



WASHINGTON AVIATION SUMMARY

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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. IATA: Recovery Enters Second Slower Phase.

International scheduled passenger traffic in July rose 9.2% on year, freight by 22.7%, reports the International Air Transport Association (IATA), but slowed compared to June's increases of 11.6% (passenger) and 26.6% (cargo). Global passenger traffic in July was 3% higher than pre-crisis levels of early 2008, cargo 4%. Improving demand is an important component of the recovery, but anticipated 2010 profit of \$2.5 billion is only a 0.5% return on revenues, said IATA Director General and CEO Giovanni Bisignani. "The financial situation of the industry remains fragile"; a change in industry structure is needed "to secure sustainable profitability at levels exceeding the 7-8% cost of capital," and all partners in the value chain must work together to find solutions to reduce costs. The pace of recovery will likely slow, said Bisignani, as the jobless economic recovery is keeping consumer confidence fragile, particularly in North America and Europe. He noted the need for a regulatory structure "free of outdated ownership restrictions and able to facilitate opportunities for consolidation globally—something that other industries take for granted."

2. UAL-Continental Merger Cleared by Justice Dept.

The proposed merger of United and Continental was cleared by the Antitrust Division of the U.S. Department of Justice, after the airlines satisfied competition concerns with an agreement to lease to Southwest Airlines 18 slot pairs and related facilities at Newark Liberty International Airport. The Department concluded that the airlines' largely complementary networks would result in overlap on a limited number of routes where they offer competing nonstop service. The largest such routes are between United's hub airports and Continental's hub at Newark, where Continental has a high share of service and where there is limited availability of slots, making entry by other airlines particularly difficult; low-cost Southwest has only limited service in the New York area and no Newark service. The all-stock merger of equals was proposed in May and is expected to close by October 1, subject to approvals by the U.S. Department of Transportation (DOT) and shareholders. The European Commission (EC) cleared the merger in July, noting its investigation found the transaction would not raise competitive concerns in Europe or on transatlantic routes. Chicago-based United is the third largest U.S. carrier, with 2009 revenues of \$16.3 billion and 80 million passengers. Houston-based Continental is the fourth largest U.S. carrier with 2009 revenues of \$12.6 billion and 67 million passengers. The new entity will be named United

Airlines. CEO will be Jeff Smisek, currently Continental's Chairman, President and CEO. Glenn Tilton, UAL Corp. Chairman, President and CEO, initially will chair the Board of Directors. Corporate and operational headquarters will be in Chicago, with Houston as the largest hub.

3. FAA Proposes \$24.2 Million Civil Penalty Against American Airlines.

The Federal Aviation Administration (FAA) proposed a \$24.2 million civil penalty against American Airlines for failing to correctly follow a 2006 Airworthiness Directive (AD) requiring operators to inspect wire bundles located in wheel wells of MD-80 aircraft. The AD aimed to prevent events that potentially could lead to loss of auxiliary hydraulic power, a fire in the wheel well or a fuel tank explosion. FAA first detected the violations in March 2008; after subsequent inspections American grounded its MD-80 fleet, cancelling more than 3,000 flights while completing the required work. FAA said 286 of the non-compliant MD-80s were operated on a combined 14,278 passenger flights. American called FAA's action "unwarranted," and plans to challenge the civil penalty, the largest ever proposed by the agency.

4. Delta Applies for Heathrow Routes.

Delta filed applications with DOT and the EC, requesting permission to operate twice-daily year-round service between London Heathrow and Boston, and daily year-round service between Heathrow and Miami. The slots are available following U.S. and Europe Union (EU) approval of an immunized American Airlines-British Airways transatlantic alliance that required some Heathrow slots to be divested. Delta said the new service would benefit consumers by increasing competition between the U.S. and Heathrow, which is tightly restricted by airport slot restraints. The oneworld alliance, which includes American and British Airways, holds 47% of Heathrow takeoff and landing slots; Star, which includes United, US Airways, BMI and Lufthansa, accounts for 25%; while SkyTeam, which includes Delta, Air France-KLM and Alitalia, holds only 5%. If approved, Delta's Heathrow service from Boston and Miami would begin March 27, 2011, and would be offered in cooperation with transatlantic joint venture partners Air France-KLM and Alitalia.

5. FAA Alters Safety Ratings for Nigeria, Mexico.

Nigeria has achieved a Category 1 rating under FAA's International Aviation Safety Assessment (IASA) program, which means the country's civil aviation authority complies with international safety standards set by the International Civil Aviation Organization (ICAO); Nigerian air carriers may now apply to operate to the United States with their own aircraft. FAA downgraded Mexico from a Category 1 to Category 2 rating; Mexican air carriers cannot establish new service to the United States, but may maintain existing service.

