



## WASHINGTON AVIATION SUMMARY

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### CONTENTS

I.	REGULATORY NEWS.....	1
II.	AIRPORTS.....	4
III.	SECURITY AND DATA PRIVACY .....	7
IV.	E-COMMERCE AND TECHNOLOGY.....	10
V.	ENERGY AND ENVIRONMENT .....	12
VI.	U.S. CONGRESS.....	14
VII.	BILATERAL AND STATE DEPARTMENT NEWS .....	15
VIII.	EUROPE/AFRICA.....	17
IX.	ASIA/PACIFIC/MIDDLE EAST .....	20
X.	AMERICAS .....	21

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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. **Delta, Northwest Merger Approved.**

Saying the merger of Delta and Northwest “is likely to produce substantial and credible efficiencies that will benefit U.S. consumers and is not likely to substantially lessen competition,” the U.S. Department of Justice Antitrust Division closed its six-month investigation and approved the arrangement. The new airline, called Delta and headquartered in Atlanta, is the largest in the world. Northwest is now a Delta subsidiary, NWA Inc., with Delta President and Chief Financial Officer Edward Bastian as its CEO and President. Former Northwest CEO Douglas Steenland is a member of the new Board of Directors. Delta CEO Richard Anderson is CEO of the combined company, and Delta Chairman Daniel Carp its Chairman. The companies will be integrated over the next 12-24 months. Delta and Northwest reached a settlement with travelers suing to block the merger in U.S. District Court in San Francisco. The merger “signals the end stages of airline deregulation,” said House Transportation Chairman James Oberstar (D-Minn.). It will trigger worldwide consolidation of air service into a handful of global mega-carriers, “not what Congress intended when it voted for airline deregulation in 1978, [and will result] in fewer choices, higher fares, and diminished levels of service.” Oberstar said he is drafting a bill to expand the Essential Air Service program, which is “likely to be most adversely affected by the merger,” and will revisit these issues and the question of consumer protection and passenger rights when Congress reconvenes.

### 2. **U.S. Protectionism Chided.**

The protectionist approach adopted by the United States has represented an abdication of its leadership role, Virgin Atlantic CEO Steve Ridgway told the International Aviation Club in Washington. Europe’s vision for a transatlantic open aviation area would remove traditional barriers to investment and freedom of routings, he said, and the U.S. needs to return to providing leadership on issues at the heart of the second stage of EU-U.S. negotiations—unlimited market access and freedom for foreign investors. Both sides need to work together to overcome the legislative obstacles to progress. (See also Section VII, item 1.) Referring to the proposed British Airways-American Airlines transatlantic joint venture, which Virgin Atlantic is mightily opposing through regulatory and media means, Ridgway said the new entity would have a stranglehold and insurmountable monopoly on some of the busiest and most profitable routes between Europe and the U.S.

3. **Continental Applies for Houston-Rio de Janeiro Service.**

Continental filed an application with the U.S. Department of Transportation (DOT) to operate daily year-round Boeing 767-200 service between Houston Bush Intercontinental Airport and Rio de Janeiro and through flight service between New Orleans and Rio de Janeiro, beginning June 2009. The airline currently operates daily nonstops between New York Newark and Sao Paulo Guarulhos and between Houston and Sao Paulo, with continuing service to Rio, and will operate three weekly Houston-Rio nonstops from December 17, 2008 through February 28, 2009.

4. **Third-Country, Code Share Services to Russia Awarded.**

DOT awarded tentative approval to six U.S. carriers to offer third-country, code share service to Russia. American plans to offer its service via Helsinki with Finnair, Delta via Paris with Air France, Northwest via Amsterdam with KLM, United via London with bmi, and both Continental and US Airways via Zurich with Swiss. Per an agreement reached with Russia in July, U.S. carriers can enter into up to eight such arrangements with carriers from 16 European countries, up to six of which may be for passenger services.

5. **DOT IG Completes Aircraft Maintenance Outsourcing Audit.**

The DOT Inspector General (IG) conducted an audit of aircraft maintenance outsourcing to identify the type and quantity of maintenance performed by external repair stations and determine whether the Federal Aviation Administration (FAA) is effectively monitoring air carriers' oversight and verifying that safety requirements are met. The IG found that FAA relies too heavily on carriers' oversight procedures, which are not always sufficient, and recommended that FAA develop and implement a system to determine how much and where critical maintenance is performed; ensure that inspectors conduct initial and follow-up inspections at substantial maintenance providers; perform detailed reviews of carrier and repair station audits and corrective actions; document inspection findings in the national database; and review related findings by other inspectors. In addition, since many carriers do not differentiate between in-house and outsourced maintenance, FAA must ensure carriers provide repair stations with clearer guidance on how to perform maintenance and inspections. FAA is working to address this issue through a rulemaking change but needs to pursue interim actions to establish agreements between carriers and repair stations on maintenance procedures, said the IG, which conducted the audit at the request of the House Transportation Committee.

6. **Domestic Air Fares Reach Highest Quarterly Level.**

Average domestic air fares in second quarter 2008 reached the highest level for any quarter in the 13 years measured by available data, reported DOT, and

were up 8.1% over Q2 2007. The average fare was up 14.7% from the post-9/11 Q2 low of \$307 in 2005, and 18.5% from Q2 1995. Of the top 100 airports based on originating passengers, the highest Q2 fares were in Cincinnati, followed by Greenville/Spartanburg, Knoxville, Madison and Grand Rapids. The lowest were at Dallas Love, followed by Burbank, Houston Hobby, Chicago Midway and Oakland. A separate measure of fares, the Air Travel Price Index (ATPI), reached an all-time high in the second quarter, up 4.1% from the previous high set in first quarter 2008 and up 7.2% from Q2 2007 to Q2 2008. DOT Secretary Mary Peters said the data shows the need for competition at newly capped airports, where fares increased at a faster rate. The average airfare at Newark Liberty was up 16%, after caps were put in place in May of this year. "Competition is the key to lower fares," she said, "and slot auctions are the best way to get new airlines to serve New York's airports while caps are in place." DOT has issued rules to allow slot auctions at New York's three capped airports, where physical constraints make it virtually impossible to add new runways (see also Section II, item 1).

