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

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| **Application of** | ) | |
| | ) | **Docket No. OST-2013-0204** |
| **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)** | ) | |

# OBJECTION OF LABOR PARTIES TO ORDER TO SHOW CAUSE


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**Dated: May 16, 2016**

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**OBJECTIONS OF THE LABOR PARTIES[1] TO THE ORDER TO SHOW CAUSE**

The U.S.-EU Air Transport Agreement between the United States and the European Union and its Member States, as amended ("ATA" or "Agreement"), includes a "groundbreaking" article that was designed to "not only ensure that existing legal rights of airline employees be preserved, but that the implementation of the Agreement contributes to high labour standards." Now, in the first case in which DOT is called on to apply that article, the Department has found that the article cannot be used to deny an application by a carrier whose business model is predicated on undermining labor

[1] The Labor Parties are the Air Line Pilots Association; Association of Flight Attendants-CWA; European Cockpit Association; International Association of Machinists and Aerospace Workers; Transportation Trades Department, AFL-CIO; the Transport Workers Union of America; the International Transport Workers' Federation; and the European Transport Workers' Federation.

standards. The Department reached this decision by (1) failing to properly apply fundamental principles of treaty construction to the interpretation of the article, and (2) by applying the laws and rules that normally govern permit applications in an unprecedented manner that is arbitrary, capricious and not in accordance with law.

## INTRODUCTION

The ATA includes an authorization provision under which the United States generally permits any EU airline to conduct international air transportation under the Agreement if substantial ownership and effective control is vested in a Member State or States, or nationals of such state or states, the airline is licensed as an EU airline and has its principal place of business in the territory of the EU, and the airline is qualified to meet the conditions prescribed under the laws and regulations normally applied by the U.S. Under the authorization provision, an airline of one EU country may generally own and control an airline established in another EU country.

The right to own a subsidiary airline in another European country that can fly to the U.S. is a right that EU carriers did not have before the ATA came into effect. During the negotiations leading up to the ATA and subsequently, airline employee representatives from both sides of the Atlantic continually voiced their strong concern that this new freedom could be used to undermine representation rights and the terms and conditions of employment of airline employees. In particular, the labor representatives were concerned that the new authorization provision could lead to

"reflagging," "social dumping" and "regulatory shopping" by EU airlines because while the EU was being treated as a single entity for purposes of the Agreement, each of its Member States[2] maintained its own labor laws.

In negotiations over a possible amendment to the ATA, the Labor Parties and other U.S. and EU labor representatives vigorously sought to have included in the Agreement provisions that would deter labor-forum shopping. Ultimately the 2010 Protocol that amended the ATA did include such a provision. That provision, which became Article 17 *bis*, states:

> 1. The Parties recognise the importance of the social dimension of the Agreement and the benefits that arise when open markets are accompanied by high labour standards. The opportunities created by the Agreement are not intended to undermine the labour standards or the labour-related rights and principles contained in the Parties' respective laws.
>
> 2. The principles in paragraph 1 shall guide the Parties as they implement the Agreement, including regular consideration by the Joint Committee, pursuant to Article 18, of the social effects of the Agreement and the development of appropriate responses to concerns found to be legitimate.

In the words of the European Commission, Article 17 *bis* "commits both sides to implement [the Agreement] in a way that does not undermine labour rights."[3] But faced with an application for a foreign air carrier permit by a European air carrier that

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[2] At the time the Agreement was reached in 2007, there were 27 Member States. Now there are 28.

[3] European Commission Memo/10/103, "FAQs on the Second Stage EU-US 'Open Skies' Agreement and Existing First Stage Air Services Agreement, March 25, 2010, ("EC FAQs Memo") Attachment 1 hereto at 2.

its parent airline admittedly established in an EU country for the purpose of avoiding the labor rules of its parent's home country, the Department has tentatively determined that Article 17 *bis* cannot be used to deny the application. Order 2016-4-12, issued April 15, 2016 ("Order"). This proposed determination is wholly at odds with the terms and purposes of Article 17 *bis* and the Agreement as a whole. The Department should reverse its tentative decision and issue a new order stating that it proposes to deny the carrier's application.

## THE NEGOTIATING HISTORY OF ARTICLE 17 *BIS* AND NAI'S APPLICATION

### 1. Negotiating History Of Article 17 *bis*

In response to the concerns voiced by the labor representatives about certain aspects of the ATA, including the fact that the Agreement opened up labor-forum-shopping opportunities for EU carriers, the EU and the U.S. held two "labor forums" in order to examine those concerns in more depth.

The first forum was held in Washington, D.C. on December 3-4, 2008. The second was held in Brussels on June 22-23, 2009. At these forums, European and U.S. employee representatives explained why they were concerned about a number of the provisions that were included in the 2007 ATA and were being discussed in connection with the ongoing "Stage II" negotiations. A key concern was that European airlines would be able to "shop" among the various labor standards of the European Parties to the Agreement. At the core of this forum-shopping concern was the fact that while the

EU had formed a common aviation area within which EU carriers could operate freely, the EU had left in place national labor laws and airline licensing authorities. In the view of the employee representatives, this was a halfway step that had created a fragmented labor law framework in Europe, had resulted in a significant tilting of the balance of power in labor-management relations in Europe toward management, and provided meaningful possibilities for "reflagging" and "regulatory shopping" by EU airlines,[4] similar to what had occurred over the last several decades in the maritime shipping industry. The labor representatives also expressed their concern about the European Court of Justice decision,[5] which bolstered the right of an EU company to establish a subsidiary in an EU country different from its own home country. *Viking Line* also made it significantly more difficult for the employees of an EU transport company to challenge the reflagging of a vessel or aircraft in a country other than the home country of the vessel or aircraft's owner. They explained that these concerns had been

[4] Air carriers in the U.S. all must abide by the same labor and aviation laws. One labor law sets the rules for labor-management relations (*i.e.*, employee representative recognition and bargaining over wages and working conditions). One set of aviation laws applies to the licensing of air carriers and those laws are administered by a single entity – the DOT. The Memorandum of Consultations ("2010 MOC") that accompanied the 2010 Protocol noted that the U.S. principle that allows for selection of a single representative for a defined class and craft of employees at an airline "has helped promote rights for both airline flight and ground workers to organise themselves and to negotiate and enforce collective bargaining agreements." 2010 MOC ¶ 19.

[5] Case C-439/05, Int'l Transp. Workers' Fed. and Finnish Seaman's Union v. Viking Line ABP, 2007 E.C.R. I-10779 ("*Viking Line*").

heightened by the creation by British Airways ("BA") of a French subsidiary – OpenSkies Airlines – that would offer flights between France and the U.S.[6] There, the BA pilots sought to have the OpenSkies pilots covered by their contract with BA but their request was rebuffed by the company. The BA pilots then sued BA claiming that their contract should apply to the OpenSkies pilots, but in light of the potential applicability of the *Viking Line* case, felt compelled to dismiss the suit.

The last session of the second forum was dedicated to discussing how labor's concerns ought to be addressed in the ATA. The labor representatives uniformly emphasized that the Agreement needed to deal with the representational and bargaining legal certainty challenges posed by transnational airlines. *See* December 17, 2013 Answer of ALPA to NAI Application ("ALPA Answer"), Exs. 16-21 (Dkt. No. 0004). At the end of that session, the European Commission announced that "as part of developing these and other ideas for possible inclusion in a second stage agreement," the Commission would appoint an independent "*explorateur*" to develop a report on the issues. *Id*., Ex. 17 ¶34.

The individual appointed to the *explorateur* position was Claude Chêne, a former Director of Air Transport at the Commission. Mr. Chêne proceeded to meet with a broad cross-section of stakeholders in the EU and the U.S. and submitted to the

[6] The carrier is formally known as "BA European Ltd. t/a OpenSkies." *See* DOT Order 2008-8-8 (Dkt. No. OST-2008-0064, Aug. 12, 2008).

Commission a report entitled "Transatlantic Trans-National Airline Companies: Taking Account of Social Issues." *Id.*, Ex. 22. Mr. Chêne noted that at the conclusion of the second labor forum there was a widely held consensus among the EU and U.S. delegations that a second stage agreement should seek to include a provision that addressed labor matters. *Id.*, Ex. 22 ¶6. He wrote:

> In the context of the first stage agreement, the concern most commonly voiced by labour representatives is that the greater commercial freedoms that have been provided by the first stage EU-US agreement have not been matched by a regulatory framework providing equivalent protection for employees. Thus, airline companies have been granted the possibility of basing some or all of their operations in a foreign market (For example, the right for Community carriers to operate from *any* Member State to the US . . .) yet similar possibilities for labour groups to mirror the organisational structures of these trans-national airline companies (through, for example, the establishment of union groupings covering subsidiaries based in multiple jurisdictions) have been precluded by restrictions in place in the national laws on both sides of the Atlantic.

*Id*., Ex. 22 ¶12 (footnote omitted).

Mr. Chêne went on to note that harmonization of European labor law was "not a workable solution in the context of the EU-U.S. agreement, even if such an approach is, in the abstract, personally attractive." *Id*., Ex. 22 ¶30. There were, he concluded, substantial political obstacles to harmonizing European labor laws in order to provide a more coherent regulatory framework that would promote more effective employee representation at transnational carriers. In particular, he noted the EU Member States "have been keen to ensure that the power of the European Community is expressly limited in the area of social harmonisation." *Id*., Ex. 22 ¶25.

The limited proposals offered by Mr. Chêne to address the labor-management challenges raised by transnational airlines were ultimately rejected by unions on both sides of the Atlantic. *Id.*, Exs. 23 and 24. They also were not pursued by the EU and U.S. negotiators. Rather, the negotiators took into account Mr. Chêne's findings as they worked to fashion language that broadly conveyed labor's strong concern that implementation of the Agreement should not facilitate the undermining of labor standards. Indeed, business arrangements that undercut national labor standards were to be discouraged. The language they agreed upon became Article 17 *bis* of the ATA. Article 17 *bis* was understood by the labor representatives to the negotiations as providing a meaningful deterrent to flag-of-convenience carriers.[7] The Department of State hailed the Agreement as containing a "ground-breaking article on the importance of high labor standards." Statement on U.S.-EU Civil Aviation Agreement, March 25, 2010, Attachment 3 hereto. The European Commission, for its part, issued a statement that emphasized the substantive nature of Article 17 *bis*:

> 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 existing legal rights of airline employees be preserved, but that the implementation of the agreement contributes to high labour standards.

[7] February 21, 2014 Joint Reply of ALPA, *et al.*, to Comments on DOT's January 30 Notice ("Feb. 2014 Labor Parties' Joint Reply"), Attachment 2 (Declaration of Martin Chalk) ("Chalk Dec.") (Dkt. No. 044); August 25, 2014 Reply of APA to Comments of NAI, Attachment (Declaration of Bob Coffman) ("Coffman Dec.") (Dkt. No. 0170); Declaration of Ed Wytkind ("Wytkind Dec."), Attachment 2 hereto.

EU Statement re "Breakthrough in EU-US Open Skies negotiations," March 25, 2010, ("March 2010 EU Statement") Attachment 4 hereto at 1.[8]

**2. NAI's Business Plan**

The record shows that NAI is a wholly-owned subsidiary of the Norwegian airline Norwegian Air Shuttle ("NAS"), that NAI proposes to serve the U.S. with 787s, and that NAS had created NAI as an Irish subsidiary in order to avoid the application of Norwegian labor laws to the flight crew that would work on board NAI's long-haul operations. ALPA Answer, Exs. 1-9 and attached Declaration of Jack Netskar ("Netskar Dec."); February 13, 2014 Answer of Parat to DOT Notice ("Parat Answer") (Dkt. No. 0031).

The record shows that the pilots and flight attendants who were likely to work on NAI's transatlantic flights were employed on contracts governed by Singapore or Thai law and were employed on terms and conditions of employment significantly inferior to those applied to their NAS counterparts. The record also shows that the

[8] Knowledgeable observers of the negotiations also noted the importance of Article 17 *bis*. *See* Letter of Congressman James Oberstar to Secretary Anthony Foxx, April 28, 2014 at 2 ("Article 17 *bis* was a critical factor in the 'Agreement' . . . and [a] necessary step in protecting against the use of market-opening aviation trade agreements to lower labor standards throughout the transatlantic aviation market. . . .") (Attachment 5 hereto). *See also*, Charles A. Hunnicutt, *U.S.-EU Second Stage Air Transport Agreement: Towards an Open Aviation Area*," 39 Ga. J. Int'l & Comp. L. 663, 681-82 (Spring 2011) ("One historic breakthrough is an article in which both parties agree to be guided in the implementation of the full agreement in a manner that does not undermine labor rights. This is the first time that an air transport agreement includes an explicit commitment to high labor standards.").

pilots and flight attendants were hired by employment agencies that then contracted their services to NAI or other NAS affiliates. *See* Netskar Dec.

