



## WASHINGTON AVIATION SUMMARY

March 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. **Aviation and The Economic Stimulus Package.**

The \$787 billion American Recovery and Reinvestment Act of 2009 provides for \$1.1 billion in Airport Improvement Program (AIP) funding to be made available by the Federal Aviation Administration (FAA) for “shovel-ready” projects this year, and provides federal income tax breaks to those who buy airport revenue bonds. The stimulus plan also includes \$1 billion for the Transportation Security Administration (TSA) for procurement and installation of airport baggage screening and checkpoint security equipment. In related news, Department of Transportation (DOT) Secretary Ray LaHood created TIGER (Transportation Investment Generating Economic Recovery), an internal team tasked with ensuring that DOT funding is rapidly dispensed and tracked. DOT will coordinate with the Office of Management and Budget and other White Office offices on performance measures to be used to track job creation and the impact of each infrastructure investment.

### 2. **Administration Unveils 2010 Budget Framework.**

The fiscal year 2010 budget proposed by the Obama Administration provides \$800 million for the Next Generation Air Transportation System, which would move air traffic control from a ground-based radar surveillance system to one that is satellite-based. The budget proposes to increase the existing Aviation Passenger Security Fee, beginning in 2012, to offset costs associated with Transportation Security Administration passenger and baggage screening; the current fee captures 36% of the cost. To ensure transparency, the Administration proposes changing the budgetary treatment of transportation programs to show both budget authority and outlays as discretionary, a change that “will convey to the taxpayer the real costs of supporting the transportation infrastructure our nation needs.” (See also Section VI, item 1.)

### 3. **DOT Orders Virgin America to Disclose Data.**

DOT denied a request by Virgin America for confidential treatment of its financial information and the carrier announced statistics retroactive to its August 2007 launch. The carrier had a \$175.4 million net loss for the first three quarters of 2008 on operating revenues of \$259.6 million. Load factors were 77.6% and 81.4% respectively in second and third quarters 2008. Quarter over quarter unit revenue improved by 28% in first quarter 2008, 26% in second quarter and 10% in third quarter. Third quarter unit revenue was up over 75% versus fourth quarter 2007, despite a near doubling of capacity. Virgin America said it “sought protection of this data because it is competitively sensitive and ripe for misuse by the legacy carriers.” Separately, Alaska Airlines petitioned

DOT to conduct a public inquiry into Virgin America's compliance with U.S. foreign ownership and control restrictions on domestic carriers. Alaska's petition cites news reports of U.S. investors owning 75% of Virgin America's voting stock "with imminent rights to sell their shares back to the foreign-owned Virgin Group and of new funding from investors, apparently including Virgin Group." Alaska competes with Virgin America on West Coast routes. Virgin America in a filing said it complies and will continue to comply with all ownership, control and fitness requirements and urged DOT not to hold a public hearing on the matter.

4. **US Airways Files for Rio de Janeiro Route.**

US Airways filed a response to evidence request from DOT in support of its application to operate daily, year-round service to Rio de Janeiro beginning in fall 2009. The flight number and aircraft will originate in Philadelphia, fly to Charlotte, N.C., and then onto Rio. "As a new entrant in the U.S.-Brazil market, we believe our application to be the most compelling and to hold the most benefit for the flying public," said the company. American, Continental and Delta also have requested the route; they currently fly to Brazil.

5. **U.S. Passenger Airline Employment Down 6.7% in December.**

U.S. scheduled passenger airlines employed 391,918 workers in December 2008, 6.7% fewer than in December 2007, the largest year-to-year decrease since 2003, reports DOT. The seven network carriers reported a 6.3% decrease. Low-cost carrier employment declined overall by 3.3%, but year-to-year increases were reported by JetBlue, Allegiant, Southwest, Spirit and startup Virgin America. Regional carrier employment was down 5.2% overall, with Compass and Mesaba reporting the largest increases in the group.

6. **NTSB Probes Fatal Colgan Air Crash Near Buffalo.**

The National Transportation Safety Board (NTSB) is investigating the crash of a Continental Connection turboprop near Buffalo on February 12, which killed all 49 aboard and one person on the ground. It was the first fatal U.S. airliner accident in over two years. The Bombardier Dash 8-Q400 twin-engine aircraft was operated by Pinnacle unit Colgan Air. Wing icing and pilot error were among potential causes cited in press reports.

7. **DOT, FAA Sued by Safety Advocates.**

Following the Colgan Air crash, the National Air Disaster Alliance/Foundation filed a lawsuit against DOT and FAA for failure to implement NTSB recommendations on deicing and other hazards. Former DOT Inspector General Mary Schiavo, who is a frequent critic of FAA, is associated with the organization. FAA issued a list of over 100 directives since 1994 requiring specific actions related to icing, and a proposed rule change that would require

installation of ice detection equipment or changes to procedures for activating the ice-protection system for current and future planes in service with carriers whose maximum takeoff weight is less than 60,000 pounds. FAA is also developing a proposed rule to address supercooled large drop icing, which is outside the icing envelope considered by current icing certification requirements, for transport category planes.

