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UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
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on the 19th day of July, 2025

Joint Application of **DELTA AIR LINES, INC.** **AEROVIAS DE MEXICO, S.A. DE C.V.** **Under 49 U.S.C. §§ 41308 and 41309 for Approval of and Antitrust Immunity for Alliance Agreements**	**Docket DOT-OST-2015-0070**

SUPPLEMENTAL ORDER TO SHOW CAUSE

I. SUMMARY

By this Order, the U.S. Department of Transportation (the Department or DOT) identifies ongoing concerns with the state of competition in the U.S.-Mexico air services market and proposes to take appropriate corrective action with respect to a joint venture (JV) operating with the approval of and grant of antitrust immunity (ATI) from the Department.

Pursuant to 49 U.S.C. §§ 41308-41309, the Department proposes to withdraw the approval and grant of ATI for a JV operated by Delta Air Lines, Inc. (Delta) and Aerovias de Mexico, S.A. de C.V. (Aeromexico) (collectively, the Joint Applicants). The Delta/Aeromexico JV, which is subject to conditions that the Joint Applicants accepted, was originally set to expire in 2020 and has since been extended pending review. Based on our review, the conditions required for an immunized JV do not exist and the immunized JV no longer serves the public interest due, in large part, to anticompetitive measures imposed by the Government of Mexico (GoM or Mexico) that are distorting the marketplace. The Department made a similar proposal in January 2024 that received several objections. This revised proposal clarifies the basis for the Department's action with additional reasoning and support.

Delta and Aeromexico also have filed a *de novo* application to continue their immunized JV on a long-term basis. Because the Department is committed to restoring a level playing field for all market participants as soon as possible, the new application will remain suspended pending full

resolution of the critically anticompetitive and distortive market conditions in the U.S.-Mexico market.

II. NEED FOR ACTION

Since 2022, Mexico has significantly altered the playing field for airlines in ways that reduce competition and allow predominant competitors to gain an unfair advantage in the U.S.-Mexico market. The United States and Mexico have an air services agreement, the U.S.-Mexico Air Transport Agreement (the Agreement), that commits both parties to a liberalized operating environment for all airlines, including a fair and equal opportunity to compete.

Mexico has walked away from its commitments. As documented in Order 2025-7-11, Mexico arbitrarily reduced capacity at the country's primary gateway airport in Mexico City, Benito Juarez International Airport (MEX), confiscated slots from U.S. carriers at MEX, and ordered all-cargo carriers to vacate MEX. In addition, Mexico lacks a transparent and non-discriminatory slot allocation regime that adheres to international standards and applies consistently across the country's airports, including MEX. The lack of a coherent slot allocation regime and the prospect of arbitrary action looming at any time raises serious concerns about the long-term competitiveness of the U.S.-Mexico market and the ability of the Department to depend upon the air services agreement as a mechanism to ensure adequate competition. Mexico's actions harm airlines seeking to enter the market, existing competitor airlines, consumers of air travel and products relying on time-sensitive air cargo shipments traded between the two countries, and other stakeholders in the American economy.

In this environment, the Department is proposing to take responsive action with respect to the Delta/Aeromexico JV that operates with special permissions not available to other competitors. As immunized JV partners, Delta and Aeromexico can jointly price and plan routes, shift capacity from one partner to the other, and achieve greater scale to compete in both passenger and cargo markets as if they were a merged firm. The regulatory framework enabled by the Agreement is, as we will explain in more detail, the cornerstone of the Department's statutory analysis and precedent supporting the approval of and grants of ATI for JVs. Mexico's non-compliance over a period of years, despite significant efforts by the Department to resolve, raises serious concerns about Mexico's commitment to providing a stable and pro-competitive market environment. The Department's concerns with respect to ATI matters require Mexico to establish a track record of providing certainty that the rights of new entry, competitive pricing, and a fair and equal opportunity to compete will be respected. Only under such circumstances can the Department have confidence that its competition analysis, conducted under Clayton Act standards, is able to fully assess the competitive implications of a grant of ATI.

The Department is concerned about potentially severe impacts to consumers, other airlines competing in the market, and the U.S. economy. In material respects, Mexico has compromised the ability of market forces to determine outcomes and has unilaterally resorted to government intervention for over three years, such that the market is no longer competitively contestable. The Department sees significant economic harm resulting from the actions of Mexico, including with respect to the continuation of the Delta/Aeromexico JV, and this harm is likely to increase over time given the current distortive marketplace. For example, since 2023, after U.S. all-cargo carriers were forced to exit the premium MEX market and overall cargo tonnage declined by approximately 40 percent, Aeromexico's share of that tonnage increased about 10 percent in

short order and continues its upward trend today. Mexico's actions impose significant distortive revenue and cost impacts on U.S. carriers that are beyond their control. It is not tenable to allow the Joint Applicants to continue to operate with ATI in a market in which the underlying regulatory foundation no longer guarantees open market access, resulting in actual or potential harm to consumers, the traveling public, competing air carriers, and the economies of both countries.

When the Department first reviewed the Delta/Aeromexico JV, the Department made the grant of ATI subject to strict conditions because we were concerned that Mexico would not adhere in practice to the open and pro-competitive regulatory framework that the two countries agreed to in principle. Unfortunately, as the facts and circumstances show, those concerns have materialized. The Department now determines tentatively, in light of Mexico's failure to honor its obligations under the Agreement, that approval of the JV and a grant of ATI are no longer consistent with the public interest.

The Department's authority to act expeditiously and decisively in international aviation matters is supported by multiple statutes and well established in practice. In reviewing JVs under its statutory authority, the Department has the responsibility to protect the public interest, defined broadly, and to consider the implications of implementing international air transport agreements and overseeing a range of aviation economic functions, including regulating foreign air transportation. For example, the Department must pursue the public interest mission of strengthening the competitive position of domestic air carriers to ensure at least equality with foreign air carriers.[1]

The importance of the Open Skies regulatory framework to the Department's review of ATI matters cannot be overstated. Wherever joint ventures operate with a grant of ATI, the Department has insisted that an open and competitive market exists. This core tenet of U.S. international aviation policy is strongly supported by the Department's statutory authority, which requires the Department to consider, among other things, whether a joint venture agreement: (1) does not substantially reduce competition; and (2) is not adverse to the public interest.[2]

Crucially, withdrawing approval of the immunized JV would not end the cooperation between Delta and Aeromexico. Delta maintains its equity stake in Aeromexico, and the two partners can continue traditional commercial cooperation as practiced by their competitors, including code sharing and joint marketing. The Department leaves open the possibility that the United States and Mexico can work together to restore an open market for air services.

III. BACKGROUND

For years, the U.S.-Mexico air services market was highly restrictive under the terms of a 1960 bilateral air services agreement that limited frequencies, routes, and air carriers that could operate.[3] The essential elements of an open, market-oriented air services market were not in

[1] 49 U.S.C. § 40101(a)(15). *See also* 49 U.S.C. § 40105(b)(1)(B), which requires the Department, in carrying out its responsibilities in regulating air commerce, to consider the laws and requirements of a relevant foreign country, reflecting the international nature of air transportation.
[2] 49 U.S.C. § 41309(b) and (b)(1).
[3] The Air Transport Services Agreement between the United States and Mexico was first signed on Aug. 15, 1960, and entered into force on Jan. 17, 1961. It was amended through an Exchange of Notes on July 3, 1970, and through

place as demand increased and new U.S. and Mexican airlines emerged. In November 2014, the United States and Mexico reached a significantly more liberalized agreement in an effort to more effectively enable market forces, rather than government regulation, to address the substantial demand for air travel between the two countries and beyond.[4] This liberalized agreement – still in force today – meets, by its written terms, the U.S. Open Skies threshold for enabling competition by allowing any Mexican or U.S. airline to adjust its network to serve the demand in the ways it sees fit.[5] The Agreement, similar to all U.S. Open Skies air transport agreements, also provides airlines of both parties with a fair and equal opportunity to compete.

Ancillary to the agreement, and as shown below, the United States and Mexico expressed an understanding that, under longstanding decisional standards, the Department would not consider an application for ATI on its merits unless there was a liberalized air service agreement in place. They further acknowledged that during the review the Department would take into account the availability of all essential commercial rights in a competitive marketplace.[6]

U.S.-Mexico Memorandum of Consultations (Nov. 7, 2014)

> "…Both delegations noted that the new Agreement represents a significant step forward in the aviation relationship, creates opportunities in a new and modern pro-competitive environment, and sets the stage for substantial public benefits. The Mexican delegation shared with the U.S. delegation a letter dated 4 November 2014…emphasizing its view of the importance of the availability of antitrust immunity (ATI) so that U.S. and Mexican carriers could further their beneficial alliances and/or commercial agreements.
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> The U.S. delegation explained that each application for ATI is considered on its merits and is given fair and expeditious treatment by the DOT, according to well-established policies and standards. Because the DOT must, by statute, take into account the competitive market conditions contemporaneous with the filing of an ATI application, carriers should be aware of the need to take into account the availability of all essential commercial rights in a competitive marketplace and in the framework of a modernized agreement…"

Exchanges of Notes and Letters on Sep. 23, 1988; Nov. 21, 1991; Dec. 4, 1997; and Feb. 15, 1999. This initial agreement saw its last amendments and extensions entered into on Dec. 12, 2005.

[4] Air Transport Agreement Between the Government of the United States of America and the Government of the United Mexican States, Dec. 18, 2015; U.S. Department of State, https://2009-2017.state.gov/e/eb/rls/othr/ata/m/mx/250782.htm. *See also* Memorandum of Consultations, Nov. 5-7, 2014; U.S. Department of State, https://2009-2017.state.gov/e/eb/rls/othr/ata/m/mx/234716.htm.

[5] The Agreement provides "for the airlines of both Parties to compete in providing the international air transportation governed by this Agreement…(and) allow each airline to determine the frequency and capacity of the international air transportation it offers based upon commercial considerations in the marketplace…neither Party shall unilaterally limit the volume of traffic, frequency or regularity of service, or the aircraft type or types operated by the airlines of the other Party…." Air Transport Agreement Between the Government of the United States of America and the Government of the United Mexican States, Dec. 18, 2015; U.S. Department of State, https://2009-2017.state.gov/e/eb/rls/othr/ata/m/mx/250782.htm, at 10.

[6] *See* Memorandum of Consultations, Nov. 7, 2014, U.S. Department of State, *available at* https://2009-2017.state.gov/e/eb/rls/othr/ata/m/mx/234716.htm.

First Application

On March 31, 2015, Delta and Aeromexico filed an application for approval of, and antitrust immunity for, a JV agreement in the U.S.-Mexico market. In the application, Delta and Aeromexico expressly reiterated their understanding that "[t]he existence of liberalized agreements with the United States has long been a public interest factor that is a prerequisite to approval of an ATI application."[7]

Before addressing the merits of the request for ATI, the Department noted that the Joint Applicants failed to satisfy the threshold criteria as the Agreement did not yet contain all the elements of an Open Skies agreement.[8] DOT paused the proceeding to investigate and deliberate. A subsequent exchange of letters with the GoM in May 2015 ensured that all elements of the U.S. Open Skies policy were provided under the Agreement.

The Department's review of the regulatory conditions was rigorous, transparent, and fundamental to its overall analysis of the application. The Department sought information and involved multiple interested parties,[9] and requested information formally from the applicants and the GoM regarding access to landing slots and facilities at MEX, as well as any plans Mexico had to improve the slot allocation process at MEX.[10] In addition, the Department asked the Joint Applicants for information regarding their slot holdings at MEX and other slot constrained airports they planned to serve with their proposed joint venture, such as at New York John F. Kennedy International Airport (JFK). Finally, the Department asked the Joint Applicants additional questions regarding their ability to deliver promptly the consumer benefits that the joint venture was expected to produce.[11] The Joint Applicants responded by providing information about their holdings and operations, as well as information about airport slot administration practices in Mexico. Among other things, Delta and Aeromexico expressed their view that the slot administrator at MEX is the airport administration, but that the airport is accountable to the Ministry of Communications and Transportation.[12]

Separately, the Department sent two letters to MEX's airport administration seeking information on the slot administration procedures in place at MEX. The answers did not address any barriers to entry concerns in the transborder market, did not provide a commitment or plan to reform

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[7] Joint Application for Approval of and Antitrust Immunity for Alliance Agreements, Mar. 31, 2015; DOT-OST-2015-0070-0001, at 30; and Joint Applicants, at 2 ("Delta and Aeromexico applaud the landmark bilateral air services agreement initialed by the U.S. Government and Mexico on Nov. 21, 2014. Once entered into force the new agreement will provide for full liberalization on U.S.-Mexico transborder routes, removing previous designation limitations which restricted carriers' ability to introduce beneficial new services and limited new entry and competition. This agreement provides a sound framework to support the proposed transborder JCA agreement between Delta and Aeromexico – and the substantial increase in new transborder network service and competition it will produce.").

[8] Notice Suspending the Procedural Schedule, Apr. 8, 2015; DOT-OST-2015-0070-0002, at 1.

[9] *E.g.,* Motion of JetBlue Airways Corporation to Require Submission of Additional Documents and Data, July 2, 2015; DOT-OST-2015-0070-0017, at 1-2 (requiring the Joint Applicants to submit additional documents and data before the Department to determine the Application for Approval of and Antitrust Immunity for Alliance Agreements).

[10] Order Requesting Additional Information, July 31, 2015; Order 2015-7-18, DOT-OST-2015-0070-0022, at 6-7.

[11] Order Requesting Additional Information, July 31, 2015; Order 2015-7-18, DOT OST-2015-0070-0022, at 8-11.

