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

Application of	)	
	)	
WIZZ AIR HUNGARY, LTD.	)	**Docket DOT-OST-2022-0008**
	)	
for a foreign air carrier permit pursuant to 49 U.S.C. § 41301 (U.S.-EU Open Skies)	)	

ANSWER OF THE
TRANSPORTATION TRADES DEPARTMENT, AFL-CIO, THE AFL-CIO, THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS AND THE TRANSPORT WORKERS UNION OF AMERICA
TO CONSOLIDATED REPLY AND CONTINGENT MOTION TO AMEND APPLICATION OF WIZZ AIR HUNGARY, LTD.

Introduction

The Transportation Trades Department, AFL-CIO ("TTD"), AFL-CIO, the International Association of Machinists and Aerospace Workers (IAM) and the Transport Workers Union of America (TWU), hereby submit this Answer to the Consolidated Reply of Wizz Air Hungary, Ltd. (Wizz), including its motion for an exemption, and supports the Response of the Air Line Pilots Association, International (ALPA) and Association of Flight Attendants, CWA.[1] As we will show, the Consolidated Reply fails to address the concerns raised by ALPA, the European Cockpit Association (ECA), the Allied Pilots Association (APA), the Independent Pilots Association (IPA), and the Southwest Airlines Pilots Association (SWAPA). Collectively, we

[1] To the extent necessary, we hereby move for leave to file this Answer as an otherwise unauthorized pleading under 14 C.F.R. §302.6. Good cause exists to grant this motion because this pleading more fully explores some aspects of Wizz's business model which the Department should consider.

support the request of these pilot unions and associations for consultations among the Department and its European counterparts.

The gravity of the task before the Department presented by Wizz's application, including whether it is consistent with the EU-US Open Skies Agreement ("ATA") and is fit under normally applied U.S. laws and regulations, remain unchanged by the Consolidated Reply. Wizz's anti-union animus, deficient corporate culture with potential impacts on safety, defiance of numerous court orders with respect to employees, and the novel safety oversight arrangement of its air operating certificate provide "specific reason for concern." Moreover, in our view, the Department should consider the employment arbitrage enabled by Wizz's use of leased crew as closely connected to its anti-union animus.

The ATA's reciprocal recognition provisions allow a party receiving an application from an airline of another party to challenge the submitting party's fitness and/or citizenship determination of the airline if it presents "specific reasons for concern." Article 6 *bis*. Given the ATA's emphasis on "social effects" and safety standards, these specific reasons for concern are unquestionably legitimate. Therefore, under the ATA, consistent with the statutory public interest, and in support of the submissions of ALPA, AFA, APA, IPA, SWAPA, and ECA, we request the Department seek consultations with the appropriate European aviation authorities under Article 6 *bis* and Article 8 of the ATA. In the interim, the Department should defer action on the application.

Discussion of the Reply

Wizz begins by asserting that the ATA's reciprocal recognition procedures effectively require the grant of a foreign air carrier permit "without delay," but that is wrong. The TTD was present at the creation of the ATA and was concerned about reciprocal recognition. During the

Memorandum of Consultations (MOC) that accompanied the 2010 amendment to the ATA, the U.S. – at the request of TTD – proposed, and the EU accepted, text to clarify that the reciprocal recognition procedures "are not intended to modify the conditions prescribed under the laws and regulations normally applied by the Parties to the operation of the international air transportation referred to in Article 4 of the Agreement." (MOC ¶5). Article 4 of the agreement, in turn, provides, that one Party shall grant appropriate authorizations and permissions to airlines of the other Party provided, among other things, that "the airline is qualified to meet the conditions prescribed under the laws and regulations normally applied to the operation of international air transportation by the Party considering the application. Ex. 14. The "conditions prescribed under the laws and regulations normally applied" include an assessment of a carrier's fitness by considering its "positive compliance disposition" and "safety problems." DOT Foreign Air Carrier Information Packet, 5. Any suggestion that Wizz, or any other party, must automatically receive a permit or that the U.S. forfeit the exercise of its normally applied laws and regulations is simply incorrect.

No-Union Culture and Employment Concerns

Wizz is equally dismissive of well-substantiated issues regarding its employment practices and chilling hostility toward the rights of employees to form unions and collectively bargain. Wizz curtly states that the point of issue raised by the pilot labor parties is that its employees "are not unionized." Whether Wizz has a "non-unionized labor force" is not the concern – many airlines, as Wizz blithely points out – do not feature unions on their property. The issue, rather, is that employees at Wizz effectively *cannot* join unions and basic norms regarding the freedom of association do not apply, as manifested by a culture of intimidation and reprisal for union activists, employment arrangements structured to preclude employee representational rights, and

outright defiance of court orders enjoining their anti-union behavior. Wizz's "no-union" and anti-employee culture is inconsistent with European values: as ALPA pointed out, at least one national government, Norway, has protested its behavior, another, Italy, has tried to intervene, and an investment fund has divested from the company *because* of the disregard for "labour rights issues." (ALPA Answer at 7-8.)

