



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. Obama Nominates FAA Acting Administrator for Full Term.

Michael Huerta was nominated to the post of Federal Aviation Administration (FAA) Administrator by President Barack Obama. Currently FAA Deputy Administrator, Huerta has been Acting Administrator since December, when Randy Babbitt resigned. He has held positions with the Department of Transportation (DOT) since 1992, after earlier serving as Commissioner of the New York City Department of Ports and Executive Director at the Port of San Francisco. The five-year appointment requires Senate confirmation.

2. IATA Downgrades Global Profit Forecast.

Airlines are expected to turn a global profit of \$3 billion in 2012 for a 0.5% margin, a \$500 million downgrade from the December forecast by the International Air Transport Association (IATA), primarily due to a projected average oil price of \$115/barrel, up from a previously forecast \$99. Factors preventing a more significant downgrade are avoidance of significant worsening of Eurozone crisis, improvement in the U.S. economy, cargo market stabilization and slower than expected capacity expansion. IATA revised estimated profits for 2011 upward to \$7.9 billion from previously forecast \$6.9 billion, due primarily to better than expected performance of Chinese carriers.

In remarks to the 37th FAA Aviation Forecast Conference, IATA Director General and CEO Tony Tyler urged U.S. policy makers to ease tax and regulatory burdens on airlines, which in the past decade lost \$62.5 billion, laid off 25% of the workforce and cut domestic departures by 21%. Taxes and fees now represent 20% of a U.S. ticket, he said, and “the Administration’s 2013 budget proposal heaps even more taxes on aviation, with much of the receipts used to balance the budget or reduce the deficit. When Washington does look beyond taxes, the agenda often bogs down on complex problems that defy easy regulatory solutions or commercial matters that should be left to the workings of the free market.” Tyler cited “three recent policy initiatives which seek to micromanage how airlines compete: requiring airlines to hold all reservations for 24 hours, which ties-up valuable inventory and is being applied extra-territorially to non-U.S. airlines; requiring airlines to include all fees and taxes in the price of the ticket being advertised, when the same is not required of other travel products; and, considering forcing airlines to sell all of their products through global distribution systems, although with a few keystrokes any consumer has access to every airline’s available fares and attributes in every market.” As for the tarmac delay rule, Tyler said, “fines won’t stop bad weather, which is the instigating factor in most extended delays.” Regulators should “ensure that every dollar paid by passengers for

customs and immigration services is invested to provide officers and airport facilities commensurate with rising levels of international travelers visiting the U.S.; and that revenue generated from airport fees and charges is used to improve airport facilities.”

3. FedEx to Pay \$3 Million to Settle Discrimination Charges.

FedEx agreed to pay \$3 million to settle charges of hiring discrimination brought by the U.S. Department of Labor against two of the company's units. FedEx will pay back wages and interest to 21,635 applicants rejected for jobs at 23 facilities in 15 states and reform hiring practices. The Department's Office of Federal Contract Compliance Programs (OFCCP) found evidence of discrimination on the bases of sex, race and/or national origin, and uncovered extensive violations of record-keeping requirements. “Being a federal contractor is a privilege and means you absolutely, positively cannot discriminate, not when you are profiting from taxpayer dollars,” said OFCCP.

4. Justice Dept. Files Charges Against JetBlue Pilot.

The U.S. Department of Justice filed criminal charges against a JetBlue pilot, following a verbal rampage that resulted in a co-pilot locking him out of the cockpit and quick action in the cabin by passengers to subdue him. The Airbus A320, en route from New York LaGuardia to Las Vegas with 141 on board, was diverted to Amarillo, where the pilot was placed in a hospital and questioned by the FBI. The 12-year JetBlue veteran was suspended, while the FBI and aviation authorities investigate the incident, which is raising questions about pilot medical qualifications and workplace stress.

5. Southwest, AirTran Win Single Operating Certificate.

Southwest and subsidiary AirTran received FAA approval for a single operating certificate. Full integration of the AirTran fleet is not complete and transition to a single ticketing system will take several years, said Southwest.

6. FAA Fines Colgan Air.

FAA is seeking a civil penalty of \$153,000 from Colgan Air, alleging the Pinnacle unit operated 17 flights between June 2008 and February 2009 without giving pilots or flight attendants required minimum rest. Crew fatigue was thought to be a contributing factor in the 2009 crash of Colgan Air Flight 3407 (Continental Connection), in which 50 people died.

7. Cargo Firms Want to Keep Pilot Fatigue Rule Exemption.

Following a meeting with DOT Secretary Ray LaHood and FAA Acting Administrator Michael Huerta, cargo executives said they want to retain their exemption from pilot fatigue rules, which take effect for passenger carriers in December 2013. DOT said, “The meeting was productive [and we] look

forward to working together to ensure the safety of our national air transportation system.”