**7. DOT Air Travel Consumer Report for August.**

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

	August '08/'07	July '08	Full Year				
			2007	2006	2005	2004	2003
On-time arrivals %	78.4 / 71.7	75.7	73.4	75.4	77.4	78.1	82
Mishandled baggage*	4.98 / 7.58	4.86	7.03	6.73	6.64	4.91	4.19
<i>Consumer complaints:</i>							
Airline service	1,006 / 1,639	1,093	13,168	8,325	8,741	7,452	5,983
Disability-related	41 / 61	65	480	430	511	521	375
Discrimination**	17 / 10	9	99	114	129	118	85

Note: Aloha Airlines ceased operations in April, reducing the number of reporting carriers from 20 to 19.

\* Reports per 1,000 passengers.

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

## II. AIRPORTS

### 1. Slot Auction Rules for New York Airports Finalized.

DOT issued final rules, effective January 2009, for the auctioning of up to 10% of landing and takeoff slots at New York Kennedy, Newark and LaGuardia airports; 89 slots at Kennedy, 113 at La Guardia, and 91 at Newark could be auctioned over the next five years to new entrant or other airlines. The new rules also would lower the hourly operating cap at LaGuardia by retiring an additional 5% of slots, cutting delays by an estimated 40%. Airlines would keep 988 of their current slots at La Guardia, 1,035 at Kennedy, and 1,154 at Newark. DOT will spend \$89 million between 2009 and 2016 on new and improved taxiways at Kennedy. The Air Transport Association (ATA) filed a federal lawsuit to halt the auction, challenging the claim that slots can be leased or disposed of under FAA's general property management authority. The International Air Transport Association (IATA) filed a petition for review with the U.S. Court of Appeals for the District of Columbia, condemning the final rule as an ineffective and illegal way to alleviate flight delays. Slot confiscation is almost universally opposed, said IATA. "DOT ignored 60 years of internationally accepted and proven slot management procedures contained in the IATA Worldwide Scheduling Guidelines (WSG)." Congressman James Oberstar (D-Minn.) and Senator Patty Murray (D-Wash.) asked the DOT Inspector General to investigate the legality of the auctions, citing a nonbinding Government Accountability Office opinion that "FAA may not auction slots under its property disposition authority, user fee authority or any other authority." In defense of "weary travelers . . . sitting on packed planes that can't get off the ground because everyone else is trying to do the same thing at the same time," a *Washington Post* editorial praised the auction plan, saying, "the right to fly at 9 a.m. or 5:30 p.m. is a valuable commodity. [The next Congress] should give the FAA clear statutory authority. The airlines can't land or take off without the agency's permission. And they should have to pay for doing so at peak times."

### 2. Chicago Midway First Major U.S. Airport to be Privatized.

Midway Airport will become the first major U.S. airport to be privatized if FAA approves a 99-year lease awarded by the Chicago City Council to a consortium comprised of Citi Infrastructure Investors, Vancouver Airport Authority unit YVR Airport Services and John Hancock Life Insurance. The city will get the \$2.5 billion lease fee in an upfront payment and airlines that currently fly to Midway have agreed to new 25-year leases with rates capped for six years at levels below this year's charges, then raised with the consumer price index, excluding food and energy costs. Mayor Richard Daley said the

lease will mean lower and more predictable charges for airlines and improvements in amenities and services for passengers. The Transportation Security Administration (TSA) must approve a revised security plan.

3. **Las Vegas Airport Expansion Questioned.**

Las Vegas McCarran International completed a \$179 million, 128,000-square-foot, nine-gate wing, which completes the 800,000-square-foot D concourse; and a C Annex security checkpoint with 12 additional lanes. Some \$3.5 billion in improvements to be completed through 2013 include construction of \$2.5 billion, 14-gate Terminal 3, to open mid-2012. Such plans are being questioned by Southwest and others, as McCarran passenger traffic is down 4.8% this year and available seats are projected to drop 12% to 15% next year. About 35% of Las Vegas air traffic is on Southwest, which has halted a plan to increase daily flights there from 240 to 350.

4. **Dallas-Fort Worth, Shanghai Airport Authority to Cooperate.**

Dallas-Fort Worth International and the Shanghai Airport Authority signed a Memorandum of Understanding establishing them as "Friendship Airports," which empowers them to work closely together on business and operational projects, from promoting direct air links to sharing information ranging from protecting the environment to airport security.

5. **Mexico Delays Riviera Maya Airport Project.**

Mexico delayed plans for a new airport near the Mayan ruins in the Caribbean town of Tulum, due to the global financial crisis. The Riviera Maya airport was to open in 2012.

6. **BAA Service at Heathrow, Gatwick Improves.**

The UK Civil Aviation Authority (CAA) reported that security queuing times, cleanliness and pier service in most terminals at London Heathrow and Gatwick have improved over the past six months, compared to the year-ago period. However, because improvements were not consistent across all services at all terminals, airport operator BAA has paid £7.34m in rebates where it has failed to meet required standards in the April to September 2008 period (£4.08m at Heathrow and £3.26m at Gatwick). CAA asked BAA for a plan to improve services that still fail to meet standards, and will audit the service quality schemes in early 2009.

