



## WASHINGTON AVIATION SUMMARY

December 2009 EDITION

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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 Convenes “Future of U.S. Aviation” Forum.**

Ray LaHood, Secretary of the U.S. Department of Transportation (DOT), invited aviation stakeholders to a closed-door “Future of U.S. Aviation” forum, where the Air Transport Association (ATA) called for: no new taxes and fees; fully funded and accelerated modernization of the air traffic control system; enhanced oversight of energy markets to curb excessive speculation and volatility of oil prices; elimination of restrictions on airlines’ ability to operate efficiently in the global marketplace; and a global sectoral approach to climate change developed through the International Civil Aviation Organization (ICAO). In a letter to LaHood, US Airways Chairman Doug Parker, who could not attend the forum, wrote, “Our request [is] ‘Do No Harm’ . . . do not impose any additional taxes, fees or unfunded mandates on this already over-taxed industry [and] allow us the ability to fix our industry through rational business decisions and actions and self-help mechanisms.” Union officials said they are not seeking re-regulation, but want tighter barriers to entry for low-cost startups, which sometimes drive air fares below cost, causing economic chaos for mainline carriers. LaHood will create a federal advisory committee of government and industry stakeholders to seek solutions to challenges facing U.S. airlines. Kevin Mitchell, Business Travel Coalition Chairman, and Bob Crandall, former American Airlines Chairman, urged LaHood to allocate the first two months of the committee’s efforts to “develop public-policy objectives and a framework for effective analysis and oversight such that it does not take a tragedy outside Buffalo to recognize a flawed regional airline business model; or to identify that there is significant safety and security risk when U.S. aircraft are sent to third-world countries to be overhauled by workers whose backgrounds cannot be verified, who are not tested for drugs and alcohol, who rely on pictures in manufacturers’ manuals to perform repairs because they cannot read detailed English instructions and whose oversight by FAA and TSA [Transportation Security Administration] is uneven, or non-existent.”

### 2. **DOT Issues Precedent-Setting Fines for Tarmac Delay.**

DOT levied fines of \$50,000 each against Continental and ExpressJet for an incident in August, in which passengers were forced to remain on a Continental Express aircraft overnight at Rochester International Airport after the flight was forced to divert from its planned destination at Minneapolis. A \$75,000 civil penalty was assessed against Mesaba, which acted as ground handler for the flight, whose station agent mistakenly refused to allow passengers to deplane into the terminal because the airport was closed and

no TSA personal were present. Passenger rights advocates cheered the precedent-setting enforcement actions.

3. **FAA to Ensure 'No-Radio' Flights Tracked and Reported.**

Following a review of air traffic contact with Northwest Flight 188 on October 21, the Federal Aviation Administration (FAA) is updating training and procedures for handling loss of two-way communication with aircraft and how other agencies are notified, and has taken steps to ensure more accurate preliminary information about air traffic events can be provided to top officials more quickly.

4. **FAA Proposes Limits on Companies Hiring FAA Inspectors.**

A proposed FAA rule would prohibit carriers, flight schools, repair stations and other certificated organizations from employing or contracting with former FAA inspectors and managers, to represent them in agency matters, if the former employee had any direct oversight of the certificate holder in the preceding two years. FAA policy already provides for a two-year cooling off period for newly employed safety inspectors, prohibiting them from having certificate management responsibilities over a former aviation employer. Comment period ends February 19, 2010.

5. **FAA Proposes De-Icing Standards.**

FAA proposed a rule requiring scheduled airlines to either retrofit in-service aircraft with a takeoff weight of less than 60,000 pounds with ice-detection equipment, or ensure their system activates at the proper time. The changes would cost operators about \$5.5 million to implement.

6. **ATC Failure Causes Widespread Delays, Cancellations.**

The U.S. air traffic control system suffered a software failure on November 19 that disrupted services used for traffic flow and flight plan processing, leading to delays and cancellations across the country. Radar and communication with aircraft were not affected during the four-hour period, critical safety systems remained up and running and there was no indication the outage occurred as a result of a cyber attack, said FAA. The National Air Traffic Controllers Association (NATCA) called the failure "an indictment of the FAA's continuing agenda to run critical aviation safety systems like a business and put cost savings over building more redundancy . . . a nationwide shutdown could happen at any time without warning due to technological failure or the lack of adequate resources to locate and fix problems quickly."

7. **Study of Safety Effects of Modifying Pilot Retirement Age Inconclusive.**

The 2007 Fair Treatment for Experienced Pilots Act, which increased the mandatory retirement age to 65 from 60 for pilots of large commercial aircraft,

called for a policy review in two years. But, says the Government Accountability Office (GAO), “a study is not yet feasible because the act is too recent for flight records to be available for a sufficient number of pilots 60 years or older.” A review of FAA and NTSB data from December 2007 through September 2009 showed that no accidents or incidents resulted from the health conditions of pilots 60 years or older.