8. DOT Clarifies Full-Fare Advertising Rule.

DOT clarified its full-fare advertising rule, which requires that all taxes and mandatory fees be included in all published prices, advising airlines and travel sellers that when fares are rounded off to whole dollar amounts, they must be rounded up, not down. Sellers rounding up in ads may sell the ticket at the exact fare upon purchase.

9. DOT Levies Record Fines.

DOT issued a record 45 fines for violations of aviation consumer rules and assessed \$3.2 million in penalties last year, reports the *Washington Post*, compared to 27 fines and \$1.8 million in penalties in 2010. New consumer protection rules adopted last August and in January this year have yet to be enforced, but noncompliant carriers are issued warnings.

10. DOT Air Travel Consumer Report for January.

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

	Jan. '12/'11	Dec. '11	Full Year				
			2011	2010	2009	2008	2007
On-time arrivals %	83.7 / 76.3	84.4	79.6	79.8	79.5	76	73.4
Cancellations %	1.5 / 3.9	0.8	1.91	1.76	1.39	1.96	2.16
Mishandled baggage*	3.3 / 4.29	3.37	3.39	3.51	3.91	5.26	7.05
<i>Consumer complaints:</i>							
Airline service	935 / 857	710	11,545	10,988	8,821	10,648	13,180
Disability-related	39 / 40	58	630	572	519	477	488
Discrimination**	10 / 12	7	127	143	131	115	99

Note: Airlines reported no tarmac delays of more than three hours on domestic flights or more than four hours on international flights in January.

* Reports per 1,000 passengers.

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

11. FAA, NATCA Extend Contract to 2016.

FAA and the National Air Traffic Controllers Association (NATCA) agreed to extend their contract for four more years, until July 1, 2016, rather than negotiate a new one. The current contract was due to expire on October 1.

The extension will “ensure continued collaboration to transform the air traffic system through NextGen,” said Acting FAA Administrator Michael Huerta and NATCA President Paul Rinaldi .

12. FAA Review Finds Philippine Safety Standards Still Deficient.

FAA continues to find deficiencies in Philippine air safety standards despite the country’s efforts to fix the problems, reports The Associated Press, which obtained a report summary. Unqualified personnel inspect aircraft and airport facilities, inspectors accept free rides with airlines they are checking and airlines receive certification despite failing to meet requirements. Safety and management concerns led FAA to downgrade the Civil Aviation Authority of the Philippines in 2007 and limit U.S.-bound flights from the Philippines. In 2010, the European Union (EU) placed Philippine carriers on its blacklist.

II. AIRPORTS

1. Carriers File for Beyond-Perimeter Service at DCA.

Carriers with limited or no service at Washington Reagan National submitted applications to DOT for four new beyond-perimeter services authorized in the recent FAA spending bill. Alaska applied for daily nonstops to Portland, Ore., and San Diego; San Diego is the largest U.S. market without nonstop service to National. JetBlue would offer new nonstops to San Juan, Puerto Rico and Austin, Texas. Southwest would offer service to San Diego via Austin. Virgin America would serve its San Francisco home base with two daily nonstops. Another four long-distance roundtrips are earmarked for the largest incumbents, which may convert one pair of slots to beyond-perimeter use, using single-aisle, narrowbody aircraft. United will launch daily nonstops from San Francisco on May 14. Delta will offer a daily flight to Salt Lake City from June 7. American will launch a Los Angeles nonstop on June 14. US Airways service to San Diego will begin on June 8; in addition, US Airways will launch Reagan National service to Cincinnati and Des Moines on May 2, and to Augusta, Ga., Minneapolis, Fayetteville, Montreal and Toronto, on July 11.

2. US Airways CEO, Philadelphia Mayor Discuss Airport Expansion.

After US Airways warned in a regulatory filing that costs of a proposed Philadelphia International expansion could force it to take some of its business to other airports, CEO Doug Parker and Mayor Michael Nutter held “very productive meetings.” They jointly said their paramount objective is “to conclude an agreement on a long term airport lease that includes a road map for continuing to modernize PHL and expanding capacity.” US Airways, the dominant carrier at the airport, has objected to costs it would bear for the expansion, while the city had threatened to impose new airport use rates if US Airways does not agree to a new, 15-year lease by July. The parties stated they will continue to jointly lobby FAA “to accelerate improvements to find a solution to the congestion in the region’s crowded airspace.”

3. United, Southwest in Houston Battle.

Southwest and United are engaged in a lobbying war over Southwest's proposal to spend \$75 million to \$100 million to construct a new international terminal with a full-scale Customs and Border Protection facility at Houston Hobby, reports the *Houston Chronicle*. United argues the project would dilute international traffic at Bush Intercontinental, where it is building a \$700 million terminal, having already spent \$1 billion there in the past decade.

