



## WASHINGTON AVIATION SUMMARY

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For further information, including documents referenced, contact:

Joanne W. Young  
Kirstein & Young PLLC  
1750 K Street NW  
Suite 200  
Washington, D.C. 20006  
Telephone: (202) 331-3348  
Fax: (202) 331-3933  
Email: [jyoung@yklaw.com](mailto:jyoung@yklaw.com)

<http://www.yklaw.com>

The Kirstein & Young law firm specializes in representing U.S. and foreign airlines, airports, leasing companies, financial institutions and aviation-related companies before U.S. Government agencies, Congress, the courts and in commercial and financing matters.

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## **I. REGULATORY NEWS**

### **1. IATA: Fuel Crisis a Catalyst for Change.**

The International Air Transport Association (IATA) called on governments, industry partners and labor to address the fuel crisis, forecasting a potential loss of \$6.1 billion for 2008 based on an average oil price of \$135 per barrel. In remarks at IATA's 64th Annual General Meeting in Istanbul, IATA Director General and CEO Giovanni Bisignani said, "Re-regulation or re-nationalization is not the right answer. But it may be the only one unless we change the rules of the game." IATA will convene an Agenda for Freedom Summit in Istanbul to drive change to "free airlines from national flags, secure financial stability and create global opportunities. It's time to tear-up the 3,500 bilateral agreements and replace them with a clean sheet of paper without any reference to commercial regulation. Airlines would be free to innovate, compete, grow, become financially healthy or even disappear. Governments also have an important role: to ensure a level playing field and regulate safety, security and environmental performance." Royal Jordanian CEO Samer Majali assumed his one-year term as IATA Chairman, succeeding TAP Portugal CEO Fernando Pinto; Cathay Pacific CEO Tony Tyler will succeed Majali in June 2009.

### **2. Continental, United Alliance Planned.**

Continental and United signed a framework agreement for a systemwide alliance, with cooperation on frequent flier programs, lounges, facility utilization, information technology and procurement. Continental plans to exit SkyTeam and join Star Alliance, and will request that the U.S. Department of Transportation (DOT) allow it to join United, Lufthansa, Air Canada and other Star members in their established antitrust immunized alliance. A planned transatlantic joint venture, in which Continental, United, Lufthansa and Air Canada will pool revenue, "will permit the carriers to compete more effectively with the proposed joint venture involving certain SkyTeam members that was recently granted antitrust immunity." Joint ventures are also planned for Latin America and Asia/Pacific for Star members, with antitrust immunity and code sharing subject to approvals. Continental and United said their route networks have little overlap. In the U.S. domestic market, where antitrust immunity for solely domestic travel would not apply, the two airlines plan broad code sharing and award program reciprocity, subject to regulatory notice to authorities and Continental exiting other alliance relationships. United earlier held merger talks with Continental, US Airways and Delta, which has a pending merger with Northwest; Continental reportedly held merger talks with American and British Airways.

3. **Airlines Seek Blanket Dormancy Waiver for Some Intl. Flights.**

Citing the unprecedented increase in fuel prices and increasingly difficult economic conditions, several U.S. airlines on June 3 filed a joint application with DOT for a temporary blanket dormancy waiver applicable to their frequency allocations and other limited entry international authority for a period of two years beginning as soon as possible. The applicants—American, Continental, Delta, Northwest, United, US Airways and Alaska—would notify DOT by February 15, 2010, if service will be suspended on routes subject to dormancy conditions after June 30, 2010, and would not object to temporary re-allocation of unused frequencies or dormant limited-entry route rights to other airlines during the waiver period. “In these perilous times, airlines should not be required to operate flights that are uneconomic during periods of low demand to preserve their long-term investments in operating rights,” they said in the filing. Other U.S. carriers showed support for the blanket waiver, but an objection filed by Spirit Airlines called the move “anticompetitive in what are already the most restricted U.S. aviation markets.”

4. **Airlines to Pay \$504 Million in Criminal Fines for Price-Fixing.**

The U.S. Department of Justice issued criminal fines totaling \$504 million to a number of international airlines as a result of its investigation into a conspiracy to manipulate air cargo transportation costs through a multi-year price-fixing scheme. Agreeing to plead guilty and pay the fines, and to cooperate with the ongoing investigation, are Air France and KLM (\$350 million), Cathay Pacific (\$60 million), Martinair (\$42) and SAS Cargo Group (\$52 million). The Air France-KLM fine is the second highest ever levied in a criminal antitrust prosecution. The plea agreements are subject to court approval. If approved, total fines imposed in the Antitrust Division’s air transportation industry investigation would come to more than \$1.27 billion, the highest total ever imposed in a criminal antitrust investigation. The conspiracy “undermines our economy and harms the American people who, due to lack of true competition in this area, end up footing the bill,” said the Department.

5. **American, Delta to Add New York-Buenos Aires Service.**

American and Delta each won government approval to add New York-Buenos Aires flights. DOT approved Delta’s application for five weekly December-April flights and four flights a week in other months. American can add five flights a week to the single daily flight it now operates between the two cities. The carriers have until December 28 to begin service. American currently has a daily roundtrip in the market; Delta offers daily Atlanta-Buenos Aires nonstops.

6. **Audits Initiated of FAA Oversight of Carrier Operations.**

The DOT Office of Inspector General (OIG) will conduct audits regarding Federal Aviation Administration (FAA) oversight of airline operations.

