



## WASHINGTON AVIATION SUMMARY

May 2011 EDITION

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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. DOT Expands Airline Passenger Protections.**

The U.S. Department of Transportation (DOT) finalized an expanded passenger protection rule that will take effect in August. Airlines will be required to: reimburse passengers for bag fees if bags are lost; prominently disclose all potential fees on their websites; include all government taxes and fees in every advertised price; allow reservations, made at least seven days prior to the flight, to be held at quoted fare without payment or cancelled without penalty for at least 24 hours after reservation is made; promptly notify consumers of delays of over 30 minutes, as well as cancellations and diversions; and provide consumers involuntarily bumped from flights with up to \$1,300 in compensation, with inflation adjustments every two years. The rule bans post-purchase fare increases unless due to government-imposed taxes or fees. The current ban on lengthy tarmac delays will cover foreign airlines' operations at U.S. airports; there will be a four-hour hard time limit on tarmac delays for international flights of U.S. and foreign airlines. DOT will issue a supplemental notice of proposed rulemaking later this year requiring, among other things, that ancillary fees be displayed at all points of sale. Airline groups say the new rule will lead to increased cancellations, higher ticket prices and passenger inconvenience.

### **2. Southwest Acquisition of AirTran Cleared.**

The Department of Justice Antitrust Division closed its investigation into the proposed acquisition of AirTran by Southwest, after determining the merger is not likely to substantially lessen competition. The merged firm can offer new low-cost service on routes that neither airline serves today, including new connecting service through Atlanta from cities currently served by Southwest to cities currently served by AirTran. Dallas-based Southwest had 2010 revenues of \$12.1 billion, carried 88 million passengers and serves 72 U.S. cities. Orlando-based AirTran had 2010 revenues of \$2.6 billion, carried 25 million passengers and serves 69 cities in the United States, Mexico and the Caribbean. The merger, which will close on May 2, has been approved by AirTran stockholders. Securing a single operating certificate from FAA is projected for completion in first quarter 2012, said Southwest.

### **3. Southwest B-737 Fuselage Skin Ruptures Mid-Air.**

Boeing, the Federal Aviation Administration (FAA) and the National Transportation Safety Board (NTSB) are investigating an April 1 mid-air rupture of the fuselage skin on a Southwest Boeing 737-300. The plane experienced rapid decompression at 34,000 feet, en route from Phoenix to

Sacramento, and pilots made an emergency landing in Yuma; there were no serious injuries. NTSB found additional cracks in other portions of the lap joint along the fuselage and said most rivet holes connected to the nine-inch-wide rupture in the fuselage crown showed microscopic cracks. The airplane had accumulated 39,781 flight cycles and 48,740 flight hours, and was delivered to Southwest in 1996. Boeing issued an Alert Service Bulletin to operators of Boeing 737-300s, 400s, and 500s with at least 30,000 cycles, and FAA issued an emergency airworthiness directive mandating the inspections, with re-inspections every 500 flights. Southwest found crack indications in lap joints on five of its 737-300s, during inspections.

**4. IATA: U.S. Aviation Policy Agenda Short-Sighted.**

“The U.S. aviation policy agenda is dominated by short-sighted half-measures that focus on micro-management,” said Giovanni Bisignani, Director General and CEO of the International Air Transport Association (IATA), in a speech to the Wings Club in New York City. He called on the U.S. government to accelerate NextGen implementation, renew its focus on liberalization, revise proposals for passenger rights legislation and address the rising cost of security. Among his remarks: Airlines globally are spending \$7.4 billion annually on aviation security and these should not be airline costs. The U.S. must be more vocal in its opposition to the EU emissions trading scheme and faster in delivering NextGen, which is tied-up in politics with 18 extensions on the FAA reauthorization bill that provides funding; the new bill needs to be passed quickly. The DOT rule to fine all airlines for tarmac delays does not align with President Obama’s vision of promoting economic growth, reducing uncertainty and passing a cost-benefit analysis; the fines will not melt snow, stop thunderstorms, free-up airport gates, build new infrastructure, or deliver more customs personnel. Liberalize ownership; ownership restrictions of the bilateral system have made airlines stunted national companies. In Washington, Bisignani was honored with the L. Welch Pogue award by the International Aviation Club of Washington, *Aviation Week* and Jones Day.

**5. ATC Supervisors to Monitor Flights of First Lady, Vice President.**

FAA will require air traffic control (ATC) supervisors to monitor flights carrying the First Lady and Vice President in the Washington area and at their destinations where possible. The order came following an incident in which the required separation was compromised between a C-17 and a Boeing B-737 carrying First Lady Michelle Obama and Jill Biden, wife of the Vice President, during a landing attempt at Andrews Air Force Base. FAA said the aircraft were never in danger; the acting manager of the ATC facility responsible for the mistake was demoted; NTSB is investigating the incident. Movements of the President are monitored in DC-area airspace and wherever he is flying in the country.

