A bold voice for transportation workers

May 4, 2016

**Tell DOT to Enforce our Aviation Trade Agreements and Reject Norwegian Air International's Application**

Dear Senator:

I urge you to sign on to the letter being circulated by Senator Amy Klobuchar which asks the Secretary of Transportation to reject the application of Norwegian Air International (NAI) for a foreign air carrier permit. This letter is in response to a show cause order issued by the Department of Transportation (DOT) on April 15th to tentatively approve NAI's application despite significant opposition from U.S. and European airlines and labor unions, as well as over 200 bipartisan members of the House and Senate. Furthermore, the DOT decision is written in a way that dangerously misinterprets and would severely weaken a critical labor provision (Article 17 *bis*) built into the U.S.-EU Air Transport Agreement (ATA).

The applicability and enforcement of Article 17 *bis* of the ATA, which was negotiated and adopted by the Obama Administration in 2010, has been central to the debate over NAI's application. This article states that "the opportunities created by the Agreement are not intended to undermine labour standards or the labour-related rights and principles contained in the Parties' respective laws." NAI has taken advantage of an opportunity created by the ATA by establishing itself in Ireland, something that, as a Norwegian-owned company, it could not do but for the ATA. The stated purpose of establishing NAI outside of Norway was to avoid the application of strong Norwegian labor and social laws, and to undermine its existing collective bargaining agreements with its employees in Norway. NAI further plans to use pilots and flight attendants hired under Singaporean or Thai employment contracts and based in Bangkok. Quite simply, this is a flag of convenience scheme to lower labor standards and gain an unfair competitive advantage – a clear violation of Article 17 *bis*. In the 113th Congress over 40 U.S. Senators wrote to DOT asking them the deny NAI's application on these very grounds.

When the U.S.-EU accord was completed, U.S. officials praised Article 17 *bis* as "groundbreaking." Yet less than 6 years later and the first time that Article 17 *bis* is raised in a proceeding, the DOT has issued a show cause order that renders this important provision useless and unenforceable. The order doesn't rebut the fact that NAI's business model violates Article 17 *bis*, but instead declares that the labor provisions in the agreement cannot be the basis for denying this or any other application. This is a stunning conclusion. Not only would it allow NAI to operate with an unfair competitive advantage in violation of the agreement, but it would allow any carrier, even one that blatantly seeks to undercut labor standards, to provide air service under the ATA.

**Transportation Trades Department, AFL-CIO**

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Edward Wytkind, President / Larry I. Willis, Secretary-Treasurer

The show cause order also sends a clear message that this Administration either cannot or will not enforce the trade provisions it negotiates. U.S. Open Skies policies have been generally supported by both industry and labor because they have been effective in opening markets, increasing competition, and promoting the growth of good, middle-class jobs. The ATA went a step further by including the first ever labor article that specifically committed the parties to opening markets while upholding high labor standards. But unless the DOT denies NAI's application, the Administration will signal to the global aviation industry that even when protections for employees are negotiated into air service trade agreements those provisions will not be enforced.

I urge you to oppose this misguided decision by cosigning the Klobuchar letter urging DOT to deny the NAI application. To do so, please contact Flynn Rico-Johnson (flynn_rico-johnson@klobuchar.senate.gov/ 224-3244) in Senator Klobuchar's office.

Thank you for your consideration.

Sincerely,

Edward Wytkind
President

*Letter text*:

Dear Mr. Secretary:

We write to urge you to reconsider the findings of the order to show cause issued by the Department of Transportation (DOT) on April 15, which recommends that Norwegian Air International Limited (NAI) be granted a foreign air carrier permit.

The landmark United States-European Union Open Skies Agreement has resulted in substantial benefits to the parties involved. Market liberalization has improved service options for consumers, spurred fare competition, increased travel to the United States, and opened opportunities for U.S. carriers in new markets. The benefits come as a result, in part, of provisions designed to ensure our aviation labor forces continue to enjoy strong employment protections. Specifically, the Agreement states, "The opportunities created by the Agreement are not intended to undermine labour standards or the labour-related rights and principles contained in the Parties' respective laws."

NAI is a Norwegian-owned company, but it has applied to operate in the United States as an Ireland-based foreign air carrier. We understand that NAI does not plan to locate significant operations in Ireland and may hire some employees under Singaporean or Thai employment contracts. This structure could allow NAI to avoid the labor and employment protections in

Norwegian and EU law. This type of arrangement appears to be exactly what the labor provisions of the Agreement are intended to prevent.

The Transportation, Housing and Urban Development Appropriations and Related Agencies Acts of 2015 and 2016 stated that no funds shall be used to grant a foreign air carrier application that violates the worker protection elements of the Agreement. It is troubling that DOT does not appear to have done its own analysis of whether the application does in fact violate these elements of the agreement. Instead, DOT only concluded that certain labor provisions alone cannot be used as the basis for denying an application.

We support fair competition. The U.S. aviation industry is a critical sector of our economy and an important middle-class job creator. Bilateral air transport agreements have enjoyed wide support in the United States because they have successfully fostered increased competition while providing greater opportunities for U.S. airlines and their workers. Approving NAI's foreign air carrier permit application would upset this careful balance and seriously harm the U.S. aviation industry.

We ask that DOT take the appropriate steps to fully enforce the worker protection provisions by rejecting the order to show cause and denying NAI's application for an air carrier permit. Thank you for your consideration.

Sincerely,