7. **ADP, Schiphol Group to Form Dual Hub.**

Aéroports de Paris (ADP) and Schiphol Group announced a cooperation and cross-shareholding agreement, "to anticipate future challenges in their sector." ADP would acquire 8% of Schiphol Group for €370 million. Schiphol Group

would acquire 8% of ADP from the French state for €530 million. The 12-year agreement would be supported by a committee comprised of four representatives of each company and chaired on a rotating basis by ADP and Schiphol Group CEOs, currently Pierre Graff and Gerlach Cerfontaine, respectively. The airports will cooperate in operations management and interaction with airlines. Consolidation of a dual-hub would offer through airlines 143 destinations and over 30,000 weekly frequencies. The companies have identified combined revenue and cost synergies of around €71 million per annum by 2013 and expect to reduce expenses by €18 million annually thereafter. Together they will pursue international airport development joint ventures that support the dual-hub concept. The transaction is expected to close in November, subject to required approvals.

**8. Copenhagen to Add Low-Cost Terminal.**

Copenhagen Airports will build a six-gate, low-cost terminal by 2010 that will require 30-minute airline turnarounds and passenger check-in via Internet, mobile phone or self-service kiosks; flight transfers will not be an option. CPH Swift will have initial annual capacity of 6 million passengers. Passenger charges will be half those at the main facility. Passengers will use the main airport's central security checkpoint and baggage sorting system.

**9. Singapore to Split Changi and Regulatory Body.**

The Civil Aviation Authority of Singapore (CAAS) will split business and regulatory aspects of Changi Airport into two entities by next summer. Changi Airport and Changi Airports International will be a wholly owned subsidiary of state investor Temasek Holdings. Liew Mun Leong, currently CAAS Chairman and CEO of developer CapitaLand, will be Chairman of the new airport company, which is expected pay for construction of planned Terminal 4. Lee Hsien Yang, brother of Singapore Prime Minister Lee Hsien Loong and non-executive Chairman of Fraser and Neave, will be Chairman of a restructured CAA, which will oversee air traffic services, air services negotiations, safety and economic regulation and customer service.

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

#### **1. Secure Flight Final Rule Tasks TSA With Watch List Vetting.**

The U.S. Department of Homeland Security (DHS) issued the Secure Flight final rule, which shifts pre-departure watch list matching responsibilities from aircraft operators to the Transportation Security Administration (TSA). Airlines will be required to collect a passenger's full name, date of birth and gender when making a reservation. TSA will determine if the information matches No Fly or Selectee lists and will transmit results back to airlines. Watch list matching responsibility will be assumed by TSA for passengers on domestic flights in early 2009 and on international flights in late 2009. Bringing watch list matching responsibilities in-house can remedy misidentifications when a traveler's name is similar to one on a watch list, said TSA. To prevent delays for passengers who have completed a redress process, Secure Flight will integrate DHS TRIP (Traveler Redress Inquiry Program). "The airline industry is committed to working through this process as efficiently and cooperatively as possible," said ATA. The American Civil Liberties Union (ACLU) welcomed the changes, specifically: DHS will not use commercial data to conduct background checks on travelers or create a risk score for passengers, is minimizing data collection to only necessary elements, and is greatly reducing the length of data retention to only seven days. But ACLU cites among unresolved problems a lack of adequate redress for individuals mistakenly matched to secret government watch lists, and calls DHS TRIP "a black hole that sucks in documents and information from those misidentified but never emits a final resolution to help affected travelers get off the lists and stay off the lists." ACLU also maintains, "These bloated lists have more than one million names"; but DHS Secretary Michael Chertoff in October said, "there are less than 16,000 individuals on the Selectee and No Fly lists, of which less than 2,500 individuals are on the No Fly list, and less than 10% are U.S. persons."

#### **2. U.S. Extends Visa Waiver Program.**

Citizens from Estonia, Latvia, Hungary, Lithuania, Slovakia, the Czech Republic and South Korea will be allowed visa-free entry into the United States, provided they register online ahead of arrival and carry tamper-proof biometric passports. Greece, Romania, Malta, Poland, Bulgaria and Cyprus are in the process of qualifying for the program, which requires that they agree to share information about threats to the U.S. and its citizens. The European Union (EU) has contended that visa policy should be negotiated between the U.S. and the EU and not bilaterally with individual member states, but, said President Bush, these nations allow American citizens to travel to their

countries visa-free and it is frustrating for their citizens “to wait in lines and pay visa fees . . . it was unfair that their people had to jump through bureaucratic hoops that other allies can walk around.”

**3. Paperless Boarding Passes Tested.**

TSA began a pilot program at nine U.S. airports, in which passengers can download boarding passes to their cell phone or personal digital assistant (PDA) from the airline Web site. The electronic pass includes a bar code with encrypted flight information and passenger identification that security and airline personnel scan at the airport. Paperless boarding passes are in use by several European airlines.

**4. Counterterrorism and Privacy Report Released.**

A new report, “Protecting Individual Privacy in The Struggle Against Terrorism: A Framework For Program Assessment,” reviews what is known about the effectiveness of data mining and behavioral surveillance techniques, discusses privacy implications, and offers criteria the government should use to evaluate usefulness and privacy impact of agency programs. The report urges Congress to re-examine existing privacy law to assess how privacy can be protected in current and future programs and recommends that individuals harmed by violations of privacy be given a meaningful form of redress. Prepared by a National Research Council committee, the report concludes that data mining, while useful for spotting consumer fraud, is less helpful for counterterrorism because little is known about what patterns indicate terrorist activity. Regarding behavioral surveillance, there is no scientific consensus on whether such techniques are ready for operational use in counterterrorism.

**5. TSA Proposes General Aviation Security Program.**

TSA proposed a rule that would require all U.S. operators of aircraft exceeding 12,500 pounds maximum take-off weight to implement security programs that would be subject to compliance audits by TSA. The Large Aircraft Security Program (LASP) would also require operators to verify that passengers are not on the No Fly and/or Selectee lists.

