

Air Carrier Newsletter

August 1, 2012

Air carriers continue to be affected by a wide range of Department of Transportation (DOT), Federal Aviation Administration (FAA), and international regulatory actions. Following is a roundup of the most recent activity.

Passenger Protections

On [July 24, 2012](#), the U.S. Court of Appeals for the D.C. Circuit denied a petition by Spirit Airlines, Inc., et al for review of portions of DOT's Passenger Protections regulations. Spirit challenged three provisions: (1) Airfare Advertising Rules which required airlines to most prominently display the full fare price, including the base fare, taxes, and other charges; (2) Refund Rule requiring airlines to allow cancellation of reservations without penalty for up to twenty-four hours with certain conditions; and (3) Post-Purchase Price Rule prohibiting price increases after purchase for services purchased by consumers. The Court rejected all three of Spirit's arguments and upheld DOT'S rules as reasonable and supported by the evidence.

DOT denied a requested extension from enforcement action on certain baggage fee disclosure regulations on [July 19, 2012](#). Airlines for America (A4A), the International Air Transport Association, the Regional Airline Association, and the Air Carrier Association of America requested relief from enforcement action until January 24, 2013 citing the industry's significant progress on compliance with the baggage fee disclosure rules and the substantial work remaining to adjust and reintegrate carrier systems without disrupting ongoing operations. DOT's rejection of the request means that it will begin enforcing baggage fee disclosure requirements on certain itineraries, interline, and code-share operations on **August 24, 2012**. The baggage disclosure regulations were instituted as part of DOT's Final Rule in "Enhancing Airlines Passenger Protections" which became effective in August 2011; the baggage fee disclosure regulations became effective January 24, 2012.

Separately, on [July 13, 2012](#), Frontier Airlines, Inc., which is not a member of A4A, requested relief from baggage fee disclosure enforcement. DOT has not yet ruled on Frontier's request.

Ex-Im Bank Financing to Foreign Air Carriers

The U.S. District Court for the D.C. Circuit granted summary judgment to the Export-Import Bank of the United States in a lawsuit brought by Airlines for America (A4A). A4A sued Ex-Im Bank last year over whether loan guarantees to Air India were harmful to domestic carriers in the competition for airline routes. The judge acknowledged that "the new planes are very likely to compete directly with service provided by [A4A's] members[,]"; and that the "possibility of a foreign airline transaction of such a kind and on such a scale that it would have massive adverse effects on domestic industry and nonetheless fail to qualify for additional economic-impact scrutiny." However, the judge concluded that in this case, the transaction "does not embody such a situation" because "there remain significant external checks on such hypothetical transactions: Congress not only has a recurring opportunity to decline to reauthorize the Bank, but it also gets the chance to review new commitments of more than \$100 million before they take effect."

Civil Penalties

Thus far in 2012, DOT has issued a total of \$1,805,000 in penalties. Following are some of the most recent Consent Orders.

[Travelocity.com LP](#) was fined **\$180,000** by DOT for failure to include fuel surcharges in the advertised flights on certain international itinerary advertisements.

[Caribbean Sun Airlines d/b/a World Atlantic Airlines](#) was assessed **\$180,000** by DOT for violations of public charter requirements, including the failure to require payment up front by the public charter sponsor.

[Bahamasair Holdings Limited](#) was assessed a **\$70,000** civil penalty for violations of DOT-enforced laws on providing refunds and providing notice of liability limits on flights covered by the Montreal Convention.

[Vision Airlines, Inc.](#) received a **\$75,000** civil penalty from DOT for failure to file on-time annual disability complaint reports and for violations of the full-fare advertising requirements.

[Trip Advisor, LLC](#) was fined **\$80,000** for violations of DOT's full fare advertising regulations and for code-share disclosure regulations.

FAA announced the following major proposed penalties in July:

[Boeing Company](#) was notified of FAA's proposed penalty of **\$13.57 million** for failure to meet a deadline for drafting instructions to prevent the risk of fuel-tank explosions on more than 380 of its aircraft.

[Delta Air Lines](#) received notification that FAA had proposed a total fine of **\$987,500** for violations involving operations of aircraft that were not in compliance with regulations.

[Kingfisher Air Services](#) of Puerto Rico received a proposed FAA penalty of **\$185,750** for operations of its Cessna 208B when the aircraft was not in compliance with maintenance regulations.

For more information, please contact:

**Lisa A. Harig, Esq.
Shelley A. Ewalt, Esq.
McBreen & Kopko
1501 Lee Highway, Suite 180
Arlington, Virginia 22209**

lhurig@mklawdc.com

sewalt@mklawnyc.com

Tel: +1 703 247 5487

Fax: +1 703 852 3590

www.mcbreenkopko.com