**8. Chealander Leaves NTSB for Airbus.**

NTSB announced that Member Steven Chealander resigned to take a position with Airbus Americas as Vice President, Technical Training.

**9. FAA Work on Bird Strikes.**

Peggy Gilligan, the new FAA Associate Administrator for Aviation Safety, outlined FAA efforts to reduce the probability of bird strikes. Her remarks were made at a congressional hearing following the US Airways Flight 1549 emergency landing in the Hudson River in January, believed to be caused by a multiple bird ingestion. A bird strike database maintained by the Wildlife Services Program of the U.S. Department of Agriculture (USDA) has collected over 100,000 voluntary wildlife strike reports since 1990 and is available to operators and safety analysts for determining which species are most frequently involved in strikes, seasonal patterns and extent and type of damage from strikes. FAA, with USDA, works to educate and increase awareness with industry, conferences and participation on the national Bird Strike Committee. The Smithsonian Institution analyzes bird remains at the Feather Identification Laboratory (National Museum of Natural History) to identify species and in 2003 FAA purchased a DNA sequencer to assist in building a DNA library and improve identification capability. Airports can mail small remains from bird strikes to the feather laboratory, which identified over 700 cases in 2008. FAA requires commercial service airports to conduct Wildlife Hazard Assessments and, if necessary, a Wildlife Hazard Mitigation Plan. In 2000, FAA began research to determine if low cost radars can reliably detect birds at or near airports and be used to develop an airport bird strike advisory system, and is conducting evaluations at Seattle-Tacoma International Airport; testing at Chicago O'Hare, Dallas-Ft. Worth, and New York Kennedy will begin later this year. FAA airworthiness certifications require that aircraft be able to survive situations including flight into a flock of birds, emergency landings on land, loss of engine power and emergency landings in water. The Airbus A320 involved in the Hudson River landing was powered by two CFM56-5B4/P engines, which were certified to be able to ingest birds and shut down safely. In other testimony at the House Transportation Aviation Subcommittee hearing, NTSB Member Robert Sumwalt said, "The fact that the accident engines exceeded even today's standard and still failed is of great interest and concern." NTSB is considering

whether to recommend tougher federal standards for jet engines in response to the incident. The Board has noted engines should be able to withstand birds as large as the Canada goose, which can weigh up to 24 pounds, thereby representing a more realistic threat to airplanes, Sumwalt said.

**10. Flight 1549 Crew Say Airlines Losing Experienced Pilots.**

In their congressional testimony regarding the US Airways Flight 1549 emergency landing in the Hudson, pilot Captain Chesley "Sully" Sullenberger and co-pilot Jeffrey Skiles warned that airline pay and benefit cuts since post-9/11 bankruptcies are driving experienced pilots from careers in the cockpit, with potential "negative consequences to the flying public." Both hold second jobs "to maintain a middle class standard of living."

**11. DOT Air Travel Consumer Report for 2008.**

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

|                             | Dec.      | Nov. | Full Year |        |       |       |       |       |
|-----------------------------|-----------|------|-----------|--------|-------|-------|-------|-------|
|                             | '08/'07   | '08  | 2008      | 2007   | 2006  | 2005  | 2004  | 2003  |
| On-time arrivals %          | 65.3/64.3 | 83.3 | 76        | 73.4   | 75.4  | 77.4  | 78.1  | 82    |
| Mishandled baggage*         | 6.96/9.05 | 3.75 | 5.26      | 7.05   | 6.73  | 6.64  | 4.91  | 4.19  |
| <i>Consumer complaints:</i> |           |      |           |        |       |       |       |       |
| Airline service             | 700/852   | 532  | 10,643    | 13,180 | 8,325 | 8,741 | 7,452 | 5,983 |
| Disability-related          | 33 / 20   | 28   | 474       | 488    | 430   | 511   | 521   | 375   |
| Discrimination**            | 7 / 2     | 7    | 115       | 99     | 114   | 129   | 118   | 85    |

\* Reports per 1,000 passengers.

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

## II. AIRPORTS

### 1. Only Three U.S. Airports Saw Domestic Growth in 2008.

San Francisco traffic rose 4.8% in 2008, largely due to the growth of Southwest and Virgin America, but a 5%–7% decline is projected for this year. Low-cost carriers represented 14.5% of the airport's passengers in 2007 and 21.7% in 2008, reported the *San Francisco Chronicle*; those airlines had a 55.9% increase in traffic compared with a 2.2% decrease for non-low-cost domestic carriers. Traffic at Atlanta Hartsfield Jackson and Charlotte Douglas each saw a slight (<1%) rise in domestic traffic.

### 2. Delta Lowers Cincinnati Fares, Begins Gate Consolidation.

Delta lowered business and leisure fares by as much as 60% for domestic flights from Cincinnati/Northern Kentucky, one of the highest-fare U.S. airports, and reduced daily departures there. Delta and subsidiary Northwest will drop 170 U.S. gates by year-end, as they consolidate operations; all international destinations will be integrated by mid-2010.