Prompted by congressional concern about FAA oversight at Southwest, the audits will examine FAA's implementation of its risk-based Air Transportation Oversight System, its review of carrier compliance with airworthiness directives and its oversight of maintenance practices at an unnamed carrier.

**7. NTSB Recommends FAA Address Fatigue Management Systems.**

Citing three accidents and a recent incident attributable to pilot fatigue, the National Transportation Safety Board (NTSB) recommended that FAA develop guidance for operators to establish fatigue management systems, and methods to continually assess effectiveness of those systems.

**8. DOT Air Travel Consumer Report for April.**

Based on data filed by 19 of the largest U.S. airlines

	April '08/'07	March '08	Full Year				
			2007	2006	2005	2004	2003
On-time arrivals %	77.7/75.7	71.6	73.4	75.4	77.4	78.1	82
Mishandled baggage*	4.99/6.34	6.66	7.03	6.73	6.64	4.91	4.19
Consumer complaints:							
Airline service	1,113/1,248	1,013	13,168	8,325	8,741	7,452	5,983
Disability-related	36 /44	43	480	430	511	521	375
Discrimination**	8 / 13	6	99	114	129	118	85

Note: Aloha Airlines ceased operations in April, reducing the number of reporting carriers from 20 to 19.

\* Reports per 1,000 passengers.

\*\* Other than disability; i.e., race, religion, national origin or sex.

**9. FAA Raises Safety Rating for Bulgaria**

FAA raised Bulgaria's Category 2 safety rating, given in 2003, to Category 1, meaning the country's civil aviation authority complies with international safety standards set by the International Civil Aviation Organization (ICAO). Bulgarian air carriers now may apply to operate their own aircraft to the U.S.

## II. AIRPORTS

### 1. O'Hare Flight Caps to End October 31.

FAA will end flight caps at Chicago O'Hare on October 31; in 2004, daily arrivals at O'Hare were capped at 88. A new runway and new north control tower, to be operational later this year, will allow four to five additional arrivals per hour, about 56-70 operations per day. Actual winter schedule requests are for 43 additional arrivals, or about three per hour. The extension of an existing runway is scheduled for completion on September 25, two months ahead of schedule. FAA designated O'Hare as an IATA level 2 airport, requiring air carriers to continue to provide schedules six months in advance. In related news, Virgin America protested efforts by United, American and other airlines to protect slots they may not use at O'Hare and at New York-area airports and Reagan Washington, saying "slot hoarding" is "anti-consumer and anti-competitive." Virgin America hopes to launch daily flights from O'Hare to both San Francisco and Los Angeles.

### 2. Phoenix Raises Landing Fees, Leasing Rates.

Phoenix Sky Harbor in July will increase airline fees to help fund airport operations. Landing fees will climb from \$1.19 to \$1.24 per airplane half-ton. Monthly terminal area lease rates also will rise.

### 3. Sacramento Launches \$1.27 Billion Expansion.

Sacramento International broke ground on a \$1.27 billion expansion that includes a new 675,000 sq. ft. terminal, 19 gates and concourse. Projected to open at the end of 2011, the new terminal will accommodate 10 million passengers annually, bringing total airport capacity to 16 million. Officials said the expansion will make the facility the airport of choice for Northern California.

### 4. San Antonio Building New Terminal.

Work began on a new \$134 million, eight-gate terminal at San Antonio International, with completion expected in two years. The airport handled 8 million passengers in 2007.

### 5. Toronto Pearson Reduces Cargo Fees.

Cargo landing fees at Toronto Pearson will be reduced by 25%, effective January 1, 2009, in an effort to boost competitiveness. Reductions in landing and terminal charges earlier this year "may remove as many as 40,000 trucks per year from Ontario roads, reducing congestion and ground-level pollution," said authorities, and "initiatives related to the reduced fee structure are intended to encourage air carriers to modernize their fleets to newer, quieter

and more fuel-efficient aircraft.” Pearson has five runways designed to handle heavy all-cargo aircraft.

**6. GE Joint Venture to Build Chinese Airport.**

GE Commercial Aviation Services and Guangdong Airport Management agreed to set up a joint venture to build Chaoshan Airport in the southern province of Guangdong. Construction will start later this year.

**7. EC Probes German Aid To Frankfurt Hahn.**

The European Commission (EC) is investigating whether financial aid from regional government authorities to Frankfurt Hahn constituted illegal state aid. Contracts between the airport and Ryanair are also being investigated, as is an agreement with airport parent Fraport. After initial assessment of the evidence, said the Commission, the airport may have acted like a private market investor, which would mean no illegal state aid exchanged hands; further evidence is required to show this beyond a reasonable doubt.

**8. Prague Airport Privatization Attracts Interest of 65 Parties.**

Privatization of Prague Airport has attracted at least 65 interested parties, said Czech Transport Minister Ales Rebicek, including Flughafen Wien, Fraport, Aeroport de Paris and Czech private equity groups. The sale, valued at \$6.4 billion, is opposed by the Czech opposition party, which prefers a long-term airport management contract or minority stake sale.