**8. FAA Finalizes Changes in Hudson River Airspace.**

A new FAA rule separates low-altitude, local aircraft flights over the Hudson River from flights transiting through the river airspace. The rule also requires pilots to follow previously recommended safety procedures when operating in the congested air corridor, which U.S. Senator Charles Schumer has called “the wild west of the New York City airspace because at any given time there are countless helicopters and planes flying above and below radar, some in communication with the tower and some flying completely undetected.” Nine people died on August 8, when a tourism helicopter collided with a small, private plane in Hudson River airspace.

**9. Babbitt Reinforces Call for Professionalism.**

“The accidents we’ve seen of late make it clear that a lack of professionalism can kill,” FAA Administrator Randy Babbitt told the Regional Airline Association. He urged members to step up to his Call to Action, which identified such safety issues as professionalism in the cockpit, flight monitoring, crew fatigue, good standard operating procedures, compensation practices and flight crew experience, maintenance practices, and training. Babbitt told the International Aviation Club the U.S. places heavy emphasis on establishing a seamless weave between NextGen and Europe’s SESAR, saying “the dollar cost of fuel, the social cost of carbon and our focus on being green are proof enough that NextGen and SESAR need to be hand-in-glove each step of the way. And we are talking with other authorities around the globe [about] their future programs—CARATS in Japan and CNATS in China.”

**10. USDA Withdraws Inspection Fee Increase.**

The U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service withdrew a recently published interim rule that would have imposed a fee increase on arriving international airline passengers and air carriers, for certain agricultural quarantine and inspection services. According to USDA, this increase would have raised an additional \$40 million annually from passengers and \$7 million annually from air carriers—above and beyond the \$480 million annually currently collected. Air Transport Association President and CEO James May said, “We hope that any future consideration of such a change will be done in consultation with the airlines, who question the need for another fee increase.”

**11. DOT Orders British Airways to Reimburse for Erroneous Fare Offer.**

British Airways will refund travel expenses incurred due to an erroneous offer of \$40 fares between the U.S. and India, per an agreement with DOT. The carrier removed the fare within minutes from its own Web site, but it remained on online travel agent sites for about two hours, during which some 1,200 bookings were made for 2,200 passengers. British Airways cancelled the bookings and, before the DOT review, offered a \$300 travel voucher.

**12. Airline Employment Down 4.4% in September.**

U.S. scheduled passenger airlines employed 4.4% fewer workers in September 2009 than in September 2008, reports DOT, the 15th consecutive decrease in full-time equivalent employee (FTE) levels from the same month of the previous year. The seven network airlines employed 254,866, down 5%. Low-cost airline employment was down by 0.1% and regional by 5.7%.

**13. DOT Air Travel Consumer Report for September**

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

|                             | Sept.<br>'09 / '08 | August<br>'09 | Full Year |        |       |       |       |       |
|-----------------------------|--------------------|---------------|-----------|--------|-------|-------|-------|-------|
|                             |                    |               | 2008      | 2007   | 2006  | 2005  | 2004  | 2003  |
| On-time arrivals %          | 86.2/84.9          | 79.7          | 76        | 73.4   | 75.4  | 77.4  | 78.1  | 82    |
| Mishandled baggage*         | 3.01/3.86          | 4.04          | 5.26      | 7.05   | 6.73  | 6.64  | 4.91  | 4.19  |
| <i>Consumer complaints:</i> |                    |               |           |        |       |       |       |       |
| Airline service             | 604 / 683          | 888           | 10,643    | 13,180 | 8,325 | 8,741 | 7,452 | 5,983 |
| Disability-related          | 28 / 40            | 47            | 474       | 488    | 430   | 511   | 521   | 375   |
| Discrimination**            | 11/ 10             | 16            | 115       | 99     | 114   | 129   | 118   | 85    |

Note: There were two flights with tarmac delays of four hours or more in September.

\* Reports per 1,000 passengers.

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

**14. ALPA Adopts Pilot Fatigue Policy.**

See Section X, item 1.

## II. AIRPORTS

### 1. Village Paid \$16 Million to Drop Opposition to O'Hare Expansion.

The Chicago Department of Aviation agreed to pay \$16 million to Bensenville to cease its opposition to O'Hare expansion plans, which include demolishing homes in the village to accommodate a proposed runway. Bensenville has spent \$10 million to fight the O'Hare expansion. Chicago also agreed to soundproof remaining buildings and work on economic revitalization of Bensenville. A court challenge regarding relocation of graves at a historic cemetery, which is in the path of a runway under construction, is still underway.