4. **Opening Date Set for Atlanta International Terminal.**

The Maynard Jackson International Terminal at Hartsfield-Jackson Atlanta will open May 16. The facility and its 12-gate concourse, part of a \$6 billion improvement project, connects with the existing international concourse, creating a 40-gate travel complex. In 2011, the airport handled 9.86 million international passengers, a figure that is estimated to rise to 13 million by 2015.

5. **Study Defends Heathrow Expansion.**

A Heathrow-sponsored Oxford Economics study finds that Heathrow capacity constraints could cause the UK to lose more than 141,000 jobs and £8.5 billion in annual gross domestic product by 2021. An alternative hub in the Thames estuary is under consideration, but that project would take at least 25 years, during which traffic would move to Frankfurt, Amsterdam and Paris. Business and union leaders, in a letter to the *Sunday Telegraph*, said the UK's only hub airport is "being allowed to wither on the vine," and urged Prime Minister David Cameron "to do more to support Heathrow in the short and medium term to ensure British businesses can access world markets." UK Transport Secretary Justine Greening said she will meet with the Heathrow Leadership Group, comprised of airport manager BAA and airlines, to discuss ways of maximizing Heathrow capacity. Meanwhile, major structural work on Heathrow Terminal 2 has been completed, with an opening expected in 2014. . . . BAA is appealing a Competition Appeal Tribunal judgment, which found in favor of the Competition Commission's July decision that required the sale of Stansted.

6. **Hong Kong Three-Runway Option Approved.**

A three-runway option recommended by Airport Authority Hong Kong (AAHK) for Hong Kong International was approved by the government. In other news, C. K. Ng was named Executive Director of Airport Operations, reporting to CEO Stanley Hui Hon-chung. Ng succeeds Howard Eng Kiu-chor, who now is President and CEO of Greater Toronto Airports Authority. And, AAHK awarded a HK\$6.2 billion contract to Hong Kong-based Gammon for construction of the new Midfield Concourse, due to start immediately and scheduled for completion in September 2015.

III. SECURITY AND DATA PRIVACY

1. TSA PreCheck Program Expands.

The Transportation Security Administration (TSA) extended PreCheck operations to Reagan Washington National and Chicago O'Hare airports, and said active duty members of the U.S. Armed Forces are now eligible to receive the same expedited screening benefits when flying out of National. Since the pilot launch in October 2011, more than 540,000 passengers have been screened through TSA PreCheck. Among other recently announced "risk-based security initiatives," TSA is testing relaxed screening procedures for older passengers at O'Hare, Denver, Orlando and Portland airports. Those 75 or older may leave light jackets and shoes on at security checkpoints and may be exempted from pat-downs. Similar changes were made last fall for travelers 12 and younger. . . . TSA is considering a proposal from private expedited screening company Clear, the American Association of Airport Executives and U.S. Travel Association, in which Clear members would be eligible for screening under programs such as PreCheck. Clear emerged from bankruptcy in 2010 and is operating at Denver and Orlando airports, with plans to expand to San Francisco and Dallas Ft. Worth. Its technology uses fingerprinting and iris verification to confirm identity. Caryn Seidman-Becker is Clear's CEO; Michael Chertoff, former Secretary of the U.S. Department of Homeland Security (DHS), is on the Board of Directors.

2. National Civil Liberties Group Sues TSA.

Liberty Guard filed suit in Superior Court for the Eastern District of Virginia against TSA and DHS, as part of its "defense of the civil liberties of American citizens against the intrusive searches that routinely confront air travelers by the TSA at airport security checkpoints." Liberty Guard Chairman, former Congressman Bob Barr (R-GA), alleges that TSA and DHS refused to comply with Freedom of Information Act (FOIA) requests in November 2010, when the group was encouraging airline passengers to opt out of body scanner use by TSA.

3. TSA Told to Implement Opt-Out Screening Program.

See Section VI, item 5.

IV. **E-COMMERCE AND TECHNOLOGY**

1. **American Extends Travelport Agreement.**

Existing full-content agreements between American and Travelport's global distribution systems Apollo, Galileo and Worldspan were extended concurrently through late 2012. The carrier said it will rely on mediation to settle antitrust disputes with Travelport and Sabre, which, along with other major GDS operators, are being investigated by the U.S. Department of Justice for alleged anticompetitive behavior.

2. **FAA May Test Use of Passenger Personal Electronic Devices.**

After the *Wall St. Journal* reported that most of the 1,306 incidents of customer misconduct reported by flight attendants last year related to noncompliance with personal electronic devices, FAA said it will explore ways to test usage of passenger devices, other than cell phones, during takeoffs and landings. Cell phones are regulated by the Federal Communications Commission, which prohibits inflight use because of potential interference with ground networks. . . . In related news, Port Authority of New York and New Jersey may levy fines against passengers who refuse to turn off phones or devices before takeoff, causing costly flight delays. Executive Director Pat Foye said police last year responded to 400 calls involving passengers who refused to turn off electronic devices at Kennedy, LaGuardia and Newark. Foye said the fines go primarily to repeat offenders and behavior that causes lengthy delays.