In June 2015, Bjorn Kjos, the Chief Executive Officer of NAS, wrote Secretary Foxx to say that NAI would commit to employ only U.S. and EU citizens on NAI's transatlantic services and that it was the "firm policy" of NAS to offer all pilots and flight attendants employed through agencies the opportunity to transfer to a company in the Norwegian Group after a transition period. June 1, 2016 Motion of NAI for Leave to File and Expedited Treatment, Ex. 1 at 2 (June 1, 2015 Letter of Bjorn Kjos to DOT) (Dkt. No. 0203). The Labor Parties replied that our concern is not with the citizenship or the nationality of the crew but with the contracts under which they are employed. We also showed that it did not appear to be the policy of NAS to transition all flight crew from the outside hiring agencies to a company in the Norwegian Group. June 10, 2015 Joint Answer of ALPA, *et al.* to Motion for Expedited Treatment by NAI at 2-4 and attached Declaration of François Ballestero (Dkt. No. 0217).

Even today some Norwegian 787 pilots and flight attendants are based in Thailand and at least one agency recruiting pilots who will operate 787s for the Norwegian Group is offering employment on contracts governed by Singapore law with bases in Bangkok. *See* Employment Agreement, Attachment 6 hereto.[9]

[9] The Labor Parties note that some of NAS's transatlantic services are being operated by flight attendants based in the U.S. Bjorn Kjos has stated to the press that NAI will use

### 3. DOT's Order To Show Cause

DOT's Order to Show Cause finds that NAI is fit, willing and able properly to perform foreign air transportation and is substantially owned and effectively controlled in a manner consistent with the provisions of the ATA. Order at 8. The Order recognizes that NAI's "unique business plan" presents "unusual and complex issues that "warrant proceeding with caution and careful consideration." *Id*. at 7. For this reason DOT took the "unprecedented" step of formally seeking the views of the Department of State ("DOS") and the Office of Legal Counsel of the Department of Justice ("DOJ"). *Id*. Specifically, DOS and DOJ were asked to address the following question: "Assuming that an air carrier of a Party to the U.S.-EU Agreement is otherwise qualified to receive a permit under DOT's authorities and the U.S.-EU Agreement, does Article 17 *bis* allow the United States to unilaterally deny an application for a permit by such carrier, and, if so, under what circumstances?" Order at 6. Based on its own legal analysis, and that provided by DOS and DOJ, DOT concludes Article 17 *bis* "cannot be invoked to take precedence over our normal licensing standards, . . . that those standards are met" in this case, and that the terms of the aviation statutes and the ATA preclude a "comparative public interest analysis."

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only flight crew who are based in, and have contracts covered by the laws of, the EU and the U.S. on NAI's transatlantic services, but NAI has not made such a commitment in this docket.

Order at 7-8.[10] The DOT tentatively concludes that NAI's application should be granted.

## SUMMARY OF ARGUMENT

Article 17 *bis* provides an independent basis for denying NAI's application. However, we first address DOT's view that NAI is qualified and fit because that view leads DOT to assert that it need not undertake a meaningful examination of whether approval of NAI's application would be consistent with the public interest or with the terms of Article 17 *bis*.

DOT has not made a specific finding that NAI is qualified to be awarded a foreign air carrier permit and it cannot make such a finding on the record in this case. Article 4(c) of the ATA requires that an applicant be "qualified to meet the conditions prescribed under the laws and regulations normally applied to the operation of air transportation." One of the standard conditions that has been applied to permits for at least seventy years is that the "exercise of the privileges" granted in the permit is subject to "all applicable provisions in any treaty, convention or agreement affecting international air transportation. . . ." Here, NAI's proposed business model is directly at odds with the intent of the Parties – as stated in the very agreement under which the

[10] The DOT, DOS and DOJ opinion letters are individually referred to as "[Agency] Opinion" and collectively referred to as the "Agency Opinions." The DOT Opinion and DOS Opinion are Appendices E and F, respectively, to the Order and the DOJ Opinion was entered in the Docket on April 22, 2016 (Dkt. No. 0278).

carrier is applying for operating authority – that the agreement will be implemented in a manner that does not undermine labor standards.

Second, DOT – again, for the first time in nearly seventy years – has not made a finding that approval of a permit will be consistent with the public interest. This finding is certainly required here where the applicant is not "qualified" and where serious questions have been raised about whether approval of the application will be in the public interest. The record in this proceeding requires a conclusion that approval would not be consistent with the public interest because a careful comparative analysis would show that the adverse effect of approval on wages and working conditions and on the competitive condition of U.S. carriers would significantly outweigh other public interest factors.

Third, Article 17 *bis* provides an independent and sufficient basis for not granting NAI a permit. A decision on whether to grant or deny an application for operating authorization is an action implementing the ATA and an application of the standard rules of treaty construction to Article 17 *bis* leads directly to the conclusion that the article directs a Party to implement the Agreement in a manner that does not contribute to the undermining of labor standards. In reaching the opposite conclusion, the Agency Opinions systematically violate virtually every basic rule of treaty construction. They do not give key words in Article 17 *bis* their ordinary meaning or, in several cases, any meaning at all; they do not read Article 17 *bis* with other provisions of the Agreement in

a way that would give effect to the intent of the article; and they do not look to the negotiating history of Article 17 *bis,* which strongly supports a conclusion that the article was meant to provide a means to ensure that an implementing action by a Party not undermine labor standards. These failures lead the Agency Opinions and the Order to Show Cause to render Article 17 *bis* ineffective and meaningless. Indeed, given the extraordinary amount of time and resources that went into developing Article 17 *bis,* the result reached in the Agency Opinions and the Order is, in the words of the Vienna Convention on the Law of Treaties, "manifestly absurd and unreasonable."

## ARGUMENT

### I. APPROVAL OF NAI'S APPLICATION WOULD BE INCONSISTENT WITH THE TERMS OF THE ATA. DOT SHOULD PROPOSE TO DENY THE APPLICATION.

#### A. NAI Is Not Qualified To Be Granted A Foreign Air Carrier Permit.

In order to grant NAI a foreign air carrier permit, DOT must find, among other things, that NAI meets "the conditions prescribed under the laws and regulations normally applied to the operation of international air transportation" by the U.S. ATA, Article 4(c).[11] Among the conditions "prescribed under the laws and regulations

[11] The qualifications requirement set out in Article 4 ("Authorization") of the ATA states, in pertinent part:

> On receipt of applications from an airline of one Party, in the form and manner prescribed for operating authorizations and technical permissions, the other

normally applied" are the tests contained in the aviation statute that an applicant be "qualified" or that "the foreign air transportation to be provided under the permit will be in the public interest." 49 U.S.C. § 41302.

DOT has not made an express finding that NAI is qualified under the laws and regulations normally applied to the review of an application for a foreign air carrier permit. On this record it cannot do so.

The legal opinions on which DOT relies assert that Article 4 of the ATA does not allow DOT to examine Article 17 *bis* in connection with the issuance of operating authorizations, but these opinions are based on the erroneous conclusion that Article 17 *bis* is not a component of the "exclusive criteria" set out in the qualifications test of Article 4 of the ATA. DOS Opinion at 3; DOT Opinion at 4; DOJ Opinion at 5-9. Compliance with Article 17 *bis* is part of the qualifications tests of both Article 4(c) and the aviation statute because consistency with the terms of an air services agreement is a "condition . . . normally applied to the operation of international air transportation" by the United States.

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> Party shall grant appropriate authorizations and permissions with minimum procedural delay, provided:
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> * * *
>
> (c) the airline is qualified to meet the conditions prescribed under the laws and regulations normally applied to the operation of international air transportation by the Party considering the application or applications; . . . .

"Qualified" means "having complied with the specific requirements or precedent conditions." *Merriam-Webster Dictionary*, available at www.merriam-webster.com/dictionary/qualified. The "qualified" test in Article 4(c) (and in 49 U.S.C. § 41302 subparagraph 2(A)) plainly means something in addition to the fitness, principal place of business and citizenship requirements specified in paragraph (b) of Article 4 and the U.S. has emphasized that it retains the right to apply the "qualified" test as a separate licensing standard.[12]

DOT's standard qualifications test includes mandatory compliance with the whole of an air services agreement. The proposed permit for NAI is a case in point. That permit includes the following condition:

> This permit and the exercise of the privileges granted in it shall be subject to the terms, conditions and limitations in both the order issuing this permit and the attachment to this order, and to all applicable provisions of any treaty, convention or agreement affecting international air transportation now in effect. . . .

Order, Appendix A (Norwegian Air International Limited, Permit to a Foreign Air Carrier).

[12] Paragraph 5 of the 2010 MOC that accompanied the 2010 Protocol emphasizes that the reciprocal recognition procedures for citizenship and fitness determinations set out in Article 6 *bis* of the ATA "are not intended to modify the conditions prescribed under the laws and regulations normally applied by the Parties to the operation of international air transportation referred to in Article 4 of the Agreement."

This requirement appears in all foreign air carrier permits issued by DOT, and makes compliance with the whole ATA, including Article 17 *bis* "a condition . . . normally applied to the operation of international air transportation." In fact, it is a condition uniformly applied.[13]

Thus, contrary to DOT's assertion, the question is not whether Article 17 *bis* "trumps" Article 4. DOT Opinion at 5. The two articles must be read together. Richard A. Lord, 11 WILLISTON ON CONTRACTS § 32:9 (4th ed. 1990). But none of the Agency Opinions read Article 17 *bis* together with Article 4: the DOT Opinion because it incorrectly assumed that an assessment of the consistency of an application with Article 17 *bis* is not part of the qualifications test, and the DOS and DOJ opinions because DOT asked them to assume that the requirements of Article 4(c) were met.

The "qualified" test, however, contemplates that where facts are presented that show approval of an application may be inconsistent with the provisions of an air services agreement, the U.S. will examine that contention as part of the test. Here,

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[13] A review of the foreign air carrier permits issued by DOT and its regulatory predecessor, the Civil Aeronautics Board, for the last seventy years shows that the agencies have consistently imposed these identical conditions on every permit. *See, e.g.*, *Air France*, 7 CAB 1, 9-12 (1946) ("This permit shall be subject to all the applicable provisions of any treaty, convention, or agreement affecting international air transportation. . . ."); *Iberia*, 12 CAB 258, 264 (1950) (same); *Air-India*, 30 CAB 1041, 1044 (1960) (same); *British Midland Airways*, 54 CAB 151, 156 (1970) (same); *Thai Airways*, 86 CAB 2011, 2014 (1980) (same); *Nordic European Airlines*, 1996 WL 33484035, at *4 (DOT 1996) (same); *Emirates*, 2004 WL 279216, at *4 (DOT 2004) (same); *Polskie Linie Lotnicze LOT S.A.*, 2012 WL 1048415, at *4 (DOT 2012) (same); *Hong Kong Airlines*, Order 2016-4-18 (DOT-OST-2015-0229-0003, April 28, 2016) (same).

where there is a well-documented claim that the applicant's business model is inconsistent with the intent of the very agreement under which it is applying for authority, DOT must undertake a careful examination to determine whether the applicant is qualified to conduct the proposed international air transportation under the Agreement. We incorporate here the arguments we make in Section C below about the meaning of Article 17 *bis* and its application to the facts presented in this proceeding. Those arguments demonstrate that NAI is not qualified "to meet the conditions prescribed under the laws and regulations normally applied to the operation of international air transportation" by DOT and should not be granted a foreign air carrier permit.

### B. Approval Of NAI's Application Would Not Be In The Public Interest.

#### 1. The Aviation Statutes And DOT's Longstanding And Uniform Practice Require DOT To Conduct A Comparative Public Interest Analysis Of NAI's Application.