### 2. Anchorage Completes \$500 Million Redesign.

Ted Stevens Anchorage completed an 11-year, \$500 million renovation project with the unveiling of its \$200 million, 350,000-square-foot concourses A and B. Construction is funded by airlines and vendors.

### 3. San Francisco Delays Could Reach 21-Minute Average.

Delays at San Francisco International are expected to reach an average of 21 minutes by 2035, up from six minutes in 2007, reports the Metropolitan Transportation Commission, leading 2.4 million passengers to migrate annually to nearby Oakland and another 1.9 million to Mineta San Jose. The change would be contingent upon an expansion of service and lower fares at Oakland and San Jose and the effect on air travel from the planned California high-speed train. San Francisco this year has handled 57% of Bay Area domestic passengers, as Oakland's share fell to 23% from 33% in 2006, and San Jose's to 20% from 24%.

### 4. Cyprus Larnaka Opens.

Cyprus' Larnaka Zenon International officially opened under the management of Hermes Airports, a joint venture comprised of Cypriot and foreign shareholders, including Vancouver Airport Services and Aer Rianta. The new terminal can handle 7.5 million passengers per year; airlines include Cyprus Airways and easyJet.

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

1. **Airlines Spend \$5.9 Billion Annually on Security.**

Airlines now spend \$5.9 billion a year on security, said the International Air Transport Association (IATA), which called for an end to “ineffective and costly duplication of aviation security procedures [that] do nothing to improve security.” Speaking in Cape Town at a conference of aviation security experts, IATA officials said harmonization, efficiency and cost effectiveness are key to keeping aviation secure. The group urged adoption of a threat-based and risk managed approach; regulators must work with industry on outcome-based legislation; and airlines and regulators must share perspectives, knowledge and experience.

2. **TSA to Strengthen Security at Aircraft Repair Stations.**

The Transportation Security Administration (TSA) published a Notice of Proposed Rule Making (NPRM) that establishes security requirements for maintenance and repair of aircraft and components at FAA-certificated domestic and foreign repair stations. The NPRM supplements FAA requirements that protect aircraft undergoing repairs from terrorist threats, said TSA, and guards against potential threat of an aircraft being destroyed or used as a weapon. The 60-day comment period began November 16.

3. **TSA Clarifies Search Objectives.**

TSA revised policies governing airline passenger screening to clarify that its agents are authorized to conduct searches related to safeguarding flight safety, not to engage in general law enforcement. The new policy states that “screening may not be conducted to detect evidence of crimes unrelated to transportation security [and] traveling with large amounts of currency is not illegal,” and that to the extent bulk quantities of cash warrant searching, it is only to further security objectives. The American Civil Liberties Union (ACLU) sued the government in June on behalf of a traveler who was detained by TSA agents at an airport because he was carrying \$4,700 in cash.

4. **Air Wisconsin Loses \$1.2 Million Appeal in Security Case.**

The Colorado Court of Appeals upheld a \$1.2 million defamation award to an Air Wisconsin pilot who was removed from the cockpit for questioning by armed guards, after an employee alerted TSA that he was unstable and might be armed. A jury found he had been defamed, and the appeals court said his employer, Air Wisconsin, was not immune under the Aviation and Transportation Security Act.

5. **Rights of Rastafarian Baggage Screener Upheld.**

TSA violated the rights of a baggage screener at Boston Logan when managers threatened to fire him if he did not comply with agency policy requiring hair to be short, ruled the Equal Employment Opportunity Commission (EEOC). From the time he was hired by TSA in October 2002, the employee wore his hair in long dreadlocks in accordance with his Rastafarian religion, believing that long hair shows one's devotion to God and that the longer the hair, the closer one is to God. A February hearing has been scheduled to determine possible compensation for violation of the federal law prohibiting employment discrimination based on religion, said the ACLU.

6. **DHS Rule Would Establish Permanent Global Entry Program.**

The Department of Homeland Security (DHS) published a proposed rule that would establish Global Entry as a permanent program. The voluntary initiative expedites the international arrivals and admission process at airports, for trusted travelers through biometric identification. Currently a pilot program at 20 airports, Global Entry reduces average wait times by more than 70%, with most travelers processed in under five minutes. At Global Entry kiosks, members insert a passport or permanent resident card into a document reader, provide digital fingerprints for comparison with fingerprints on file, answer customs questions and present a transaction receipt to customs officers. Comments must be received by January 19, 2010.

7. **Paperless Boarding Debuts at Dallas/Fort Worth.**

Continental and TSA introduced paperless boarding at Dallas/Fort Worth. The technology, which TSA is piloting at more than 30 airports with five airlines, enables passengers to download a boarding pass on cell phones or personal digital assistants. An encrypted two-dimensional bar code is then displayed, along with passenger and flight information. TSA officers use hand-held scanners to validate authenticity at the checkpoint.