### **III. SECURITY AND DATA PRIVACY**

#### **1. ATA Says US-VISIT Exit Rule Should be Terminated.**

As the period for public comment on the US-VISIT Exit program closed, carriers and others continued to lobby the Department of Homeland Security (DHS) regarding the plan to have airlines collect biometric information of foreign travelers as they leave the country. Air Transport Association President James May called the proceeding for making the new rule "purely and simply against the law" and estimated costs to airlines at more than \$3 billion over the next decade. "The US-VISIT Exit plan should be terminated now," said May. DHS collects two fingerprints on foreign travelers as they enter the country and is expanding collection to 10 fingerprints per traveler to better correspond with FBI systems.

#### **2. Pre-Travel Authorization for U.S.-Bound Travelers.**

DHS announced the Interim Final Rule for the Electronic System for Travel Authorization (ESTA), which is part of the Visa Waiver Program (VWP). Once ESTA is mandatory, nationals or citizens of VWP countries will need to provide biographical, travel and eligibility information online prior to departure, so as to receive an electronic travel authorization prior to boarding a U.S.-bound airplane. Currently that information is collected en route. ESTA will determine if an individual is eligible for VWP travel, and if such travel poses any law enforcement or security risks. ESTA applications may be submitted at any time prior to travel, and once approved, will be valid for multiple entries into the U.S. for up to two years. A notice will be published in the Federal Register by mid-November, announcing implementation of mandatory ESTA requirements on January 12, 2009.

#### **3. GAO Finds Weaknesses in Current Privacy Policy.**

A new Government Accountability Office (GAO) report, presented at a Senate Homeland Security Committee hearing, concludes that several weaknesses exist in current privacy policy, which was established long before the explosion of electronic records and communication. The report cited overuse of data, weak notice to citizens of how their information will be used, and the lack of a central privacy officer in the federal government. Experts at the hearing said stronger federal leadership on privacy issues is needed. The Privacy Act of 1974 prohibits unauthorized disclosure of personal information, ensures accuracy and relevance of information collected by the government, and provides individuals with access to their information and a means of redress for errors. The E-Government Act of 2002 further requires that agencies analyze in advance potential privacy impacts of new information systems and

data collections and minimize those potential risks. As federal agencies rely more on data brokers and use greater amounts of personal information for security-related watch lists and programs to verify citizenship for employment, privacy risks increase. Data breaches have occurred within the last few years through the theft of laptops, for example, and the posting of Social Security numbers on a public Web site. Committee Chairman Joe Lieberman (ID-Conn.) and Ranking Member Susan Collins (R-Me.) said federal privacy policy must be updated for the digital age to protect ever growing amounts of personal information the government collects, uses and stores.

4. **Barrot Named EU Vice President for Justice, Freedom and Security.**

Named European Union (EU) Vice President-Justice, Freedom and Security, Jacques Barrot said he intends to tighten data protection and convince the U.S. to allow citizens of EU member states to travel to the U.S. without a visa. Barrot was succeeded as Transport Vice President by Antonio Tajani.

5. **U.S., Europe Agreement on Transfer of Private Data.**

A U.S.-EU joint statement at a summit meeting in Slovenia in June declared “the fight against transnational crime and terrorism requires the ability to share personal data for law enforcement,” and called for creation of a “binding international agreement” to aid such transfers while also ensuring protection of privacy. Such an agreement is underway, reports the *New York Times*, and would allow the U.S. and EU to transfer personal data, such as credit card transactions, travel histories and Internet browsing habits.

6. **Lufthansa Used PNRs for Internal Probe.**

Lufthansa confirmed it analyzed passenger name records to discover who on its board leaked information to the media, but said it had not engaged in espionage, eavesdropping or surveillance activities. The leaks violated the German Stock Companies Act, the carrier said, and checking its own flight records of board members to find the source was legally unobjectionable.

7. **U.K. Information Commissioner Guidance on Disclosure of Employee Data in Business Acquisitions.**

The U.K. Information Commissioner’s Office (ICO) issued guidance on how businesses can avoid violating U.K. law protecting personal data on employees in connection with the transfer of a business. The U.K. Transfer of Undertaking (Protection of Employment) Regulations 2006 (TUPE) which applies when a business is transferred with its employees to a new owner requires the transfer of certain employee information at least two weeks before the transfer is completed. The Guidance notes that compliance with TUPE is permitted under the U.K. Data Protection Act, because the transfer is required by law. It reminds businesses that they must comply still comply with the

principles of the Data Protection Act, and that they must be particularly careful in providing information beyond the requirements of the TUPE, or in cases where TUPE does not apply, such as in stock transfer transactions.

**8. Hearing on Laptop Searches and Other Violations of Privacy.**

See Section VI, item 6.

**9. House Passes Surveillance Overhaul.**

See Section VI, item 7.

## IV. E-COMMERCE AND TECHNOLOGY

### 1. JetBlue LiveTV Unit to Buy Verizon Airfone.

JetBlue's LiveTV unit agreed to buy Verizon Airfone, including 100 air-to-ground communications towers in the continental U.S., on January 1. With the Airfone network, LiveTV will expand its Kiteline inflight email and messaging service launched last year on BetaBlue, JetBlue's A320 equipped with Wi-Fi access points and an air-to-ground antenna and radio. Continental and Frontier have committed to deploying Kiteline when the service becomes commercially available. Airfone is an industry leader in general aviation inflight communications. LiveTV live inflight entertainment and connectivity systems are installed on over 500 aircraft operated by commercial airlines.

