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# International Air Service Controversies: Frequently Asked Questions

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## Summary

“Open skies” agreements are a form of international civil air service agreement that facilitates international aviation in a deregulated environment. They eliminate government involvement in airline decisionmaking about international routes, capacity, and prices. Since 1992, the United States has reached 114 open skies agreements governing international air passenger and air freight services.

There are two ongoing controversies that are related to open skies agreements. One controversy involves some U.S. network airlines’ and labor unions’ opposition to the expansion of three fast-growing airlines based in the Persian Gulf region—Emirates Airline, Etihad Airways, and Qatar Airways. The U.S. carriers allege the subsidies and support that these three Persian Gulf carriers purportedly receive from their government owners contravene fair competitive practices requirements of their home countries’ open skies agreements with the United States. The U.S. carriers have urged the Administration to freeze the number of flights Gulf carriers operate to the United States and to renegotiate the open skies accords with Qatar and the United Arab Emirates. Similar protests have occurred in Europe, initiated by Lufthansa Group and Air France-KLM, and organized labor.

The other controversy concerns Norwegian Air International (NAI), an airline that is registered in Ireland and plans to operate transatlantic flights to U.S. destinations. NAI’s application has met strong opposition from labor groups and some airlines that allege that NAI violates a provision of the U.S.-EU open skies agreement that governs labor standards. They contend that NAI’s plan would create precedent for using low-wage crew members from third countries aboard flights to the United States. However, several former U.S. secretaries of transportation and Irish and European Union (EU) officials, as well as some U.S. consumer advocates and travel industry groups, maintain that the NAI application is valid under the terms of the open skies agreement and would encourage competition and bring lower fares.

This report addresses some of the most frequently asked questions related to these two on-going controversies.

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## What Are Open Skies Agreements?

Under the Chicago Convention, agreed in 1944, airlines provide international air services for passengers, cargo, and mail on the basis of bilateral or multilateral air service agreements covering the countries concerned. Traditionally, air service agreements covered topics such as route selection,<sup>1</sup> airline identity,<sup>2</sup> capacity,<sup>3</sup> pricing,<sup>4</sup> provisions for charter and cargo transportation, and a number of ancillary issues.<sup>5</sup>

Open skies agreements were conceived as a way to stretch the framework of bilateral air service agreement to the least restrictive form by “giving the airlines of each contracting party unlimited access to operate services to and from any point in each other’s territory, creating a virtually untrammelled pricing regime, and eliminating prescribed curbs on airline capacity.”<sup>6</sup> In addition, open skies agreements contain provisions governing commercial opportunities, safety, and security.

In August 1992, the U.S. Department of Transportation (DOT) announced its “open skies” initiative, which was intended to continue the trend of liberalizing international civil aviation. As defined by DOT, “open skies” consists of the following 11 principles:<sup>7</sup>

- open entry on all routes between the signatory countries;
- unrestricted capacity and frequency on all routes;
- the right to operate between any point in the United States and any point in other signatory countries without restriction, including service to intermediate and beyond points, and the right to transfer passengers to an unlimited number of smaller aircraft at the international gateway;
- flexibility in setting fares;
- liberal charter arrangements;
- liberal cargo arrangements;
- the ability of carriers to convert earnings into hard currency and return those earnings to their homelands promptly and without restriction;
- open code-sharing<sup>8</sup> opportunities;

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<sup>1</sup> Brian F. Havel, *Beyond Open Skies: A New Regime for International Aviation* (Alphen aan den Rijn, The Netherlands: Kluwer Law International, 2009 ed.), p. 11. Route selection is the configuration of “freedoms” that each party will concede, ranging from simple bilateral air traffic rights to more complex routing strategies that involve transit to or from third countries, and the origin, destination, and intermediate airports for those routes.

<sup>2</sup> Designation of one or more airlines to serve the agreed routes.

<sup>3</sup> Limitations on the number and frequency of flights and type of aircraft permitted on each approved route.

<sup>4</sup> The degree of government approval required for airline tariff proposals.

<sup>5</sup> Ancillary issues include fair competition, access to computer reservation systems, authorization of code-sharing agreements, and equitable treatment of nonnational airlines in the supply and operation of airport slots, gates, and apron/terminal services.

<sup>6</sup> Havel, *Beyond Open Skies*, p. 13.

<sup>7</sup> DOT Order No. 92-8-13, defining “Open Skies,” Appendix.

<sup>8</sup> Code-sharing is a business arrangement in which an airline places its designator code on a flight operated by another (continued...)

- the right of a carrier to perform its own ground handling in the foreign country;
- the ability of carriers to freely enter into commercial transactions related to their flight operations;
- a commitment to nondiscriminatory operation of and access to computer reservation systems.