[12] Joint Applicants' Response to Order Requesting Additional Information, Nov. 6, 2015; DOT-OST-2015-0070-0025, at 8.

existing procedures, and did not answer the Department's questions on whether it would implement any of the Mexican competition authority's recommendations on implementing changes at MEX.[13]

Also, during this time period, the Department and the Mexican competition authority, the Comision Federal de Competencia Economica (COFECE), conducted parallel reviews of the Mexican slot administration practices, which bolstered the Department's assessment of the situation at MEX as supported by responses to the Department's evidence request. COFECE, whose future status is unclear following recent legislative changes in Mexico,[14] provided a decisive voice in determining that the slot allocation regime at MEX was opaque and anticompetitive, and that Aeromexico, the largest slot holder, was the primary beneficiary of these policies.[15] Through anticompetitive rules and lax enforcement, Aeromexico was allowed to underutilize its slot portfolio while simultaneously keeping slots out of the hands of competitors.[16] COFECE concluded that "…MEX does not follow the IATA WSGs or have functionally equivalent transparent rules for slot allocation and administration."[17] The Department's analysis was equally rigorous with respect to entry at New York City airports, finding several impediments that were addressed in subsequent orders.[18]

Approval With Conditions That Were Accepted

In late 2016, the Department tentatively approved the Delta/Aeromexico JV and granted ATI. The Department tentatively concluded that "a grant of ATI would be unjustified without stringent conditions. We therefore tentatively find that it is necessary both (1) to limit the duration of a grant of ATI while efforts to reform the slot rules continue and (2) to ensure that competitors are able to gain access to an adequate number of MEX slots to effectively compete in the interim."[19] In a Show Cause Order, the Department proposed to approve the Delta/Aeromexico JV and grant ATI subject to the following conditions: Delta and Aeromexico were required to divest 24 slot-pairs at MEX and six (6) at JFK to U.S. or Mexican low-cost carriers and low-fare carriers for transborder service; and ATI was limited to five (5) years with a *de novo* application requirement.[20]

The Show Cause Order was the first step in the decision-making process. By Order 2016-11-2, the Department found tentatively that "[t]here is ample evidence in the record that MEX is severely constrained, slot administration at the airport is opaque and diverges from industry standard practices, and new entry or expansion by potential competitors is severely limited. …

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[13] Answer from the Mexican Secretariat of Communications and Transportation (SCT): Answer from the General Directorate of Civil Aviation (DGAC) on slot policy, DOT-OST-2015-0070-0024, Oct. 2, 2015, at 13; Aeropuerto Internacional de la Ciudad, S.A. de C.V. – Response to Request for Additional Information, DOT-OST-2015-0070-0038, June 2, 2016, at 6-7.

[14] "Mexico Dissolves Antitrust Authority in Setback to Competition" Law.com, Jan. 2, 2025, http://law.com/international-edition/2025/01/02/mexico-dissolves-antitrust-authority-in-setback-to-competition/.

[15] Order to Show Cause, Nov. 4, 2016; Order 2016-11-2, DOT-OST-2015-0070-0074, at 15-17; Final Order, Dec. 14, 2016; Order 2016-12-13, DOT-OST-2015-0070-0096, at 16-18.

[16] Order to Show Cause, Nov. 4, 2016; Order 2016-11-2, DOT-OST-2015-0070-0074 at 15-17; Final Order, Dec. 14, 2016; Order 2016-12-13, DOT-OST-2015-0070-0096 at 16-18.

[17] Order to Show Cause, Nov. 4, 2016; Order 2016-11-2, DOT-OST-2015-0070-0074 at 15-16.

[18] Order to Show Cause, Nov. 4, 2016; Order 2016-11-2, DOT-OST-2015-0070-0074 at 17.

[19] Order to Show Cause, Nov. 4, 2016; Order 2016-11-2, DOT-OST-2015-0070-0074 at 17.

[20] Order to Show Cause, Nov. 4, 2016; Order 2016-11-2, DOT-OST-2015-0070-0074, at 2.

[T]he Department has been unable to determine that MEX follows, or has committed to follow, any consistent or transparent guidelines for slot administration that would address the significant barriers to entry."[21] The Department stated that it "tentatively believes that the JV will lead to an increase in transborder connectivity and will serve the interest of transborder passengers provided that infrastructure issues are addressed."[22] Among the findings and conclusions:

- The Department's competitive analysis concluded tentatively that "approving the Joint Application will not substantially reduce or eliminate competition at the network or country-pair level, except with respect to JFK and MEX. The Department further tentatively finds that there will be no substantial reduction or elimination of competition at the city-pair level, aside from the infrastructure constraints noted at JFK and MEX."[23]
- The Department found tentatively that slot administration practices at MEX created significant competitive access concerns and proposed tentatively slot divestitures to prevent Delta and Aeromexico from exerting market power unduly. To address these issues, the Department proposed that the carriers divest 24 slot-pairs at MEX and six (6) at JFK to U.S. or Mexican low-cost carriers for U.S.-Mexico transborder service.[24]
- The Department decided tentatively to grant ATI to the alliance agreements between Delta and Aeromexico because it found that "the proposed JV, as conditioned, is required by the public interest and the Joint Applicants have stated that it would not be implemented without a grant of ATI."[25] The Department's public benefits analysis found tentatively that the proposed JV would offer the following consumer benefits: "a broader network with better connections resulting from network coordination, significant operational and cost efficiencies, increased accrual and redemption opportunities from the Joint Applicants' frequent fliers, a stronger market position resulting in more attractive services for consumers in several important markets where other legacy carriers have a strong presence (*e.g.*, Chicago, Dallas, Washington), and the potential development of an additional regional hub in Mexico to connect the U.S. to additional points in Mexico, and perhaps beyond, resulting in a further decrease in double marginalization and a further increase in capacity."[26] Granting relief from U.S. antitrust laws provides an extraordinary opportunity for air carriers to work together to produce consumer benefits that they would not otherwise be able to deliver; a failure to deliver on these expectations challenges the basis upon which the Department granted ATI.
- Next, the Department proposed that the grant expire after five (5) years, after which time Delta and Aeromexico could submit a *de novo* application if they wished to continue with their immunized joint venture.[27] Given the infrastructure issues at MEX, many parties were skeptical about Mexico's commitment to providing and adhering to transparent and market-based processes, especially those regarding access at key Mexican airports. Such transparent processes were core to ensuring airlines had a fair and equal opportunity to compete in the liberalized market enabled by the Agreement.

[21] Order to Show Cause, Nov. 4, 2016; Order 2016-11-2, DOT-OST-2015-0070-0074, at 16.
[22] Order to Show Cause, Nov. 4, 2016; Order 2016-11-2, DOT-OST-2015-0070-0074, at 9.
[23] Order to Show Cause, Nov. 4, 2016; Order 2016-11-2, DOT-OST-2015-0070-0074, at 17-18.
[24] Order to Show Cause, Nov. 4, 2016; Order 2016-11-2, DOT-OST-2015-0070-0074, at 2.
[25] Order to Show Cause, Nov. 4, 2016; Order 2016-11-2, DOT-OST-2015-0070-0074, at 20.
[26] Order to Show Cause, Nov. 4, 2016; Order 2016-11-2, DOT-OST-2015-0070-0074, at 19.
[27] Order to Show Cause, Nov. 4, 2016; Order 2016-11-2, DOT-OST-2015-0070-0074, at 2.

Delta and Aeromexico maintained that the Mexican authorities were committed to reforming their slot allocation regime to conform to international standards of transparency thereby ameliorating both structural problems.[28] As a result, the Department established tentatively the five-year expiration of the ATI and required the Joint Applicants to submit a *de novo* application for renewal of the Delta/Aeromexico JV.

Under these circumstances, the Department tentatively determined that the five-year period would be long enough to evaluate the impact of any future changes and reforms in the MEX slot allocation regime objectively, while providing some certainty to interested parties regarding the rules that would apply to the new alliance. As the U.S.-Mexico market had only recently been liberalized, the likely competitive effects of a new joint venture were difficult to predict.[29] As such, in lieu of additional carve-outs or other precautionary measures that potentially could limit the consumer benefits of the alliance, the Department tentatively decided to reexamine the grant of ATI after a suitable observation period. The Department tentatively determined that "[s]hould the situation prove otherwise, the regulatory predicate for a grant of ATI would no longer exist and the Department's findings could be rendered invalid."[30] With this declaration, the Department reserved the right to revisit its findings should integral components of the air services relationship change.

Delta and Aeromexico, in their reply of November 30, 2016, argued that the time limit was not necessary by citing the Department's ability to withdraw immunity at any time as precluding the need for such a remedy. The carriers acknowledged that "[g]iven DOT's authority, DOT has no need to place an unprecedented time limit on the grant of ATI in this case."[31] Here, Delta and Aeromexico affirm DOT's authority to grant and revoke ATI "at any time" should it find "concerns" such as the "slot regime" and other issues that are exhaustively documented in the case record.[32]

The Joint Applicants objected to several of the Department's findings, conclusions, and proposed conditions. Primarily, the Joint Applicants asserted that there were no barriers to entry at MEX, and that the divestitures required for approval by the Mexican competition authority were sufficient to address any issues.[33] The Joint Applicants also claimed that the five-year time-limited grant and *de novo* application requirement would be "unprecedented and harmful" to consumers and that the Joint Applicants, given the uncertainty regarding the longevity of its alliance, would not be able to make the long-term investments necessary to deliver the public benefits promised.[34] Overall, the Joint Applicants alleged that the tentative decision and conditions "would jeopardize the sizeable consumer and economic benefits that the Show Cause Order recognized would flow from the proposed [joint venture]."[35]

The Final Order was the second step. By Order 2016-12-13, the Department made final its tentative findings and conditions, but reduced the number of slot-pair divestitures at JFK from

[28] Joint Applicants' Response to Order Requesting Additional Information, DOT-OST-2015-0070-0025, at 16-17.
[29] Final Order, Dec. 14, 2016; Order 2016-12-13, DOT-OST-2015-0070-0096, at 27-28.
[30] Order to Show Cause, Nov. 4, 2016; Order 2016-11-2, DOT-OST-2015-0070-0074, at 8.
[31] Reply of the Joint Applicants, Nov. 30, 2016; DOT-OST-2015-0070-0091.
[32] Reply of the Joint Applicants, Nov. 30, 2016; DOT-OST-2015-0070-0091, at 28.
[33] Objections of the Joint Applicants, Nov. 18, 2016; DOT-OST-2015-0070-0084, at 12.
[34] Objections of the Joint Applicants, Nov. 18, 2016; DOT-OST-2015-0070-0084, at 38-39.
[35] Objections of the Joint Applicants, Nov. 18, 2016; DOT-OST-2015-0070-0084, at 1.

six (6) to four (4) while maintaining the requirement for 24 slot-pair divestitures at MEX, as well as making final the five-year limit and requirement for a *de novo* application.[36] The Department cited the Joint Applicants' slot holdings at MEX as evidence of potential to exert market power as well as continued questions regarding the efficacy of ongoing reforms to the slot allocation system at MEX as reasons to affirm the tentative decisions made in the Show Cause Order.[37] The Joint Applicants accepted the conditions and stated that, in their view, less onerous conditions would have enabled them to "generate even greater consumer benefits."[38]

Extension of Expiration Date

In 2020, the Department agreed to postpone the expiration of the antitrust immunity following a motion filed on the record. In their motion, Delta and Aeromexico contended that the five-year review condition created a disincentive to long-term investment and was unreasonably burdensome.[39] They argued that slot access at MEX had not proven to be a barrier to entry as many of the recipients of divested slots either did not need their slots or had returned their slots and left the market due to exogenous circumstances, and that competitive conditions had changed so fundamentally that the basis for the five-year period and *de novo* application no longer existed – that such a process would be "wasteful and potentially disruptive."[40] Alaska, Southwest, JetBlue, Interjet, and the Delta Master Executive Council opposed the motion, highlighting ongoing challenges in accessing MEX, the prematurity of removing the condition while reforms were still evolving, and the size and proximity of the Mexican market warranting special scrutiny.

By Order 2020-12-18, issued on December 17, 2020, the Department granted in part the motion of Delta and Aeromexico to amend Order 2016-12-13.[41] The Department maintained the requirement that Delta and Aeromexico file a *de novo* application and extended the filing date for that application to March 31, 2022, while extending the existing grant of ATI through the pendency of a renewal application so long as Delta and Aeromexico filed their application in a timely manner and worked expeditiously toward establishing a substantially complete record.

Second Application

On March 29, 2022, Delta and Aeromexico filed their *de novo* application (Reapplication) and the Department issued a notice suspending the procedural schedule on April 11, 2022. Consistent with Order 2020-12-18, the carriers' existing JV has remained immunized during the pendency of the Reapplication.

At the time of their Reapplication, competitive conditions in the U.S.-Mexico market remained unpredictable and less favorable than expected. In May 2021, the Federal Aviation Administration (FAA) downgraded Mexico's International Aviation Safety Assessment (IASA) rating to Category 2 after finding that the country did not meet International Civil Aviation Organization safety standards. Under Category 2, Mexican carriers were no longer able to

[36] Final Order, Dec. 14, 2016; Order 2016-12-13, DOT-OST-2015-0070-0096, at 1.
[37] Final Order, Dec. 14, 2016; Order 2016-12-13, DOT-OST-2015-0070-0096, at 3.
[38] Notice of the Joint Applicants, Dec. 21, 2016; DOT-OST-2015-0070-0100, at 1.
[39] Consolidated Reply and Motion for Leave to File, Aug. 15, 2019.
[40] *See* Consolidated Reply, at 17.
[41] Order, Dec. 17, 2020; Order 2020-12-18, DOT-OST-2015-0070-0235.

initiate new own-metal flying to the United States, and U.S. carriers, including Delta, were required to suspend the display of U.S. carrier designator codes on flights operated by their Mexican code-share partners. Carriers from both countries could continue already-existing services, and U.S. carriers were still free to add services to Mexico. Despite these limitations, with the understanding that reforms were being pursued such that the downgrade may have only been temporary, the Department continued to evaluate Delta and Aeromexico's Reapplication without taking any action that would impair the existing ATI. On September 14, 2023, FAA restored Mexico's IASA Category 1 status, after which Delta and Aeromexico resumed joint marketing and selling activities on U.S.-Mexico routes and Aeromexico, along with other Mexican carriers, added own-metal services in the U.S.-Mexico market.

