

From: timclark@emirates.com
Sent: 9 January 2017 4:05 p.m.
To: will.lofberg@emirates.com
Cc: adnan.kazim@emirates.com; boutrosb@emirates.com; valerie.tan@emirates.com
Subject: RE: Draft Open Skies paper

Will,

Hits the spot.

Tim

From: Will Lofberg - VP - International, Government and Environment Affairs
Sent: 09 January 2017 15:09
To: Tim Clark - P - EKA
Cc: Adnan Kazim - DSVP Strategic Planning, RO & Aeropolitical Affairs; Boutros Boutros - DSVPCC-M&B; Valerie Tan
Subject: Draft Open Skies paper

Tim

Mike was asked to submit a policy paper re ATC reform to the Trump team before 20th January and when asked he asked if he could also submit one re open skies.

It is below - it read well to me even though it deliberately does not tackle our issue head on by design, I just was going to suggest an explicit ref to China in the highlighted para.

Regards

Will

PS – I had filled Mike in on your chat with Lord Ahmad re action Point 3. Hopefully a “*longtime U.S. ally...very special!*” (Trump recent Tweet re May’s Spring Visit) will not be at the ‘back of the queue’ re talks.

From: Mike Korens [<mailto:mkorens@mindspring.com>]
Sent: 06 January 2017 02:11
To: Will Lofberg - VP - International, Government and Environment Affairs; Claus Basse; 'John Byerly'
Subject: Draft Open Skies paper

Will and Claus, with a number of excellent suggestions and edits by John already incorporated.

DRAFT – January 5, 2017

Open Skies: Preserving the United States' Leadership in International Aviation

The Paradigm Shift in 1992: From an Airline-Centric to a National Benefits Focused International Aviation Policy. The Open Skies policy implemented under President George H.W. Bush in 1992 marked a fundamental shift in focus from an airline-centric policy to an approach based on what is good for America as a whole. Before Open Skies, decisions to expand international flying rights were dictated by the commercial needs of the legacy US carriers, particularly PanAm and TWA. Opportunities for new U.S. entrants and for foreign airlines passed the litmus test only if the US incumbents received additional new rights in return that they deemed sufficiently comparable. Conspicuously absent from the equation was the broader national interest including the strong interest of consumers in greater competitive choice, of communities and airports in spurring new and often first-time international air service, of the US tourism industry in stoking more visitors to America, and of the world-leading US aerospace industry in selling more airframes, engines and aviation technology to both foreign carriers as a result of increased flying.

From 1992 forward—with strong bipartisan support from every US Administration—Open Skies promoted aviation agreements that looked to the best interest of the nation, not solely that of a handful of US airlines. One hundred and twenty (120) Open Skies agreements later, the success of this shift in US policy is widely heralded. For consumers, Open Skies has unleashed greater competitive choice in international travel—much as deregulation did for domestic aviation—that has made trips abroad affordable for Americans and foreign tourists who 25 years ago considered it a luxury beyond their reach. The benefit for communities has been equally impressive. For cities like Orlando, Austin, Oakland, Las Vegas, Portland, San Jose and even Newburgh, New York (later this year)

whose airports are not hubs for the three international airline alliances, Open Skies has opened the door for non-stop international air service that is a huge boon to local economies. For instance, according to a September 2016 State Department backgrounder, the new Dubai-Orlando non-stop service by Emirates—enabled by the US-UAE Open Skies agreement—will add \$100 million annually in new economic activity in Central Florida and create 1,500 jobs. Additionally, the State Department noted Portland International Airport estimates its direct flights to Tokyo, Amsterdam and Frankfurt generate over \$240 million in airport and visitor revenue.

The benefit of Open Skies has extended far beyond our borders, triggering a seismic shift in global aviation policy. Countries around the world have witnessed the benefits of Open Skies and have embraced it themselves. The result is greater freedom and flexibility than ever before for global aviation to support worldwide trade flows and commercial activity. This US policy leadership has helped fuel global trade, and Open Skies has positioned US all-cargo carriers FedEx and UPS to build global networks to be essential facilitators of globalization and to efficiently deliver US exports worldwide.

