



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. **FAA Funding Restored.**

Congress restored funding to the Federal Aviation Administration (FAA), ending a two-week partial shutdown of the agency (see also Section VI). Flights were not affected since air traffic control operated out of other funding, but 4,000 FAA workers were furloughed and some 70,000 construction workers were laid off as airport projects halted. FAA authority to collect ticket taxes ceased, but most airlines raised base fares to match the tax; two exceptions were Spirit Airlines and Alaska Airlines. IRS issued guidance to consumers regarding ticket tax refunds for the period. The White House said loss of the taxes cost the federal government \$200 million a week. "This is a lose-lose-lose situation," said President Obama during the congressional stalemate; Congress should "take care of this [and] do what they've done 20 times since 2007." The 21st short-term funding bill expires September 16.

2. **DOT Passenger Protection Rules Take Effect.**

New protections for airline passengers established by the U.S. Department of Transportation (DOT) took effect on August 23. Finalized earlier this year, the new rules require airlines to double the maximum compensation to passengers involuntarily bumped from oversold flights, refund baggage fees for lost bags and prominently display all optional fees on their websites. The new rule expands the existing ban on lengthy tarmac delays to cover international flights of foreign airlines at U.S. airports, and extends the three-hour tarmac delay limit for domestic flights, formerly in place only at large- and medium-hub airports, to flights at small- and non-hub airports. DOT delayed some new consumer protection rules to January 24, due to industry requests and court challenges by Spirit, Allegiant, and Southwest. Deferred rules would require: all taxes and fees to be included in advertised fares; disclosure of baggage fees on booking and on e-ticket confirmations; application of the same baggage allowances and fees throughout a journey; prompt notification of delays, cancellations and diversions; a ban on post-purchase price increases; and allowing passengers to hold a reservation without payment, or to cancel without penalty, for 24 hours after the reservation is made.

3. **Airline Industry Supports Court Challenge to New DOT Consumer Rules.**

The Air Transport Association (ATA) and the International Air Transport Association (IATA) filed notices with the U.S. Court of Appeals for the D.C. Circuit to submit *Amicus* briefs in support of the challenge filed by Kirstein & Young PLLC on behalf of Spirit Airlines and Allegiant Air to certain DOT new

consumer rules. Southwest Airlines earlier filed in support as an Intervenor. The rules challenged include the DOT requirement as of January 24, 2012 that all government taxes & fees be included in airline base fares and a requirement that passengers be allowed to cancel tickets without payment or penalty within 24 hours if the ticket is purchased more than a week before flight. The ATA and IATA filings support concerns raised by Spirit and Allegiant that DOT has exceeded its statutory authority in violation of the Airline Deregulation Act, the First Amendment protection of commercial free speech and the requirements of the Administrative Procedure Act.

4. East Coast Earthquake, Hurricane Create Havoc for Airlines.

FAA halted some operations at New York Kennedy, Newark Liberty and Washington Reagan National airports, after a 5.9-magnitude earthquake in Virginia rattled the East Coast; a 4.2 tremor struck about six hours later. Hurricane Irene then swept through the mid-Atlantic region, turning into a tropical storm as it reached New York and points north, causing airlines serving the East Coast to cancel thousands of flights, at a cost of millions of dollars.

5. FAA Approves Production of Boeing 787 Dreamliner.

FAA issued type and production certificates for the Boeing 787 Dreamliner with Rolls-Royce engines. The Dreamliner is the world's first major airliner to use composite materials for most of its construction, more than 50% by weight. It will use 20% less fuel and produce less noise compared to similarly sized airplanes, and it incorporates many capabilities of the Next Generation Air Transportation System (NextGen). The European Safety Agency (EASA) issued a same day validation of the FAA type certificate.

6. DOT Fines Airlines.

DOT fined United \$20,000 for providing inaccurate information to passengers about compensation they could receive for lost, damaged or delayed baggage on international flights. . . . DOT fined Air Canada (\$50,000), Ethiopian Airlines (\$50,000) and Thai Airways (\$70,000) for violation of price advertising rules. . . . DOT fined public charter operator Aviation Advantage \$150,000 for advertising flights in 2009 without listing the operator name and failing to disclose that passengers would have to sign an operator-participant contract. In 2010, the company sold tickets and operated charters without DOT authority, and used Capital Airways, an operator that did not hold the required commercial license. . . . DOT fined Swift Air \$100,000 for cancelling a public charter flight less than 10 days before scheduled departure; the carrier knew of compliance concerns; the entire charter program was canceled.