### 3. Lindbergh Field Improvements Proposed.

San Diego officials are proposing \$5 billion to \$11 billion in Lindbergh Field improvements through 2030, including relocation of most passenger services to the airport's north side to improve transit to the airport and reduce area traffic congestion. The concept will be considered by the San Diego City Council and the San Diego Association of Governments, with the San Diego County Regional Airport Authority having final say.

### 4. Toronto Pearson Raises Fees.

Toronto Pearson's Airport Improvement Fee will be increased by \$5 per departing passenger, effective June 1, from \$20 to \$25, as part of a plan to offset an expected 5.8% reduction in passenger traffic this year. A landing fee rebate program will be introduced for carriers that offer net new services at the airport. Other measures initiated by Greater Toronto Airports Authority include a hiring freeze, closure of some airside and groundside facilities, consolidation of some contracted services, a freeze in management salaries and deferral of all but the most critical capital projects.

### 5. European Freight Traffic Down 21.4% in December.

Passenger traffic at European airports decreased by 0.2% in 2008 compared with 2007, with freight down 4.0% and overall aircraft movements were down 0.7%, reports Airport Council International (ACI). In December, passenger traffic decreased by 7.7% compared with December 2007; freight was down

21.4% and overall aircraft movements were down 8.1%. "Make no mistake," said ACI Europe Director General Olivier Jankovec, "2009 will be an *annus horribilis* traffic-wise."

**6. New EU Directive on Airport Charges.**

The EU adopted a rule requiring larger airports to consult with airlines before raising rates. Airports will come under the jurisdiction of a new independent regulator and will be required to implement transparent pricing. The rules apply to airports with more than 5 million passengers and to the largest airport in each EU member nation. Each country must translate the directive into its own national legislation by March 2011. ACI Europe welcomed the directive and its exclusion of small regional airports, but said liberalization has led airlines to have "a virtual global airport superstore from which they can pick and choose their routes, with no commitments vis-à-vis the airports and the communities they serve . . . airports need to be incentivized to finance and develop new infrastructure—a regrettable oversight." The Association of European Airlines (AEA) called the directive "an important first step in addressing a serious deficiency in the air transport value chain," but said monopolistic airport behavior amidst plummeting traffic figures ignores the situation of the airline industry.

**7. Polish Airports to Receive State Aid.**

The European Commission (EC) authorized state aid for eight Polish airports in Warsaw, Gdansk, Wrocław, Poznan, Szczecin, Rzeszów, Kraków and Katowice. The €251.5 million aid program includes new terminal construction and runway modernization, and is to be granted by the Ministry of Infrastructure and regional and local authorities. The regional airports may receive grants of up to 75% of the cost of the investment, while Warsaw airport will receive a maximum of 30%.

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

#### **1. Mary Ellen Callahan Named DHS Chief Privacy Officer.**

Mary Ellen Callahan was named Chief Privacy Officer of the U.S. Department of Homeland Security (DHS). Callahan has specialized in privacy, security, data protection, consumer protection and e-commerce law, and is Co-Chair of Online Privacy Alliance and Vice-Chair of the American Bar Association's Privacy and Information Security Committee of the Antitrust Division. In other news, DHS Secretary Janet Napolitano named an internal Efficiency Review Initiative Steering Committee to identify and develop strategies to reduce costs, streamline processes, eliminate duplication and improve transparency and customer service, in an effort to develop "a leaner, smarter and more efficient DHS." As Governor of Arizona, Napolitano oversaw a similar initiative resulting in more than \$1 billion in savings and cost avoidances focused on procurement, energy conservation, travel, fleet management, training and electronic communications.

#### **2. Court Orders TSA To Recalculate Airline Security Fees.**

A federal appeals court found that the Transportation Security Administration (TSA) overcharged commercial airlines for passenger and baggage screening and told TSA to recalculate the fees. Airlines had argued that they should get back the more than \$100 million a year in disputed fees they have been paying since 2005. TSA was right to impose fees in general, said the court, but erred by including the costs of screening non-passengers, such as "meters-and-greeters" in its baseline cost calculations. The court rejected a claim by American Airlines that TSA owed it about \$14 million for installing a baggage-security system, calling it a contract matter that American should pursue with the government. The court also turned down an appeal from Northwest, which said it was wrongly charged for security duties TSA did not assume, and said Northwest was more than \$3 million in arrears on payments in 2005.

#### **3. TSA Technology News.**

TSA will pilot millimeter wave technology in place of walk-through metal detectors at airports in San Francisco, Miami, Albuquerque, Tulsa, Salt Lake City and Las Vegas and said passengers are reacting positively to pilots currently in place at 20 U.S. airports. The body scanning machines can detect weapons hidden in clothing, including non-metallic weapons such as plastic and liquid explosives. They have been likened to strip-searches by privacy advocates because images reveal outlines of body parts. Millimeter wave technology is voluntary; passengers may opt for metal detector screening and a pat-down. In other news, TSA plans to test encrypted bar codes on boarding

passes, reports *USA Today*, screeners would use handheld scanners to check paper or electronic boarding passes. TSA currently is using scanners to read digital boarding passes at 13 airports.