6. Northwest to Pay \$38 Million Criminal Fine for Cargo Price Fixing.

Northwest agreed to plead guilty and pay a \$38 million criminal fine for its role, through defunct Northwest Airlines Cargo, in a conspiracy to fix prices for international air cargo shipments from at least July 2004 until at least February 2006, said the U.S. Department of Justice. Under the plea agreement, Northwest agreed to cooperate with the Justice Department's ongoing antitrust investigation; to date, 16 airlines have pleaded guilty or agreed to plead guilty; more than \$1.6 billion in criminal fines have been imposed; and four executives have been sentenced to serve prison time, with charges pending against a fifth.

7. NTSB, Boeing Assist Colombia With Aires Accident Probe.

The National Transportation Safety Board (NTSB) and Boeing are assisting the Colombia Civil Aviation Authority with its investigation of the crash of an Aires Airlines Boeing B737-700. The flight, which originated in Bogota, crashed during landing at San Andreas Island airport. There were 131 people on board, with one initial death and many serious injuries. Thirty-year-old Aires, Colombia's second largest carrier in domestic market share, serves New York Kennedy and Fort Lauderdale, among its international destinations.

8. NTSB to Examine Code Sharing and Aviation Safety.

NTSB will hold a symposium in October on "Airline Code-Sharing Arrangements and Their Role in Aviation Safety," with presentations from major and regional airlines, industry organizations, and representatives of the traveling public. Goals are to (1) elicit information on the structures, practices, and oversight of domestic and international code-sharing arrangements; (2) gain insight into best practices regarding the sharing of safety information between airlines and their code-sharing partners; and (3) explore role a major airline would have in family disaster assistance response for an accident involving a code sharing partner.

9. June Passenger Airline Employment.

U.S. scheduled passenger airlines employed 378,300 workers in June 2010, 2.4% fewer than in June 2009, reports DOT, and the highest number since January 2010. The six network airlines employed 256,600 in June, 67.8% of the passenger airline total, while low-cost carriers employed 16.9% and regionals employed 13.8%.

10. Equipment News.

An NTSB report says the Southwest Boeing 737-300 that developed a hole in its fuselage in July 2009, en route from Nashville to Baltimore, experienced

metal fatigue in the fuselage skin near the leading edge of the vertical stabilizer. A subsequent Boeing service bulletin and FAA airworthiness directive called for repetitive external inspections of the B-737 Classic to detect cracks in the fuselage. Southwest said it has increased visual inspections and non-destructive testing. . . . FAA proposed that airlines modify wing-flap wiring on certain Boeing 747-400s, after flaps automatically retracted during takeoff; the incident involved a Rolls-Royce engine. . . . Bombardier said 222 of the 300 Q400 worldwide fleet should be inspected for corrosion, fatigue or stress, and Transport Canada is issuing an airworthiness bulletin on concerns relating to the turboprop's landing gear; service bulletins were issued in July and April. . . . ILFC (International Lease Finance Corp.) repaid a \$3.9 billion Federal Reserve Bank loan, the single largest repayment by parent AIG (American International Group) since its 2008 federal bailout; ILFC CEO Henri Courpron said \$13 billion worth of Airbus and Boeing jetliners are on order.

11. DOT Air Travel Consumer Report for June.

Based on data filed by 18 of the largest U.S. airlines.

	June '10 / '09	May '10	Full Year				
			2009	2008	2007	2006	2005
On-time arrivals %	76.4 / 76.1	79.9	79.5	76	73.4	75.4	77.4
Cancellations %	1.5 / 1.5	1.2	--	--	--	--	--
Mishandled baggage*	3.72 / 4.26	3.29	3.91	5.26	7.05	6.73	6.64
<i>Consumer complaints:</i>							
Airline service	1,419 / 748	801	8,819	10,648	13,180	8,325	8,741
Disability-related	60 / 55	41	517	477	488	430	511
Discrimination**	22 / 10	10	132	115	99	114	129

Note: There were three flights with tarmac delays of over three hours in June.

* Reports per 1,000 passengers.