7. FAA Proposes \$155,000 in Civil Penalties Against American Eagle.

FAA proposed \$80,000 in civil penalties against American Eagle for allegedly entering inaccurate weight and balance data for eight flights operated in December 2010. A \$75,000 civil penalty is proposed for using improper procedures to repair an engine on an Embraer 135, which then was operated on 34 flights in September 2010.

8. NTSB News.

Deborah Hersman and Christopher Hart were sworn in for second two-year terms as Chairman and Vice Chairman, respectively, of the National Transportation Safety Board (NTSB). . . . NTSB will hold sessions in coming months on aircraft structural integrity and oversight of aircraft operated on behalf of government agencies; training on emergency communications in major aircraft accidents and incidents is for communications professionals working with airports, airlines and corporate aviation departments.

9. Pilot Fatigue Rules Delayed.

The Administration postponed new pilot fatigue rules amid cargo and charter airline opposition. FAA was to release the finalized rules by August 1, in response to a law enacted in 2010 following the 2009 Colgan Air crash in Buffalo that killed 50 people. Fatigue was found to be a significant contributing factor to pilot errors in that and other accidents. The Coalition of Airline Pilots Associations urged FAA to release the new flight/duty time regulations, which advocate “One Level of Safety” for all commercial flight operations—passenger and all-cargo. NTSB Chairman Deborah Hersman said airlines are holding up the rule because it is not in their financial self-interest. The Air Transport Association said the rules could cost airlines \$20 billion over 10 years, compared to an FAA estimate of \$1.2 billion. The White House Office of Management and Budget (OMB) is reviewing the proposal.

10. Airline Employment of FAA Safety Inspectors Restricted.

FAA issued a final rule prohibiting air carriers and other certificate holders from employing certain former FAA aviation safety inspectors as company representatives to the agency for a period of two years after they have left the agency..

11. FAA De-icing Rule for Commuter Aircraft.

FAA issued a new rule requiring scheduled airlines to install ice detection equipment on aircraft weighing less than 60,000 pounds or update manuals to ensure crews know when to activate ice protection systems. The rule addresses a longstanding NTSB recommendation.

12. June Employment Rose 1.9%.

U.S. scheduled passenger airlines employed 385,652 workers in June 2011, 1.9% more than in June 2010, reports DOT. The six network airlines employed 67.6% of the scheduled passenger airline total, the seven low-cost carriers employed 17.4% and the 18 regional carriers employed 13.7%.

13. DOT Air Travel Consumer Report for June

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

	June '11 / '10	May '11	Full Year				
			2010	2009	2008	2007	2006
On-time arrivals %	76.9 / 76.4	77.1	79.8	79.5	76	73.4	75.4
Cancellations %	1.8 / 1.5	2.1	1.76	1.39	1.96	2.16	1.71
Mishandled baggage*	3.57 / 3.65	3.52	3.99	3.91	5.26	7.05	6.73
<i>Consumer complaints:</i>							
Airline service	1,127 / 1,423	1,062	10,985	8,821	10,648	13,180	8,325
Disability-related	48 / 64	57	572	519	477	488	430
Discrimination**	12 / 22	10	143	131	115	99	114

Note: U.S. airlines reported 14 total tarmac delays of more than three hours, compared to three in June 2010 and 16 in May 2011.

* Reports per 1,000 passengers.

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

14. Court Rules Contract Claim for Breach of Good Faith Not Preempted.

See Section X, item 7.

II. AIRPORTS

1. ACI: June Passenger Traffic Growth Strong, Freight Flat.

Worldwide passenger traffic grew by nearly 5% in June, over June 2010, with international traffic up 6.2% and domestic up 3.6%, reports Airports Council International (ACI World). Only the Africa region saw a decline, largely due to civil unrest in several major North African markets. Freight tonnage was down 1.9%, “partially due to high fuel prices and it is likely there has been a diversion to maritime for freight that is less time-sensitive,” said ACI. “In Asia Pacific, there continues to be a contraction in freight volumes as Japan recovers from the industrial production decreases following the earthquake and tsunami earlier this year. But the IMF continues to forecast growth in emerging and developing economies and increased world trade for the last half of 2011; thus cargo should bounce back before year-end.”

2. United, Houston Agree on \$1 Billion Revamp of Terminal B.

The city of Houston and United agreed on a plan to renovate 42-year-old Terminal B at Bush Intercontinental, with the airline contributing \$686 million and Houston Airport System (HAS) \$288 million. HAS will pay its share with a \$3-per-passenger fee it has been collecting for two years. United gains control of operations, including concessions, in Terminal B, and will give the city 10% of receipts with an annual cap of \$1 million. United extended its Terminal C tenancy and gave up rights at the international terminal.

