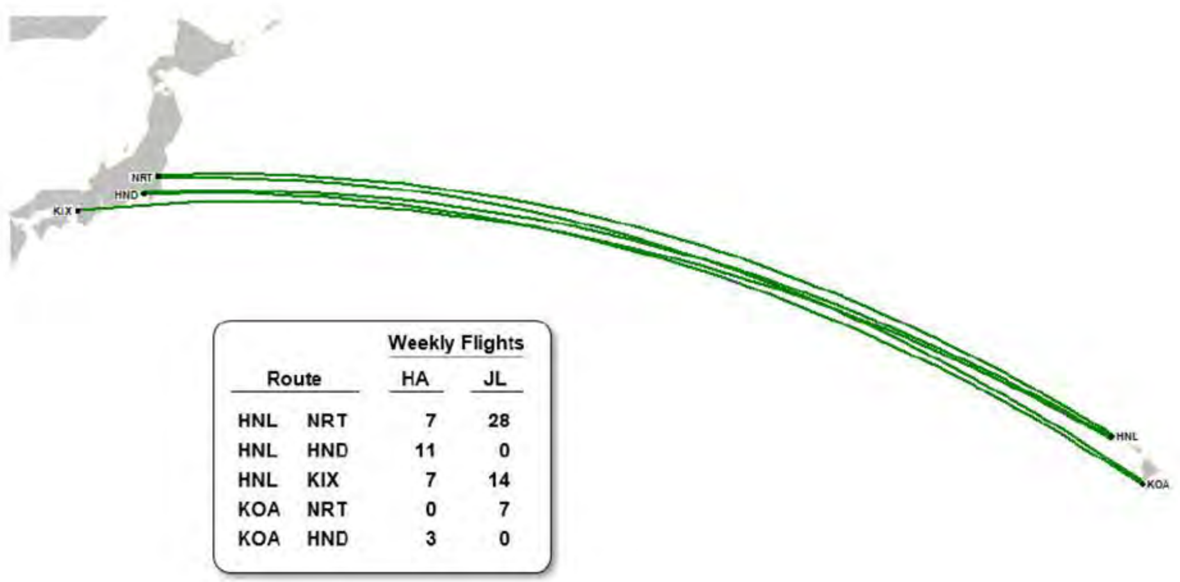
Carrier	YE September 2017 Onboard Passengers Share	April 2018 Seat Share	Estimated April 2019 Seat Share*
Star-ATI	25.4%	31.4%	44.2%
SkyTeam-ATI	24.4%	20.9%	17.0%
Hawaiian/JAL-ATI	**39.8%**	**47.7%**	**38.8%**
China Airlines	10.4%	0.0%	0.0%
# Competitors Before / After ATI	5/4	4/3	4/3

* Includes ANA upgauge to a 520-seat A380 in the HNL-NRT market in Spring 2019.
Note: Hawaiian/JAL ATI shares are for Hawaii routes only. Carriers with ATI are combined but other members of global alliances are considered unique carriers.
Source: U.S. DOT, T-100 Data, YE September 2017 and Innovata Schedules, April 2018.

Figure 33.

HA and JL Serve Only Three Overlapping City-Pairs

(Honolulu-Tokyo, Honolulu-Osaka, and Kona-Tokyo)



Note: Tokyo-Kona is served by 5 other carriers on a one-stop interline basis.
Includes additional daily HNL-KIX roundtrip added by JAL at the end of April 2018.
Source: Innovata schedules for April 2018.

Table 7. HNL-Tokyo Shares

Carrier	**YE September 2017 Onboard Passengers Share**	**April 2018 Seat Share**	**Estimated April 2019 Seat Share***
Star-ATI	26.3%	32.3%	42.6%
SkyTeam-ATI	19.2%	16.3%	13.8%
Hawaiian/JAL-ATI	**46.4%**	**51.4%**	**43.6%**
China Airlines	8.2%	0.0%	0.0%
# Competitors Before / After ATI	5/4	4/3	4/3

* Includes ANA upgauge to a 520-seat A380 in the HNL-NRT market in Spring 2019.
Note: Hawaiian/JAL ATI shares are for Hawaii routes only. Carriers with ATI are combined but other members of global alliances are considered unique carriers.
Source: U.S. DOT, T-100 Data, YE September 2017 and Innovata Schedules, April 2018.

