



April 2, 2020

The Honorable Joel Szabat
Assistant Secretary of Aviation and International Affairs
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington D.C. 20590

Re: Docket DOT-OST-2020-0037 – OBJECTION TO SHOW CAUSE ORDER

Dear Assistant Secretary Szabat:

Let me begin by wishing you and all the staff at the Department of Transportation good health and we appreciate your efforts in keeping the transportation infrastructure operating during this pandemic and the eventual recovery.

Exhaustless respectfully objects to the Order to Show Cause issued by the U.S. Department of Transportation (DOT) on March 31, 2020 regarding the continuation of certain service obligations for air carriers receiving financial assistance under the programs set forth in Sections 4005 and 4114(b) of the Coronavirus Aid, Recovery, and Economic Security Act (the CARES Act). Exhaustless is a closely held, 100% U.S.-owned corporation that has invested significant time and money in the development of a private-sector service that competitively allocates slot reservations to carriers.

The Order states: "These provisions do not authorize any coordination among air carriers that would violate the antitrust laws." But the airlines are already coordinating to violate antitrust laws by using the anticompetitive International Air Transport Association's¹ Worldwide Slot Guidelines (IATA WSG) to allocate slot and schedule reservations at airports where excess supplier demand and excess passenger demand exist.

The IATA WSG fix slot reservation prices to \$0, favors incumbents, and lock-in market share through free rights-of-first-refusals that prevent new entrants from gaining access to the slot markets. In *Exhaustless, Inc. v. FAA*, 931 F.3d 1209 (D.C. Cir. 2019) the Court found that the current FAA slot rules² (which follow the IATA-WSG) share the

¹ The IATA is an airline trade association.

² The current order for EWR is at 84 Fed. Reg. 52580 (Oct. 2, 2019); for LGA at 83 Fed. Reg. 47065 (Sep. 18, 2018); and for JFK at 83 Fed. Reg. 46065 (Sep. 17, 2018).



anticompetitive attributes of the High Density Rule³, which was outlawed effective January 1, 2007 at LaGuardia and JFK under the AIR-21 Act.⁴ The Court ruling found no hurdles for airlines to adopt our service, showing that it is lawful.

The airlines' recent requests for a waiver of the slot usage requirements expose the anticompetitive aspects of the IATA-WSG.⁵

Pursuant to the general conditions⁶ of the economic authority of the certificate of public convenience and necessity, the Secretary could require that airlines adopt Exhaustless' competitive slot reservation service, called Aviation 2.0 Congestion Prevention Service. Our private-sector market-clearing service allows the Secretary to meet the *fundamental deregulatory requirement* of "placing maximum reliance on competitive market forces"⁷. This service upgrades the airline and passenger reservation systems to support increased market competition that leads to reduced chronic congestion delay costs, higher potential profit margins, and reliable flight service. This increased competition will better serve passengers and air transportation investors by stimulating innovation in the industry. Increased airline margins will further protect taxpayers by more quickly stabilizing the industry and allowing for timely loan repayments.

We remain ready to roll out our market-clearing service to make the industry more resilient and to prevent the need for future government intervention in response to market shocks.

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³ "The interim rule resembled the High Density Rule and generally grandfathered the slots held by airlines under the previous regime." Also, "[T]he orders largely match the prior extensions in substance . . ."

⁴ Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21), Pub. L. No. 106-181, §231, 114 Stat. 61, 108 (2000), codified at 49 U.S.C. §§ 41715-18.

⁵ 85 Fed. Reg. 16989 (Mar. 25, 2020). See our comment at: <https://www.regulations.gov/document?D=FAA-2013-0259-2815>.

⁶ 14 C.F.R. §201.7.

⁷ 49 U.S.C. §40101(a)(6).