**6. FAA Takes New Action on Controller Problems.**

FAA Administrator Randy Babbitt accepted the resignation of the head of the Air Traffic Organization, which is charged with operating the U.S. ATC system, and announced additional management changes. The actions followed a flurry of events in which controllers were asleep on the job. FAA announced changes to controller scheduling practices to allow more time for rest between shifts, and prohibited scheduling practices most likely to result in controller fatigue. FAA also placed an additional controller on the midnight shift at 27 towers that had been staffed with only one; and, with the National Air Traffic Controllers Association (NATCA), launched a nationwide Call to Action that includes site visits, an independent review of training curriculum and qualifications, and an expansion of NATCA's Professional Standards committees. As a result of a previously announced review of staffing and scheduling, FAA is investigating additional incidents involving "unresponsive air traffic controllers." DOT Secretary Ray LaHood told reporters he sees no need for an independent review of FAA performance, but an independent review panel was appointed to evaluate the ATC training curriculum, qualifications and placement process, with a report due this fall. NTSB Member Mark Rosekind said on-the-job naps should be considered as a way to address controller fatigue.

**7. NextGen Equipage Fund Announced.**

A public-private partnership (PPP) has been established to help operators acquire NextGen technologies for aircraft. The NextGen Equipage Fund was announced following passage of the FAA reauthorization bill in the House of Representatives, which authorizes the PPP approach. Russ Chew, former FAA Chief Operating Officer and JetBlue President, is a general partner of the Fund, which is partnering with ITT and other aerospace companies, "to provide the more than \$1.5 billion in financing for the industry to adopt the avionics technology needed to help make NextGen a reality." The Fund will enable airlines to retrofit up to 75% of the U.S. commercial fleet without a large cash outlay or adding more debt. Payments would be deferred until specific NextGen services are delivered. The Washington DC-based NextGen Equipage Fund is managed by the NEXA General Partnership and Management Company.

**8. American and Delta Apply for Additional Brazil Frequencies.**

American Airlines and Delta Air Lines filed applications with DOT for newly available frequencies under the U.S.-Brazil bilateral. American requested 10 additional weekly frequencies from Miami to increase Brasilia and Belo Horizonte services from four weekly to daily on December 15, and initiate four frequencies to Manaus on June 14, 2012. Delta applied for nine frequencies to increase Detroit-Sao Paulo service from five weekly to daily and to begin

new daily service between Atlanta and Manaus. The two carriers filed a joint motion requesting approval of both applications as there are an additional nine frequencies still available for U.S. carriers.

**9. FAA Assigns Barbados Category 2 Rating.**

FAA has assigned Barbados a Category 2 rating. As such, Barbados' air carriers, which do not currently serve the United States, cannot establish U.S. service. The Category 2 rating means the country does not comply with international safety standards set by the International Civil Aviation Organization (ICAO), based on an assessment of its civil aviation authority.

**10. FAA Proposes \$350,000 Civil Penalty Against Lynx Aviation**

FAA proposed a \$350,000 civil penalty against Colorado-based Lynx Aviation, a Republic Holdings subsidiary, for allegedly operating 177 revenue passenger flights on a Bombardier Dash 8-400 twin turboprop when it was not in compliance with federal aviation regulations.

**11. ATA Calls for Action on National Airline Policy.**

ATA called on DOT, Congress and the industry to quickly enact a U.S. national airline policy in order to boost competitiveness and drive economic growth. In a speech to the Annual Aviation Summit, sponsored by the U.S. Chamber of Commerce, ATA President and CEO Nicholas Calio said a focused and coordinated commitment is needed to turn multiple commission recommendations into real policy with a measurable timeline of accomplishments: address the rising tax burden, reduce the regulatory burden, expedite implementation of NextGen, expand access to global markets and enable the U.S. airline industry to attract investment. Other featured speakers included U.S. Airways Chairman and CEO Doug Parker, JetBlue President and CEO David Barger and FedEx President and CEO David Bronczek. Parker said taxes and fees now make up 20% of a \$300 ticket, more than the rate for cigarettes or alcohol.

**12. Former Air France Cargo Executives Indicted in Cargo Scheme.**

A Chicago grand jury returned an indictment against two former Air France executives for participating in a conspiracy to fix and coordinate surcharges and service rates on air cargo shipments to and from the United States and elsewhere. The indictment further alleges that with co-conspirators they agreed to refuse to pay their customers commissions on surcharges. The U.S. Department of Justice said the conspiracy occurred from at least August 2004 until at least February 2006 in violation of the Sherman Act, which carries a maximum penalty of 10 years in prison and a \$1 million fine for individuals. A total of 21 airlines and 21 executives have been charged in the Justice Department's ongoing investigation into price-fixing in the air transportation

industry; more than \$1.8 billion in criminal fines have been imposed and four executives have been sentenced to serve prison time.

