

## COVINGTON CONFERENCE OPENING STATEMENT AND PANEL INTRODUCTION

### Opening Statement

Good morning, Mr. Anderson and Commission staff. I am Peter Lichtenbaum from Covington and Burling appearing on behalf of Respondent Bombardier Inc.

Boeing's petition in this case is unprecedented in its overreach. There have been no subject imports. There are no lost sales or lost revenues. Boeing doesn't even make a product that competes with the aircraft Bombardier offered in the sales campaigns that Boeing complains about. Boeing is a giant in the market for large civil aircraft with an enviable order backlog, while Bombardier is a new entrant. There is nothing here that meets the Commission's standard for a real and imminent threat of material injury.

Our witnesses from Bombardier and from Delta will fill in the details, but let me highlight the main themes in our presentation this morning.

First, aircraft are not like the commodity products the Commission usually investigates. Large civil aircraft are complex, technologically sophisticated products that purchasers select based on lifetime operating costs and a wide range of non-price factors. Even if the Commission could compare purchase prices for similarly sized aircraft — which it cannot for the United and Delta sales campaigns about which Boeing complains — that comparison would tell only a partial and misleading story about what ultimately drives purchasing decisions.

Second, by focusing only on its smallest and least successful 737 models, Boeing has created an artificially narrow like product. The like product should be the 737 family of aircraft, which represent a continuum of sizes, ranges, operating costs, and other features. There is no clear dividing line at 150 seats or elsewhere.

Third, Boeing has not suffered any lost sales or lost revenues due to competition with Bombardier. There just isn't much competition between Bombardier's C Series and Boeing's products. Airlines purchase aircraft to meet specific needs in terms of passenger load, range, and other factors. The CS100, the only product involved in the U.S. sales about which Boeing complains, seats about 30 fewer passengers than the 737 MAX 7. Aircraft are not like shampoo, where getting 30% more for a comparable price is a bonus; larger aircraft are heavier and more expensive to operate. Thus, an airline does not want to operate a larger aircraft than it needs for a particular route.

Boeing and Airbus both adopted deliberate strategies years ago to make larger single-aisle aircraft that are more profitable. Boeing presses its customers to up-gauge their orders from the 737-700 and MAX 7 to the MAX 8 and 9, effectively cannibalizing demand for its smaller aircraft. Airbus does much the same. They have been able to follow this strategy because there was no alternative for customers. But in doing so, they left a hole in the market that created the business case for the C Series. Boeing had decades of head start and plenty of opportunity to produce aircraft in this seat range — as it did up until 2006 — but chose instead to exit the 100-seat market space.

As you will hear from our witnesses, a new Boeing aircraft was never considered at Delta, not because of price, but because Boeing does not have a new aircraft that meets Delta's needs for a smaller plane. United also expressed interest in the CS100 because of its smaller size. To keep Bombardier from gaining a foothold at United, Boeing priced so aggressively it was able to divert United to the larger MAX 7 — away from the 100-seat aircraft United said it needed and Boeing could not supply. Within months, Boeing persuaded United to convert to the even larger and more profitable MAX 8. So Boeing is now complaining about pricing impact on a plane that doesn't compete with the CS100 that Bombardier offered at United — and that Boeing didn't even end up selling to United.

Fourth, there were no subject imports during the POI and there won't be any in 2017. A small number of subject imports is projected to begin no sooner than April 2018. Further, since Bombardier is still in the production learning curve, and aircraft are long lead time items, it won't be able to ramp up imports any time soon. Meanwhile, Boeing has a 7 or 8 year backlog of orders for the 737 family and is effectively sold out for years. The threat Boeing imagines is both more speculative and more distant than anything the Commission has ever considered to be real and imminent.

Boeing's attempt to portray itself as a vulnerable market entrant is not credible in light of Boeing's commanding share in the U.S. single-aisle LCA market, its robust publicly reported financials, and its lengthy 737 production backlog. If this is a case of David vs. Goliath, Boeing has cast itself in the wrong role.

For all these reasons, the Commission can and should reach a negative preliminary determination. We look forward to completing our presentation later this morning.