

**BEFORE THE  
U.S. DEPARTMENT OF TRANSPORTATION**

**Joint Application of**

**DELTA AIR LINES, INC. and  
WESTJET AIRLINES, LTD.**

**Under 49 U.S.C. §§ 41308 and 41309 for  
Approval of and Antitrust Immunity for  
Alliance Agreements**

**Docket DOT-OST-2018-0154**

**MOTION FOR LEAVE TO FILE AND  
SECOND SURRESPONSE OF THE WESTJET MEC**

Dave Colquhoun, Chairman  
WestJet Master Executive Council  
AIR LINE PILOTS ASSOCIATION,  
INTERNATIONAL  
180 Attwell Drive, Suite 200  
Toronto, ON, M9W-6A9

Alexander Van der Bellen  
AIR LINE PILOTS ASSOCIATION,  
INTERNATIONAL  
1625 Massachusetts Avenue, N.W.  
Washington, DC 20036  
202-797-4075  
*sascha.vanderbellen@alpa.org*

**February 21, 2020**

**BEFORE THE  
U.S. DEPARTMENT OF TRANSPORTATION**

**Joint Application of**

**DELTA AIR LINES, INC. and  
WESTJET AIRLINES, LTD.**

**Under 49 U.S.C. §§ 41308 and 41309 for  
Approval of and Antitrust Immunity for  
Alliance Agreements**

**Docket DOT-OST-2018-0154**

**MOTION FOR LEAVE TO FILE AND  
SECOND SURRESPONSE OF THE WESTJET MEC**

The WestJet Master Executive Council (the MEC) respectfully requests leave to file this consolidated Surreponse to the February 13 and February 14 Responses of the Joint Applicants and Southwest, respectively.<sup>1</sup> Good cause exists for accepting this Surreponse in order to correct the record, and to provide a more accurate basis for decision on the critically important LaGuardia fleeting issue, which has only recently surfaced on the public record.

*First*, the MEC seeks to correct a factual mischaracterization of its proposed LaGuardia condition. The MEC does not have an “artificially narrow” “focus on the LGA-YYZ market” nor would the JV be constrained to the “continuation of WestJet mainline [LGA-YYZ] service, utilizing WestJet’s LaGuardia slots, regardless of future

---

<sup>1</sup> Common names are used throughout.

market conditions.”<sup>2</sup> Rather, WestJet would be free to deploy its LaGuardia slots on *any* transborder route, ensuring optimal output in this important international market. For example, WestJet could use its slots to upgauge current Delta Connection service from LGA to Montreal, Ottawa, or Halifax.<sup>3</sup> Under the JV, the Joint Applicants can and should be using antitrust immunity to increase output and replace regional jet flying with mainline aircraft, not the other way around. WestJet has operated B-737 aircraft on the LaGuardia-Toronto route continuously for the past eight years. WestJet’s slots should not be put at risk of divestiture or transfer to another operator by virtue of a grant of antitrust immunity to the JV. The modest condition proposed by the WestJet MEC - simply that WestJet continue to operate WestJet’s LGA slots - will ensure an optimal public interest result.<sup>4</sup>

*Second*, the MEC takes strong exception to Southwest’s claim that “the MEC is seeking to substitute its *private interest* for the *public interest* that the Department must

---

<sup>2</sup> SWA Response at 2, JA Response at 1.

<sup>3</sup> Should the LaGuardia Perimeter Rule be relaxed – a topic of perennial discussion – WestJet could use its LaGuardia slots to provide nonstop service to its hubs at Calgary and Vancouver. This beneficial result would be foreclosed if WestJet were forced to give up its LGA slots. Southwest’s claim that it produces more block hours per operation is a result of the LaGuardia Perimeter Rule, the fact that 90 percent of Canada’s population resides within 100 miles of the U.S. border, and the lack of major population centers between Toronto and Calgary.

<sup>4</sup> The WestJet MEC and the Delta MEC are fully aligned that all existing mainline LGA operations by both carriers should be maintained. *See*, Response of the Delta MEC, February 14, 2020.

uphold.”<sup>5</sup> There is no higher and better public interest use of WestJet’s LaGuardia slots than the continuation of WestJet mainline service on transborder routes. The fact that public interest and those of the MEC coincide is no reason to dismiss the MEC’s concerns.<sup>6</sup>

Canada is the single largest U.S.-international market with over 32,000,000 annual air passengers.<sup>7</sup> Yet, only 7.6 percent of LaGuardia slots are operated in transborder service. No party disputes the merits of the public interest arguments put forward by the MEC, including the fact that 184,000 passengers would be displaced if WestJet’s flights were replaced by Delta Connection regional jets.

Preserving geographic diversity, and service to the United States’ largest international market, is more important than duplicative service to well-served domestic markets such as Dallas, Chicago, and Ft. Lauderdale.<sup>8</sup> For these reasons it imperative

---

<sup>5</sup> SWA Response at 1 (emphasis original).