Hostility to the rights of workers to organize and join unions is suffuse through all elements of the company. Wizz's CEO has said that "we have been keeping out unions everywhere. Unions are killing the business…. If the unions try to catch us and kill us, we simply close the base and move on."[2] Just prior to filing this application, the CEO strongly suggested to employees that any employee who joins a trade union will be fired.[3]

These chilling words are turned into deeds not just by retaliatory terminations but by a labor model that plays direct employees under individual contracts against "leased" crew through an employment agency, who are paid substantially less, in order to preclude them from unionizing. The "leased" flight attendants and contract pilots are employed via individual employment contracts with Confair, a Dutch crew leasing firm. (ECA Submission, Ex. C.(Confair contract).) These employees work alongside workers employed by Wizz and are subject to the direction and control of Wizz, but their terms of employment are substantially inferior to Wizz pilots given they are "incredibly cheap" and can be dismissed at a moment's notice.[4] The use of direct and

[2] Aerotelegraph.com, "Interview with Jozsef Varadi of Wizz Air," June 22, 2020, at https://www.aerotelegraph.com/en/then-we-simply-close-the-base-and-move-on; Reuters, Investors challenge budget airline Wizz Air over labour rights," Dec. 15, 2021, at https://www.reuters.com/business/aerospace-defense/investors-challenge-budget-airline-wizz-air-over-labour-rights-2021-12-15/.

[3] E24 News, https://e24.no/boers-og-finans/i/Qm4bPA/wizz-air-sjefen-langer-ut-mot-fagforeninger-i-ny-lekkasje-en-av-grunnpilarene-bak-vaar-suksess (CEO's video meeting with Wizz staff).

leased crews alongside each other allows Wizz to "whipsaw" one against one another to instill fear, lack or permanency, and prevent the right to organize. While atypical employment models are not uncommon among low-cost carriers in Europe, its use at Wizz, when combined with other behavior, demonstrates extreme anti-union animus by contributing to precarious employment while defeating the ability to exercise the freedom of association.[5]

Possibly the most problematic of Wizz's unique no-union culture may be its retaliatory terminations of employees and outright hostility to the rule of law for consequent legal sanction, as ALPA thoroughly discussed in the Romanian and Bulgarian cases, in which courts decided that Wizz terminated pilots and flight attendants unlawfully, yet even after appeals had run, Wizz refused to return them to flying duty.

In short, Wizz aircrew who form or join unions are denied these rights, unlawfully terminated, and Wizz uniformly refuses to comply with judicial decisions ordering employee reinstatement.

Scope of Operations

Wizz then proceeds to suggest that the *size* of its initial operation – that it is "seeking only to operate occasional cargo charter service with a single aircraft" on an "ad hoc" basis – makes Department approval more readily attainable. The basic criteria for evaluating a foreign air carrier application's merits are the same for sizable operations and modest ones, for charter operations and scheduled ones, and for all-cargo and passenger ones. The Department's work does not rest on fleet size or the purported modesty of the carrier's initial application. The criteria, especially the need for a positive compliance disposition, is the same. Further, the

[5] Y. Jorens, D. Gillis, L. Valcke & J. De Coninck (Ghent University), *Atypical Employment in Aviation, Final Report*, European Social Dialogue/European Commission, 2015, p. 57.

Department must consider potential designs for passenger operations. In further pushing a narrative of modesty, Wizz suggests that its single aircraft type fleet is not compatible with transatlantic service, and yet, similar Airbus aircraft operate as such. Additionally, Wizz's private equity partner – Indigo Partners – has also ordered longer range aircraft to complete such service for the carrier.[6] Furthermore, once the carrier has economic authority for charter cargo operations, it will take a minimal additional showing to receive scheduled passenger authority, as ALPA noted. Thus, Department scrutiny now is appropriate. *See, e.g.*, Order 2010-4-8, *Atlas Air, Inc*., Dockets DOT-OST-2009-0267 and -0268 (passenger authority for all-cargo carrier). Finally, the Department must investigate the true operational control of the single-airplane cargo charter. The Hungarian government owns, insures, and will pay the airplane's maintenance for flying COVID missions and "other purposes." In contrast, Wizz's application suggests the *ad hoc* charters would be unrelated to COVID-19-related operations (Reply, 2). If, indeed, the flights are conducted by or for a foreign government without military equipment they may be covered by 49 USC § 41703 and therefore subject to a mandatory public interest finding. The lack of clarity compels Departmental inquiry through consultations. If sufficient information is not provided, the DOT should not authorize them. If Section 41301 remains in use by the carrier, the Department should not submit the matter for Presidential approval under Section 41307.