**6. EU Parliament Demands Further Study of Body Scanners.**

The European Parliament rejected use of full body scanners in EU airports for now, insisting on a full study of implications for privacy and health. The European Commission had said the legislation under consideration would respect safety and privacy rules and provide passengers who objected with an alternative form of security check. The scanners allow security staff to see an outline of passengers' bodies beneath their clothes and are in use in several U.S. airports. Supporters say the scanners can detect concealed objects not picked up by traditional metal detectors, but privacy advocates call them a

"virtual strip search." The ACLU in June said whole body scanning machines "produce graphic images of travelers' bodies and are an assault on their dignity and privacy." Germany said it will not introduce the scanners at its airports even if approved by the EU.

**7. Security Technology Update.**

TSA is testing machines mounted on tripods in busy airport terminals that scan passengers for "cold spots," indicating the potential presence of a bomb. Tests at Minneapolis-St. Paul and Denver were inconclusive, reports *USA Today*. ACLU said the scanners will subject innocent people to extra scrutiny due to false alarms, while terrorists will evade scrutiny by simply avoiding them. Made by QinetiQ North America, the scanner does not produce still images of passengers and poses no health risk because it does not emit energy such as X-rays. TSA may ease restrictions on carry-on liquids next year, as improved technology will enable checkpoint X-ray machines to spot dangerous liquids. Israel has installed a "shoes-on" weapons metal detection system at Ben-Gurion International; developed by IDO Security, MagShoe scans the ankles and feet in seconds without requiring passengers to remove shoes. TSA is testing shoe-scanner technologies. Facial recognition scanners being tested at Manchester Airport reportedly are failing to detect when two people pass through immigration control booths at one time. The machines measure unique details of a face and compare them with details stored on a microchip embedded in the new British ePassports. Testing at Stansted is to begin in November.

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

### **1. Delta, American to Filter Internet Sites Inflight.**

Delta conducted a successful Wi-Fi test flight on an MD-88 and plans to begin passenger Internet service in November. Aircell is installing its Mobile Broadband Network on Delta's mainline fleet; "Gogo" will be available for \$9.95 on flights up to three hours, and \$12.95 on longer flights. Delta and American, which began offering the service in August, are working with Aircell to allow filtering of pornography and other inappropriate content due to concerns expressed by flight attendants.

### **2. American Sues Yahoo for Trademark Infringement.**

American Airlines filed a lawsuit against Yahoo for trademark infringement, in a case similar to one settled earlier against Google. American said users searching for its trademarked terms can get confused and click on competitors' ads. Since Yahoo gets paid for clicks, the airline is suing for unspecified damages, legal costs and funds to cover a corrective advertising campaign.

### **3. American Joins U.S. Testing of Air Cargo Paperless Initiative.**

An American Airlines Cargo flight between New York Kennedy and London Heathrow participated in the U.S. test of a new industry e-freight initiative facilitated by IATA. British Airways, KLM, United and DHL are among other carriers participating in U.S. tests. IATA's e-freight eliminates the need to send 12 paper documents with air cargo shipments, which speeds shipments and cuts costs. IATA e-freight is also operational in Canada, Germany, Hong Kong, the Netherlands, Singapore, South Korea, Sweden and the UK. The deadline for e-freight implementation is the end of 2010 where feasible.

### **4. Microsoft, Travelport to Create Services for Airlines, Travel Suppliers.**

Microsoft and Travelport early next year will roll out services designed to provide airlines, travel suppliers and travel agencies with revenue and cost-reductions, broader distribution reach, and improved customer satisfaction and loyalty. Previous collaborations include Travelport's e-Pricing shopping technology, originally developed for Expedia, and Microsoft's corporate travel booking solution.

### **5. Cheapflights.com Debuts Travel Price Index.**

San Francisco, Washington and Los Angeles were among cities that scored favorably in a study of flight prices from 30 U.S. markets, as compared to the cost of living index in those cities. Cities where travel costs were highest

include Salt Lake City, Honolulu and Minneapolis. The airfare figures were culled from Cheapflights.com's database of more than 1.5 million flight deals across hundreds of departure points; the cost-of-living data was supplied by the Economic Research Institute. "Flying from JFK presents New Yorkers with the biggest bargain, while travelers from Houston and Ft. Lauderdale ended up on the other end of the scale with some of the most expensive flights when compared to recent cost-of-living data," reports Cheapflights' "Travelnomics: The Travel Price Index."

**6. Cell Phone Ban Favored.**

A survey of more than 3,000 U.S. travelers, conducted by online travel community TripAdvisor, found that 80% of respondents want cell phones banned on flights; 69% want wireless internet access, but only 14% are willing to pay for it. Among other findings: 50% predicted airlines will charge extra for a window seat; 83% are concerned about germs, bacteria and viruses when traveling; 49% had more trouble booking desired flights in the past 12 months than previously; 17% had a flight canceled this year because their route or flight was eliminated from their carrier's schedule. Favorite airlines are Southwest, American and Delta, due to friendly, helpful staff; good on-time arrival and departure record; and best fares. Top airports are Orlando, Las Vegas, and Amsterdam; least favorite is Chicago O'Hare; 80% said clean bathrooms determine a great airport. A "staycation" is planned for next year by 18%; 34% are uncomfortable with full body scanners used at some airports; 51% overspent their travel budget in the past year; 50% said unfavorable exchange rates will prevent or limit travel to Europe in the next 12 months; and Budoni, in Sardinia, emerged as a world travel hotspot for 2009.