Since the open skies initiative was unveiled in 1992, the United States has reached 114 open skies agreements governing international air passenger and air freight services.<sup>9</sup> These agreements typically allow any airline based in a signatory jurisdiction to offer service between the jurisdictions, and let the airlines determine their flight routes, frequencies, fares, and aircraft types according to market demand.<sup>10</sup>

## How Is International Aviation Governed?

In general, international air service agreements involve the granting of various levels of the “freedoms of the air.”

The foundation and framework for modern international civil aviation agreements can be traced back to the Chicago Convention, which affirmed the principle that every nation has absolute and exclusive sovereignty over its airspace.<sup>11</sup> The Chicago Convention produced two ancillary accords, the International Air Services Transit Agreement (“Two Freedoms Agreement”) and the International Air Transport Agreement (“Five Freedoms Agreement”). These are the “five freedoms” of air transport that are often referred to in negotiations over international air service agreements.

The Two Freedoms Agreement contains provisions limited to overflight and noncommercial landing rights. These provisions are widely accepted around the world.

The Five Freedoms Agreement includes the two transit rights in the Two Freedoms Agreement and three additional freedoms called “traffic rights” that permit airlines to develop deeper transnational route networks:

- The Third Freedom allows an air carrier to deplane traffic that was enplaned in its home country in a foreign country.

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(...continued)

airline and sells tickets for that flight. Most of the major airlines throughout the world have code-sharing partnerships with other airlines to strengthen and expand their market presence. Code-sharing is a key feature of the major airline alliances. For more information, see <http://www.dot.gov/policy/aviation-policy/licensing/code-sharing>.

<sup>9</sup> In addition to bilateral agreements, the United States has negotiated two multilateral open skies accords: the 2001 Multilateral Agreement on the Liberalization of International Air Transportation with New Zealand, Singapore, Brunei, and Chile, later joined by Samoa, Tonga, and Mongolia; and the 2007 Air Transport Agreement with the European Community and its Member States. See U.S. State Department, “Full List of Open Skies Partners,” <http://www.state.gov/e/eb/rls/othr/ata/114805.htm>.

<sup>10</sup> See U.S. State Department, “Open Skies Partnership,” <http://www.state.gov/documents/organization/159559.pdf>; “Current Model Open Skies Agreement Text” at <http://www.state.gov/e/eb/rls/othr/ata/114866.htm>.

<sup>11</sup> Brian Havel and Gabriel Sanchez, *The Principles and Practice of International Aviation Law* (New York, NY, Cambridge University Press, 2014 ed.), pp. 40-41.

- The Fourth Freedom refers to the right to enplane traffic in the foreign country that is bound for the carrier’s home country.
- The Fifth Freedom is the right to enplane traffic at one foreign point and deplane it at another foreign point as part of a continuous operation also serving the airline’s home country.

After the United States implemented domestic airline deregulation in the late 1970s, it began to pursue more liberal and market-based international agreements. However, some aspects of international civil aviation remain subject to U.S. laws.

Current U.S. law requires that to operate as an air carrier between domestic locations in the United States, a carrier must be a “citizen of the United States.”<sup>12</sup> To be considered a citizen for civil aviation purposes, an entity must be owned by an individual U.S. citizen, a partnership of persons who are each U.S. citizens, or a corporation (1) whose president and at least two-thirds of whose directors and other managing officers are U.S. citizens, (2) that is under the actual control of U.S. citizens, and (3) has at least 75% of its voting stock owned or controlled by U.S. citizens.<sup>13</sup> This limits foreign ownership of any U.S. airline to 25%, considerably lower than the 49% limit set by the EU.

Another U.S. law contains a general prohibition against cabotage activity,<sup>14</sup> excluding foreign airlines from providing domestic point-to-point air services.<sup>15</sup>

## **Who Negotiates Air Service Agreements?**

Since the Chicago Convention, international civil aviation rights have developed primarily through a series of bilateral agreements treated in the United States as “executive agreements” rather than as treaties, meaning they do not require the advice or consent of Congress.

DOT’s Office of the Assistant Secretary for Aviation and International Affairs, with assistance from the State Department, is responsible for negotiating bilateral agreements and awarding U.S. airlines the right to offer services provided for in those agreements.

## **What Are the Recent Controversies?**

There are currently two debates related to open skies agreements. In both cases, several U.S. network airlines and unions representing U.S. airline workers have objected that foreign carriers are making use of rights granted under open skies agreements in ways that were not intended when those agreements were reached. The airlines have called for “fair skies.” Some other U.S.