In the time period after Delta and Aeromexico submitted their Reapplication, the Department became increasingly concerned about competitive conditions. Between 2022 and 2023, the GoM took a series of measures at MEX that constricted and restricted the U.S.-Mexico air transportation market, calling into question the continued validity of the Agreement and undermining the Department's findings in its ATI orders.

With respect to the existing ATI and the Reapplication, the Department was conservative in its approach, allowing time for carriers to emerge from the COVID-19 pandemic (even though the pandemic did not reduce U.S.-Mexico transborder traffic as much as other international markets), awaiting the restoration of Mexico's IASA Category 1 status, and allowing for government-to-government consultations with Mexico at all levels to resolve issues relating to Mexico's noncompliance with the Agreement.

Order 2024-01-17 Proposing to Withdraw the ATI

In January 2024, the Department, by Order 2024-01-17, identified fundamental concerns regarding the international regulatory framework and competition in the U.S.-Mexico market, including the imposition of a decree by Mexico prohibiting all-cargo operations at MEX, the confiscation of slots of U.S. carriers, and the unreliable and nontransparent slot administration practices that reduced capacity at MEX and created no possibility for new entry.[42] The Department identified the potential harmful impacts of antitrust immunity in this environment, with specific emphasis on the lack of entry or the possibility of entry in the Mexico City market.

By Order 2024-01-17, the Department determined tentatively that Delta and Aeromexico should not have ATI under current competitive conditions. The Department tentatively proposed to dismiss the Reapplication and allow the existing immunity to expire after an orderly and extended wind down period.

Rooted in the same concerns regarding Mexican noncompliance, the Department previously had suspended the procedural schedule in the application of Allegiant and Viva Aerobus for an antitrust immunized joint venture between the United States and Mexico.[43]

[42] Order to Show Cause, Jan. 26, 2024; Order 2024-01-17, DOT-OST-2015-0070-0245, at 4.
[43] Notice to Joint Application of Allegiant Air, LLC and Aeroenlaces Nacionales, S.A. de C.V. d/b/a Viva Aerobus, July 31, 2023; DOT-OST-2021-0152-0193.

Comments by Interested Parties

The Department received numerous comments on its 2024 tentative decision to terminate ATI. American and JetBlue supported DOT's competitive assessment and its reliance on a predicate of an open and pro-competitive international regulatory framework as a necessary condition for an immunized JV. This predicate, they agreed, was a longstanding requirement that every interested party had understood. American and JetBlue pointed to some of the specific concerns identified by the Department, including a nontransparent and non-standard slot administration regime in Mexico.

Delta and Aeromexico, joined by parties such as the Mexican Undersecretary for Transport and the Asociacion Sindical de Pilotos Aviadores de Mexico (ASPA), objected. Delta and Aeromexico stated their belief that the Department's tentative decision was cursory, unsupported, premature, extra statutory, and extra record-based.[44] In this administrative proceeding, the Department has reviewed these arguments thoroughly to ensure due process. The Joint Applicants assert that the Department:

- violated the Administrative Procedure Act (APA) by, among other things, failing to provide a statutory justification, a factual analysis, or clear evidence showing how Mexico's actions breached the Agreement or how any actions by the GoM or the current competitive conditions established a basis to withdraw the ATI;
- failed to identify which provisions of the U.S.-Mexico agreement were breached;
- had been unclear about its assumptions, including whether the Felipe Angeles International Airport (NLU) was outside the Mexico City market, and whether there was actual harm to U.S. aviation interests. To Delta/Aeromexico, the multi-airport system in Mexico City is not different materially from other global examples such as London or Tokyo where ATI has been granted; further, Delta and Aeromexico believe the Department is applying stricter standards to MEX unfairly;
- violated due process by not allowing proper review, public comment, or a chance to contest the rationale;
- failed to consider reasonably available alternatives, such as diplomatic or regulatory tools including: formal consultations under the Agreement, the International Air Transportation Fair Competitive Practices Act (IATFCPA), 14 CFR Part 213 allowing the Department to require the filing of schedules or reduce schedules, or dispute resolution provisions under the Agreement; and
- violated law and procedure extending to its treatment of the new application by failing to take evidence, follow procedures in its regulations, allow public comment, and consider the application *de novo* as laid out in previous orders.

Delta and Aeromexico urged the Department to withdraw Order 2024-01-17 and, should the Department continue to have concerns after pursuing other options, it should announce a new process to review the ongoing necessity of ATI.

Allegiant and Viva Aerobus, which also seek a separate grant of antitrust immunity, supported Delta and Aeromexico. Allegiant and Viva Aerobus argued that MEX access issues do not harm U.S. airlines or access to the rest of Mexico. They asserted that disputes should be resolved

[44] Objection of the JCA Partners to Show Cause Order 2024-01-17, Feb. 23, 2025; DOT-OST-2015-0070-0258.

through the resolution processes outlined in the Agreement and that the Department did not cite specific articles of the Agreement that the GoM violated. They advocated for reinstating the procedural schedule for their ATI application, warning that inaction on both applications creates competitive imbalance. They stressed that localized issues at one airport should not call into question a nation's overall compliance with Open Skies commitments. They claimed the Department did not provide empirical analysis to support the decision and that there is no clear evidence of unfair treatment at MEX.[45]

IV. STATUTORY FRAMEWORK

The Department's approach in this Order is firmly grounded in statute as well as competition analysis, and well within the scope of discretion provided to the Secretary of Transportation by Congress to protect the public interest.

A. Statutes of General Applicability

There are statutes of general applicability that are relevant to this ATI matter and provide important guidance in support of the Department's overall mission to promote competition and exercise sound regulatory oversight. For example, Congress has enumerated a number of public interest factors DOT must consider in reviewing alliance agreements in consideration of ATI, including:[46]

- placing maximum reliance on competitive market forces and on actual and potential competition;
- developing and maintaining a sound regulatory system that is responsive to the needs of the public and in which decisions are reached promptly to make it easier to adapt the air transportation system to the present and future needs of the commerce of the United States;
- preventing unfair, deceptive, predatory, or anticompetitive practices in air transportation;
- avoiding unreasonable industry concentration, excessive market domination, monopoly powers, and other conditions that would tend to allow at least one air carrier or foreign air carrier to unreasonably increase prices, reduce services, or exclude competition in air transportation;
- encouraging, developing, and maintaining an air transportation system relying on actual and potential competition;
- encouraging entry into air transportation markets by new and existing air carriers and the continued strengthening of small air carriers to ensure a more effective and competitive airline industry;
- strengthening the competitive position of air carriers to at least ensure equality with foreign air carriers, including the attainment of the opportunity for air carriers to maintain and increase their profitability in foreign air transportation;
- with respect to all-cargo services, encouraging and developing an integrated transportation system relying on competitive market forces to decide the extent, variety, quality, and price of services provided;

[45] Joint Objection of Allegiant Air and Viva Aerobus to Order to Show Cause, Feb. 23, 2024; DOT-OST-2015-0070-0259.
[46] 49 U.S.C. § 40101(a), (b), and (e).

- with respect to all-cargo services, providing services without unreasonable discrimination, unfair or deceptive practices, or predatory pricing;
- the maximum degree of multiple and permissive international authority for air carriers so that they will be able to respond quickly to a shift in market demand; and
- eliminating discrimination and unfair competitive practices faced by United States airlines in foreign air transportation, including unreasonable restrictions on operations.

We include a significant portion of 49 U.S.C. § 40101(a), (b), and (e) here to demonstrate the extent of the Department's relevant responsibilities that we uphold through the action in this Order.[47]

B. The ATI Statutes

The Department reviews a joint venture involving foreign air transportation under 49 U.S.C. §§ 41309, 41308, and its procedural regulations at 14 CFR Part 303. A person seeking approval of a transaction covered by 49 U.S.C. § 41309 may file an application with the Department.[48] Applications must be prepared and submitted consistent with the Department's procedures.[49] The applicant must state explicitly whether it seeks ATI under 49 U.S.C. § 41308.[50] When reviewing new requests, there is a two-step process.

The first step involves determining whether the cooperation agreement is "adverse to the public interest," based on competitive factors (competitive effects analysis).[51] The Secretary shall approve the agreement if it is consistent with the public interest. The Secretary shall disapprove, or after periodic review, end approval of an agreement that substantially reduces or eliminates competition, unless the Secretary finds that the agreement is necessary to meet a serious transportation need or achieve important public benefits, and the transportation need cannot be met or those benefits cannot be achieved by reasonably available alternatives that are materially less anticompetitive.[52]

The second step involves the request for ATI.[53] If the Secretary approves an agreement, he *may* exempt the parties to the agreement from the antitrust laws, when he decides it is required by the public interest, but only to the extent necessary to allow those parties to proceed with the transaction.[54] To determine whether an exemption is required by the public interest, the Department conducts a detailed examination of public benefits (public benefits analysis). The Department's findings must be included in the final order approving or disapproving the agreement.[55]

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[47] *See also* 49 U.S.C. § 40105(b)(1)(B). We further note this source: *International Air Alliances: Greater Transparency Needed on DOT's Efforts to Monitor the Effects of Antitrust Immunity*, GAO-19-237 (Mar 20, 2019).
[48] 14 CFR § 303.03.
[49] 14 CFR §§ 303.04, 303.30-32.
[50] 14 CFR § 303.05.
[51] 49 U.S.C. § 41309(b).
[52] 49 U.S.C. § 41309(b)(1).
[53] 49 U.S.C. § 41308.
[54] 49 U.S.C. § 41308(b).
[55] 49 U.S.C. § 41309(c)(3).

In the event that the Department reviews or withdraws existing approvals or grants of ATI, it exercises, as needed, its full range of economic and international aviation policy authorities including sections 41309 and 41308. In reviewing any ATI conferred previously in any section 41309 transaction, the Department may terminate or modify such ATI if, after notice and hearing, it determines the ATI is not required by the public interest.[56] In determining whether ATI is required by the public interest, the Department considers the factual record and statutory policy objectives.[57] The proponents of the ATI have the burden of justifying the continuation of ATI conferred previously.[58]

In their objections, Delta and Aeromexico challenge the Department's statutory authority – at a minimum with respect to dismissing their new application based on the GoM's failure to comply with the terms of the Agreement. We note, above all, that the ATI statutes provide for termination of approval for joint venture agreements while also establishing high standards for obtaining and maintaining a grant of ATI. The Secretary's approval is contingent upon findings of adequate competition ("not adverse to the public interest"; "substantially reduces or eliminates competition"). Modification and termination of a JV are expressly allowed.[59] In addition, with respect to the Department's authority to grant, to deny, or to withdraw ATI under section 41308, the Secretary may draw upon the public interest factors.[60] The Department should only grant ATI "to the extent necessary" and only as "required by the public interest."[61] It is entirely supportable for the Secretary to find that the continued grant of ATI is not required by the public interest given present facts and circumstances, including material changes in the international regulatory framework that alter the competitive playing field. Because the standards for obtaining approvals and grants of ATI are high, once a grant of ATI is made, it is reasonable that changed circumstances after the initial actions by the agency could result in current holders of authority falling short of those standards. All of the statutes of general applicability strongly counsel the Department to remain vigilant and dynamic in its assessments and view of the public interest.

To put the Joint Applicants' objections in context, it is instructive to look at the broader purpose and structure of the Department's approach to these cases. ATI proceedings contain a procedural phase in which parties submit comments routinely and the Department engages in detailed and transparent factfinding on the key issues. In the decisional phase, there are an initial comment period and detailed written decisions containing policy positions upon which interested parties can further comment. The resulting record of evidence provides a firm foundation for decisions and the conditions and limitations that apply to those decisions. The Department and interested parties rely routinely upon precedent and cite it in both the procedural and decisional phases. One reason that the Department engages in such detailed process *ex ante* is to ensure that, if there is a serious issue with an ATI grant *ex post*, we have the flexibility to protect the public interest adequately should circumstances warrant.

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[56] 49 U.S.C. § 41308(b); 14 CFR § 303.06.
[57] *See* 49 U.S.C. § 40101.
[58] 14 CFR § 303.06.
[59] 49 U.S.C. § 41309 (b)(1) provides that the Secretary of Transportation shall "end approval of, an agreement, request, modification, or cancellation, that substantially reduces or eliminates competition…."
[60] *See* 49 U.S.C. § 41308.
[61] 49 U.S.C. § 41308.

C. DOT's Assessment of the Regulatory Framework While Exercising the Statutory Authority to Review and Grant ATI

The Joint Applicants have changed their positions and questioned the legal foundations for the Department's "ATI predicate" and Mexico's compliance with key terms of the Agreement. Whereas historically, and during the application process, the Joint Applicants recognized the prerequisite of an Open Skies agreement, they now, as the only holders of ATI in the market, argue that the Department's authority is limited.[62, 63]

In the 1990s, the Department developed and defined its Open Skies policy.[64] We did so in a public proceeding, subject to notice and comment, and then transparently incorporated the resulting "Open Skies" model into international aviation policy, negotiations, and regulatory proceedings such as applications for ATI. There is broad consensus about the meaning of U.S. Open Skies agreements and their economic effects developed through this body of precedent over several decades.[65] Numerous airlines have relied upon this understanding while working with foreign regulators, negotiating the terms of joint ventures or other cooperative agreements, and to inform their positions in many different aviation dockets.

With respect to ATI proceedings, the Open Skies predicate is an organizing principle that ensures a competitive market in which joint ventures do not substantially reduce competition and provide public benefits for which a grant of ATI is required by the public interest. For that reason, it is the longstanding policy of the Department not to consider requests for ATI in a market until all the elements of an Open Skies agreement are available to carriers.[66] In a seminal 2008 order involving Delta as an applicant, we wrote that:

> The predicate for our consideration of a request for immunity is the existence of an "open-skies" framework between the United States and the government of

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[62] In a 2022 statement, a senior executive at Delta stated: "Today, there are more than 120 Open Skies agreements worldwide. These have allowed Delta to expand our flying and build industry-leading joint ventures and codeshare partnerships with our airline partners around the world …. But there is one very important 1992 milestone not likely on any of our radars at the time that would transform the airline industry and become the backbone for the growth not only of Delta, but all of civil aviation. That was the year the very first Open Skies Agreement was signed between the U.S and the Netherlands. This groundbreaking agreement between our two countries eliminated government interference in airline decisions regarding service levels, routes, and pricing. It paved the way for airlines like KLM and Delta to form robust, metal-neutral joint venture partnerships enabled by the U.S. Department of Transportation's grants of antitrust immunity (which are based on, and cannot be granted without, Open Skies)…." *See* https://www.deltatakingaction.com/content/deltaactions/en/news/2022/oct/let-s-celebrate-three-decades-of-open-skies-agreements-and-their.html.