**7. Australia Proposes to Allow Inflight Mobile Phone Use.**

Australian regulators are proposing to allow inflight use of mobile phones on Australian airlines for domestic and international services. Trials conducted over the past 18 months showed no interference with flight operations, said the Australian Communications and Media Authority (ACMA), which is seeking comments on the proposal until November 17.

## V. ENERGY AND ENVIRONMENT

### 1. EU to Include Aviation in Emissions Trading System.

EU ministers approved the European Commission plan to include aviation in the EU emissions trading system. The 27 member states are required to develop national laws within 12 months, and, as of January 1, 2012, most airlines that land or take off from an airport in the EU will be required to cut carbon emissions by 3% compared to 2005 levels. Operators with very low traffic levels are excluded and the measures include provisions that could benefit start-up airlines in Eastern Europe. EU regulators estimate the new policy could add \$50 to the cost of a round-trip flight between New York and Europe. Airlines estimate combined annual compliance costs could reach \$6 billion. The United States has maintained the rules may violate international aviation agreements. IATA blasted the decision, saying an effective Single European Sky would save billions of euros in cost and 16 million tons of CO<sub>2</sub> annually.

### 2. Port Authority Moves Toward Carbon Neutral Goal.

Among a broad range of initiatives to reduce environmental impacts, the Port Authority of New York and New Jersey will build the world's first geothermal-powered building at an airport at John F. Kennedy International and plans to make Stewart International the first U.S. carbon-negative airport. The Authority will purchase carbon offsets in 2009 and 2010 to achieve a carbon neutral goal in its operations by 2010; airline passengers will be able to purchase credits online to offset carbon emissions.

### 3. Schiphol Drafts New Noise Rules.

A plan allowing Amsterdam Schiphol to expand to up to 510,000 flights a year by 2020 was supported by the two main governing parties and the Liberal opposition. According to the plan, noise problems would be alleviated by letting further growth be absorbed by Lelystad and Eindhoven airports, both owned by Schiphol Group. Schiphol would handle mainline flights from European and international airlines, while charter and budget airlines would use the regional airports. The 35 noise monitoring stations currently in use at Schiphol would be replaced by agreements between the airport authority and local residents. The proposal was called "shameful" by a Delft University noise specialist and "immoral" by a representative of 27 local residents' groups.

### 4. London Stansted to See 10% Expansion in Flights.

The UK authorized London Stansted to increase flights to 264,000 a year from 241,000—passenger numbers could climb to 35 million a year from 25

million—after a local authority had banned the expansion due to noise and environmental concerns. In related news, London City Airport won permission from the local authority to expand to 120,000 flights a year from 80,000. City airport was partially owned by AIG, which sold its stake to co-owner Global Infrastructure Partners to help repay \$85 billion borrowed from the U.S. government.

**5. Biofuel Made from Sugar.**

Amyris Biotechnologies of Emeryville, Calif. says the hydrocarbons created through sugar fermentation have the same molecular structure as petroleum fuels, and hopes to produce, with Brazilian ethanol distributor Crystalsev, 100 million gallons a year of cane-based fuel by 2012. The renewable products company said the new fuel works in today's engines and reduces emissions by 80%.

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

### **1. 110th Congress Ends.**

As the 110th Congress concluded, the House Transportation Committee summarized its accomplishments over the past two years. Of 93 bills and resolutions that became law or are awaiting the President's signature, those related to aviation include: H.R. 1, Implementing the Recommendations of the 9/11 Commission Act of 2007; H.R. 6, Energy Independence and Security Act of 2007; and H.R. 4343, Fair Treatment for Experienced Pilots Act. Bills that passed through the House, but stalled in the Senate, included: H.R. 2881, FAA Reauthorization Act of 2007; and H.R. 6493, Aviation Safety Enhancement Act of 2008. A Committee oversight hearing revealed flaws in FAA's aircraft inspection program and prompted the agency to ground hundreds of commercial aircraft for overdue inspections.

### **2. Senator Urges Roll Back of Fuel Surcharge.**

Senator Robert Menendez (D-N.J.) asked major U.S. airline CEOs to roll back fuel surcharges and extra fees implemented to offset soaring costs of jet fuel earlier this year. "The cost of jet fuel has dropped precipitously over the past few months," he wrote on October 20. "The spot price for Kerosene-Type Jet Fuel in New York Harbor—a major jet fuel price indicator—has fallen from \$4.34 per gallon in early July to \$2.34 per gallon last week." He also urged the CEOs to make base fares that consumers see online more reflective of the actual price they pay to fly. "Americans are having a hard enough time keeping up with their bills these days. To keep many of them priced out of flying altogether is not only devastating to many families, it also slows the engine of commerce that helps propel our economy."

## VII. BILATERAL AND STATE DEPARTMENT NEWS

### 1. “Discussion Draft” on International Investment in Airlines Prepared.

A “discussion draft” of a multilateral agreement on international investment in airlines, which could set the stage for an open exploration of ideas, has been prepared by the office of John Byerly, U.S. State Department Deputy Assistant Secretary for Transportation Affairs and chief negotiator for the United States in EU-U.S. open skies talks. Speaking before a forum of airline leaders in Kuala Lumpur, Byerly said changing existing rules will not be easy. The United States has an open mind regarding airline ownership and control issues, he said, but hurdles include strong opposition from American labor, reciprocity and some 3,500 bilateral air agreements currently in effect. Also at the forum, British Airways CEO Willie Walsh called for freedom for airlines worldwide to consolidate, saying governments must not impose restrictions to protect domestic carriers. Industry consolidation is crucial, said Walsh, if airlines are to survive tough market conditions including high fuel prices and slowing demand due to the global financial crisis.