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<sup>12</sup> 49 U.S.C. §41102(a).

<sup>13</sup> 49 U.S.C. §40102(a)(15)(a)-(c).

<sup>14</sup> Cabotage rights refer to the privilege to move passengers or cargo between two points within a single domestic territory.

<sup>15</sup> 49 U.S.C. §40109(c).

air carriers, as well as groups representing airline passengers and cargo shippers, have accused advocates of “fair skies” of seeking to limit international competition.<sup>16</sup>

In one case, representatives of three major U.S. airlines—American Airlines, Delta Air Lines, and United Airlines—and airline labor unions allege that three carriers based in the Persian Gulf region have received subsidies and government support that contravene Article 11 of the U.S.-United Arab Emirates (UAE) open skies agreement and identical language in the U.S.-Qatar agreement. The language in question states the following: “Each Party shall allow a fair and equal opportunity for the designated airlines of both Parties to compete....”<sup>17</sup> The other case, also initiated by U.S. network airlines and labor unions, involves Norwegian Air International (NAI), which seeks to operate transatlantic flights to U.S. destinations. The opponents accuse NAI, a subsidiary of Norway-based Norwegian Air Shuttle, of registering in Ireland so that it could employ a business model that purportedly would violate labor standards provisions in the U.S.-European Union (EU) open skies agreement.<sup>18</sup>

On a separate but related note, there has been debate over a U.S. Customs and Border Patrol (CBP) preclearance facility that began operation in January 2014 at Abu Dhabi International Airport in the UAE.<sup>19</sup> The presence of a preclearance facility makes an airport more attractive to U.S.-bound travelers, as they are not delayed by the need to pass through immigration and customs controls upon arrival in the United States. The Abu Dhabi facility was strongly opposed by some U.S. air carriers, labor unions, and Members of Congress because Etihad Airways, owned by the government of Abu Dhabi, is the only airline that operates nonstop flights from Abu Dhabi to the United States. Opponents were concerned that U.S. carriers, which rely on code-sharing partners to serve Abu Dhabi via connections in Europe, would be competitively disadvantaged because their passengers are not eligible for preclearance.<sup>20</sup>

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<sup>16</sup> *Air Transport World*, “U.S. ‘big three’ carriers accuse Gulf rivals of taking \$40 billion in subsidies,” March 5, 2015.

<sup>17</sup> The text of U.S.-UAE agreement can be found at <http://www.state.gov/documents/organization/125743.pdf>, and the text of U.S.-Qatar agreement at <http://www.state.gov/documents/organization/114398.pdf>. For the U.S. carriers’ allegations, see “Restoring Open Skies: The Need to Address Subsidized Competition from State-owned Airlines in Qatar and the UAE,” at <http://www.openandfairskies.com/wp-content/themes/custom/media/White.Paper.pdf>.

<sup>18</sup> U.S. Department of Transportation Docket ID: DOT-OST-2013-0204. See the documents related to the NAI application at <http://www.noticeandcomment.com/DOT-OST-2013-0204-fdt-21019.aspx>.

<sup>19</sup> Preclearance facilities are inspection stations operated in foreign airports by the CBP Office of Field Operations. Established via a formal agreement between the United States and the host country, preclearance allows CBP to staff offices at host airports and complete customs and immigration clearance for airline passengers prior to their departure for the United States. For more information, see <http://www.cbp.gov/border-security/ports-entry/operations/preclearance>.

<sup>20</sup> *Wall Street Journal*, “U.S. Preclearance Customs Post Opens in Abu Dhabi,” January 26, 2014; *Washington Post*, “Congressman concerned about TSA’s Abu Dhabi pre-clearance program,” February 13, 2014; *Reuters*, “Homeland Security chief grilled over Abu Dhabi travel clearance,” February 26, 2014. Also see written testimony of CBP Acting Deputy Commissioner Kevin McAleenan before the House Committee on Foreign Affairs, Subcommittee on Terrorism, Nonproliferation, and Trade, July 10, 2013, available at <http://www.dhs.gov/news/2013/07/10/written-testimony-cbp-house-foreign-affairs-subcommittee-terrorism-nonproliferation>.

## Who Are the Persian Gulf Carriers Involved in the Controversy, and Who Are Their Owners?

Three fast-growing air carriers in the Persian Gulf region are involved in the controversy: Emirates Airline, Etihad Airways, and Qatar Airways. All three airlines are state-owned: Emirates Airline by the government of Dubai, Etihad Airways by the government of Abu Dhabi, and Qatar Airways by the government of Qatar. Dubai and Abu Dhabi are emirates within the UAE. These three airlines are referred to as the Persian Gulf carriers in this report.

