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INSIGHT

Norwegian Air International and Low-Cost Long-Haul Flights

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Legislation introduced in the House of Representatives in July 2019 would prohibit the U.S. Department of Transportation (DOT) from allowing a foreign airline to serve the United States if it "is established in a country other than the home country of its majority owner or owners in order to avoid regulations of the home country." The bill, H.R. 3632, is the latest salvo in a prolonged battle over issuance of a foreign air carrier permit that allows Norwegian Air Shuttle, which owns a group of discount carriers, to operate transatlantic flights to U.S. destinations.

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). In 2013, a Norwegian Air Shuttle subsidiary, Norwegian Air International (NAI), applied for a permit to serve the United States as well. Some U.S. labor organizations objected to the application, alleging that NAI is based in Ireland because Irish labor laws allow extensive use of pilots and flight attendants who are supplied by temporary labor contractors or are self-employed.

NAI supporters included some U.S. passenger and cargo carriers, U.S. airports, consumer and travel groups, former U.S. Secretaries of Transportation, EU officials, and the Irish Aviation Authority. They maintained that NAI had satisfied the legal requirements of the U.S.-EU air service agreement and that DOT approval would increase competition and reduce airfares in the transatlantic market.

Several U.S. and European airlines and labor organizations, however, strongly opposed NAI's application, insisting that NAI's business model is predicated on sidestepping Norway's labor laws in favor of Ireland's less strict rules. These opponents argued that NAI's plans would violate Article 17 *bis* of the U.S.-EU air service agreement, which 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." DOT approved NAI's application in December 2016, stating 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. The agency did not opine on the merits of opposing arguments or concerns.

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The dispute relates to a discrepancy in EU law. While air traffic agreements covering all EU member states and certain other countries (including Norway) are negotiated by the EU, social regulations (including labor laws, standards governing working conditions, and workers' rights) are generally determined at the national level. Norwegian and some other European carrier groups have taken advantage of this discrepancy to establish subsidiaries in EU countries where they can recruit crew members under temporary contracts without running afoul of union agreements in their home countries. Hence, pilots and flight attendants who are nationals of one country may be assigned to a base in another country where they work as contract employees for an airline headquartered in a third country.

As noted in a 2016 briefing paper by the European Parliamentary Research Service and another European Commission study published in 2019, 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 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. European aviation labor unions have referred to such arrangements as "social dumping" and have opposed them. Under union pressure, Ryanair and some other carriers have reportedly reached collective bargaining agreements with directly employed cabin crew in some countries and improved terms on issues including leave, promotion, and base transfers.

It appears that H.R. 3632 would not apply to the various Norwegian subsidiaries that have already received foreign air carrier permits and now serve roughly a dozen U.S. airports. However, it could affect other foreign carriers that might seek to fly to the United States. This could be important to the three largest U.S. carriers by revenue, American Airlines, Delta Air Lines, and United Airlines, which rely heavily on international business; in 2018, for example, 27% of American's revenue came from international flights, not counting revenue from passengers on connecting domestic flights. This traffic could be threatened by the entry of low-cost carriers relying on nontraditional crew arrangements.

Low-cost carriers typically fly point-to-point routes, as opposed to network airlines' hub-and-spoke operating model. This is evolving as low-cost carriers collaborate with one another to handle connecting traffic, often through code-sharing agreements, to extend market reach. For example, Norwegian and another large low-cost carrier, UK-based easyJet, have an agreement to offer connecting flights through Gatwick Airport in London to the United States. Norwegian is looking for feeder partners in the United States and Asia. This could potentially erode U.S. network airlines' partners' positions in foreign markets and eclipse U.S. network carriers' domestic market presence if foreign low-cost airlines with international flights partner with U.S. nonnetwork airlines for domestic feeder traffic.

European low-cost carriers' entry into the transatlantic market, however, has not always been successful. Icelandic budget airline WOW Air ceased operations in March 2019. Norwegian, amid rapid expansion, was not profitable in 2018; it recently announced the cancellation of service to Providence, RI, and Stewart Airport, NY, but still operates more than 40 routes between the United States and Europe with its Boeing 787 fleet. These planes can seat as many as 330 passengers, and it may be important for Norwegian to find a U.S. feeder partner if it is to fill them.

No Asian or Latin American discount carriers currently serve the United States, but their potential entry could be affected by H.R. 3632 as well.

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