Table 8. KOA-Tokyo Shares

Carrier	**YE September 2017 Onboard Passengers Share**	**April 2018 Seat Share**
Hawaiian/JAL-ATI	**100.0%**	**100.0%**
# Competitors Before / After ATI	2/1	2/1

Note: Hawaiian/JAL ATI shares are for Hawaii routes only. Carriers with ATI are combined but other members of global alliances are considered unique carriers.
Source: U.S. DOT, T-100 Data, YE September 2017 and Innovata Schedules, April 2018.

The HNL-KIX and HNL-NRT routes are two of the most-heavily trafficked long-haul international routes from the United States (*see* **Figure 25** above) and will remain highly competitive after the grant of ATI based on city-pairs and airport-pairs (*see* **Figure 34**[188] and **Figure 35**[189]). Indeed, as discussed above, ANA plans to more than double its current capacity on the already hyper-competitive NRT-HNL route early next year. Both ANA and Hawaiian also serve Honolulu from Haneda airport, but JAL does not.

[188] Exhibit 412. *See also* Exhibit 410 (HNL-Osaka and HNL-Tokyo are two of the most competitive long-haul international city-pairs from the U.S.).

[189] Exhibit 407.

Figure 34.

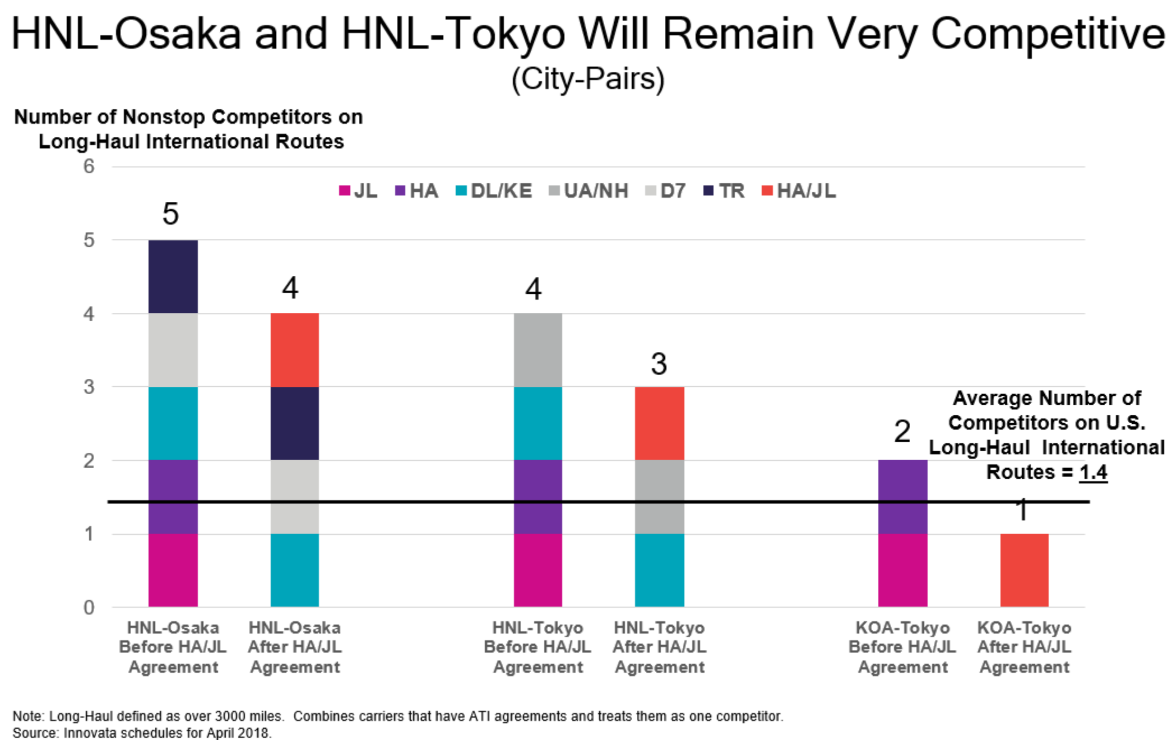
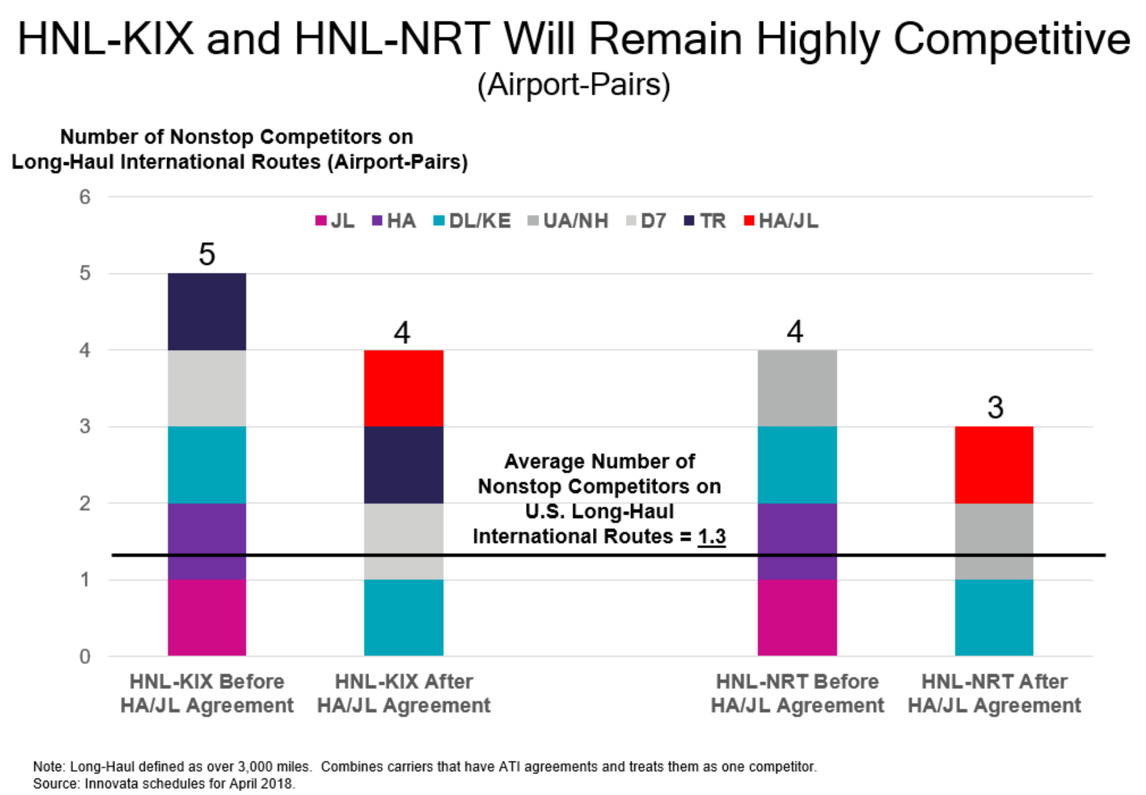