8. **Biometric Database Features Instantaneous Matches.**

The Federal Bureau of Investigation (FBI) has collected 6,000 sets of fingerprints and identified 1,300 known or suspected terrorists with "Quick Capture," a system comprised of a laptop, fingerprint scanner, battery and satellite unit that fit into a backpack and can be transported into remote or hazardous places like outposts in Iraq or Afghanistan. FBI personnel collect and digitize fingerprints and run searches against two U.S. databases, the Integrated Automated Fingerprint Identification System and the Department of Defense's Automated Biometric Identification System. Future models of Quick Capture will be more lightweight and include multi-modal capabilities like iris, palm and facial recognition.



**9. UK Security Technology Update.**

Nearly one million passengers at five UK airports—Birmingham, Manchester, Stansted, Cardiff and Bristol—have used facial recognition gates, which scan biometric details and check them against watch lists before allowing entrance to the country, said the UK Border Agency. The UK has also introduced fingerprint visas and compulsory ID cards for foreign nationals. An e-Borders system allows the Border Agency to count people in and out of the country and target terrorist suspects, criminals and would-be illegal immigrants before entry. At Gatwick, Cyclamen detects radiation in cargo and Braun Compass, a full body scanner, detects whether a passenger is carrying illegal weapons or drugs on their person.

**10. Lufthansa Cargo Complies With U.S. Mandate.**

Lufthansa Cargo is utilizing new-generation x-ray technology to scan the entire contents of airfreight containers, instead of individual shipments. The system, to be used initially in Frankfurt, Munich and Johannesburg, enables Lufthansa Cargo to comply with a U.S. mandate that all inbound and outbound cargo on passenger aircraft to the U.S. be 100% screened from August 2010; the regulation has been in force for 50% of shipments since February this year.

**11. U.S., EU Agree on Data Protection Principles.**

See Section VII, item 2.

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

### **1. American Offers Expanded Inflight Retail.**

American Airlines has begun a limited test of expanded inflight retail on London-bound flights, offering gifts, train and theater tickets and limousine and other services, reports the *New York Times*. Technology provided by Toronto-based GuestLogix enables operators to transact all types of payments: cash in any currency, credit and debit cards, loyalty cards, bar-coded coupons. GuestLogix says its customer base includes most of the top global airlines.

### **2. Air Canada Launches Self-Service Rebooking Tool.**

Air Canada introduced a Web-based, self-service rebooking tool that notifies customers when their flight has been or is expected to be cancelled, offers an alternative flight and gives them the option to cancel their trip. The carrier's strategy is to use technology, such as Web-enabled mobile devices and smart phones, including new Apple and Blackberry applications and enhanced airport kiosks to better communicate with customers during times of disrupted operations.

### **3. Qantas Plans Next Generation Check-In.**

An "Airport of the Future" initiative announced by Qantas aims to halve domestic airport check-in times. Qantas frequent flyer cards will be embedded with an intelligent chip, transforming them into personal boarding passes linked to permanent bag tags. Non-frequent flyers will also see significant upgrades to check-in arrangements, with hosted kiosks and rapid bag drop. Next generation check-in begins in Perth in mid-2010, followed by Sydney and Melbourne in 2011.

### **4. Google Offers Free Airport Wi-Fi for Holiday Season.**

Google is providing free Wi-Fi at 47 U.S. airports through January 15, in cooperation with Boingo Wireless, Advanced Wireless Group, Airport Marketing Income and others. Burbank and Seattle airports will begin offering airport-wide free Wi-Fi indefinitely. Google had already announced that all Virgin America passengers will have free inflight Wi-Fi during the holiday period. Microsoft and eBay are also providing free Wi-Fi access to travelers during the holidays.

## V. ENERGY AND ENVIRONMENT

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

The price of aviation jet fuel, as of November 20, was \$84.1/barrel, down 3.7% for the month and up 16.6% year-on-year, reports the International Air Transport Association. Fuel price average year-to-date was \$69.5/barrel.

### 2. FAA Rejects Burbank Night Flight Ban.

FAA rejected a Part 161 application by the Burbank-Glendale-Pasadena Airport Authority for a mandatory curfew at Bob Hope Airport, ruling that a 10 p.m. curfew would create an undue burden on commerce. "Burbank has a 40-year-long history of battling nighttime noise including countless lawsuits," wrote the city of Burbank, calling the FAA decision "only a minor setback." The airport, which spent \$7 million and nine years to create the application, said, "FAA has failed to provide a balance between aviation interests and the rights of airport neighbors. We are disappointed, but we haven't given up the fight."