If an applicant is not qualified -- and we have shown NAI is not -- the statute and Article 4(c) require DOT to make a finding that the foreign air transportation to be provided "will be in the public interest." But, in addition to not making a finding that NAI is qualified, DOT has also failed to make an express finding that approval of NAI's application would be in the public interest. It cannot do so on the record in this case.

Rather than assess whether issuance of a permit to NAI would be in the public interest, DOT simply states that "[t]he existence of an air services agreement

demonstrates that granting operating authority to a foreign air carrier is *per se* in the public interest." Order at 7 (footnote omitted); *see also* DOT Opinion at 5 ("DOT's statute unambiguously establishes that no public interest analysis is necessary or even appropriate in reviewing the permit application here."). But there is no *per se* test in the aviation statute. Rather, DOT's statement, which is not accompanied by any supporting citation, is inconsistent both with the text of the aviation statute and the way it has been applied.

Prior to 1980 the aviation statutes stated that in order to grant a foreign air carrier a permit, the Civil Aeronautics Board ("CAB") was required to find that the applicant was "fit, willing, and able properly to perform [the requested] air transportation and to conform to the provisions of this chapter and the rules, regulations, and requirements of the Board hereunder, and that such transportation will be in the public interest." Former 49 U.S.C. § 1372(b).[14] In 1980 Congress amended the foreign permit provision, placing the fitness test in a sub-paragraph, adding a "qualified" and "designated" test, and placing that new test and the public interest test as alternative requirements in a separate sub-paragraph. The amended, and current, foreign air carrier permit provision reads:

[14] Available at http://loc.heinonline.org/loc/Page?handle=hein.uscode/usc1976011&id=1453&collection=journals&index=uscode/usci#1677.

> The Secretary of Transportation may issue a permit to a person (except a citizen of the United States) authorizing the person to provide foreign air transportation as a foreign air carrier if the Secretary finds that--
>
> (1) the person is fit, willing, and able to provide the foreign air transportation to be authorized by the permit and to comply with this part and regulations of the Secretary; and
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> (2)(A) the person is qualified, and has been designated by the government of its country, to provide the foreign air transportation under an agreement with the United States Government; or
>
> (B) the foreign air transportation to be provided under the permit will be in the public interest.

49 U.S.C. § 41302.

In hearings before the Senate, the CAB testified that because the Board "is empowered, but not required, to issue a permit" even if the new qualified and designated test was met by an applicant, the Board "would still have the power to withhold a permit where issuance would not be in the public interest. . . ."[15] DOS and DOT sought a presumption – in essence, a *per se* rule – that a "service authorized by a bilateral" would be in the public interest.[16] Congress rejected their view and adopted the CAB's view that it retained the power to reject a permit application, using exactly the same language as appeared in the CAB's testimony.[17] In short, Congress did not

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[15] International Air Transportation Competition Act of 1979, Hearings on S. 1300 before the S. Subcommittee on Aviation of the Committee on Commerce, Science and Transportation, 69th Cong. 67 (1979) (written statement of CAB Chairman Marvin S. Cohen).

[16] *Id*., 69th Cong. 101, 122 (1979) (Addendum to the testimony of Richard N. Cooper, Under Secretary for Economic Affairs, Department of State and Supplementary Statement of the Department of Transportation).

[17] S. Rep. No. 96-329, at 4 (1979).

eliminate application of the public interest test. *See also*, David Heffernan and Brent Connor, AVIATION REGULATION IN THE UNITED STATES 104 (ABA 2014) ("In reviewing an application for economic authority, DOT's goal is to determine that the applicant is fit, willing, and able to provide the foreign air transportation, is qualified to do so, has been designated to provide such foreign air transportation by the government of its home county, and that the foreign air transportation being requested will be in the public interest." Footnote omitted).[18]

The novel and unprecedented view expressed in the Order is also inconsistent with the way that DOT has exercised its authority to grant permits. The Department's Foreign Air Carrier Information Packet ("Packet") states that "the overall standard we use in considering foreign air carrier applications is a public interest test" and "there are a number of factors we consider in reaching this public interest determination. . . ." Packet at 5.[19] Among these factors are "the merits of any responsive pleading." *Id*. This public interest test appears to have been applied in all permit cases since at least 1950, including all those involving EU carriers that have applied for permits under the ATA

[18] This practice has also been recognized by three DOT lawyers and one former special assistant to the DOT General Counsel: "DOT's Foreign Air Carrier Licensing Division reviews the contents of the application and determines whether granting the request is in the public interest." Aman Arshad, Robert Gorman, Michael Hallock, and Laura Jennings, AVIATION REGULATION IN THE UNITED STATES 220.

[19] Available at https://www.transportation.gov/sites/dot.gov/files/docs/Foreign_Carrier_Informations_Packet.pdf.

since 2007. In each instance, in fact, the DOT has made a finding that "the public interest warrants granting the applicant a foreign air carrier permit. . . ."[20] In each instance, that is, until this one. No such finding is made for NAI. This may just be "the luck of the Irish," but it is still an arbitrary and capricious result.

**2. <u>A Public Interest Analysis Test Would Likely Show That Approval Of NAI's Application Is Not In The Public Interest</u>.**

The Order states that DOT's normal licensing standards, "in light of the statute and the terms of the U.S.-EU Agreement, preclude a comparative public interest analysis." Order at 7-8. Because of that conclusion, DOT did no comparative analysis. We submit that if a comparative analysis were to be done, it would compel the conclusion that NAI's application should be denied.

Among the public interest factors that Congress has directed the Department to apply is the encouragement of "fair wages and working conditions." 49 U.S.C. § 40101(a)(5). That a specific article in the Agreement – one that has been characterized

[20] *See, e.g.*, *Hong Kong Express Airways, Ltd.*, Order 2016-5-4 (Dkt. No. OST-2016-0039, May 5, 2016); *Lufthansa CityLine GMBH*, Order 2015-5-4 (Dkt. No. OSST-2015-0023, May 8, 2015); *SkyGreece Airlines S.A.*, Order 2014-5-6 (Dkt. No. OST-2014-0035, May 14, 2014); *Wow Air EHF*, Order 2013-12-12 (Dkt. No. OST-2013-0197, December 20, 2013); *Norwegian Air Shuttle ASA*, Order 2012-6-13 (Dkt. No. OST-2012-0075, June 20, 2012); *Cyprus Airways Public Ltd.*, Order 2011-7-13 (Dkt. No. OST-2011-0114, July 28, 2011); *SmartLynx Airlines, Ltd*., Order 2010-6-10 (Dkt. No. OST-2009-0129, June 7, 2010); *Travel Service*, 2009 WL 418725 (DOT 2009); *Futura Gael*, 2008 WL 5508660 (DOT 2008); *Emirates*, 2004 WL 2794216 (DOT 2004); *Nordic European Airlines Int'l*, 1996 WL 33484035 (DOT 1996); *Trans-Mediterranean*, 85 CAB 1497, 1508 (1980) (renewal/amendment); *British Midland Airways*, 54 CAB 151, 152 (1970); *Air-India Int'l*, 30 CAB 1041, 1043 (1960) (permit modification); *Iberia*, 12 CAB 258, 262 (1950).

by the Parties as a "breakthrough" that "commits both sides to implement [the Agreement] in a way that does not undermine labor rights" – is dedicated to the encouragement of fair wages and working conditions, and to advancing the desire expressed in the preamble that the Agreement benefit airline workers, means that significant weight should be given to that factor. So, too, should significant weight be given to "strengthening the competitive position of air carriers to at least ensure equality with foreign air carriers," 49 U.S.C. § 40101(a)(15), because for the reasons stated at pages 4-5 above, European carriers are able to "shop" for regulatory frameworks in a way that U.S. carriers are not.

While the Order does not undertake any public interest analysis, Order at 7, the DOT Opinion suggests that it would be "entirely novel and legally unsustainable" to find that the competitive condition and labor factors could outweigh the other public interest factors listed in 49 U.S.C. § 40101. DOT Opinion at 5. But making a public interest assessment is not just adding up factors that might fit in one column or another. Not every factor is of equal (or even of any) weight in a particular case and the suggestion in the DOT Opinion overlooks key circumstances that must be taken into account to ensure that there is a fair assessment of the public interest in this case.

First, as noted above, there is a specific provision in the ATA that directs the Parties to implement the Agreement in a manner that does not undermine "the labour standards or labour-related rights and principles contained in the Parties' respective

laws." That direction in the ATA should weigh heavily in favor of denying an application of a carrier whose business plan was designed specifically to avoid the labor standards of one of the Parties and that serves to undermine the labor standards of several others, including the U.S. If there is any doubt about the initial reasons that NAI was established in Ireland, or how the pilots and flight attendants who will work on board NAI's aircraft are employed, DOT should issue appropriate document requests, including those attached to the February 21, 2014 Joint Reply of the Labor Parties. NAI's parent company NAS has been making many statements to the press about how the pilots and flight attendants who would work on NAI's transatlantic services would be employed, but has not made any commitments in this docket about the terms and conditions of their employment. The DOT Opinion states that "under DOT regulations and precedent, NAI had no requirement or reason to provide any information regarding its intended employment practices in its permit application." DOT Opinion at 4. But where there is a well-supported claim that grant of an application would be inconsistent with the provisions of the statute and the air services agreement at issue (here the "qualified" and "public interest" provisions of the statute, and Articles 4(c) and 17 *bis* of ATA) the Department has the right, indeed the obligation, to request information pertinent to the evaluation of that claim. That requested information would assist DOT in adequately evaluating the weight to be given this factor.

Second, significant weight should be given the goal of strengthening the competitive position of U.S. air carriers to at least ensure equality with foreign air carriers. A primary concern that underlies Article 17 *bis* is that EU carriers are able to avail themselves of alternative regulatory regimes in a manner that U.S. carriers are not. It is not in the public interest that a foreign carrier be able to competitively disadvantage U.S. carriers by reducing costs through undermining labor standards via forum shopping in a manner that is not available to U.S. carriers.

Third, the suggestion in DOT's Opinion overlooks the fact that many of the factors cited by DOT – the availability of low-cost services, reliance on competitive forces, avoiding unreasonable industry concentration, the freedom to offer market prices – should be given no weight at all here because NAI's parent, NAS, is already providing a broad array of transatlantic services using its own operating authorization and there is no transatlantic service to the U.S. (including Cork, Ireland, to the U.S.) that NAI might provide that NAS does not already have the authority to provide. To the extent that NAI might be able to provide a service less expensively only because of its employment model, that is precisely the type of undermining of labor standards that the Parties are committed to deter as they implement the Agreement.

The last factor suggested in the DOT Opinion – that DOT's action be consistent with international agreements – does not, as far as we can tell, appear as a public interest factor in 49 U.S.C. § 40101. If a public interest assessment is to be undertaken,

consistency of DOT's action with the Agreement should be considered and that, for the reasons set forth throughout this filing, approval of NAI's application would be inconsistent with the ATA.

In sum, a public interest analysis would require that NAI's application be denied and we reserve our right to respond to any comparative analysis that DOT may conduct.

### C. Article 17 *Bis* Affords An Independent Basis To Unilaterally Deny NAI's Application.

#### 1. Rules Of Construction

We agree with the DOJ Opinion that the starting point for analysis of the terms of the ATA is the rule that the "'interpretation of a treaty . . . begins with its text,'" DOJ Opinion at 5, quoting *Abbott v. Abbott*, 560 U.S. 1, 10 (2010), and that a treaty "'shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose.'" *Id.*, quoting Vienna Convention on the Law of Treaties art. 31(1). "The law prefers an interpretation which gives a reasonable, lawful, and effective meaning to all parts of the contract rather than one that leaves a portion of the contract ineffective or meaningless." Richard A. Lord, 11 WILLISTON ON CONTRACTS § 32:9 (4th ed. 1990), and an "interpretation which gives a reasonable, lawful, and effective meaning to all the terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect." RESTATEMENT (SECOND) OF CONTRACTS § 203 (1981) (updated Mar. 2016). "Recourse

may be had to supplementary means of interpretation, including preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from application of article 31 [of the Vienna Convention], or to determine the meaning when the interpretation according to article 31: (a) Leaves the meaning ambiguous or obscure; or (b) Leads to a result which is manifestly absurd or unreasonable." Vienna Convention on the Law of Treaties, art. 32.

The application of these standard principles of treaty and contract construction leads to the conclusion that Article 17 *bis* provides DOT a firm basis for proposing that NAI's application be denied.