**13. Airline Employment Rises.**

U.S. scheduled passenger airlines employed 381,831 in February, 3,811 (1%) more than in February 2010 and the highest number since August 2009, reports DOT. Compared to employment numbers of February 2007, the six network airlines had 259,545 employees in February 2010, down 2,856; the six low-cost carriers reporting employment data in both 2007 and 2011 employed 10.5% more; and the 15 regionals reporting in both 2007 and 2011 had 13.2% fewer.

**14. DOT Air Travel Consumer Report for February.**

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

|                             | Feb.<br>'11 / '10 | Jan.<br>'10 | Full Year |       |        |        |       |
|-----------------------------|-------------------|-------------|-----------|-------|--------|--------|-------|
|                             |                   |             | 2010      | 2009  | 2008   | 2007   | 2006  |
| On-time arrivals %          | 74.5 / 74.7       | 76.3        | 79.8      | 79.5  | 76     | 73.4   | 75.4  |
| Cancellations %             | 4.9 / 5.4         | 3.9         | 1.76      | 1.39  | 1.96   | 2.16   | 1.71  |
| Mishandled baggage*         | 3.59 / 3.93       | 4.2         | 3.99      | 3.91  | 5.26   | 7.05   | 6.73  |
| <i>Consumer complaints:</i> |                   |             |           |       |        |        |       |
| Airline service             | 687 / 770         | 855         | 10,985    | 8,821 | 10,648 | 13,180 | 8,325 |
| Disability-related          | 40 / 30           | 39          | 572       | 519   | 477    | 488    | 430   |
| Discrimination**            | 10 / 5            | 11          | 143       | 131   | 115    | 99     | 114   |

Note: The largest U.S. airlines reported no flights in February with tarmac delays of more than three hours, down from 60 flights in February 2010.

\* Reports per 1,000 passengers.

\*\*I.e., race, religion, national origin or sex.

**15. Court Tells DOT the Federal Government Is Not the Public.**

See Section X, item 4.

## II. AIRPORTS

### 1. St. Louis Recovering From Tornado Damage.

Lambert-St. Louis operations halted when an EF-4 tornado system tore through the airport complex, devastating C Concourse. The airport's notable Terminal 1, designed by World Trade Center architect Minoru Yamasaki, and two aircraft on the ground had significant damage. At least five people were injured. A day later, after full power was restored to the airport, Terminals 1 and 2 and Concourse A were fully operational. Lambert moved operations of American, AirTran, Frontier and Cape Air to vacant gates in B and D Concourses. About 70% of flight operations resumed less than 48 hours after the tornado strike and 85% a day later. . . . Tornadoes and severe storms continued to wreak devastation in mid- and eastern U.S. states, killing hundreds and causing thousands of flight delays and cancellations.

### 2. SFO T2 Opens for Business.

San Francisco opened newly renovated 640,000 square foot Terminal 2, the nation's first LEED<sup>®</sup> Gold-Registered terminal. Virgin America occupies seven of 14 gates, American Airlines six, and one is for common use. The \$383 million project features 30,793 square feet of retail development, including 12 restaurants, a local food market with celebrity chef offerings, a spa, a children's play area, and a "recompose" area near security for passengers to re-assemble clothing and belongings. Designed and built through a partnership between Turner Construction and Gensler, T2 can handle 5.5 million enplaned passengers per year; gates can accommodate a Boeing 747-400 sized aircraft; a pedestrian bridge to AirTrain connects to Bay Area Rapid Transit; sustainable features include preferential parking for hybrid cars.

### 3. LAWA, Alaska Airlines Settle Lawsuit Over Terminal Charges.

Los Angeles World Airports (LAWA) and Alaska Airlines agreed to settle a lawsuit regarding terminal charges. Under terms of the agreement, Alaska will sign a 10-year lease for Terminal 6 at LAX and contribute \$18.6 million to a \$271 million renovation that will merge its domestic and international operations into a single terminal. Other funding includes \$156.5 million in LAWA commercial paper/long-term debt. Another \$95.9 million from LAWA cash, Passenger Facility Charges and Transportation Security Administration (TSA) reimbursements covers improvements useable by any airline operating in Terminal 6. Phased construction is expected to be completed by summer 2012, at which time Alaska and Horizon Air operations will move from their current Terminal 3 location to Terminal 6.

4. **Study: Brazil's Airports Not Ready for 2014 World Cup.**

Brazil's Institute for Applied Economic Research (IPEA) released a study that determines the country's airports will be unable to accommodate the 800,000 to 1 million visitors expected for the 2014 World Cup. The study says renovations planned for 10 of the 13 passenger terminals to be used during the tournament will not be completed in time, due in part to Infraero's low level of efficiency in the execution of investment programs. Brazil's strong economic growth is expected to significantly increase passenger demands at the airports in the next few years, adding to the problem; 14 of Brazil's 20 largest airports already operate at capacity. The study concluded that temporary terminals with remote boarding facilities will be required for the World Cup and the 2016 Olympics to be held in Rio de Janeiro.