<sup>6</sup> It is, of course, in Southwest’s own private commercial interest to argue for slot divestitures. Southwest’s piety is especially ironic in light of Southwest’s role in the “Five Party Agreement” and the Wright Amendment Reform Act (“WARA”) which involved the destruction of gates at Dallas Love Field that prevents WestJet and other carriers from offering service they might otherwise provide. *See*,

<https://www.cato.org/blog/government-cant-team-competitors-deny-you-just-compensation>

<sup>7</sup> *See* Table 3, <https://www.transportation.gov/sites/dot.gov/files/2020-02/US%20International%20Air%20Passenger%20and%20Freight%20Statistics%20for%20June%202019.pdf>

<sup>8</sup> It should not be forgotten that WestJet significantly outbid Southwest for the LGA slots at issue, and that WestJet, together with its pilots, has worked hard to develop the New York-Toronto market.

for the Department to avoid any regulatory result that would require – or permit – the transfer of WestJet’s LaGuardia slots to any other operator.<sup>9</sup>

“[I]nternational comity and foreign policy considerations” figure prominently in the Department’s decision under 49 U.S.C. 41309. The MEC understands that the Canadian Competition Bureau (“CCB”) approved the transaction; however, it is not clear from the 1-page clearance letter what discovery was conducted, or if specific consideration was given to the LaGuardia fleeting issue. In the interest of comity and foreign policy, the MEC respectfully recommends that the Department collaborate with the CCB and Canadian Transportation Agency (“CTA”) as part of its ongoing consideration of this case. By doing so, the Department can ensure regulatory harmony, as it did in the American/British Airways ATI case in concert with the European Commission. *See*, Order 2010-7-8.

*Third*, the MEC would address the specious procedural objections of the Joint Applicants and Southwest. The MEC’s comments are most timely in the circumstances, and offer valuable perspective on the single most important and only controverted issue in this case. Because counsel for the MEC was strictly bound by the Department’s Rule 12 procedures, only recently was MEC leadership informed of the regional jet

---

<sup>9</sup> As described in its prior Surreponse, the WestJet MEC continues to believe that no divestitures are necessary given the lack of any nonstop overlap between Delta and WestJet on the LaGuardia-Toronto route. If, however, any divestitures are necessary, they should not be funded out of WestJet’s very limited portfolio of 16 LGA slots.

substitution plan for WestJet's LaGuardia flights, finally enabling a fulsome discussion with the Joint Applicants and on the public record. The Joint Applicants were duly cautioned by the Department against just such conduct:

We remind the Joint Applicants of the importance of discussing the merits of the case on the public record to the maximum extent possible. Unnecessarily broad redactions are contrary to the public interest and result in delay in reviewing the application. Order 2019-4-4 at 2.

The Joint Applicants made the strategic decision not to discuss the most import public interest issue in the case on the public record, and should not now heard to be complain of any procedural delay. Consideration of the MEC's discrete and focused comments, and engaging in a collaborative dialogue with the Canadian regulators can be done expeditiously and should not result in delay beyond the Department's standard six-month statutory timeline for a decision.

Respectfully Submitted,

/s/ Dave Colquhoun

Dave Colquhoun, Chairman  
WestJet Master Executive Council  
Air Line Pilots Association, Int'l

/s/ Alexander Van der Bellen

Alexander Van der Bellen  
Senior Counsel  
AIR LINE PILOTS ASSOCIATION,  
INTERNATIONAL

## CERTIFICATE OF SERVICE

I hereby certify that on February 21, 2020, the foregoing document was served on the following persons via the email addresses listed below in accordance with the Department's Rules of Practice:

Embassy of Canada:	frank.stendardo@international.gc.ca
Delta MEC:	ryan.schnitzler@alpa.org
Allegiant:	agoerlich@ggh-airlaw.com
Alaska Airlines:	dheffernan@cozen.com
	jeremy.ross@alaskaair.com
American Airlines:	robert.wirick@aa.com
	bruce.wark@aa.com
	james.kaleigh@aa.com
Amerijet Int'l:	jcanny@amerijet.com
Atlas Air:	rpommer@atlasair.com
	naveen.rao@atlasair.com
Delta Air Lines:	alex.krulic@delta.com
	scott.mcclain@delta.com
	robert.letteney@delta.com
	chris.walker@delta.com
	steven.seiden@delta.com
Federal Express:	nssparks@fedex.com
Frontier Airlines:	matwood@cozen.com
	howard.diamond@flyfrontier.com
	perkmann@cooley.com
JetBlue:	robert.land@jetblue.com
	reese.davidson@jetblue.com
	adam.schless@jetblue.com
Hawaiian Airlines:	esahr@eckertseamans.com
	dderco@eckertseamans.com
Kalitta Air:	matwood@cozen.com
National Airlines:	mlbenge@zsrlaw.com
	jrichardson@johnrichardson.com
Polar Air:	kevin.montgomery@polaraircargo.com
Southwest Airlines:	bob.kneisley@wnco.com
	leslie.abbott@wnco.com
Spirit Airlines:	jyoung@yklaw.com
	dkirstein@yklaw.com
Sun Country Airlines:	brandon.carmack@suncountry.com
	victoria.palpent@suncountry.com
United Airlines:	dan.weiss@united.com
	steve.morrissey@united.com

United Parcel Service:  
WestJet:

Department of Transportation:

Federal Aviation Administration:  
Department of Justice:  
Department of Commerce:  
Department of State:  
Airline Info:

abried@jenner.com  
anita.mosner@hklaw.com  
jennifer.nowak@hklaw.com  
andrew.kay@westjet.com  
robert.cohn@hoganlovells.com  
patrick.rizzi@hoganlovells.com  
kristen.davis@dot.gov  
jeffrey.gaynes@dot.gov  
david.short@dot.gov  
brian.hedberg@dot.gov  
todd.homan@dot.gov  
peter.irvine@dot.gov  
matt.zisman@dot.gov  
brett.kruger@dot.gov  
laura.remo@dot.gov  
benjamin.taylor@dot.gov  
kevin.bryan@dot.gov  
jason.horner@dot.gov  
john.s.duncan@faa.gov  
Kathleen.oneill@usdoj.gov  
Eugene.Alford@trade.gov  
forsbergap@state.gov  
info@airlineinfo.com

/s/ Alexander Van der Bellen  
AIR LINE PILOTS ASSOCIATION,  
INTERNATIONAL