**2. <u>The Unambiguous Intent Of Article 17 *bis* Is To Deter Flag Of Convenience Business Models In The Transatlantic Markets</u>.**

Paragraph 1 of Article 17 *bis* reads: "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."

Giving these words their ordinary meaning, the intent of the Parties is clearly expressed and unambiguous: the use of an opportunity that was created by the Agreement – such as the right of a European airline owned by the nationals of one country to establish a wholly-owned subsidiary in another European country for the purposes of operating international air transportation under the ATA – should not undermine labor standards and principles set out in the Parties' laws.

This intent is entirely consistent with the desire expressed in the preamble of the ATA that "all sectors of the air transport industry, including airline workers, benefit in a liberalized agreement." Article 17 *bis*, reached after several years of careful consideration of the possible effects of the Agreement on airline workers, is in fact, a specific provision designed to help fulfill that expressed desire.

Paragraph 2 of Article 17 *bis*, when the words therein are given their ordinary meaning, places an obligation on each of the Parties. The first phrase of that paragraph states, in pertinent part: "The principles in paragraph 1 shall guide the Parties as they implement the Agreement, including regular consideration by the Joint Committee, pursuant to Article 18, of the social effects of the Agreement. . . ."

The principles set out in paragraph 1 are not contested: (1) benefits arise when open markets are accompanied by high labor standards; and (2) opportunities created by the Agreement are not intended to undermine labor standards or the labor-related rights and principles in the Parties' respective laws. These principles "shall guide" the Parties as they "implement" the Agreement. The phrase "shall guide" is not merely hortatory; it is directive. "Shall" is "used in laws, regulations or directives to express what is mandatory." *Merriam-Webster Dictionary*, available at www.merriam-webster/dictionary/shall; *see Gonzalez v. Thaler*, 132 S. Ct. 641 (2012) ("[t]he word 'shall' . . . underscores the rule's mandatory nature"); *see also* LEGISLATIVE DRAFTING: A Commission Manual at 24, ¶6.1(c) ("In English, the auxiliary 'shall' is

used to express mandatory provisions: Member States shall take necessary measures . . . ."). "Guide" means "to direct . . . to a particular end." *Merriam-Webster Dictionary*, available at www.merriam-webster/dictionary/guide. Therefore "shall guide" provides marching orders for the Parties as they implement the Agreement, whether they are acting individually or collectively. "Implement," in turn means "to give practical effect to and ensure of actual fulfillment by concrete measures," *id.*, available at www.merriam-webster/dictionary/implement, and DOT is most certainly implementing the Agreement when it considers whether or not an EU carrier should be granted operating authorizations under the terms of the Agreement.[21] And "including" means that resort to the Joint Committee is just one path for a Party to ensure that the principles in paragraph 1 are effectuated. This makes sense. The Joint Committee meets only periodically (it was 10 months between the last two meetings) and is not in a position to take action when a decision on how to implement the Agreement must be taken in a prompt manner or under a statutory deadline, as is the case with exemption applications such as the one that DOT considered earlier in this proceeding.

In summary, giving to each of the words of Article 17 *bis* their ordinary meaning and reading them together, how the Article should apply to NAI's application is made manifest:

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[21] This straightforward reading of "implement" is consistent with the Commission's own description of the purpose of Article 17 *bis*: "The agreement commits both sides to implement it in a way that does not undermine labour rights." EC FAQs Memo at 2.

- Principle 1 – Benefits arise when open markets are accompanied by high labor standards.

- Principle 2 – The Parties do not intend opportunities created by the Agreement (such as the newly created right of a European airline of one country to be able to create a subsidiary in another to provide air transportation services under the ATA) to undermine labor standards or the labor-related rights and principles contained in the Parties' respective laws.[22]

- Principle 1 and Principle 2 "shall guide" (*i.e.*, shall direct) the Parties (*e.g.*, DOT) as they "implement" (*i.e.*, ensure actual fulfillment of the Agreement through concrete measures such as deciding whether or not to grant operating authorizations) the Agreement.

- Implementation may "include" addressing the concerns raised by the Labor Parties through the Joint Committee process set out in Article 18. In other words, resort to the Joint Committee process is an option, but not the only one, available to DOT to effect the intent expressed in Article 17 *bis*.

There is nothing in the text of Article 17 *bis* that in any way suggests that the guiding principles should not be applied to all aspects of implementing the Agreement, including implementation of the authorization provisions in Article 4.

[22] The Labor Parties have specified in detail how the NAS/NAI business scheme undermines labor standards and rights and principles contained in U.S. and European labor laws and regulations. *See* ALPA Answer at 8-13; January 7, 2014 Motion for Permission to File and Joint Reply of ALPA, *et al.*, to Reply of NAI at 2-9 (Dkt. No. 0011); Parat Answer; February 14, 2014 Answer of ALPA to DOT Notice at 6-8 (Dkt. No. 0034); Feb. 2014 Labor Parties' Joint Reply at 6-9 and Chalk Dec. (express purpose of establishing NAI in Ireland was to avoid application of Norway's labor laws to the flight crew that will work on board NAI's long-haul flights); August 25, 2014 Joint Reply Comments of ALPA, TTD and ECA at 10-11 (Dkt. No. 0162).

The text of Article 17 *bis* was agreed to by the labor representatives after extensive discussion and was understood by those representatives as providing a flexible framework for addressing, in a meaningful way, concerns such as the use of flags-of-convenience to undermine labor standards. *See* Chalk Dec.; Coffman Dec; Ed Wytkind Dec. This understanding is consonant with the Commission's understanding of the article at the time the 2010 Protocol was reached:

> For the first time in aviation history, the agreement includes a dedicated article on the social dimension of EU-U.S. aviation relations. This will not only ensure that existing legal rights of airline employees be preserved, but that the implementation of the agreement contributes to high labour standards.

March 2010 EU Statement at 1 (second emphasis added).

The labor representatives understanding of Article 17 *bis* is also fully supported by the negotiating history attached to ALPA's Answer and summarized at pages 4-9 above. The Agency Opinions assert that there is no need to consider the negotiating history of Article 17 *bis* because the Agreement is "unambiguous." *See, e.g.*, DOT Opinion at 5. But as we have shown at pages 14-26 above, whether NAI meets the authorization requirements of Article 4 is anything but unambiguous. Whether the carrier does or does not meet those requirements can only be determined by consideration of Article 17 *bis* and the negotiating history sheds substantial light on what the article means. That negotiating history shows that the potential of labor-forum shopping by EU airlines was a concern of labor representatives from the outset of the negotiations; that this concern became a central issue to which considerable time

and resources were dedicated in the "second stage" negotiations; that remedies that were perceived to be ineffective in responding to the flag-of-convenience concern were rejected by the labor representatives; and that the labor representatives ultimately supported a provision that committed the Parties to implement the Agreement in a manner that does not undermine labor standards. *Supra* at 4-9.

### 3. The Agency Opinions

The Agency Opinions all conclude that Article 17 *bis* does not create a standalone basis for DOT to deny NAI's application. But each opinion violates each of the rules of treaty construction set out at pages 26-27 above. Each fails to give the ordinary meaning to each of the terms of Article 17 *bis* and each, in fact, fails to give any meaning at all to key terms. These failures result in the Agencies interpreting Article 17 *bis* in a manner that renders it "ineffective" and "meaningless." Indeed, because the Agencies all avoid a meaningful examination of the negotiating history of the Article 17 *bis* they interpret the article in a way that is "manifestly absurd" and "unreasonable."

#### a. *The DOT Opinion*

The DOT Opinion's treatment of Article 17 *bis* is quite brief. It starts with an abbreviated recitation of the article, omitting the language of paragraph 1 that "the opportunities created by the Agreement are not intended to undermine labor standards," DOT Opinion at 3, and finds, without independent analysis of the text, that

"Article 17 *bis*, while articulating important policy objectives, does not provide an independent legal basis for denying the NAI application." *Id*. at 4.

The DOT Opinion concludes – rather abruptly – that "the plain language and negotiating history of Article 17 *bis*" establish that the article is "essentially hortatory, not mandatory." *Id.* at 5. There is no real evaluation of the language of Article 17 *bis*. For example, the opinion simply ignores the phrase "as they implement the Agreement," a key component of the overall structure of Article 17 *bis* that shows that DOT is to be guided by the principles in paragraph 1 as it gives "practical effect to and ensure[s] actual fulfillment [of the principles] by concrete measures."

Nor is there any meaningful evaluation of the negotiating history of Article 17 *bis.* That extensive history, which is set out at pages 4-9 above, shows that the concern of the airline representatives that regulatory shopping opportunities created by the Agreement could lead to the undermining of labor standards was the subject of extended and careful consideration. The negotiating history also shows that during the negotiations over the 2010 Protocol, a proposal – that in the words of the European Commission "commits both sides to implement [the Agreement] in a way that does not undermine labor rights" – was agreed to by the Parties and supported by the labor representatives. The labor representatives understanding was that this proposal – which became Article 17 *bis* – could be used to deny an application of an airline for operating authorization. *See* Wytkind Dec. ¶9; Chalk Dec. ¶16; Coffman Dec. ¶7. There

was never any indication – until this case – that Article 17 *bis* could not be used in connection with a review of such an application, a review that goes to perhaps the most common and core implementing action the Parties undertake under the Agreement.[23] The Labor Parties respectfully submit that the conclusion in the DOT Opinion about the meaning of Article 17 *bis* is not supported by the text of the article, nor by the negotiating history from which it is derived. The labor representatives accepted the text that became Article 17 *bis* because they believed that text addressed their concerns, including their concerns over the development of European flags-of-convenience. S*ee* Chalk Dec.; Coffman Dec; Ed Wytkind Dec. If the words of the article are given their ordinary meaning and read in the light of the expressed desire to have airline workers benefit in a liberalized agreement, it does just that.

**b. *The DOS Opinion***

The DOS Opinion asserts that (1) Article 4 provides the exclusive criteria for issuance or denial of permits; (2) paragraph 1 of Article 17 *bis* does not impose a legal obligation on the Parties to take any particular action; and (3) that paragraph 2 of

[23] As the DOT Opinion asserts, there was substantial debate over what a labor clause might say, and a number of proposals and modified texts were considered by the negotiators and the labor representatives to the negotiations. DOT Opinion at 5. The Labor Parties are not sure, however, what the DOT's Opinion is referring to when it asserts that a "much stronger version of Article 17 *bis* was initially proposed and rejected." *Id*. But it does not matter. What matters is the language that was accepted by the labor representatives and agreed to by the Parties.

Article 17 *bis*, "at most provides for the Joint Committee to consider labor-related concerns raised by the Parties." DOS Opinion at 3. None of these assertions are supported by a reading of Article 17 *bis* as a whole, giving the article's words their ordinary meaning.

As with DOT's Opinion, the DOS Opinion fails to take into account several key words and phrases that give the article force. Thus, the DOS Opinion omits discussion of the word "shall" when addressing the manner in which the Parties are to implement the Agreement. This omission occurs even though the DOS Opinion recognizes that "shall" has mandatory force when used in other provisions. *Id*. at 3, n.4 ("Article 6 . . . includes a mandatory term 'shall' . . . ."). The DOS Opinion also omits any discussion of the word "implements," which, as we show above at page 29, given its ordinary meaning, includes a decision on whether to issue operating authorizations. And it omits discussion of the phrase "including regular consideration by the Joint Committee" which, given its natural reading, means that a Party has options other than to take a matter to the Joint Committee.[24] When all the words are accounted for,

[24] The view set forth in the DOS Opinion that paragraph 2 of Article 17 *bis* "at most provides for the Joint Committee to consider labor-related concerns raised by the Parties and leaves to the discretion of the Joint Committee any further actions to be taken related to such concerns," DOS Opinion at 3 (footnote omitted), is at odds with the text of the article. First the DOS reading overlooks the word "including" which means that DOT has options for how it carries out its obligation to implement the Agreement in a way that does not undermine labor standards. Moreover, Article 18 of the Agreement indicates that the Joint Committee is to review implementation of the

Article 17 *bis* does create an obligation (in paragraph 2, not in paragraph 1) and does provide an independent basis for denying an application as we have further shown above at pages 27-32.