### 2. Liberalizing the Aviation Industry: IATA Summit.

Senior aviation officials from governments worldwide convened in Istanbul to consider ways to liberalize market access and ownership and control rules of international civil aviation. Liberalization would let airlines operate as any other global business and benefit airlines and consumers, said IATA, which sponsored the Agenda for Freedom Summit, chaired by former DOT Undersecretary Jeff Shane. A second meeting will be held in early 2009 “to turn the discussion into action,” said IATA, which plans to facilitate the development of a multilateral statement of policy. Attending governments were Australia, Brazil, Canada, Chile, the European Union, India, Mauritius, Morocco, Panama, Singapore, Switzerland, Turkey, the United Arab Emirates, the United States and Vietnam.

### 3. United States Reaches Agreement with Vietnam.

The United States and Vietnam agreed to remove restrictions on air cargo services between the two countries. A pact reached in October 2003 allowed for an unlimited number of all-cargo carriers to operate with no limit on the number of flights. The new agreement removes restrictions on routing and carrying cargo to or from third countries, and allows U.S. airlines to carry cargo between Vietnam and third countries without requiring a stop in the United States. The two sides agreed to meet no later than October 2010 to work toward further liberalization of the agreement, including additional rights for passenger services.

4. **United States, Laos Reach Open Skies Agreement.**

The United States and Laos concluded an open skies agreement, the first aviation accord between the two countries. Airlines from both countries may select routes and destinations based on consumer demand, without limitations on the number of U.S. or Laotian carriers that can fly between the two countries or the number of flights they can operate.

5. **United States, Armenia Conclude Open Skies Pact.**

The United States and Armenia concluded a full open skies agreement, the first aviation accord between the two countries.

6. **WTO Delays Ruling in Airbus Dispute.**

The World Trade Organization (WTO) will delay its ruling on EU subsidies for Airbus until next year, reported Reuters, due to the complexities of the volume of materials involved. The dispute panel formed to examine the EU counter-claim against U.S. support for Boeing also expects to report in 2009.

7. **EU-India Bilateral Signed.**

The EU and India signed a horizontal agreement, which restores legal certainty to the 26 bilateral air services agreements that India has with individual EU member states by bringing them into conformity with Community law. The agreement will create a sound legal basis for future EU-India air transport relations and cooperation, said the EU. Nearly 5.7 million passengers traveled between the EU and India in 2007. Over the past three years, EU-India passenger traffic increased by 75%.

## VIII. EUROPE/AFRICA

### 1. EU Rule Addresses Price Transparency, Competition, Safety, Quality.

The EU introduced a new framework for air services, which is “a substantial improvement on the present legislation.” The regulation requires airlines to include all taxes and charges in published ticket prices and to apply the same price for a flight when bought in different countries. The rule address the granting of licenses and control of airlines and market access. National authorities will have more oversight, to guarantee quality and ensure safety. Startups will have to provide more financial information to lessen the risk of bankruptcy. If a carrier cannot meet its financial obligations for a 12-month period, its operating license can be suspended or revoked by the authority. Rules regarding public service obligations (PSO) are unchanged, but the text has been clarified. The new regulation abolishes the last restrictions existing in aviation bilaterals between member states for intra-Community services.

### 2. Lufthansa Acquires Majority Stake in bmi.

Lufthansa increased its 30% stake in bmi to 80%; Sir Michael Bishop, Chairman of bmi, exercised an option to sell his 50% plus one share stake in the airline and the €400 million transaction should complete on January 12. Lufthansa is expected to bid for the remaining 20% owned by SAS. British Airways and Virgin Atlantic had expressed an interest in buying bmi, which controls 12% of Heathrow slots.

### 3. Austrian Privatization Process Extended.

The privatization of a 42% stake in Austrian Airlines was extended until December 31. Lufthansa asked that the Austrian state cover up to €500 million of the airlines' €900 million debt, which would equate to state subsidies thus requiring EU clearance. Lufthansa said its offer is valid until the end of the year. Russia's S7 and Air France KLM had expressed interest. In other news, Austrian will cease service to Mumbai from March 1, 2009, due to “drastic overcapacity between European airports and the city,” the weakening Indian economy and the crisis in European financial markets. Services from London City Airport, Luxembourg, Riga and Chicago were cancelled earlier this year.

### 4. Alitalia Bid in Limbo.

Compagnia Aerea Italiana (CAI) approved €1.1 billion to purchase assets from Alitalia, but the offer for the bankrupt carrier is conditional upon approvals by unions and the European Commission. CAI Chairman, Piaggio CEO Roberto Colaninno, told reporters a foreign partner will be chosen in November and the new Alitalia could be launched by December. Air France-KLM has held talks

with CAI, and Lufthansa reportedly has expressed interested in acquiring a minority stake. The CAI consortium includes Italian bank Intesa Sanpaolo, highway operator Atlantia, Piaggio controlling shareholder Immsi and shipping magnate Gianluigi Aponte.

**5. United, Aer Lingus Launch Partnership.**

Aer Lingus and United agreed to code share on Aer Lingus connecting flights to destinations in Ireland, the UK and Continental Europe from November 1. From April 2009, Aer Lingus will place its code on United's domestic flights. The agreement will cover all Aer Lingus U.S. gateways: New York Kennedy, Boston, Orlando, Chicago O'Hare, San Francisco and Washington, and United's hubs in Chicago, San Francisco and Washington. In other news, Aer Lingus announced a cost reduction program to ensure "long-term viability as an independent airline . . . appropriately positioned to take advantage of future growth opportunities." Aer Lingus reportedly will cut up to 1,500 jobs; freeze pay until the end of 2009; and close cabin crew bases at Heathrow and Shannon. Services from New York, Boston and San Francisco will be staffed with U.S.-based cabin crew.