Figure 35.



In fact, HNL-KIX is the only U.S. long-haul international airport pair with five competitors today and HNL-NRT is just one of nine U.S. long-haul international airport pairs with four competitors.[190]

Moreover, the number of competitors remaining on the HNL-KIX and HNL-NRT overlap routes is consistent with or higher than routes covered by prior DOT approvals. For example, in the U.S.-Japan Alliance proceeding, three competitors were deemed sufficient in the Honolulu-Tokyo city pair: "Honolulu-Tokyo is a large, leisure-oriented market that would lose one competitor if ANA and United are able to cooperate on the route, but will gain one competitor as Hawaiian enters the market with its new Haneda authority, as it plans."[191] And, the NRT-HNL route has a history of fifth freedom competition. Korean Air has long served the route and continues to do so today. While China Airlines has announced it will stop serving the route, its longstanding presence demonstrates the fact that the market is open to fifth-freedom competition.

Likewise, factors that the Department has found persuasive and supportive of ATI approval in its analysis at the country- and city-pair levels in previous proceedings are present here. For one, the market is large and growing, and characterized by high traffic volumes. As the Department recently noted:

> There have been many developments in the U.S.-Asia market since 2002. The market has expanded; new carriers have entered the market; Delta has acquired a substantial Asian network through its merger with Northwest Airlines and subsequently increased its footprint; Chinese carriers have expanded their services to the United States and worked towards greater US-Asia connectivity; and several competitors have chosen to develop their services through integrated joint ventures, which now have broad geographic scope. Together, these changes indicate that . . . competition is increasing . . . .[192]

In the same proceeding, the Department also remarked that, "The U.S.-Asia market is competitive generally and it shows a long-term trend towards expansion, diversification, and more competition

[190] Exhibit 405.