The DOS Opinion also concludes that consideration of the negotiating history is "unnecessary" because the Agreement is "unambiguous." *Id*. at 4. But notwithstanding this conclusion the opinion, with no analysis of the negotiating history whatsoever, states that it believes that history "confirms the conclusion that Article 17 *bis* does not constitute a basis for a Party to unilaterally deny a permit. . . ." *Id*. For the reasons set out at pages 33-34 in connection with the similar arguments made by DOT, these assertions are without merit and must be rejected.

**c. *The DOJ Opinion***

As with DOT and DOS, DOJ's analysis of Article 17 *bis* fails to follow the cardinal principles of treaty and contract interpretation that "the ordinary meaning . . . be given to the terms" and that an interpretation should give "effective meaning to all the terms" of the Agreement.

DOJ starts what turns out to be a rather truncated analysis of the article by trying to obscure the meaning of paragraph 1. DOJ opines (at 7-8) that "Paragraph 1 is thus,

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Agreement generally (Article 18 ¶ 3), and to consider the social effects of the implementation of the Agreement specifically. *Id*. ¶ 4(b). Thus, considering the effect of an implementing action (such as action on a permit application) that has social effects is a separate activity and presupposes that such an action might have occurred before the Joint Committee considers it.

on its face, simply a statement of the Parties' recognitions and intentions, and does not create any affirmative rights, obligations, or authorities." Stripped of the words that seem to have no purpose other than to try to minimize or diminish the force of the principles set out in paragraph 1, the first half of DOT's statement would be a straightforward statement that paragraph 1 "is a statement of the Parties' recognitions and intentions." As for the second half of DOJ's sentence, the agency does not read the stated intent in conjunction with the requirement set forth in paragraph 2 that when Parties take actions to implement the Agreement they shall be guided by the recognitions and intentions set out in paragraph 1. In fact, DOJ makes no effort at all to evaluate the meaning of paragraph 2, because it summarily concludes that it need not do so because "no plausible reading of that provision would provide a basis for denying a permit to an air carrier otherwise qualified under Article 4." *Id*. at 8.

We also note that DOJ's reading of Article 17 *bis* would "leave a portion of the contract ineffective or meaningless." In fact, it is a reading that, on its face, leads to a result that is "manifestly absurd" and "unreasonable." DOJ does not, however, follow the basic principle of treaty interpretation that the negotiating history should be consulted in these circumstances. As we have shown at pages 4-9 above, the negotiating history of Article 17 *bis* demonstrates that the article was to provide meaningful direction to the parties as they implement the Agreement, including consideration of applications for operating authorizations.

As we have shown, however, a straightforward reading of the entire text of Article 17 *bis*, giving its words their ordinary meanings, leads to the firm conclusion that Article 17 *bis* does provide an independent basis for denying a permit application.

## III. ARTICLE 17 *BIS* AFFORDS A BASIS FOR DOT TO PROPOSE TO APPROVE NAI'S APPLICATION WITH CONDITIONS.

Though we firmly believe that Article 17 *bis* provides a basis for DOT to unilaterally deny NAI's application, if DOT believes otherwise, the Department may pursue other options to seek to ensure that the intent expressed in Article 17 *bis* is fulfilled. One option is for the DOT to propose to approve NAI's application and to place conditions on the carrier's permit to ensure that its operations are consistent with the intent of the Parties expressed Article 17 *bis*. These conditions could include that NAI's aircrew will (1) be based in Ireland; (2) be employed on contracts with an Irish company that will be governed by Irish employment and social security laws; and (3) have the right to choose a representative for collective bargaining purposes.

## IV. CONCERNS ABOUT RETALIATION ARE UNFOUNDED.

The DOT Opinion states that if DOT fails to approve or take action on NAI's application, the European Parties may determine that such action (or inaction) is a breach of the Agreement and take proportional countermeasures. DOT Opinion at 4. We believe this concern is unwarranted as the European Parties may not implement countermeasures until a breach of the Agreement is determined through the dispute resolution mechanisms in the Agreement.

The concern expressed in the DOT Opinion is presumably based on paragraph 20 of the 2010 MOC, which states that "in the event that a Party would take measures contrary to the Agreement . . . the other party may avail itself of any appropriate and proportional measures in accordance with international law, including the Agreement." But the right to take countermeasures in predicated on a determination that a Party has taken a measure "contrary to the Agreement." *Id*. The ATA establishes a process for making such a determination and DOT would likely proceed in a manner that would avoid a unilateral denial by issuing an order to show cause that proposes to deny the application.

The European Parties could either accept DOT's proposed course of action or could challenge it by taking the steps set out in the Agreement for resolving disputes. A first step of that process is to request a meeting of the Joint Committee "to seek to resolve questions relating to the interpretation or application of the Agreement." Art. 18 ¶ 2. The 2007 Memorandum of Consultations that accompanied the ATA ("2007 MOC") emphasizes that this is the appropriate path for resolving disputes over the issuance of operating authorizations: "If either Party believes that its airlines are not receiving the economic operating authority to which they are entitled under the Agreement, it can refer the matter to the Joint Committee." 2007 MOC at ¶33. If the question is not resolved by the Joint Committee, then "any dispute relating to the

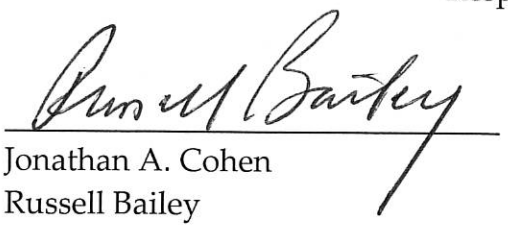
application or interpretation of [the] Agreement" may be referred to one of the dispute resolution mechanisms set out in Article 19 of the ATA. Art. 19. ¶1.

To be sure, once it has been established that a Party's proposed measure "would be contrary to the Agreement," then the other side could take "appropriate and proportional measures." But the specified process for resolving questions over the issuance of authorizations means that there must first be a determination that a Party has breached the Agreement before the other side may take responsive action. Allowing one Party to determine that the Agreement has been breached before exhausting the carefully-crafted dispute resolution mechanism would completely defeat the intent of the mechanism which is to avoid unilateral actions based on perceived violations of the Agreement. If the specified process is followed, the likelihood of a Party not complying with dispute resolution determination is remote. Equally remote is the chance that a Party will ever have to decide whether to avail itself of retaliatory measures.

## CONCLUSION

For the reasons set forth above, DOT should reverse its tentative conclusion that NAI should be issued a foreign air carrier permit and deny NAI's application.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I certify that I have, on this 16th day of May, 2016, served the foregoing Objection of Labor Parties by causing a copy to be sent by electronic mail or fax as identified below:

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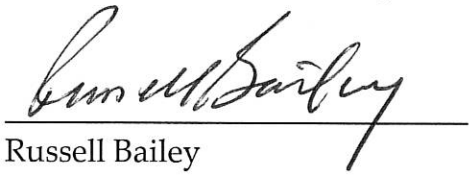

Russell Bailey

# ATTACHMENT 1

**MEMO/10/103**

Brussels, 25 March 2010

# FAQs ON THE SECOND STAGE EU-US "OPEN SKIES" AGREEMENT AND EXISTING FIRST STAGE AIR SERVICES AGREEMENT

***On 25 March, after eight rounds of negotiations, negotiators reached tentative agreement on a 'second stage' air services accord which builds upon the success of the 2007 EU-US Open Skies Agreement.***

## FAQs ON THE NEGOTIATIONS ON A SECOND STAGE EU-US AIR TRANSPORT AGREEMENT

***What are the new elements of the second stage agreement?***

A large number of elements will enter into effect immediately:

- A close cooperation on **environmental matters**. The agreement will establish a broad framework to tackle the local and global environmental challenges for aviation. Both sides agreed to ensure consistency and avoid duplication between their respective emission trading schemes. This will reduce the costs of climate change measures for airlines and consumers. The agreement will promote greater transparency on noise-based operating restrictions at airports (e.g. night-flight bans). Furthermore, both sides committed to a close cooperation on green technologies, fuels and air traffic management innovation and to joint efforts in ICAO to address the climate change impact of international air services.
- Further access to US-Government financed traffic. Under the "**Fly America**" program, US-Government financed air traffic is reserved to US airlines. The agreement gives EU airlines full access to sell tickets to contractors of the US Government and a partial access to the air travel of US Government officials.
- Even closer cooperation on **aviation security** with a view to achieving maximum reliance on each other's security measures and avoiding duplication. The cooperation will also be based on coordinated responses to new threats and consultations prior to introducing additional measures. This will reduce the hassle for passengers while ensuring a maximum of security.
- A **mutual recognition** of regulatory decisions. This will substantially simplify the procedures, reducing the regulatory costs for airlines. For example, US authorities will rely on Member States' regulatory decisions that an EU airline is financially fit and European-owned when dealing with applications from EU airlines.
- Further increasing the transparency of the cooperation between the **competition** authorities concerning transatlantic airline alliances.
- An extended role of the **Joint Committee**. The Joint Committee established by the EU-US Air Transport Agreement as monitoring body has demonstrated its benefits to aviation authorities and stakeholders on both sides of the Atlantic. Its role will be extended to matters of aviation safety, air traffic management, passenger facilitation and the mutual recognition of regulatory decisions.

- The agreement commits both sides to implement it in a way that does not undermine **labour rights**. This is the first time that an air transport agreement includes an explicit commitment to high labour standards.

Other elements will enter into effect at a later stage as they are subject to legislative changes on either side:

- The reciprocal liberalisation of **airline ownership and control**. This will require legislative changes in the US. Currently, foreign ownership in US airlines is limited to 25% of voting rights. Upon legislative change in the US, the EU will reciprocally allow majority ownership of EU airlines by US nationals.
- The right for EU airlines to fly between the US and a number of non-European countries (so-called "**7th freedom right**") as well as the removal of obstacles for European **majority investment in third country-airlines** by facilitating access to the US market. These rights are subject to legislative change in the EU concerning noise-based operating restrictions at airports.

**What is the anticipated economic benefit of this agreement?**

- The economic benefit to be gained from the full implementation of the Second Stage agreement has been independently estimated to be equivalent to the transatlantic benefit to be expected out of a successful conclusion of the Doha round of trade liberalisation negotiations.[1]

**What is the link between the first and second stage agreements?**

On March 30, 2008, the First Stage EU-US "**Open-Skies" Agreement** came into effect, introducing new commercial freedoms for operators and an unprecedented framework for regulatory cooperation in the field of transatlantic aviation. The agreement replaced the individual agreements Member States had with the United States, and removed all barriers for airlines of either side wishing to fly between and beyond Europe and the United States. For the first time, European airlines could operate from bases outside their licensing state, creating the opportunity, for example, for British Airways to operate flights from Paris to New York.

The agreement also included a comprehensive new regulatory framework within which these new freedoms could be exercised, reflecting the importance placed by Europe and the United States on safe, secure and effective regulation of the sector. A new body responsible for implementation of the agreement, the Joint Committee, was formed, and new cooperative initiatives in the areas of security, competition and air traffic management were launched.

This ground-breaking agreement has paved the way for new entrants into once sheltered markets and provided an open market for all trans-Atlantic routes between the United States and Europe, thereby facilitating greater competition, encouraging job creation and helping to lower air fares.

Importantly, the first stage agreement also established a road-map for negotiations on further improvements to the agreement aimed at creating additional opportunities for both sides, particularly within each other's domestic markets, and deepening the already excellent level of cooperation on aviation issues of common interest.

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[1] The sources of these estimates are two Studies undertaken by the Brattle consultative Group:
(i) the '*Economic impact of an EU-US Open Aviation Area*' (2002) Commissioned by the European Commission into the benefits of an Open Aviation Area (OAA) Aviation Agreement for the US and Europe; and
(ii) A study commissioned by the Center for Transatlantic Relations at Johns Hopkins University, Baltimore, U.S., and included in the publication '*Deep Integration: How Transatlantic Markets are Leading Globalization.*' (2005)

***When did the second stage negotiations begin?***

- They started in May 2008, less than 60 days after the first stage agreement came into effect. This timetable was foreseen in the first stage agreement, which established a detailed framework for the second stage negotiations, including a list of priority topics for discussion. Since then, there have been a total of eight rounds of negotiation.
- The provisional agreement reached by negotiators on 25 March is consistent with the commitment made by both sides at the 2009 EU-US Summit that they would '*aim to reach a second-stage air transport agreement in 2010 which includes benefits for both sides*'. It will be submitted for approval to the Council of Transport Ministers in June of this year.