5. **UK CAA Publishes Competition Guidelines.**

The UK Civil Aviation Authority (CAA) published competition guidelines on how it will approach analysis of an airport's market power. Service quality, relationships with users, financial and pricing performance and investment record are among factors to be considered. Heathrow, Gatwick and Stansted are the initial subjects. The guidelines are part of ongoing work to improve how regulation works to protect passengers, said CAA.



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

#### **1. TSA Union Vote Requires Runoff Election.**

Employees of the Transportation Security Administration (TSA) voted on the question of union representation, in a nationwide election conducted by the Federal Labor Relations Authority. Of 43,000 Transportation Security Officers eligible to vote, 8,369 voted for the American Federation of Government Employees (AFGE), AFL-CIO; 8,095 voted for the National Treasury Employees Union (NTEU); and 3,111 voted for neither union. Because none of the choices received a majority of the votes cast, a runoff election will be held between AFGE and NTEU.

#### **2. TSA Replaces Newark Liberty Security Director.**

Following numerous significant security lapses at Newark Liberty, the airport's federal security director resigned and was replaced by Donald Drummer, a retired U.S. Army Colonel who was Acting Federal Security Director at Baltimore Washington since February, after having served as Deputy Federal Security Director at New York Kennedy from January 2010. In February, U.S. Sen. Frank Lautenberg (D-NJ) asked the Department of Homeland Security (DHS) Inspector General to review security breaches at Newark Liberty and subsequent responses by TSA. One of the planes hijacked on 9/11 took off from Newark Airport.

#### **3. Europe Defers Lifting of Liquid Restrictions.**

EU member states were told to delay lifting the screening of duty-free liquid purchases carried by passengers arriving from outside the EU and transferring onto a connecting flight. The rule was set to go into effect on April 29, but several EU nations had opted to maintain the ban, which was expected to cause confusion for passengers. Passengers will continue to be allowed to carry duty-free liquids from some international airports, including those in the United States. Passengers with liquid purchases made at EU airports or on board EU carriers may transfer at European airports without restriction. The EU is working toward removing all restrictions on the carriage of liquids in hand luggage by 2013.

#### **4. Crewmember Identity Verification Program to Begin Testing.**

TSA approved the testing of a new crewmember screening system, to begin later this year, which is jointly sponsored by the Air Line Pilots Association and the Air Transport Association. The system links airline employee databases, enabling TSA security officers to verify identity and employment status of crewmembers. Members of Congress urged the TSA Administrator to ensure

that it includes both pilots and flight attendants and a biometric identification system. An earlier version, the Crew Personnel Advanced Screening System (CrewPASS), has been used at three airports for almost three years.

**5. USTA Launches Campaign for Trusted Traveler Program.**

The U.S. Travel Association (USTA) launched “Be Trusted,” a national campaign to urge Congress to implement a trusted traveler program. “A one size fits all approach to security is inefficient. If Congress implements a trusted traveler program, we’ll see more Americans traveling and that will create more American jobs,” says USTA. . . . A survey of travelers conducted by USTA’s Travel Tax Institute found that 49% have altered plans due to high travel taxes; 66% rated taxes on airfare as “very high” (38%) or “high” (28%); 60% said travel taxes should be reinvested in travel infrastructure. The Travel Tax Institute is creating a database to track travel taxes in 50 U.S. destinations and uses of these revenues. . . . The U.S. visa system is a roadblock to increasing inbound international travel, says USTA, which is compiling recommendations for a 10-year strategy to increase U.S. travel exports. In some countries, wait time for U.S. visas can be as long as 100 days. The \$140 visa application fee is non-refundable, and applying for a visa is no guarantee that a visa will be issued since nearly 20% of applicants are refused, and many potential visitors must travel great distances at great expense to make a mandatory trip to a U.S. consulate.

## **IV. E-COMMERCE AND TECHNOLOGY**

### **1. Google Acquisition of ITA Approved.**

The Department of Justice approved the acquisition of ITA Software by Google, ordering Google to “protect competition for airfare comparison and booking websites and ensure that websites using ITA’s software will be able to power their websites to compete against any airfare website Google may introduce.” The department will require Google to develop and license travel software, establish internal firewall procedures and continue software research and development. Google said ITA customers can extend contracts into 2016. ITA’s QPX, a comprehensive airfare shopping system, is used by leading airlines and travel distributors worldwide.

### **2. American Files Antitrust Lawsuit Against Travelport, Orbitz.**

American Airlines filed a civil antitrust lawsuit in a federal court in Texas against Travelport and Orbitz Worldwide “to stop exclusionary and anticompetitive business practices and recover monetary damages that American has incurred as a result of these harmful actions.” American revoked Orbitz ticketing authority when the agency refused to use the carrier’s Direct Connect technology. . . . American and Expedia announced that access to fares and schedules of the carrier and subsidiary American Eagle have been restored for search and ticketing on Expedia and Hotwire sites worldwide initially via global distribution system (GDS) technology and later via American’s Direct Connect link using technology provided by a GDS.