3. Chicago Requests Extension on Midway Privatization.

The city of Chicago asked FAA for a sixth extension on its application to privatize Midway Airport, after missing a July 31 deadline; a 2009 privatization effort failed due to the global credit crisis. Under the Airport Privatization Pilot Program, FAA can select up to five airports for privatization, only one of which can be a large commercial hub, such as Midway. Luis Munoz Marin International in Puerto Rico, Briscoe Field near Atlanta and AirGlades near Miami currently have applications with FAA.

4. Brazil Auctions Airport Concession.

Brazil's civil aviation authority ANAC auctioned a concession to build and operate an airport in Rio Grande do Norte state, reports Reuters. Inframerica, a venture formed by Brazil's Engevix and Argentina's Corporacion America, paid about \$100 million for the rights. The concession is the first in a plan to let private companies build and operate five major passenger terminals. Brazil's airports have been run exclusively by state-owned airport authority Infraero.

Rio Grande do Norte is in the northeastern region of Brazil; the capital and largest city is Natal.

5. Hainan Air Parent Bids for Hochtief Airport.

China's state-owned HNA Group, parent of Hainan Airlines, is bidding for airport assets of German construction firm Hochtief, valued at more than \$1 billion. Hochtief owns stakes in the airports of Athens, Budapest, Düsseldorf, Hamburg, Sydney and Tirana. HNA also is bidding on stakes in Turkish air cargo carrier ACT Airlines and Malev Hungarian Airlines; in related news, Hungary announced it will invest \$45 million in Malev.

6. Dubai to Become Second Largest International Airport This Year.

Dubai will become the world's second busiest international airport this year, estimates the Centre for Asia Pacific Aviation (CAPA), behind London Heathrow and jumping ahead of Paris de Gaulle, Hong Kong and Frankfurt.

III. **SECURITY AND DATA PRIVACY**

1. **TSA Tests Enhanced Behavior Screening at Logan.**

The Transportation Security Administration (TSA) is testing a new level of behavior detection at Boston Logan, in which officers ask all passengers non-intrusive questions and observe responses, such as sweating or avoiding eye contact, to determine suspicious behavior. The 60-day pilot, an expansion of SPOT (Screening of Passengers by Observation Techniques), is limited to the Logan Terminal A checkpoint.

2. **Known Crewmember Screening Tested at O'Hare.**

The first test site for the Known Crewmember program is operating at Chicago O'Hare. The program, which links airline employee databases, verifies a pilot's identity and employment status. Known Crewmember "recognizes the extensive background checks pilots receive as part of their employment," said the Air Line Pilots Association, which led the effort with the Air Transport Association. TSA was urged to include flight attendants in the future. Additional Known Crewmember access points will open this year at Miami International, Boston Logan, Washington Dulles, Minneapolis-St. Paul, Phoenix Sky Harbor and Seattle-Tacoma.

3. **TSA Finalizes Air Cargo Screening Mandate.**

TSA finalized its Certified Cargo Screening Program (CCSP), created in 2008 to ensure that all air cargo carried in passenger jets is screened, per requirements of the 9/11 Act for domestic air cargo. Under the finalized rule, air cargo entities may apply to become a Certified Cargo Screening Facility (CCSF). CCSFs carry out a TSA-approved security program and must adhere to strict chain-of-custody requirements to secure cargo from the time it is screened until it is loaded onto a passenger aircraft. They must also implement a multi-layered security program that includes appointing security coordinators, strict access controls and vetting of key personnel. Since August 2010, all air cargo carried on passenger aircraft departing U.S. airports is screened. Air carriers must verify that the chain of custody is intact upon acceptance of screened cargo from a CCSP participant.

4. **Coalition Calls For Suspension of Watchlist.**

The Electronic Privacy Information Center (EPIC) and other privacy, consumer rights, and civil rights organizations filed a statement of opposition to the Department of Homeland Security (DHS) regarding recently proposed changes to the Watchlist Service. The new system of records would contain

name, date and place of birth, biometrics and photographic data, passport and driver's license information and other information; and multiple data feeds from the Federal Bureau of Investigation to DHS would be replaced with a single feed. The groups objected to proposals to exempt portions of the system of records from Privacy Act provisions because of criminal, civil, and administrative enforcement requirements, and requested suspension of the proposal pending full review of privacy, security and legal implications.

