With regard to Compass Lexecon’s work on the merger, Bruce Wark, who led AA’s legal and regulatory efforts during the merger process, indicated that:

“We chose Compass Lexecon to evaluate and quantify the consumer benefits arising from our merger. Their economists have a deep understanding of the airline industry, and they have the reputation and know-how to convince both regulators and judges. Their work was instrumental both in defending against the claims filed by the DOJ and in finding a resolution with the DOJ that allowed us to consummate our merger.”

Similarly, Howard Kass, who led US Airways’ legal and regulatory efforts during the merger process, indicated that:

“Compass Lexecon was a valued member of the U.S. merger team. Having worked successfully with Compass Lexecon on several other projects in front of regulators, we knew that Compass Lexecon would bring a level of professionalism, expertise and candor that is unmatched by others. Compass Lexecon’s devotion to its clients, knack for detail and commitment to finding solutions where none seemingly exist are why we chose Compass Lexecon.”

In February 2013, US Airways and American Airlines (AA) announced plans to merge, a union that would create the world’s largest airline. Because this was the fourth major U.S. airline merger in recent years and because the merger would take place in the context of bankruptcy protection sought by American Airlines in 2012, the parties anticipated intense scrutiny of the merger’s competitive effects by the U.S. Department of Justice (DOJ) and thus retained FTI Consulting subsidiary Compass Lexecon to perform the economic analyses required to address the DOJ’s likely concerns. The DOJ was expected to focus on whether the deal would decrease competition in the commercial airline industry enough to permit airlines to increase prices in the various markets served by the merging parties. The extent to which restrictions on operations and/or pricing — designed to mitigate any anticipated competitive effects — were required as conditions for merger approval.
FTI Consulting’s Role: Subsidiary Compass Lexecon

Teams of economists from Compass Lexecon had begun working on the engagement when US Airways first expressed interest in acquiring American Airlines after it had filed for bankruptcy protection in 2012. The teams analyzed massive amounts of data on the airlines’ traffic and pricing practices pertaining to various nonstop and connecting routes in order to assess the potential overall competitive effects of a combination, as well as effects on markets involving Reagan Washington National Airport in particular — where many anticipated that DOJ would require the airlines to surrender a significant number of takeoff and landing slots as a condition for merger approval.

Based on these analyses, the Compass Lexecon team prepared whitepapers and held consultations with DOJ staff that demonstrated that the transaction would have the effect of creating a larger network, which would be able to operate more efficiently and effectively, thereby providing new and better options to all airline consumers. By studying the outcomes of recent mergers, as well as pricing and traffic on routes with different numbers of competitors, the Compass Lexecon team also presented analyses demonstrating that these benefits would swamp any potential competitive harm as a result of the transaction.

Despite this evidence, the DOJ surprised the carriers by filing suit to block the merger in August 2013, claiming, among other things, that elimination of US Airways’ Advantage Fares Program, once the merger was consummated, would increase airfares for consumers.

Outcome: A Pre-Trial Settlement Allowed the Deal to Proceed

In response to the lawsuit, the Compass Lexecon team shifted its focus to converting its prior work into expert reports and presentations that demonstrated that the transaction would create significant consumer benefits with minimal competitive harm, including heightened focus on analyzing and rebutting the DOJ’s concern about Advantage pricing. In November 2013, soon after Compass Lexecon filed its evidence — and just weeks before the trial was scheduled to begin — a settlement was reached that required limited (and anticipated) concessions, including the divestiture of 104 slots at Reagan Washington National Airport and 34 slots at LaGuardia Airport.

The settlement, which was upheld by the courts in April 2014, kept the parties’ merger plan intact and will allow $1 billion in estimated annual synergies arising from the transaction to be realized.