BEFORE THE
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Application of
EW Discover GmbH
docket DOT-OST-2021-0081
for Blanket Statements of Authorization
under 14 C.F.R. Part 12
(Codesharing with Lufthansa, Austrian Airlines,
Brussels Airlines, and
and Swiss International Air Lines)

COMMENTS OF CONDOR FLUGDIENST GmbH

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Dated:  July 26, 2021
Application of
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COMMENTS OF CONDOR FLUGDIENST GmbH

Condor Flugdienst GmbH (“Condor”) submits these comments in response to the anticompetitive conduct of the Lufthansa Group that will be perpetuated with implementation of the proposed codeshare. Condor is a licensed air carrier of Germany and holds a foreign air carrier permit issued by the Department.\(^1\) Condor is an independent airline and not a member of any global alliance. Over the past few years, Condor has developed an innovative and disruptive business flying U.S. passengers nonstop from medium-hub and underserved large-hub U.S. airports to Frankfurt, Germany. Condor’s nonstop flights benefit U.S. passengers by offering a convenient alternative to the transatlantic alliances that primarily fly out of the major U.S. hubs. In many cases, Condor is the only airline flying these nonstop routes, or is one of two (the other being Lufthansa):

\(^1\) Application of Condor Flugdienst GmbH for an Exemption under 49 U.S.C. § 40109 and an Amended Foreign Air Carrier Permit under 49 U.S.C. § 41301, Order 2008-5-20 (May 8, 2008) (authorizing Condor to engage in, among other things, foreign scheduled air transportation of persons, property and mail between any point or points in an European Union member state and any point in the United States.).
• Condor is the only airline offering nonstop service to Frankfurt from the following U.S. airports: Baltimore-Washington (BWI), Fairbanks (FAI), Minneapolis (MSP), New Orleans (MSY), Pittsburgh (PIT), and Portland (PDX). At least since Winter Season 2014/2015 no other airline operated on these routes.

• Condor is one of two airlines (the other being Lufthansa) offering nonstop service to Frankfurt from Anchorage (ANC), Las Vegas (LAS), Phoenix (PHX), and Seattle (SEA).

• Condor also serves U.S. passengers over its Canadian gateways via connections with interline partners Alaska Airlines and WestJet.

Absent Condor’s flights, U.S. passengers flying to Frankfurt from these airports would typically need to add another leg to their itinerary by first flying or otherwise traveling to a major hub airport out of which the major alliances originate most transatlantic flights. Condor thus offers a convenient and highly procompetitive alternative for U.S. passengers. In fact, even though Condor is a German airline, Condor’s U.S. business has evolved such that on its transatlantic routes, a substantial portion of Condor’s passenger traffic is U.S.-originating.

Lufthansa’s Anticompetitive Scheme

The proposed codeshare services between EW Discover and the Lufthansa Group will help facilitate an anticompetitive scheme to divert traffic from Condor and drive it out of business. As has been publicly reported, Lufthansa recently took steps to foreclose Condor on its transatlantic and other routes.² In particular, in November 2020 Lufthansa terminated a long-standing and mutually profitable special prorate agreement (“SPA”) providing for the exchange of traffic at Frankfurt airport, effective as of June 1, 2021. Condor is reliant on the SPA to compete, because Lufthansa dominates short-haul routes at Frankfurt airport where a substantial portion of Condor’s transatlantic passengers connect to a Lufthansa short-haul flight. Lufthansa has been transparent

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in proclaiming its anticompetitive intent in terminating its longstanding and profitable course of dealing with Condor:

- In March 2020, Lufthansa informed Condor of its intent to discontinue the SPA. This correspondence ties the termination of the SPA to restraining Condor’s competition against Lufthansa in the business segment, explicitly referencing Condor’s “envisaged expansion into business segments other than leisure travel” and the “evolving aviation landscape.”

- Lufthansa’s actual notice of termination in November 2020 goes further, attempting to justify the termination based on changes in “Condor’s market position,” “customers’ travel interests,” and “an even greater overlap” in the range of products offered by the parties.

- Lufthansa’s CEO explicitly stated on earnings call in March 2019 “Assuming we’ll -- one way or another get hold of Condor, be it through an acquisition, be it through a bankruptcy, [then] that could be the number of airplanes we could end up with in Frankfurt Int’l and Munich.”

The proposal to for the Lufthansa Group to codeshare on EW Discover’s initial flight between Frankfurt and Las Vegas and subsequently planned Frankfurt to Anchorage flight, which are also served by Condor, is a further manifestation of Lufthansa’s anticompetitive intent.

**Lufthansa Abuses Market Power**

Absent the SPA and the traffic flows it enables, Condor would be forced to stop flying its transatlantic routes—benefiting Lufthansa and the Star Alliance, but resulting in substantial competitive harm to passengers. For that reason in January 2021, Germany’s cartel office (the Bundeskartellamt) opened an antitrust probe into Lufthansa’s termination, and in March the head of the Bundeskartellamt publicly stated that he “believe[s] that [Lufthansa’s] termination

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3 See Notice of Discontinuance of SPA and Miles&More Participation Agreement from Lufthansa Group to Condor Executive Board (Mar. 2, 2020) (on file with Condor). At the time of this correspondence, Polish Aviation Group had entered into an agreement to acquire Condor. In April 2020, amid the growing COVID pandemic, Polish Aviation Group walked away from the deal.