3. **Air France-KLM Sells 7.5% Stake in Amadeus.**

Air France-KLM earned about €473.3 million in the sale of its 7.5% stake in Amadeus. Air France, one of the founding airlines of Amadeus, still controls 7.73% of the company. Lufthansa and Iberia hold similar stakes.

4. **Southwest Sues to Stop Website Offering Check-In Service.**

Southwest filed a lawsuit in U.S. District Court in Dallas to shut down a website that provides customer check-in 24 hours before a flight at \$5 per trip; Southwest offers early boarding for \$10 a trip. Southwest argues that MySouthwestCheckin.com violates the use agreement on Southwest's website, deprives Southwest of selling and advertising opportunities, and trespasses on Southwest's website. Phoenix-based SW Software launched MySouthwestCheckin.com in 2010.

5. **United Reservations System Conversion Creates Havoc.**

As United converted from two reservations systems to one, a key step in completing the merger with Continental, technical issues caused extensive

airport delays. The airline added 600 reservations agents worldwide to assist with “extraordinarily high call volumes,” with some customers on hold for more than an hour, as they sought to correct discrepancies in their records and frequent flier accounts. United said the conversion is the largest in aviation history.

6. ARC: U.S. Travel Agent Sales Up 11%.

Consolidated dollar value of airline tickets sold by U.S.-based travel agencies increased 10.7% in first two months 2012, compared to same period 2011, and 23% over same period 2010, said Airlines Reporting Corporation (ARC). January and February 2012 ticket sales totaled \$14.9 billion, compared to \$13.5 billion in 2011, and \$12.1 billion in 2010. Passenger segments for first two months 2012 increased by 0.57%, at 54.5 million segments, compared to 54.2 million in 2011, and decreased by -0.23% over same period 2010. Ticket transactions for January and February 2012 were up 4.41%, compared to same period 2011, and up 5% over same period 2010. Results reflect data from 13,992 U.S. retail and corporate travel agencies, satellite ticket printing offices, and online travel agencies; figures do not include sales of tickets purchased directly from airlines; total sales equal total amount paid for a ticket, including taxes and fees.

7. OAG and Dohop Announce Data Partnership.

Iceland-based Dohop travel website signed on for worldwide flight schedule data from UBM unit OAG. The OAG database holds future and historical flight details for over 1,000 airlines and more than 4,000 airports.

V. **ENERGY AND ENVIRONMENT**

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

The average price of aviation jet fuel, as of March 23, was 138.1/barrel, down 0.2% on the month and up 2.2% year-on-year, reports the International Air Transport Association. Fuel price average for 2012 was \$134.3/barrel.

2. **A4A Ends EU ETS Lawsuit.**

Airlines for America (A4A) ended its lawsuit against the European Union Emissions Trading Scheme (EU ETS), since “the Obama Administration, the U.S. Congress and the world’s governments now are united in their opposition” to the scheme. A4A urged the Administration to “accelerate its work to reverse this unilateral tax [which] violates international law and is an exorbitant money grab.” . . . EU Climate Commissioner Connie Hedegaard visited Washington to discuss EU ETS with government officials, including DOT Secretary Ray LaHood. . . . Roberto Kobeh Gonzalez, President of the Council of the International Civil Aviation Organization, said ICAO is studying alternatives to EU ETS, but finding a global mechanism to address airline emissions will be difficult and complicated, partly because of developing country concerns about economic impact. Under consideration are mandatory offsetting, mandatory offsetting with a revenue-raising mechanism, and two cap-and-trade systems. One or more options will be ruled out in June, said Gonzalez. . . . Fears of a global trade war were heightened when Airbus said China suspended a major order. Lufthansa CEO Christoph Franz, speaking to the International Aviation Club in Washington, said EU ETS should be sidelined while a solution is found through ICAO, in order to avoid a trade conflict. He urged speed, as carriers are already spending heavily to comply.

3. **Global Aviation Commits to Support Sustainable Development.**

Executives from the global industry signed the Aviation & Environment Summit’s Declaration, which calls for governments to support research and development of new technologies, sustainable biofuels for aviation and infrastructure improvements, and “to show leadership through ICAO to deliver a global framework for international, multilateral market-based measures for aviation.” The declaration precedes the United Nations Conference on Sustainable Development, to be held in Rio de Janeiro in June. The Air Transport Action Group (ATAG) organizes the Summit.

4. **LAN, Air BP Copec Flight Uses Second Generation Biofuels.**

LAN and Air BP Copec made the first commercial flight in South America using second generation biofuels. The Airbus A320 flight operated between

the Chilean cities of Santiago and Concepcion with fuel derived from used vegetable oil. Air BP Copec is the major fuel supplier in the Chilean aviation market.