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

II. AIRPORTS

1. ACI 2009 World Airport Traffic Report: Passengers -2%, Cargo -8%.

Total global passenger traffic at airports declined by 1.8% in 2009 relative to 2008, according to ACI's World Airport Traffic Report for 2009, while cargo tonnage fell by 7.9%. Worldwide airport passenger numbers dropped to 4.796 billion, from a high of 4.882 billion in 2008: Middle East (+7.7%), Asia-Pacific (+4.9%), Latin America-Caribbean (+1.5%), Europe (-5.4%), North America (-5.2%), Africa (-0.6%). Worldwide domestic traffic was flat (-0.2%) while international traffic dropped 3.9%; aircraft movements decreased by 5.1% to 74.1 million. "During the first half of the year, overall traffic continued to spiral downwards due to the impact of deepening economic uncertainty, falling industrial production and falling GDP," said ACI. "Exceptional factors such as the H1N1 influenza virus pandemic had an adverse impact on traffic in May and June, reaching beyond the borders of Latin America to North America, Asia Pacific and Europe."

2. Delta's \$1.2 Billion Terminal 4 Project at Kennedy Approved.

Delta's plans for a \$1.2 billion enhancement and expansion of Terminal 4 at New York Kennedy were approved by Port Authority of New York and New Jersey, JFKIAT and Schiphol USA. Under a 30-year arrangement, Delta's international traffic will move into Terminal 4, into nine newly constructed passenger gates and up to seven existing gates, occupying 16 of the expanded terminal's 25 total gates. The expansion is expected to take 36 months, after which demolition of Terminal 3 will begin. During construction, officials estimate the project will provide 6,400 jobs, \$360 million in wages and \$1.8 billion in economic activity. Financing will come from a combination of passenger facility charges, Delta equity, and special project bonds, which are limited obligations of the Port Authority; debt service on the bonds is paid exclusively through rental terms in the lease agreement. The international baggage claim hall and federal inspection services processing capacity will also be expanded.

3. \$9.2 Million in Recovery Act Projects for Atlanta.

Hartsfield Jackson Atlanta International is undertaking some \$9 million in upgrades funded by the federal American Recovery and Reinvestment Act (ARRA), including a \$5 million project to install a new approach lighting system for Runway 27L.

4. **\$20.39 Million Contract Approved for MBS Airport Terminal.**

The MBS International Airport Commission approved a \$20.39 million contract to complete the fifth and sixth construction phases of a new 75,000-square-foot terminal. The project is expected to begin this fall and be completed in 14 months. The seventh and final planned phase will be completed in 2013. The airport serves Michigan's Great Lakes Bay Region.

5. **DC Competition Unhindered by a United-Continental Merger.**

Competition in the Washington, D.C., market would not be hindered by a merger of United and Continental, according to a study by the nonprofit Washington Airports Task Force. The merger would "help us expand and increase our international market share in this region," said Task Force President Leo Schefer. An analysis of 2009 DOT data, prepared by a consultant for the task force and reviewed by *The Washington Post*, found that about 97% of the more than 37 million domestic travelers using Dulles, Reagan National and Baltimore/Washington (BWI) had a high level of competitive choice—no one airline held more than 80% of any one connecting airport's travelers. Southwest is the Washington area's largest carrier (8.2 million passengers), followed by Delta (6.1 million), United (6 million), U.S. Airways (5.2 million) and American (3.7 million). Several newer entries are thriving; Virgin America is the second-largest carrier between San Francisco and the region.

6. **BAA USA Sold, Renamed Airmall USA.**

BAA USA was acquired by New York-based Prospect Capital Corporation for \$50 million and renamed Airmall USA. Previously owned by UK-based BAA Ltd., the company is manager and developer of retail, food and beverage concessions at Pittsburgh, Boston Logan, Baltimore/Washington and Cleveland Hopkins airports. Headquarters will remain in Pittsburgh. BAA said the sale reflects its ongoing strategy to divest non-core assets.

III. SECURITY AND DATA PRIVACY

1. TSA Administrator Outlines Vision.

In recent interviews, Administrator John Pistole talked about his vision for the Transportation Security Administration (TSA). Strengthening TSA's counterterrorism mission through intelligence and cutting-edge technology is a priority. Under consideration is formation of a small corps of Transportation Safety Officers (TSOs) that would function as law enforcement, supplementing but not replacing airport law enforcement authority. Pistole is conducting meetings and "town halls" with TSA personnel and heads of federal employee unions to discuss a range of issues, including collective bargaining rights. He believes that full-body scanners are a necessary component for improving security at U.S. airports, despite privacy concerns.