**4. First U.S. Independent Cargo Screening Facility at LAX.**

Under new air cargo screening guidelines that took effect February 1, half of all cargo on passenger aircraft now must be screened at a level commensurate with passenger checked baggage; by 2010, 100% of cargo on passenger jets must be screened on the piece level. Mercury Air Cargo, a tenant at Los Angeles International Airport (LAX), secured TSA certification to be the first U.S. Independent Cargo Screening Facility (ICSF). Mercury's 200,000-square-foot, on-airport air cargo handling facility can accept unscreened cargo from freight forwarders street side, screen it in a secured environment, and transport it anywhere on the airport, keeping all operations within the airport's security perimeter. LAX ranks eleventh worldwide in tonnage of air cargo handled. Last year, the airport handled 1.8 million tons of arriving and departing freight and mail, of which 310,137 tons were loaded onto departing passenger flights. TSA is rolling out its Certified Cargo Screening Program in 18 major gateway airport markets.

**5. Corporations Weigh in on Data Privacy Laws.**

A group of U.S. companies formed the Consumer Privacy Legislative Forum to encourage adoption of federal consumer data-privacy laws. Forum members, including Microsoft, Hewlett-Packard, eBay Google, Oracle, Procter & Gamble and Eli Lilly, soon will roll out recommendations that could lead to a standard federal breach-notification law; currently there are 38 different state laws. Recommendations also will cover rules on data use and the ability of consumers to correct inaccurate data.

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

### **1. Southwest Begins Customer Tests of Inflight Wi-Fi.**

Southwest is testing new aircraft-to-satellite technology on one aircraft, with plans to equip three additional aircraft by early March. Southwest is using Row 44 high-speed broadband for inflight Internet connectivity and partnering with Yahoo! to offer an inflight homepage with flight tracker, games and destination-relevant content. Cellular technology will not work with the wi-fi service, which is being offered free on a trial basis and has not yet received final FCC approval.

### **2. American Enhances "Remember Me" Technology.**

American Airlines introduced enhanced "Remember Me" technology that recognizes customers' phone numbers, instantaneously pulls up their reservations, and greets them by name, all in about 25 seconds. AAdvantage program members who have a 10-digit, U.S.-based phone number can register up to three phone numbers. The technology is provided by Microsoft unit Tellme.

### **3. United Tests RFID Bag Tags.**

United, with TSA, is testing radio frequency identification (RFID) tags on checked bags at Chicago O'Hare. Up to 1,000 United frequent-flier members are expected to participate in the six-week test. The plastic RFID tags allow United to sort bags electronically, without printing and affixing adhesive tags.

### **4. Mixed Performance for Expedia, Orbitz, Priceline.**

Expedia reported total value of fourth quarter bookings fell 11% to \$4 billion, with North American bookings down 13% and European down 11%. Orbitz saw a fourth quarter profit amid lower overhead costs, but air bookings fell 9%; the company plans to cut up to \$25 million in annual costs, in addition to \$20 million announced in November. Priceline posted a fourth-quarter net profit, with total bookings up 23%.

### **5. TripAdvisor Includes Airline Fees in Fare Calculations.**

Users can see estimated baggage, alcoholic beverage and other fees and include them when calculating the total price of their airline trips, in a new feature on Expedia-owned TripAdvisor.

## V. **ENERGY AND ENVIRONMENT**

### 1. **FAA Funding Bill Addresses Environment.**

The House funding bill proposed for FAA (H.R. 915) allows airport operators to reinvest proceeds from the sale of land for noise compatibility purpose and reinvest those funds in another noise or environmentally-related project. The bill creates the Continuous Lower Energy, Emissions and Noise (CLEEN) Engine and Airframe Technology partnership to develop, mature and certify CLEEN engine and airframe technology for aircraft over the next 10 years. Under the program, FAA and industry would cost share maturation of promising technologies to reduce aircraft environmental impacts and energy usage. Other environmental provisions include: an environmental mitigation pilot program; the phasing out of noisy stage 2 aircraft; an aircraft departure queue management pilot program; broadened AIP eligibility to include several energy saving terminal projects; and requirements for FAA to build sustainable air traffic control facilities.

### 2. **Administration Emphasizes Environmental Standards.**

Regarding the Administration's American Recovery and Reinvestment Act, DOT Secretary Ray LaHood said, "We are ready to build a new transportation infrastructure and we will work to keep it green. We will emphasize sustainable investment and focus on the quality of our environment." Major rail investment, he said, "will relieve congestion on the roads and in the skies, and take advantage of a mode of transportation that has already benefited Europe and Japan for many years."