### 2. Orbitz Launches "Price Assurance."

Orbitz introduced "Price Assurance," which allows customers to get automatic cash refunds if the price drops for a ticket booked on Orbitz and another customer then books the same ticket on Orbitz for less. Orbitz tracks the fare from moment of purchase until the day of the flight. Each time the price drops and another customer books, the refund amount increases. The cash refund is for the fare difference. Customers receive emails from Orbitz and can also monitor the information on the Orbitz site. In a recent poll of 370 people, fliers said price (45%), followed by flight date (26%) and flight time (20%) were the most important factor in booking a flight, said Orbitz.

### 3. Yapta Integrates Flight Search, Price Tracking, Savings Alerts.

Yapta.com says it is the first travel Web site that integrates customized flight search results with the ability to track airfare prices and create flight-specific savings alerts in a single click. The site also alerts travelers when they're eligible for a travel credit from their airline if a lower fare becomes available on tickets already purchased. Yapta supports airfare price checking on more than 30 domestic and international carriers.

### 4. Travelers Can Track Multiple Mileage Plans in One Area.

Placely.com, a Web community of business and other travelers worldwide who share plans and experiences, has launched a free service that allows members to track their current frequent flyer miles data in one central area, without having to log into different airline sites. Participating airlines include American, Delta, Continental, Frontier, Hawaiian, Jet Blue, Midwest, Northwest, Southwest, United, US Airways and Virgin America.

## V. **NOISE AND ENVIRONMENT**

### 1. **EU to Cap Aircraft Emissions.**

All airlines leaving from or landing at airports in the EU will be required to buy pollution credits beginning in 2012, per a compromise agreement reached by the European Parliament and the Slovenian Presidency of the Council on how to include aviation in the EU Emissions Trading System. Under the agreement, which needs to be endorsed by the full Council and put to a second reading vote at Parliament's July session, 85% of the emissions certificates will be allocated for free, 15% will be auctioned. The reduction target will be calculated on the basis of airlines' average annual emissions between 2004-2006: in the first period (2012), airline emissions will be cut by 3%; in the second (from 2013), by 5%. Excluded will be research flights and small airlines producing low emissions. Revenues generated from the plan will be used to fund climate change mitigation, research on clean aircraft, anti-deforestation measures in the developing world and low-emission transport. IATA called the unilateral move "tunnelvision," saying compliance costs to the airline industry would be more than \$4 billion. U.S. officials said the requirements are contrary to international law and unworkable.

### 2. **ICAO Launches Carbon Emissions Calculator.**

Concerned with proliferating carbon offsetting schemes offered by airlines, ICAO has developed the Carbon Emissions Calculator, which allows passengers to estimate carbon dioxide emissions attributed to their air travel. Found on the ICAO Web site, it considers aircraft type, route specific data, passenger load factors and cargo carried.

### 3. **Southwest to Implement RNP Procedures.**

Southwest will invest \$175 million over the next six years to implement RNP (Required Navigation Performance) procedures at all 64 airports the airline serves. RNP is a cornerstone for the FAA's Next Generation Air Traffic Control System. "For a single minute of time saved on each flight, the annual savings quickly add up to 156,000 metric tons of reduction in emissions per year (by 2015), and \$25 million in fuel savings," said Southwest. Since May 2007, Southwest, RNP developer Naverus, and the FAA have worked to train the airline's pilots on RNP, equip its fleet to be RNP capable, and produce RNP charted procedures. The goal is to begin flying RNP procedures in fall 2009.

### 4. **Japan Airlines to Test Second-Generation Biofuel.**

A second-generation biofuel blended with jet fuel will be tested in one of the four Pratt & Whitney JT9D engines of a Japan Airlines Boeing 747-300 next

March. The flight will be the first biofuel demonstration by an Asian carrier, and the first using Pratt & Whitney engines. Second-generation biofuels do not compete with natural food or water resources nor contribute to deforestation. First-generation biofuel sources, such as corn and soybeans derivatives, require large areas of land and are food crops predominately grown for human consumption. The goal is to find an alternative fuel that will help reduce the impact of carbon dioxide emissions generated by the aviation industry, while also reducing the industry's reliance on traditional petroleum-based fuels.

**5. ANZ to Test Sustainable Biofuel.**

Air New Zealand (ANZ) expects to use at least one million barrels of environmentally sustainable fuel annually by 2013, said CEO Rob Fyfe, at least 10% of total needs. The world's first flight test on a large passenger aircraft using fuel sourced from the plant jatropha is planned for later this year in Auckland on an ANZ Rolls-Royce-powered Boeing 747-400, subject to final regulatory approvals. Jatropha seeds contain inedible lipid oil used to produce fuel and jatropha can be grown in difficult conditions, including arid and non-arable areas. ANZ is sourcing jatropha oil from South Eastern Africa and India from seeds grown on environmentally sustainable plantations. Fyfe said criteria for sourcing the jatropha oil was that land was neither forest nor virgin grassland within the previous two decades, and is not suitable for most food crops. The plantations are rain-fed and not mechanically irrigated. "Jatropha is likely to be available in the necessary commercial quantities to meet our needs within five years," he said. "We have already had offers from organizations in Asia and Africa willing to guarantee enough supply to meet our 2013 target. The challenge is to develop a robust supply chain model and we are quite open to working with likeminded partners, including the New Zealand Government, on the development of refinery and delivery opportunities." ANZ and others are also testing algae as a source of jet fuel. In related news, ANZ said its fuel savings initiative has delivered 91,000 tons in reduced carbon emissions in just over three years and it expects to beat a goal of topping 100,000 tons within five years by almost two years. Methods include reducing weight on aircraft, more accurate fuel loadings so as not to fly with excess fuel weight, optimizing flight speeds, better use of ground power when at the gate and improved descent profiles. "We are using 36 million liters less fuel on an annual basis compared to when we started this program and this is delivering a saving of \$43 million each year based on current fuel prices," said the airline.

