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**
Application of **NORWEGIAN AIR UK LIMITED** **for an exemption under 49 U.S.C. § 40109 and a foreign air carrier permit pursuant to 49 U.S.C. § 41301**	)	**Docket No. OST-2015-0261**

MOTION OF THE LABOR PARTIES FOR LEAVE TO FILE NEWLY-AVAILABLE INFORMATION

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Dated: June 28, 2016

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**
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MOTION OF THE LABOR PARTIES FOR LEAVE TO FILE NEWLY-AVAILABLE INFORMATION

The Labor Parties move, under Section 302.6 of the Department's Rules of Practice, for leave to file newly-available information. The newly-available information is set forth in the attached article "Setting the record straight on Norwegian Air and the US-EU Open Skies Agreement,"[1] in which former Deputy Secretary of Transportation

[1] This Huffington Post Blog article is also available at http://www.huffingtonpost.com/john-d-porcari/setting-the-record-straig_b_10704160.html (last visited June 28, 2016).

John Porcari[2] states his views on the applicability of Article 17 *bis* to the application of Norwegian Air International ("NAI") for a foreign air carrier permit. There is good cause to grant this motion because the article was not available until yesterday afternoon and because Mr. Porcari's views bear directly on the central issue in these proceedings: whether approval of the applications of NAI and Norwegian Air UK Limited ("NAUK") would be consistent with the terms of the U.S.-EU Air Transport Agreement ("ATA" or "Agreement").

In the article, former Deputy Secretary Porcari states that approval of NAI's application would not be consistent with the terms of the ATA. In his words:

- "[S]ome basic facts about [the ATA] and the applicability of its provisions have been twisted beyond recognition in the pending case. . . ."
- "[I]f approved, [NAI's] highly unusual application guts the core of the ATA's labor provision. . . ."
- Article 17 *bis* "unambiguously sets out a clear commitment to protect against air services that 'undermine labor standards or the labor-related rights and principles contained in the Parties' respective laws.'"
- The "USDOT Show Cause Order . . . does not refute the legitimate concerns being expressed by U.S. and European flight crew unions, but sidesteps the issue by declaring that those concerns are not a basis for denial of NAI's or any other permit application."

[2] Former Deputy Secretary Porcari was the senior DOT official who participated in the U.S.-EU negotiations and played a central role in the U.S. Government's efforts to consider and address the concerns the U.S. labor groups had with the various proposals presented in the negotiations.

- "[A] decision whether or not to grant operating authority based on compliance with Article 17 is at the heart of implementation of the ATA."

Former Deputy Secretary Porcari's understanding of the intent and meaning of Article 17 *bis* is consistent with the terms of the article. As we have shown throughout these proceedings, including in our May 16, 2016 Objections to DOT's Order to Show Cause in the NAI proceeding, that article directs the Parties to implement the Agreement in a manner that does not contribute to the undermining of labor standards.[3] As Mr. Porcari states in the article "[t]his administration should be justifiably proud that appropriate labor provisions were negotiated into [the ATA]" and that DOT should "use them for their intended purpose."

CONCLUSION

For the reasons set forth above, and in our prior pleadings, DOT should (1) reverse its tentative conclusion that NAI should be issued a foreign air carrier permit

[3] December 17, 2013 Answer of ALPA to Application of NAI for an Exemption and Foreign Air Carrier Permit at 7-13 (Dkt. No. 0002); December 17, 2013 Answer of ECA to Application of NAI for an Exemption and Foreign Air Carrier Permit at 8 (Dkt. No. 0010); January 7, 2014 Motion for Permission to File and Joint Reply of ALPA, TTD and ECA to Reply of NAI at 4-9 (Dkt. No. 0011); February 14, 2014 Answer of ALPA to DOT Notice at 11-15 (Dkt. No. 0034); February 21, 2014 Joint Reply of ALPA, TTD and ECA to Comments on DOT's January 30 Notice at 11-13 (Dkt. No. 0044); August 18, 2014 Joint Comments of ALPA, TTD and ECA on DOT's August 4 Notice at 7-11 (Dkt. No. 0148); August 25, 2014 Joint Reply of ALPA, TTD and ECA at 2-8 (Dkt. No. 0161); May 16, 2016 Objections of Labor Parties to Order to Show Cause at 14-18, 22-37 (Dkt. No. 13281).