[191] Show Cause Order 2010-10-4 at 10.

[192] Order 2017-11-8 at 5.

between large networks. We expect the Delta/Korean JV to contribute to these positive trends. The enhanced competition between JVs is likely to be the most pronounced competitive effect resulting from this transaction."[193]

The air service routes between Japan and Hawaii as well as Asia and Hawaii are competitive and open to entrant competition. Indeed, the Department has recognized the importance of new entry in its analysis of antitrust immunity applications, stating for instance in the transatlantic **one**world proceeding that, "the new entrants have enhanced competition and will continue to exert competitive discipline in the market when the joint venture is implemented."[194] As noted above, within the scope of the Proposed Alliance, new entry is occurring and is likely to continue.[195] Moreover, the LCCs that have recently entered the market have pledged to invest significant resources in new aircraft, meaning that there is substantial capacity on the sidelines available to be deployed on Japan-Hawaii routes, *see* **Figure 36**.[196]

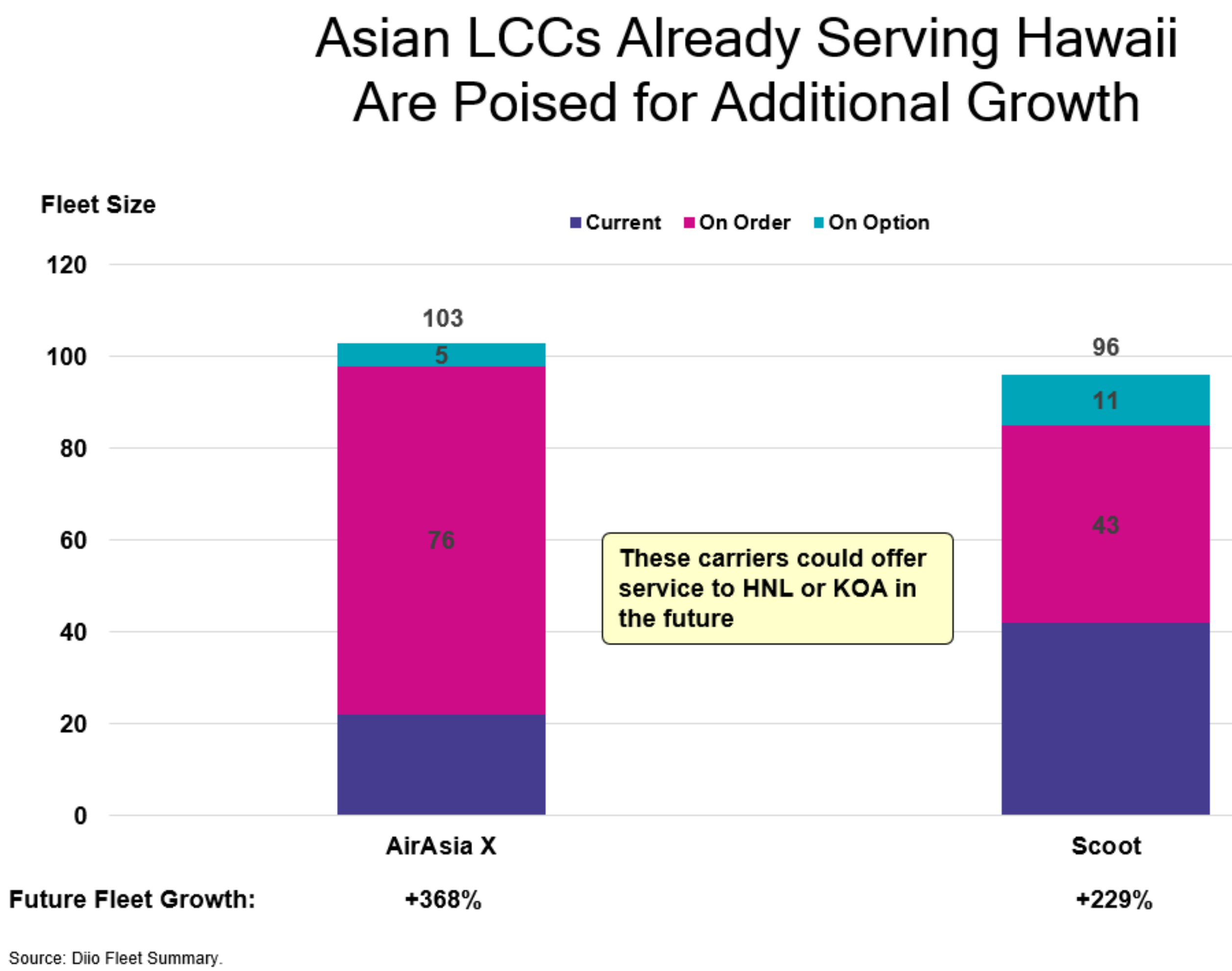
[193] *Id.* at 5-6; *see also* Show Cause Order 2010-10-4 at 10 ("Honolulu-Tokyo is a large, leisure-oriented market . . .").