5. **Thai, PTT, Aerothai, Boeing Sustainable Biofuels Project.**

Thai Airways and Boeing joined forces with PTT and Aeronautical Radio of Thailand (Aerothai) to develop sustainable biofuels. PTT is testing oil made from palm and jatropha. In December, Thai Airways operated the first passenger biofuel flight in Asia, from Bangkok to Chiang Mai.

6. **Boeing, Airbus, Embraer to Collaborate on Biofuel Commercialization.**

Boeing, Airbus and Embraer will work to develop drop-in, affordable aviation biofuels and agreed to speak in unity to governments, biofuel producers and other stakeholders to support, promote and accelerate availability of sustainable new jet fuel sources. Boeing and Embraer already collaborate on sustainable aviation biofuels in Brazil. Boeing and Airbus are helping to establish regional supply chains. All three have supported biofuel flights.

7. **Airbus, Virgin Australia Study New Alternative Fuel Process.**

Airbus joined a consortium including Virgin Australia to study a new pathway to produce sustainable aviation fuels. Indigenous Eucalyptus mallee trees are sustainably harvested and converted to feedstock for refining to alternative aviation fuel via the Pyrolysis thermal process, which is not yet recognized by fuel standards authorities. Airbus' role includes supporting the approval and certification process so that Pyrolysis-based fuels can be used in aviation.

VI. U.S. CONGRESS

1. Hearing on FAA Safety Oversight.

At a hearing on FAA safety oversight, held by the Senate Aviation Subcommittee, the DOT Inspector General said FAA has strengthened pilot rest requirements and advanced programs for managing safety risks, as required in the in the 2010 Airline Safety and FAA Extension Act, but has yet to implement provisions related to pilot training, professional development and qualifications, due in large part to industry concerns. FAA also faces challenges in establishing a pilot records database to enhance carriers' screening process for pilot applicants, and needs to assist smaller carriers in developing and managing required safety programs.

2. Challenges for U.S. Air Travel Addressed in Senate Hearing.

A hearing on "Challenges for U.S. Air Travel" was held by the Senate Appropriations Subcommittee on Homeland Security to discuss the efficiency of aviation security. In his testimony, A4A official Tom Hendricks called for a new national travel-and-tourism strategy in which the government would speed issuance of visas, particularly for high-growth countries such as Brazil, China and India; expand the Visa Waiver Program and TSA's PreCheck and other trusted-traveler programs; staff up U.S. Customs and Border Protection Global (CBP) and modernize CBP's information technology systems and avoid diverting CBP staff from existing airports of entry and overseas preclearance locations to provide additional personnel for land-border crossings or to open new preclearance locations.

3. Senate Anti-EU ETS Bill Gains Support.

Claire McCaskill (D-MO) became the first Democrat to sign onto the Senate's EU Emissions Trading Scheme Prohibition Act, sponsored by John Thune (R-SD). The bill, which would prohibit U.S. aircraft operators from participating in EU ETS, is similar to bipartisan legislation passed by the full House of Representatives last fall.

4. Bill to Create Passenger Advocates at U.S. Airports Proposed.

Legislation creating passenger advocates at the busiest U.S. airports was introduced in the Senate by Charles Schumer (D-NY) and Susan Collins (R-ME). The "Restoring Integrity and Good-Heartedness in Traveler Screening (RIGHTS) Act would require TSA to establish a program in which certain airports would have at least one passenger advocate on duty at all times and clearly visible signage at each gate explaining the program. TSA would be required to train officers to resolve frequently occurring passenger complaints,

resolve complaints in real-time, and field advance notification calls from individuals with medical conditions or disabilities to pre-arrange for a screening process at the airport.

5. **TSA Told to Implement Opt-Out Screening Program.**

House Republicans wrote to TSA Administrator John Pistole regarding the Screening Partnership Program, an “opt-out” provision in the FAA authorization bill that allows airports to replace federal security screening with private screeners and “requires the agency to reconsider applications it baselessly denied.” House Transportation Committee Chairman John Mica (R-FL) also alerted airports of their “right to opt out,” saying “the burden of proof is now on TSA to establish legitimate reasons why any airport’s request should be denied”; 16 airports currently operate under the opt-out program, said Mica.

6. **Bill Directs TSA to Transfer Unclaimed Money to USO.**

The House Subcommittee on Transportation Security passed a bill that would require TSA to transfer unclaimed money at airport security checkpoints to United Service Organizations, which benefits members of the military.

