

**BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.**

Application of )

NORWEGIAN AIR INTERNATIONAL LIMITED )

) Docket DOT-OST-2010-0204

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

**JOINT REPLY OF DELTA AIR LINES, INC., UNITED AIRLINES, INC.,  
AMERICAN AIRLINES, INC. AND US AIRWAYS, INC.**

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**December 20, 2013**

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WASHINGTON, D.C.**

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**JOINT REPLY OF DELTA AIR LINES, INC., UNITED AIRLINES, INC.,  
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Delta, United, American and US Airways (the “Joint Carriers”) appreciate this opportunity to reply to the issues raised by ALPA and A4A in their Answers to Norwegian Air International’s (NAI) application for DOT certificate and exemption authority. The Joint Carriers urge that NAI’s application be denied because it is contrary to the express provisions of the U.S.-EU Air Transport Agreement -- specifically, Article 17 *bis* which prohibits the establishment of flags of convenience to evade labor protections and thereby derive a competitive advantage in the marketplace and is not in the public interest.<sup>1</sup>

Absent the U.S.-EU multilateral agreement, NAS would have no expectation that it could set up a shell company in Ireland to operate its aircraft using imported labor, because standard bilateral agreements contain “nationality clauses” requiring that carriers be owned and effectively controlled by their own nationals. There is no question that NAI is controlled by Norwegian interests. Because the EU is a collection of individual member states, and the U.S. is governed by a single set of federal aviation and labor standards, implementing the

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<sup>1</sup> If the application is not dismissed outright, the Joint Carriers agree with ALPA and A4A that many unanswered questions about the NAI scheme need to be addressed through the Joint Committee and on the public docket.

U.S.-EU agreement presented special challenges to prevent exactly this type of forum shopping and re-flagging by EU carriers. For this reason, the carefully negotiated Article 17 *bis* of the U.S.-EU Agreement recognizes the importance of “high labor standards” and that “the opportunities created by the Agreement are not intended to undermine labor standards or the labor-related rights and principles contained in the Parties’ respective laws.” The NAI applications are contrary to these provisions and should be rejected because they are inconsistent with the U.S.-EU Agreement.

As detailed in ALPA’s Answer, although NAI does not yet have an Irish air carrier certificate, it is being established in Ireland so that its affiliate, Norwegian Air Shuttle, (NAS) can avoid the social laws of Norway -- allowing NAI to provide lower wages and less desirable working conditions. NAI, in turn, will provide aircraft and flight crews for marketing and sale under the Norwegian brand that will be used in competition with U.S. carriers on routes from London to New York, Los Angeles, and Ft. Lauderdale, and from Scandinavia to various U.S. points. In an open letter, NAS this week confirmed that NAI is being established to take over operations from Norwegian Long Haul (NLH), a Norwegian company that currently provides lift to NAS using 787 aircraft: “The operations for NLH will end in Norway and we will establish Norwegian Air International Ltd. (NAI) in Ireland. With this, all business under NLH will be transferred to NAI.” (Attachment 1).

At bottom, NAI and NAS seek to establish a new flag of convenience in Ireland to avoid Norway’s labor laws and lower labor costs in violation of the U.S.-EU multilateral agreement (using crews working under Singapore employment contracts), thus giving NAI and NAS a competitive advantage on transatlantic routes in direct competition with U.S. carriers. An important focus of the NAI operation appears to be point-to-point service between the U.S. and London. The US-EU multilateral is a special agreement that allows this extraordinary privilege that would otherwise be prohibited 7th freedoms under any other

bilateral. But, in order to reach this extraordinary openness, Art. 17 *bis* was agreed to prevent exactly what NAI is trying to do.

Even if NAI's plans did not specifically violate the U.S.-EU Air Transport Agreement, the application should be dismissed because it fails to meet the Department's public interest standard. Under the DOT's public interest standard, a key objective is "strengthening the competitive position of [U.S.] air carriers to at least ensure equality with foreign air carriers." 49 U.S.C. §§ 40101(a)(15) and (e)(1). U.S. carriers' competitive positions would be unfairly and unlawfully compromised by approval of the NAI scheme.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

A copy of the foregoing Reply has been served this 20<sup>th</sup> day of December, 2013, upon the following persons via email:

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## Dear Colleagues,

As 2013 draws to a close, we prepare to embark on a new year and a new chapter for Norwegian.

Just as in 2012, the year of 2013 presented us with many exciting challenges.

We have been the focus of a lot of media attention this year, both positive and negative. It can be challenging when the strategy of the company is debated in the media, and not everything is an accurate reflection of the situation. This can put the company in a bad light and create uncertainty about job security.



Norwegian Air Shuttle (NAS) has received a delivery of 14 Boeing 737-800 aircraft and launched new crew bases in Spain and in the UK.

Norwegian Long Haul (NLH) has received a delivery of 3 Boeing 787-8 and launched a new crew base in Thailand.

With these expansions, we have welcomed many new colleagues who will join us in developing our organisations in the future. I am happy for the way in which our new colleagues have been welcomed on board, both internally, and of course, by many of our satisfied customers.

In autumn, it was announced that NAS would undergo an organisational restructure. In line with these changes, NAS will no longer operate as one company in the future, but instead, operations will be set up as new companies that will handle flight operations under individual AOCs.

Norwegian Air Norway AS (NAN) has now been established and the company has been issued its own AOC. This organisation will handle a lot of NAS operations with the bases in Norway, Sweden and Denmark.

NAS will continue to operate bases outside Scandinavia.

In June, NLH commenced operating with B787-8. Due to the initial issues experienced with the second aircraft that was delivered, we faced a number of challenges in the beginning. This caused a lot of inconvenience and difficulties for our passengers and our employees. After the upgrade completed by Boeing, we have since delivered good on time performance for these operations as well.

The operations for NLH will end in Norway and we will establish Norwegian Air International Ltd. (NAI) in Ireland. With this, all business under NLH will be transferred to NAI. This will mean that the work location for many of our employees will change. We understand that this is challenging for both those involved and their families. We have emphasised that this should be voluntary. Establishing NAI is necessary for us to get the traffic rights needed out of Europe, which we do not have with an AOC in Norway.

All of the changes that are now being implemented are to secure jobs and reduce the cost of operation, which in turn, will allow us to be more competitive in the future.

Although we have faced a number of challenges during the last two months, on a whole, our punctuality this year has been very good, and we strive to ensure that these positive results will continue in the years ahead. Thank you to all of you who have contributed to these positive results - we recognise that this could not be achieved without a lot of hard work and close collaboration.

The changes that must now be made in Norwegian will also affect me and my family.

When NAI is established in Ireland, I will also be moving to oversee the operations. This will mean that I will be resigning from my role as COO and Accountable Manager for NAS. I have had some fantastic years with NAS and I have been involved in many challenging times that have provided me with a lot of experience and knowledge, which will no doubt be beneficial for me in the future.

Although I will no longer be responsible for NAS operations, I will still contribute to ensure that Norwegian as a group will continue to grow and thrive as a competitive air carrier in the future.

I will no doubt be on board our flights and will be sure to visit the headquarters when I am here in Oslo.

A big thank you to everyone who has helped tackle the challenges of 2013.

An extra thank you to those of you who have to work during the Christmas and New Year period to help keep our operations running smoothly.

I wish everyone a Merry Christmas and a Happy New Year together with your family and friends.