### 3. Online Noise, Flight Tracking Tool for Washington Airports.

Metropolitan Washington Airports Authority (MWAA) has made a new flight tracking tool available to the public on its Web site. Map-based Airscene allows users to collect data about flights around Dulles International and Reagan National 72 hours after they occur; live flight tracks are not accessible due to security concerns. The Authority also has replaced 20-year old noise monitors around National and Dulles.

### 4. Missouri Labs Awarded \$35 Million for Work on Algae Oil.

A \$35 million research grant for research on oil producing characteristics of algae was awarded to Washington University's Photosynthetic Research Center in St. Louis and the Advanced Biofuels Systems at the Donald Danforth Plant Science Center, by the U.S. Department of Energy. Missouri's water resources, flat terrain and access to fertilizer supplies could make the state a hub for algae-to-fuel production, wrote *Biodiesel Magazine*, and its coal mines, with their constant temperature and controlled lighting, could serve as ideal incubators.

## VI. U.S. CONGRESS

### 1. Senate Approves Flight Crew Family and Medical Leave Act.

The Senate approved the Airline Flight Crew Family and Medical Leave Act, clarifying the 1993 Family and Medical Leave Act (FMLA), which grants job-protected, unpaid leave to employees who have worked 60% of a full-time schedule over a year. “The courts and federal agencies disregarded that original intent and narrowly defined the ‘full time schedule’ as that of a traditional 40 hour work week, thereby excluding flight attendants whose schedules do not fall within the traditional 9-5 work day,” said the Association of Flight Attendants. “The Airline Flight Crew FMLA corrects this misinterpretation of the original legislation and finally extends this vital coverage to flight crews.” A similar bill has been passed in the House.

### 2. Congress Tackles Personal Electronics in the Cockpit.

The October Northwest overflight and other accidents and incidents have led to the proposal of several new bills in Congress. Senator Jim DeMint (R-S.C.) plans to introduce the “Pilot Professionalism Assurance Act,” which would allow airlines to use information from cockpit voice or flight data recorders to discipline or discharge a pilot for actions that endanger the safety or well being of passengers, and to evaluate or monitor judgment or performance of an individual pilot. Such legislation raises privacy and other legal questions, said the Air Line Pilots Association (ALPA), which is working to kill bills that support installation of video recorders in cockpits. Proposed bills to ban personal electronic devices from the cockpit (the Northwest pilots claim they were distracted by their laptops) are opposed by both airlines and unions, who say the legislation could hinder technology expansion and would be counterproductive to safety and efficiency. The Distracted Flying Act, sponsored by Senator Jay Rockefeller (D-W.Va.) and others, includes exemptions that would allow electronic devices and computers used to operate the aircraft or enhance safety.

### 3. House Hearing Assesses Security at Foreign Repair Stations.

The House Subcommittee on Transportation Security held a hearing to assess security at foreign repair stations. Chairman Bennie Thompson expressed concern that a newly-released TSA NPRM “fails to clearly address serious procedural and communication questions that will be essential in implementing an effective foreign repair station security program,” and questioned “the extent to which relevant stakeholders were engaged in the construction of the NPRM.” (See Section III, item 2.) Among those providing testimony, Doug Dalbey, Deputy Director, FAA Flight Standards for Field Operations, stressed

that TSA is responsible for security oversight and FAA for safety oversight. He said “the promulgation of international agreements has impacted FAA foreign repair station certification and surveillance activities.” Bilateral aviation safety agreements focus on harmonization of maintenance rules and requirements and safety standards for entities performing maintenance activities, remove duplicative efforts by FAA and the national aviation authority and provide for each authority to perform certification and surveillance activities on behalf of the other, while reserving the right of each country to certificate or renew certification of the 174 relevant repair stations, said Dalbey.

4. **Schumer Wants Probe of Frequent Flier Mile Claims.**

Senator Charles Schumer (D-NY) called for a DOT review of consumer complaints regarding loss of frequent flier miles, and wants industry rules established for mileage programs. Ten trillion unused frequent flier miles worth \$165 billion are in circulation now, Schumer said, but 20% may never be redeemed due to unclear expiration and other requirements. The Air Transport Association said occasional tweaks to airline frequent-flier programs do not justify government interference.

## VII. BILATERAL AND STATE DEPARTMENT NEWS

### 1. Governments Sign Principles for Liberalization.

A Multilateral Statement of Policy Principles regarding Implementation of Bilateral Air Service Agreements was signed by Chile, Malaysia, Panama, Singapore, Switzerland, the United Arab Emirates, the United States and the European Commission (EC), which together represent some 60% of global aviation. “Our shared task now is to bring even more countries on board,” said IATA Director General and CEO Giovanni Bisignani. Among non-binding principles reached: an agreement not to exercise bilateral rights that could allow states to block international services from airlines with non-national ownership structures, and a multilateral agreement to waive ownership restrictions; reduce restrictions on market access and expedite further opening of markets in future bilateral negotiations; and allow greater freedom to price airline services in line with market realities. The document notes that signatories “recognize the importance of promoting compatible regulatory approaches and reducing the potential for conflicts” and the intention to use the principles to guide “implementation of existing air service agreements and our approach to the negotiation of new or amended air services agreements in the future”.