[194] Final Order 2010-7-8 at 10.

[195] AirAsia X, Press Release, AirAsia X touches down in Honolulu, Hawaii (June 28, 2017), https://www.airasia.com/ot/en/press-releases/airasia-x-touches-down-in-honolulu-hawaii.page. (announcing four AirAsia X operations per week Malaysia-Osaka-Honolulu); Press Release, Scoot's First Direct Flight from Singapore Touches Down in Honolulu, BusinessWire (Dec. 19, 2017), https://www.businesswire.com/news/home/20171219006215/en/Scoot%E2%80%99s-Direct-Flight-Singapore-Touches-Honolulu. (announcing four Scoot operations per week Singapore-Osaka-Honolulu).

[196] Exhibit 505.

Figure 36.



Airlines considering entry or expansion on Japan-Hawaii routes have sufficient access to airports and slots to enable any such plans. In the United States, neither Honolulu nor Kona are slot controlled, and both airports have abundant capacity. In Japan, slot availability at slot-constrained airports is overseen by Japanese governmental authorities. Available slots are notified to interested parties through Notices of Airport Capacity. While both Tokyo airports are slot controlled, slots are available at Narita Airport for carriers considering service to Hawaii. During the 2017 IATA summer scheduling season, the slot utilization rate at Narita Airport was 85 percent. Notably, slots are available in the 19:00 to 21:00 time period when most flights arrive from and depart to Hawaii, meaning the slot regime will not impede new entrants from competing with the Proposed Alliance at peak travel times. In addition, slot availability at Haneda is expected to expand in 2020.[197] The only other pertinent slot-controlled airport is Kansai Airport in Osaka, which has ample capacity for flights to/from Hawaii. During the IATA 2017 summer scheduling season, the slot usage rate at Kansai Airport was 48 percent with capacity available between 19:00 and 21:00, which is the most popular time for Hawaii flight arrivals and departures. The Applicants do not expect the above slot availability facts to be materially different in the near term.