These relatively young carriers are among the fastest-growing airlines in the world. For example, the youngest among the three, Etihad Airways, was established by royal decree in July 2003. It started operation in November 2003, and has grown extremely rapidly. Nearly 14.3 million passengers flew Etihad in 2014, an increase of 24% over the 2013 level. Emirates Airline was established in 1985; Qatar Airways in 1993. Emirates flew 44.5 million passengers and 2.25 million tons of cargo in its fiscal year 2013-2014, and is now the world's largest international airline by capacity. The three carriers have young fleets and hundreds of wide-body aircraft on order. Collectively, these three carriers serve about 10 U.S. cities.<sup>21</sup>

Although the open skies agreements allow U.S. carriers to fly between the United States and Qatar and between the United States and the UAE, no U.S. carriers serve Qatar or Abu Dhabi. Delta and United each operate one daily round trip to Dubai.

## What Are the Allegations Against the Persian Gulf Carriers?

American Airlines, Delta Air Lines, and United Airlines, joined by the Air Line Pilots Association, International, as well as the Allied Pilots Association and the Association of Professional Flight Attendants, accused the UAE and Qatar of providing more than \$40 billion in subsidies to the Persian Gulf carriers over the past decade. They claim that such practices have distorted the global air transport market in favor of the three state-owned carriers.<sup>22</sup> Americans for Fair Skies, a group led by former Air Line Pilots Association (ALPA) President Lee Moak, joined the coalition to oppose the expansion of the Persian Gulf carriers' service to the United States.<sup>23</sup>

Among specific allegations, the opponents claim that Emirates Airline received between \$1.6 billion and \$4 billion in subsidies when its government took over its fuel-hedging losses, and at

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<sup>21</sup> *Wall Street Journal*, "Now Landing: Tough Challengers," November 6, 2014. According to their websites, as of May 1, 2015, Emirates served Boston; Chicago (O'Hare); Dallas-Fort Worth; Houston (Intercontinental); Los Angeles; New York (Kennedy); San Francisco; Seattle; and Washington, DC (Dulles); Etihad served Chicago (O'Hare); Dallas-Fort Worth; Los Angeles; New York (Kennedy); and Washington, DC (Dulles); and Qatar Airways served Chicago (O'Hare); Dallas-Fort Worth; Houston (Intercontinental); New York (Kennedy); Philadelphia; and Washington, DC (Dulles).

<sup>22</sup> "Restoring Open Skies: The Need to Address Subsidized Competition from State-owned Airlines in Qatar and the UAE," p. 2, at <http://www.openandfairskies.com/wp-content/themes/custom/media/White.Paper.pdf>

<sup>23</sup> See <http://fairskies.org>.



least \$2.3 billion in subsidies since 2004 from subsidized Dubai airport expansions;<sup>24</sup> that Etihad Airways received \$6.3 billion in government capital injections plus \$4.6 billion in interest-free loans;<sup>25</sup> and that Qatar Airways benefited from airport fee exemptions and rebates and billions of dollars in interest-free, unsecured loans from its state owner that did not require repayment.<sup>26</sup>

The U.S. carriers also accuse their Persian Gulf rivals of “skyrocketing capacity” at more than three times the global GDP growth rate, and of targeting international routes to the United States.<sup>27</sup> The *Wall Street Journal* reported that, collectively, the Persian Gulf carriers have doubled the number of available seats on flights to the United States since 2009.<sup>28</sup>

The opponents have promoted a concept they refer to as “fair skies,” which would limit foreign carriers’ access to the United States. They have asked the Administration to freeze the number of flights Persian Gulf carriers operate to the United States and to renegotiate the open skies accords with Qatar and the UAE, or even annul the agreements if no terms can be reached within a fair-competition framework.<sup>29</sup>

All open skies agreements the United States has entered include provisions for consultations to resolve disputes. However, the agreements do not provide for unilateral changes, nor for capacity restrictions.<sup>30</sup>

## Is There Opposition from Airlines in Europe?

A similar debate was initiated in Europe in late 2014 by Lufthansa Group and Air France-KLM, and by labor groups such as the European Cockpit Association (ECA). They have been pushing for the EU to limit certain traffic rights offered by open skies, and advocate a change to what the ECA and other groups call “fair skies,”<sup>31</sup> which would allow governments to limit some traffic rights to carriers perceived to benefit from unfair state subsidies and/or support. The European Commission indicated that it would address German and French concerns over the alleged unfair subsidies to Persian Gulf carriers later in 2015.