### 2. U.S., EU Agree on Data Protection Principles.

The United States and European Union (EU) completed a set of common principles for protecting personal data, when exchanging information for law enforcement and security purposes. The next step is negotiating a binding agreement.

### 3. Taiwan, UK Agree to Expand Frequencies.

Taiwan and the UK signed a new agreement that increases passenger and cargo flights and grants fifth-freedom rights to airlines from both sides. In related news, the EU will begin negotiations with Taiwan on a free trade agreement; Taiwan is the EU's fourth largest trading partner in Asia and the EU is Taiwan's fourth largest market. The EU will grant Taiwanese visitors to Europe visa-free status in 2010.

## VIII. EUROPE AND AFRICA

### 1. AEA: No Signs of Recovery.

The latest traffic figures from members of the Association of European Airlines (AEA) show no sign of improvement, remaining locked-in to a trend line about 2% below last year's already dismal figures, said AEA Secretary General Ulrich Schulte-Strathaus, while the average ticket price per kilometer of travel has fallen by more than 15%. AEA called for a stakeholder summit to create conditions necessary for recovery.

### 2. British Airways, Iberia Agree to Merge.

British Airways and Iberia agreed to merge, subject to antitrust and other regulatory clearances. Ultimately, British Airways shareholders will hold 55% of a new Spanish-incorporated holding company (TopCo) and Iberia's shareholders will hold 45%. The oneworld partners said the merger could generate annual synergies of €400 million over five years, at a cost of up to €350 million. The combined business will be led by British Airways CEO Willie Walsh and a management team chosen equally from each airline and will include Iberia CEO Rafael Sanchez-Lozano.

### 3. Air Berlin to Serve San Francisco.

Air Berlin will offer two weekly flights from Düsseldorf to San Francisco next summer, its first service on the route, and five weekly flights to Miami. The carrier will not suspend New York and Los Angeles services this winter and will increase Fort Myers flights to four weekly.

### 4. Continental, bmi Code Share.

Lufthansa unit bmi began a code share with new Star partner Continental, for flights to New York Newark and Houston from London Heathrow, Manchester, Birmingham, Glasgow, Edinburgh and Brussels, and improved connections between the U.S. and the wider bmi network. Additional code share destinations launch in phases through the end of the year. bmi also announced a code share agreement with Aegean. In other news, bmibaby will reduce fleet size by five aircraft in 2010 from the current 17, and through a restructuring program create capacity to add destinations from East Midlands.

### 5. Air France to Cut 1,700 Jobs.

Air France-KLM reported first-half declines in passenger (-4.5%) and cargo (-19.3%) traffic and total revenues (-19.9%), and continues to adapt to the economic environment by reducing capacity and costs, such as a voluntary redundancy program involving 1,700 jobs at Air France. "The crisis has led to

behavioral changes among our customers which are likely to persist beyond the recovery,” said the group. Air France inaugurated transatlantic Airbus A380 operations, with service from Paris to New York Kennedy.

**6. British Airways Fined in Cargo Price-Fixing Conspiracy.**

British Airways admitted to fixing surcharges on the sale and supply of international air cargo exported on certain routes from Canada between April 2002 and February 2006, reported Canada’s Competition Bureau, and was fined \$4.5 million. Air France, KLM, Martinair and Qantas also have pleaded guilty, with total fines now at more than \$14.6 million. The Bureau’s investigation into the alleged conduct of other air cargo carriers continues.

**7. Aer Lingus Revenues Drop 9.7% in Q3.**

Aer Lingus reported total revenues decreased by 9.7% during the July-September quarter, compared to same period 2008, and is striving to achieve €97 million in savings. Aer Lingus applied to the UK Civil Aviation Authority for an operating certificate to be used to explore new routes, but the *Wall Street Journal* speculates the carrier could “move out of Ireland, make its Irish workers redundant and ask them to re-apply for their jobs in a new ‘Aer Lingus UK’ entity.” The company is embroiled in negotiations with pilots, who want all outsourcing stopped in exchange for pay cuts.

**8. IATA, Russia Formalize Strategic Partnership Agreement.**

IATA and the Russian Federation signed a Memorandum of Understanding that outlines areas of cooperation with a focus on safety, security, technology, airport infrastructure, air navigation, ground handling and training.