Safety

[6] Airbus, *Indigo Partners portfolio airliners order 255 A321neo Family aircraft*, Nov. 14, 2021, at https://www.airbus.com/en/newsroom/press-releases/2021-11-indigo-partners-portfolio-airlines-order-255-a321neo-family

Wizz counters the well-documented reasons for a potential safety concerns raised by ALPA and ECA by not addressing them. Wizz asserts that under Article 8 of the ATA that the DOT must recognize as valid the certificates of competency and airworthiness as well as licenses – full stop. But publicly available information and court records – in the dismissive words of Wizz, "press clippings" – demonstrate that Wizz's culture is foundationally built on terminating employees for being "bad apples," including those pilots and flight attendants who will not fly when sick, pilots who are unwilling to fly beyond their maximum duty day limit, and pilots and flight attendants who will not fly when fatigued. These problems should not be dismissed out of hand. In fact, Article 8 of the ATA, para. 2, provides the U.S. the right to engage in consultations with appropriate European authorities, including EASA, to discuss "the safety standards relating to … aircrews" of Wizz and of "the operation of the airlines overseen by those authorities." In light of the specific concerns highlighted, the Department should not simply rubber stamp safety determinations about Wizz's operation. Similarly, Wizz dismisses European pilot reports to EASA as not worthy of consideration. To the contrary, gathering more information on allegations in keeping with public information and court records is precisely why the ATA provides a method – through consultations – to defer action on the application to fully understand Wizz's safety record and culture.

Wizz then proceeds, through provocative language, to suggest that ALPA's inquiry into potential coordination and surveillance issues for EASA, given the novelty and difficulty of the regulator's direct oversight of the carrier, "besmirch[es]" the European civil aviation regulator. But what the Consolidated Reply fails to do is to grapple with appropriate questions. For example, has EASA delegated tasks to local Hungarian and Austrian authorities (as ECA believes) and how is EASA

handling its first AOC licensee given the deep-rooted cultural issues reported at the carrier? Wizz's reply is silent on these matters. If EASA has delegated some tasks or relying on Hungarian or Austrian authorities, coordination by EASA of oversight and surveillance among them may present an added obstacle. The lack of clarity and novel arrangement, when viewed in light of the ample documented problems at Wizz, necessitates consultations between the Department, FAA, European Commission, EASA, and other applicable European parties.

Wizz then asks the Department to absolve itself of any responsibility because "Wizz Air must apply for and obtain Part 129 operations specifications from the FAA" and, if approved "be subject to ongoing FAA inspection and surveillance." While operational safety is within FAA's purview, the Department is responsible by statute for evaluating the overall corporate environment with respect to safety in its fitness determination. (49 U.S.C. §40101.) The Department's authority in matters of safety is unimpeachable and is not restricted to the approval of a carrier's operations specifications.[7]

Argument

I. DOT Should Seek Consultations Out of Specific Reason of Concern with the Applicant and Defer Action

Wizz's Consolidated Reply has not answered any crucial questions to dispel problems raised by the labor parties. As we stated above, under the U.S.-E.U. Air Transport Agreement, the Department can seek consultations with the European authorities if it has "specific reason for concern" about a European decision made under Article 4 concerning an applicant's fitness or citizenship. ATA Article 6 *bis*, Reciprocal Recognition; Article 4. The ATA, as amended in

[7] Ibid 11, pg 7.

2010, allows the Department to use the "laws and regulations [it] normally applies" to evaluate an applicant's fitness which DOT historically does by considering its "positive compliance disposition" and "safety problems" presented. (DOT Foreign Air Carrier Info. Packet, 5). As such, concerns about compliance disposition and safety represent a "specific reason" for consultations. Wizz Air's application presents specific and ample reason for concern.

A. **Toxic labor-relations and compliance disposition**

The rights of aircrew are elemental to the history and letter of the ATA and provide weight to the compliance disposition under U.S. law. TTD strongly supported the inclusion of a labor article that we believed to be an essential element of the agreement. As a result, , the ATA was amended to include a social dimension lauded by both parties regarding the "social effects" on aircrew and importance of "high labour standards," Article 17 *bis*.[8] The parties charged the Joint Committee, Article 18, with responsibilities with respect to the "social dimension." Consultations concerning the labor concerns raised by the unions and associations in this docket are more than warranted.

