



Committee on Transportation and Infrastructure  
U.S. House of Representatives  
Washington, DC 20515

Peter A. DeFazio  
Chair

Sam Graves  
Ranking Member

Katherine W. Dedrick, Staff Director

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March 30, 2021

The Honorable Pete M. Buttigieg  
Secretary  
U.S. Department of Transportation  
1200 New Jersey Avenue S.E.  
Washington, D.C. 20590

Dear Secretary Buttigieg:

In the cutthroat international aviation market, there is no place for unfair competition. Unfortunately, in 2016, the then-outgoing administration issued a foreign air carrier permit to an airline that everyone knew was structured to play unfairly.<sup>1</sup> And a permit application by another unfair player—Norse Atlantic Airways—may soon be before your Department.

The airline that received its permit in 2016, Norwegian Air International, was a subsidiary of Oslo-based Norwegian Air Shuttle, but it was “Norwegian” in name only, having organized itself under Irish law to avoid Norway’s strong labor protections. Norwegian Air International and its various fellow subsidiaries—Norwegian Air UK and Norwegian Long Haul—were essentially “virtual” airlines: Their long-haul low-cost business model was predicated on the use of pilots and flight attendants employed under short-term contracts and assigned to the Norwegian subsidiaries via third-party crew sourcing firms. In short, Norwegian exploited labor while enjoying the liberalized benefits of the U.S.-E.U.-Iceland-Norway open skies agreement and competing unfairly with airlines that do not subvert fair labor standards.

Norwegian’s long-haul experiment never thrived, and it achieved meager profits only three times between 2016 and 2019 while incurring debt nearing USD \$7 billion.<sup>2</sup> Largely as a result of the COVID-19 pandemic, Norwegian Air Shuttle entered bankruptcy proceedings in Europe and shuttered its long-haul subsidiaries to focus on low-cost flights within Europe. That should have been the end of this story.

But as Chair DeFazio publicly warned on December 20, 2016, while “Norwegian is the first airline in the transatlantic market to fly under a flag of convenience, . . . the Department’s recent

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<sup>1</sup> *In re Application of Norwegian Air Int’l Ltd. for an exemption under 49 U.S.C. § 40109 and a foreign air carrier permit under 49 U.S.C. § 41301*, Order No. 2016-11-22, Dkt. No. DOT-OST-2013-0204 (Dec. 2, 2016).

<sup>2</sup> Rytis Beresnevicius, “How and why Norwegian long-haul dream ended?” AERO TIME NEWS (Feb. 25, 2021), at <https://www.aerotime.aero/27352-norwegian-question-long-haul-ops>.

decision [to grant it a foreign air carrier permit] guarantees Norwegian will not be the last.”<sup>3</sup> Four years and some weeks later, he was proven right.

Norwegian’s founder and former CEO recently revealed his plans to form a new airline called Norse Atlantic Airways to try the long-haul, low-cost business model again, using long-haul aircraft formerly operated by Norwegian.<sup>4</sup> OSM Aviation, one of the contracting agencies used by Norwegian, is reportedly a partner in the new venture and will be sourcing crewmembers to Norse Atlantic.<sup>5</sup> All the elements are in place for a repeat of the Norwegian debacle.

Article 17 *bis* of the U.S.-E.U.-Iceland-Norway open skies agreement states that “[t]he 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” and further requires that these “principles . . . shall guide the Parties as they implement the Agreement.”<sup>6</sup> The Department in 2016 engaged in tortuous legal gymnastics to conclude that article 17 *bis* was not a basis for denying Norwegian Air International’s permit application. That is far from an acceptable conclusion. If the language quoted above is not a basis for denying an application by a foreign air carrier that openly exploits “labour standards or the labour-related rights and principles contained in the Parties’ respective laws,” then it is meaningless. And it is unreasonable to conclude that any negotiated provision in an international agreement or in statutory law is meaningless.

If Norse Atlantic Airways’ business model is predicated on the same flag of convenience concept that we saw in the case of Norwegian and its various alter egos, the public interest demands that the Department deny the carrier’s application for a foreign air carrier permit if it is submitted to the Department. Norse Atlantic’s application will give you the opportunity to make good on the new administration’s commitment to protecting U.S. jobs and promoting fair competition in international markets. We respectfully urge you in advance to take full advantage of that opportunity.

Sincerely,



PETER A. DeFAZIO  
Chair



RICK LARSEN  
Chair, Subcommittee on Aviation

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<sup>3</sup> Letter from Rep. Peter A. DeFazio, Ranking Democratic Member, U.S. House Committee on Transportation and Infrastructure, to President-elect Donald J. Trump (Dec. 20, 2016).

<sup>4</sup> “Norway has a new low-cost airline aiming to crack transatlantic market,” REUTERS (Mar. 15, 2021), at <https://www.reuters.com/article/norway-airlines-norseatlantic/norway-has-a-new-low-cost-airline-aiming-to-crack-transatlantic-market-idUSL8N2LD4UN>.

<sup>5</sup> OSM Aviation, “B787 Cabin Crews: Norse Atlantic Airways,” at <https://osmaviation.com/job/b787-cabin-crew-norse-atlantic-airways/>.

<sup>6</sup> *Air Transport Agmt. Between the United States, the Member States of the European Union, Iceland, and the Kingdom of Norway of June 24, 2010, as amended*, art. 17 *bis* (June 24, 2010). Fully integrated text available at <https://2009-2017.state.gov/documents/organization/151670.pdf>.