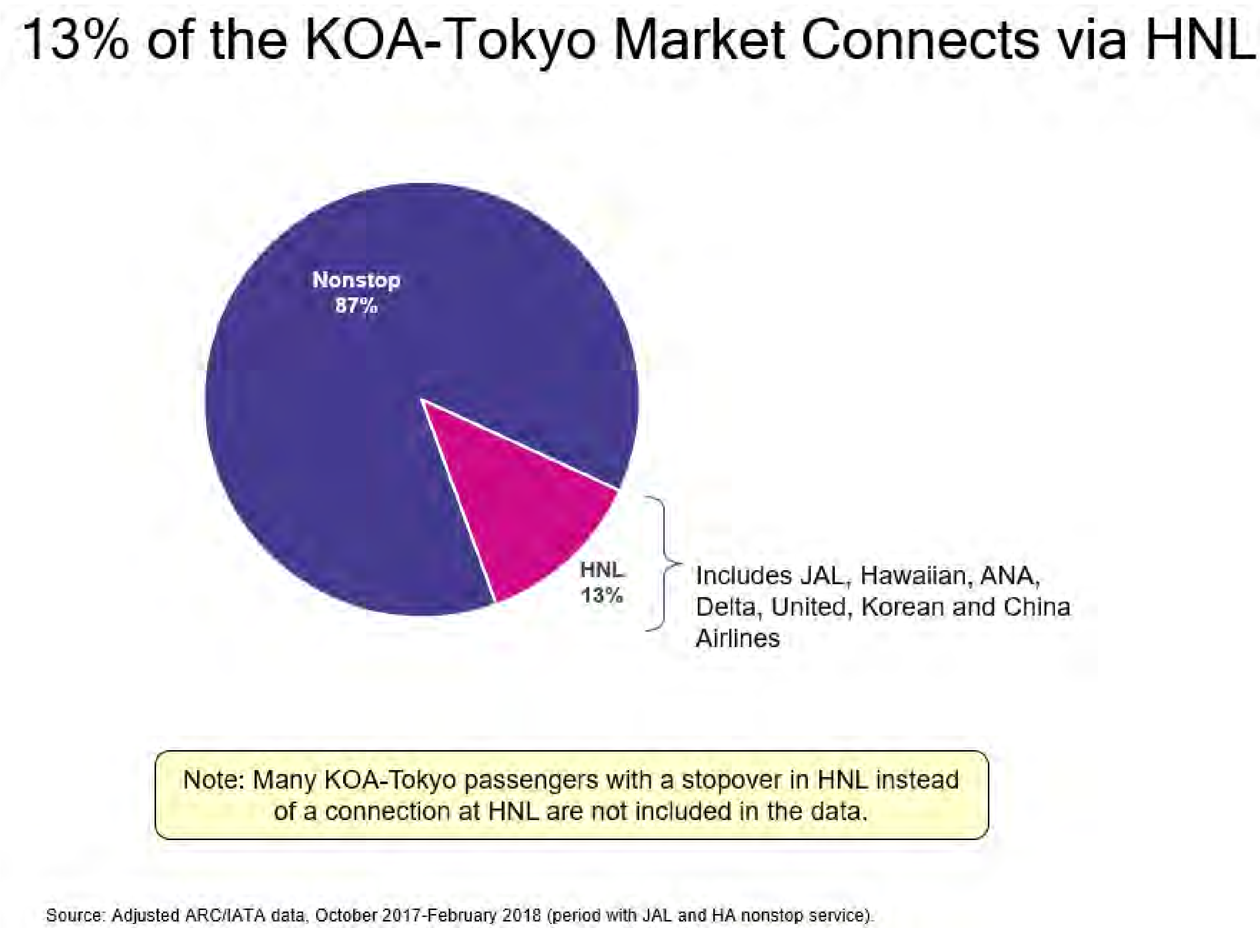
The Department also should not be concerned about competition on the Kona-Tokyo route for the following reasons. First, the highly competitive conditions existing at Honolulu will exert a competitive discipline on the Applicants at Kona, which, like other points in Hawaii, is a leisure route where passenger demand is price sensitive. The flight from Kona to Honolulu is under 45 minutes, and Hawaiian maintains interline or codeshare agreements with all of the carriers serving Honolulu-Tokyo, including Star and SkyTeam members. (HA's freedom to enter into and maintain such agreements will not be thwarted by the Applicants' JV since it is generally non-exclusive in nature.) If the Applicants attempted to raise fares on the Kona-Tokyo route, passengers could simply opt to travel via Honolulu on the highly competitive Tokyo-HNL routes. Indeed, 79 percent of all Big Island visitors from Japan visit other Hawaii islands as well, meaning flying to Kona via HNL is an often-used option for passengers.[198] Currently, about 13 percent of passengers traveling

[197] While Tokyo International Airport (Haneda) is slot controlled and the number of international slots are limited, there is an expectation that the capacity of Haneda will be increased in advance of the 2020 Tokyo Olympics. *See* Japan Schedule Coordination & Japan Aeronautic Association, Outline of Japan Schedule Coordination at 3 (2018 version), http://www.schedule-coordination.jp/jpn/about/pdf/brochure(ENG).pdf ("Toward 2020 Tokyo Olympic Games, the capacity of Narita International Airport and Tokyo International Airport (Haneda) will be increased dramatically."); CAPA Centre for Aviation, Tokyo Haneda Airport to become Asia's #1, overtaking Beijing Capital, as international grows, (Feb. 23, 2018), https://centreforaviation.com/analysis/reports/tokyo-haneda-airport-to-become-asias-1-overtaking-beijing-capital-as-international-grows-401552 ("Tokyo Haneda will receive approximately 53 new daily international round trips in 2020 in the lead-up to the 2020 Tokyo Olympics.").