[63] Delta has previously commented on the Open Skies issue, stating, "well settled Department precedent and international aviation policy preclude the United/bmi request. Thus, in the absence of an open skies agreement, the Department must dismiss or deny the pending applications and terminate the proceeding. The Department adopted a sound policy nearly a decade ago that antitrust immunity will not be granted without a full open skies agreement. That policy has been immutable and has been applied in every single immunity case considered by the Department, since the first Northwest/KLM proceeding in 1993." (Reply of Delta Air Lines, Inc., DOT-OST-2001-11029-0117, March 1, 2002, at 1-2.).

[64] Final Order in the matter defining "Open Skies," Aug. 5, 1992; Order 92-8-13, Docket 48130.

[65] "Regulatory Convergence Between U.S. Antitrust Law and EU Competition Law in International Air Transport—Taking Stock" by Antigoni Lykotrafiti *Journal of Competition Law & Economics*, 2023, 19, 146–176 https://doi.org/10.1093/joclec/nhac013.

[66] Order to Show Cause, Nov. 4, 2016; Order 2016-11-2, DOT-OST-2015-0070-0074, at 7.

> each foreign applicant-carrier's homeland. We are willing to consider the instant request because the United States has an "open-skies-plus" air transport agreement with the European Union and its Member States that includes as a signatory the homeland of each foreign carrier-applicant…The U.S.-EU Air Transport Agreement will allow U.S. airlines to serve any point in the EU, and European Community airlines to serve any point in the U.S., with open intermediate and beyond rights. The open-skies-plus framework between the United States and Europe encourages more competitive service, because market forces, not restrictive agreements, discipline the price, frequency, capacity levels, and quality of airline service.[67]

We also discussed the importance of maintaining an Open Skies predicate where immunized joint ventures operate when we stated that:

> Open-skies agreements create a situation in which pricing, capacity, frequency, routing, new entry, and quality of airline service are determined by market forces, not government restrictions or the threat of government restrictions. Without an open-skies framework, airlines operating with antitrust immunity may not be subject to competitive market forces, which could compel the Department to reconsider its prior grants of immunity.[68]

These passages – echoed in virtually every ATI case, including this one – mean that the Department's starting point for reviewing a joint venture is ensuring that it will operate within a pro-competitive regulatory framework where market forces, not government intervention, determine market outcomes. In many industries, one might take for granted that firms can enter a market and compete vigorously without interference from the government. Not so in the global airline industry. While commercial aviation in the United States since its deregulation in 1978 is subject to market forces based on U.S. law, when it comes to flights beyond U.S. borders, the markets and ability to access them are subject to the terms of an air services agreement negotiated between the United States and a foreign government.

Statutory Grounding for the Open Skies Regulatory Framework

Delta and Aeromexico argue that the Department's reliance on the "Open Skies predicate" to dismiss the application is "extra-statutory." Regardless of the label, the Department's approach is firmly grounded in statute and U.S. competition law.

Proper review of an application requires an assessment of the market's regulatory framework to determine first whether the market structure is open and competitive and second what competitive effects will result from the JV operating in that market structure. As noted above, unlike the domestic U.S. market, the regulatory framework for foreign air transportation is established by air transport agreements negotiated between the United States and the foreign country. We therefore review the implementation of the applicable air transport agreement, in

[67] Order to Show Cause, Apr. 9, 2018; Order 2008-4-17, DOT-OST-2007-28644-0174, at 2. *See also* Order 2008-4-17, at 13 ("In light of all the factors discussed above, we tentatively find that the proposed alliance will not substantially reduce or eliminate competition, provided that transatlantic markets remain governed by a regional open skies agreement that promotes new entry regardless of national borders.").
[68] Final Order, Feb. 13, 2007; Order 2007-2-16, DOT-OST-2005-22922-0055, at 2.

this case, the U.S.-Mexico Air Transport Agreement, to determine the extent to which it enables market forces such as new entry, competitive pricing, and a fair and equal opportunity to compete.[69] Each of these elements are part of the defined U.S. Open Skies framework – what we have referred to as the "Open skies predicate" in ATI cases. If the elements exist in principle and are adhered to in practice, the Department can establish on the record that a minimally pro-competitive environment exists to adequately discipline the type of integrated commercial activities that the Joint Applicants propose, which includes joint pricing, capacity planning, and revenue sharing like a merged firm.

The statutes support this approach. Under section 41309, the Secretary shall disapprove a joint venture agreement that "substantially reduces or eliminates competition," which is the same standard applied in the Clayton Act when examining the impact of a transaction (such as a merger) on relevant markets. This threshold analysis for immunized joint ventures is independently supported by section 41308 as well. Section 41308(b) supports the ATI predicate because a grant of ATI is discretionary; further, the statute contains high standards for granting and, by logical extension, maintaining ATI in its own right (ATI must be "required by the public interest" and DOT should only grant ATI only "to the extent necessary"). This broad discretion and dynamic approach that takes into account changing circumstances is further buttressed by the policy standards in section 40101 that Congress infused heavily with competition standards present in other competition laws (*e.g.*, "eliminating discrimination and unfair competitive practices faced by U.S. airlines in foreign air transportation, including unreasonable restrictions on operations").

DOT's approach is consistent with the U.S. Government's standardized reviews of regulatory matters in antitrust, as well as case law. The Merger Guidelines issued jointly by the Federal Trade Commission and the U.S. Department of Justice indicate that a merger may lessen competition substantially if it would enable firms to avoid a regulatory constraint because that constraint was applicable to only one of the merging firms.[70] Antitrust case law further supports the notion that regulatory barriers, including a government's desire to limit new entry, are relevant to assess the competitiveness of mergers.[71] DOT's longstanding approach of using the Open Skies threshold to assess a minimally viable regulatory framework is not only wholly consistent with sections 41308 and 41309, but it also provides benefits to interested parties including efficiency, predictability, and enhanced competitiveness. Here, we are administering our statutory authority in the context of a market in which the United States and Mexico have

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[69] Final Order, Dec. 14, 2016; Order 2016-12-13, DOT-OST-2015-00070-0096, at 19 (The Department "…must, in order to protect the public interest, not examine just the effects of the proposed alliance, but also the environment in which that alliance will operate, to ensure that there will be adequate competition to not only mitigate any potential harm from the proposed transaction, but to guarantee that the anticipated public benefits are likely to be realized.").

[70] Merger Guidelines (2023), U.S. Department of Justice, at § 2.11, https://www.justice.gov/d9/2023-12/2023%20Merger%20Guidelines.pdf; *see also* Merger Guidelines, at § 4.4 (explaining that factors such as regulation are important to determine whether competitors may become effective or "rapid" new entrants in a market affected by a transaction).

[71] In the Matter of RWJ Barnabas Health, June 2, 2022; Docket No. 9409, https://www.ftc.gov/system/files/ftc_gov/pdf/D09409RWJP3ComplaintPublic.pdf; In the Matter of Lifespan Corporation, Feb. 17, 2022; Docket No. 9406, https://www.ftc.gov/system/files/ftc_gov/pdf/d_9406_lifespan-cne_p3_complaint_public_redacted.pdf; Federal Trade Commission Staff Submission to Indiana Health Department, Sep. 5, 2024; U.S. Federal Trade Commission, https://www.ftc.gov/system/files/ftc_gov/pdf/in_copa_comment_9-5-24_public_redacted.pdf.

agreed to a liberalized agreement on paper, and two competitors in that market have a grant of ATI with unprecedented conditions designed explicitly to address problems with the consistency and adequacy of the international regulatory framework in practice.

V. TENTATIVE DECISION

We have reviewed the competitive state of the U.S.-Mexico air services market based on the current facts and circumstances noted above and determined tentatively that the Delta/Aeromexico JV – initially approved and given a grant of ATI by the Department – no longer meets applicable statutory standards. We also assess that the Department's findings approving the JV and granting ATI are no longer valid. Therefore, we decide tentatively to disapprove the JV and withdraw the grant of ATI currently in effect following a wind-down period. This tentative decision is supplemental to Order 2024-01-17, responds in detail to the objections raised to the proposal in that order, and provides a more extensive basis and explanation for the Department's action.

The Department provided every opportunity for the circumstances to change and for the Joint Applicants to prepare for the eventuality that the situation would not change. When the Joint Applicants petitioned to extend the expiration date for their grant of ATI, we granted the request; when the COVID pandemic and the FAA safety audit were in progress, we extended the timeline; when two other carriers, Allegiant and Viva Aerobus sought a new grant of ATI, we deferred a decision; when Delta and Aeromexico strongly opposed the first proposal to terminate the ATI, the Department allowed another 18 months for conditions to improve and for new government administrations in each country to transition to office. Not only did market conditions in the U.S.-Mexico market fail to improve, they worsened, as described below in section B and in Part VI, Additional Factual Assessment of Competitive Conditions. The Department can no longer wait to prevent further consumer harm and must treat all stakeholders fairly. If ATI is withdrawn as proposed, Delta and Aeromexico will still have pro-competitive options to coordinate many aspects of their services in the market just like other competitors.

A. Mexico's Non-Compliance with Open Skies Regulatory Framework

Based upon the evidence set forth in Order 2025-7-11, the Department finds that the necessary competitive conditions for an immunized joint venture are no longer present in the U.S.-Mexico market.

In their comments to the Department's earlier tentative findings, Delta and Aeromexico express concern that the Department did not identify specific terms of the Agreement that Mexico failed to meet before we proposed to terminate the ATI. The primary violations that affect the competitive structure of the market materially are Mexico's regulatory actions to prohibit cargo operations at MEX, its confiscation of slots at MEX, and its continued application of anticompetitive slot administration rules. The Department found that, in implementing these restrictions, Mexico acted inconsistently with its obligations to allow U.S. carriers to conduct scheduled combination operations between the United States and Mexico under Annex I of the U.S.-Mexico agreement. The Department also found that Mexico acted inconsistently with its obligations 1) under Article 11(1) of the Agreement to allow U.S. airlines a fair and equal opportunity to compete in providing air transportation governed by the Agreement, and 2) under Article 11(2) of the Agreement to not limit unilaterally the volume of traffic, frequency, or

regularity of service, or the aircraft type or types operated by the airlines of the United States. These actions limit materially and unacceptably entry and capacity at MEX and distort competition in a market where two predominant competitors may coordinate pricing and capacity.

Since the issuance of Order 2024-01-17, the competitive situation in the U.S.-MEX market has deteriorated. Delta and Aeromexico are able to exploit this uneven playing field by adding additional flights between MEX and U.S. points. Meanwhile, U.S. carriers continue to be significantly disadvantaged in their ability to plan, maintain and/or add services at MEX due to a non-transparent slot allocation regime that continues to favor Aeromexico and Delta. The degree of opacity and arbitrariness surrounding the GoM's slot management practices at MEX, coupled with the disproportionate impacts on U.S. carriers versus Mexican carriers or third-country carriers, undercuts the ability of U.S. carriers to fairly compete in the market. All-cargo carriers also remain prohibited from operating at MEX, which undermines their ability to compete with combination passenger-cargo carriers such as Delta and Aeromexico at the largest Mexican airport.

Mexico's lack of compliance with a suitable international regulatory framework provided by the Agreement creates anticompetitive conditions in the U.S.-Mexico market. It makes a material difference in the review of a Delta/Aeromexico JV under the statutes as described below.

B. Analysis of Changed Circumstances

Detrimental Competitive Effects

The 2016 orders proposing to grant ATI and then granting it analyzed competitive effects in U.S.-Mexico markets. As first identified in Order 2024-01-17, and reiterated here with additional explanation, the changed circumstances in the market undermine seriously the Department's going in position for its statutory analysis and conclusions. Actions taken by Mexico regarding access to MEX for both cargo and passenger airlines highlight that the issues the Department identified in 2016 remain, confirming the Department's concerns about the suitability of the U.S.-Mexico market to support a grant of ATI to any JV, including specifically the Delta/Aeromexico JV.

Entry at MEX

Mexico's Transport Ministry, SICT, confirmed to the Department in direct correspondence on November 28, 2023, that additional entry at MEX is closed. A copy of this letter is being placed in the docket. It should be noted that this communication came after the Department expended significant time outside of this proceeding working with Mexican counterparts to address Mexico's failure to adhere to the Agreement. The threat, potential, and ability of a new entrant to come in as a market disruptor is an important disciplining competitive force. Permitting ATI in a market that the GoM has closed effectively and substantially to new entrants would mean that the Department has given a license for legalized collusion among partners that control almost 60 percent of operations at the fourth-largest gateway to and from the United States. It would provide safe harbor to possible anti-competitive and efficiency-reducing arrangements, such as reduced growth, inefficient timings, or exclusionary conduct. While this potential harm has been evidenced at MEX to date, we see a realistic possibility that Mexico could act in a similar arbitrary manner at other congested Mexican gateways, such as Cancun, given Mexico's

lack of a coherent and transparent slot allocation regime that is applied consistently at the national level. The strike against a major underpinning of the Agreement – the free entry and exit of new competition – is seriously problematic for the continued relevance of the findings that the Department identified as necessary to constrain the anticompetitive effects of the Delta/Aeromexico JV.