### **3. US Airways Files Antitrust Lawsuit Against Sabre.**

US Airways filed a federal civil antitrust lawsuit in the Southern District of New York against Sabre Holdings, claiming the GDS “has engaged in a pattern of exclusionary conduct to shut out competition, protect its monopoly pricing power, and maintain its technologically-obsolete business model.” Over 35% of US Airways’ revenue is booked through Sabre and Sabre-affiliated agents. According to the complaint, Sabre imposes significant economic penalties on agents relating to bookings not made using Sabre. If Sabre excluded US Airways from its offerings to agents, those agents could no longer book US Airways tickets through Sabre. Sabre said the complaint is “baseless and without merit” and will defend against it.

## V. ENERGY AND ENVIRONMENT

### 1. Fuel Bill for Global Airline Industry.

The average price of aviation jet fuel, as of April 15, was \$140/barrel, up 5.8% on the month and 45% year-on-year, reports the International Air Transport Association (IATA). New fuel price average for 2011 was \$125.6/barrel.

### 2. U.S. Airline Fuel Surcharges Set Record.

U.S. carriers added a record \$420 in fuel surcharges to U.S.-Europe round trip fares, reports Bloomberg, compared to \$330 in summer 2008 when fuel prices peaked. U.S.-London fuel surcharges rose to \$362, up from \$302 in the 2008 period, according to BestFares.com; to \$580 on some round trips between the U.S. and South America, up from \$390 in 2008; and to \$500 between the U.S. and Sydney, compared with \$220 in mid-2008. Jet fuel is the largest operating expense for airlines.

### 3. Greenhouse Gas Reductions of 60% from Jatropa-Based Fuel.

A report by Yale's School of Environmental Studies, funded by Boeing, projected greenhouse gas reductions of up to 60% from jatropa-based fuel compared to petroleum-based jet fuel, and concluded that jatropa can deliver strong environmental and socioeconomic benefits. The study used sustainability criteria developed by the Roundtable on Sustainable Biofuels in evaluating actual farming conditions. . . . Mission NewEnergy, the largest producer of jatropa by acreage planted, "employs more than 140,000 formerly impoverished farmers in India now earning a living cultivating Jatropa without compromising food supply or food pricing." The company is currently distributing in Europe, and launching U.S. operations. . . . Business Matchmaking, a non-profit that matches small firms with government agencies and major corporations, said jatropa-fueled flights tests carried out by Japan Airlines, Air New Zealand, Continental, Brazil's TAM and Mexican carrier Interjet, in cooperation with Airbus, were successful.

## VI. U.S. CONGRESS

### 1. House Passes FAA Reauthorization.

The House approved the FAA Reauthorization and Reform Act of 2011. “The bill saves \$4 billion by streamlining and consolidating FAA programs and facilities, increasing the use of cost effective programs, modernizing our air traffic control system, and increasing the role of the private sector in facility operations,” said Transportation and Infrastructure Committee Chairman John Mica (R-FL). H.R. 658 funds priority NextGen projects planned in the next four years, sets deadlines and metrics for NextGen progress and enables public-private partnerships for financing. It eliminates the essential air service program (except in Alaska and Hawaii) effective October 1, 2013. It reverses a National Mediation Board ruling that allows aviation and railway workers establish union representation based on the vote of a majority of those voting rather than a majority of all employees to be represented. It does not increase the passenger facility charge. It expands a program that allows airports to utilize privately operated control towers. It institutes “a risk-based approach to inspections of foreign repair stations in a manner that protects U.S. jobs and respects bilateral agreements.” Other provisions include legal protections for safety information provided to FAA as part of the voluntary Safety Management System, and harmonization of U.S. rules and international standards for shipments of lithium batteries. The House and Senate now must negotiate the bills approved by each chamber. A 2003 reauthorization expired in 2007 and has been followed by 18 short-term extensions.

### 2. Bills Would Ban Airport Body Screeners, Address Child Patdowns.

Legislation addressing effectiveness, privacy and health concerns associated with Advanced Imaging Technology (AIT) machines was introduced in the House by Jason Chaffetz (R-Utah) and Rush Holt (D-NJ). H.R. 1279 prohibits TSA from using AIT machines unless the National Academy of Sciences determines they pose no threat to public health; they are equipped with privacy protecting technology; and another method of screening (such as metal detection, explosive trace detection, or behavioral profiling) demonstrates reasonable cause for use. The bill is an updated version of one introduced in the last Congress by Chaffetz, who now is Chairman of the Oversight and Government Reform Subcommittee on National Security. . . . Chaffetz also introduced the TSA Screening of Minors Act of 2011, after wide dissemination of a video showing a small girl undergoing a patdown at an airport security checkpoint. H.R. 1510 would prohibit a patdown search of a minor for purposes of air transportation security without the consent and presence of a parent of the minor, and for other purposes.