[198] Exhibit 418.

between Tokyo and Kona opt not to fly nonstop but instead connect through Honolulu.[199] This 13 percent figure does not take into account Kona passengers who have a stopover at Honolulu. Based on Hawaiian's data, if those passengers are counted, the percentage of Kona passengers traveling via Honolulu is substantially higher, approximately 36 percent. *See* **Figure 37**.[200]

Figure 37.



Second, the DOT has recognized that the loss of an independent price setter on a route with only two nonstop carriers does not necessarily prevent the approval of a JV.[201]

[199] Exhibit 417.

[200] Exhibit 419 (estimated using Hawaiian internal data, October 2017-March 2018).

[201] *See, e.g.*, Show Cause Order 2010-10-4 at 10-12 ("Washington-Tokyo would move from a duopoly to a monopoly on a nonstop basis … [but] there are other competitive factors that merit consideration … [and] we also tentatively find that there are sufficient incentives in the Chicago-Tokyo and Washington-Tokyo markets to encourage continued

Third, as discussed above, empirical evidence shows that ATI partners do not increase prices on their trunk routes.[202] ATI partners tend to keep fares on the trunk routes the same following the grant of ATI and grow capacity, which has the effect of overwhelming the impact of losing an independent price setter in the market.

Fourth, the Kona-Tokyo route is relatively thin compared to other Hawaii-Japan routes and historically has supported only one nonstop flight (Hawaiian currently operates its nonstop flight on the route only three days a week). Following Hawaiian's launch of nonstop service on the route in December 2016,[203] JAL reentered that market in September 2017.[204]

Finally, Hawaiian serves Kona from Tokyo's Haneda airport while JAL serves Kona from Narita, meaning that their services are complementary and not perfect substitutes for one another.

As to all the nonstop overlap routes, it is also noteworthy that Hawaii is a popular destination for leisure travelers, and the vast majority of Hawaii traffic is inbound.[205] As such, it competes with other leisure destinations. Carriers like Hawaiian and JAL know that fares must be kept low to continue to attract discretionary passengers. Leisure passengers are relatively more price sensitive than business passengers.[206] Passengers could simply decide not to travel to Hawaii and opt for another leisure destination if the level of service offered by the parties deteriorated or fares

competition."); Show Cause Order 2010-2-8 at 23-24 (granting ATI even though "Dallas/Ft. Worth-London will ultimately have fewer than two competitors").

[202] *See* Part V.B, *infra*, at 63-64.

[203] Dep't of Transp. Notice of Action Taken, Motion of Hawaiian Airlines, Docket OST-2016-0048 (May 13, 2016) (granting Hawaiian's motion for approval of Hawaiian's application for authority to serve between Tokyo's Haneda Airport and Kona, Hawaii (three times per week) and Honolulu (four times per week) during nighttime hours).

[204] JAL had ended its nonstop service on the route in 2010.

[205] Show Cause Order 2011-5-8 at 9 n.28 ("Hawaii is primarily a destination point . . .").

[206] *See, e.g.*, Show Cause Order 2010-5-7 at 9. *See also* Reply Comments of the Department of Justice, Docket OST-99-5888 at 16 (June 9, 2003) (referring to "price-sensitive leisure passengers"); Spirit Airlines, Inc. v. Northwest Airlines, Inc., 431 F.3d 917, 922 (6th Cir. 2005) (discussing pricing models for business passengers and "leisure or price-sensitive passengers whose travel is generally discretionary, such as passengers visiting friends and relatives, and tourists or vacationers who might not otherwise fly.").

increased following the grant of ATI. With the Japan-Hawaii market being so critical to both JAL and Hawaiian, the parties have no incentive (or ability) to increase prices and risk losing market share.

The Proposed Alliance does not result in the creation of market power, a key factor in the Department's competitive effects analysis. Considering the impact of increased capacity from ANA, the entry of new LCC competition, and the existing strong competition from the large immunized alliances, the Applicants will have no ability to exercise market power in this highly competitive market.[207] Price-sensitive leisure passengers, who make up the bulk of those traveling in the scope of the Proposed Alliance, will likely take the time to shop around and compare fares, and may forgo travel to Hawaii altogether if prices are too high.

For all of the above reasons, the Proposed Alliance does not substantially reduce or eliminate competition and therefore meets the statutory standard laid out in 49 U.S.C. § 41309.

