

**BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, DC**

Application of)

NORWEGIAN AIR INTERNATIONAL)
LIMITED)

for an exemption under 49 U.S.C. § 40109)
and a foreign air carrier permit pursuant to)
49 U.S.C. § 41301 (US-EU Open Skies))

Docket No. OST-2013-0204

**ANSWER OF THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF
INDUSTRIAL ORGANIZATIONS, AND THE TRANSPORTATION TRADES
DEPARTMENT, AFL-CIO TO DOT NOTICE OF MOTION**

On behalf of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), and the Transportation Trades Department, AFL-CIO, we write in response to the written summary of the January 8, 2014 U.S.-EU Joint Committee meeting as it pertained to the current and planned long haul operations of Norwegian Air Shuttle ASA (NAS) and its affiliated companies, Norwegian Long Haul AS (NLH) and Norwegian Air International Limited (NAI).

The AFL-CIO and TTD support the comments filed by the Air Line Pilots Association (ALPA), and we refer you to the analysis and response to each point made by the European delegation detailed in ALPA's filing. As those comments discuss, the DOT Summary states that during a closed-door session of the Joint Committee Meeting, the European delegation gave the Joint Committee what the Summary characterized as "some detailed factual information." We do not believe that this characterization accurately reflects the nature of the information provided by the European delegation, as the information is in most cases not detailed or not factual, or both. Much of the justification being provided for NAS/NLH/NAI business model, including their decision to seek an Air Operators Certificate in Ireland rather than Norway, has only

been recently presented. Furthermore, as detailed in the ALPA filing, the economic claims for basing long haul operations out of Ireland seem to be insubstantial. Rather, we believe that these claims are merely part of a publicity campaign designed to distract the general public and federal regulators from their true goal and purpose: to avoid Norway's labor and other social laws, evade their existing collective bargaining agreements, and to undercut existing U.S. and European airlines and their workers.

Perhaps the most troubling thing about the written summary is what is what the EU delegation did not mention. The EU-U.S. Air Transport Agreement (ATA) includes, for the first time ever, a labor article designed prevent an agreement from having adverse effects on aviation workers. This provision, Article 17 bis ("Social Dimension"), 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." It further states that "the principles in paragraph 1 shall guide the Parties as they implement the Agreement."

The inclusion of Article 17 bis in the ATA represented important progress in our global effort to ensure that market-opening trade initiatives are not used to harm good jobs and undermine labor standards, and was praised by both U.S. and European negotiators. On March 25, 2010 Siim Kallas, the European Commission Vice President Responsible for Transport released a statement proclaiming that "For the first time in aviation history, the agreement includes a dedicated article on the social dimension of EU-US aviation relations. This will not only ensure that the existing legal rights of airline employees are preserved, but that the implementation of the agreement contributes to high labour standards."¹

Despite such a strong statement supporting high labors standards and worker protections, the European delegation appears to be walking away from commitments they agreed to in Article 17 bis. At no point in the written summary of the European delegation's presentation was Article 17 bis mentioned or referenced. Nor does it appear that the European delegation has factored this article into its determination that the U.S. DOT should grant NAI a foreign air carrier permit.

¹ European Commission, Office of the Vice President for Transport. Breakthrough in EU-US second-stage Open Skies negotiations: Vice-President Kallas welcomes draft agreement. Retrieved from: http://europa.eu/rapid/press-release_IP-10-371_en.htm?locale=en

As TTD detailed in its previous filing, NAI's intentions leave little in doubt. Its business model was developed explicitly to evade its collective bargaining obligations in its home country and Norwegian labor laws, and it is doing so using opportunities provided by the ATA. By basing its crews in Thailand and employing them on individual contracts governed by the laws of Singapore, NAI is clearly undermining labor standards on both sides of the Atlantic.

The negotiators of the ATA recognized that the fact that each European signatory to the ATA has its own national labor law might entice airlines to "shop around for a better deal." Article 17 bis was included to precisely to prevent this practice. Yet now, when NAI is attempting to do precisely that, the European delegation appears to be abandoning the principles that guided their negotiations, and walking away from their commitments under the agreement.


Should NAI's business plans be allowed to move forward, we believe that it will set a devastating precedent that will have far reaching implications for the global aviation industry, U.S. and European airlines and airline employees. NAI's application is a critical test case for how the U.S.-EU air services agreement will be implemented, and whether the Article 17 bis labor protections will be enforced as intended.

We believe that the case presented by the European delegation as detailed in the written summary is fundamentally flawed and ignores a crucial article in the ATA. It also ignored many serious questions that TTD and other organizations have posed in regards to the NAI business model. DOT should make clear that it will not ignore the ATA labor article, and seek further information from the European delegation and NAI about how they will address the serious labor concerns that we have presented.

We appreciate your consideration of our views.



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