Slot, Regulatory, and Transparency Issues

A key component of the 2016 ATI order was mutual recognition by the Department and Mexico's competition regulator, COFECE, that substantial slot and regulatory transparency issues needed to be addressed by the GoM. We chose to proceed in 2016 based on Mexico's commitment to address these issues through reforms (among other conditions). One of the primary reasons for limiting the original grant of ATI to five years was to provide an incentive for Mexico to follow through on implementing the promised reforms.[72] Since then, Mexico has reversed course through its actions, including the confiscation of slots from foreign and domestic carriers at MEX without adhering to international standards. Indeed, American, United, as well as Mexican carriers such as Volaris and Viva Aerobus, lost approximately two slot pairs each at MEX during the Winter 2022/2023 and Summer 2023 schedule periods, and as of this writing there continues to be a lack of clarity as to whether these carriers will be able to recover their historic access to these slots or will ever be able to expand their services from MEX even as Aeromexico continues to launch new routes and frequencies from MEX to the United States. Even if these carriers were to get some or all of the slots back, the Department now has a fundamental concern as to Mexico's commitment to historical rights and the principle of fairness and new entry that are critical at congested gateways, in addition to the foundational concern regarding the absence of a transparent slot allocation mechanism consistent with international norms that would apply to all Mexican IATA Level 3 airports both now and in the future. The considerable due process and patience requested by Delta and Aeromexico to address the Department's concerns with ATI stand in contrast to the speed at which the GoM has proven it will act to fundamentally change market conditions.

In this environment, the immunized Delta/Aeromexico JV has an unfair advantage as it can leverage the continued lack of transparency at MEX with dominant slot holdings and favored positioning at MEX. For example, while other carriers have been forced to cut capacity between the U.S. and Mexico City, Delta/Aeromexico have announced new routes.[73] In a closed market, giving ATI to the largest slot holders magnifies the competitive concerns and increases the potential for consumer harm, because they can leverage their large pool of holdings to trade slots among themselves. This is not an opportunity afforded readily to other carriers whose slots are being taken away (*e.g.*, Delta may not have to reduce services at MEX as Aeromexico can instead sacrifice lower yielding domestic services within Mexico to repurpose those slots for expansion on transborder routes). The Department cannot simply count the number of new services by the joint venture from MEX. It must also take into account the counterfactual (*i.e.*, what Delta and Aeromexico could have done otherwise) and the overall impact on the market given the limitations placed on their competitors.

[72] *See* Order 2016-11-2, at 27 (noting that if sufficient reforms and transparency at MEX are lacking, "the Department would have to carefully consider whether it could approve a new application if tendered...").

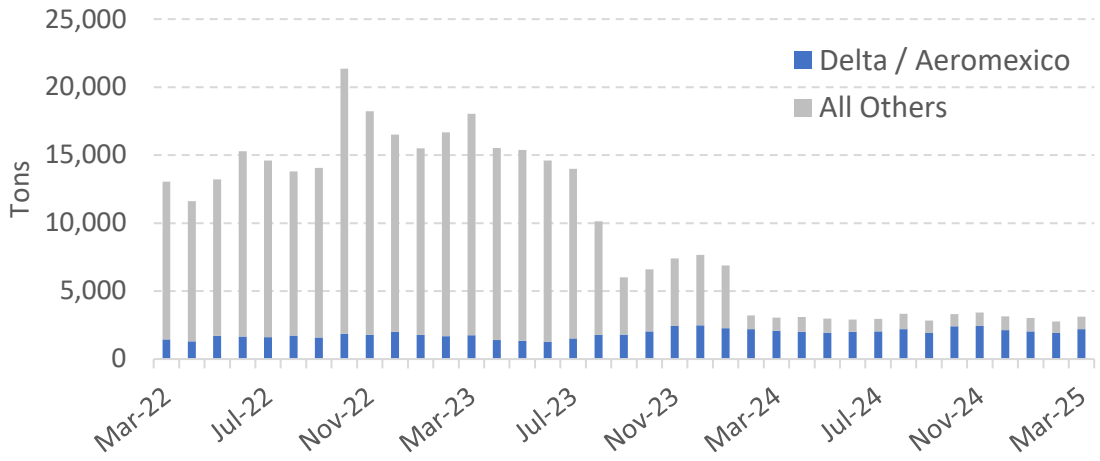
[73] Aeromexico initiated new flying from MEX to Boston (BOS), Raleigh Durham (RDU), Tampa (TPA), and Washington Dulles (IAD) airports in 2024, and to Philadelphia (PHL) and San Juan (SJU) in 2025.

Cargo market distortions in Mexico City

The existing ATI allows Delta and Aeromexico to coordinate cargo operations in the U.S.-Mexico market, including at MEX. By decree, Mexico forced the all-cargo carriers to leave MEX, leaving them no choice but to relocate to the distant new airport – NLU. This type of airport planning enforced by abrupt fiat creates uncertainty in the market that limits growth and investment, especially by new entrants. In addition, by forcing all-cargo carriers out of MEX while allowing Delta/Aeromexico and other combination carriers to continue to carry belly-cargo at MEX, Mexico confers an unfair advantage in the cargo market to the ATI holders who also have a disproportionate share of the slots at MEX. All-cargo operations at NLU are further hampered as they cannot feed their cargo to connecting operations to other points in Mexico and beyond which was previously possible (and which Delta/Aeromexico can still do) at the much larger MEX. Carriers operating "combination" services, *i.e.*, both passenger and belly cargo operations, continue to benefit from the proximity and infrastructure advantages of MEX whereas all-cargo services have incurred extra costs associated with transitioning operations to NLU resulting in a competitive imbalance between combination and all-cargo carriers.

Figure 1

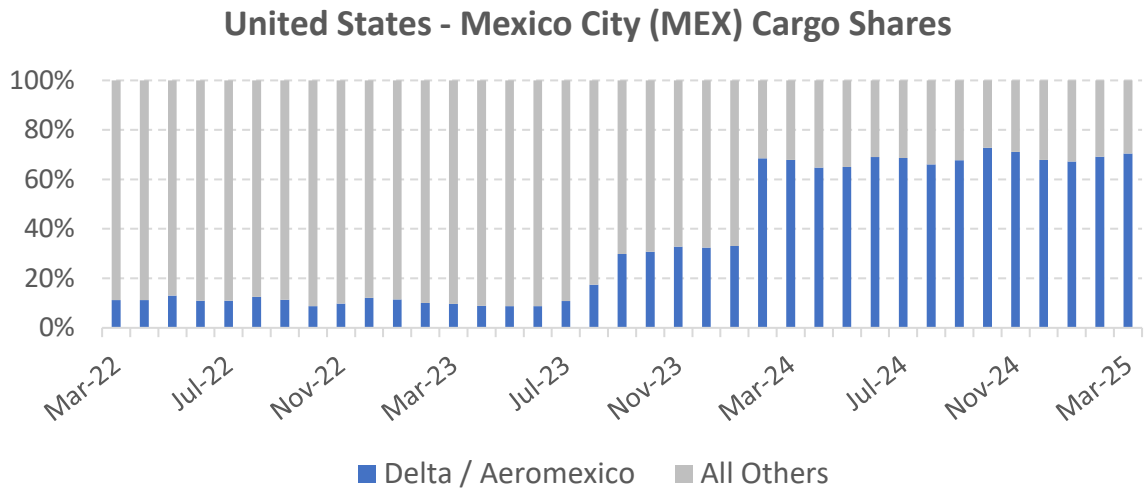
United States – MEX: Total Cargo



Source: DOT T100 Segment

Figure 2

Total Cargo Shares in the United States – MEX market



Source: DOT T100 Segment

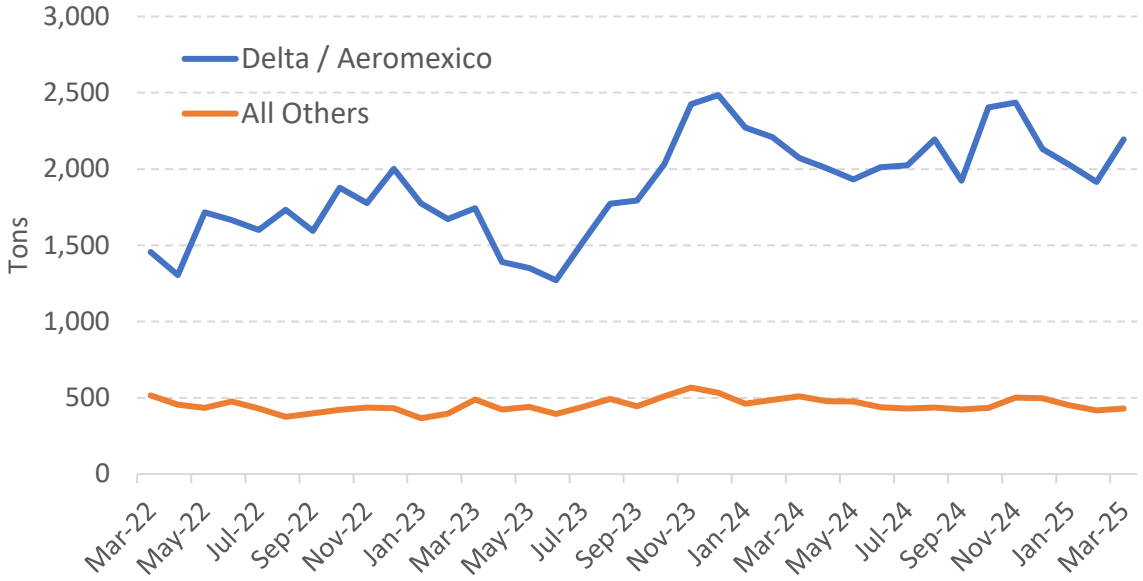
The charts above show the impact of Mexico's actions to move all-cargo operations out of MEX by September 2023. Predictably, overall cargo tonnage has declined, and Delta/Aeromexico now controls the majority share of cargo tonnage at MEX, placing the carrier in an advantageous position to connect air cargo in markets throughout the region. Notably, this impact is also occurring in an environment where other combination carriers that offer belly cargo are also having their capacity reduced, further providing an upper hand to Delta/Aeromexico in the air cargo markets that serve or connect through MEX. Aeromexico is the carrier with the largest volume of belly cargo in the U.S.-Mexico transborder region, carrying 59 percent of all belly cargo tons for 2022-2023. American, United, and Delta are the only other carriers transporting significant belly cargo in the broader U.S.-Mexico market, each with between 9 and 15 percent of belly cargo tons.[74]

Aeromexico has an even larger share of belly cargo volume between the U.S. and MEX specifically, carrying 73 percent of all belly cargo tons for 2022-2023.[75] The only other carriers with significant belly cargo operations are American, United, and Delta. These three carriers each have single-digit shares of the belly cargo in this market.

[74] DOT T-100 Segment.
[75] Ibid.

Figure 3

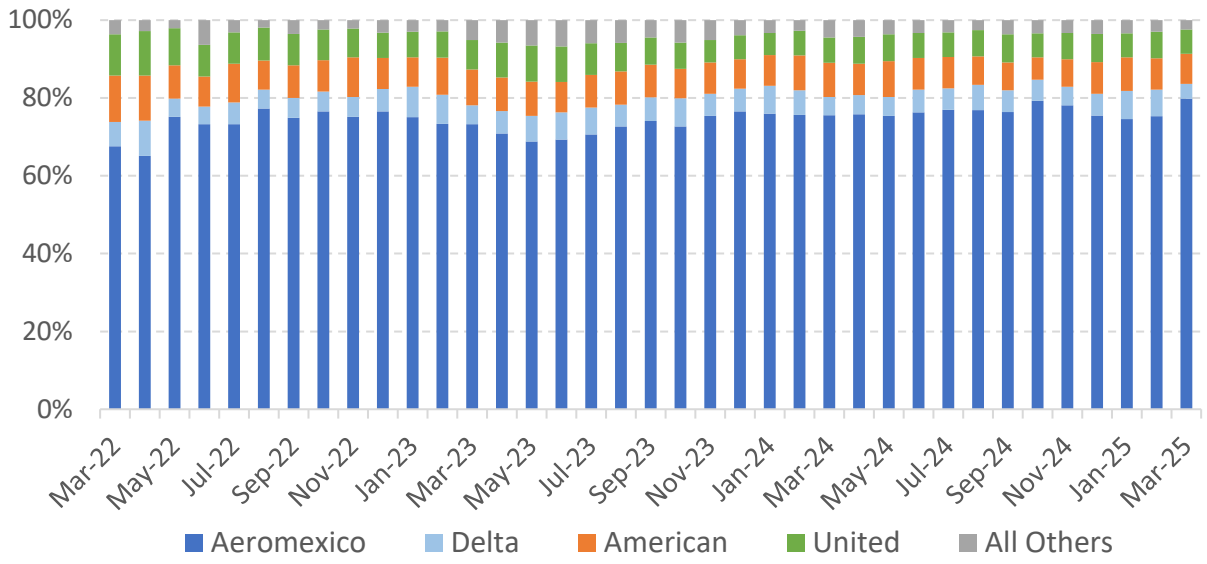
United States – MEX: Belly Cargo



Source: DOT T100 Segment

Figure 4

Belly Cargo Shares in the United States – MEX Market



Source: DOT T-100 Segment

Infrastructure Issues

In 2016, DOT identified lack of capacity at MEX as one of the main issues driving the need for improved slot administration at the airport. During the 2016 proceeding, the GoM was already

in the process of building a replacement airport for MEX at Texcoco. Indeed, in 2016, construction was well underway on the project, with portions of the terminal as well as the runway and other physical elements of the airfield complete. In late 2018, the newly elected Mexican president, Andres Manuel Lopez Obrador, cancelled the project, citing the results of a referendum. Instead, his government looked to a distant converted military airport, NLU. All-cargo carriers had no choice but to move their operations there to serve Mexico City after his government forced them out of MEX via decree.[76] His government also coerced additional passenger services to move to NLU by restricting capacity at MEX on the basis of saturation of the airport.[77]

It is inappropriate and contrary to the public interest for the Department's grant of ATI authority to contribute to and indeed reinforce this harmful competitive dynamic. The regulatory framework has created significantly changed circumstances that either are no longer consistent with the Department's decision in 2016, including these findings and citations, or validates the structural concerns we identified, including those in the table below.