The German Transport Minister and his French counterpart reportedly have asked the European Commission not to grant additional traffic rights into the EU until the dispute is resolved.<sup>32</sup> The

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<sup>24</sup> “Restoring Open Skies: The Need to Address Subsidized Competition from State-owned Airlines in Qatar and the UAE,” at <http://www.openandfairskies.com/wp-content/themes/custom/media/White.Paper.pdf> Ibid., pp. 27-29.

<sup>25</sup> Ibid., pp. 12-16.

<sup>26</sup> Ibid., pp. 21-25.

<sup>27</sup> Ibid., pp. 39-49.

<sup>28</sup> *Wall Street Journal*, “Gulf Airlines Force the Question: Join or Fight?,” March 16, 2015.

<sup>29</sup> *Aviation Daily*, “Dispute over Open Skies Policy Take Shape,” February 3, 2015; “U.S. Carriers Call for Gulf Capacity Freeze, Ask Administration to Begin Talks with Qatar, UAE,” March 6, 2015.

<sup>30</sup> *Aviation Daily*, “U.S. Carriers Call for Gulf Capacity Freeze, Ask Administration to Begin Talks with Qatar, UAE,” March 6, 2015.

<sup>31</sup> *Aviation Daily*, “U.S. Remains Committed to Open Skies Despite Calls to Limit Access,” December 9, 2014.

<sup>32</sup> *Reuters*, “EU to address competition concerns in Gulf aviation agreement,” March 13, 2015; *Aviation Week*, “France, Germany protect Gulf carrier encroachment,” March 20, 2015.

two ministers have reportedly said that the Netherlands, Belgium, Sweden, and Austria support their position.<sup>33</sup>

The United Kingdom, home to the British Airways, has not expressed an official view. British Airways is now owned by International Airlines Group (IAG), which is also the parent company of the Spanish airline Iberia and the Spanish low-cost carrier Vueling. In January 2015, Qatar Airways acquired nearly 10% of IAG's shares.<sup>34</sup> At the end of March 2015, British Airways and Iberia left the Brussels-based Association of European Airlines (AEA), an industry lobby group, reportedly over disagreement with Air France-KLM and Lufthansa regarding their demands to limit access to Europe for the Persian Gulf carriers and to investigate the alleged government subsidies to the Persian Gulf carriers.<sup>35</sup> Air Berlin, in which Etihad holds over a 29% stake, reportedly also left AEA soon after the departure of British Airways.<sup>36</sup>

## How Do the Persian Gulf Carriers Respond?

All three Persian Gulf carriers have denied the subsidy allegations individually without making a joint response to the U.S. allegations. Qatar Airways CEO Akbar Al Baker contended that Qatar's government acts as a shareholder, saying the situation is similar to instances in the past when European governments owned carriers such as Lufthansa, British Airways, and Air France. He pointed out that U.S. airlines do not fly to 90% of the destinations that Qatar Airways serves.<sup>37</sup> The Persian Gulf carriers have suggested that the U.S. airlines benefited from financial restructuring under Chapter 11 of the U.S. Bankruptcy Code in the aftermath of the 9/11 attacks,<sup>38</sup> indicating that shedding debt obligations under bankruptcy protection might be seen as a subsidy outside the United States.<sup>39</sup>

Emirates, Etihad, and Qatar Airways maintain that they are unsubsidized and profitable companies, and that they offer Americans access to cities around the globe that U.S. airlines ignore. They say the U.S. airlines should improve the way they run their businesses, offer better service, and compete. As did the U.S. airlines and labor unions, the Persian Gulf carriers have presented their case to U.S. government officials.<sup>40</sup>

In early April 2015, the U.S. Departments of State, Commerce, and Transportation invited comments from interested parties on both the subsidies case and whether the U.S. government should begin consultations with the governments of the UAE and Qatar.<sup>41</sup> Emirates Airline filed a request asking the U.S. government to release all materials that the Partnership for Fair & Open Skies, Delta Air Lines, United Airlines, and American Airlines have submitted to make their case.

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<sup>33</sup> *Aviation Daily*, "EU Seeks Mandate for Talks with Gulf States over Subsidies," March 20, 2015.

<sup>34</sup> In January 2015, Qatar Airways acquired a 9.99% stake in IAG. <http://www.iairgroup.com/phoenix.zhtml?c=240949&p=irol-newsArticle&ID=2012054>.

<sup>35</sup> *Aviation Daily*, "Iberia and BA Leave AEA in Clash Over Gulf Carriers," April 16, 2015.

<sup>36</sup> *Aviation Daily*, "Air Berlin, Like IAG, Terminates AEA membership in Policy Row," April 22, 2015.

<sup>37</sup> *Aviation Daily*, "Equity, Not Subsidy, Says Qatar CEO Al Baker," March 6, 2015.