3. **Bill Would Aid Airports Seeking to Use Private Screening Companies.**

New legislation introduced in the House would aid airport operators who, under the Screening Partnership Program (SPP), seek to replace TSA screeners with private screening companies operating under federal supervision and guidelines. In January, TSA Administrator John Pistole announced that TSA would not expand SPP beyond its current 16 airports “unless there are clear and substantial advantages to doing so.” The SPP was established by the Aviation Transportation Security Act (ATSA). H.R. 1586 requires TSA to act on applications within 120 days of receiving them, approving them if they would not compromise security or the effectiveness of screening or adversely affect TSA’s mission; it also requires TSA to reconsider any applications pending at the time of Pistole’s announcement. The Security Enhancement and Jobs Act of 2011 is sponsored by Committee on Homeland Security Chairman Peter King (R-NY), Subcommittee on Transportation Security Chairman Mike Rogers (R-AL), and Subcommittee on Oversight, Investigations and Management Chairman Michael McCaul (R-TX). . . . King and Rogers also announced that the legislative process has begun to move a TSA Authorization bill, which will “address the need for fundamental reform at TSA by streamlining programs, cutting wasteful spending, increasing effectiveness through partnering with other law enforcement agencies and the private sector, and strengthening your mission.”

## VII. BILATERAL AND STATE DEPARTMENT NEWS

### 1. United States, Saudi Arabia Initial Open Skies Agreement.

The United States and Saudi Arabia initialed an open skies agreement, which, said the U.S. Department of State, “will be applied on the basis of comity and reciprocity pending its entry into force.”

### 2. U.S.-Israel Open Skies Agreement Enters Into Force.

An open skies agreement signed by the U.S. and Israel in December was brought into force. The pact “will expand air service and encourage vigorous price competition by airlines, while safeguarding aviation safety and security,” said the State Department.

### 3. EU Forum on Transatlantic Aviation Competitiveness.

European Commission Transport Vice President Siim Kallas said the EU Forum on Transatlantic Aviation Competitiveness, held in Washington D.C., “contributed to the objective of creating a transatlantic Open Aviation Area: a single air transport market between the EU and the U.S. with free flows of investment and no restrictions on air services, including access to the domestic markets of both parties.” No formal conclusions were made.

### 4. State Department Travel Warnings.

The U.S. Department of State updated its list of travel warnings, urging U.S. citizens traveling to Mexico to visit only legitimate business and tourist areas during daylight, and avoid areas where criminal activity might occur; 34,612 people have been killed in narcotics-related violence in Mexico since 2006; more than 15,000 narcotics-related homicides occurred in 2010, two-thirds more than in 2009; the number of U.S. citizens murdered in Mexico increased from 35 in 2007 to 111 in 2010. . . . U.S. citizens were told to defer all travel to Syria; those in Syria “should depart immediately while commercial transportation is readily available”; demonstrations throughout Syria have been violently suppressed by Syrian security forces, resulting in hundreds of deaths. . . . The travel alert to Japan was reduced to the 50-mile radius of the Fukushima nuclear power plant.

## VIII. EUROPE AND AFRICA

### 1. EU News.

In an update to its list of airlines banned in the European Union, the European Commission removed four Indonesian all cargo air carriers and Ukrainian airline UMAir. All Mozambique air carriers and Air Madagascar were added to the banned list. Issues in Germany and Spain were also noted. . . . The EC launched infringement procedures against Bulgaria and the Czech Republic over bilateral air service agreements with Russia, which “may hinder equal treatment of EU airlines and competition between European airlines and provide the basis for Siberian overflight charges that may be illegal under EU antitrust rules”; 23 other member states have received similar warnings. . . . EC Transport Vice President Siim Kallas announced measures to clarify and strengthen enforcement of EU passenger rights legislation, so consumers can more effectively access their rights and industry has more certainty and a level playing field across the EU. A dialogue with stakeholders with a view to revising the regulation will result in a proposal from the Commission in 2012. Issues to be reviewed include liability limits in extraordinary circumstances, compensation thresholds, effective passenger re-routing, shared risk between operators and protection in case of mishandled luggage or re-scheduled flights. . . . The EU ombudsman determined that the EC wrongly implied that passengers had an automatic right to compensation in all cases involving delayed luggage during the volcanic ash crisis. The ombudsman gave the EC a May 31 deadline to outline steps taken to prevent recurrence, with a possible investigation into a potential systemic problem. . . . As the EC considers a rule change for allocation of slots at EU airports, airline groups worldwide have united in opposition, stating that the problem lies not in allocation of available capacity, but in lack of capacity at congested airports.

### 2. Study: Airport Closures During Volcano Eruptions Justified.

A study published in the Proceedings of the National Academy of Sciences says last year’s airport closures during eruptions of the Eyjafjallajokull volcano were warranted. Led by a University of Iceland researcher, the study found that hard, sharp particles of volcanic ash could have caused jet engines to fail and marred airplane windows, affecting visibility. In related news, the International Civil Aviation Organization (ICAO) tested a volcanic ash contingency plan, which simulated the eruption of the Grimsvötn volcano in Iceland, sending volcanic ash south across the North Atlantic and Europe. The exercise involved over 70 airlines, 14 air navigation service providers, 10 national regulatory authorities, the Volcanic Ash Advisory Centre London (VAAC), as well as the European Commission, European Aviation Safety



Agency (EASA) and EUROCONTROL. The results will be presented in Brussels in early June.

