

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, et al.

Plaintiffs,

v.

JETBLUE AIRWAYS CORPORATION and
SPIRIT AIRLINES, INC.

Defendants.

Civil Action No. 1:23-cv-10511-
WGY

**DEFENDANTS' OPPOSITION TO PLAINTIFFS'
MOTION FOR CLARIFICATION**

Defendants JetBlue Airways Corporation (“JetBlue”) and Spirit Airlines, Inc. (“Spirit”) respectfully oppose Plaintiffs’ Motion for Clarification, ECF No. 91, because there is nothing to clarify. At the scheduling conference, the Court was clear: the “one expert per discipline” rule will be discussed “in detail” and addressed by the Court at the final pretrial conference. March 23, 2023, Sched. Conf. Tr., ECF No. 67, 22:1–5; *id.* 23:10-11 (“in my practice, [this] is a matter that is thrashed out at the final pretrial conference.”). Despite the Court’s admonition, Plaintiffs identified two experts from the same discipline (economists) and seek an advisory opinion *now* on how the rule will apply to these experts.

Plaintiffs’ own Motion further demonstrates why their request is misguided. Although Plaintiffs claim the “issues” on which their respective economists will testify are “distinct,” the abstract issues they identify for each economist necessarily overlap, raising a serious risk of cumulative testimony, waste of time, and confusion.¹ Only after expert reports have been

¹ For example, contrary to Plaintiffs’ suggestion, JetBlue’s commitment to divest significant Spirit holdings (on which Dr. Chipty supposedly will testify, ECF No. 91 at 2) is critical to whether Plaintiffs can meet their prima facie case as to anticompetitive effects (on which Dr. Gowrisankaran supposedly will testify, *id.*). See *United States v. UnitedHealth Grp. Inc.*, No.

exchanged and expert depositions taken will be there a concrete record of exactly what these dual economists intend to say. Consistent with the Court's standard practice of addressing the permissible scope of expert testimony at the final pretrial conference based on a developed record, Defendants ask the Court to deny Plaintiffs' motion. *See In re Nexium (Esomeprazole) Antitrust Litig.*, 42 F. Supp. 3d 231, 301 (D. Mass. 2014) ("Since this Court will permit testimony from only one expert per discipline, it is unclear how [plaintiffs' expert theories] will all work out at the final pretrial conference.") (Young, J.).

DATED: May 23, 2023

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1:22-cv-0481, 2022 WL 4365867, at *9 (D.D.C. Sept. 21, 2022). More generally, Defendants disagree with Plaintiffs' characterization of the legal framework under Section 7 of the Clayton Act, ECF No. 91 at 2–3, and reserve their rights to address that argument at an appropriate time.

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

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