2. TSA Meets Deadline for Domestic Cargo Screening.

TSA said it met the August 1 deadline for screening 100% of cargo on domestic passenger flights, and is "continuing its work to improve cargo security on passenger flights originating in other countries." Prior to the deadline, over 900 facilities completed the Certified Cargo Screening Program (CCSP), which allows certified facilities across the country to screen cargo before it reaches the airport. CCSP facilities are approved by TSA and adhere to security standards, including physical access controls, personnel security and screening of prospective employees and contractors. A secure chain of custody must also be established from the screening facility to the aircraft. The CCSP program spreads the cargo screening responsibility, on a voluntary basis, throughout the supply chain to manufacturing facilities and distribution centers, said TSA, enabling "over half of the more than 9 million pounds of cargo loaded onboard passenger-carrying planes each day to be prescreened, avoiding potential bottlenecks at airports."

3. Global Entry Program Expands.

The Global Entry pilot program has been expanded to 13 additional U.S. airports, reports the Department of Homeland Security (DHS). The initiative uses biometric identification to expedite the customs and security process for trusted air travelers. At the kiosk, Global Entry members insert their passport or permanent resident card into a document reader, provide digital fingerprints for comparison with fingerprints on file, answer customs declaration questions on the kiosk's touch-screen, and then present a transaction receipt to customs officers before leaving the inspection area. The application fee is \$100; membership is valid for five years. About 16,000 members are enrolled in

Global Entry, which began in June 2008. DHS says the program reduces average wait times by 70%.

4. Registered Traveler Revived.

The Registered Traveler program has been revived by iQueue Priority Access at Indianapolis International Airport. The iQueue program allows business travelers and other frequent fliers to pay a \$169 annual membership fee for a biometric identity card that provides expedited passage through airport security checkpoints; members do not avoid passage through body scanners and other security measures. Virginia-based iQueue is owned by Cogent Systems in partnership with ARINC. Registered Traveler collapsed last summer when CLEAR ceased operations. CLEAR plans to re-launch this fall, as Alclear LLC, at Denver and Orlando airports; former DHS Secretary Michael Chertoff is a director of the new CLEAR.

5. GAO: US-VISIT Pilot Evaluations Insufficient.

DHS did not properly evaluate all options in establishing the US-VISIT (Visitor and Immigrant Status Indicator) program, according to the Government Accountability Office (GAO), in part because no airline was willing to participate. The purpose of the program is to control and monitor the entry and exit of foreign visitors by storing and processing biometric and biographic information. The entry capability has operated since 2006; an exit capability is not yet implemented. A 2008 congressional mandate required DHS to test air exit scenarios with the U.S. Customs and Border Protection (CBP) and airlines, and to provide a report to congressional committees.

IV. E-COMMERCE AND TECHNOLOGY

1. Delta “Ticket Window” on Facebook.

Delta introduced a "Ticket Window" on Facebook, through which passengers can book reservations without navigating to the company website, and plans to allow full booking capabilities via its Internet ads. Delta also redesigned its website home page, enhanced its smartphone site and plans to upgrade its airport kiosks to offer more functionality. A new iPhone application will enable customers to check in, check flight status, review schedules, review SkyMiles account balance and use eBoarding passes (in select cities) directly from mobile devices; future releases of the app will enable customers to book flights and select seats.

2. Travelocity Business Offers Ancillary Fee Spend Tool.

A new tool from Travelocity Business helps corporations identify luggage, seat selection and other airline fees, “bringing additional insight to clients in an area of travel expenses that can range from 2% to 10% of a traveler’s average ticket price.” The solution gives travel and procurement managers a view of fees by carrier, category and traveler.

3. MakeMyTrip Scores \$70 Million in IPO.

Indian online travel agency MakeMyTrip plans to use proceeds of \$70 million from a successful initial public offering for acquisitions, new investments in technology and working capital. Originally a website in the U.S., mainly serving the U.S.-India travel market, the company in 2005 began operations in India. In the year ended March 31, 1.6 million domestic air tickets were booked through MakeMyTrip's website in India, up from 1.2 million in the previous 12 months.

4. Industry’s First Telepresence Distribution Platform.

Sabre Travel Network will collaborate with Cisco to develop a telepresence distribution and reservation platform, enabling agencies and corporations to book services from any telepresence provider and any point of sale. Through the use of high-definition video and audio, telepresence enables users to view room availability in real time, book meetings, and review applicable rates and restrictions. Public telepresence providers and private corporations will be able to provide open or restricted access to their rooms through the platform.

V. ENERGY AND ENVIRONMENT

1. Fuel Bill for Global Airline Industry.

The average price of aviation jet fuel, as of August 13, was \$86.4/barrel, down 1.4% on the month and up 7.2% year-on-year, reports the International Air Transport Association. Fuel price average year-to-date was \$88.2/barrel.