7. **TSA Oversight Hearing.**

The House Committee on Oversight and Government Reform, and House Transportation Committee held a joint hearing titled “TSA Oversight Part III: Effective Security or Security Theater.” In its testimony, the Government Accountability Office (GAO) said, based on data collected from March 2010 through February 2011, Advanced Imaging Technology (AIT) is under-used because TSA lacks trained workers. TSA Assistant Administrators said the agency has revised training and staffing availability to operate the body scanners and resolve anomalies, following recommendations from GAO and the DHS Inspector General. Legislators cited rudeness and inefficiency among TSA shortcomings. GAO did not make new recommendations.

VII. BILATERAL AND STATE DEPARTMENT NEWS

1. EU Parliament Panel Approves New EU-U.S PNR Data Accord.

The EU Parliament's Civil Liberties Committee approved a new agreement to transfer passenger name record (PNR) data to the United States. It addresses privacy concerns and, subject to full parliamentary vote scheduled for April 19, would replace a 2007 accord. Under the new measure, EU citizens may access their own PNR data and seek correction or erasure of inaccuracies. If data are misused, EU citizens can seek administrative and judicial redress in accordance with U.S. law, and may bring a U.S. court case under the Freedom of Information Act, the Electronic Communications Privacy Act or the Computer Fraud and Abuse Act, among other laws.

2. New WTO Ruling in Airbus-Boeing Dispute.

In the latest round of the Airbus-Boeing dispute, the World Trade Organization (WTO) appellate body found that U.S. federal and state governments granted \$5 to \$6 billion in subsidies to Boeing between 1989 and 2006; later subsidies are estimated to be worth at least \$3.1 billion. Both sides claimed victory. The U.S. Trade Representative noted earlier findings that most programs challenged by the EU were not subsidies, that the value of WTO-inconsistent subsidies was far below what the EU alleged and that the EU gave Airbus \$18 billion in subsidized funding, which resulted in lost market share and lost sales involving 342 U.S.-produced large civil aircraft. Following adoption of the report, the U.S. will have six months "to bring itself into compliance with the findings by withdrawing the subsidies or their adverse effects," said the EU.

3. EU-Israel Aviation Agreement Finalized.

Israel and the EU finalized negotiations on an agreement in which all EU airlines will be able to operate direct flights to Israel from anywhere in the EU and Israeli carriers will be able to operate flights to airports throughout the EU. The market will be opened gradually, with no restrictions on the number of weekly flights between Israel and the EU by the start of the 2017 summer season. Once signed by both sides, the agreement will replace bilateral air services agreements between EU Member States and Israel.

VIII. EUROPE AND AFRICA

1. UPS to Acquire TNT.

In an all-cash offer valued at €5.16 billion, United Parcel Service proposed to acquire Netherlands-based TNT Express. The combined company would have more than €45 billion in annual revenues, 36% generated outside the United States, up from 26% today at UPS.

2. JetBlue Denies Interest in Aer Lingus Stake.

JetBlue denied a report by the *Irish Times* that it had held talks regarding acquisition of the Irish government's 25% stake in marketing partner Aer Lingus. "The preference for Jetblue as a trade investor might stem from the fact that the two airlines operate similar business models and don't compete head-to-head on any routes," wrote the *Times*. Etihad also is reported to be interested in buying the government shareholding. Ryanair holds a 29.8% stake in Aer Lingus.

3. A4A Members Challenge German Departure Tax.

Airlines for America (A4A) filed an initial legal complaint with the German Fiscal Court in Kassel to reject the German Air Transport Tax. Since January 2011, U.S. airlines serving Germany have complied with the tax, paying the maximum €45 euros per passenger, the highest of three brackets. A4A and its members say the tax "is a short-sighted cash grab" that violates the Chicago Convention, the U.S.-EU Open Skies Agreement and the German Constitution. A4A will file a detailed complaint with the German Fiscal Court within the next two months and urge a referral of the case to the German Federal Constitution Court.

4. UK Confirms 8% APD.

The UK confirmed the Air Passenger Duty (APD) will rise to 8% on April 1, as previously announced, and plans a further increase from April 2013, when business jets also will become subject to the tax. In a joint statement, the CEOs of easyJet, IAG, Ryanair and Virgin Atlantic said UK passenger numbers last year were the same as in 2004 and "rises of up to 360% in APD in the last seven years are squeezing the life out of the economy . . . we must assume that the Treasury knows it cannot justify this job-destroying tax in overall economic terms. APD must be scrapped."

5. Lufthansa Offers Notes Exchangeable Into JetBlue Shares.

Lufthansa Malta Blues offered notes due in 2017 that would be exchangeable into JetBlue common stock or cash, with proceeds to be used for general

corporate purposes. CEO Christoph Franz said Lufthansa does not intend to terminate its 16% share in JetBlue, acquired in 2009, or their marketing agreement. Lufthansa posted a 2011 net loss of €13 million because of costs at bmi, which is being acquired by International Airlines Group, and expects operating profit to drop substantially this year from €820 million in 2011. A hiring freeze on administrative jobs was imposed, part of a previously announced plan to cut operating costs by €1.5 billion over a three-year period. In other news, subsidiary LSG Sky Chefs plans to acquire Finnair Catering, subject to approvals.