and deny NAI's application, and (2) deny NAUK's application for an exemption and issue the Information and Document Production Request attached to our December 28, 2015 Joint Answer (Dkt. No. 0002) in the NAUK proceeding.

Respectfully submitted,

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Dated: June 28, 2016

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CERTIFICATE OF SERVICE

I certify that I have, on this 28th day of June, 2016, served the foregoing Motion of the Labor Parties by causing a copy to be sent by electronic mail as identified below:

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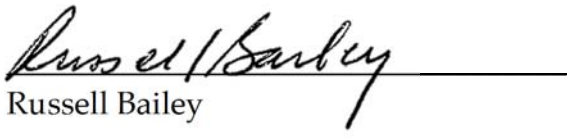

Russell Bailey

ATTACHMENT

THE BLOG

Setting The Record Straight On Norwegian Air And The US-EU Open Skies Agreement

06/27/2016 02:55 pm ET | **Updated** 21 hours ago

John D. Porcari
Former Deputy Secretary of the U.S. Department of Transportation, 2009-2013

Expanding global connectivity through aviation only succeeds when the playing field is level and the rules are both universally understood and scrupulously enforced. That was the core principle behind our government's negotiation of an amended air services agreement with the European Union (EU), known as the U.S.-EU Air Transport Agreement (ATA). I know this because I was in those discussions while serving as Deputy Secretary of the United States Department of Transportation (USDOT).

Today, some basic facts about this agreement and the applicability of its provisions have been twisted beyond recognition in the pending case involving Norwegian Air International (NAI), an Irish subsidiary of Norwegian Air, which seeks USDOT approval of a foreign air carrier permit application to fly to the United States. Let's set the record straight.

NAI is requesting to launch a complex international airline operation that at its core challenges explicit provisions of the agreement, in particular those specifically designed to protect high labor standards for cabin crews on both sides of the Atlantic. Norwegian Air's plan is to have their Irish subsidiary hire crews under Singaporean or Thai law that allows them to fly without having to comply with the employment and tax laws of its Norwegian home country. If approved, this highly unusual application guts the core of the ATA's labor provision, which is the logical forum for such disputes.

Concerns about potential "forum shopping" by airlines were raised during the negotiation process. Those concerns were especially relevant because this agreement would allow European air carriers, for the first time, to operate from any country in the EU to any point in the US. The opportunity for airlines to forum shop

for favorable labor, tax and other laws was clearly a point of contention for both sides.

The labor provision was achieved after extended discussions with our European counterparts that resulted in what is today known as Article 17 of the ATA. This article unambiguously sets out a clear commitment to protect against air services that "undermine labor standards or the labor-related rights and principles contained in the Parties' respective laws." This key provision of the agreement is now being challenged by a USDOT Show Cause Order, which does not refute the legitimate concerns being expressed by U.S. and European flight crew unions, but sidesteps the issue by declaring that those concerns are not a basis for denial of NAI's or any other permit application.

The Show Cause Order tentatively concludes that Article 17 cannot be applied in deciding whether to grant operating authority to an EU airline. To the contrary, a decision whether or not to grant operating authority based on compliance with Article 17 is at the heart of implementation of the ATA.

We live in a world of rapid international economic integration and changing employment models. Trade agreements such as the ATA must benefit all sectors of our society, including US workers. That, I believe, is what we accomplished in the ATA, and now the US needs to uphold the core labor protection provisions of the agreement.

This administration should be justifiably proud that appropriate labor provisions were negotiated into this agreement; let's use them for their intended purpose.

More: Labor Open Skies

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