### 3. **Airlines Call for Global Approach to Aviation Emissions.**

Air France-KLM, British Airways, Cathay Pacific Virgin Atlantic and airport operator BAA formed the Aviation Global Deal Group to promote inclusion of aviation emissions in a new global climate treaty to be negotiated at the United Nations climate summit in Copenhagen in December. Aviation emissions, which contribute around 2% of global CO<sub>2</sub> emissions, were not included in the Kyoto Protocol commitments and are not currently managed under an international climate change treaty. The coalition calls for "a pragmatic, fair and effective global policy solution for the sector" that "must: offer genuine environmental benefits; be operationally and economically sound; maintain competitiveness between airlines and avoid market distortions; reflect the UN climate change principle of 'common but differentiated responsibilities' between countries with different levels of development; balance the social and economic benefits of flying with the industry's responsibility to cut global emissions and play its part in meeting tough climate change targets; and

reflect the work of ICAO's Group on International Aviation and Climate Change (GIACC) and IATA's strategy for reducing emissions." The Group's work is supported by The Climate Group, an international organization working to break political deadlock around a global climate deal and aims to build support from other international carriers, industry and environmental stakeholders, and complement the work of ICAO.

**4. \$25 Million for U.S. Biofuel R&D.**

The U.S. Departments of Energy and Agriculture will jointly release up to \$25 million in funding for research and development of aviation and other biofuels. This is a first step in implementing provisions found in the Food, Conservation and Energy Act of 2008 (known as the 2008 Farm Bill), meant to provide grants for commercial-scale demonstration projects and other activities leading to commercially viable, environmentally friendly alternative jet fuel. Award amounts will range from \$1 million to \$5 million, with project periods up to four years, subject to annual appropriations. Eligible applicants include institutions of higher education, national laboratories, federal research agencies, state research agencies, private sector entities, nonprofits, or a consortium of two or more of those entities.

**5. Japan Airlines Conducts Biofuel Test.**

Japan Airlines conducted a biofuel test flight, operating a Boeing 747-300 with one of four Pratt & Whitney JT9Ds powered by a blend of traditional jet fuel (50%) and biofuel derived from camelina (84%), jatropha oil (<16%) and algae oil (<1%). Biofuels used in the flight were second-generation biofuel feedstocks, the airline said, that do not compete with natural food or water resources and do not contribute to deforestation practices. It was the first biofuel test flight using Pratt engines and the fourth Boeing project using biofuel. No modifications to the aircraft or engine were required, said the airline.

**6. JetBlue, Airbus Plan Biofuels Test.**

JetBlue, Airbus, Honeywell UOP and International Aero Engines plan to test a second-generation biofuel on an A320-200 by spring 2010. Jatropha, algae, corn stover and waste forest residues are among feedstocks under consideration.

**7. Burbank Seeks FAA Curfew Approval.**

Burbank-Glendale-Pasadena Airport Authority is seeking federal approval to make current voluntary restrictions on nighttime operations at Bob Hope Burbank enforceable by law. If FAA approves the application, the curfew would prohibit flights by airlines, cargo operations, couriers and private pilots between 10 p.m. and 6:59 a.m. with some exceptions. It would be the first time

curfews have been applied to stage 3 aircraft. Officials say the curfew could reduce jet noise for more than 180,000 nearby residents. A \$6 million, eight-year study found that the curfew could shift 35 flights a night to other regional airports with little effect on noise levels or air pollution; those airports disagree with that finding.

**8. EU States to Monitor U.S. Operator Emissions.**

The EC published a preliminary list of airlines that will be required to participate in the European Union (EU) Emission Trading Scheme (ETS) from January 1, 2012. The list includes passenger, cargo and corporate operators that fly into and out of EU airports and links each one to an EU member state, which will be responsible for ensuring compliance. Most of the 749 U.S. companies on the list will be assigned to Ireland or the United Kingdom. The ETS legislation set a cap for 2012 of 97% of average annual emissions between 2004 and 2006, after which airlines must buy additional carbon allowances; the cap will fall to 95% of base emissions in 2013.

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

### **1. House Reintroduces FAA Authorization Bill.**

FAA would receive nearly \$70 billion in the 2009-2012 fiscal year period in the Federal Aviation Administration Reauthorization Act of 2009. The bill would authorize funding levels of \$16.2 billion for the Airport Improvement Program (AIP), \$13.4 billion for Facilities & Equipment, \$38.9 billion for FAA operations and \$1.35 billion for Research, Engineering & Development. The bill raises the passenger facility charge cap to \$7 from \$4.50, provides funding for runway incursion and status light programs, calls for a study on pilot fatigue, and directs FAA to implement occupational health standards to ensure crewmember safety. Among initiatives to strengthen oversight, the bill increases the number of safety inspectors, requires FAA to inspect all certificated foreign repair stations twice a year and creates an independent Aviation Safety Whistleblower Investigation Office. The bill authorizes DOT to incorporate financial incentives into essential air services (EAS) contracts, allows use of long-term EAS contracting, provides emergency increases in subsidy payments for increased EAS fuel costs, and extends the Small Community Air Service Development program through 2012 at the current authorized funding level of \$35 million per year. A reauthorization bill passed the House in 2007 but stalled in the Senate and expired in 2008. FAA's previous authorization was set to expire in September 2007, but taxing and operating authority has been preserved through a series of extensions; the current extension expires at the end of March.

