

Routes. Regulation effectively closed the industry to newcomers and guaranteed relatively stable market shares to firms already in the industry. (Id., 205)

The Airline Deregulation Act was signed into law in 1978. The Act phased out the CAB's authority and the Board itself ceased operations entirely by 1985.

2. The Role of Market Power Analysis in Airline Deregulation and Merger Policy

Market power analysis was an important factor in the rapid deregulation of airlines and an even more important factor in the merger policy that controlled consolidation within and exit from the industry. An important element of the case against regulation was that but for regulation, the industry would be much less concentrated at the national level than it was under CAB regulation. The relevant market for the traveler was usually defined to be the "city-pair," the two cities between which the traveler wishes to fly.²⁵ Advocates of deregulation did not argue that each airline would find itself battling hosts of actual competitors. They claimed only that the threat of entry into a particular market by airlines not currently serving that market would hold prices down. An airline that serves city A and city B, but does not fly between them, can enter the A-B market at very low cost, and there are several such airlines serving most major routes.

The Board based its assessment of the likely effects of a merger on two related findings: that concentration measures based on city-pair markets alone are not an accurate gauge of competitive performance and that potential entry would have an important disciplining effect on performance. (Bailey et al, 1985, 173-202). Market definitions were often contested. The DOJ in the Northwest/Republic merger, for example, argued that the relevant product market was "non-stop" flights between city-pairs. In other cases witnesses have argued over whether the appropriate definition should be airport pairs, city pairs, or the complex of services representative of a hub and spoke network. But in all cases the same general relevant market definition framework has been used.

Breyer (1987) suggested that antitrust rules designed to deal with industry in general may not properly reflect the unique features of the airline industry. For example, he cautioned against applying the "optimistic" merger view that is more lenient on higher concentration thresholds and places great store on "potential competitors," fearing that such an antitrust view would not be stringent enough. On the other hand, he would be more lenient than the merger guidelines with respect to the "failing company" or efficiency defenses for merger, to reflect that fact that the airline industry is emerging from forty years of regulation.

3. The Effects of Airline Deregulation

Virtually all observers agree that airline fares have been much lower and traffic immensely larger than they would have been absent deregulation.²⁶ However, as Alfred Kahn put it, there were some "unpleasant surprises" as well.²⁷ Although in the early years there was much new entry, most failed and national concentration in the industry failed to decline as most proponents of deregulation had predicted. Quality of service declined. Another unpleasant surprise to Kahn was "the persistence-indeed, intensification-of price discrimination * * *" despite which the airline industry has experienced severe losses and only a few carriers have been profitable.

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Issuance of Decisions and Orders for the Week of December 5 Through December 9, 1994

During the week of December 5 through December 9, 1994 the decisions and orders summarized below were issued with respect to appeals and for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Eric Engberg, 12/5/94, VFA-0010

CBS News Correspondent Eric Engberg (Engberg) filed an Appeal from a determination issued by the Albuquerque Operations Office (Albuquerque). The determination denied, in part, a Request for Information which Engberg submitted under the Freedom of Information Act (FOIA). Engberg requested various travel documents submitted by security personnel, known as couriers, who had travelled with Secretary of Energy Hazel R. O'Leary. Albuquerque released responsive documents, from which names, home addresses, Social Security numbers, home telephone numbers, credit card numbers, and expiration dates had been redacted pursuant to FOIA Exemption 6. Engberg appealed only the deletion of the names. In considering the Appeal, the DOE found that Albuquerque had failed to adequately justify the withholding of the couriers' names under Exemption 6. In the course of the Appeal, Albuquerque requested an opportunity to re-evaluate the applicability of Exemption 6 and other FOIA exemptions to the withheld names. Consequently, the DOE granted in part the Appeal and remanded the matter to Albuquerque for a new determination.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Costain Coal, Inc	RF304-15459	12/06/94
Empire Coal Company	RF304-15460
Atlantic Richfield Company/Vaccaro & Son Arco et al	RF304-14638	12/06/94
Crystal Water Co. et al	RF272-85480	12/06/94
Cubby Oil Co., Inc	RF272-97229	12/06/94
Dalton Asphalt Corp et al	RF272-94139	12/06/94
Dart Container Corporation	RF272-66874	12/05/94
Dart Container Corporation	RD272-66874
E & B Paving, Inc	RF272-67026	12/07/94
E & B Paving, Inc	RD272-67026
Epes Transport System, Inc	RF272-93329	12/08/94
Farmers Cooperative Elevator et al	RF272-94704	12/06/94
Good Hope Refineries/Howard Oil Company	RF339-17	12/08/94
Gulf Oil Corporation/City of Rocky River et al	RF300-21325	12/07/94
Gulf Oil Corporation/Fallwood Service Center	RF300-18460	12/06/94
Gulf Oil Corporation/Kirk Brown's Gulf Service et al	RF300-18153	12/08/94

²⁵ The analog for pipeline transportation would be "origin-destination" pairs, but both the Commission and DOJ have generally analyzed pipeline origin and destination markets separately.

Why the difference? Oil and gas are fungible, airline passengers and freight are not.

²⁶ Elizabeth Bailey, David Graham, and Daniel Kaplan, *Deregulating the Airlines* (MIT, 1985), and Steven Morrison and Clifford Winston, *The*

Economic Effects of Airline Deregulation (Brookings, 1986).

²⁷ Alfred Kahn, "Supresses of Airline Deregulation," *American Economic Review* (May, 1988).