## **VI. U.S. CONGRESS**

### **1. Hearing on DOT Slot Auction Plan.**

The House Transportation Aviation Subcommittee held a hearing on the need to increase capacity and reduce congestion in New York-area airspace. A DOT plan to auction slots at New York Kennedy, LaGuardia and Newark as a means of easing delays was called "repugnant" by Transportation Committee Chairman James Oberstar (D-Minn.), and "hare-brained" by Senator Charles Schumer (D-N.Y.); Schumer has proposed an amendment to the long-stalled FAA spending bill that would prevent the government from auctioning slots. DOT said, "Schumer appears to be more interested in obstructing measures to cut delays than he is in modernizing the nation's air traffic control system and managing chronic aviation congestion. It is tempting to imagine how much better air travel may have been last year had the Senator demonstrated the same enthusiasm 17 months ago for our proposal to improve the nations aviation network as he does now in supporting higher fares, poorer service and less competition." The Air Transport Association of America (ATA) denounced DOT congestion pricing and slot auction proposals and urged DOT to "stop talking ideology and experiments, and instead to move forward with capacity enhancements and airspace redesign using every available resource with all deliberate speed." The Port Authority of New York and New Jersey also oppose the auctions.

### **2. Oberstar Urges Justice to Reject Delta-Northwest Merger.**

James Oberstar (D-Minn.), Chairman of the House Transportation Committee, urged the U.S. Department of Justice to reject the Delta-Northwest merger, saying it would lead to reduced competition and less service for small markets. In related news, 28 airline passengers alleged in a federal lawsuit filed in San Francisco that higher ticket prices and diminished service will result if the merger is approved. The International Association of Machinists (IAM), representing Northwest ground workers, urged shareholders to oppose the merger, saying the two carriers have failed to provide a convincing argument that consolidation would increase shareholder value.

### **3. Passenger Rights Bill Introduced in House.**

An airline passenger bill of rights was introduced in the House, using language from the House-passed FAA reauthorization bill. Sponsored by House Transportation Chairman James Oberstar (D-Minn.) and Aviation Subcommittee Chairman Jerry Costello (D-Ill.), the Air Service Improvement Act of 2008 would provide airline passengers with rights to fair treatment when facing significant delays.

4. **Airlines Urge Congress to “End Rampant Oil Speculation.”**

ATA told a joint Senate hearing on speculative trading in oil markets that Congress should immediately “impose common-sense measures to ensure transparency and reel back the overwhelming odds now favoring index speculators and institutional investors, particularly those trading on foreign exchanges.” Senate Democrats Richard Durbin (Ill.) and Tom Harkin (Iowa) introduced the Transparency and Accountability in Oil Markets Act, which would provide resources to the Commodities Future Trading Commission (CFTC) to oversee oil futures trading. In the House, Bart Stupak (D-Mich.) proposed the “Prevent Unfair Manipulation of Prices (PUMP) Act of 2008.” Supported by an airline industry coalition, PUMP would focus on “opening up the market to greater transparency and fairness to level the playing field for all traders.”

5. **Cap-and-Trade Bill Withdrawn in Senate.**

The bipartisan Climate Security Act of 2008 introduced by Joseph Lieberman (I-Conn.) and John W. Warner (R-Va.) was withdrawn in the Senate, with opponents charging it would cause energy prices to rise. The bill included a cap-and-trade system, which airlines said could add \$5 billion to industry fuel costs if allowances were priced at even modest levels, or as much as \$10 billion if allowances were set higher.

6. **Hearing on Laptop Searches and Other Violations of Privacy.**

The Senate Judiciary Constitution Subcommittee held a hearing on “Laptop Searches and Other Violations of Privacy Faced by Americans Returning from Overseas Travel.” “Neither the drafters of the Fourth Amendment, nor the Supreme Court when it crafted the 'border search exception,' ever dreamed that tens of thousands of Americans would cross the border every day, carrying with them the equivalent of a full library of their most personal information,” said Senator Russ Feingold (D-Wis.). “Ideally, Fourth Amendment jurisprudence would evolve to protect Americans' privacy in this once unfathomable situation. But if the courts can't offer that protection, then that responsibility falls to Congress. Customs agents must have the ability to conduct even highly intrusive searches when there is reason to suspect criminal or terrorist activity, but suspicionless searches of Americans' laptops and similar devices go too far. Congress should not allow this gross violation of privacy.” The searches are often targeted at Muslim Americans and Americans of Arab or South Asian descent, who have also been asked about their religious and political views, but the Association of Corporate Travel Executives said 7% of business travelers who responded to a survey had experienced seizures of their laptops or other electronic equipment. The Department of Homeland Security has not complied with Freedom of Information Act requests regarding its specific policies on searching and

seizing electronic equipment at the border, and did not send a witness to the hearing. Feingold said Homeland Security Secretary Michael Chertoff had failed to respond to questions in a letter sent in April regarding this practice.