2. Burbank Noise Fight Redux.

California legislators are seeking federal legislation to bar flights between 10 p.m. and 7 a.m. at Bob Hope (Burbank) and Van Nuys airports. FAA last year rejected the Burbank-Glendale-Pasadena Airport Authority's request to impose the ban. Commercial airlines have agreed to a voluntary curfew at Burbank, but freight carriers and others oppose the curfew.

3. Boeing's SUGAR Volt Powered by Batteries.

Boeing's NASA-funded prototype for a battery-powered jetliner was unveiled at Experimental Aircraft Association's annual air show in Oshkosh. The SUGAR Volt includes an electric battery and gas turbine hybrid propulsion system, which the company says can reduce fuel burn by more than 70% and total energy use by 55%. The fuel burn reduction and the greening of the electrical power grid can greatly reduce emissions of life cycle carbon dioxide and nitrous oxide. Hybrid electric propulsion also has the potential to shorten takeoff distance and reduce noise. The SUGAR Volt would be as large as a Boeing 737 but weigh much less, and would use batteries or jet fuel depending on whether it is cruising or taking off and climbing.

4. Air Force Evaluating Powdered Algae Fuel.

The U.S. Air Force Research Laboratory is evaluating powdered algae fuel as a solid fuel propellant for rocket use, developed by Utah-based Compact Contractors for America (CCA). Dry process biofuels, made from algae, camelina seed and other non-fossil fuel sources, can be fluidized and combusted in jet turbine engines. CCA has identified "the most effective feedstock, process methodology and fuel delivery processes to make dry process biofuels scalable to military operations. Commercial application requires further research and testing."

5. Bill Would Spur Clean Energy Production.

See Section VI, item 3.

VI. U.S. CONGRESS

1. FAA Extension Includes New Safety Rules.

A bill that extends FAA funding through September 30 includes language to improve pilot training and safety on commuter and regional airlines, drafted in response to the crash of a Colgan Air flight in 2009 near Buffalo, in which 50 people died, and other accidents involving short-haul carriers. The Airline Safety and Federal Aviation Administration Extension Act of 2010 requires FAA to complete a rulemaking to revise commercial pilot requirements and mandates all commercial pilots to have a minimum of 1,500 hours of flight experience (up from 250 hours). Among other provisions, the bill requires the DOT Secretary to report annually on the status of adoption of NTSB recommendations, with explanations for unmet deadlines; and the DOT Inspector General (IG) to conduct a review and assessment of FAA's oversight of commercial air carriers. It requires FAA: to create and maintain a comprehensive pilot record database for air carriers to track and review pilot work histories; to conduct a rulemaking to mandate all commercial air carriers implement Safety Management Systems (SMS); and to perform random, onsite inspections of regional air carriers not less than once each year. The bill also requires any entity selling tickets to disclose the actual air carrier providing the air transportation. The bill extends FAA funding through September 30, the 15th extension of current law, which was set to expire in 2007. It will allow the House and Senate to continue to work out differences between their versions of a new FAA reauthorization bill. The previous extension expired August 1.

2. Measure Addresses Hidden Fees, Mishandled Baggage.

A bill that would require airlines to increase transparency of baggage, reservation change, cancellation and other fees was introduced in the Senate by James Webb (D-Va.). The Airline Baggage Transparency and Accountability Act would "eliminate a tax loophole that incentivizes airlines to charge carry-on and checked baggage fees," said Webb. Revenues from baggage and many other fees are not subject to a tax earmarked for air traffic control system improvements. "An estimated \$186 million in revenues were lost in FY2009 alone because of the exemption of checked baggage fees to this tax," he said. The legislation would authorize DOT's Aviation Consumer Protection Division to oversee lost and stolen baggage claims, and require data collection and public release of collected data concerning airline handling of lost, damaged and stolen baggage. In 2008 and 2009, airlines reported \$7.9 billion in revenues from baggage fees and reservation change and

cancellation fees, the two largest sources of fee revenues. DOT recently issued a Notice of Proposed Rulemaking (NPRM) considering different forms of disclosure of airline-imposed optional fees.

3. Bill Would Spur Clean Energy Production.

A bill that would extend the excise tax credit for biodiesel and renewable diesel retroactively for 2010 and through 2012 was introduced in the Senate by John Kerry (D-Mass.) Among other provisions, the Clean Energy Technology Leadership Act of 2010 would modify the cellulosic biofuel tax credit to include algae based fuels; provide additional funding for the advanced energy manufacturing credit and uncap the credit for solar energy property, fuel cell power plants, and advanced energy storage systems, including batteries for advanced vehicles; and extend the research and development tax credit retroactively for 2010 and through 2012 and provide an additional 10% credit for qualified advanced energy research expenditures.