**9. EU Clarifies Passenger Compensation Rules.**

The EU Court of Justice clarified passenger compensation and assistance rules, in answer to German and Austrian courts where passengers from Condor and Air France respectively claimed compensation for flights that reached destinations 25 and 22 hours after scheduled arrival time. Passengers are entitled to €250 to €600 for cancelled flights. The Court held that passengers affected by a delay sustain damage similar to those whose flights are cancelled; passengers on a flight cancelled at short notice have a right to compensation even if re-routed by the airline on another flight, if they lose three hours or more in relation to the duration originally planned.

**10. EC Updates Airline Blacklist.**

The EC published an updated list of airlines banned in the EU. Three carriers licensed in Ukraine were removed from the list: Ukraine Cargo and Volare, which lost their operator certificates, and Motor Sich; Ukrainian Mediterranean may resume operations with one aircraft. TAAG Angola may increase the



number of aircraft it uses for flights to Portugal. Added to the list are all air carriers certified in Djibouti, Republic of Congo and Sao Tome and Principe.

**11. Eurocontrol Proposes to Increase Overflight Charges.**

IATA reacted sharply to proposals from 19 of 34 Eurocontrol states to increase overflight route charges in 2010, which will result in a 2.7% net increase in average unit rates or \$360 million. The “out-of-control monopolists [are] completely divorced from reality,” said Giovanni Bisignani, IATA Director General and CEO, “proposing increases in the middle of an unprecedented industry crisis.” IATA, with the EC, urged all providers of air navigation services in Eurocontrol to freeze or reduce unit rates in 2010. The proposals demonstrate beyond doubt that we must urgently implement a robust performance framework under the Single European Sky regulations, said Bisignani.

**12. DOT Orders British Airways to Reimburse for Erroneous Fare Offer.**

See Section I, item 11.

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

### **1. ACCC Issues Draft Authorization for Virgin Blue-Delta Joint Venture.**

The Australian Competition and Consumer Commission (ACCC) issued a draft proposal to grant authorization for three years for a Delta-Virgin Blue joint venture on trans-Pacific routes, which would coordinate pricing, revenue management, schedules, capacity and routes flown. Entry of Virgin Blue and Delta on the trans-Pacific routes has created strong competition on price and service in the market, the Commission said, and the joint venture is likely to help them compete more effectively against incumbents on the routes, Qantas and United.

### **2. JAL Secures Emergency Loan.**

JAL Group (JAL) secured a loan agreement from Development Bank of Japan, its fourth emergency loan from the state-owned bank since 2001, as it seeks backing from the Enterprise Turnaround Initiative Corporation of Japan for a turnaround plan. JAL said its operating environment during the April 1-September 30 period remained extremely severe (passenger revenue declined by 42.8%; international cargo revenue by 54.9%) and withdrew its forecast for fiscal year ending in March 2010. JAL reportedly asked retirees and employees to accept an average 40% cut in pension payouts to alleviate a multi-billion dollar pension shortfall, and will cancel year-end bonuses. Oneworld partner American Airlines has teamed with private equity firm TPG to develop a plan to bid for a stake in JAL. Delta and its SkyTeam partners have offered a \$1.02 billion proposal.

### **3. Japan Bookings to the U.S. Decrease 20%.**

Japan second quarter bookings to the United States decreased 16 to 20% on average, according to the U.S. Department of Commerce. Primary drivers for the decline were H1N1 Flu and airfare/fuel surcharges. The state of the global economy was rated as a minimal deterrent. The exchange rate was the strongest motivator for travel in 2009, but continued lower bookings were projected for third and fourth quarters.

### **4. American's Chicago-Beijing Flight to Start in April.**

American Airlines rescheduled its inaugural Chicago-Beijing flight to April 26, 2010, from May 1. The Boeing 777 flight will accommodate passengers who want to attend China's International Labor Day activities on May 1.

## X. AMERICAS

### 1. ALPA Adopts Pilot Fatigue Policy.

Air Line Pilots Association adopted a flight-time/duty-time and rest policy that is “tailored to take into account the latest science on how pilots deal with fatigue and maintain maximum alertness.” The policy takes on pilot fatigue in major areas: rest, duty, extension of duty, cumulative fatigue, augmentation, reserve, and fatigue risk management systems. Among other approaches, the policy uses time of day when a pilot reports for flight duty to determine appropriate flight-duty period length; it would set a maximum flight-duty period of nine hours with a limit of seven hours of flight time for pilots who report to work between midnight and 3:59 a.m., because the duty period runs contrary to natural circadian rhythms. FAA is expected to issue a new proposed flight- and duty-time rule by yearend.

### 2. Majors Add Surcharges for Spring Flights.

Major U.S. carriers raised surcharges for travel on a few peak days in March and April. US Airways will add a 5% surcharge to all domestic flights on or after May 8. Separately, a business travel coalition will work to develop standards and policies for airline product unbundling, saying checked baggage fees at U.S. airlines rose from \$400 million to \$2 billion in the past year, as change-fees and other new ancillary fees came to \$4 billion in the U.S. and \$10 billion globally.