**7. House Passes Surveillance Overhaul.**

The House approved an overhaul of the 1978 Foreign Intelligence Surveillance Act (FISA). The bill extends government surveillance ability and provides legal immunity for telecommunications companies that participated in the Bush administration's post-9/11 warrantless wiretapping program. An "outraged" American Civil Liberties Union called the legislation "unconstitutional," saying, "This immunity provision will effectively destroy Americans' chance to have their deserved day in court and will kill any possibility of learning the extent of the administration's lawless actions." The FISA Amendments Act of 2008 also passed a Senate test vote and was expected to win final congressional approval.

## **VII. BILATERAL AND STATE DEPARTMENT NEWS**

### **1. U.S.-Kenya Sign Open Skies Agreement.**

The United States and Kenya signed an open skies agreement, the first aviation accord between the two countries, after two days of negotiations in Washington. Effective immediately, there are no limits on the number of U.S. or Kenyan carriers that can fly between the two countries, the number of flights they can operate, or on routes and destinations, and there are no restrictions on capacity and pricing. After three years, U.S. carriers can fly beyond Kenya to any other African country.

### **2. U.S., Brazil Agree to Expanded Air Services.**

The United States and Brazil concluded an agreement that will provide for a nearly 50% increase in passenger flights between the two countries and eliminate restrictions on the number of airlines that can provide U.S.-Brazil air service. The agreement will, in four stages between July 2008 and October 2010, permit an increase in the number of weekly U.S.-Brazil passenger flights from 105 to 154 for each country's carriers. The number of weekly cargo flights may expand from 24 to 35 immediately, and to 42 in 2010. Cargo charter flights may increase from 750 per year to 1,000 immediately, and to 1,250 in 2010. U.S. cargo companies can transfer freight from aircraft to trucks for door-to-door delivery in Brazil. U.S. carriers may serve five new cities in Brazil—Fortaleza, Curitiba and three others to be selected by the United States. And, for the first time, U.S. and Brazilian carriers may provide certain types of service on a code share basis with their partner airlines from third-countries. The terms of the agreement will be applied on a reciprocal basis until it enters into force.

### **3. U.S.-China ADS Takes Effect.**

A Chinese leisure group visited the United States in June, the first such tour from the mainland, as the U.S.-China bilateral ADS (Approved Destination Status) agreement, signed in December, took effect. Previously, the United States issued only business and student visas to Chinese travelers.

## VIII. EUROPE/AFRICA

### 1. Antonio Tajani Succeeds Barrot as EU Transport Commissioner.

Antonio Tajani was confirmed as EU Transport Vice President, succeeding Jacques Barrot who now is Vice President for Justice, Freedom and Security. Tajani takes over the Italian Commissioner post from Franco Frattini, who was recalled to the new Berlusconi government. Tajani said his nationality will not prejudice him in the EC investigation into a €300 million loan made by the Italian government to Alitalia.

### 2. EU Court Rules Greek Post-9-11 Olympic Airways Aid Legal.

The European Court of First Instance annulled a EC decision declaring certain state aid paid to Olympic Airways for losses connected with the terrorist attacks of September 11, 2001 incompatible with the common market. The €4.8 million grant compensated Olympic for flights cancelled when U.S. airspace closed for a few days following the attacks and for other cancellations and the costs of extra repatriation flights. The EC earlier had ruled that only aid covering the cancellation of flights during the closure of U.S. airspace, less than €2 million, met EU rules, and had ordered Greece to recover the rest. "The exceptional occurrence and the loss caused may be directly connected even if they do not occur at the same time," ruled the Court.

### 3. EC Passes Single European Sky Legislation.

The EC passed the second package of legislation for a Single European Sky (SES II), which could help airlines save up to 16 million tons of carbon dioxide emissions and cut their costs by €2-3 billion per year.

### 4. EU Rules Air Fare Ads Must Show All Taxes, Surcharges.

New EU rules would ensure that air fares advertised in the EU include all taxes and additional charges. An EU investigation found that airlines and other travel companies often add taxes, fees and other charges to prices that appear on Web sites. The guidelines have been approved by EU governments; a full EU assembly vote is expected in July.

### 5. Lufthansa Expects Another Record Year.

Lufthansa expects another record operating result, despite fuel expenses of €5.6 billion, for 2008. "Higher costs are to be compensated by efficiency gains, cost savings as part of a package of measures which has already been initiated and fuel surcharges," the carrier told investors. An "important pillar" for profitable growth is expansion through alliances and partnerships such as the planned joint venture with United, Continental and Air Canada.

6. **Delta Inaugurates Nine International Flights.**

Delta initiated nine international flights in June, including: From New York Kennedy, nonstops to Guyana, Cairo, Malaga, Amman and Antigua, and Cape Town via Dakar. From Atlanta, a fourth daily flight to Paris and from Salt Lake City, daily service to Paris, both part of a recently implemented joint venture with Air France. And also from Atlanta, nonstop service to Stockholm.