**6. Air France Suspends London Heathrow-Los Angeles Service.**

Citing the economic crisis, Air France announced it will end London Heathrow-Los Angeles service for the 2008-09 winter schedule and use freed-up aircraft and slots to increase Heathrow-New York Kennedy service from two to three daily flights for the summer 2009 schedule; two operated by SkyTeam partner Delta and one by Air France. "The assignment of an Air France aircraft to this route will give SkyTeam passengers the benefit of a first class cabin," said Air France, and "Delta will offer its new full-flat seats in business class on London Heathrow-New York JFK flights." Air France-KLM is working on a new cost-savings plan which could deliver up to €800 million of additional savings by 2012, and €1.2 billion by 2014. Capacity increases for winter 2008 and summer 2009 will be limited to between 1% and 2%.

**7. British Airways Launches Gatwick-New York Kennedy Flights.**

British Airways ended daily Manchester-New York Kennedy service, its last direct international flight from the northwest England airport. The carrier launched daily Boeing B-777 four-class service to Kennedy from London Gatwick and next year plans business-only flights between Kennedy and London City Airport. Future flights from Manchester will be via Heathrow and Gatwick. British Airways will move Atlanta originating flights to Heathrow from Gatwick on March 29, 2009. In other news, the carrier reportedly is postponing expansion plans for its OpenSkies subsidiary, due to economic woes, and will operate the carrier from Paris when a merger with L'Avion is complete.

**8. Sterling Airlines Ceases Operations.**

Unable to raise financial support for a restructuring program due to the collapse of the Icelandic financial system, Sterling Airlines filed for bankruptcy. The Denmark-based, Icelandic-owned budget carrier merged with Maersk Air in 2005 and implemented a restructuring plan this year resulting in a reduction in fleet and manpower and a retreat from loss-making activities.

**9. Russian News.**

After problems with fuel bills caused flight delays across the country in August and September and forced several airlines into bankruptcy, Russia moved to stabilize the air travel market with \$1 billion in loans to airlines for fuel purchases and a deferment of up to six months on the payment of customs duties and fees on foreign-made aircraft, simulators and engines. A proposal to insure air passengers against air carrier failures, including flight delays, was also introduced. President Dmitry Medvedev ordered the government to investigate a possible cartel among aviation fuel suppliers and the Chief of the Russian Air Transport Agency, Yevgeny Bachurin, tendered his resignation. Russia is establishing a new airline to replace the failed AiRUnion. Tentatively called Russian Airlines, the new company will comprise 10 airlines, including former AiRUnion members. Aeroflot is seeking to acquire a 25.5% stake in S7.

**10. Spanair Crash Due to Faulty Warning System.**

A preliminary report by Spanish investigators on the August Spanair crash in Madrid that killed 154 people says data from the MD-82 flight recorder showed the take-off warning system had failed to sound, so pilots failed to set wing flaps and slats before takeoff. Two mechanics are being investigated for manslaughter. Now a *USA Today* analysis of U.S. government data shows that since 2000, pilots in the U.S. have reported a failure to properly set the wings for takeoff 55 times. Most mistakes were caught by the take-off warning system that did not sound in the Madrid crash. Several U.S. cases were nearly catastrophic, including a 2005 incident at Washington Reagan in which pilots lifted off without flaps and nearly plunged to the ground. In 1987 and 1988, two U.S. crashes caused by pilot failures to set the flaps claimed 170 lives.

**11. EU-India Bilateral Signed.**

See Section VII, item 7.

**12. Qantas, BA Agree to Australian Price-Fixing Fines.**

See Section IX, item 1.

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

### **1. Qantas, BA Agree to Australian Price-Fixing Fines.**

Qantas and British Airways reached a settlement with the Australian Competition and Consumer Commission, agreeing to pay fines for alleged price-fixing of fuel surcharges in the global air cargo market between 2002 and 2006. Qantas agreed to pay \$A20 million; British Airways, \$A5 million. Fines assessed by the U.S. Justice Department in the ongoing investigation have totaled more than US\$1.2 billion and the Australian probe continues.

### **2. DHL Express, Polar Air Cargo in Transpacific Partnership.**

A transpacific partnership with Atlas Air subsidiary Polar Air Cargo gives DHL Express access to six Polar Boeing 747-400Fs that will serve eight destinations in Asia and the United States. DHL owns a 49% stake in Polar. DHL Express increased frequency of its dedicated Air Hong Kong flights from Hong Kong to Nagoya, Taipei, Seoul and Singapore to six times per week, from five. Air Hong Kong is a Cathay Pacific-DHL joint venture.

### **3. Jet Airways, Kingfisher to Rationalize Operations.**

Jet Airways and Kingfisher Airlines proposed an alliance that will rationalize operations, but will not include mutual equity investments. The alliance is expected to save \$307 million. Jet began Bangalore-Brussels service, but otherwise will reduce domestic and international domestic routes, postponed aircraft deliveries by at least a year and with Kingfisher will return 14 leased planes. Plans to eliminate 1,900 jobs were reversed, reportedly due to labor protests and political pressure. IATA has forecast a combined loss of \$1.5 billion for Indian carriers in 2008.

### **4. V Australia Launch Delayed.**

Virgin Blue delayed the planned December 15 launch of long-haul international airline V Australia, The Sydney-Los Angeles service now is expected to begin February 28. Brisbane-Los Angeles service begins March 1.

### **5. United Begins Washington- Dubai Service.**

United launched nonstop Dubai service from Washington Dulles.

### **6. EU-India Bilateral Signed.**

See Section VII, item 7.