3. **British Airways, Union Agree to 28-Day Extension for Talks.**

Leaders of the Unite union agreed to a 28-day extension to allow talks to continue with British Airways. In March, the union voted in favor of taking strike action and set April 15 as the deadline to name strike dates. But after weeks of talks with new British Airways CEO Keith Williams, the two parties said they are “committed to seeking an honorable and fair settlement to the long running dispute . . . a lasting peace is essential for the well-being of all cabin crew and for the benefit of British Airways’ customers.” Strike action has cost British Airways more than GBP£150 million since November 2009.

4. **Air France Resumes Service to Cambodia.**

Air France is offering three weekly roundtrips between Paris and Phnom Penh, after a 37-year absence. The first European airline to resume scheduled services to Cambodia, Air France initially is operating 275-seat Airbus A340-300s, and from May 9 will operate 309-seat Boeing 777-200s. The “flights will promote economic and cultural ties with this buoyant region and also meet a strong demand from our leisure customers,” said CEO Pierre-Henri Gourgeon. Air France KLM growth strategy includes a 5.7% increase in capacity, with the launch of 11 new destinations in 2011.

5. **LOT, Continental Begin Code Sharing.**

Star Alliance partners LOT Polish Airlines and Continental began code sharing on LOT flights between New York Newark and Warsaw and on LOT-operated flights linking Warsaw with London Heathrow, Frankfurt and Amsterdam, and, subject to government approval, Paris de Gaulle. LOT is placing its code on Continental-operated flights between New York Newark and Boston, Los Angeles, Miami, Orlando, San Francisco and Washington Dulles that connect with LOT’s flights between Warsaw and Newark.

6. **Alliance News.**

Michael Wisbrun was named Managing Director of SkyTeam, effective June 1, 2011. He replaces Marie-Joseph Malé, who decided not to extend his contract for personal reasons. Wisbrun was “instrumental in developing the KLM Northwest Joint Venture, the blueprint of which is still considered to be the most developed alliance in the world and is the basis of the current transatlantic Joint Venture among Delta, Air France, KLM and Alitalia,” said SkyTeam Chairman Leo van Wijk. China Southern senior executive Su Liang was named Deputy Managing Director. . . . Concerned about partnerships that allow airlines “to shift labor, offshore maintenance and avoid regulation,” unions that represent workers at oneworld airlines have formed a new alliance.

The oneworld labor council plans to forge new strategies and tactics to combat threats to job security caused by global airline cooperation.

7. **Former Air France Cargo Executives Indicted in Cargo Scheme.**

See Section I, item 12.

8. **Arab Airlines Defend Against European Claims.**

See Section IX, item 5.

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

### **1. Japan Update.**

As travel demand continued to decline following the March earthquake and tsunami, Japan Airlines (JAL) announced reduced frequency on international and domestic routes through May, and offered unpaid leave to some staff, cabin attendants and flight crew during May and June. . . . Sendai Airport, which was engulfed by the tsunami, resumed commercial operations; full restoration will take at least a year, said officials. . . . IATA said the United Nations “confirms the safety of Japan operations and there are no recommendations for passenger screening” and ICAO said current radiation levels from the Fukushima nuclear power plant do not present health or transportation safety hazards to passengers or crew. . . . American and JAL launched their trans-Pacific joint venture, as did United Continental and All Nippon Airways (ANA). Hawaiian began ticket sales for new daily nonstops between Osaka Kansai and Honolulu, to begin in July. Delta will resume flights from Los Angeles and Detroit to Tokyo Haneda in June.

### **2. Australia Fines JAL in Price-Fixing Case.**

The Australian Competition and Consumer Commission (ACCC) fined JAL Aus\$5.5 million, after the carrier admitted to “making and giving effect to illegal price-fixing understandings with other international airlines” on fuel, insurance and security surcharges. JAL was given a significant discount, ACCC said, because it made admissions at an early stage of litigation and agreed to facilitate further assistance from JAL personnel and provide access to additional documents for use against other respondents. JAL is the seventh airline to settle the ACCC's air cargo proceedings.

### **3. China News.**

In the next five years, China will build 56 airports, said Li Jiexiang, head of the Civil Aviation Administration of China (CAAC), bringing the total number of airports to more than 230; the aircraft fleet is expected to exceed 4,500 units, enough to carry 450 million passengers annually; investment in China's aviation industry is likely to reach about \$230 billion. From 2005 to 2010, 33 new airports were constructed while another 33 were renovated or expanded, bringing the total number of airports to 175 in 2010. Investment in building civil aviation infrastructure during this period was nearly the equivalent of total spent during the previous 25 years. . . . China Eastern will formally join SkyTeam in June, increase its cargo and passenger fleets to 561 aircraft by 2015, and maintain a double-digit growth rate in the next five years, said the carrier's Chairman, Liu Shaoyong, in remarks at a Columbia University forum

on China business. . . . The two daily flights linking Wuhan and Nanjing were suspended March 27 until September, as CAAC evaluates air service usage amid the expansion of high-speed railways; bullet trains to Wuhan, a railway hub, have a 90% occupancy rate compared to under 50% on weekday flights. China will have 12,000 kilometers of high-speed rail by 2012, the largest such network in the world.