7. **Silverjet Rescue Fails.**

An attempt to rescue Silverjet failed when Kingplace, a Swiss-managed Irish company, did not meet funding requirements of the UK Civil Aviation Authority. The Luton-based, all-premium airline flew to New York and Dubai until May when it collapsed under the strain of current economic conditions and competition from large airlines.

8. **Sudan Airways Appeals Grounding, Flights Resume.**

Sudan's Civil Aviation Authority grounded Sudan Airways, following a landing accident at Khartoum International Airport that killed 30 people. The carrier appointed an independent expert to review its operations and the Authority allowed flights to resume pending further evaluation in early July. Privatized last year, the carrier is owned by a Kuwaiti company, the government and private Sudanese. Authority officials reportedly said the airline's performance generally does not comply with international aviation standards.

9. **U.S.-Kenya Sign Open Skies Agreement.**

See Section VII, item 1.

10. **China Southern, Air France KLM to Develop Cargo Joint Venture.**

See Section IX, item 3.

## **IX. ASIA/PACIFIC / MIDDLE EAST**

### **1. China, Taiwan Agree to Direct Flights.**

In a historic development, direct passenger air service has been authorized between Taiwan and China. The charter flights will be the first since the 1949 civil war, with some exceptions during major Chinese festivals, and will be available to anyone with valid travel documents. Beginning July 4 carriers from each side will operate a total of 36 weekend flights, via Hong Kong airspace. The two sides agreed to discuss a direct flight route as soon as possible, as well as chartered cargo flights and air traffic control coordination, and agreed to set up representative offices to handle tourism issues, to simplify entry and exit procedures and to protect mainland tourists' legal rights and safety.

### **2. China, Taiwan Carriers Form Alliances.**

Following the Taiwan-China agreement, airlines from both sides announced new alliances to represent each other's businesses in passenger, cargo, maintenance and ground handling operations, including: China Southern with China Airlines (China Southern said it will support China Airlines as it seeks to join the SkyTeam alliance), EVA Airways with China Eastern, and Air China with China Airlines and EVA. Airlines launching direct weekend charter flights include China Airlines and its Mandarin Airlines subsidiary, China Southern, Air China, which said tickets for its first Beijing to Taipei flights were sold out immediately, China Eastern, Hainan, Xiamen and Shanghai.

### **3. China Airlines Names New President.**

Huang-Hsiang Sun was named President of China Airlines. He has held executive positions with numerous airlines and currently is Chairman of Yangtze River Express Airlines, which is 25% owned by China Airlines.

### **4. China Southern, Air France KLM to Develop Cargo Joint Venture.**

Air France KLM and China Southern agreed to develop a cargo joint venture, subject to required approvals.

### **5. Hainan Begins Seattle-Beijing Service.**

Hainan Airlines began flying four times a week from Beijing to Seattle, its first U.S. destination. The privately owned airline has filed with Chinese authorities to launch service to Boston, Chicago, Newark and Toronto. In other news, Hainan partner Grand China Air is joining with the Yunnan provincial government in southwest China to launch Yunnan Airlines.

**6. US Airways, Air China to Code Share.**

Star Alliance partners US Airways and Air China agreed to a code share pact that puts the US code on Air China service to Beijing from Los Angeles, San Francisco and New York Kennedy, and on flights to Shanghai via Los Angeles or San Francisco-Beijing service. Air China will put its code on US Airways flights from Los Angeles and San Francisco to Phoenix, Las Vegas, Charlotte, Philadelphia and Pittsburgh.

**7. Korean Air's Jin Air to Launch in July.**

Korean Air's low-cost Jin Air unit will begin operations in July. Jin Air initially will offer B737-800 domestic flights between Gimpo, near Seoul, and Jeju island, with service to Busan to be added later this year and to China, Japan and Southeast Asia from the second half of 2009. Asiana and Tiger Air are also planning low-fare airlines in South Korea.

**8. Thai Suspends New York Flights, Reduces Los Angeles Service.**

Thai Airways International suspended its seven weekly Bangkok-New York flights for an indefinite period and reduced flights to Los Angeles to five from seven, due to soaring fuel prices. Direct flights to Los Angeles will end later this year.

**9. Jet Airways Begins Mumbai-San Francisco Flights.**

Jet Airways began daily services from Mumbai to San Francisco via Shanghai in June; the Indian carrier already flies to New York Kennedy and Newark. Jet's international operations, 62 destinations, now account for 42% of operating revenues, compared to 23.7% in fourth quarter last year. Code share agreements are in place with American Airlines, Air Canada, ANA and Etihad.

**10. Emirates Launches First Commercial A380 Service to the U.S.**

Emirates will offer the first commercial Airbus A380 service to the United States on August 1, from Dubai to New York Kennedy. Three times weekly A380 service on the route begins August 8. Emirates is the largest customer for the superjumbo.

## **X. AMERICAS**

### **1. Changes in American Capacity Cuts.**

American announced additional capacity cuts, to take place in November, in addition to those already announced for September. American is reducing flights at most of its principal bases, including Chicago, Dallas/Fort Worth and New York LaGuardia, and closing operations entirely at Oakland; London Stansted; and Barranquilla, Colombia. American Eagle closures include Albany, Harrisburg and San Luis Obispo.

