Aviation Regulatory Update

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U.S. ANNOUNCES IT WILL AGAIN ALLOW CHARTER AND COMMERCIAL FLIGHTS TO CUBAN AIRPORTS OUTSIDE HAVANA

In a first step towards some form of re-normalization of relations with Cuba, on May 16, 2022, the Biden Administration announced that it plans to reverse some Trump-era restrictions on Cuba, including limits on travel and remittances, as well as efforts to boost visa processing in Havana. In addition, the U.S. will again allow charter and commercial flights to airports outside Havana. This reflects a change from policy instituted by the Trump administration, under which flights to Cuba were restricted to only Havana's airport. Officials also said that the U.S. will reinstate educational travel in groups under a general license but cautioned that the administration is not reinstating individual "people-to-people" educational travel. The loosening of sanctions will also see the cap on family remittances - funds sent by migrants in the U.S. to family members in Cuba - removed.

Weeks prior to the announcement, the U.S. and Cuban governments began conversations amid a surge of Cubans seeking entry into the U.S. Further, in early May, the U.S. Embassy in Havana resumed processing visas for Cubans on a limited basis. That said, the Biden Administration is not planning to remove individuals or entities from the Restricted List, a U.S. State Department register of companies linked to the Cuban government with whom U.S. citizens are barred from doing business.

DOT ISSUES CONSENT ORDER AGAINST SILVER AIRWAYS FOR REPORTING DELINQUENCIES

On May 17, 2022, the U.S. Department of Transportation ("DOT") issued a Consent Order against Silver Airways, LLC ("Silver") for alleged reporting delinquencies in violation of 49 U.S.C. § 41708 and the accounting and reporting requirements specified in 14 CFR Part 241. According to DOT, Silver allegedly failed to timely complete and submit Passenger Origin-Destination Survey reports during several time periods in 2020 and 2021. In response Silver stated that its failure to submit the reports on time was due to an unintended administrative oversight, which was exacerbated by staffing challenges during the COVID-19 pandemic including the departure of the person who was responsible for preparing the reports. Silver also attempted to show further mitigation efforts including a series of steps it had implemented to correct the previous issues that resulted in violations, but DOT ultimately decided that enforcement action was nonetheless warranted. As part of its decision, DOT also directed Silver to cease and desist from future violations and imposed a civil penalty of $25,000 on the company.

US AIRWAYS WINS ANTITRUST TRIAL BUT RECEIVES ONLY $1 IN DAMAGES

On May 19, 2022, the U.S. District Court for the Southern District of New York found in favor of plaintiff, US Airways in an 11-year-old Sherman Act suit against Sabre Holdings Corp. ("Sabre") a Texas based company that operates an electronic network used by travel agents to search for and book flights listed by airlines. Prior to merging with American Airlines in 2013, US Airways accused Sabre of unlawfully maintaining monopoly power by forcing restrictive "full content" contracts onto "nearly every major airline" during the early 2000s in violation of § 2 of the Sherman Act and engaging in other anticompetitive conduct.

US Airways accused Sabre of threatening to block it from service or impose hefty fines on the carrier unless it agreed to sign a contract in 2011 that would bar the carrier from selling directly to corporate customers or sharing business with upstart booking platforms. US Airways was seeking $300 million in damages. In response, Sabre argued that US Airways readily agreed to the 2011 contract deal, making the concessions in exchange for receiving better prices. Ultimately the Court found that Sabre did purposefully engage in anticompetitive activities by forcing out other entities in the business travel industry but found that US Airways was only entitled to $1 in damages as a lack of evidence was provided to prove that Sabre unreasonably restrained trade through the 2011 contract.

D.C. CIRCUIT UPHOLDS RULING AGAINST RAILROAD COMPANIES IN A CASE INVOLVING AN ALLEGED FUEL SURCHARGE PRICE-FIXING SCHEME

On May 17, 2022, a D.C. Circuit Court appellate panel decided to uphold most of a lower court's ruling requiring certain discussions about interline shipping conducted between rail carriers to be included as evidence in ongoing litigation in which the U.S.'s four largest railroad companies, Union Pacific Railroad Co., CSX Transportation Inc., Norfolk Southern Railway Corp. and BNSF Railway Co. have been accused by rail shippers of being involved in a fuel surcharge price-fixing scheme. The rail shippers claimed that the four companies had been working together for years to fix the price of fuel surcharges and agreed not to compete on their prices to keep prices high, which the shippers claim cost them billions of dollars over the course of several years. The rail carriers' main argument in response to the shippers' claims was that according to 49 U.S.C. § 10706, in antitrust trials evidence based on conversations between rail carriers about interline shipping cannot be heard, provided that those conversations by themselves would not constitute an antitrust violation. However, the appellate panel found that such conversations must do more than simply mention interline shipping to qualify for the evidence exclusion provided for in § 10706, and that in the instant case, the rail carriers would have to show that the movements at issue are their shared interline traffic to enjoy the kind of blanket protection on their conversations that they were seeking. The appellate panel therefore rejected the rail carriers' arguments that the law excludes discussion of anything with a connection to their shared interline traffic. Consequently, the rail shippers who brought the case are now able to freely introduce evidence of the carriers' conversations and/or agreements during which they allegedly colluded to coordinate fuel surcharges on their respective freight and single-line traffic.