**4. Cathay Pacific Offers Passenger Service to Chicago.**

Cathay Pacific will launch Hong Kong-Chicago Boeing 777-300ER service on September 1, with connecting support from oneworld partner American Airlines. Cathay currently flies all-cargo freighters daily from Chicago to Hong Kong via Anchorage and twice weekly via Amsterdam and Dubai.

**5. Arab Airlines Defend Against European Claims.**

Speaking before the International Aviation Club (IAC) in Washington, Arab Air Carriers Organization Secretary General Abdul Wahab Teffaha challenged concerns about subsidized Persian Gulf carriers and their advance into foreign markets. Among his remarks: Airlines in Europe traditionally have enjoyed state support and U.S. carriers are protected by Chapter 11. Arab airlines have been growing in double digits since 1975, because technology and geography allow them to provide one-stop service to destinations around the world and because of superior customer service. Slots at major European airports are controlled by dominant European carriers, creating a not-so-level playing field for non-European competitors. Teffaha's speech addressed widely publicized remarks made at IAC in January by Ulrich Schulte-Strathaus—the Secretary General of the Association of European Airlines said state-subsidized Emirates, Qatar and Etihad airlines operate as instruments of national strategy and called on ICAO to regulate capacity dumping.

**6. Air France Resumes Service to Cambodia.**

See Section VIII, item 4.

**7. Alliance News.**

See Section VIII, item 6.

## **X. AMERICAS**

### **1. Q1 Losses for Majors Reached \$951 Million.**

Combined first-quarter losses for the five largest U.S. airlines reached \$951 million from \$892 million a year earlier; only Southwest reported a profit. Fare increases during the quarter could not offset losses due to severe winter weather and a 41% year-on-year increase in the price of jet fuel for immediate delivery in New York harbor. Delta announced a four point reduction in planned capacity, in markets where revenue improvements have not kept pace with rising fuel costs, and reduced planned capital expenditures by \$300 million to \$1.2 billion for 2011. US Airways cut spending by \$20 million to \$160 million, and full-year capacity will increase 1% over 2010, rather than the originally planned 2%. American's full-year mainline capacity will be 1.4% lower than originally planned or up 2.2% versus 2010, with domestic capacity down 0.5% and international up 6.2%.

### **2. Sun Country Serving Reagan Washington National.**

Sun Country launched Washington Reagan National service with daily Boeing 737 flights from Minneapolis/St. Paul, via Lansing, Michigan. The St. Paul-based carrier, which emerged from Chapter 11 bankruptcy protection in February, will begin twice-weekly summer service from Minneapolis to London Gatwick in May.

### **3. Virgin America Seeks Washington National, Newark Slots.**

Virgin America CEO David Cush said Washington Reagan National and Newark Liberty will be the airline's next two destinations, if it can win landing rights at the capacity-controlled airfields. In an interview with *USA Today*, Cush said, "We've been quite vocal with the DOT as well as with the DOJ that the competitive environment in Newark is very bad. We want to get in and provide some competition." Virgin America is seeking commercially viable times for three flights from San Francisco and three from Los Angeles, "because we're not going to go in and just get our head pounded by the monopoly carriers."

### **4. Court Tells DOT the Federal Government Is Not the Public.**

In an opinion by the U.S. Court of Appeals for the District of Columbia, the Court rejected the position of the Department of Transportation that an air services broker that sold charter air services to the federal government was engaged in "common carriage" and subject to civil penalties for acting as an unauthorized indirect air carrier. The Court in *CSI Aviation Services, Inc. v.*

*U.S. Department of Transportation*, found that common carriage must involve some type of holding out to the public,” and that providing charter services only to government agencies is not providing air transportation as a common carrier. The Court also held that a company can “segregate its operates acting sometimes as a common carrier and sometimes not.”

5. **US Airways Express to Offer First Class.**

US Airways is adding first class service to 110 US Airways Express regional jets, with initial introduction scheduled for the Embraer E175 fleet in October, followed by the Embraer 170 and Canadair RJ 700 and 900 fleets by the end of January 2012.

6. **Southwest Acquisition of AirTran Cleared.**

See Section I, item 2.

7. **American and Delta Apply for Additional Brazil Frequencies.**

See Section I, item 8.

8. **FAA Assigns Barbados Category 2 Rating.**

See Section I, item 9.

9. **LOT, Continental Begin Code Sharing.**

See Section VIII, item 5.

10. **Alliance News.**

See Section VIII, item 6.

11. **Japan Update.**

See Section IX, item 1.

12. **Cathay Pacific Offers Passenger Service to Chicago.**

See Section IX, item 4.