Recent challenges to Open Skies. Despite this success, some entrenched special interests have challenged the core tenet of Open Skies that the broad national interest should be the North Star for US international aviation policy. Specifically, the three large U.S. network passenger carriers and their unions have launched massive campaigns to undo Open Skies agreements with the United Arab Emirates and Qatar in order to limit air service by the Gulf airlines and, in addition, to persuade the Department of Transportation to deny to affiliates of Norwegian Air Shuttle the foreign air carrier permits to which they are entitled under the comprehensive US-EU Open Skies agreement. These campaigns, in turn, have threatened US global leadership, calling into question not only whether the United States will seek Open Skies agreements with additional countries but also whether it will continue to respect the Open Skies agreements it has signed. Indeed, the unprecedented delay in licensing Norwegian Air International led to the recent unprecedented step by the

European Union to formally initiate arbitration to address the breach of the US-EU agreement.

In their campaign against the Gulf carriers and Norwegian, the three large US network airlines and their unions have advanced a range of self-serving and highly novel arguments. **They have asserted that the Gulf carriers benefit from government subsidies and state ownership, while refusing to cite any provision in the Open Skies agreements that is being breached, casting a blind eye to their alliances with other state-owned airlines,** and ignoring the significant government support and other advantages which they have themselves enjoyed over many decades and which have made them the most profitable airlines in the world. They have asserted that Norwegian engages in unfair labor practices but have failed to cite any US or EU labor or employment statute that has been violated and have seen their strained legal arguments based on the US-EU Open Skies agreement unanimously and categorically rejected by the DOT General Counsel, the State Department Legal Adviser, and the Department of Justice Office of Legal Counsel.

What is clear is that the three US network airlines, despite their protestations of allegiance to Open Skies, seek a radical revision of policy: Open Skies only if, and only to the extent, it is good for the three airlines' bottom line. These dissenters contend agreements should be selectively enforced and even amended to include restrictions where they regard it to be appropriate to do so. In short, they are advocating that US international aviation policy revert to the airline-centric, "what's good for PanAm is good for America" focus that was wisely jettisoned 25 years ago. For instance, with respect to the new Emirates Orlando-Dubai flight that the State Department has said will create over \$100 million in annual economic benefit for Central Florida and 1,500 jobs, the US network airlines urged the Obama Administration to block it. They claimed the new flight would cost US airline jobs (even though no US carrier offers non-stop service between Orlando and Dubai), and ignored not only the jobs and economic benefit to Central Florida but also the thousands of high-paying US manufacturing jobs supported by the GE-powered Boeing 777 aircraft Emirates uses to serve the route. The bottom line is that the network airlines seek to replace the pro-consumer, pro-competitive, pro-growth

Open Skies policy with an approach that limits competition, denies consumers a choice of new routes and better quality service, and bolsters the US carriers' already record-setting profits.

Recommended early actions:

1. Reaffirm America's commitment to Open Skies. The Trump Administration should make clear that its international policy decisions will continue to be guided by the broad national interest, including the needs of US consumers, communities, and the broader national economy. In particular, the United States will live up to its Open Skies commitments, will demand that foreign partners do so as well, and will seek to negotiate Open Skies agreements with additional countries.

2. Approve the pending Norwegian UK application if the Obama Department of Transportation fails to do so. Although DOT finally approved Irish-licensed Norwegian Air International's permit application on December 2, 2016, a parallel application on behalf of UK-licensed Norwegian UK has been pending for over one year. The Departments of Transportation, State, and Justice have unanimously concluded that there is no legal basis in the US-EU Open Skies agreement to deny that application, and there is clearly no basis for further delay. Approval of Norwegian UK would send a clear signal to Europe and the rest of the world that the US abides by its international aviation agreements.

3. Publicly signal a willingness to negotiate an Open Skies agreement with the United Kingdom when it is prepared to do so. The Brexit vote has raised the question of whether the Open Skies rights between the US and the UK incorporated in the US-EU Open Skies agreement will be available after the UK ends its membership in the EU. Until the UK takes further steps to leave the EU and reestablish its sovereign power to negotiate bilateral air service agreements, an Open Skies negotiation is premature. However, the new Administration could publicly signal its willingness to commence negotiations aimed at a US-UK Open Skies

agreement as soon as the UK is able to do so. That would accomplish the dual purposes of allaying concerns about the future openness of the US-UK aviation air service market and reaffirm the new Administration's commitment to Open Skies.