Table 1

Finding	**Citation**
"It is the longstanding policy of the Department not to consider requests for ATI in a market until all of the elements of an Open Skies agreement are available to carriers…Should the situation provide otherwise, the regulatory predicate for a grant of ATI would no longer exist and the Department's findings could be rendered invalid." – concern validated	Order 2016-11-2 at 8.
"The Department therefore tentatively finds that approving the application will not substantially reduce or eliminate competition in the U.S.-Mexico market, except in markets involving MEX." – no longer supported	Order 2016-11-2 at 11 and 13.
"The Department tentatively views the concentration and barriers to entry in [the JFK-Mexico City] market as having a substantial impact on competition in the foreseeable future, unless appropriate conditions are imposed." – no longer supported	Order 2016-11-2 at 14
"There is no suitable substitute airport for MEX" and "this is unlikely to change in the foreseeable future." – concerns validated	Order 2016-11-2 at 15.

[76] *See* Feb. 2, 2023, Decree*, available at* https://dof.gob.mx/nota_detalle.php?codigo=5678705&fecha=02/02/2023.
[77] *See* Mar. 3, 2022, Resolution *available at* https://dof.gob.mx/nota_detalle.php?codigo=5644607&fecha=03/03/2022; *see also* Aug. 31, 2023, Resolution *available at* https://www.dof.gob.mx/nota_detalle.php?codigo=5700389&fecha=31/08/2023.

Finding	**Citation**
"While the Mexican government has proposed to construct a new, larger Mexico City airport as a replacement for MEX, it is unclear when the new airport would enter into service." – concerns validated	Order 2016-11-2 at 15.
"Based upon longstanding competition policy principles, as well as established aviation policy, the Department would have serious concerns about granting ATI to any airlines under these circumstances. [A] grant of ATI would be unjustified without stringent conditions. We therefore tentatively find that it is necessary both (1) to limit the duration of a grant of ATI while efforts to reform the slot rules continue and (2) to ensure that competitors are able to gain access to an adequate number of MEX slots to effectively compete in the interim." – concern validated	Order 2016-11-2 at 17.
"Competitors cannot rely upon a slot administration regime at MEX that meets international standards to aid new entry and to make the adjustments necessary to respond to enhanced competition by major slot holders." – concern validated	Order 2016-11-2 at 23.
"The Department notes that it retains the ability to alter or amend its grant of ATI at any time so that harsh competitive effects…can be mitigated if necessary. The competitive balance and the policies governing allocation of slots at MEX are fluid and the Department needs to retain the ability to fully reexamine the basis for granting ATI." – concerns validated	Order 2016-12-13 at 27-28.

Based on these facts and circumstances, the Department cannot clear the statutory hurdles in section 41309 to approve, or maintain approval of, a significant JV agreement; rather, the statute guides us to "after periodic review, end approval of…an agreement…that substantially reduces or eliminates competition".

Effects on Public Benefits

In its 2016 orders, the Department conducted a standard analysis to assess the extent to which there was adequate competition in the U.S.-Mexico market to ensure that the JV partners would pass along the benefits of their cooperation to consumers. As part of this analysis, we measured – applying the statutory language in 41308 to determine whether a grant of ATI was required by the public interest – whether the joint venture would produce substantial public benefits quickly for consumers.[78]

Consistent with competition analysis, there is a counterfactual aspect to the Department's public interest test in that we measure whether the grant of ATI is required by the public interest because it would enable substantially *more benefits* than would *otherwise be possible* without a

[78] Order to Show Cause, Nov. 4, 2016; Order 2016-11-2, DOT-OST-2015-0070-0074, at 18.

grant of ATI, *i.e.*, under normal market conditions in which carriers compete independently on price and capacity to make their best offerings to consumers.[79] This reasonable interpretation of the statutory language, importing rigorous competition law principles and sound economic policy, lends itself to the facts and circumstances presented in this Order. It is easy to understand how the actions taken by Mexico to restrict entry and certainty for competitors would significantly devalue the potential public benefits of a JV that has a unique ability provided on a discretionary basis by the government to coordinate prices and capacity.

The Department conditioned its grant of ATI on the assumption that the Agreement between the United States and Mexico would enable open entry and new competition in the market, thereby allowing both Delta and Aeromexico, new entrants, and incumbents to deliver public benefits in the form of additional flights and other benefits over and above what would have been expected under the terms of the pre-existing air transport agreement. As the Agreement was only negotiated recently at the time, and the Department had identified several concerns in its analysis of the case, we imposed a five-year sunset and reapplication requirement in order to assess whether the foundations of an Open Skies agreement continued to be implemented and whether competition in the U.S.-Mexico market encouraged all market participants to deliver the expected public benefits.

Since 2016, the changes in the regulatory framework and other commercial developments have not enhanced the benefits that travelers and shippers experience in the U.S.-Mexico market or as a result of the immunized Delta/Aeromexico JV. Mexico's cargo decree and seizure of slots used by U.S., Mexican, and other third-country operators invalidates the assumptions on which the Department conditioned its approval. The uncertain operating environment that these actions caused has enabled and could further enable Delta and Aeromexico to consolidate their position in the passenger and cargo markets at MEX; meanwhile, other airlines cannot add additional flights at MEX, depriving consumers in both countries the public benefits the Department assumed that the grant of ATI would deliver.

Based upon the changes in the regulatory framework documented in Order 2025-7-11, we no longer believe the findings and determinations of the 2016 orders can be sustained, or that the concerns we identified have been validated. Such findings and determinations include those in the table below.

Table 2

Finding	**Citation**
"It is the longstanding policy of the Department not to consider requests for ATI in a market until all of the elements of an Open Skies agreement are available to carriers…Should the situation provide otherwise, the regulatory predicate for a grant of ATI would no longer exist and the Department's findings could be rendered invalid." – concerns validated	Order 2016-11-2 at 8.

[79] Order to Show Case, Apr. 9, 2008; Order 2008-4-17, DOT-OST-2007-28644-0174, at 14-16.

Finding	**Citation**
"Based upon longstanding competition policy principles, as well as established aviation policy, the Department would have serious concerns about granting ATI to any airlines under these circumstances. [A] grant of ATI would be unjustified without stringent conditions. We therefore tentatively find that it is necessary both (1) to limit the duration of a grant of ATI while efforts to reform the slot rules continue and (2) to ensure that competitors are able to gain access to an adequate number of MEX slots to effectively compete in the interim." – concerns validated	Order 2016-11-2 at 17.
"Many of these traditional benefits of ATI result from increases in capacity on hub-to-hub routes, usually with wide-body aircraft that are necessary to carry substantial connecting traffic on long-haul trans-oceanic routes. Transborder and other near-international markets, more analogous to the domestic market with more nonstop point-to-point travel and shorter stage-lengths, limit some of these traditional benefits…Similarly, the limited geographical scope of the proposed JV limits network connectivity and capacity benefits, as there will be less demand for network feed from behind and beyond destinations. Nevertheless, the Department is tentatively convinced that significant public benefits will be generated from the proposed alliance based upon the particular facts and circumstances of this case." – no longer sustained	Order 2016-11-2 at 18.
"The Department must, in order to protect the public interest, not examine just the effects of the proposed alliance, but also the environment in which that alliance will operate, to ensure that there will be adequate competition to not only mitigate any potential harm from the proposed transaction, but to guarantee that the anticipated benefits are likely to be realized." – concerns validated	Order 2016-12-13 at 19.
"The Department notes that it retains the ability to alter or amend its grant of ATI at any time so that harsh competitive effects…can be mitigated if necessary. The competitive balance and the policies governing allocation of slots at MEX are fluid and the Department needs to retain the ability to fully reexamine the basis for granting ATI." – concerns validated	Order 2016-12-13 at 27-28.

Based on these facts and circumstances, the Department cannot clear the statutory hurdles in section 41309 to approve, or maintain approval of, a significant JV agreement; rather, the statute guides us to "after periodic review, end approval of…an agreement…that substantially reduces or eliminates competition".

The Joint Applicants allege that a proposal to withdraw their ATI is inconsistent with the Department's treatment of other immunized alliances in, for example, the U.S.-Japan market or the U.S.-Europe market. Both situations present facts and circumstances that are different from this case as both Japan and Europe have transparent slot allocation mechanisms that largely conform to international standards. In these situations where certain conditions or government decisions have the potential to limit entry at gateway airports, the Department has expressed concern and either exercised its regulatory tools or negotiated outcomes that provide for adequate competition and that maximize public benefit. The Joint Applicants do not point to any restrictions imposed by foreign governments that create conditions in which an immunized JV could substantially reduce or eliminate competition in the market despite the Department's actions to address the issues. Addressing ATI matters necessarily requires a case-by-case analysis of facts and circumstances.

C. Assessment of Alternatives and Harm

Delta and Aeromexico contend that the Department's approach focusing on Mexico's anticompetitive changes to the market is insufficient to justify withdrawing a grant of ATI. They make a series of related arguments suggesting that: 1) we failed to consider reasonably available alternatives; 2) our actions cause significant harm; 3) Delta and Aeromexico have reliance interests that have not been addressed; 4) we normally do not scrutinize slot administration in Open Skiess negotiations; 5) we are applying a more stringent approach in the ATI review regarding the U.S.-Mexico market than other markets in which there are congested hubs; and 6) we are unfairly challenging the validity of a "multi-airport" system in which Mexico forces some operators to distant NLU, which Delta and Aeromexico do not prefer, versus the prime MEX hub, which they and virtually every airline serving Mexico do prefer.

Based upon the actions of Mexico, which have distorted the market and changed the competitive effects of the Delta and Aeromexico JV materially, we do not assess that there are acceptable alternatives to withdrawing ATI that would be consistent with the public interest and the international aviation policy interests of the United States. We review some of the alternatives suggested by Delta and Aeromexico:

Maintaining the ATI while waiting for things to change, taking into account that the harm may compound over time. In effect, the Department took this approach. DOT has waited multiple years and deferred by 18 months specific action from the January 2024 show cause order with the expectation that extensive and high-level consultations under the Agreement would resolve the underlying issues of Mexico's noncompliance with the Agreement. Unfortunately, those consultations yielded nothing in the way of resolving the concerns. We assess that this approach is no longer viable as it is causing significant confusion, promoting an unlevel playing field, and harming consumers; these effects are getting worse over time.

Abandoning Order 2024-01-17 and letting international negotiations play out. The Department also took this approach in effect for a period of time. In addition to the fact that negotiations are separate from the exercise and enforcement of the ATI statutes, this approach has yielded no progress over several years. We assess that we can no longer ignore our statutory responsibility to review and address the competitive effects of the status quo. Even if the Department agreed with the concerns expressed by Delta and Aeromexico, and if it accepted their invitation to begin the process anew, this alternative is not viable. As

demonstrated in the history section above, the competitive issues are documented and longstanding, and a new and even more elongated process will do little if anything to shed further light on the competitive environment in the context of the ATI docket. Further delay would perpetuate harm to stakeholders and disrupt the Department's exercise of its policy and regulatory functions. One of the Joint Applicants' strongest concerns was the Department's dismissal of the new application, and the Department is returning that application to a suspended state.

Carving out Mexico City and/or cargo from the scope of the ATI grant. Mexico City is the largest city and network hub in Mexico as well as being among the largest destinations for U.S.-Mexico services. A carveout of Mexico City, which the Department does not see as possible, would in any event impair significantly the potential consumer benefits by removing the heart of the network; such a remedy may lead to a worse outcome where the joint venture is allowed to coordinate legally in other markets without producing the network benefits of the JV as the largest hub is outside the scope of it. We also note our concern that MEX is not the only constrained airport in Mexico, and Mexico's lack of transparency and arbitrary capacity management may not be limited to MEX in the future. Removing the cargo cooperation from the joint venture would only target one element of the competitive harm and would at best be a partial and incomplete fix as it would not address passenger harm nor the harm created by the anticompetitive framework that gave rise to the concern.

Other means to compel compliance by Mexico. Delta and Aeromexico argue that the Department should pursue other processes, including issuance of an order under 14 CFR Part 213 and countermeasures under 49 U.S.C. § 41310. This argument is based on an incorrect premise that the Department is taking this action to assert leverage to bring Mexico into compliance with the Agreement. That is not the case. The matter of Mexico's noncompliance with the Agreement is addressed through Order 2025-7-10 and Order 2025-7-11 under 14 CFR Parts 212 and 213. That process will play out separately, in part because, were the Department ultimately to disapprove schedules in that proceeding, it would merely compound the competitive concerns with the ATI in this proceeding by further reducing capacity in a market effectively restricted by the GoM and providing Delta and Aeromexico with unique flexibility to manage the situation. Meanwhile, outside of this proceeding, the Department will continue to press for solutions with the GoM that allow U.S. carriers to exercise fully the rights available to them under the Agreement. Identifying these solutions, however, does not necessarily lead to the continuation of grants of ATI in the U.S.-Mexico market. The competitive issues summarized here are entrenched. Mexico's ability to resolve them will take time, as will any potential improvements to the competitive environment to make it more certain and stable. Meanwhile, consumer harm has and will continue to increase given the incumbents' favorable position that is only strengthened by ATI. Therefore, any argument that the Joint Applicants should retain their ATI pending resolution of the Agreement compliance matters and any other competition concerns is unfounded. Furthermore, while we have thus far not elected to take certain other actions, *e.g.*, initiate proceedings under 49 U.S.C. § 41310, we reserve the right to take any future steps that we find appropriate in the public interest to bring Mexico into compliance with the Agreement. In any event, each of these options are separate from the ATI proceeding and are not properly viewed as alternatives.

The language in the ATI statutes, including the Department's flexibility to consider reasonably available alternatives that are materially less anticompetitive while weighing international aviation policy concerns, strongly supports the Department's approach in this Order. A materially less anticompetitive alternative to an immunized alliance is an arms-length commercial alliance like the ones pursued by other competitors in the market. Such an alliance remains available to the Joint Applicants and would still deliver public benefits in the market.