VII. BILATERAL AND STATE DEPARTMENT NEWS

1. U.S. Appeals WTO Findings in Airbus Subsidies Case.

The United States is challenging two findings in the World Trade Organization (WTO) June ruling, which found that Airbus gained an unfair advantage over Boeing through significant European financial support. “The United States is challenging the WTO panel’s finding that launch aid granted to Airbus over the course of 40 years was not part of an ongoing program of assistance,” said the U.S. Trade Representative, “and the finding that certain launch aid contracts were not export subsidies.” The European Union (EU) has appealed the June ruling, and in a complaint not yet decided by the WTO, has charged that Boeing receives U.S. subsidies through space and defense contracts.

VIII. EUROPE AND AFRICA

1. SAS CEO Resigns.

Mats Jansson resigned as President and CEO of SAS, effective this fall when his contract expires, after four years with the company. The Board of Directors is seeking a “a suitable successor.”

2. Continental, Aegean Begin Code Sharing.

Star Alliance partners Continental and Aegean began code sharing on Continental flights between New York Newark and Athens, and on Aegean flights from Athens to six destinations in Greece and to Cyprus. At a future date, Continental will code share on Aegean flights between Athens and London Heathrow, Munich and Frankfurt. Pending government approval, Continental will code share on Aegean flights between Athens and Paris de Gaulle and Rome Fiumicino; and Aegean will code share on Continental flights from New York Newark to Paris de Gaulle and to Rome Fiumicino.

3. EC Opens Probe of Proposed Olympic-Aegean Merger.

The European Commission opened an in-depth investigation of the planned merger between Olympic Air and Aegean, following initial findings of “serious competition concerns, in particular because the merged entity would have very high, if not monopolistic, market shares on all domestic routes and on a number of international routes where both parties operate.” The EC also has “serious doubts” as to the compatibility of the transaction with the provision of public service obligation routes and ground handling services in Greece. A final decision will be made by December 7 on whether the merger would significantly impede effective competition in the European Economic Area (EEA) or any substantial part of it. EC Competition Vice President Joaquin Almunia said: “The Commission must make sure that consumers and businesses will continue to have a competitive choice of airline services in Greece, both as regards fares and routes, in particular at a time of difficult economic circumstances.”

4. SA Express Appoints New CEO.

Inati Ntshanga was named CEO of SA Express, effective September 1, 2010. He succeeds Siza Mzimela, who became CEO of South African Airways in May.

5. **South Africa Cites Airlines for Collusion in Air Cargo Market.**

South Africa's Competition Commission referred cases of collusion in the air cargo market against eight airlines to the country's Competition Tribunal, and recommended a penalty of 10% of annual revenue. The airlines are South African Airways, British Airways, Air-France-KLM, Alitalia, Cargolux, Singapore, Martinair and Lufthansa; Lufthansa was granted conditional immunity from prosecution after applying for leniency in 2006.

6. **Qantas Price Fixing Lawsuit May Proceed.**

See Section IX, item 5.

IX. ASIA/PACIFIC AND MIDDLE EAST

1. Alliance News.

As a result of its recent merger with China Eastern, Shanghai Airlines will terminate membership in Star Alliance by the end of October.

2. China Reviews Airline Safety After Henan Crash.

Following the crash of a Henan-operated Embraer 190 that killed 42 people and injured 54, the Civil Aviation Authority of China dispatched teams nationwide to inspect airline safety measures. Henan suspended operations after the crash, which occurred at Lindu Airport in Yichun, in northeast China's Heilongjiang Province, and the airline head was replaced. Previously known as Kunpeng Airlines, Henan is a unit of Shenzhen Airlines; founding investor Phoenix-based Mesa Air Group is no longer involved.

3. Virgin Blue Group Restructures Network.

Virgin Blue's new CEO John Borghetti announced a restructuring plan that adds capacity to routes with strong revenue potential and removes capacity from underperforming services. Pacific Blue will expand international medium haul operations across the Tasman, the Pacific Islands and South East Asia, and as of October 18 will cease New Zealand domestic flying. V Australia will fly only international long haul routes, including additional services to Los Angeles from Sydney and Melbourne. Virgin Blue will continue to focus on domestic operations. In related news, Sir Richard Branson announced that California-based Virgin America, UK-based Virgin Atlantic and V Australia/Virgin Blue will offer reciprocal frequent flyer miles. Separately, Virgin America and Virgin Atlantic signed an international one-way interline agreement; Virgin America last year launched a U.S.-Australia interline arrangement with V Australia/Virgin Blue.