IV. E-COMMERCE AND TECHNOLOGY

1. American Signs GDS Agreements.

Existing full content agreements between American and Travelport's global distribution systems (GDS), Apollo, Galileo and Worldspan, have been extended and are no longer due to expire in 2011. Travelport also owns 48% of Orbitz Worldwide. . . . American agreed to explore long-term arrangements with American Express Global Business Travel and corporate travel agency Hogg Robinson Group, in which fares, schedules and customized travel products and services would be accessed via its direct connect link. . . . American and Sabre extended their full-content agreement, set to expire August 31, to September 6, due to ongoing litigation. The carrier said it expected no disruption in service with Sabre.

2. Gogo Vision Launches on American Flights.

American is the first North American airline to offer Gogo Vision, which enables inflight wireless streaming of movies and other content from an onboard server to Wi-Fi enabled laptops. The service is available on the carrier's Boeing 767-200s, primarily on flights between New York Kennedy and Los Angeles and San Francisco.

3. ARC: U.S. Ticket Sales 6% Ahead of Last Year.

Consolidated dollar value of airline tickets sold by U.S.-based travel agencies increased 6.36% in first seven months 2011, compared to same period 2010, and 28% over same period 2009, says Airlines Reporting Corporation (ARC), the financial settlement link between airlines and travel sellers. January-July 2011 sales were \$50.5 billion, compared to \$47.5 billion in 2010, and \$39.4 billion in 2009. Passenger segments for first seven months 2011 fell 2.5% (219.3 million, compared to 224.9 million in 2010), with a 4% increase over same period 2009. Transactions for January-July 2011 were down 2.05% from same period 2010, and up 6% over same period 2009. Results are based on data from 15,043 U.S. retail and corporate travel agencies, satellite ticket printing offices and online travel agencies, and do not include tickets purchased directly from airlines. Total sales are equal to total amount paid for a ticket, which includes taxes and fees.

V. **ENERGY AND ENVIRONMENT**

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

The average price of aviation jet fuel, as of August 19, was \$124.6/barrel, down 6.9% on the month and up 43.1% year-on-year, reports the International Air Transport Association (IATA). Fuel price average for 2011 was \$127.9/barrel.

2. **U.S. Initiative to Spur Biofuels Industry.**

The U.S. Departments of Agriculture, Energy and Navy will invest up to \$510 million during the next three years, in partnership with the private sector, to produce advanced drop-in aviation and marine biofuels to power military and commercial transportation. The initiative responds to the Administration's framework for reducing dependence on foreign oil (Blueprint for a Secure Energy Future). Several drop-in biofuel plants and refineries will be constructed or retrofitted. "These pioneer plants will demonstrate advanced technologies to produce infrastructure-compatible, drop-in renewable fuels from America's abundant biomass resources," said Energy Secretary Steven Chu. The U.S. spends more than \$300 billion on imported crude oil per year.

3. **Firms Chosen to Advance Drop-in Transportation Biofuels.**

The National Advanced Biofuels Consortium (NABC) chose Amyris and Virent Energy Systems to work on Stage II development of drop-in biofuels, which can replace or supplement existing fuels without changes to existing fuel distribution networks or engines. NABC is funded by the Department of Energy with \$35 million through the American Recovery and Reinvestment Act. Stage I efforts focused on determining whether technical and economic barriers could be overcome to develop a pilot-ready process in three years for six biofuels technology pathways. Stage II will further develop two technologies to a pilot-ready state over two years. Fermentation of Lignocellulosic Sugars, led by Amyris, focuses on converting biomass into sugars that can be biologically and chemically converted into a renewable diesel fuel, which is certified by the U.S. Environmental Protection Agency to be blended up to 35% with conventional diesel. Catalysis of Lignocellulosic Sugar, led by Virent, focuses on converting biomass into sugars that can be chemically and catalytically converted into an array of gasoline and diesel fuel components.

VI. U.S. CONGRESS

1. Bill Ends Partial FAA Shutdown.

A House bill authorizing FAA through September 16 was approved by the Senate in a unanimous consent procedure, ending a two-week partial shutdown of the agency. The 21st FAA extension (H.R. 2553) includes provisions to reduce Essential Air Service. Subsidies are eliminated for service to airports 90 miles or less from a large- or medium-hub airport, but the Transportation Secretary can waive the requirement when geographic characteristics make it difficult to access the large- or medium-hub airport. Republican leaders, in a letter to DOT Secretary Ray LaHood, requested “a thorough written justification for any waivers to the 90-mile requirement granted by the Secretary.” In related news, bipartisan legislation introduced in the House would ensure back pay for FAA employees furloughed during the shutdown, to be funded by the Airport and Airway Trust Fund.

