
The Association does not oppose the codeshares at this time but does believe the public interest will be served with thorough consideration given to the complexities of the parties’ relationships. The potential conflicting dynamics between key personnel at the applicant airlines and considering those same personnel’s roles at other airlines demonstrate an uncommon degree of interrelation compared to other codeshare applications.

The Association applauds the applicants’ more forthcoming explanation of the ownership structure of JetSMART SpA filed on April 20, 2023 (DOT-OST-2009-0337-0056). They do mention interests in other airlines Frontier, Volaris, and Wizz and further disclose a degree of the complicated ownership structure of JetSMART Peru in the application related to that airline. However, the ownership structure and the interrelationships of key personnel are yet still more complicated.

The web of personnel and corporate structures is complex enough that Frontier Airlines, another Indigo airline, has difficulty accurately disclosing (or describing) the roles of its board members in other entities. (Frontier Group Holdings Schedule 14A proxy statement, April 12, 2023.)

- For example, in William Franke’s biography, JetSMART Holdings is described as, “JetSMART Holdings Limited, the parent company of an airline based in South America.” However, there are in fact multiple airlines in South America bearing the JetSMART name including the recent applicants.
- Alejandro Wolff’s biography describes him as being involved with “JetSMART Holdings, a low-cost air carrier based in South America.” As is now clear, JetSMART Holdings is not an airline but a holding company.

Frontier and Wizz are particularly significant due to overlapping personnel with American and/or JetSMART or JetSMART Holdings. William and Brian Franke, Alejandro Wolff, and Andrew Broderick are all on the Board of Frontier Airlines. At JetSMART holdings, “The ultimate controlling party is William Franke on account of his control over the funds which own JetSMART Holdings Limited.” (JETSMART HOLDINGS LIMITED CONSOLIDATED FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 DECEMBER 2021). William Franke is also Chairman of the Board at Frontier. Steven Johnson of American Airlines (recently promoted to Vice Chair and Chief Strategy Officer) is on the Board of Wizz. Wizz Air says of him, “Stephen L. Johnson is not considered to be an independent Non-Executive Director given his past position with Indigo.” (Wizz Air Holdings Plc Annual report and accounts 2022). Wizz considers the term independent to be as outlined in its Corporate Governance Code, “free from any business or other relationship which could materially interfere with the exercise of their independent judgment.” (Wizz Air Holdings Plc Annual report and accounts 2022).
In his role at American Airlines, Mr. Johnson was almost certainly aware of, if not involved with, the decision to direct funds to Indigo Partners (or one or more of its subsidiary entities) for a share in JetSmart. This decision to disperse American funds to Indigo (or subsidiary entities) comes at a time when he apparently also receives compensation from Wizz (as reported in Wizz Annual Report) due to his position on the board at that airline. A position even Wizz considers somewhat linked to his employment with Indigo. As such he is potentially in a position to influence the direction of funds to Indigo (or subsidiary entities), the parent of Wizz from which he apparently receives compensation.

A recent ruling (May 19, 2023) in U.S. District Court, District of Massachusetts (Case 1:21-cv-11558-LTS) raises the question of how vigorously American, Frontier, and Volaris will compete if American enters into a Joint Venture or other ownership interest with JetSmart. “The Court also finds that this same spirit of partnership will diminish competition between the defendants outside the NEA region. See supra note 30 (regarding evidence American competed less vigorously with at least one other joint-venture partner);” Further, “It is neither logical nor possible to view the NEA’s impact on the defendants’ competitive relationship as confined to the northeast. Both carriers have a strong and vested interest in the NEA’s success. They intended to form a long-term partnership, and they each have invested substantial time and resources in developing and implementing the partnership. All of this materially changes the competitive relationship between American and JetBlue, increasing their mutual interest in the success and survival of the other within the NEA and beyond.” Though the dynamics are different in this case, the spirit of partnership exhibited suggests the spirit of long-term partnership will by function extend beyond JetSmart to Indigo, its parent and the “ultimate controlling party,” William Franke.

The initial application lists applicant JetSMART Airlines SpA-Chile as being owned by JetSMART Holdings Limited of the U.K. at 100%. As acknowledged above, more clarity has been added by the parties on April 20, 2023. Applicants have so far seemingly opted not to disclose that both have already applied for and received approval to modify the ownership structure from Chilean authorities to provide American with an ownership stake, nor that the stake could result in American’s “negative control” of JetSMART. Likewise, the applicants make no mention of the following excerpt from JetSMART consolidated financial statements for the year ending 31 December, 2021, which further makes clear that the ownership structure described in the applications is not the ownership structure the parties intend to use during the period of codeshare.

“On July 29, 2022, the Group signed an agreement with American Airlines to create a broad commercial alliance in South America. The agreement is subject to regulatory anti-trust approval which is currently ongoing and expected to conclude at the end of December 2022. The agreement involves American Airlines acquiring a minority ownership stake in the Group’s parent company JetSMART Holdings Limited, proposed codesharing between the two airlines for customers traveling between the United States and South America, and a frequent flyer
program tie-in enabling customers to earn and redeem AAdvantage miles on JetSMART flights. For its minority stake, American Airlines will make a cash contribution upon receipt of regulatory approval, providing the Group with significant cash reserves to accelerate growth of its ultra-low-cost network in South America.”

The above quote speaks of two airlines as if JetSMART is a singular airline. The frequent flyer program mentioned is also interesting. In the application for codeshare involving JetSMART Peru S.A.C., Annex A of Exhibit A mentions JetSMART SpA (of Chile), but makes no mention of JetSMART Peru S.A.C. “Frequent Flyer Participating Carrier Agreement” means the agreement, from time to time, between American and JetSmart Airlines SpA relating to the participation of JetSmart in American's AAdvantage frequent flyer program.” It remains unclear if this is what was intended or if parties intend to extend the frequent flyer program to passengers on JetSMART Peru.

The Association believes JetSMART should be afforded the opportunity to correctly account for 2 of the aircraft in its Schedule of Aircraft submitted as part of Exhibit D of both applications. Aircraft with MSN # 10788 is listed as an A321. It is an A320. Aircraft with MSN #11209 is listed as an A320. It is an A321.

The Association does express concern about the ability of JetSmart SpA to function in a manner consistent with DOT standards. A recent court decision (Attachment 1) in the Labor Court of Santiago, Chile includes several findings which are concerning. Primary among them are falsification of rest/flight time records, and the following which is translated from the original Spanish; “Repeated and systematic conduct of workplace harassment.” The original language, “Conductas reiteradas y sistemáticas de acoso laboral.”

The Association respectfully submits that while we do not have a present objection to the codeshares, we do note that the circumstances related to the applicants and key personnel are largely unique. Therefore, public interest may be served by providing a more complete public record of the ownership structure the applicants intend to use during the term of the applied for codeshares. It may also be served by altering the wording in all related Department Notices of Action Taken from “third-county” to the more standard phrasing, “third-country.”