4. Thai, Tiger to Form Low-Fare Thai Tiger.

Thai Airways and Singapore-based Tiger Airways Holdings agreed to form low-fare Thai Tiger Airways, with operations expected to begin in first quarter 2011, pending regulatory approvals. Thai Tiger will operate international and domestic flights from Bangkok Suvarnabhumi, offering short-haul, point-to-point services within a five-hour flying radius. Thai and a Thai entity will hold 51% of Thai Tiger, while Tiger Airways will hold 49%. The carriers anticipate growth in the low-cost market "as a result of continued ASEAN air liberalization policies by 2015 which should lead to growth in air travel in the Asian market." Tony Davis and Declan Ryan will sit on the Board of Thai Tiger

as nominees for Tiger Airways; Ryan is a founding shareholder of Tiger Airways and Ryanair.

5. Qantas Price Fixing Lawsuit May Proceed.

The Federal Court of Australia overturned a lower court decision dismissing a class action lawsuit charging Qantas with conspiring with other airlines to fix cargo rates from January 2000 to January 2007. Also named in the lawsuit are Lufthansa, Singapore Airlines, Cathay Pacific, Air New Zealand, Japan Airlines and British Airways. Qantas pleaded guilty to cargo price fixing and agreed to a \$61 million criminal fine in the United States in 2007; and was ordered to pay A\$20 million in penalties in 2008, after admitting to Australian Competition and Consumer Commission allegations of collusion on fuel surcharges.

6. Emirates Increases Daily U.S. Service.

Dubai-based Emirates announced the launch of second daily Boeing 777 flights to Los Angeles (October 31) and Houston (November 1). The value of trade between United Arab Emirates and America was \$12.7 billion in the 12 months to June 2010, said CEO Tim Clark, and 400,000 American business and leisure travelers visited Dubai last year, up 23% from 2007-08. Emirates also serves New York and San Francisco.

7. Low-Cost Sama Ceases Operations.

Saudi low-cost airline Sama discontinued flight operations after failing to find strategic investors, said CEO Bruce Ashby, or “a significant aviation relief package with respect to fuel subsidies, subsidies for PSO routes [and] a gradual lifting of domestic fare caps.” Sama began operations in 2009 and operated Boeing 737-300s to domestic and regional destinations.

8. South Africa Cites Airlines for Collusion in Air Cargo Market.

See Section VIII, item 5.

X. AMERICAS

1. LAN, TAM to form LATAM Airlines Group.

TAM of Brazil and LAN of Chile entered into a non-binding Memorandum of Understanding (MOU) to combine holdings, in an all-stock transaction, under a single parent entity to be known as LATAM Airlines Group. The group would include Lan Airlines and its affiliates in Peru, Argentina and Ecuador; Lan Cargo and its affiliates; TAM; TAM Mercosur; and all other holdings of LAN and TAM. Each airline would continue to operate under existing operating certificates and brands. Mauricio Rolim Amaro, current TAM Vice Chairman, will serve as LATAM Chairman; and current LAN CEO Enrique Cueto will be LATAM CEO. The group would have 40,000 employees and with 220 aircraft provide passenger services to 115 destinations in 23 countries and cargo services worldwide. In 2009, the carriers had combined revenues of \$8.5 billion and carried 45 million passengers and 832,000 tons of cargo. The combination is expected to generate annual synergies of \$400 million, from alignment of passenger networks, growth in cargo and reduced cost. "In an open skies market," said officials; "this will position us to compete with the foreign carriers that continue to increase service to our region, while creating new jobs in our home countries."

2. Mexicana Files for Bankruptcy, Suspends Service.

Grupo Mexicana suspended operations, saying it would continue to seek ways to secure the company's long-term financial viability. Mexicana earlier filed for bankruptcy protection in Mexico and the United States and suspended ticket sales and some flights, after failing to reach cost-saving agreements with labor unions. The carrier and its Click and Link subsidiaries then were acquired by an investor group, Tenedora K (95%), and the pilots' union (5%). At that time, Tenedora K said the purchase was the first step in establishing conditions that would lead to a process of restructuring that would require coming to financial, operative and labor agreements.