## **X. AMERICAS**

### **1. Boeing, Machinists Reach Settlement.**

Boeing and the International Association of Machinists and Aerospace Workers reached an agreement, ratified by a vote of the union members on November 1, 2008. The new four-year contract covering 27,000 employees in Washington, Oregon and Kansas includes a 15% pay raise over four years, increased pension benefits and no change in the share employees pay for health care plans; machinists currently working in facilities maintenance are protected from layoffs due to outsourcing. The strike, which started September 6, is expected to cost Boeing more than \$2 billion, reported the *Seattle Times*, assuming extra expenses incurred in recovering to pre-strike rates of production and the costs of delays on the B-787 Dreamliner. Separately, the company said Boeing Capital Corp. will become the lender of last resort for some airlines needing aircraft financing as a result of the global credit crisis. Boeing already has backstopped 3% of its order book, providing \$9.5 billion in bridge loans to buyers.

### **2. United to Furlough 2,000 Employees.**

More than 2,100 employees have voluntarily given up their jobs, said United, nearly one-third of the 7,000 jobs planned for elimination by the end of 2009. United reported a third quarter net loss of \$779 million, compared to a year-earlier profit of \$334 million, and a 6.1% increase year-over-year in mainline passenger unit revenue. The airline intends to reduce its domestic capacity by 14% in the fourth quarter.

### **3. Southwest Posts Third Quarter Loss Due to Hedging.**

Southwest lost \$120 million in third quarter 2008, its first loss in 17 years, because of a one-time charge of \$247 million to write down declining value of hedging contracts. Southwest otherwise would have earned \$69 million, and had record operating revenue of \$2.9 billion, up 11.7%. CEO Gary Kelly said there is a healthy demand for seats in the fourth quarter. The company will reduce capacity by 5% to 6% in first quarter 2009.

### **4. Sun Country Files for Bankruptcy Protection.**

Minneapolis-based Sun Country filed for bankruptcy following a federal investigation into a \$3 billion fraud scheme that authorities say was run by Tom Petters, the founder of parent company, Petters Group Worldwide. Sun Country Chairman and CEO Stan Gadek said the airline plans to continue operating on its normal schedule and is seeking to attract new capital and

ownership. A federal judge appointed a receiver to oversee assets of Petters; under bankruptcy protection, Sun Country is exempt from receivership actions.

**5. Republic Airways to Provide up to \$35 Million of Loans to US Airways**

Republic Airways agreed to lend up to \$35 million to US Airways in two tranches. The first tranche of \$10 million was funded in October. At US Airways' option, and subject to certain other conditions, the second tranche of \$25 million may be funded in first quarter 2009. Interest will be paid quarterly, with principal amounts to be repaid between October 2009 and October 2011. Indianapolis-based Republic owns Chautauqua and Shuttle America and operates through services agreements with six U.S. airlines. Chautauqua amended its agreement with American Airlines and will reduce the number of aircraft, as of June 2009, from 15 to 13 Embraer 140 regional jets. The date on which American may terminate the agreement was extended from March 2009 to March 2012. Shuttle America was selected by Mokulele Airlines of Hawaii to operate four, 70-seat Embraer 170s under a 10-year capacity-purchase agreement beginning November 19.

**6. TAM, Air Canada Agree to Code Share.**

TAM announced its entry into the Star Alliance and will begin its integration process. TAM also entered into a new code share agreement with Air Canada for Air Canada flights from Sao Paulo to Toronto, with connections to Vancouver, Calgary, Edmonton, Winnipeg, Montreal and Quebec; and for TAM flights from Sao Paulo to Rio de Janeiro, Salvador, Recife, Belo Horizonte, Curitiba and Porto Alegre.

**7. Mexico Denies Avolar Concession Renewal.**

The Mexican Transportation Ministry denied Avolar Aerolineas renewal of its concession to provide passenger, cargo and mail services, given the airline's inability to comply with necessary safety, service, coverage and quality guidelines. The carrier had reduced its operations at Tijuana, Guadalajara and Morelia airports from 891 scheduled departures in September 2007 to 162 scheduled departures in September 2008, reported airport operator GAP.

**8. Argentina Seizes Aerolineas.**

Argentina reportedly seized Aerolineas Argentinas after talks to purchase the airline from current owner, Spain's Grupo Marsans, broke down. The dispute centers on the airline's worth, which Marsans values at \$250 million to \$400 million, compared to reported government estimates of negative \$600 million to \$800 million. With its Austral unit, Aerolineas employs 9,000 and operates 80% of domestic flights; debt is estimated at \$890 million.

9. **GOL Integrates Varig Route Network.**

GOL won approval from Brazil's National Civil Aviation Agency (Anac) to integrate the GOL and Varig networks and is eliminating overlapping routes and schedules, increasing offerings in newly consolidated markets and adding new connections between previously unlinked cities. GOL will operate domestic and short-haul flights to Asuncion (Paraguay), Buenos Aires, Cordoba and Rosario (Argentina), Montevideo (Uruguay), Lima (Peru, via Santiago), Santa Cruz de la Sierra (Bolivia) and Santiago (via Buenos Aires). Varig will operate medium-haul international flights to Bogota (Colombia), Caracas (Venezuela) and Santiago (Chile). This division was based on a profile of international, predominantly business, passengers traveling on flights longer than four hours.

10. **Delta, Northwest Merger Approved.**

See Section I, item 1.

11. **Continental Applies for Houston-Rio de Janeiro Service.**

See Section I, item 3.

12. **United States Reaches Agreement with Vietnam.**

See Section VII, item 3.

13. **United States, Laos Reach Open Skies Agreement.**

See Section VII, item 4.

14. **United States, Armenia Conclude Open Skies Pact.**

See Section VII, item 5.

15. **United, Aer Lingus Launch Partnership.**

See Section VIII, item 5.

16. **Air France Suspends London Heathrow-Los Angeles Service.**

See Section VIII, item 6.

17. **British Airways Launches Gatwick-New York Kennedy Flights.**

See Section VIII, item 7.

18. **United Begins Washington- Dubai Service.**

See Section IX, item 5.