<sup>38</sup> *Aviation Daily*, "Delta, Emirates Exchange Barbs as Open Skies Battle Intensifies," February 20, 2015.

<sup>39</sup> *Aviation Daily*, "Emirates to Raise Subsidy Counterclaims Against U.S. Airlines," March 6, 2015.

<sup>40</sup> *Wall Street Journal*, "Gulf Airlines Force the Question: Join or Fight?"; "Persian Gulf Airlines' Service Wins U.S. Fans," March 16, 2015.

<sup>41</sup> <http://www.regulations.gov/#!documentDetail;D=DOC-2015-0001-0001>.

Emirates said in its filing that it would be “fundamentally unfair for Emirates to be asked to respond to specific allegations when it continues to be denied full access to all of the materials the Coalition claims support those allegations.”<sup>42</sup>

## **Are There Supporters of the Persian Gulf Carriers?**

Some trade groups, tourism interests, and consumer advocates, including Airports Council International-North America, the U.S. Travel Association, the U.S. Business Travel Coalition, and some domestic passenger and cargo carriers, have voiced their support for the competition brought by the open skies agreements. These organizations have alleged that the U.S. air carriers that have complained about the subsidization of the Persian Gulf carriers have themselves benefited from extensive U.S. government subsidies.<sup>43</sup>

FedEx Corp., concerned about potential restrictions to its air cargo hub in Dubai, maintains that the open skies deals with the Persian Gulf countries are crucial to its cargo business, and warns that “retrenchment in any way from open skies by the U.S. would jeopardize the economic growth benefits that air cargo provides.”<sup>44</sup>

U.S. passenger airline JetBlue, which has a code-sharing agreement with Emirates, supports the open skies policy and argues that its own success in serving the Caribbean and Latin America would not have been possible without such agreements.<sup>45</sup>

The major aircraft manufacturers, such as Boeing and Airbus, have customers on both sides. They have not explicitly taken sides in the debate. Boeing and Airbus maintain that they generally support the liberalization of international aviation and oppose drastic changes to the Qatar and UAE agreements.<sup>46</sup>

## **What Is at Issue in the Debate?**

The Persian Gulf air carriers are based in locations with relatively moderate population levels and moderate growth potential for local air traffic. However, they appear to be following the operational model of Singapore Airlines, which has been developing its hub to connect travelers between Asia Pacific and Europe or North America. From the Persian Gulf carriers’ hubs in Dubai, Abu Dhabi, and Doha, 80% of the world’s population lives within an eight-hour flying distance.<sup>47</sup> This has helped the Persian Gulf carriers to benefit from the growth in traffic between U.S. and European points and Asia, especially the Indian subcontinent.

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<sup>42</sup> <http://www.regulations.gov/#!documentDetail;D=DOT-OST-2015-0082-0020>.

<sup>43</sup> Keith Laing, “Airlines accused of hypocrisy on international flight subsidies,” *The Hill*, April 9, 2015, <http://thehill.com/policy/transportation/238205-airlines-accused-of-hypocrisy-on-international-flight-subsidies>.

<sup>44</sup> *Aviation Daily*, “FedEx: Don’t ‘Capitulate’ to U.S. Passenger Airlines on Open Skies,” March 23, 2015.

<sup>45</sup> *Wall Street Journal*, “U.S. Airlines Clash Over Rivals from Persian Gulf,” February 23, 2015.

<sup>46</sup> *Reuters*, “Boeing, FedEx battle back vs. U.S. airlines on Gulf competition,” February 26, 2015.

<sup>47</sup> The Emirates Group Annual Report 2013-2014, p. 8. [http://content.emirates.com/downloads/ek/pdfs/report/annual\\_report\\_2014.pdf](http://content.emirates.com/downloads/ek/pdfs/report/annual_report_2014.pdf).

These carriers are also changing the landscape of international aviation. First, by connecting passengers via their hubs in the Persian Gulf, they alter global aviation connectivity and put pressure on major traditional international air travel hubs such as Paris and Frankfurt. In a *Wall Street Journal* article, Lufthansa said that its Frankfurt hub has lost nearly a third of its market share on routes between Europe and Asia since 2005, and that more than 3 million passengers now fly annually from Germany to other points via Persian Gulf hubs. Lufthansa said the market share erosion would affect its North American partners such as United Airlines and Air Canada as it cuts flights and reduces connections for North American passengers who change planes in Germany en route to points in Europe, Africa, and South Asia.<sup>48</sup>