6. EU Court: Airlines Must Provide Care in Extraordinary Circumstances.

In a non-binding opinion, the Advocate General of the EU Court of Justice said airlines must provide care to passengers whose flights have been cancelled because of extraordinary circumstances, such as the closure of airspace following the eruption of the Eyjafjallajökull volcano in 2010. In a case involving a passenger who claims Ryanair failed to provide her with necessary assistance during that event and is required to compensate her for costs incurred, the Advocate General said, “The notion of ‘extraordinary circumstances’ is not defined in EU law [and] EU law does not imply either release from, or temporal or monetary limitation of, the obligation to provide care to passengers (accommodation, meals, refreshments).”

7. EC Conducts State Aid Probe in Belgium, France and Germany.

The European Commission (EC) opened an investigation to determine if financial arrangements between public authorities and airports of Charleroi (Belgium), Angoulême (France) and Dortmund (Germany), as well as rebates and marketing agreements concluded between these airports and some airlines using them, are in line with EU state aid rules. The proceedings extend the scope of an investigation opened in 2002 into advantages granted to Ryanair when it set up operations at Charleroi, and open new investigations into financing of Angoulême and Dortmund airports.

8. American, British Airways Code Share to India.

See Section IX, item 5.

IX. ASIA/PACIFIC AND MIDDLE EAST

1. Asia-Pacific Passenger Numbers to Top 2.2 Billion in 2030.

The Asia-Pacific region accounts for 34% of passenger traffic worldwide, ahead of both Europe and North America (27% each), says an Oxford Economics report. Passenger numbers are expected to almost triple from 779.6 million in 2010 to over 2.2 billion in 2030; cargo volumes are projected to rise 6.3%/year. Association of Asia Pacific Airlines (AAPA) noted a 6.1% increase in international passengers during first two months this year.

2. Virgin America–Korean Air Interline Pact.

Virgin America announced an interline agreement, in which Korean Air passengers can connect at Los Angeles, San Francisco, Seattle and Las Vegas to Virgin America destinations. Korean Air offers daily Airbus A380 service between Los Angeles and Seoul, and also flies nonstops from Los Angeles to Tokyo and Sao Paulo.

3. Turkish Increases U.S. Service, Offers Mogadishu Flights.

Turkish Airlines increased nonstops from Istanbul to New York Kennedy, Los Angeles and Washington Dulles. . . . The Star Alliance partner launched twice-weekly flights to Mogadishu via Khartoum, the first major service to the Somali capital in more than 20 years.

4. American, Hainan Launch Code Share Service.

American Airlines and Beijing-based Hainan implemented a code share agreement on Hainan flights between Seattle and Beijing and beyond to Fuzhou, Guangzhou, Hangzhou, Kunming and Urumqi; and on American flights between Chicago and Beijing and Shanghai, Los Angeles and Shanghai, and to and from 12 other cities in the U.S.

5. American, British Airways Code Share to India.

American and British Airways received approval from the Indian government to place American's code on British Airways flights from Heathrow to Bangalore, Chennai, Delhi, Hyderabad and Mumbai. American also serves India through partner Jet Airways via Brussels.

6. India News.

The Indian government announced a new infusion of almost \$800 million for national carrier Air India and promised relaxed regulations to aid the struggling industry, such as allowing up to 49% direct investment by foreign carriers in Indian airlines, and allowing airlines to raise foreign loans of up to \$1 billion for

working capital. IATA urged a change in taxation, as all fuel is subject to an 8.24% excise duty and domestic flights face state fuel taxes of up to 30%. . . Kingfisher suspended all overseas flights and flights to several Indian cities and said over the next six months it would operate 120 flights with 20 of its planes, a quarter of year-earlier operations. Kingfisher has been unable to garner financing needed to satisfy unpaid debts. IATA has suspended Kingfisher from its clearing house, its bill settlement system and its cargo payment system, due to non-payment of fees. . . . Jet Airways said it worked out a tax payment schedule with authorities, after IATA confirmed it had been served with a garnishment by Indian tax authorities for amounts owed them by the carrier. Jet Airways merged its low-fare brands—JetLite and Jet Airways Konnect—into one entity, JetKonnect.

