

TESTIMONY OF

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BEFORE THE

**HOUSE COMMITTEE ON TRANSPORTATION AND
INFRASTRUCTURE**

CONCERNING

“OVERSIGHT OF U.S. AIRLINES CUSTOMER SERVICE”

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Good morning, Chairman Shuster, Ranking Member DeFazio, Chairman LoBiondo, and Ranking Member Larson, and Committee Members. On behalf of Consumers Union, the policy arm of Consumer Reports, thank you for the opportunity to speak today regarding the concerns of millions of American air travelers.

The abusive mistreatment of Dr. David Dao onboard United Express Flight 3411 last month shocked us all, and powerfully brought home, once again, that consumers are at the mercy of powerful airlines in an ever-more concentrated industry, facing increasingly less competition, and showing less interest in how their passengers are treated, than in how their passengers can be taken advantage of to increase profits. American consumers are very much aware that Dr. Dao's fate could all-too-easily have been their own.

This incident – and other recent media reports of disturbing treatment of airline passengers – has re-galvanized Congress to action, and we applaud this Committee for calling this hearing.

The major airlines may boast of investing new millions into their operations, but a closer examination reveals those investments often focus on amenities and perks for the few who can afford to pay more to fly in premium classes, while the overwhelming bulk of passengers in economy class are subjected to packed cabins, tight seats, new and higher add-on fees, and – all too often – an utter lack of respect.

We hope the Committee will take this opportunity not only to address the issues of overbooking and denied boarding, but to take a broader look at the one-sided Contracts of Carriage that give all the rights to the airlines, and precious few rights to their passengers.

I. REINING IN AIRLINE OVERBOOKING AND DENIED BOARDING

Dr. Dao's mistreatment highlights one aspect of passenger rights that is badly in need of reining in – the out-of-control practice of airlines overbooking flights and then not having seats for all passengers who have bought tickets.

The practice of overbooking is a throwback to the 1950s, an era when passengers could make multiple alternative bookings without penalty, and

often did, exposing airlines to being surprised by unexpected empty seats. Overbooking was a calculated way for airlines to cope with this unknown.

But since deregulation, four key factors have eliminated the need to overbook:

- “no-show” passengers today are penalized, either with high fees or the forfeiture of their tickets, thereby allowing the airline to get paid twice by reselling the seat;
- greater market concentration, reduced competition, and state-of-the-art reservations and yield management systems allow airlines to closely manage selling all available seats;
- airlines have rescinded once ubiquitous “interline” agreements that allowed bumped passengers to be accommodated on rival carriers at no charge to the passengers;
- record-high passenger loads – historically in the 50 to 60 percentile range – now average in the low 80s and regularly reach 100%.

We are not aware of other industries in America where the business is given this kind of free license to oversell the product, with so little accountability for failing to deliver. Last year, domestic carriers bumped 40,629 passengers against their will. Airline executives may tell you this is a small percentage of the total passengers carried. But this disregards the pain and frustration of those 40,629 people, who paid for their tickets, made their plans, and then were selected – without explanation, based on criteria known only to the airline – to miss family events, business meetings, and vacations.

United has now announced it will no longer forcibly remove a passenger who has already been permitted to board, for reasons other than safety and security. And it has announced it will increase the inducements it offers for ticketed passengers to voluntarily give up seats, to a maximum of \$10,000 per seat. Both JetBlue and more recently Southwest have stated they will not intentionally overbook.

But rather than leave overbooking to the discretion of the airlines and their shifting incentives, we would urge this Committee to set clear and

reasonable guidelines and limits for all airlines to follow, and that all consumers can count on.

Essentially, we believe that if the airlines want to continue overbooking, the risk of ticketed passengers without seats should be entirely on the shoulders of the airline making that calculation, rather than on the passengers. The needed change is that all denied boardings should truly be voluntary. The airline should pay whatever compensation is necessary to convince a passenger to willingly give up the seat.

For most domestic flights, at least, the amount the airline would end up paying for the seat would likely be far less than the \$10,000-per-ticket amount United has already said it is prepared to pay. But there should be no arbitrary ceiling that results in any passenger ever being forced to give up a seat because of overcapacity or to give preference to another passenger deemed “more valuable” to the airline. Again, the risk of overbooking should be on the airline choosing to overbook.

II. OTHER HARMS TO PASSENGERS

Airline industry consolidation – and most particularly, the “mega-mergers” since 2008 of Delta/Northwest, United/Continental, and American/US Airways – has left us with an industry too concentrated, with not enough competition, which has hurt consumers and entire communities. The harmful effects of this consolidation have come home to roost in numerous ways.

Among them: higher fares, especially on routes not served by low-cost carriers; the downgrading of major airport hubs across the country; fewer nonstop flights, and fewer flight frequencies on many routes; and an overall marked decline in customer service and customer satisfaction.