Second, by acquiring stakes in or forming partnerships with other airlines, the Persian Gulf carriers are challenging the established global alliances while raising concerns over the role they would play in the existing network alliances. For example, Etihad has been expanding its network and operations through investments in relatively small European airlines, as well as by purchasing equity in India's Jet Airways (24%) and Virgin Australia (22%).<sup>49</sup> It has acquired a 49% stake in the Italian carrier Alitalia, and also holds stakes in other "partner airlines."<sup>50</sup> Alitalia is a member of the Skyteam alliance, whose members include Delta and Air France-KLM.<sup>51</sup> Air Berlin, in which Etihad owns a 29.21% stake, is in the Oneworld alliance, whose members include American Airlines, British Airways, and Qatar Airways.<sup>52</sup>

However, aside from the opposition from Europe and the United States, the Persian Gulf carriers face issues that may challenge their future growth. One key issue, according to a 2014 International Air Transport Association (IATA) report, is airspace management. Since approximately 40%-60% of airspace in the Persian Gulf region is controlled by various countries' militaries, the limited available airspace may hamper the airlines' continuing expansion. Another challenge is staff shortage: with the Persian Gulf carriers leading the world in new aircraft orders, the region may face pilot and crew shortages in the next 20 years.<sup>53</sup>

On the other hand, the government of Dubai is building a new airport, Al Maktoum International Airport, which it envisions as the largest passenger hub in the world. Al Maktoum, located approximately 40 miles from Dubai International Airport, is used mainly as a cargo airport at present and sees only a handful of passenger flights. Last September, Dubai's ruler, Sheik Mohammed bin Rashid Al Maktoum, approved a \$32 billion expansion plan that would enable the airport to handle 120 million passengers per year and to service 100 Airbus 380 jets at the same time. Further expansion plans would take capacity to 220 million passengers per year. The government expects Emirates to relocate its hub to the new airport. The existing Dubai International Airport is expected to remain in operation.<sup>54</sup>

<sup>48</sup> *Wall Street Journal*, "Gulf Airlines Force the Question: Join or Fight?" March 16, 2015.

<sup>49</sup> See Etihad website, "Our Equity Partners," <http://www.etihad.com/en-us/about-us/our-equity-partners/>.

<sup>50</sup> Etihad Airways holds stakes in other partner airlines such as Air Berlin (29.21%), Air Serbia (49%), Air Seychelles (40%), and Aer Lingus (4.99%). *Aviation Daily*, "Shareholdings in European Airlines Face EC Scrutiny," March 28, 2014; also see <http://ir.airberlin.com/en/ir/airberlin-share/shareholder-structure>; [http://www.airseychelles.com/en/about\\_us/company\\_profile.php](http://www.airseychelles.com/en/about_us/company_profile.php); and Aer Lingus 2014 Annual Report, p. 42, <http://corporate.aerlingus.com/media/aerlinguscom/content/pdfs/corporate/annualreport2014.pdf>.

<sup>51</sup> See <http://www.skyteam.com/About-us/Our-members/>.

<sup>52</sup> See <http://www.oneworld.com/member-airlines/overview>.

<sup>53</sup> <http://airlines.iata.org/analysis/middle-east-special-report-partnership>.

<sup>54</sup> Government of Dubai, Dubai Aviation Engineering Projects, "Al Maktoum International—Phase 1," [http://daep.ae/\(continued...\)](http://daep.ae/(continued...))

## What About Norwegian Air International?

An application by Norwegian Air International (NAI) for a foreign air carrier permit under the U.S.-EU open skies agreement has become controversial. NAI is a subsidiary of Norwegian Air Shuttle, 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 services are authorized under the U.S.-EU agreement, which has applied to Norway, not an EU member state, since 2011.

On December 3, 2013, Norwegian Air Shuttle submitted an application for NAI, which is registered in Ireland, to operate transatlantic flights to U.S. destinations.<sup>55</sup> NAI's application has been pending before DOT for more than a year. In general, DOT approves EU carriers' applications within weeks, making the delay unprecedented. At issue is NAI's plan to operate with an Irish air operator certificate, using not only Norwegian, EU, and U.S. citizens as crew members, but also contracting for crew members from other countries.