4 See Notice of Termination of SPA from Lufthansa Group to Condor Executive Board (Nov. 30, 2020) (on file with Condor).

constitutes an abuse of market power.” The Bundeskartellamt’s investigation is ongoing. To avoid interim measures, Lufthansa and Condor have reached an interim, temporary settlement agreement pursuant to which Lufthansa will continue to provide Condor with feeder traffic in the short term. Condor expects that the Bundeskartellamt will conclude its investigation before the end of the interim period. Despite the interim settlement, Lufthansa has limited the amount of inventory available for Condor to book on Lufthansa feeder flights, imperiling competition.

The termination of the SPA is just one of the anticompetitive strategies that Lufthansa has employed in attempt to drive Condor from the market. Lufthansa also has flooded competitive routes with uneconomic additional capacity and squeezed Condor’s margins – all with the intention to divert Condor traffic to the Lufthansa Group (including, now, EW Discover) flights and starve Condor’s transatlantic flights of customers. For example, Condor operated between Frankfurt and Austin, Texas between 2016 and 2018 with up to 94 frequencies per year. Lufthansa entered the FRA-AUS in 2019 with 343 frequencies, driving Condor from the market. Condor believes this pattern of unfair methods of competition will be repeated.6

**Lufthansa’s Conduct Harms Consumers**

In addition to harming Condor, Lufthansa’s conduct will directly harm U.S. consumers that have come to rely on the convenience of Condor’s nonstop routes. If Condor exits these routes, U.S. passengers would instead be forced to fly a transatlantic alliance flight through a major hub. On the multiple other routes where Condor and Lufthansa compete head-to-head, Lufthansa will

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6 Lufthansa’s past conduct has set a credible precedent under the very brand name Eurowings. Eurowings deployed excess long-haul capacity in direct competition with Air Berlin between Air Berlin’s hub in Düsseldorf (DUS) and LAX, SFO, ORD, NYC and LAS. Following Air Berlin’s bankruptcy and cessation of operations in 2017, Eurowings left those O&Ds entirely (with the exception of DUS-NYC prior to the pandemic). Now that same capacity has been moved from DUS to FRA in an apparent attempt to drive Condor out of the market.
have eliminated an important competitive discipline, enabling it to increase price, or exit the route entirely to force passengers to travel through a hub.  

Moreover, Lufthansa will no longer perceive Condor to be an actual or potential competitor on other routes, and thus will have eliminated a competitive discipline on other routes as well.

If Lufthansa’s strategy against Condor succeeds, the oligopolistic market position of the major global alliances that dominate transatlantic traffic will be fortified. Not only will Lufthansa have eliminated a direct competitor, but it will have reduced the incentive of any other independent competitor to introduce a new, innovative service on a transatlantic route in competition with Lufthansa – or any other alliance member. Such a result would be inconsistent with the Department’s foundational directive to “avoid[] unreasonable industry concentration, excessive market domination, monopoly powers, and other conditions that would tend to allow at least one air carrier or foreign air carrier unreasonably to increase prices, reduce services, or exclude competition in air transportation.”

The Department Should Protect Competition

Earlier this month, the Biden Administration issued an Executive Order directing the Secretary to “better protect consumers and improve competition” and “to provide consumers with more flight options at better prices and with improved service, and to extend opportunities for competition and market entry as the industry evolves.”  

Condor respectfully submits that this

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7 Moreover, to attempt to eliminate competition from Condor, Lufthansa also has been flooding competitive routes with capacity. The long-term effect of this strategy is to eliminate competition, but in the short term customers benefit from the increased capacity. If Condor is eliminated, Lufthansa would no longer have the incentive to make this increased capacity available.


directive includes the prohibition of the unfair methods of competition like the ones employed by Lufthansa against Condor and should (1) commence an investigation of Lufthansa’s anticompetitive practices targeting Condor; and (2) condition the grant of the instant application on Lufthansa’s continued commitment to continue to exchange traffic with Condor consistent with past practice.  

Dated: July 26, 2021

Respectfully submitted,

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10 In prior decisions, the Department has conditioned the grant of antitrust immunity on the applicants’ commitment to provide access to feeder flights. See Joint Application of American & Qantas, Order 2019-5-23 (Jun. 3, 2019)(“To further address this issue, we tentatively find that it is necessary to provide greater definition to the rights of new entrants that would seek to cooperate with American and/or Qantas to support their services. In light of the non-exclusive posture of the JBA, we are proposing that the Joint Applicants must be willing to grant a new entrant using its own aircraft in the nonstop U.S.-Australia or U.S.-New Zealand markets access to feeder flights on terms that are comparable to those offered to the Joint Applicants’ existing non-immunized partners, including non-immunized codeshare partners. The financial terms of these arrangements with third parties must be no less favorable than IATA prorate agreement(s) in effect at the time.”); see also Application of Delta & WestJet, Order 2020-10-13 (Oct. 23, 2020), at 31 (“We tentatively conclude that WestJet, if requested by a U.S. carrier not part of a transborder immunized alliance, must provide interline access. Interline access, including available inventory, shall be under similar commercial terms and availability that WestJet currently offers to other interline and codeshare partners outside of the proposed JV. The financial terms that govern the interline agreement must be no less favorable than IATA prorate agreement(s) in effect for non-immunized partners at the time.”).
CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of July, 2021, the foregoing Comments of Condor Flugdienst GmbH was submitted via email on the following:

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