2. Thompson Wants End to Security “Chat-Downs.”

Bennie Thompson (D-Miss.), Ranking Member of the House Committee on Homeland Security, asked TSA to end an expanded behavior-detection program that involves interviews with all passengers moving through security checkpoints. TSA is going forward with the “chat-downs,” said Thompson, “despite concerns from Congress and independent analyses stemming from its precursor, the Screening Passengers by Observation Technique (SPOT) program.” Thompson noted a likelihood of ethnic and racial profiling by Behavior Detection Officers. A 60-day pilot of the enhanced program is underway at Boston Logan.

VII. **BILATERAL AND STATE DEPARTMENT NEWS**

1. **MANPAD Proliferation Subject of New Report.**

The U.S. State Department announced a new report on the proliferation of shoulder-fired anti-aircraft missiles known as Man-Portable Air Defense Systems (MANPADS). Since 1975, 40 civilian aircraft have been hit by MANPADS, causing about 28 crashes and more than 800 deaths around the world. "MANPADS: Combating the Threat to Global Aviation from Man-Portable Air Defense Systems" tracks State Department efforts, in partnership with the U.S. Department of Defense, the U.S. Department of Homeland Security and other agencies, to safely dispose of more than 32,500 at-risk MANPADS systems in 30 countries since 2003. The report also entails U.S. support for international efforts to prevent proliferation and provide technical assistance to countries looking to strengthen safeguards on remaining armament inventories.

2. **Canada Signs Pacts With Brazil, Mexico, Costa Rica, Europe.**

Canada and Brazil signed a new air transport agreement that builds on the 1990 bilateral and provides airlines with significant additional flexibility for route selection, frequency of service and pricing. In addition to existing rights that allow code sharing between a Canadian and Brazilian airline, carriers now can offer such services using flights of third country airlines. Brazil will host the Summer Olympic and Paralympic Games in 2016 in Rio de Janeiro. . . . Canada and Mexico reached an expanded agreement that provides a completely open framework for direct flights between Canada and Mexico, allowing any number of airlines from both countries to offer more services between any Canadian and Mexican cities. The agreement also provides greater flexibility to adjust prices according to market forces and modernizes safety and security provisions. . . . Canada and Costa Rica signed an agreement that will provide significantly more flexibility in terms of routes, frequency of service and pricing; enables Canadian and Costa Rican airlines to offer services using flights from countries other than their own; and contains provisions dealing with safety and security. The 1996 agreement remains in effect until the new pact is ratified by the two countries. . . . Canada and Europe signed an aviation safety agreement that commits the European Aviation Safety Agency and Transport Canada to jointly resolve safety issues, facilitates reciprocal acceptance of aeronautical products and services and provides stronger and more consistent communications on all work related to aviation safety matters.

VIII. EUROPE AND AFRICA

1. Air Berlin CEO Resigns.

After announcing capacity reductions of more than one million seats, Air Berlin CEO Joachim Hunold resigned. Hartmut Mehdorn was appointed interim CEO. Hunold initiated fleet, route and frequency reductions, partial withdrawal from regional airports, and a concentration on the Berlin, Dusseldorf, Palma de Mallorca and Vienna hubs. He said regional airports are casualties of Germany's aviation tax, which "is causing a dramatic distortion of competition." Hunold led the carrier since 1991.

2. Flybe Acquires Finncomm With Finnair.

UK-based Flybe Group acquired Finnish Commuter Airlines with Finnair. Flybe Europe Managing Director Mike Rutter said the joint venture airline's flights to Finland, Estonia and the Nordic/Baltic states, as of November 14, will connect to Finnair international flights, be included in Finnair flight schedules and flown as code shares.

3. Safest Airlines Identified.

The 10 safest airlines in the world, alphabetically, are Air France-KLM, American, British Airways, Continental, Delta, Japan Airlines, Lufthansa, Southwest, United and US Airways, according to Geneva-based Air Transport Rating Agency (ATRA), a specialist in aviation risk assessment. ATRA examined 2009 data using criteria such as average age of fleet and technical, human and organizational elements to arrive at its Holistic Safety Rating 2011.

4. Air France-KLM to Invest in New Ivory Coast Airline.

Air France-KLM will hold a 35% stake in a new Ivory Coast airline that will replace grounded Air Ivoire, reports Bloomberg. The state will own 51% of the company, which will start flights by January.