### 3. United Ends Mesa Partnership, Signs With ExpressJet.

United did not exercise renewal rights for Mesa's operation of 26 CRJ-200s, and the aircraft will be phased out by April 30, 2010. United also announced that ExpressJet will operate 22 ERJ-145s under the United Express brand, as of May 1, replacing flying previously done by other United Express carriers whose contracts have expired.

### 4. Low-Cost California-Florida Service Expands.

Virgin America launched twice-daily nonstops from both San Francisco and Los Angeles to Fort Lauderdale, and JetBlue began Fort Lauderdale-San Francisco nonstops. In other news, Bloomberg reports that Virgin America expects an ownership shift of more than 10% under its plan to add new U.S. investors, after completion of the DOT review under way. “We’ll have these new investors by the end of the year,” said CEO David Cush.

5. **Republic Expands Milwaukee Operations.**

Consolidating operations after acquisitions of Midwest and Frontier, Republic Airway Holdings will move heavy maintenance, flight crew and call center jobs from Denver to Milwaukee, with the promise of \$27 million in tax credits, through the end of 2021, from the state of Wisconsin. Midwest will expand Milwaukee service in April, with nonstops to San Francisco (136-seat Airbus A319s) and Raleigh/Durham (76-seat Embraer 170s).

6. **GAO: Underfunded Pension Plans, Airline Executive Pay.**

Two airlines paid executives handsomely, as the U.S. Pension Benefit Guaranty Corp. (PBGC) took over their underfunded employee pension plans, said the Government Accountability Office (GAO), in a report that studied pension takeovers from 2002 through 2005. One airline missed \$979 million in required pension contributions while its top three executives took \$55.5 million in compensation, and another paid four executives \$120.4 million amid two bankruptcies. Bloomberg has determined the two airlines were United and US Airways. Benefits to retirees were cut by as much as two-thirds, as executives got salary increases, stock awards, retention bonuses and other pay. Congress is considering legislation that would freeze executive compensation if a company's pension plan becomes significantly underfunded. The PBGC has a \$22 billion deficit.

7. **FlyersRights Sues Delta.**

Kate Hanni of the Coalition for an Airline Passenger Bill of Rights (FlyersRights.com) filed a lawsuit claiming Delta obtained her emails in an effort to derail her hoped-for legislation. The coalition is seeking \$1 million in actual and \$10 million in exemplary damages. Delta asked the federal court to dismiss the lawsuit on grounds that Hanni initiated the chain of communications by forwarding emails to an industry discussion group, the administrators of which are employed by Delta partner KLM; they then were forwarded to Delta, which forwarded them to its contractor, Metron Aviation. The lawsuit claims that Metron used the email to discredit FlyersRights.

8. **Airlines, Gov't Thwart Canada's Passenger Bill of Rights.**

Canada's Transport Minister's office "worked in lock step with the airline industry to draft the government's passenger rights campaign," reports Canwest News Service. The Conservative government launched Flight Rights Canada last fall, after airline executives reviewed several drafts, provided input and approved the final product. "A tiny communications budget of \$15,000 to fund the initiative" meant that "the promised rollout of prominent signage at key airports never materialized . . . and only \$3,640 was spent to develop the initiative. This includes material posted on the departmental website, Transport Canada confirmed." Liberal and other parties said this is the latest evidence of

“collusion” between the Conservative government and the airline industry to squelch real action to enhance protections for air travelers. A Canadian version of the EU’s Airline Passenger Bill of Rights now has been introduced.

9. **Alliance News.**

Mexicana officially joined oneworld, and subsidiaries MexicanaClick and MexicanaLink became affiliate members, extending the oneworld network to 700 destinations in 150 countries; Russian domestic carrier S7 is on track to join in 2010. Vietnam Air and Romania’s Tarom will join SkyTeam in June.

10. **US Airways, TACA to Code Share.**

A new code share agreement between US Airways and TACA will take effect January 12, for US Airways flights from Charlotte, N.C. to Latin America, and vice-versa.

11. **Argentina Authorizes Fare Increases.**

Argentina’s Transport Department authorized rate increases for domestic airline tickets, on the hope the move will lead to financial improvements. With emergency powers over the airline industry since the 2001-2002 economic crisis, the government has kept fares low.

12. **Air Berlin to Serve San Francisco.**

See Section VIII, item 3.

13. **Continental, bmi Code Share.**

See Section VIII, item 4.

14. **ACCC Issues Draft Authorization for Virgin Blue-Delta Joint Venture.**

See Section IX, item 1.

15. **American’s Chicago-Beijing Flight to Start in April.**

See Section IX, item 4.