A lack of competition and consumer choice allows carriers to disregard the interests and concerns of their passengers in ways that would have been unthinkable when there were 12 or 10 or even 8 major airlines in the United States competing for customers.

One result of higher concentration has been record high passenger loads, as fewer and more powerful airlines find that they can reduce flights

and routes to suit their own bottom line, without fear of seeing another airline step in to fill the gap.

Record passenger load factors mean more frequent boarding delays, tighter seating, cramped overhead bin space. And they also mean less ability for airlines to effectively handle problems when they arise. If there's a mechanical issue with an airplane, for example, and it needs to be grounded for safety reasons, there's less likely to be space on other flights, or a spare plane and standby crew available to step in. So passengers are more likely to be stranded.

Compounding the harmful effects of industry concentration, passenger protections are further compromised by the fact that the Airline Deregulation Act preempted state consumer protection laws. The stated intent was to keep states from re-imposing the kinds of economic regulation that Congress was removing at the federal level. But the effect has been broader. For example, consumers do not have the private right of action to sue, and courts cited the federal preemption clause in striking down New York State's 2007 Airline Passenger Bill of Rights.

There has also been a widespread increase in outsourcing, particularly with aircraft maintenance, sometimes to foreign countries where safety oversight by the FAA is more difficult. And there also has been a dramatic increase in outsourced carrier operations, through codeshare marketing deals with regional carriers, now operating more than 50 percent of daily domestic departures, further obscuring accountability on both safety and customer service issues.

It also has become more difficult for consumers to determine the true cost of flying. Any appearance that airlines are holding down fares – adjusted for inflation, as they like to say – is a mirage, especially on routes not served by low cost carriers. The base fare is now accompanied by add-on fees, for more and more kinds of basic services that consumers used to be able to count on as being included in the base fare. Basic services such as checking baggage, selecting seats, changing flight reservations, even *carrying on* a small bag.

This means it is no longer possible to make accurate apples-to-apples comparisons to previous airfares. It also means it is now harder for

consumers to comparison shop for the best fare, particularly if the add-on fees are not transparently and conveniently made available on all ticket sites.

III. MEANINGFUL PASSENGER RIGHTS PROTECTIONS

We hope we have seen the last of the airline mergers. But in many ways, we have already lost the benefits of competition, and no new scheduled passenger airline has emerged since 2007. It is all the more important in this concentrated air travel industry that the airline incentives to increase profits be held in check by strong and clear protections that consumers can rely on.

We need a consistent, uniform, comprehensive, clearly written set of passenger rights for U.S. airlines.

A good starting point for developing a clear set of passenger rights and protections might be the European Union's written statement of passenger rights, which has been working well for air passengers in the EU for 12 years.

What we cannot do is continue to leave it to the airlines to decide what rights they will confer, from time to time, in their Contracts of Carriage – which, as we have documented over the years, are lengthy, filled with legal jargon, and where the priority is to protect the airline, not its passengers – and are subject to change whenever it suits the airline.

Here's an example taken from Delta's Contract of Carriage:

“Delta's published schedules are not guaranteed and form no part of this contract. Delta may substitute alternate carriers or aircraft, delay or cancel flights, change seat assignments, and alter or omit stopping places shown on the ticket at any time. Schedules are subject to change without notice.”

And here are some of the passenger protections that belong on your list:

- clear and consistent guidelines for compensation for flight delays of varying lengths (rebooking, refunds, meals and lodging when necessary, etc.);

- clear and consistent guidelines for compensation for flight cancellations (rebooking, refunds, meals and lodging, etc.);
- clear and consistent guidelines for compensation for mishandling baggage;
- clear and consistent guidelines for compensation for *voluntary* relinquishment of a ticketed seat due to overbooking or priority of other passengers; and a clear prohibition on *involuntary* relinquishment of a ticketed seat due to overbooking or priority of other passengers;
- clear guidelines for involuntary denied boarding and forced removal for safety and security reasons;
- complete airfare transparency, including for all taxes and surcharges, and for all possible ancillary fees, equally available in all booking channels, both online and offline, whether offered through the airlines themselves or offered through third parties;
- enforcement of minimum seat standards to ensure reasonable passenger comfort; address health concerns, including the risk of deep vein thrombosis; and promote safety, including adequate space for effective evacuation;

Much has happened in the airline industry in the nearly four decades since passage of the Airline Deregulation Act. But some of the key promises of deregulation – especially enhanced competition and improved customer experience – have not been realized.

Fixing the airline industry is a conversation comprised of many details and nuances. But these disturbing incidents of passenger mistreatment have made clear it's a conversation we need to undertake immediately.

I will be happy to answer any questions you may have. Thank you very much.