### **2. House Bill Tightens Foreign Ownership Restrictions.**

A provision that would tighten restrictions on foreign ownership of U.S. carriers was added to the FAA reauthorization bill by James Oberstar (D-Minn.), Chairman of the House Transportation Committee, who charged the Bush Administration with interpreting current restrictions too loosely and told Dow Jones that "U.S. airlines are not going to be sold to non-U.S. carriers." The issue is a key one in second phase EU-U.S. open skies talks. The bill would require that U.S. citizens "control all matters pertaining to the business and structure of the air carrier, including operational matters such as marketing, branding, fleet composition, route selection, pricing, and labor relations." Current law requires that airlines be under "actual control" of U.S. citizens, but does not offer a precise definition of the term.

### **3. Airline Anti-Trust Bill Introduced in House.**

A bill calling for scrutiny of the impact on customers of airline alliances was introduced by James Oberstar (D-Minn.), Chairman of the House

Transportation Committee, who cited “the erosion of airline competition on international routes.” The legislation provides that no antitrust immunity for alliances may continue beyond three years from date of enactment, unless DOT affirmatively decides that the immunity should continue under any new laws and policies. The market is now dominated by three major alliances: Star (United/Lufthansa), SkyTeam (Delta-Northwest/Air France-KLM) and oneworld (American/British Airways), which together control over 87% of traffic between the United States and Europe and account for almost 80% of total world airline capacity, 78% of world revenue passenger kilometers, and 73% of passengers carried. In essence, the granting of antitrust immunity is a de facto merger of these airlines over routes involved, said Oberstar, and “evidence suggests that when immunity is granted to an alliance, there is a decline in competition from carriers not in the alliance. Case in point: in 1990, the New York Kennedy-Paris market had six competing airlines, today there are only three. Of the three remaining carriers in the market—Air France and Delta, which are part of the immunized SkyTeam alliance—have approximately 75% of the market share. Chicago to Frankfurt is dominated by Star members United and Lufthansa, which control an 85% share; the Amsterdam-Atlanta market will now be controlled by newly immunized SkyTeam members Delta and KLM.”

## VII. BILATERAL AND STATE DEPARTMENT NEWS

### 1. U.S. Resumes Some Spare Parts Sales to Syria.

The Obama Administration reportedly agreed to allow the sale of spare parts to Syrian Arab Airlines, says the *Wall Street Journal*. Sanctions were imposed against Syria in 2004, as a penalty for support of militant groups operating in Lebanon and the Palestinian territories. The U.S. Department of Commerce is granting waivers to Boeing and other companies to sell spare parts to the national airline, which has had limited route access due to safety code violations.

### 2. EU-Pakistan Sign Civil Aviation Agreement.

The EU and Pakistan signed an aviation agreement that does not replace bilateral air services agreements in place between the Pakistan and 18 EU member states, but brings them in line with EU law. Any EU airline may operate flights between Pakistan and any EU member state in which a bilateral agreement with Pakistan already exists, and in which traffic rights are available.

### 3. Arab Economic Council Discusses Open Skies.

Implementation of open skies among Arab countries would “strengthen air freight movement resulting in energizing Arab economic cooperation, expanding trade exchange and enhancing tourism to the Arab World,” said United Arab Emirates representatives attending the 83rd meeting of the Arab Socio Economic Council in Cairo. The Council plans to establish the Arab Customs Union by 2015 and expand the Free Trade Zone to include services in addition to products and commodities trade, in the move toward a Common Arab Market.

## VIII. EUROPE/AFRICA

### 1. European Airlines Cut 5,000 Jobs in February.

Air France-KLM this year will eliminate up to 2,000 jobs, 3% of its workforce, through attrition, and this summer will reduce capacity by 2%. The company reported a €194 million operating loss in fourth quarter 2008. In all, European airlines cut more than 5,000 jobs in February, reports Bloomberg. For the nine months ended December 31, British Airways announced that operating profit was down 88% over 2007, with revenue up 6.2%; CEO Willie Walsh said actions to offset unprecedented economic conditions include increased sales activity in markets with stronger foreign currencies.

### 2. EC Probing Austrian Sale to Lufthansa, Restructuring.

The EC launched a state aid probe into the privatization and restructuring of Austrian Airlines, in relation to a takeover by Lufthansa, after former Austrian suitor Air France-KLM and Ryanair filed complaints. The Austrian government plans to sell its 41.6% stake in the airline to Lufthansa for €366.3 and provide €500 million for a capital increase. The state will receive a debtor warrant, which may lead to another payment depending on Austrian Airlines' performance. The Commission doubts whether the price paid (including the debtor warrant) reflects the market price for Austrian Airlines at the time it was sold, whether the sale was truly open, transparent and unconditional; and whether the restructuring plan is in accordance with the EC framework for rescue and restructuring of firms in difficulty. In January, the EC authorized a guarantee on a €200 million rescue aid loan for Austrian Airlines. Austrian CEO Alfred Oetsch resigned suddenly and was replaced by co-CEOs Peter Malanik and Andreas Bierwirth, who with Oetsch had comprised the company's management board. Cost cuts planned to save €225 million in 2009 include a 10% reduction in flights, work-hour reductions, temporary pay waivers and a suspension of pension contributions. Lufthansa said it would stand by its offer, then made a firm bid.