5. Kenya Airways to Operate New Low-Cost Unit.

Kenya Airways reportedly is starting a low-cost unit, Jambo Jet, to operate routes in eastern Africa.

6. Air India's Star Membership Application on Hold.

See Section IX, item 2.

IX. ASIA/PACIFIC AND MIDDLE EAST

1. ACCC Tentatively Authorizes Qantas-American JBA.

The Australian Competition and Consumer Commission tentatively approved a joint business agreement (JBA) between oneworld partners Qantas and American, saying it will not have anti-competitive effects. Under the JBA, the airlines will coordinate operations on services between Australia/New Zealand and the U.S and on respective services which support the trans-Pacific routes. ACCC previously authorized an alliance between Virgin Australia and Delta on transpacific routes.

2. Air India's Star Membership Application on Hold.

Star Alliance announced that integration of Air India has been suspended, "due to the fact that Air India has not met the minimum joining conditions that were contractually agreed in December 2007." Existing bilateral relationships with member airlines are not affected. In related news, the Indian government reportedly will infuse 5 billion rupees (\$113 million) as equity in Air India this fiscal year, in addition to 20 billion rupees provided earlier this year. The state-run carrier lost an estimated \$1.75 billion in year ended March 31 and \$1.25 billion in the previous business year.

3. Tiger Australia Suspension Lifted; Tony Davis to Depart.

Australia's Civil Aviation Safety Authority (CASA) lifted the suspension of Tiger Airways Australia, which had been in effect since July 2. The carrier resumed some operations after complying with conditions regarding pilot training, proficiency and fatigue management; currency and revision of operational manuals; appointment of additional qualified personnel in key positions; and amendments to the safety management system. CASA limited the number of sectors Tiger could fly to 18 a day during August, with ensuing operations subject to CASA approval. Meanwhile, Singapore-based Tiger Airways Holdings moved CEO Tony Davis to head the budget carrier, then announced he would leave the company on November 1 to pursue other career options.

4. Qantas, JAL, Mitsubishi to Launch Jetstar Japan.

A low-cost airline will be launched by Qantas Group, Japan Airlines (JAL) and Mitsubishi by the end of 2012, with each holding a one-third share (voting-rights-basis). Jetstar Japan initially will fly three new Airbus A320s from Tokyo Narita and Osaka Kansai; destinations under consideration include Sapporo, Fukuoka and Okinawa. Short-haul international services to key Asian cities are planned. Jetstar is a Qantas unit.

5. Qantas Plans Asian-Based Premium Airline.

Qantas is seeking shareholders for an Asian-based premium airline. The new brand will have a “private-jet feel,” said CEO Alan Joyce, with “luxurious” business- and economy-class cabins on 180-seat Airbus A320 services to India and China. Qantas announced phase one of a five-year plan that will affect about 1,000 jobs and reduce a cost base that, said Joyce, “is around 20% higher than that of our key competitors.” A “gateway” approach, based on an expanded network of alliances, is meant to “reduce loss-making, asset intensive flying.” Qantas will replace Buenos Aires with direct service to Santiago, home to oneworld partner LAN, and with British Airways will offer daily A380 services from Melbourne and Sydney to London via Singapore. Previously announced Dallas/Fort Worth service with American Airlines replaces San Francisco. Fleet additions include 12 A380s and up to 110 A320s, 78 of which will be A320neos. The short-term objective “is to return Qantas International to profitability,” said Joyce. “In five years time the Qantas flying businesses, both domestic and international combined, will exceed the cost of capital on a sustainable basis.”

6. AirAsia, MAS Form Partnership.

Malaysian Airline System (MAS), AirAsia and AirAsia X signed a five-year collaboration agreement, with an option for a five-year renewal. Through a share swap, AirAsia parent Tune Air will hold a 20.5% stake in flag carrier MAS; Malaysian investment arm Khazanah will own a 10% stake in AirAsia and continue to be the single largest and major shareholder (49%) of MAS. Khazanah also proposes to acquire 10% of shares in AirAsia X. Flights to destinations currently not served by any of the parties will be explored; savings and increased revenues are expected in aircraft purchasing, engineering, ground support services, cargo services, catering and training. MAS will focus on full-service operations; resources of its budget unit, Firefly, will be refocused to launch a regional full-service airline.

7. China Eastern Begins Shanghai-Honolulu Service.

China Eastern launched Shanghai-Honolulu Airbus A340-300 service, the first regularly-scheduled direct flight from China to Hawaii. The Hawaii Tourism Authority projects more than 91,000 visitors from China will arrive in 2011, a 37% increase, and estimates the route will provide up to \$60 million in annual visitor expenditures.

