

More Low-Cost Transatlantic Flights May Shake Airline Industry

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On December 2, 2016, the U.S. Department of Transportation (DOT) issued its [final decision](#) approving Norwegian Air International's (NAI's) application for a foreign air carrier permit to operate transatlantic flights to U.S. destinations. This action is expected to lead to a substantial increase in discount airline service across the North Atlantic over the next few years.

DOT approval came after contentious exchanges between opponents and supporters and was deferred for three years after NAI submitted its [application](#) on December 2, 2013. DOT's delay in granting or denying the permit led to the European Commission raising the matter in multiple meetings with U.S. officials and subsequently [requesting arbitration](#) with the U.S. authority on December 1, 2016. The DOT decision does not appear to have brought an end to this controversy, as discussed later in this Insight.

NAI, based in Ireland, is a subsidiary of Norwegian Air Shuttle (NAS), the third-largest discount carrier in Europe. Norwegian Air Shuttle and its intercontinental arm, Norwegian Long Haul, hold FAA-issued airline certificates under Norwegian license and provide nonstop services to several U.S. destinations from several European countries, including Norway. These flights are authorized under the U.S.-EU air service agreement, which has applied to Norway since 2011 (even though Norway is not an EU member state).

Several U.S. and European network airlines and labor organizations strongly opposed NAI's application, insisting that NAI's business model is predicated on sidestepping Norway's stricter labor laws in favor of Ireland's less-strict rules. More specifically, the opponents argued that NAI's plans to operate with an Irish air operator's certificate rather than a Norwegian one and to source crews from Asia (possibly through a third-party company) as well as from the United States and Europe would violate [Article 17 bis](#) of the U.S.-EU air service agreement. This article stipulates that "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."

NAI and its supporters—including some non-network U.S. airlines and cargo carriers, U.S. airports, consumer and travel groups, former U.S. Secretaries of Transportation, EU officials, and the Irish Aviation Authority—maintained that NAI has satisfied the legal requirements of the U.S.-EU agreement. They asserted that approval of its application would

increase competition and reduce airfares in the transatlantic market.

NAI's application prompted a high number of filings, both in support and opposition, reflecting the novel and complex nature of the NAI case. As noted in a [2016 briefing paper](#) by the European Parliamentary Research Service, since the European Union deregulated the aviation market in the early 1990s, employment and working conditions at European airlines have changed considerably. For example, outsourcing has increased; some airline workers, especially those working for low-cost airlines, have had to operate from airline bases where they do not reside; and atypical forms of employment have become more common, especially among low-cost airlines such as NAI and Ryanair. Different from traditional full-time, permanent contracts, atypical forms of employment include agency work, self-employment, and pay-to-fly arrangements.

Norwegian outsources many back-office functions to lower-cost countries in Eastern Europe and hires some of its crew members on temporary contracts through employment agencies. According to [industry reports](#), Norwegian's principal reasons for basing NAI in Ireland include (1) greater flexibility in recruiting crew members from various countries and in their contractual terms than is possible for a Norway-registered airline; (2) the ability to have a single operator serve both the transatlantic and the Europe-Asia markets, which Norwegian Long Haul cannot do as easily because Norwegian-based carriers cannot fly between EU member states and some Asian countries; and (3) financial advantages due to the Irish tax system and beneficial aircraft financing costs due to Ireland being a signatory to the [Cape Town convention](#).

Although DOT decided that it had no legal basis to deny NAI's application, the agency did not opine on the merits of opposing arguments or concerns. In its decision, DOT acknowledged labor-related concerns but concluded that the labor-related provision in the U.S.-EU air service agreement did not provide a basis for rejecting an applicant that was otherwise qualified to receive a permit. DOT indicated that it took the unprecedented step of consulting both the Departments of Justice and State before reaching its decision.

NAI plans to start service to the United States in mid-2017, flying Boeing 737-MAX aircraft between European cities (such as Edinburgh, Scotland, and Cork, Ireland) and U.S. cities in the Northeast. It plans to serve the New York metropolitan area from the upstate Stewart International Airport and the Boston region from T. F. Green International Airport in Providence, RI. Once NAI begins operations, other foreign low-cost carriers with similar business models may follow it across the Atlantic. Norwegian Air Shuttle's chairman recently expressed his desire to form alliances with other low-cost European carriers, such as Ireland-based Ryanair and UK-based EasyJet, so that NAI could connect transatlantic passengers to their services within Europe. This could well pose a challenge to traditional full-service carriers based in Europe and the United States.

Shortly after the DOT decision, on January 12, 2017, the Air Line Pilots Association, the Association of Flight Attendants, the Transportation Trades Department of the AFL-CIO, and the Allied Pilots Association jointly filed a [petition](#) in court challenging the DOT order. It was reported that organized labor would appeal to Congress and the Trump Administration to reverse the DOT order. Congress faces a September 30, 2017, deadline to extend the authorization of the Federal Aviation Administration (FAA). Critics of the DOT order may seek to use the reauthorization legislation to address the controversy.