### 3. Lufthansa Italia Launched.

Lufthansa Italia launched with flights from Milan Malpensa to Barcelona and Paris. Service to Brussels, Budapest, Bucharest and Madrid begins in March and to London Heathrow and Lisbon with the 2009 summer schedule. The 138-seat, two-class Airbus A319 services offer a "premium feeling with Italian charm," said Lufthansa, which is redesigning its lounge at Malpensa and adding Quick Check-in terminals and refurbishing gate and baggage reclaim areas. Heike Birkenbach was named head of the Lufthansa Milan division. She has been with the company since 1990.

4. **Executive Shift at Malev.**

Anatoly Ballo was named Chairman of Malev and Alexander Tikhomirov was appointed to the Board. Both were with Russian bank, Vnesheconombank, which recently took over the Hungarian airline. Peter Leonov resigned as Malev CEO and Chief Operational Officer Geza Fehervary is interim chief.

5. **Czech Airlines Privatization Launched.**

Air France-KLM reportedly may bid up to €200 million for SkyTeam partner Czech Airlines (CSA). The Czech Republic is offering 91.5% of its controlling stake in CSA until March 23. Aeroflot, also in SkyTeam, has expressed interest but cannot seek more than a 49% share in the airline, since it is not part of the EU. "We aim to have a partner who would be a Czech resident," said Aeroflot CEO Valery Okulov. Aeroflot said it would keep CSA as the Czech flag carrier, with its brand, identity and traditions.

6. **New Offers for Olympic Air.**

Greece received binding offers for units of Olympic Airlines from Greek investment group Marfin (MIG), owned primarily by Dubai Financial Group, which will pay €45.7 million for assets related to Olympic's flying operations and €16.7 million for assets of its technical base; and from Swissport, a subsidiary of Spain's Ferrovial, which offered €44.8 million for Olympic's ground handling unit. Bids in an earlier privatization effort were too low, said the government. The EC had agreed to suspend action over illegal state aid if a sale went ahead. Now the European Court of Justice has been advised to order the Greek government to pay fines for failing to recover aid illegally granted to the airline, but lowered the sums from those requested by the Commission.

7. **Turkish Airlines Crash Kills Nine.**

A Turkish Airlines Boeing 737-800 crashed during approach from Istanbul to Amsterdam Schiphol. Nine of the 134 people aboard died, including both pilots, and 86 were injured. The plane's data recorders and voice tapes were sent to Paris for analysis.

8. **ACCC Fines Air France, KLM, Martinair, Cargolux.**

See Section IX, item 1.

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

### **1. ACCC Fines Air France, KLM, Martinair, Cargolux.**

The Australian Competition and Consumer Commission (ACCC) fined four airlines for alleged price-fixing. They are Air France (\$3 million), KLM (\$3 million), Martinair (\$5 million) and Cargolux (\$5 million). The charges relate to fuel surcharges applied to international carriage of air cargo from 2003 to 2006. ACCC earlier fined Qantas \$20 million and British Airways \$5 million in related cases. Proceedings are in process with Singapore Airlines Cargo, and ACCC continues to investigate other airlines with further actions expected over the next few months.

### **2. Qantas Announces Service Changes.**

Qantas is replacing its flights in the New Zealand domestic market with service by low-cost unit Jetstar. The carrier will increase trans-Tasman services; New Zealand subsidiary Jetconnect will focus its Boeing B-737 operations on the Tasman from June. Changes in China services include an increase to daily Airbus A330 flights from Sydney to Shanghai from March 31, and ending Melbourne-Shanghai and Sydney-Beijing services. Three weekly Mumbai services will operate via Singapore from mid-May. New Zealand and Mumbai changes are subject to regulatory approval.

### **3. Singapore Airlines Announces 11% Capacity Reductions.**

Singapore Airlines announced an 11% reduction in capacity for the period April 2009–March 2010. Among changes are a withdrawal of service to Vancouver and fewer nonstops to the U.S.

### **4. V Australia Flies to Los Angeles.**

Virgin Blue startup V Australia received certification and began Boeing 777-300ER flights from Sydney to Los Angeles. Nonstops to Los Angeles from Brisbane will begin in April, and from Melbourne in September.

### **5. Etihad to Begin Chicago Nonstops.**

Abu Dhabi-based Etihad Airways will begin three weekly Airbus A340-500 nonstops to Chicago in September, with daily service to begin in October.

## **X. AMERICAS**

### **1. Delta Sheds 2,100 Employees.**

Delta said more than 2,100 employees opted for voluntary buyouts. The carrier seeks to cut capacity by 6% to 8% this year. In an effort to enhance on-time performance and baggage handling, Delta will consolidate some operations of its three feeder airlines under a new Minneapolis-based Regional Handling Services division; baggage handlers and gate agents for Comair, Mesaba and Compass will be among 4,100 employees shifted to the new unit. Pilots, flight attendants and mechanics will continue to work for and be based at headquarters of their respective airlines, which are overseen by Delta Connection. Delta has contracts with six regional carriers in addition to the three it owns. Delta is enhancing service from its Salt Lake City hub, starting five weekly services to Tokyo, adding daily nonstops to Seattle, Baltimore, Spokane, Oakland, Portland, Phoenix, St. Louis, Memphis, and Los Angeles and initiating new service to Bismarck, Des Moines, El Paso, Fargo, Indianapolis, Milwaukee, Nashville, and Sioux Falls.

