

April 28, 2014

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

Dear Mr. Secretary:

I have watched with great interest the public debate over the application of Norwegian Air International (NAI) for a foreign air operator's certificate from the U.S. Department of Transportation (DOT). As a former chairman of the House Transportation and Infrastructure Committee, it is my strongly held view that the approval of NAI's application would run contrary to the U.S.-EU Air Transport Agreement and the labor article embodied in the agreement, and contrary to the best interests of U. S. commercial aviation. I respectfully urge you to reject NAI's application.

During my 36 years of service in the U.S. House of Representatives on the committee of jurisdiction over international aviation trade issues, I witnessed dramatic changes in the U.S. and global airline industries. Beginning with deregulation in 1978 and continuing through the modern era of mergers, code sharing, anti-trust-immunized alliances, and expansive Open Skies agreements, much of the airline industry today is globally interconnected; U.S. airlines and their employees are directly impacted by the actions of foreign competitors more than ever before. During my tenure of watchfulness over the U.S. aviation industry, I sought to ensure that liberalization was pursued in bi-lateral agreements which assured a balance of benefits with our international trade partners, protecting the integrity, safety, and competitiveness of the U.S. aviation system.

In the early 1990s, the U.S. government began negotiating bilateral Air Transport, or Open Skies agreements that were intended to open aviation markets, promote competition and tourism, create jobs and increase consumer choice for international travel. These Open Skies agreements are qualitatively different from other trade agreements which deal with services in that they are almost exclusively bilateral. As such, they reflect a balance of benefits for the U.S. and our trade partner, often with in-country and beyond operating rights, and they are overseen by the Departments of State, Transportation, and Justice, rather than the United States Trade Representative. Given the complexity and size of the U.S. aviation market – which accounts for over half of the world's aviation marketplace – retention of this model is necessary to ensure that

the exchange in air traffic rights is done in a way that promotes strong safety, labor and working condition standards, while also ensuring an equitable competitive environment for U.S. airlines. Critical to achieving this goal has long been the continued enforcement of U.S. foreign ownership and control and cabotage laws, along with strong US DOT and DOJ regulatory oversight.

The negotiation of the U.S.-EU Open Skies agreement, which began in the middle of the last decade, presented many unique challenges. While the European Union is an economic and political union of 28 member states, each of these states has retained its respective governmental aviation regulatory authority. Therefore, rather than dealing with a single aviation regulatory body and one set of labor and social laws as we had with previous agreements, we were dealing with multiple aviation regulatory authorities and sets of labor and social laws. While there are base standards for safety and labor laws, the individual nation-state laws still differ widely.

Given the unique nature of negotiating with the EU, many of my colleagues and I were concerned about proposed changes in regulatory structure that would allow any EU airline to operate from any point in the EU to any point in the U.S. and to establish subsidiaries in other EU states. Despite this “European status” for operating and corporate rights, there was no EU-wide law that governed key labor-management relations aspects of these airlines. Instead, these aspects – such as selection of bargaining representatives and contract negotiations – were, and continue to be, subject to the national labor laws of the respective European countries.

During the negotiations, EU representatives expressed concern that such an arrangement could lead to “forum shopping” where European airlines would seek to operate out of countries with less robust labor and social laws. This could allow airlines to seek the lowest common denominator in terms of labor and regulatory standards thereby lowering their own operating costs but driving down standards throughout the EU. In other words, the EU was concerned that new airlines could be launched using a NAI-like business model.

This concern led negotiators to include in the agreement Article 17 *bis* (“Social Dimension”), which 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 fact that there was no equivalent to Article 17 *bis* in any of the previous Open Skies agreements with EU member states is a direct acknowledgement of the challenges posed by the regulatory and legal arrangement within the EU.

Article 17 *bis* was a critical factor in the “Agreement”. I applauded its inclusion as an important and necessary step in protecting against the use of market-opening aviation trade agreements to lower labor standards throughout the transatlantic aviation market: the largest aviation trade market in the world.