These concerns also implicate U.S. public interest legal considerations for the "encouragement of "fair wages and working conditions," 49 U.S.C. § 40101(a)(5), and the "competitive position of [U.S.] air carriers," 49 U.S.C. §§ 401010(a)(15) and (e)(1). Importantly, uniquely toxic management-labor relations can implicate an air carrier's compliance disposition.[9] In this case, Wizz Air, *by design*, has created a process so toxic to labor rights and the rule of law that, at a minimum, consultations must be pursued.

[8] See, e.g., Statement by Siim Kallas, European Commission VP for Transport, upon conclusion of the agreement, Press Release IP/10/371, Mar. 25, 2010 (emphasis added): State Department media note, March 25, 2010.
[9] *In re ATX, Inc. Fitness Investigation*, Order 94-4-8, 1994 WL 113077 at *7 (Apr. 5, 1994).

It is further noteworthy that policymakers and politicians are expressing concerns with anti-union behavior, methods of labor arbitrage in the airline industry, and a renewed commitment to "high labour standards." The Biden Administration released a report attendant to Executive Order 14025 for the White House Task Force on Worker Organizing and Empowerment. The Report calls on the executive branch agencies, including the DOT, to make use of "the range of "policies, practices and programs" under their purview to, among other things, "include actions reflecting the federal government's role as a policymaker, by shaping how executive agencies make decisions about partners with whom they engage, the regulations and other policies they institute."[10] That is, the White House is tasking agencies to effectuate protections of the freedom to association and the right to collectively bargain, including dissuading labor arbitrage, misclassification, and further to make use of policy to reverse negative trends to worker power related to "globalization."[11]

In Wizz's quest to be a "no-union" company, its willful disregard to reinstate aircrew pursuant to court orders that rescind Wizz's unlawful terminations put its "compliance disposition"– part of an aviation authority's determination of an applicant's fitness – in serious question. Wizz's disregard for judicial decisions on such matters implicates its fitness and justifies consultations.

B. **Potential impact on flight safety**

As ALPA indicated, the potential detrimental impact of "Wizz culture" on flight safety is another specific reason for concern. As previously mentioned, safety is the most important criteria the Department is to use in licensing decisions. (49 U.S.C. § 40101(a)(1).) If pilots are afraid to use

[10] White House Task Force on Worker Organizing and Empowerment. Report to the President. February 7, 2022, p.2.
[11] Ibid 10, p. 11.

their best safety judgment and authority with respect to their own fitness to fly, then those fears should be carefully scrutinized. We support ALPA's request that consultations should include these potential safety issues.

II. Further Action Should Await the Results of Consultations

As ALPA and ECA advocate, DOT and FAA should defer action on the requested authority until the applicant's disposition with respect to fundamental labor rights, compliance with court orders, and the potential impact of its hostile culture on flight safety are fully addressed. We agree with ALPA that DOT should place in the docket the information gathered in such consultations and permit time for interested parties to review and comment in the dock as well.

III. Wizz Air's Exemption Request Should be Treated in the Same Way

In the Supplemental Reply, Wizz asks, "in the interest of brevity and efficiency," that the Department issue an exemption to provide foreign air transportation of property and mail. This authority is granted under 49 U.S.C. § 40109. Crucially, the statute requires that an exemption "is effective to the extent and for periods that the Secretary decides are in the public interest." 49 U.S.C. § 40109(a)(2). On these grounds Among the policy objectives that the Secretary is to seek to achieve when determining whether proposed foreign air transportation is in the public interest is the encouragement of "fair wages and working conditions." 49 U.S.C. § 40101(a)(5). Another objective is "strengthening the competitive position of [U.S.] air carriers to at least ensure equality with foreign air carriers." 49 U.S.C. § 40101(a)(15) and (e)(1). Following consultations, notification of the information gathered in such discussions, and a review-and-comment period on those discussions in the docket, the Department must carefully

assess whether the grant of an exemption to Wizz, in light of the results of those consultations, would be consistent with these two public interest objectives, among others.

Conclusion

For the foregoing reasons, the Transportation Trades Department, AFL-CIO ("TTD"), the AFL-CIO, the International Association of Machinists and Aerospace Workers (IAM) and the Transport Workers Union of America (TWU), ask that the Department request consultations with its applicable European counterparts to discuss the specific reasons of concern with Wizz's application we have noted here, and defer action on Wizz's permit and exemption applications.

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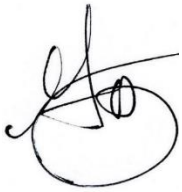

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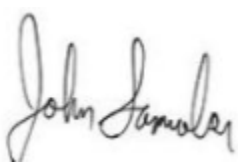

William Samuel
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Dated: March 22, 2022

CERTIFICATE OF SERVICE

I hereby certify that I have this 22nd day of March, 2022, caused the foregoing document to be served by email on the following persons:

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