***Why have the negotiations taken so long?***

- The issues for discussion in the second stage negotiations required careful consideration by both sides. Furthermore, there was a long break in the negotiations leading up to and continuing for a period after the US elections in November 2008. Consequently, the negotiations took some time.

## FAQs ON THE FIRST STAGE EU-US AIR SERVICES AGREEMENT

***When did the First Stage Agreement enter into force?***

The EU-US Air Transport Agreement, signed on 30 April 2007, has been in effect since 30 March 2008.

***What were the new rights for EU airlines in the first stage agreement?***

- The **recognition of all European airlines** as "Community air carriers" by the US, allowing for the consolidation of the EU aviation sector and the compliance with the November 2002 Court cases in the so-called 'Open skies judgments'.
- The possibility for any "Community air carrier" to fly between any point in the EU to any point in the US, without any restrictions on pricing or capacity. This freedom did not exist before 30 March.
- The possibility to continue flights beyond the United States towards third countries ('5th Freedom').
- The possibility to operate **all-cargo flights between the United States and any third country**, without a requirement that the service starts or ends in the EU ('7th Freedom').
- So-called **'7th Freedom rights'** for passenger flights between the US and a number of non-EU European countries, i.e. direct flights between the US and Croatia or Norway.
- A number of access rights to the **US 'Fly America'** programme for the transport of passengers and cargo financed by the US Federal Government.
- More freedom to enter into **commercial arrangements** with other airlines (code-sharing, wet-leasing etc.).
- Rights in the area of **franchising and branding** of air services to enhance legal certainty in the commercial relations in between airlines.
- Possibility of **antitrust immunity** for the development of airline alliances.
- Rights for EU investors in the area of **ownership, investment and control** of US airlines; Rights in the area of inward foreign investment in EU airlines by non-EU European investors; Rights in the area of ownership, investment and control by EU investors of airlines in Africa and non-EU European countries.

***What has been the commercial effect of the first stage agreement?***

The immediate effect of the agreement has been to remove constraints and enable competition to thrive. Although services have since been affected by the crisis, **the number of flights and degree of competition available to consumers is now considerably higher than under the previous set of bilateral arrangements**.

In the first year following implementation of the agreement, the effect was considerable, with the total **number of flights between the EU and the US in April-June 2008 8% higher than the same period in 2007**.

Transatlantic services **have increased particularly in those Member States where restrictive agreements were previously in place**. In London-Heathrow alone, flights to the US increased by 18 daily flights, an increase of more than 20%. Flights to the US from Spain and Ireland have also increased.

Airlines have also made use of the opportunity to **operate transatlantic flights from outside their home country**. For example, British Airways' subsidiary, Open Skies, operates daily between Paris and the US destinations of Washington and New York.

Many airlines have made use of the extended code-sharing opportunities opened up by the agreement. For example, SkyTeam partners Air France-KLM and Delta/Northwest have secured antitrust immunity for their operations. Oneworld partners British Airways, Iberia, and American have also applied for antitrust immunity for a closer alliance.

Furthermore, there has been new transatlantic investment in the airline industry. German airline Lufthansa acquired 19% of US carrier JetBlue in February 2008.

***How do the EU and the US cooperate in regulatory issues?***

The Agreement introduces unprecedented mechanisms for **regulatory convergence**, notably in **competition**, **state aid and security**. The objective is to minimize incompatibilities between the rules and policy approaches on either side of the Atlantic.

The provisions on security are key towards a **'one-stop security' approach**. The regulatory cooperation includes also provisions on EU-US technical cooperation in relation to **climate change**, on consumer protection and on the development of joint EU-US approaches in international organisations.

***Are there concrete examples of this regulatory cooperation?***

- In the field of **aviation security**, a working arrangement has been reached on reciprocal airport assessments.
- In the field of **air traffic management and environmental protection**, the European Commission and the U.S. Federal Aviation Authority have created the Atlantic Interoperability Initiative to Reduce Emissions (AIRE) Partnership to improve the environmental footprint of air transport with environmentally friendly air traffic procedures from gate to gate.
- In the field of **competition policy**, the European Commission and the U.S. Department of Transportation have been working together to achieve compatible regulatory approaches.

***How does the Commission monitor the implementation of the Agreement?***

The Agreement establishes a new mechanism: The **EU-US Joint Committee**. This has already met a total of nine [9] times to oversee implementation of the Agreement and ensure regulatory cooperation.

# ATTACHMENT 2

DECLARATION OF EDWARD WYTKIND IN SUPPORT OF REPLY OF LABOR PARTY OBJECTIONS TO THE U.S. DOT'S ORDER TO SHOW CAUSE IN THE NORWEGIAN AIR INTERNATIONAL PROCEEDING

1. I am the president of the Transportation Trades Department, AFL-CIO (TTD), a federation of 32 unions whose members work in every mode of transportation in the private and public sector including aviation. In my elected capacity as president I preside over the broad policy agenda of transportation unions in the legislative and regulatory arena.
2. During the negotiations leading up to both the 2007 'First Stage" U.S.-EU Air Transport Agreement (ATA) and the 2010 "Second Stage" Protocol amending the Agreement, I was directly involved in communicating the interests of our aviation unions to senior officials in the U.S. government including high-level decision makers in the U.S. Department of Transportation and the lead aviation negotiators at the Department of State. In fact, I was in regular contact with then senior State Department official Mr. John Byerly who is now a registered lobbyist for Norwegian Air Shuttle, the parent company attempting to launch Norwegian Air International (NAI). During the negotiations over this historic trade accord we expressed our views in real-time, often through written communication.
3. In 2003 I expressed our clear and unambiguous views regarding the negotiation of an agreement with EU that expands air services between the U.S. and Europe. Specifically, 13 years ago I raised concerns that proposals to permit a foreign airline with a license in one EU country to be designated by another EU country for purposes of taking advantage of the U.S.-EU agreement could open the floodgates to "flag-of-convenience schemes" and the type of "forum shopping" business models that "seek out countries with the lowest labor and regulatory costs."(See attached letter to Mr. John Byerly and Mr. Paul Gretch dated December 4, 2003.) Interestingly, concerns over forum shopping were articulated by the negotiators, most notably EU negotiators who understood that such flag-of-convenience business models could undermine the high labor standards enjoyed in Europe.
4. Following completion of the ATA in 2007, airline unions on both sides of the Atlantic were concerned about two primary issues: 1) the possibility that the rules that apply to the ownership and control of U.S. airlines might be weakened, and 2) that European airlines might attempt to use flag-of-convenience opportunities created by the Agreement to lower labor standards, weaken bargaining rights and gain an unfair competitive advantage by beating down good wages and benefits.
5. As a result of our active engagement on the main labor issues and concerns, we were pleased that the European Commission (EC) held two labor forums dedicated to examining the unique labor issues posed by the ATA. TTD and our aviation affiliates participated in the forum held in Washington, D.C. and made our views known at the forum held in Brussels. We were also pleased that the EC assigned Claude Chêne to serve as an "explorateur" to examine the labor issues in more depth and to consider possible ways the U.S. and EU might address these issues.
6. I met with Mr. Chêne and, among other things, told him that a primary concern of U.S. airline employees was the flag-of-convenience possibilities that the ATA had created. Given the unique regulatory structure that would arise following completion of the ATA it was paramount that the negotiations focused on addressing these concerns. I was pleased that Mr. Chêne's report

identified the flag-of-convenience issue and recognized that something should be done to address that concern.

7. Throughout the negotiations on a second stage agreement with the EU TTD advocated for the inclusion of meaningful, enforceable labor language in the core of the agreement. As the talks evolved the development of a "Labor Article" became a central topic of discussions on which we regularly engaged government officials.
8. Central to our message to government negotiators was the view of TTD and our affiliated unions that any Labor Article must provide a meaningful mechanism for addressing the obvious concerns involving jobs and workers' bargaining rights that flowed from possible flag-of-convenience airline operations that may emerge under the amended ATA. This view was delivered not only to the lead negotiators including Mr. Byerly but to other individuals at the DOT responsible for overseeing the negotiations.
9. There was an active back and forth on language under consideration for the Labor Article. The firm position of TTD and our aviation unions was that we would not support any version of a Labor Article that was not enforceable and did not allow the possibility that the U.S. government could say "no" to a permit application from an airline that proposed to operate to U.S. markets using a flag-of-convenience business model. I can unequivocally say that under no circumstances would we have endorsed the ATA, as amended in 2010, if it contained labor protections that would be deemed unenforceable during implementation of the agreement.
10. For these reasons I am stunned by the claims of Mr. Byerly and others who were intimately involved in the negotiations that Article 17 *bis* violations are not a "basis" for denial of NAI's or any other foreign air carrier permit application. These statements defy the clear objectives of the Labor Article and are tantamount to a rewrite of history.
11. Without question the support of TTD and our aviation unions for the final text that became Article 17 *bis* was conditioned on the principle that the U.S. could deny a permit to a European airline that "undermines labor standards" through the deployment of a flag-of-convenience business model. I believe that the U.S. and EU negotiators understood this. Not a single time before the application of a permit was filed by Norwegian Air International did any senior U.S. (or EU) official inform me that there was a limitation on the ability of DOT to use Article 17 *bis* to deny (or appropriately condition) an application.
12. The conclusion that Article 17 *bis* may not be used to deny or condition any application eviscerates the plain intent of the Labor Article. Any interpretation of Article 17 *bis* to that effect is at odds with the history of the negotiations, the plain meaning of the text, and the understanding that TTD had of how the article would be applied.
13. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my belief.

Executed in Washington, D.C. on May 13, 2016.

Edward Wytkind

# ATTACHMENT

TTD A BOLD VOICE FOR TRANSPORTATION WORKERS

**I Request Confidential Treatment of this Letter Pursuant to 49 U.S.C. § 40115**

December 4, 2003

**VIA FACSIMILE & U.S. MAIL**

Mr. John Byerly
Deputy Assistant Secretary for Transportation Affairs
U.S. Department of State
EB/TRA, Room 5830
2201 C Street, NW
Washington, D.C. 20520-5820

Mr. Paul Gretch
Director
Office of International Aviation
U.S. Department of Transportation
Room 6402
400 Seventh Street, SW
Washington, D.C. 20590

**RE: December 3, 2003 Draft Proposal to EU**

Dear Mssrs. Byerly and Gretch:

On behalf of the aviation unions of the Transportation Trades Department, AFL-CIO (TTD), I write to express support for the comments and concerns expressed in Captain Duane Woerth's December 3rd letter and a follow-up letter submitted by Russell Bailey concerning the December 3, 2003 U.S. draft proposal.

At the outset, I want to echo and reiterate our concerns with the rushed process that the U.S. has engaged in as part of these negotiations. The issues being discussed are complicated and the concessions on the table will have far reaching consequences for the tens of thousands of workers we represent, U.S. carriers and indeed all who depend on a vibrant aviation system. At a minimum, the U.S. should not move forward with its proposal without adequately consulting stakeholders, including aviation labor, and giving these parties a realistic opportunity to evaluate and consider various options. To date, we would contend this has not occurred.

I should also note, as highlighted in Captain Woerth's letter, that we see no reason why the U.S. is making this proposal without having received from the EC a response to the questions the U.S. side has submitted in connection with flag of convenience and labor issues. The issues raised in these questions go directly to the impact this proposal will have on international aviation and we can only hope that the U.S. will demand a response from the EC as soon as possible and in any event will not move forward with negotiations without this response.

We are particularly concerned with the proposal that would permit a foreign airline with its licenses in one EU country to be designated by another EU country for purposes of enjoying the benefits of a bilateral agreement with the U.S. Transportation labor has had experiences with "flag of convenience" schemes in other areas and we know first-hand the economic incentives that exist for operators to seek out countries with the lowest labor and regulatory costs. We would maintain that this type of forum shopping does not serve the public interest and the U.S. must be assured that the current proposal is not used to accomplish this objective. As stated above, Captain Woerth's letter includes specific recommendations in this area with which TTD concurs.

Thank you for your consideration of our views.