7. Emirates Adds New U.S. Service.

Emirates will begin nonstops from Dubai to Washington Dulles on September 12, with a Boeing 777-300 configured with eight private suites in first class, 42 lie-flat beds in business class and 304 seats in coach. Emirates launched Boeing 777-300 service to Seattle, the first direct flights between the Middle East and the U.S. Northwest. Emirates and Alaska Airlines recently embarked on a frequent flier partnership, with reciprocal check-in. The largest airline by international traffic will hire 450 pilots and 4,000 cabin crew, as 35 new aircraft are added to the fleet this year. . . . President Tim Clark, predicted “serious trouble “ for the industry this year, as fuel costs and poor economies undermine profitability, reports Bloomberg. Emirates’ fuel bill accounts for 45% of costs and may jump by \$1.7 billion in year ending March 31; Clark said he will stay with no-hedging strategy. He estimates a revenue loss beyond \$90 million from Airbus A380 groundings due to wing cracks, saying the superjumbo generates \$50,000/hour, 15 hours/day. Emirates passed on an opportunity to invest in Air Berlin and is “not interested in purchases in Europe or elsewhere.”

8. Qantas, China Eastern Plan Hong Kong Budget Airline.

Qantas and China Eastern will be equal partners in joint venture, Jetstar Hong Kong, offering low-cost service to greater China, Japan, South Korea and Southeast Asia from Hong Kong from mid-2013. Qantas and Malaysia Airlines ended joint venture talks for an Asian premium carrier.

X. AMERICAS

1. U.S. Passenger Numbers to Reach 1.2 Billion by 2032.

U.S. airline revenue passenger miles (RPMs) will rise from 815 billion in 2011 to 1.57 trillion in 2032, with an average increase of 3.2%/year, reports the FAA in its annual forecast for fiscal years 2012-2032. The number of commercial operations at FAA and contract towers is expected to increase by more than 45% from current levels. Total number of passengers will increase by 0.2% to 732 million in 2012, then to 746 million in 2013, 1 billion in 2024 and 1.2 billion in 2032. Cargo traffic measured by revenue ton miles is projected to grow at an average rate of 4.9%/year. In 2011, average seat miles reached a record level of 82%; these load factors are expected to reach 83.4% in 2032. In 2011, passenger traffic grew by 2.5% over 2010 and RPMs were up 3.5% from 2010. The forecast projects strongest growth in general aviation jet aircraft at 2.9%/year, with 4%/year growth in hours flown.

2. American Bankruptcy Update.

American Airlines parent AMR filed a motion in bankruptcy court to reject current union contracts, in an effort to force labor to move quickly on concessions, and sought permission to seal arguments in support of the motion. CEO Tom Horton told employees the best outcome remains “consensually negotiated new contracts,” and vowed to continue working with unions to reach agreement. AMR has proposed laying off 13,000 workers. Horton maintained American will emerge from court protection as a standalone company, as US Airways and Delta each expressed interest in a merger, but in interviews said he would not rule anything out. Working with creditors, including the federal Pension Benefit Guaranty Corporation, AMR reversed an earlier plan to terminate pension plans, and instead will freeze them so workers retain accrued benefits, and will seek new capital to fund them. Annual spending at American Eagle will be cut by \$75 million, as AMR retires older aircraft and expands use of larger regional jets, reduces employee pay, and cuts 600 positions through layoffs or attrition.

3. Government Acts on Air Canada Labor Issues.

Canada’s government stepped in to avert looming strikes by Air Canada mechanics and pilots and enacted legislation that bans strikes and sends unresolved labor disputes to binding arbitration. Pilots asked the Ontario Superior Court of Justice to rule “that the legislation contravenes the Canadian Charter of Rights and Freedoms, and conflicts with Canadian Aviation Regulations.” Maintenance provider Aveos Fleet Performance rejected an offer of \$15 million in emergency financing from former owner Air Canada,

filed for bankruptcy protection, ceased Canadian operations and terminated 1,300 employees. Aveos said its problems were attributable to Air Canada, its principal customer, which this year has reduced, deferred, and cancelled maintenance work, resulting in \$16 million in lost revenue.

4. **GOL Plans Service to Miami via Caracas.**

GOL requested authority from the Brazilian Civil Aviation Agency (Anac) to operate five weekly Boeing 737 flights between Sao Paulo and Miami via Caracas. GOL's alliance with American Airlines ends in August and it will partner with new shareholder Delta.

5. **UPS to Acquire TNT.**

See Section VIII, item 1.

6. **JetBlue Denies Interest in Aer Lingus Stake.**

See Section VIII, item 2.

7. **A4A Members Challenge German Departure Tax.**

See Section VIII, item 3.

8. **Lufthansa Offers Notes Exchangeable Into JetBlue Shares.**

See Section VIII, item 5.

9. **Virgin America–Korean Air Interline Pact.**

See Section IX, item 2.

10. **Turkish Increases U.S. Service, Offers Mogadishu Flights.**

See Section IX, item 3.

11. **American, Hainan Launch Code Share Service.**

See Section IX, item 4.

12. **American, British Airways Code Share to India.**

See Section IX, item 5.

13. **Emirates Adds New U.S. Service.**

See Section IX, item 7.