Today, in light of NAI's application for a foreign air operator's certificate, as well as the plethora of public comments that the DOT has received on this application, I believe that the inclusion of Article 17 *bis* and the concerns that led to its inclusion were particularly prescient.

Mr. Secretary, you and the DOT International policy staff are familiar with the details of NAI's application and business model, but key facts are worth repeating: NAI is a subsidiary of Norwegian Air Shuttle (NAS), a low-cost European carrier based out of Norway. When Norway became a signatory of the U.S.-EU Open Skies Agreement in 2011, NAS was afforded the same access to air traffic rights under that agreement as other EU carriers. Rather than expand its operations with its existing corporate structure, its workforce and collective bargaining agreements, NAS created NAI and proceeded to register its long-haul aircraft in Ireland and obtain an Irish Air Operator's Certificate – effectively becoming an Irish airline despite the fact that it has no announced plans to operate in Ireland.

This move allowed NAS to expand its long-haul operations through NAI, but also to escape Norway's social laws and to evade existing collective bargaining agreements with its Norwegian pilots and flight attendants. For example, NAI's pilots are based in Thailand and employed under individual employment contracts that are covered by the laws of Singapore. These pilots are then contracted to NAI. The individual employment contracts prevent collective bargaining, and allow NAI to drastically reduce labor costs and gain an unfair competitive advantage over U.S. and European carriers who currently operate in the transatlantic market. The workforce arrangement for flight attendants is still evolving, but what I have learned is that NAI is hiring and basing its cabin crewmembers outside of its home country in what is clearly a plan to secure substandard wages and working conditions and to blatantly evade its collective bargaining obligations in Norway. NAI is pursuing, quite simply, what in maritime law is called a "Flag of Convenience" strategy.

NAI has not denied that it registered in Ireland to avoid the application of Norwegian labor laws to its crews. Other economic justifications presented for selecting Ireland over other possible places to incorporate, the validity of which also have been effectively rebutted by several opponents, appear to be intended to distract from this central and undisputed motivation. The company is thus taking advantage of the opportunities provided by the U.S.-EU Open Skies Agreement in order to lower its own labor costs and undercut the competition, the very scenario that EU negotiators feared when Article 17 *bis* was included in the U.S.-EU agreement.

I believe that the evidence and arguments submitted in the public docket provide the Department with ample justification to deny the application.

During my years of service on the House Committee on Transportation and Infrastructure, conducting vigorous oversight of international aviation trade, I learned that liberalization and market expansion could provide numerous benefits to consumers, open business opportunities for U.S. carriers and create jobs. But I also observed that effective market expansion required


the thoughtful and careful approach of balancing reduced trade barriers with the assurance of fair competition and the public interest. We understand the strategic and economic significance of the U.S. airline industry to our nation's well-being, and further understand the unique challenges inherent in implementing the expansive and complicated U.S.-EU Open Skies Agreement in a productive and responsible manner.

With this background, I believe that this is an important inflection point for how we as a nation project and secure America's role in the global aviation marketplace. The negotiators for both sides in the the U.S.-EU Open Skies Agreement negotiations understood the risks and adverse consequences that irresponsible liberalization could pose to the airline industries and workforces on both sides of the Atlantic. They resisted deliberate efforts to dismantle the U.S. ownership and control and cabotage laws, and they included, for the first time ever, a **labor article** in the final agreement. In doing so, they made an unmistakable statement that the terms of competition must not be set by those who would seek to gain an unfair advantage at the expense of quality jobs and high labor standards.

The Department should implement the Agreement in the spirit of Article 17 *bis* and concern for both fair competition and balanced trade benefits. Were NAI to be allowed to operate as proposed, the dynamic of transatlantic aviation competition will be changed for the worse, creating a situation where Flags of Convenience become the norm, not the exception.

I urge you to reject the NAI application, and thereby uphold the spirit and intent of the U.S.-EU Open Skies Agreement and Article 17 *bis*. Thank you for your consideration of my views on this vital international aviation policy issue.

Sincerely,

  
(1975 - 2011)