Sincerely,

Edward Wytkind
President

cc: Captain Duane E. Woerth
Patricia Friend
James P. Hoffa
Sonny Hall
Robert Roach
Morton Bahr

# ATTACHMENT 3

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TEXTS & TRANSCRIPTS

TRANSLATED: English

# Statement on U.S.-EU Civil Aviation Agreement

## Agreement deepens joint cooperation in aviation security, safety and more

**25 March 2010**

U.S. DEPARTMENT OF STATE
Office of the Spokesman
March 25, 2010

MEDIA NOTE

U.S.-EU Reach Agreement in "Second Stage" Civil Aviation Talks

Today, the United States and European Union (EU) initialed a "Second Stage" civil aviation agreement, expanding the historic 2007 "Open Skies" agreement by providing for greater U.S.-EU cooperation on a wide range of aviation issues. The agreement was concluded after eight rounds of talks, including three days of discussions in Brussels, Belgium. The agreement fulfills a mandate from President Obama and his EU counterparts at the last U.S.-EU Summit to reach a "Second Stage" civil aviation agreement this year.

Today's accord builds on the U.S.-EU "Open Skies" agreement. Signed in April 2007, that agreement eliminated restrictions on services between the United States and EU member states, allowing airlines from both sides to select routes and destinations based on consumer demand for both passenger and cargo services, without limitations on the number of U.S. or EU carriers that can fly between the two countries or the number of flights they can operate.

The new agreement affirms that the terms of the 2007 agreement will remain in place indefinitely. It also deepens U.S.-EU cooperation in aviation security, safety, competition, and ease of travel. In addition, it provides greater protections for U.S. carriers from arbitrary restrictions on night flights at European airports. It also includes a ground-breaking article on the importance of high labor standards in the airline industry.

The new agreement underscores the importance of close transatlantic cooperation on aviation environmental matters in order to advance a global approach to global challenges.

KEYWORDS: United States, Europe, civil aviation agreement, security, safety

TRANSLATED: English

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# ATTACHMENT 4

**IP/10/371**

Brussels, 25 March 2010

# Breakthrough in EU–US second-stage Open Skies negotiations: Vice-President Kallas welcomes draft agreement

***Siim Kallas, European Commission Vice-President responsible for Transport, welcomed as "a major step forwards", the preliminary agreement reached today by EU and US negotiators on a 'second-stage' Open Skies aviation agreement. "A process has been agreed towards the further expansion and consolidation of the transatlantic aviation market. Both sides have agreed to increase regulatory co-operation, and remove the barriers to market access that have been holding back the development of the world's most important aviation markets. Building on the success of the 2007 EU-US Open Skies Agreement, this draft deal represents a significant breakthrough in the process of normalising the global airline industry". In economic terms, the creation of a full EU-US Open Aviation Area has been estimated to be worth up to 12 billion euro in economic benefits and up to 80.000 new jobs. Negotiators also made significant progress in agreeing a new framework for jointly addressing the environmental effects of aviation, as well as advances in the areas of security, competition, and social matters. Vice-President Kallas will submit the draft agreement for approval to the Transport Council in June under the Spanish Presidency.***

Following the launch of second-stage negotiations in May 2008 and seven further rounds of negotiations, negotiators today completed the detailed work on a new agreement. The European Union and the United States signed an air transport agreement in 2007 that has been applied since 30 March 2008. This agreement fulfils the mandate given in the last EU-US Summit in November 2009 to reach a balanced agreement in 2010.

The stage one agreement was arguably the most important air services agreement in the world, allowing open market access for air services between all 27 Member States and the US - markets that together make up almost 60 per cent of global aviation. Furthermore, it created an unprecedented regulatory platform to address all mutual concerns related to EU-US air services.

However, the 2007 agreement did not directly address the key issue of reform of airline ownership and control rules. The provisional agreement reached this week includes a commitment to engage in a process towards such reform. The European Union, based on the positive experience of the EU internal market, has long pressed for such an outcome, arguing that it would represent a key step towards liberating the airline industry from the outdated regulatory constraints in the area of foreign investment that prevent it from acting like any other industry. The provisional agreement sets out a number of incentives to encourage reform: When the United States changes its legislation to allow EU investors majority ownership of US airlines, the EU will reciprocally allow majority ownership of EU airlines by US investors and US airlines will benefit from additional market access rights to and from the EU. Progress towards this outcome will be reviewed regularly.

The negotiators also achieved significant improvements in terms of regulatory cooperation:

- The agreement will strengthen cooperation on environmental matters by requiring the compatibility and interaction of market-based measures (such as emission trading schemes) to avoid duplication; by promoting greater transparency for noise-based airport measures; and by enhancing green technologies, fuels and air traffic management. This cooperation is key to effectively decarbonising international aviation.
- 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.
- The agreement will raise the already high level of cooperation on security to better allocate resources at threats to the aviation system by promoting maximum mutual reliance on each other's security measures as well as swift and coordinated responses to new threats.
- The agreement further extends the role of the EU-US Joint Committee, the body that monitors the implementation of the agreement and coordinates the various work streams of regulatory cooperation. The new rules will reduce red tape (e.g. by mutual recognition of each other's regulatory decisions) and avoid the wasteful duplication of resources (e.g. joint safety initiatives, one-stop security, facilitation of passengers' travel).

- Market access will be further opened with EU carriers gaining further access to US Government-financed traffic ("Fly America"). Subject to certain changes to the legal framework for noise-based airport restrictions, EU airlines will gain in the future new commercial opportunities to fly between the US and non-EU countries. Furthermore, a number of obstacles to EU and US investments in 3rd countries' airlines will be removed.

The ground-breaking first-stage agreement reached in 2007 had established a clear agenda and a timetable for second-stage negotiations between the European Union and the United States aimed at further liberalisation and enhanced regulatory cooperation. Second-stage negotiations were launched in May 2008, followed by seven rounds of negotiations. At the initiative of the Commission, two labour forums were also convened to better assess the consequences of a change of airline ownership and control rules for airline employees. At their Summit in November 2009, EU and US leaders had expressed their aim to reach a second-stage air transport agreement in 2010, which includes benefits for both sides.

The European Union and the United States' markets are the largest aviation markets in the world. Together, they represent approximately 60% of global aviation. The economic benefits associated with the implementation of this second-stage agreement have been independently estimated to be equivalent to the transatlantic benefits to be expected from a successful conclusion of the Doha round of trade liberalisation negotiations.

The Commission will seek the approval of the agreement by the 27 Transport Ministers and the European Parliament.

**Facts and figures – Benefits of opening up the EU- US aviation market**

The potential economic benefits of removing the barriers to the EU-US transatlantic market are very significant (Booz Allen Hamilton, January 2007)

- In economic terms, it could be worth up to 12 billion euro in economic benefits and up to 80,000 new jobs.
- It would create the possibility of an additional 26 million extra passengers on transatlantic flights over a period of 5 years This compares with current annual traffic of just under 50 million (2007). At the end of the five years, this will mean that the market will be 34% bigger with the agreement than without the agreement.
- By eliminating the bilateral agreements and their restrictions on traffic rights, we could envisage a reduction in the cost of tickets for companies and private customers, with consolidated economic benefits of between 6.4 and 12 billion euro over a period of 5 years.
- The removal of barriers could lead to the creation of around 80,000 jobs (spread more or less equally between the US and the EU).
- The cargo market would see growth of between 1 and 2 percent, which is highly significant given the size of the market globally and the size of the European and American industry.

# ATTACHMENT 5

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,

Jim Oberstar, M.C.
(1975 - 2011)

# ATTACHMENT 6

**EMPLOYMENT AGREEMENT (the "Agreement")**

On the one part, **OSM Aviation Pte Ltd** (UEN 201417576W), a company incorporated in
Singapore and having its registered headquarter is at 91 Bencoolen Street #03-02/03 Sunshine Plaza, Singapore 189652, represented by XXX XXX, in his/her condition of director (hereinafter referred to as the "Company"), and

on the other part, (Employee)

domiciled at:

Street address:
City:
Postal code:
Country:

Pacting on his/her own name and representation, (hereinafter referred to as the "Employee").

**THEY STATE AS FOLLOWS:**

That both parties mutually recognise each other to have sufficient capacity to execute this employment contract, in consideration of the following:

**1. COMMENCEMENT OF EMPLOYMENT AND BASE**

1.1 The purpose of this Agreement is to regulate the Employee's services to be rendered to the Company in his/ her position of Captain.

1.2 The Employee is employed by the Company with effect from 1 March 2016.

1.3 Whilst at all times the Employee will remain employed by the Company, the Employee
is assigned to a client airline to provide services.

1.4 Either the Employee or the Company can terminate this Agreement on 3 months' written notice. In addition, the Company may terminate the Employee's employment hereunder at any time by paying the Employee the relevant amount of salary in lieu of such notice.

1.5 The employment is an employment for an indefinite period of time. The employment is
a 100% position. The Employee's place of work will be the Bangkok base but the Company reserves the right to change the base location with 2 months' notice.

## 2. AREA OF RESPONSIBILITY/JOB DESCRIPTION AND HOLIDAYS

2.1 The Employee shall perform work on such domestic and international flights as the Company may require and shall participate in training as and when required. The Employee is obliged in all circumstances and at all times to represent the Company and other companies within the Group in a responsible and loyal manner.

2.2 The Employee's employment is regulated by this Agreement and the terms and conditions set out in the attached Appendix 1, or the collective bargaining agreement applicable on the Company's business at the applicable base (if any) and the policies and the instructions specifically given by the Company at all times, subject always to the limits established by the law in the applicable jurisdiction.

2.3 The Employee shall not be engaged in any other employment or business, irrespective of whether such business competes with the Company's business or not, without the prior written consent of the Company. The Employee shall receive exclusivity compensation in accordance with Section 6.1 below.

2.4 The period of remunerated vacation will be 28 days, as set out in the attached Appendix 1.

## 3. WORKING TIME REGULATIONS

3.1 The Employee will be required to comply with any requests to maintain records which
may be required by the Company in order to comply with its obligations under EASA subpart FTL.

3.2 The Employee must adhere to the terms and conditions set out in the attached Appendix 1 and the Company's separate policies in relation to rest breaks and working time.

## 4.LEGAL REQUIREMENTS

4.1 The Employee shall abide by all laws of Singapore and any other state in which he may be required to perform his/her duties, as long as such rules are applicable to him.

4.2 The Employee will comply with all the policies of the Group, applicable to his/her job at any time.

4.3 The Employee will comply with the rules of conduct of the Company/Group, including
its policy on the use of alcohol and drugs. The Employee must adhere to all applicable OM documents from time to time in force.

4.4 The Employee must at all times during the term of this Contract:

(a) Meet all current requirements of the relevant Civil Aviation Authority and the International Civil Aviation Organisation to fly the Aircraft as an international and

domestic air transport Employee.
(b) Meet all licensing and medical examination requirements as specified by the relevant Civil Aviation Authority to fly the Aircraft, including being the holder of relevant
aircraft type rating and appropriate licence, with experience and hours to the satisfaction of the client and the Company.
(c) Meet the standard required by the Company and the client for all training, and simulator and other checks (including recurrency training and checks).
(d) Obtain and maintain all visas or other entry documentation, valid passport, visa, or employment permits required to perform the Employee's duties. The reasonable cost of requisite visa/employment permit shall be reimbursed on production of receipts by the Employee.
(e) Pass any medical examination or other test required by the Company or the client at any time during the Employee's employment.
(f) Be familiar with and adhere to the rules and regulations that generally apply to the relevant position of the Employee in an airport area, and the standards, rules and regulations that generally apply to the Employee in relation to the services.

**5. CONFIDENTIAL INFORMATION AND PERSONAL DATA**

5.1 Employee recognizes that the Company has and will have information regarding the following Confidential Information:

- Technical Matters
- Customer lists/customer information
- Security Procedures
- Flight Operations

and other vital information items (collectively, "Confidential Information") which are valuable, special and unique assets of the Company. Employee agrees that Employee will not at any time or in any manner, either directly or indirectly, divulge, disclose, or communicate any Confidential Information to any third party without the prior written consent of the Company. Employee will protect the Confidential Information and treat it as
strictly confidential. A violation by Employee of this paragraph shall be a material violation
of this Agreement and will justify legal and/or equitable relief.

5.2 Notwithstanding the foregoing, the term "Confidential Information" shall not include information (i) generally known and publicly available other than as a result of a breach of this Agreement by the Employee or (ii) disclosed pursuant to legal process or as required by law.

5.3 Upon termination of employment, Employee agrees not to retain or take any confidential notes, records, documents or other proprietary or Confidential Information about the Company or its customers prepared or obtained in the course of employment.