SENATORS URGE DOT TO INCREASE TRANSPARENCY AND EFFICIENCY FOR AIRLINE REFUNDS

On May 3, 2022, several U.S. Senators sent a letter to the Secretary of DOT to urge DOT to strengthen consumer protections regarding airline refunds in response to numerous complaints about refunds related to COVID-19 cancellations. Specifically, the Senators requested that DOT take further action to make the refund process easier, more transparent, and more efficient for U.S. airline consumers because of the many passenger refund complaints that were made during the COVID-19 pandemic. The Senators also urged DOT to take "specific actions to protect air travel consumers" such as clarifying and codifying policies to require air carriers and ticket agents to provide prompt refunds to consumers after a flight is cancelled or significantly delayed, and clarifying the rights consumers have when they are unable to travel and cancel their own tickets due to government restrictions or the declaration of a public health emergency. The Senators also urged DOT to require air carriers to conspicuously disclose and publicize those consumers must submit a written request to trigger the refund requirement, to set up user-friendly and easy to find refund portals, and to require carriers to report the value of refunds and vouchers provided to consumers to the Bureau of Transportation Statistics every month. The Senators based their request on a DOT report which found that during the pandemic, airlines had difficulties timely processing the extensive amount of refund requests they received from consumers and that many airlines were initially reluctant to provide refunds as required.

NEW LEGISLATION INTRODUCED ON MINIMUM PAY AND LABOR STANDARDS FOR SERVICE WORKERS AT AIRPORTS

Members of the U.S. House and Senate are planning to propose new legislation, known as the "Good Jobs for Good Airports Act" to require that airports set minimum pay and labor standards for service workers employed by vendors at their facilities. A copy of the first draft of the Act is available here.

If enacted as currently written, the Act would require small, medium, and large hub airports to certify that "airport service workers are paid the prevailing wage and benefits", or in other words, to ensure that airport service workers are paid a living wage and provided adequate health benefit coverage. This would mean that airports would be required to ensure that service workers are paid the higher of (1) a minimum of $15 per hour; (2) the minimum hourly wage for the appropriate locality and classification as determined in accordance with 41 U.S.C. 67; (3) the minimum hourly wage required under any Federal regulation, policy, or directive issued by the President pursuant to 40 U.S.C. subtitle I; or (4) the minimum hourly wage required under an applicable State or local minimum-wage law that applies to covered service workers. For benefits, airports would have to ensure that service workers are provided the higher of (1) the minimum fringe benefits for the appropriate locality and classification as determined in accordance with 41 U.S.C. 67; or (2) the minimum fringe benefits required under an applicable State or local law (including a regulation) or policy that applies to covered service workers. The legislators seeking enactment of the new legislation reasoned that the Act is necessary as several studies have shown that paying airport service workers a living wage and benefits could improve airport services and security by reducing employee turnover and ensuring that airports have an experienced workforce to serve passengers and respond to emergencies. We will continue to provide updates on the progress of the legislation as we receive them.

FAA DIRECTOR ISSUES DETERMINATION IN UNITED V. PANYNJ CASE

On May 3, 2022, a Director's Determination on Remand was issued in the case between United Airlines ("United") and the Port Authority of New York and New Jersey ("PANYNJ") involving a claim by United that PANYNJ allegedly charged unreasonable rates in violation of 49 U.S.C. § 47107(a), generated excessive surplus revenues in order to subsidize non-aeronautical functions, and improperly diverted airport revenue in violation of 49 U.S.C. § 47107(b)(2).

In making its determination, the Director confirmed that PANYNJ's actions satisfied the "grandfather" clause requirements of §§ 471107 and 47133 and Grant Assurance 25 - meaning that PANYNJ could use airport revenue for non-aeronautical purposes - for several reasons: (1) the laws relevant in PANYNJ's case were both enacted before September 2, 1982; (2) both of the laws constitute "law[s] controlling financing by the airport owner or operator" and (3) based on their language the laws provide that airport revenue "be used to support not only the airport but also the general debt obligations or other facilities of the owner or operator." The Director also looked at other applicable laws including the 1952 Consolidated Bond Resolution and various bond announcements for refundings, to determine whether the PANYNJ has grandfathered rights based on a covenant or assurance in a debt obligation issued not later than September 2, 1982. Since the Director's Determination on Remand is an initial agency determination and does not constitute a final agency decision and order subject to judicial review, United can and likely will appeal this initial determination.