### **2. United Moves Some Jobs from India to U.S.**

United will move 165 contracted customer relations positions from India to in-house slots in Chicago and Hawaii. The company cut 7,000 jobs last year and plans to cut 1,000 more this year.

### **3. US Airways Beverage Policy Makes Headlines.**

US Airways announced an end to complimentary beverages in coach cabins, then reinstated free soda, juices, tea, water and coffee in response to public outrage. "US Airways was the only large network carrier to charge for drinks and that put us at a disadvantage," CEO Doug Parker said, and "the beverage program was distracting." The company expects to generate \$400 to \$500 million in 2009 from a la carte items like checked baggage fees, choice seating and a new blanket and pillow offering. In other news, US Airways plans to cut 233 of its more than 12,000 airport positions.

### **4. Continental Addresses Tarmac Delays.**

Continental is giving passengers the option to deplane after a three-hour wait on the tarmac when possible; the new policy took effect with winter delays at New York Newark and Houston. In other news, the Coalition for an Airline Passengers' Bill of Rights filed federal Freedom of Information Act requests regarding the December 20 Continental crash at Denver on takeoff and the February 12 Continental Connection flight, operated by Colgan Air, which

crashed near Buffalo. The requests were submitted to DOT, NTSB and FAA and cover safety and training records related to the flights.

**5. JetBlue Pilots Choose Not to Unionize.**

Only 646 of JetBlue's 2,000 pilots cast ballots in an election to form an independent union; a simple majority was needed to validate the effort. In other news, the company launched a program that refunds fares for customers who experience involuntary full-time job loss prior to their trip; the refund would apply for up to nine customers traveling on one reservation. "This price promise allows them to book early and take advantage of our low fares without worrying they will lose their money if they need to cancel their trip due to job loss," said JetBlue.

**6. Virgin America Begins West Coast Service to Boston.**

Virgin America launched low-fare service to Boston Logan, with three daily roundtrips from Los Angeles International and two from San Francisco. Southwest announced it plans to begin Boston Logan service next fall.

**7. Allegiant Air to Connect Smaller Cities With Los Angeles.**

Allegiant Air will establish a base at Los Angeles International on May 1, providing low-fare, 150-seat, MD-80 series service from 12 smaller markets. Las Vegas-based Allegiant also serves Phoenix, Orlando, St. Petersburg and Fort Lauderdale.

**8. FedEx Expands Mexico Operations.**

FedEx is expanding its Mexican operations "to meet the demand for domestic service in Mexico and the increasing opportunity for international trade that the country must leverage to grow." FedEx is expanding its air cargo terminal and bonded warehouse facility in Guadalajara, which serves as a principal center of operations for FedEx Express international and domestic shipments in Mexico. The company opened a new hub in San Luis Potosí, to support FedEx Express Nacional, the company's domestic express service in Mexico launched in October 2008. The express shipping market in Mexico is projected to grow to \$1.5 billion in the next 10 years.

**9. Mexican Airlines Expand Services.**

Grupo Mexicana plans to launch Mexicana Inter on March 15. The new domestic airline will have a fleet of 50-seat Bombardier CRJ200s. AeroMexico began daily, Boeing 737-700 nonstops from Mexico City to San Francisco, Las Vegas and Denver, and in March will offer its first Canadian service with nonstops between Toronto and Mexico City, to be followed in April by twice weekly nonstops to Montreal. Tourism to Mexico rose nearly 6% in 2008, with foreign currency income from the sector at \$13.3 billion, up 3.4%. But rising

drug crime may end this trend; a U.S. State Department travel advisory warned Americans about increased violence along the border.

**10. Canada Considers Easing Airline Ownership Rules.**

Canada's Conservative government included in a budget bill a plan to raise foreign ownership limits on domestic airlines to 49% from 25%. Announced in September, the plan is supported by Air Canada.

**11. WestJet, Air France, KLM Consider Code Share Partnership.**

WestJet, Air France and KLM signed a memorandum of understanding that paves the way for work on a code sharing agreement involving the Canadian gateways of Calgary, Montreal, Toronto and Vancouver. The carriers are considering an interline agreement and frequent flyer program cooperation.

**12. Transat, CanJet to Partner.**

Transat and CanJet entered into a five-year partnership agreement, effective May 1, that allows Transat Tours Canada to charter CanJet Boeing 737-800s flying out of more than 20 Canadian cities to some 20 sun destinations. A similar partnership due to expire October 31, 2010, will be terminated at the end of the current winter season. Halifax-based charter operator CanJet is owned by IMP Group. Montreal-based Transat operates in Canada, Europe, the Caribbean, Mexico and the Mediterranean Basin.

**13. V Australia Flies to Los Angeles.**

See Section IX, item 4.

**14. Etihad to Begin Chicago Nonstops.**

See Section IX, item 5.