The Department has also evaluated the harm resulting from the existing ATI and the comparative harm that may occur should it be withdrawn. As noted above, significant potential harm to consumers and stakeholders is likely occurring and might continue to occur absent our action. The extent to which the Joint Applicants could and would rely upon a time-limited grant of immunity was discussed extensively in the record and our administrative decisions dating back to the 2016 Show Cause Order. Then, the Department asked Delta and Aeromexico to express in writing their consent or non-consent with the conditions in the final order, including the time-limited grant of ATI and the Department's ability to withdraw it.[80] The Joint Applicants provided that written consent.[81] The Department acknowledges that withdrawing the ATI would require the carriers to incur costs to end their coordination on pricing and routing. However, the Department has determined that such an approach is required by the broader public interest.

Delta and Aeromexico argue that, without ATI, they will have to reduce or eliminate services to multiple cities. Although we do not agree with this analysis, we share the same goal of ensuring that the U.S.-Mexico market is able to sustain service to as many cities as possible. Unfortunately, the Department's concerns about the restrictions imposed by Mexico in contravention of the Agreement cannot be resolved by citing speculation about particular routes. Without an open market in place, it is simply not consistent with the ATI statutes and the 2016 orders granting ATI that the Department should allow two competitors to coordinate pricing and capacity in such a market when there are detrimental impacts to consumers or other airlines who do not have the same extraordinary relief. While finalizing this Order would revoke antitrust immunity from the alliance agreement, the carriers would have a period during which they can unwind the aspects of their relationship that require immunity, while keeping the core commercial cooperation that supports the introduction and mutual marketing of flights intact. Delta and Aeromexico will continue to have every incentive to cooperate in the U.S.-Mexico market given Delta's ownership stake in Aeromexico, the ability to continue code sharing and frequent flyer cooperation, and the various mutual commercial interests stemming from their participation in the SkyTeam alliance.

Delta and Aeromexico hired Brian Keating to provide an economic assessment of what he considers the economic harms of the dissolution of the Delta/Aeromexico ATI grant as proposed in Order 2024-01-17. Much of this economic assessment is outside the scope of this Order, which reviews the regulatory framework of the U.S.-Mexico market. Keating's analysis estimates economic harm of more than $800 million due to potential service changes after ATI is withdrawn. The Keating paper, provided as an appendix to the carriers' objection to the Department's 2024 proposal, was based largely on Delta's network planners' identification of 21 routes, either operating or planned, that are *at risk* of cancellation or reduced service in the event of the dissolution of the Joint Cooperative Agreement, with a potential downgauging on seven

[80] Final Order, Dec. 14, 2016; Order 2016-12-13, DOT-OST-2015-0070-0096, at 29.
[81] Notice of the Joint Applicants, Dec. 21, 2016; DOT-OST-2015-0070-0100.

routes to smaller aircraft type. Keating states that even markets that were served prior to the implementation of ATI might lose service due to changing demand patterns but does not identify those patterns, nor does he provide any independent assessment of the at-risk services provided by Delta.

Keating's conclusions are not determinative in the Department's review on these facts and circumstances. The Department has multiple serious concerns about the accuracy of the assessment, including the assumption that when the at-risk routes are canceled or reduced the existing aircraft will be parked and not utilized elsewhere. The Department's focus must remain on broader public interest concerns. Further, Delta and Aeromexico may continue to look for opportunities to jointly serve the U.S.-Mexico market.

VI. ADDITIONAL FACTUAL ASSESSMENT OF COMPETITIVE CONDITIONS

As demonstrated above, the findings supporting the Department's approval and grant of ATI to the Delta/Aeromexico JV are no longer valid. Mexico's actions have adversely affected the market in ways that no longer enable an immunized alliance to operate without substantially reducing competition and consistently with the public interest. This changed circumstance underscores the importance of DOT's ability to withdraw ATI, which flows from a competitive market enabled by a fully implemented Open Skies agreement and rigorous regulatory review with high standards, in a market where the foreign party is failing to comply with core pro-competitive provisions of such an agreement.

To further support the Department's decision to terminate the Delta/Aeromexico ATI and show why the Open Skies regulatory framework is critical – we have conducted an additional factual assessment of competitive conditions consistent with the requirements of section 41309(c)(3). We looked back at the first application submitted by Delta and Aeromexico, plus supporting materials, to identify the expectations set by the Department at the time of the 2016 final order and assess to what extent developments between 2016 and now have affected Delta's and Aeromexico's ability to meet those expectations. This assessment provides further context for the Department's actions, recognizing the costs of the ATI decision on Delta and Aeromexico and their implicit argument – with which we disagree – that the Department should consider only facts and circumstances within their control.

Competitive Issues

In Order 2016-11-2, the Department found serious concerns with respect to the market for travel to Mexico City, including infrastructure concerns magnified by an opaque regulatory regime concerning slot policy and potential market concentration on the JFK-MEX overlap route. Despite these concerns, we provided a path forward through a slot divestiture and time-limited grant of immunity, conditions which we deemed necessary, at a minimum, to ensure adequate competition and provide a means to adequately monitor developments. The Department sought a voluntary divestiture of 24 slot-pairs at MEX that would enable low-cost carriers and new-entrant carriers to enter the U.S.-MEX market; the Department hoped that these divestitures would mitigate, at least for the five-year initial grant of immunity period, the identified transparency, regulatory, and market-power concerns with the slot regime at MEX at least until the new airport at MEX was completed or new transparent slot allocation procedures were implemented. Of the 24 slot-pairs, our current estimate is that only six (6) slot-pairs are still

actively in use by the divestiture recipient(s). Unfortunately, despite the Department's efforts to facilitate entry to overcome market concerns and enable a path forward for the Delta/Aeromexico JV, the failure of the majority of divestiture recipients – including all U.S. carrier recipients – to sustain service in the market leads us to conclude that we erred in our 2016 finding that a large slot divestiture was sufficient to address the entry and market power concerns at MEX identified in the 2016 show cause order.

At the time of Order 2016-11-2, Delta and Aeromexico combined accounted for an estimated 48 percent of U.S.-MEX traffic.[82] Today, the two air carriers account for 50 percent of U.S-MEX capacity on a rolling twelve-month basis ending June 2025.[83] For total MEX capacity, while COFECE identified Aeromexico's slot holdings at 50 percent at the time of the 2016 decision, schedule analysis today shows that Delta and Aeromexico, combined for the same twelve-month period ending June 2025, collectively account for 60 percent of scheduled departures from MEX.[84] The concerns DOT identified in 2016 are still present today, except with the proven experience that the slot divestitures were not sufficiently effective. Other than the attempts made through the slot divestiture process, no new carrier has entered the U.S.-MEX market since that time.

The Department scrutinized the JFK-MEX market with the two parties' overlapping services accounting for 81 percent market share in 2016. Today, that estimated figure remains concerning, but is lower – in part due to the voluntary divestitures at JFK – where Delta/Aeromexico are now estimated to command a 72 percent share of the market.[85]

The Department noted MEX's importance as the singular megahub for Mexico without an equivalent substitute, with the most domestic destinations served and host to the largest operations for the five largest Mexican carriers.[86] We did not find that Toluca (TLC) was a substitute for MEX due to distance, minimum levels of service, and the strong preference of transborder passengers for MEX. Those findings are still applicable today as there are no scheduled passenger flights from Toluca to the United States.[87] Additionally, Mexico's recent emphasis on adding services at NLU – which has not been designated as a Mexico City airport under the Agreement – has not made it a substitute for MEX in any material respect. Despite significant pressure for carriers to launch operations at NLU, at present only two routes from NLU to the United States are served, both on regional jets: Houston and McAllen, TX.[88] Services to the Mexico City market are not meaningfully contestable, and competition and competitive benefits for consumers seem to be decreasing.

[82] Order to Show Cause, Nov. 4, 2016; Order 2016-11-2, DOT-OST-2015-0070-0074, at 15.
[83] Sabre Market Intelligence.
[84] Sabre Market Intelligence.
[85] Estimated using Sabre Market Intelligence for the twelve-month period ending Apr. 2025.
[86] Order to Show Cause, Nov. 4, 2016; Order 2016-11-2, DOT-OST-2015-0070-0074, at 15.
[87] Analysis of OAG Schedule Data from 2008 until 2026. The last schedule flights from the United States to / from Toluca were in 2016. There are no scheduled flights from the United States to Toluca.
[88] Analysis of OAG Schedule Data for 2025 and 2026; as of this writing the only scheduled passenger flights that operate to NLU from the United States are from Houston-Intercontinental Airport and McAllen, Texas.

Public Benefits Issues

At the time of their application, Delta and Aeromexico claimed that they operated at a disadvantage in the U.S.-Mexico market. They claimed that structural issues, such as Delta's lack of a hub in Texas and Aeromexico's lack of ability to serve that hub, resulted in U.S.-Mexico market shares of 11 percent for Delta and 14 percent for Aeromexico, while competitors American and United, each of which operate large Texas hubs, maintained market shares of 25 and 22 percent, respectively.[89] The Joint Applicants claimed in their application that ATI would enable them to overcome these structural challenges and "…create a third network competitor of roughly equal size to American and United…working together, the JCA Parties will be able to introduce new nonstop services that would not otherwise be achievable as two-stand-alone competitors, create a new hub at Los Angeles serving Mexico, increase service on hub-to-hub pipeline routes, and offer greater frequencies on the largest and most important transborder routes: New York-MEX and Los Angeles-MEX…these new services and the competition they bring to the market will produce significant consumer welfare benefits."[90] Not only did Delta and Aeromexico indicate that they would add new markets and create a "new" hub in Los Angeles, they also identified 21 markets in which they would increase seats by up to 60 percent.[91] Based on experience in multiple ATI cases, the Department views increased capacity as one of the key benefits of a grant of ATI, as the additional capacity can lower fares and create additional demand in several markets. Delta and Aeromexico further claimed that "[a]ntitrust immunity for the Alliance Agreements is necessary to achieve these benefits."[92]

In adjudicating the 2015 Delta/Aeromexico ATI application, the Department concluded that "…the JV will lead to an increase in transborder connectivity and will serve the interest of transborder passengers provided that infrastructure issues are addressed."[93] Specifically, the Department stated that the proposed JV "…as conditioned, is required by the public interest and the Joint Applicants have stated that it would not be implemented without a grant of ATI."[94]

Capacity Growth

While exogenous factors affected the ability of the carriers to add service in the U.S.-Mexico market, such as the COVID-19 pandemic (though Mexican transborder traffic was much less affected by the pandemic than other international markets) and the downgrade of Mexico to IASA Category 2, based on experience, the Department still would have expected to see the Delta/Aeromexico JV produce most of the benefits noted above. During the period since the grant of ATI, the Mexican market grew from the second largest to the largest origination and

[89] Joint Application for Approval of and Antitrust Immunity for Alliance Agreements, Mar. 31, 2015; DOT-OST-2015-0070-0001, at 12.
[90] Joint Application for Approval of and Antitrust Immunity for Alliance Agreements, Mar. 31, 2015; DOT-OST-2015-0070-0001, at 13.
[91] Joint Application for Approval of and Antitrust Immunity for Alliance Agreements, Mar. 31, 2015; DOT-OST-2015-0070-0001, at 17.
[92] Joint Application for Approval of and Antitrust Immunity for Alliance Agreements, Mar. 31, 2015; DOT-OST-2015-0070-0001, at 13.
[93] Order to Show Cause, Nov. 4, 2016; Order 2016-11-2, DOT-OST-2015-0070-0074, at 19.
[94] Order to Show Cause, Nov. 4, 2016; Order 2016-11-2, DOT-OST-2015-0070-0074, at 20.

destination market for the United States, growing from 30.8 million passengers in the year ended 2019 to 40.1 million passengers for the year ended 2024 or 30 percent growth.[95]

However, the ATI granted to Delta and Aeromexico has not enabled the expected level of growth. Especially in the transborder U.S.-Mexico market, airlines have many ways of growing capacity. They can, in theory, add flights at different time channels, which adds both additional flights and seats into the market. If, on the other hand, they do not have additional slots available but still want to add capacity, they can utilize larger aircraft on currently-existing flights, which adds seats to the market. They can also add new markets that they may not have served before. Given the short distances between the United States and Mexico, airlines can use smaller aircraft such as the 76-seat Embraer 175 regional jet to evaluate demand and operational feasibility for new markets; as demand increases, they can then either add additional flights, increase size of aircraft, or pursue both approaches to adding capacity. Analysis of scheduled capacity since the implementation of the JV shows that Delta and Aeromexico have delivered substandard growth in the U.S.-Mexico market when compared to peers. Antitrust immunity for integrated joint ventures between U.S. and foreign carriers enables them to achieve merger-like synergies (in scheduling, planning, marketing, distribution, corporate contracting, pricing, capacity/revenue management, and cost efficiencies) to pass on consumer benefits in the form of more capacity over an integrated network than would otherwise be possible. Unlike mergers, which tend to rationalize capacity, pro-competitive alliances increase capacity more than would otherwise occur to carry more passengers across the linked networks. Additional capacity that would otherwise not be possible is a key test for assessing whether an immunized JV is pro-competitive. The extent to which the alliance is adding capacity in the market, especially compared with its competitors, can be an indicator of the degree to which an alliance is competitive.

