May 16, 2016

The Honorable Anthony Foxx
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, DC 20590

RE: DOT-OST-2013-0204-0223

Dear Secretary Foxx:

On behalf of the undersigned maritime labor organizations, we respectfully ask the Department of Transportation (DOT) to reverse its April 15 Show Cause order and reject Norwegian Air International (NAI)'s application for a foreign air carrier permit. We agree with comments already filed in the docket by aviation unions affiliated with the Transportation Trades Department, AFL-CIO (TTD) that NAI's application violates the U.S.-EU Air Transport Agreement and in particular Article 17 *bis* that binds the parties to maintaining high labor standards. We write to specifically offer the perspective of maritime workers who have seen firsthand the devastation that can occur when an industry is subject to a flag-of-convenience (FOC) regulatory model – a model that NAI is clearly seeking to replicate in the aviation sector to gain an unfair competitive advantage over airlines and their workers that play by the rules.

The United States, once the world's leader in shipping trade, has seen its national merchant fleet virtually destroyed by the implementation of a flag-of-convenience regulatory scheme. This system, under which vessel owners register and flag in a country other than that of the ship's owners, is used to avoid tax, labor, safety and environmental regulations. By shopping the globe for the most careless regulatory regimes– typically by registering ships and employing crews from some of the lowest-wage and least regulated nations – the U.S. and other countries have seen a steady decline of their maritime industries while fostering an increasingly opaque and lawless international marine system.

In the U.S. alone, the U.S. merchant fleet has shrunk from over 1,000 oceangoing vessels in 1955 to less than 100 today. This hollowing out of the U.S maritime sector is not for lack of shipping demand – in fact, shipping volume and trade have grown significantly during this time of decline. Instead, the reduction in U.S. vessels and accompanying jobs is a direct result of the U.S. embrace of the FOC model. In fact, only 2 percent of the annual 68,000 vessel calls at U.S. ports are from U.S.-flag ships, with the vast majority of ships calling our ports operating under a flag-of-convenience.

The spread of open registry has also turned the international maritime sector into an anarchic system that prizes legal anonymity at the expense of workers, vessel safety, and environmental standards. According to a report by the Organization for Economic Co-operation and Development (OECD) "there are many other instances where FOCs and the lack of a transparent ownership structure have provided cover for illegal operations, many of which are linked to transnational

crime." This is not an accident. By allowing vessel owners to shop the world for the most favorable regulatory environment, the flag-of-convenience model creates perverse incentives for vessel owners to evade their own nation's laws and to weaken international standards. While market liberalization is often touted as a path to robust competition, three small nations – Liberia, the Marshall Islands, and Panama – hold 40 percent of the flag-of-convenience market and each has been criticized for failing to follow the rule of law and for harboring substandard regulatory regimes.

Based in part on these experiences and the potential for a flag of convenience model to take hold under a multi-state air transport agreement, TTD and its unions called for a labor article to be included in any aviation agreement with the EU. Article 17 *bis* is the result of that advocacy and was hailed by the U.S. State Department at the time as "groundbreaking." The Administration's apparent refusal to enforce this provision – one that it negotiated and is needed to protect workers and an entire industry from unfair competition – is deeply troubling especially given our experience in the maritime sector.

Although it is a subsidiary of the Norwegian carrier Norwegian Air Shuttle, NAI seeks to operate as an Irish airline and use pilots and flight attendants based in Asia and working under Asian contracts. In effect, NAI has perfectly replicated the flag-of-convenience model that began in the marine sector: flagging in a separate country – Ireland, in this case – to avoid Norwegian labor, tax, and social laws and employing crews under even more permissive Asian employment standards. This is not about innovation or opening markets, it is gaining an unfair market advantage through the diminution of labor standards.

The significance of the DOT's decision on whether or not to grant a foreign air carrier permit to NAI cannot be overstated. Does the United States maintain an airline industry with good-paying jobs, as Article 17 *bis* can help provide*?* Or do we choose to follow the maritime model, accelerating the airline industry's collapse through international regulatory arbitrage? From our experience, the answer is simple: we ask that the DOT fully enforce worker protections as embodied in the ATA, maintain good-paying jobs, and prevent lawlessness by rejecting the NAI application for a foreign air carrier permit.

Thank you for your consideration.

Sincerely,

American Maritime Officers

International Organization of Master, Mates & Pilots, ILA

Marine Engineers' Beneficial Association

Sailors' Unions of the Pacific

Seafarers International Union

CERTIFICATE OF SERVICE

I certify that I have, on this 16th day of May, 2016, served the foregoing letter by causing a copy to be sent by electronic mail or fax as identified below:

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