8. **Air China Acquires Stake in Tibetan Startup.**

Air China acquired a stake in Lhasa-based startup Tibetan Airlines. The fleet has been retrofitted to serve Tibet's high altitude airfields; Bangda at 14,219 feet above sea level is the highest commercial airport in the world.

9. **China Halts New Train Projects After Deadly Accident.**

Domestic airline stock prices soared as China halted new train projects after a July 23 high-speed train crash killed 40 people. Train speeds were reduced from 350 to 300 kilometers/hour and train fares fell.

10. **Thai Smile to Begin Airbus Service Next Summer.**

Thai Airways' "light-premium" subsidiary Thai Smile will begin domestic operations next July from Bangkok Suvarnabhumi, and by 2013 will fly to other destinations in Southeast Asia and China and India. An initial fleet of four Airbus A320s eventually will expand to 11 aircraft. Low-cost Thai Tiger, in partnership with Singapore's Tiger Airways, is also planned.

11. **Safest Airlines Identified.**

See Section VIII, item 3.

X. AMERICAS

1. Delta Invests \$65 Million in Aeromexico, Expands Latin America Service.

Delta will invest \$65 million in Aeromexico, in exchange for stock, and gain a seat on the Aeromexico Board of Directors, in a new long-term, exclusive alliance, subject to regulatory approvals. The SkyTeam partners will offer network-wide code sharing and eventual co-located airport facilities. They will expand their Maintenance, Repair and Overhaul agreement with a new facility to open in Mexico in third quarter 2013, to handle their own and third party repair work. . . . Delta and Aerolineas Argentinas will start code sharing this year, subject to approvals, on flights connecting Miami and Atlanta to Buenos Aires, and to destinations in the U.S., Argentina, Canada, Brazil, Bolivia, Chile, Paraguay and Uruguay. Reciprocal frequent flier benefits will start in 2012. Aerolineas Argentinas will join SkyTeam in 2012. . . . Delta will begin year-round weekly Boeing 737-800 flights between Minneapolis-St. Paul and Liberia, Costa Rica in January. An additional weekly Atlanta-Brasilia frequency will bring the Boeing 757 service to daily in December. Delta will add two new weekly Detroit-Sao Paulo flights in December, to offer daily Boeing 767 service. . . . In other news, Delta ordered 100 Next-Generation 737-900ERs, with list-price value of more than \$8.5 billion.

2. United to Invest Additional \$550 Million Fleet-Wide.

United Continental will invest \$550 million on its onboard product, including flat-bed seating on 62 additional long-haul aircraft, advanced broadband Wi-Fi on more than 200 aircraft and streaming wireless video on Boeing 747-400s. Beginning in March 2012, the airline will nearly double overhead bin size on all 152 of Airbus A319s and A320s. United is also doing a nose-to-tail renovation of its p.s. fleet, which serves the New York Kennedy to San Francisco and Los Angeles markets; by 2013, p.s. aircraft will offer flat-bed seats, Economy Plus, power ports at every row, on-demand audio and video and Wi-Fi service. . . . In other news, United fleet/ramp workers opted for representation by the International Association of Machinists and Aerospace Workers (IAM), rather than the International Brotherhood of Teamsters (IBT) which represented workers at Continental. The Teamsters agreement allowed Continental to outsource all ramp/fleet work, while IAM members at United have a contract that guarantees work will be performed by United-IAM employees. The election was conducted by the National Mediation Board.

3. **AMR Will Not Retain Any Ownership Interest in American Eagle.**

AMR plans to spin off all outstanding shares of American Eagle and will not retain any ownership interest. A Form 10 filing states that Eagle generated \$1.2 billion in revenue in 2010, with more than \$250 million from ground handling services. Eagle would initially operate 281 aircraft on behalf of American. American could withdraw from Eagle and re-bid up to 12 turboprops per year from 2012 and up to 40 jets per year from 2014. While all aircraft will remain on Eagle's operating certificates, prior to any divestiture, the company expects to transfer to American all jet aircraft and associated indebtedness, on which AMR is already a guarantor. The spin-off is subject to regulatory and other approvals. . . . In other news, Hong Kong-based investment firm Guoco Group purchased a 7.3% stake (24.4 million shares) in American.