5.4 Nothing in this provision is intended to diminish in any way the common law obligations of Employee to the Company; rather, the restrictions herein are in addition to such common law obligations.

5.5 The Employee hereby agrees that the Company and any other company within the Group may collect, store, process, disclose, access, review and/or use personal data (including sensitive personal data) about the Employee, whether obtained from the Employee or from other sources, for the purposes set out below and/or any other evaluative purposes and/or the purpose of managing and/or terminating the Employee's employment with the Company:-

(i) administering and maintaining personnel records;
(ii) paying and reviewing salary and other remuneration and benefits;
(iii) providing and administering benefits;
(iv) undertaking performance appraisals and reviews;
(v) maintaining records for sickness, holiday and other absence, including maternity, childcare or infant care leave;
(vi) making decisions about the Employee's fitness for work;
(vii) providing references and information to future employers, and if necessary, governmental and quasi-governmental bodies, including, the Inland Revenue Authority of Singapore and the Central Provident Fund Board;
(viii) providing information to current and/or future partners and/or customers of the Company and/or its business and/or any company within the Group or any of their respective businesses;
(ix) maintaining medical records, including information about the Employee's physical and mental health or condition;
(x) disciplinary and grievance matters; and
(xi) recruitment activities.

5.6 The Employee is entitled to have access to the personal information relating to the Employee by making a written application to the Designated Person (as defined below) and specifying the type of information that the Employee wants to see. The Company reserves the right to charge a fee (representing its costs in administering the Employee's request) for supplying such data and to refuse requests which, in its opinion, occur with unreasonable frequency.

5.7 The Company has designated the person whose details are set out below as the person ("**Designated Person**") who will be responsible for ensuring the Company's compliance with applicable data protection laws. If the Employee has any queries or requests or wishes to make any applications concerning the Employee's personal information or data, the Employee should contact the following Designated Person :-

XXXXXXX

**6. SALARY AND OTHER CONDITIONS**

6.1 In exchange for the Employee's services established in this Agreement, he shall for 2016 receive a gross fixed monthly remuneration in Euro in accordance with the Appendix 1.

The gross fixed annual remuneration will be paid in twelve (12) payments by means of a bank transfer to the bank account designated by the Employee, before the last day of the month to which the payment refers.

6.2 The remuneration will be subject to withholding of all taxes payable as well as deductions for Social Security contributions, according to the legislation in Singapore or as required under the law of any other jurisdiction.

6.3 Subject to any deductions by the Company in accordance with Clause 6.2 above, the Employee shall be responsible for all taxes relating to the Employee or to this Agreement, and shall:

i. file all tax returns and pay any required taxes as they fall due in any applicable jurisdiction; and
ii. provide the Company with information requested by the Company evidencing the Employee's tax and social security numbers and payment of taxes in accordance with Clause 6.3 (i) above;
iii. indemnify the Company and/or the client where he performs services in respect of any failure by the Employee to pay taxes due or comply with any applicable laws and regulations.

6.4 The Employee is at all times obliged to keep the Company informed of the Employee's address.

6.5 The Company reserves the right to make deductions from the Employee's salary either
during employment or upon termination in respect of any monies owed by the Employee to the Company including, but not limited to, excess holiday, overpayment of salary, overpayment of sick pay, loans or advances.

**7 DISCIPLINARY & GRIEVANCE PROCEDURES**

7.1 The Company's disciplinary and grievance procedures are available separately. They do not have any contractual effect or otherwise form part of this Agreement.

**8 PENSION**

8.1 In respect of any payments and benefits to the Employee hereunder, the Company and the employee (as employer and employee, respectively) shall comply with the provisions of the Central Provident Fund Act (Cap. 36) for the time being in force and the rules and regulations promulgated there under.

8.2 The Company will make contributions to the Central Provident Fund for both Company and Employee as provided for in the Central Provident Fund Act where applicable.

**9 GENERAL**

9.1 This Agreement and the attached Appendix 1 General Terms and Conditions set

out the entire agreement and understanding between the Employee and the Company and supersede all prior agreements, understandings or arrangements (oral or written) in respect of the Employee's employment by the Company. Any previous contract of employment or contract for services between the Employee and the Company shall be deemed to have been terminated by mutual consent.

9.2 If any term or provision or any part thereof (in this clause called the "**Offending Provision**") contained in this Agreement shall be declared or become unenforceable, invalid or illegal for any reason whatsoever, the other terms and provisions of this Agreement shall remain in full force and effect as if this Agreement had been effected without the Offending Provision appearing herein.

**10 GOVERNING LAW**

10.1 This contract will be governed by and interpreted in accordance with Singapore law.

**11 JURISDICTION**

11.1 Each party irrevocably agrees that the courts of Singapore shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation.

**SIGNED** by XXXXXXX for and on behalf of the Company

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## APPENDIX 1

## GENERAL TERMS AND CONDITIONS – PILOT Long Haul BKK

**REMUNERATION**

**All the concepts included in the following table are gross.**

| Remuneration | Amount | Information etc. |
|---|---|---|
| Ground Training Remuneration | N/A | Students during Initial Training only |
| TRE/TRI fixed Allowance pr month<br>4 year engagement period | € 2000 | After completed ground training, TRI must complete TRE training within 12 months |
| Guaranteed Monthly Salary<br>Captain ( 65 block hours ) | Year 1 = € 9750<br>Year 2 = € 10043<br>Year 3 = € 10344 | After completed ground training |
| Guaranteed Monthly Salary<br>Relief Captain ( 65 block hours ) | Year 1 = € 7475<br>Year 2 = € 7700<br>Year 3 = € 7930 | After completed ground training |
| Guaranteed Monthly Salary<br>First Officer ( 65 block hours ) | Year 1 = € 5525<br>Year 2 = € 5691<br>Year 3 = € 5862 | After completed ground training |
| Line Training Captains | € 20 per BLH ( Block hour ) | In addition to BLH compensation |
| Simulator Instructors | € 40 per Instruction hour, max 7 hours, including briefing | 1 simulator session will count as 6 BLH towards the 65 hour threshold. |
| Check Captains | € 40 per BLH Check Flight | In addition to BLH compensation |
| TRE when checking | € 60 pr instruction hour, max 6 hours, including briefing | 6 hours will count towards the 65 hours threshold |
| Per diem | € 1100 / month | When starting line training |
| Insurances, including medical, travel, liability and LOL | According to applicable policy | Same coverage as provided today; LoL included |
| BDO ( Bought Day Off ) | 10% of guaranteed monthly salary | After request by the Company |
| Compensation for BLH above 65 hours, including training hours for TRI/TRE, see above | TRI: € 175 / hour<br>Captain; € 150 / hour<br>RCA: € 115 / hour<br>FO: € 85 / hour | Not applicable to pilots on part time<br>Unused stand by day gives 2.15 BLH towards the 65 hour threshold |
| Sick leave compensation | 30 days and after that according to | In accordance with AOC Policy |

| | | |
|---|---|---|
| | medical insurance | |
| Phone Allowance | TRE/TRI / Captain: € 100 / month<br>RCA/ FO ; € 50 / month | |

**INFORMATION ABOUT ROSTER RULES AND REGULATIONS**

| **Subject** | **Terms & Conditions information** | **Contact** |
|---|---|---|
| **Roster release day** | 14 days before actual Roster month | Roster release via e-mail |
| **Days off** | Minimum 10 days per Roster month, fully variable, and<br><br>Option 1: Maximum working period is rolling 10 days without going back to home base (or EOL days in Europe),<br><br>or<br><br>Option 2: That the days off are planned as 2 x 4 + 2 days. The order of the days off system is indifferent. | Roster release via e-mail |
| **Reserve** | Home base : call out 24 hours' notice<br><br>Outstation : EASA FTL ( 10 hours ) | |
| **Vacation** | Crew members will be entitled to 28 days' vacation per year including Singapore Statutory Public holidays.<br><br>Vacation will normally be planned as calendar weeks for bidding. Remaining vacation days are single days for bidding.<br><br>Crew has possibility to bid vacation via e-mail to pilot request after notification from the Company.<br><br>Crew shall be notified about their annual vacation at the latest 2 months before actual month of annual vacation.<br><br>Crew can only carry up to 2 days' untaken holiday entitlement forward from one Holiday year to the following holiday year, unless a period of statutory maternity, paternity or adoption leave has prevented them from taking it in the relevant year.<br>Up to 2 days' vacation days that has have not been scheduled by the end of the year ( 31st of December ), or carried forward to the | pilotrequest@norwegian.no<br><br>Crewplan will send information about bidding period to the Employees, at the latest 3 months before bidding period starts. |

| | | |
|---|---|---|
| | following holiday year, will be paid out by the Company at a daily rate of 1/245 of annual normal remuneration, one thirtieth of the month salary for each day so deferred as applicable. Otherwise, crew shall not be paid in lieu of untaken holiday.<br>Except on termination of employment. | |
| **Duty swapping after release** | The Employees may swap duty with each other, the Employee must send their request about the swap to Replan. | Request from the Employee to Replanning@norwegian.no<br><br>Replan gives confirmation if possible to swap |
| **Changes of base** | The Employee will be available to provide the specified services for all the duration of the contract.<br><br>The Employee is hired to render services in mobile or itinerant work centers.<br>The Employee's base may be changed at any location upon two months' notice. | The Company informs crew |
| **CI / CO**<br><br>**( Check in / Check out )** | At all bases other than BKK; 90 min<br><br>At BKK; 120 min<br><br>Checkout; 15 min | CI / CO times may be changed by the Company |
| **Standby call out** | Standby callout is at all stations: 90 minutes. | From Replan / OCC to crew |
| **Seniority /**<br><br>**Low ranking** | | According to AOC policy |
| **Line training** | During line training, crew will train from where the Company has line training capacity. | Roster release to crew |
| **Sick leave during the day** | The Employee will notify OCC / Replan as soon as possible on the day of absence about sick leave and the reason for absence.<br>Crew must certify their absence in accordance with AOC Policy | Crew to Operations Control Centre, ASAP<br><br>Long term sick leave to OSM Aviation |
| **Part time** | 80% = min. 14 days off pr month, 196 work days pr year<br><br>50% = min 20 days off pr month, 122 work days pr year<br><br>Part time will be granted according to company policy and personal circumstances.<br><br>Pilots aged 58 or above are entitled to 80% part time employment. | |
| **Family Friendly Policies** | According to Singapore law. | Crew to the Company |

| | | |
|---|---|---|
| **Compassionate leave ( f ex funeral )** | According to Norwegian policy or statutory law | Crew on request to the Company |

**Information/ Requests from the Employee to the Company;**

| **Requests regarding:** | **Deadline** |
|---|---|
| Leave of absence | 2 months ahead |
| Changes from full time to part time or opposite | 2 months ahead |
| Termination of contract, employer and employee | 3 months ahead. ( Written notice ) |
| Vacation | At least 2 months ahead |
| Requests regarding the released roster | Ongoing |
| Family Friendly Policies | Compliant with Singapore statutory provisions |
| Requests on the coming schedule ( late / early CI / CO etc.). | Within the **20th** one month ahead |
| Other requests | Within the **20th** one month ahead |

**AMC1 ORO.AOC.130 Flight data monitoring — aero planes**

The procedure to prevent disclosure of crew identity should be written in a document, which should be signed by all parties (airline management, flight crew member representatives nominated either by the union or the flight crew themselves). This procedure should, as a minimum, define:

1. the aim of the FDM program;
2. a data access and security policy that should restrict access to information to specifically authorized persons identified by their position;
3. the method to obtain de-identified crew feedback on those occasions that require specific flight follow-up for contextual information; where such crew contact is required the authorized person(s) need not necessarily be the program manager or safety manager, but could be a third party (broker) mutually acceptable to unions or staff and management;
4. the data retention policy and accountability, including the measures taken to ensure the security of the data;
5. the conditions under which advisory briefing or remedial training should take place; this should always be carried out in a constructive and non-punitive manner;
6. the conditions under which the confidentiality may be withdrawn for reasons of gross negligence or significant continuing safety concern;
7. the participation of flight crew member representative(s) in the assessment of the data, the action and review process and the consideration of recommendations; and
8. The policy for publishing the findings resulting from FDM.

**If a CLA is applicable to any subjects mentioned above or if any changes occurs in Singapore Law, all above shall be adjusted to be in accordance to such CLA and current Singapore Law**