IX. The Applicants Will Not Proceed Without ATI.

The Applicants will not go forward with the JVA without ATI. The Department has granted antitrust immunity upon the parties' representation that they will not go forward with the proposed transactions and when the Department found that ATI "is necessary to achieve the most important benefits."[208] The JVA provides for coordination on pricing, revenue- and cost-sharing management, metal neutrality, and joint decision-making regarding new routes, inventory allocation, and scheduling/retiming, all of which are aspects of the JVA that will result in the greatest consumer benefits.[209] Given the competitively-sensitive nature of these topics, ATI is an absolute prerequisite

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[207] **[*See* HA-JAL-0000175 at 3 Confidential Treatment Requested Under § 302.12**

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[208] Show Cause Order 2010-10-4 at 2.

[209] [**HA-JAL-0000248 Confidential Treatment Requested Under § 302.12**

to implementation of the JVA. In the U.S.-Japan Alliance proceeding, the Department found that a grant of ATI was "necessary" to achieve many of the claimed benefits and that "[i]n the current environment, the parties are unable to cooperate on fares, route coordination, and other business plans on a network-wide basis because of the risk of a legal challenge. As such, the carriers are currently unable to implement many of the provisions that would deliver the most significant consumer benefits: joint pricing, joint scheduling, and network coordination."[210] **[**Confidential Treatment Requested Under § 302.1

[211] **Confidential Treatment Requested Under § 302.12]** Similarly, joint network planning will be required to achieve the contemplated service expansions. Engaging in these activities without immunity would expose the Joint Applicants to expensive antitrust litigation[212] – even if the litigation is frivolous. Accordingly, the Applicants will not proceed with these joint activities without ATI. As Applicants' documents show, [**Confidential Treatment Requested Under § 302.12**

].[213] The Department has repeatedly recognized that ATI facilitates

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Confidential Treatment Requested Under § 302.12]

[210] Show Cause Order 2010-10-4 at 14.

[211] **Confidential Treatment Requested Under § 302.12**
]

[212] After initially denying ATI in the first Delta-Virgin Blue proceeding, the Department stated: "While we were not convinced by this argument [regarding the threat of costly private antitrust litigation] under the original application, we are now tentatively convinced, in light of the significantly deeper integration proposed by the applicants, that they would not proceed absent a grant of antitrust immunity. We tentatively conclude that a grant of immunity is, therefore, required to realize the full public benefits from the proposed alliance agreements." Show Cause Order 2011-5-8 at 15.

[213] **[HA-JAL-0000283; *see also* HA-JAL-0000263.**]

relationships that maximize competitive and consumer benefits.[214]

X. Conclusion.

For the reasons set forth above, the Applicants respectfully request that the Department grant approval of and antitrust immunity for the Proposed Alliance pursuant to 49 U.S.C. §§ 41308 and 41309. The Proposed Alliance will not result in the substantial reduction or elimination of competition in any relevant market and is in the public interest. It will produce customer benefits including metal-neutral pricing, expanded networks, capacity growth, optimized joint services, an improved customer experience and product, and enhanced inter-alliance competition. It will also generate additional public benefits such as traffic stimulation and related significant economic benefits including job growth and increased U.S. exports. ATI is essential to achieve the full procompetitive effects and consumer benefits of the JVA, and the parties will not go forward with the Proposed Alliance without ATI.

[214] Final Order 2010-7-8 at 8; Show Cause Order 2010-2-8 at 30 ("A grant of antitrust immunity is, we tentatively find, necessary to achieve most of these benefits").

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Dated: June 14, 2018

CERTIFICATE OF SERVICE

I certify that on June 14, 2018, I caused to be served a copy of the foregoing Joint Application of Hawaiian Airlines, Inc. and Japan Airlines Co., Ltd. by email upon those addresses listed below:

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<u>Appendix Index</u>

CONFIDENTIAL

SEE JOINT MOTION FOR CONFIDENTIAL TREATMENT UNDER 14 C.F.R. § 302.12

(June 14, 2018)

Appendix 1: Commercial Cooperation Agreement

Appendix 2: Joint Venture Agreement

Appendix 3: Frequent Flyer Program Agreement

Appendix 4: Amended Special Prorate Agreement

Appendix 5: Codeshare Agreement

Appendix 6: Compass Lexecon, Economic Analysis of the Effects of the Proposed Hawaiian Airlines – Japan Airlines Joint Venture, June 14, 2018

Appendix 7: Campbell-Hill Aviation Group, Hawaiian Airlines & Japan Airlines Supporting Exhibits.