Opponents, including labor groups, some airlines, and many Members of Congress, allege that NAI violates Article 17 bis of the U.S.-EU open skies agreement, which states that "opportunities created by the Agreement are not intended to undermine labour standards...."<sup>56</sup> They contend that NAI's practices, which include hiring crew in Asia via employment agencies and using an Irish Air Operator's Certificate instead of a Norwegian one, would create precedent for using low-wage crew members from third countries aboard flights to the United States and violate the U.S.-EU open skies agreement. On the other side of the argument, several former U.S. secretaries of transportation, as well as EU officials and the Irish Aviation Authority, say the application is valid under the terms of the U.S.-EU open skies agreement and would encourage competition and bring lower fares.<sup>57</sup>

On September 2, 2014, DOT issued an order dismissing NAI's request for a temporary exemption from the rules so that it could begin flights to the United States while DOT considers its application for a foreign air carrier permit. This dismissal was not a ruling on the merits of NAI's permit application.<sup>58</sup>

The EU delegations as well as European Commission and Norwegian officials believe that the U.S. authorities are in breach of the U.S.-EU open skies agreement by delaying NAI's traffic rights, and have raised the issues multiple times.<sup>59</sup>

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<sup>55</sup> U.S. Department of Transportation Docket ID: DOT-OST-2013-0204. See the documents related to the NAI application at <http://www.noticeandcomment.com/DOT-OST-2013-0204-fdt-21019.aspx>.

<sup>56</sup> <http://www.state.gov/documents/organization/143930.pdf>.

<sup>57</sup> *Wall Street Journal*, "Norwegian Air's Fight for Expansion Intensifies," November 25, 2014; *Roll Call*, "U.S., EU Officials Meet On Norwegian Air Controversy," November 25, 2014; *Irish Times*, "Norwegian Air boss rejects criticism over budget airline plan," November 20, 2014; *The Hill*, "188 House members urge Norwegian Air rejection," November 25, 2014.

<sup>58</sup> See DOT order dismissing NAI's application for exemption at <http://www.regulations.gov/#!documentDetail;D=DOT-OST-2013-0204-0173>.

<sup>59</sup> See documents filed under U.S. DOT Docket ID: DOT-OST-2013-0204. For example, DOT Notice of the U.S.-EU (continued...)

Norwegian Air Shuttle is one of the few European discount carriers now flying to the United States. However, other low-fare airlines in Europe are known to be interested in offering transatlantic service, making it possible that the controversy raised by the NAI application will reappear in similar context, but with different air carriers.

## **Have There Been Any Related Legislative Actions from Congress?**

In the Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113-235), Congress adopted two provisions related to the NAI issue. Section 415(a) of Division K prohibits any expenditure of funds to approve a foreign air carrier permit that would contravene Article 17 bis of the U.S.-EU open skies agreement. The section immediately following, Section 415(b), provides that the language of Section 419(a) does not bar issuance of a foreign air carrier permit that is consistent with the U.S.-EU open skies agreement and U.S. law.<sup>60</sup> Neither section binds DOT to reach any particular conclusion with respect to the NAI application.

In the Department of Homeland Security Appropriations Act, 2015 (P.L. 114-4), Congress included a provision regarding the establishment of new CBP air preclearance operations. Section 555 prohibits funds from being used for new air preclearance agreements entering into force after February 1, 2014, unless such operations provide (1) a homeland or national security benefit to the United States; (2) U.S. passenger airlines are not precluded from operating at preclearance locations; and (3) a U.S. passenger air carrier is operating at any airport contemplated for establishment of new air preclearance operations.<sup>61</sup>

So far there has been no legislative action regarding the allegations against the Persian Gulf air carriers. Congress has no legal authority to suspend or alter the air service agreements between the United States and Persian Gulf countries. On April 30, 2015, in a letter to Secretary of State John Kerry and Secretary of Transportation Anthony Foxx, a bipartisan group of 262 lawmakers expressed their concerns and urged the agencies to begin consultations with the governments of the UAE and Qatar.<sup>62</sup>

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Joint Committee meeting, <http://www.regulations.gov/#!documentDetail;D=DOT-OST-2013-0204-0186>; DOT Notice of Communication with the European Commissioner for Transport, <http://www.regulations.gov/#!documentDetail;D=DOT-OST-2013-0204-0194>; Notice of Communication with the European Commission Director General for Mobility and Transport, <http://www.regulations.gov/#!documentDetail;D=DOT-OST-2013-0204-0195>; and Notice of Communication with Norwegian Minister of Trade and Industry, <http://www.regulations.gov/#!documentDetail;D=DOT-OST-2013-0204-0192>.

<sup>60</sup> <http://www.gpo.gov/fdsys/pkg/CPRT-113HPRT91668/pdf/CPRT-113HPRT91668.pdf>.

<sup>61</sup> <https://www.congress.gov/114/plaws/publ4/PLAW-114publ4.pdf>.

<sup>62</sup> <http://lipinski.house.gov/uploads/Bipartisan%20Letter%20to%20Secretary%20of%20State%20John%20Kerry%20and%20Transportation%20Secretary%20Anthony%20Foxx.pdf>.

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