4. **Court Rules Contract Claim for Breach of Good Faith Not Preempted.**

The Court of Appeals for the Ninth Circuit held in *Ginsberg v. Northwest Inc.* (No. 09-56986, Aug. 5, 2011) that federal preemption under the Airline Deregulation Act (ADA), does not prohibit claims for breach of the implied covenant of good faith and fair dealing which are a part of all contracts under California law. Ginsberg alleged that Northwest cancelled his frequent flyer miles because he complained too frequently about the carrier's service and argued that the provision in the contract permitting Northwest to terminate his membership at its sole discretion violated this implied right. The court held that the ADA was not intended to preempt state common law contract claims but rather was only to prohibit states from regulating rates, routes and service. The court reversed a district court decision finding that the lower court used an overly broad interpretation of what relates to pricing and service.

5. **Air Canada, United Respond to Canada's Competition Concerns.**

Air Canada and United responded separately to an application filed in June by Canada's Commissioner of Competition to prohibit their proposed joint venture. The application "is fundamentally misconceived," said Air Canada; it "ignores Canada's 'Blue Sky' international air transportation policy, developments in air transportation in the U.S. and other countries around the world [and would] significantly impede Air Canada's ability to compete [and] have significant adverse effects on Canadian consumers." The Star partners already have approval from U.S. regulators for a five-year-old pact to coordinate fares, schedules and marketing on transborder flights, but applied in October to also combine revenues. The Commissioner maintains the joint venture "will monopolize ten important Canada/United States routes, and

substantially reduce competition on nine additional routes, leading to increased prices and reduced consumer choice on key transborder routes.”

6. Southwest to Offer Nonstops to Five Destinations From Atlanta.

Southwest will begin service to Atlanta in February, with nonstop daily departures to Baltimore/Washington, Chicago Midway, Denver, Houston Hobby and Austin. Initial fares start at \$79 one-way.

7. Spirit Adds Oakland, Chicago Services.

Spirit initiated Oakland International Airport service with two daily nonstops to Las Vegas, to increase to three in September, and is adding service from Chicago O'Hare to Boston, Dallas/Fort Worth, Detroit, New York LaGuardia and Orlando.

8. SkyWest to Fly as US Airways Express.

SkyWest signed a letter of intent to operate 14 Bombardier CRJ200s as US Airways Express from 2012. The three-year agreement, subject to board approvals, provides options to upgrade to CRJ700s. Utah-based SkyWest will replace CRJ200 and Dash 8 Express service currently provided to US Airways in Phoenix by Mesa.

9. JetBlue and TAM to Partner on Flights to Brazil and Beyond.

JetBlue announced a new interline partnership with TAM for travel to Brazil and beyond via New York Kennedy and Orlando. TAM offers multiple daily departures from Kennedy to Rio de Janeiro (Galeao) and Sao Paulo (Guarulhos), and twice-daily service between Orlando and Sao Paulo.

10. Air Canada Plans New Low-Cost Carrier.

The Canadian Union of Public Employees (CUPE), which represents Air Canada's 6,800 flight attendants, tentatively agreed to a five-year pact that includes wage increases, pension protection and better crew rest. The last collective agreement expired on March 31. The labor agreement outlines Air Canada's plan to create a discount leisure airline, for which it will recruit new flight attendants at a lower wage scale; members of the Air Canada Pilots Association rejected a tentative contract in May that would have established a lower wage scale for pilots at the discount carrier.

11. LAN-TAM Merger Wins First Approval.

Approval of the LAN-TAM merger was recommended by the antitrust unit of Brazil's finance ministry, the first of three antitrust decisions in Brazil on the merger. If all regulatory hurdles are passed in Chile and Brazil, LATAM will be

one of the world's largest airlines. TAM expects final approval by Brazilian regulators by first quarter 2012. LAN expected Chile's antitrust regulators to approve the takeover of TAM in August.

12. Peruvian Airlines Grounded.

Authorities suspended all Peruvian Airlines flights, citing maintenance shortcomings. Tourists visiting Machu Picchu were being flown by military plane to Lima from Cuzco. Peruvian Airlines was the second-largest in Peru after LAN. The government said there are plans for a new flag carrier; Aero Peru went bankrupt in 1999.

13. Airline Industry Supports Court Challenge to New DOT Consumer Rules.

See Section I, item 3.

14. Safest Airlines Identified.

See Section VIII, item 3.

15. ACCC Tentatively Authorizes Qantas-American JBA.

See Section IX, item 1.

16. Air India's Star Membership Application on Hold.

See Section IX, item 2.

17. China Eastern Begins Shanghai-Honolulu Service.

See Section IX, item 7.