The following tables indicate the yearly increase of seats, or capacity, in the U.S.-Mexico and U.S.-MEX markets with 2015 as a baseline, which is the year before the carriers received their grant of ATI. Our preliminary analysis indicates that Delta/Aeromexico did not add new capacity at a rate higher than competitors, either in the broader U.S.-Mexico market or in the U.S.-MEX market in most years subsequent to receiving ATI. For example, in the first year after operating as a JV, Delta and Aeromexico had increased seats by four (4) percent while competitors had increased seats by eight (8) percent. After 2017, the first full year of JV implementation, Delta and Aeromexico had increased seats by eight (8) percent while other airlines increased by 19 percent. Similarly, in the U.S.-MEX market, Delta and Aeromexico seat capacity growth lagged other airline capacity as well. Delta and Aeromexico capacity in U.S.-MEX increased by three (3) percent in 2016 while, while capacity by other carriers in the market increased by 13 percent. Only by 2024, the year after the FAA returned Mexico to IASA Category 1 status, which lifted the freeze that restricted Mexican carriers' ability to grow in the U.S. market since 2021, did Delta and Aeromexico deliver more growth in Mexico City than other carriers, at 15 percent versus 13 percent. Aeromexico added new service from Mexico City to several U.S. cities such as Raleigh/Durham, Tampa, and Washington-Dulles in the second half of 2024, which contributes to this gain. Even then, in the overall U.S.-Mexico

[95] U.S. International Air Passenger and Freight Statistics Report, December 2019, Released December 2020 and December 2024, Released April 2025, *available at* https://www.transportation.gov/policy/aviation-policy/us-international-air-passenger-and-freight-statistics-report.

market, Delta and Aeromexico delivered substandard growth rates of 18 percent versus 70 percent for its peers.

Table 3

U.S. - Mexico Percentage Seat Change with 2015 as Base Year		
Year	**Delta/Aeromexico**	**All Other Carriers**
2016	4%	8%
2017	8%	19%
2018	12%	23%
2019	1%	21%
2020	-40%	-17%
2021	-2%	40%
2022	0%	54%
2023	4%	58%
2024	18%	70%
Source: OAG Schedule Data		

Table 4

U.S. - Mexico City Percentage Seat Change with 2015 as Base Year		
Year	**DL / AM**	**Others**
2016	3%	13%
2017	5%	38%
2018	6%	51%
2019	-7%	37%
2020	-50%	-32%
2021	-12%	11%
2022	-1%	12%
2023	3%	4%
2024	15%	13%
Source: OAG Schedule Data		

Further, Delta and Aeromexico specifically claimed in their 2015 application that ATI would enable them to create a hub to serve Mexican travelers at Los Angeles International Airport (LAX). Specifically, they stated that "Delta and Aeromexico anticipate forming a cohesive hub at Los Angeles serving the 10 largest West Coast-Mexico markets…frequency and gauge on existing routes will be expanded. Neither Delta nor Aeromexico acting alone could implement such expansion at Los Angeles."[96] Analysis of OAG schedule data for year end 2015 versus year end 2024 shows that Delta and Aeromexico have not realized this growth at LAX. Combined, the two carriers operated service to 11 destinations in Mexico from LAX in 2015, while for the year end 2014 they serve eight (8); by June 2025, that number had reduced to Delta

[96] Joint Application for Approval of and Antitrust Immunity for Alliance Agreements, Mar. 31, 2015; DOT-OST-2015-0001, at 18.

and Aeromexico only serving five (5) destinations in Mexico from LAX; furthermore, the same data shows that the carriers have reduced seat capacity by over 29 percent in the LAX-Mexico market.[97] Meanwhile, other carriers flying from Los Angeles to various Mexican destinations, led primarily by Mexican low-cost carriers Volaris and Viva Aerobus, have added 36 percent more seats and added a net three destinations.[98] The growth that the Department hoped to see, enabled by a grant of ATI, does not seem to have materialized.

Finally, in the important JFK-MEX and LAX-MEX markets, the two carriers do not appear to have delivered the increased frequency and improved schedule they claimed ATI would enable them to deliver in their 2015 application. There, Delta and Aeromexico claimed that the metal neutrality enabled by a grant of ATI would enable the carriers to jointly "increase service on the LAX-MEX route by two frequencies (from six to eight) and on the JFK-MEX route by one (from 5 to 6)… Metal neutrality enables the carriers with the incentives to offer the best and most attractive schedule…."[99] A review of the carriers' published schedules for 2024 and 2025 shows that this level of service has not materialized, with schedules peaking at six (6) frequencies on LAX-MEX and five (5) on JFK-MEX, with Delta not consistently operating its own metal on LAX-MEX, leaving flying to Aeromexico in certain months.[100]

On balance, current information suggests that Delta's and Aeromexico's capacity increases are less than those of their competitors, undermining a case that the ATI is enabling more public benefits than would otherwise be possible without a grant of antitrust immunity. While growth by Delta and Aeromexico in the U.S.-Mexico market is welcome and encouraging, their competitors continue to grow at faster rates. The carriers may note that their growth in the U.S.-MEX market in 2024 was larger than that of their competitors, but competitors still grew more than Delta and Aeromexico in the overall U.S.-Mexico market despite their inability to establish new services to/from MEX. Given the continued growth of traffic in the U.S.-Mexico market, we would expect that the two carriers would continue to be competitive players in the market without a grant of ATI.

Connectivity

During the 2016 proceeding, the Department was concerned about the limited connectivity that could be enabled by the joint venture due to the scope of the agreement limited to connections within Mexico and not beyond, the nature of transborder travel, which involves more point-to-point routes, shorter hauls versus transoceanic routes where JVs have enabled large benefits, and the use of single aisle aircraft having many different seat capacity configurations that widebody aircraft.[101] In their application, Delta and Aeromexico claimed that a grant of ATI was required to join their networks, stating, "the parties can create bank structures and connectivity to better

[97] OAG Schedule Data.
[98] OAG Schedule Data.
[99] Joint Application for Approval of and Antitrust Immunity for Alliance Agreements, Mar. 31, 2015; DOT-OST-2015-0001, at 20.
[100] OAG Schedule Data.
[101] Order Requesting Additional Information, July 31, 2015; Order 2015-7-18, DOT-OST-2015-0070-0022, 8-9; and Order to Show Cause, Nov. 4, 2016; Order 2016-11-2, DOT-OST-2015-0070-0074, at 18-19.

serve network passengers. Antitrust immunity is essential for each carrier to effectively plug into the respective hub networks on both sides of the border."[102]

The Department identified that Delta and Aeromexico potentially could offer some network benefits with ATI. The Department stated, "[t]he Department…expects the JV to improve connectivity between the United States and Mexico...a significant portion of Delta's flights to Mexico – those to Mexico City in particular – will connect on to Aeromexico services and vice versa. Aeromexico will expand the joint network to reach secondary and smaller Mexican markets, and will benefit its passengers, especially those originating from Delta's hubs where much of its transborder services are focused…. The carriers can rely on greater amounts of passenger feed to support their routes…the resulting enhanced network linkage, reduced travel times, and increased efficiency will be a net positive to consumers."[103] Pricing efficiencies, in the form of reduction of double marginalization, are a key benefit that DOT looks for as part of its public interest analysis. This efficiency occurs in connecting travel that flows through the hubs of the combined transborder network of the alliance. Aeromexico's largest hub, at MEX, could have unlocked the potential benefits of the alliance.

The Department's analysis of traffic data both prior to the full implementation of alliance in 2016 versus 2024 indicates that on U.S.-MEX routes there is marked reduction in the amount of connectivity at both the U.S. origin and Mexico City than there was before the implementation of the JV. On Aeromexico-operated services between the U.S. and Mexico City, local traffic, or those just going from the U.S. origin to Mexico City, grew from 44 percent to 76 percent, while overall transit traffic decreased on both sides from 56 percent in 2016 to 24 percent in 2024.[104] Similarly, on Delta-operated flights between the U.S. and Mexico City, local traffic grew from 28 percent to 51 percent of traffic, while connectivity dropped from 72 percent to 49 percent.[105] This preliminary quantitative analysis shows that following implementation of the JV, flights to Aeromexico's largest hub carry significantly more local passengers as opposed to beyond MEX passenger than before implementation of the JV.

There are factors other than ATI that are contributing to the cooperative strategies and underpinning of the Delta and Aeromexico partnership. Delta owns a 20 percent equity stake in Aeromexico, guaranteeing the company's interest in working with its partner in practical and effective ways in this expanding market. Additionally, the two carriers are members of the SkyTeam alliance in North America, benefitting from a coordinated effort across many carriers to flow traffic efficiently. This membership supports the carriers' continued investment in mutual marketing and frequent flyer cooperation. Finally, the carriers can continue mutual code sharing and limited schedule cooperation with or without ATI; Delta's 20 percent investment in Aeromexico, and its presence of two (2) board members on Aeromexico's board provides every incentive to continue this operational coordination. Delta reinvested in Aeromexico after its bankruptcy, while playing a significant role in its reorganization process from 2020 to 2022. Importantly, Delta has shown that a relationship with Aeromexico without ATI can work, just as it is currently doing in its increasingly close partnership with Canadian carrier WestJet. Indeed,

[102] Joint Application for Approval of and Antitrust Immunity for Alliance Agreements, Mar. 31, 2015; DOT-OST-2015-0001, at 2-3.
[103] Order to Show Cause, Nov. 4, 2016; Order 2016-11-2, DOT-OST-2015-0070, at 19.
[104] Analysis of Sabre Market Intelligence data, calendar year 2016 and 2024, leg data.
[105] Analysis of Sabre Market Intelligence data, calendar year 2016 and 2024, leg data.

the relationship between the two carriers has grown in the last year. In May 2025, Delta announced that it will be investing $330 million to acquire a 15 percent ownership stake in WestJet.[106] This investment is in addition to several flights the carriers have added to each other's hubs over the past year such as Edmonton-Minneapolis/St. Paul, Calgary-Detroit, and Calgary-Atlanta. The continued investment in WestJet absent a grant of ATI in the U.S.-Canada market represents a template for the type of relationship that Delta and Aeromexico can have in the U.S.-Mexico market should ATI be withdrawn.

VII. CONCLUSION

Based on the analyses above, the Department concludes tentatively that its 2016 findings and conclusions supporting approval of the joint venture under 49 U.S.C. § 41309 and a grant of antitrust immunity for Delta and Aeromexico under 49 U.S.C. § 41308 are no longer valid. Consistent with this conclusion, under section 41309, the Department disapproves tentatively the JV agreement because continuation would be adverse to the public interest.[107] Under section 41308, the Department determines tentatively that a grant of ATI is not required by the public interest to any extent.

If the Department finalizes these determinations, the JV agreement and the agreement(s) integral to the JV that required antitrust immunity would be disapproved. The Department only intends to disapprove those agreements for the purposes of withdrawing the ATI for the alliance. To be clear, the Department is encouraging the Joint Applicants to continue pro-competitive commercial cooperation and is not finding that the kind of arms-length cooperation practiced widely in the airline industry is anticompetitive in this market. Because this is a complicated matter involving multiple agreements and arrangements, the Department invites comment by the Joint Applicants as to which agreements would be terminated as a result of this disapproval and which would survive to be implemented by Delta and Aeromexico without antitrust immunity.

We determine tentatively that a final order will disapprove the JV and end the JV's antitrust immunity after a wind down period, allowing for Delta and Aeromexico to square their accounts and procedures and to prevent avoidable disruptions for consumers. To give the Joint Applicants sufficient time to make any necessary adjustments, a final order would not become effective until October 25, 2025, at the earliest, which is the end of the 2025 Northern Summer Traffic Season. A suitable wind down period provides enough time to mitigate costs incurred by the joint venture partners with potential risks to consumers and stakeholders, while also preventing avoidable inconveniences to consumers.

The Department is not proceeding with the dismissal of the *de novo* application for ATI submitted by Delta and Aeromexico as proposed in Order 2024-01-17. That application remains in a suspended state, similar to the application of Allegiant and Viva Aerobus, pending a possible return to a satisfactory and procompetitive regulatory framework in the U.S.-Mexico market. A satisfactory framework would include – among other considerations – Mexico's full compliance

[106] "Delta, Korean Air to strengthen partnerships with WestJet" May 9, 2025, at https://news.delta.com/delta-korean-air-strengthen-partnerships-westjet.

[107] As described in the Decision section, without an open regulatory framework in Mexico City and elsewhere, the Department determines tentatively that an approved agreement with antitrust immunity could cause substantially reduce competition and cause harm by allowing the JV carriers to exercise unique flexibilities that are not available to other carriers.

with the Agreement on a *de jure* and *de facto* basis. If and when the Department can adjudicate those applications on the basis of full Mexican compliance with the Agreement, we would ask for updated and current information and data. The Department continues to reserve all rights to suspend, dismiss, or deny those applications.

We will serve this Order on all interested parties on the service list in this docket.

ACCORDINGLY:

1. We direct all interested parties to show cause why we should not issue a Final Order confirming the tentative findings and conclusions discussed herein. Objections or comments to our tentative findings and conclusions shall be due not later than 14 calendar days from the service date of this Order, and answers to objections shall be due no later than seven (7) business days thereafter. In the event that no objections are filed, all further procedural steps shall be deemed waived, and we may enter an order making final our tentative findings and conclusions;

2. We determine tentatively that, effective October 25, 2025, the findings of Order 2016-12-13, as modified by Order 2020-12-18, are no longer valid. Therefore:

    a. Under 49 U.S.C. § 41309, we determine tentatively that we should end approval of the joint venture described in the application submitted by Delta Air Lines, Inc. and Aerovias de Mexico, S.A. DE C.V. on March 31, 2015 in this docket, including any modifications made since up to and including the present. For the avoidance of doubt, we also disapprove tentatively the joint venture described in this subparagraph and find tentatively that approval is not necessary to meet a serious transportation need or to achieve important public benefits (including international comity and foreign policy considerations);

    b. Because we are tentatively ending approval of the joint venture under 49 U.S.C. § 41309, we are also revoking tentatively the antitrust immunity previously granted to this joint venture, as it is no longer required by the public interest;

    Accordingly, as of midnight Eastern United States time on October 25, 2025, the joint venture between Delta Air Lines, Inc. and Aerovias de Mexico, S.A., DE C.V. will be disapproved and will cease to have a grant of antitrust immunity from the Department;

3. We reserve the right to take further or separate action as warranted by the public interest;

4. We continue to suspend the *de novo* application for antitrust immunity submitted by Delta Air Lines, Inc. and Aerovias de Mexico, S.A. DE C.V. on March 29, 2022;

5. We defer action on Delta Air Lines Inc.'s February 9, 2024, Motion to Suspend the Procedural Schedule in this docket; and

6. We grant all motions for leave to file submitted to date.

By:

SEAN P. DUFFY
Secretary of Transportation

(Seal)

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