### **2. United Cuts Include 950 Pilots; Ted Axed.**

United plans to lay off 950 of its pilots, as it removes a total of 100 aircraft from its mainline fleet and reduces mainline domestic capacity in the fourth quarter 2008 by 14% year over year. The carrier is eliminating its Ted product, reconfiguring that fleet's 56 A320s to include United first class seats. The number of salaried and management staff and contractors will be reduced by 1,400-1,600 including a previously announced 500 employee reduction by year-end. United and the Association of Flight Attendants agreed on a one-time opportunity for eligible flight attendants to voluntarily separate from the company; the program will be available for up to 600 United flight attendants.

### **3. Continental to Reduce Capacity, Fleet, Staff.**

Continental CEO Larry Kellner announced to employees several measures he said were "necessary to secure our future." These include an 11% reduction in domestic mainline capacity in the fourth quarter, compared to the same period last year, and elimination of 3,000 positions across all work groups. Kellner and President Jeff Smisek declined their salaries for the remainder of the year and incentive payments for 2008. Fleet count will shrink to 356 in September 2008 and 344 at the end of 2009, with acceleration of retirement of Boeing 737-300s and -500s. Continental reached a new seven-year capacity purchase agreement with ExpressJet, effective July 1, in which regional jet service will be provided at lower than current rates.

### **4. US Airways to Reduce Capacity, Cut 1,700 Employees.**

"We must write a new playbook for running a profitable airline in this new and challenging environment," said CEO Doug Parker, as US Airways announced it would reduce fourth quarter domestic mainline capacity by 6-8% year-over-year, return 10 mainline aircraft in 2008 and 2009, cancel leases of two A330s scheduled for delivery in 2009, and reduce additional aircraft in 2009 and 2010, with resulting elimination of 1,700 staff positions systemwide. The carrier will introduce a first-checked-bag fee and other new fees and plans to

close some US Airways Clubs and cargo stations. Parker invested more than \$550,000 in US Airways common stock, equal to his 2008 salary, to show his commitment to the carrier's long-term success.

5. **Virgin America Shuffles Capacity.**

San Francisco-based startup Virgin America announced capacity changes, saying its “business model remains the same with no changes to fleet or growth plans, planned new routes or cities, or cuts to its still growing workforce.” The carrier will add flights on select high-demand routes, while reducing capacity on mid-week flights during off-peak periods this fall. As a result, the carrier will fly at 10% less capacity in the fourth quarter than previously projected, while year-over-year growth percentage will remain a net positive of 88%. “These temporary schedule reductions and strategic additions better reflect the industry landscape we anticipate, given that consumer demand for air travel will be affected by seasonality and, potentially, by higher gas prices in the fall,” said President and CEO David Cush.

6. **ATA Sues FedEx Over Loss of Military Charters.**

ATA Airlines filed a complaint against Federal Express Corp., claiming FedEx breached a military shipping contract that accounted for most of its revenue. FedEx notified ATA in January that it would not use ATA for military charters for the government fiscal year ending September 30, 2009. ATA filed for bankruptcy April 2 and ceased operations the next day. The abrupt termination led to damages that could exceed \$150 million, said ATA. FedEx said it had no contractual obligation to ATA beyond the current fiscal year, which ends in September.

7. **Spirit to Offer “Ultra Low Cost” Fort Lauderdale-Bogota Service.**

Fort Lauderdale-based Spirit will offer daily nonstops to Bogota, starting July 24, with \$69 roundtrip introductory fares. The “ultra low cost carrier” introduced flights to Cartagena in May.

8. **Families to Seek Damages From Comair Crash.**

A federal judge ruled that families of those killed aboard Comair Flight 5191 may seek punitive damages in a trial set for August 4, saying there is enough evidence to allow a jury to decide if the airline’s management was responsible for the August 2006 crash that killed 49 people at Lexington Blue Grass Airport. Comair, a unit of Delta, has admitted its pilots took off from the wrong runway, but argued it did not authorize their conduct. The plaintiffs contend there was overwhelming evidence Comair was grossly negligent in oversight of safety and that reckless operation of the aircraft was a foreseeable consequence of decisions by Comair management. The judge noted the plaintiffs had presented evidence that Comair knew that one of its flight crews

had previously taken off from a wrong runway; that it failed to adopt a written checklist to require cross-checking the runway heading; and that it had no policy prohibiting pilots from taking off on an unlit runway at night. About one-third of the lawsuits have been settled, reports the *Courier-Journal of Louisville*.

**9. Air Canada to Cut 2,000 Jobs, Capacity.**

Air Canada will cut up to 2,000 jobs (8%) of its work force and reduce capacity by 7% this fall and winter. CEO Montie Brewer blamed taxes, security fees and airport charges that are among the most expensive in the world, along with fuel costs, and said further capacity reductions may occur.

**10. Continental, United Alliance Planned.**

See Section I, item 2.

**11. U.S., Brazil Agree to Expanded Air Services.**

See Section VII, item 2.

**12. Delta Inaugurates Nine International Flights.**

See Section VIII, item 6.

**13. Hainan Begins Seattle-Beijing Service.**

See Section IX, item 4.

**14. US Airways, Air China to Code Share.**

See Section IX, item 5.

**15. Thai Suspends New York Flights, Reduces Los Angeles Service.**

See Section IX, item 7.

**16. Jet Airways Begins Mumbai-San Francisco Flights.**

See Section IX, item 8.

**17. Emirates Launches First Commercial A380 Service to the U.S.**

See Section IX, item 9.