3. American Airlines Mechanics Reject Contract, Threaten Strike.

American Airlines' mechanics rejected a three-year contract and gave union leaders authority to call a strike. The airline said it will ask the National Mediation Board for guidance on next steps with mechanics and stock clerks, who also rejected a tentative agreement. Maintenance control technicians (technical specialists) ratified their contract. In other news, American now offers premium seating, allowing travelers to purchase seats in the first few rows of coach; the \$19 - \$39 price includes priority boarding.

4. **Northwest Flight Attendants' Union Sues Delta.**

The union for Northwest flight attendants filed suit in Washington against Delta for violating rules on scheduling and other issues. Among grievances cited, the Association of Flight Attendants-CWA said members should get more than two days off after a long international flight, but Delta gives them only 11 hours. Delta flight attendants are nonunion, but those who came from Northwest are still in the union. The National Mediation Board (NMB) has granted a request by AFA-CWA to declare that the Delta-Northwest merger created a single transportation system, said the union. "As a result, a representation election has been triggered and the over 20,000 flight attendants at the merged carrier will have the opportunity to vote for AFA-CWA representation under new rules." Delta said the union lawsuit has no merit and is meant to divide flight attendants and distract them from the representation election.

5. **Alaska to Operate Total Horizon Capacity.**

Effective January 1, all Horizon Air capacity reportedly will operate under capacity purchase agreements (CPA) with Alaska Airlines, rather than the current 45%. Horizon brand flying likely will cease.

6. **SkyWest to Acquire ExpressJet.**

A merger agreement was reached in which SkyWest unit Atlantic Southeast will acquire ExpressJet. The combined airline will maintain an operational support structure in Houston, with corporate headquarters in Atlanta. Following close of transaction and receipt of required regulatory approvals, "it is anticipated that combined airline will continue to serve Continental's current hubs in Houston, New York Newark and Cleveland as well as hubs at Chicago O'Hare and Washington Dulles for United."

7. **Delta, AirTran Baggage-Fee Collusion Suit to Proceed.**

A class-action lawsuit over alleged collusion by Delta and AirTran on baggage fees imposed in November 2008 may proceed, said a U.S. District judge in Atlanta. Delta and AirTran filed motions to dismiss the claim in March.

8. **JetBlue, Sun Country Offer Unlimited Travel Passes.**

JetBlue quickly sold out its All-You-Can-Jet passes priced at \$699 or \$499 for travel between September 7 and October 6. Sun Country offered a \$499 Fall Free For All pass for a similar time period.

9. **Spirit Increases Colombia Service.**

Spirit Airlines began nonstops from Fort Lauderdale to Barranquilla, its fifth destination in Colombia, and offered \$9 introductory fares.

10. **U.S. Airlines Post Seven Consecutive Months of Revenue Growth.**

July passenger revenue rose 20%, compared to July 2009, reports the Air Transport Association of America (ATA), marking the seventh consecutive month of revenue growth. The pace of improvement slowed from the 25% year-over-year gain realized in June. The average price to fly one mile rose 17%. International passenger revenue rose 36%, led by a 52% gain in trans-Pacific markets. Cargo traffic (cargo revenue ton miles) rose 19% (8% domestic, 28% international) in June; July 2010 cargo data was not yet available. The ATA data is based on reports by a sample group of carriers In its 2010 Economic Report, ATA said operating revenues dropped 16.9% to \$155 billion in 2009, resulting in the deepest two-year contraction in the industry's history and extending industry losses to \$58 billion over a nine-year period beginning in 2001; passenger traffic declined by 5.3%, cargo by 12%. Domestic seating capacity dropped 7%, the sharpest decline in 67 years, but cuts in 2008 and 2009 left domestic seating capacity 1.3% below 1999 levels and helped set the stage for the start of a recovery. U.S. airlines and their customers pay about \$60 in taxes or 20% of the price of a typical \$300 domestic round-trip ticket. . . . ATA told the *New York Times*, "From 2000 to 2009 even when you figure in ancillary fees, we're only showing an increase of four-tenths of 1% for an average one-way fare."

11. **FedEx Sues NY Attorney General Over Probe.**

FedEx Corp. sued New York Attorney General Andrew Cuomo in federal court in Manhattan, claiming he is exceeding his authority in an investigation of the company's rates, routes and services. Denying it has engaged in fraud or committed any wrongful or illegal acts, FedEx said it is regulated by the federal government and asked for a court order barring Cuomo from continuing the investigation.

12. **Continental, Aegean Begin Code Sharing.**

See Section VIII, item 3.

13. **Emirates Increases Daily U.S. Service.**

See Section IX, item 6.