OFAC AMENDS UKRAINE-RELATED SANCTIONS REGULATIONS AND ANNOUNCES OTHER SANCTIONS RELATED UPDATES

On May 2, 2022, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") published a Final Rule in the Federal Register to announce its plans to amend the heading of the Ukraine Related Sanctions Regulations to the "Ukraine-Russia-Related Sanctions Regulations," and replacing the Ukraine-related sanctions regulations that were previously published in abbreviated form on May 8, 2014 with a more comprehensive set of regulations that includes additional interpretive and definitional guidance, general licenses, and other regulatory provisions to provide further guidance to the public. The Reissued Regulations are generally connected to U.S. sanctions targeting Russia that were implemented in 2014 and are separate from the Russian Harmful Foreign Activities Sanctions Regulations detailed in 31 C.F.R. Part 587 that implement Executive Order ("EO") 14024 and the recent Russia-related Orders issued in 2022.

OFAC stated that because of the number of regulatory sections being updated or added, it decided to reissue the Regulations in their entirety. Specifically, the amendment includes implementation of the Ukraine-/Russia-related Executive order of December 19, 2014, and provisions of the Ukraine Freedom Support Act of 2014, the Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014, and the Countering America's Adversaries Through Sanctions Act. In addition, OFAC announced that the amendment would incorporate four directives regarding sectoral sanctions issued pursuant to the Ukraine-/Russia-related Executive order of March 20, 2014, and six general licenses that had previously only appeared on its website, as well as seven new general licenses.

Later in the month on May 12, 2022, OFAC issued Syria General License 22, which authorizes activities that are ordinarily incident and necessary to activities in certain economic sectors in non-regime held areas of Northeast and Northwest Syria including information and telecommunications, power grid infrastructure, construction, finance, transportation and warehousing, manufacturing, and trade, to name a few. The general license does not authorize any transactions involving any person, including the Government of Syria, whose property or interests in property are blocked pursuant to the SySR or the Caesar Syria Civilian Protection Act of 2019. In the same notice, OFAC also announced its intent to publish several new Frequently Asked Questions ("FAQs") related to U.S. sanctions on Syria.

PUERTO RICO SUBMITS APPLICATION FOR RENEWAL OF AUTHORITY FOR EXPANDED CARGO AND PASSENGER FLEXIBILITY AT PUERTO RICAN INTERNATIONAL AIRPORTS

On April 27, 2022, the Commonwealth of Puerto Rico applied for renewal of its authority under 49 U.S.C. § 40109(c) that provides foreign air carriers expanded cargo and passenger transfer flexibility at international airports in Puerto Rico, which Puerto Rico argues is a necessary, key component to the island's economic planning and development. Specifically, in its application Puerto Rico argues that because of Category 5 Hurricane Maria, which caused extensive devastation in Puerto Rico in 2017, Puerto Rico continues to work to try to rebuild its economy and infrastructure, and that air transportation remains a vital part of its economic recovery. Some of the factors that support renewal of the authority include:

1) Promoting expanded passenger and cargo air service to and from Puerto Rico by taking advantage of the Island's geographic location between Europe and Latin America.

2) Increasing use of three substantially under-utilized international airports which include the longest runway in the Caribbean and a major maintenance, repair, and overhaul facility.

3) Allowing Puerto Rico to promote economic development by highlighting to foreign carriers, industry, and tourism organizations the benefits of Puerto Rico in terms of online and interline connections as well as for origin and destination point traffic.

4) Allowing for the expansion of interline opportunities between U.S. carriers and foreign carriers and increasing cargo and passenger service to Puerto Rico.

5) Supporting a shift in the growth in passenger and cargo traffic seen now at foreign airports in the region to include the Dominican Republic, Colombia, and Panama to U.S. airports in Puerto Rico.

6) Advancing expansion of foreign tourist traffic from Europe to Puerto Rico's 300 beaches and numerous attractions and away from foreign destinations such as Cuba.

7) Bolstering U.S. presence and influence in the Caribbean and Latin America to counter the intrusion of nations, such as China, Venezuela, Russia, and Iran with interests adverse to the United States in the region.

PILOT UNION REQUESTS EXTENSION OF FULL 5G ROLLOUT

On April 28, 2022, the Air Line Pilots Association ("ALPA") issued a statement calling for the further delay of 5G towers near certain airports that are planned to be restored to full power, and asking the U.S. Federal Communications Commission ("FCC") to ensure that 5G towers near 50 designated airports are not allowed to restore full power in July 2022 as currently scheduled by amending telecom companies' licenses to require them to continue to limit 5G frequencies around affected airports.

As you may recall, a few months ago U.S. telecom companies Verizon and AT&T agreed to voluntary restrictions, including an agreement to temporarily defer turning on a limited number of towers around certain airport runways as the companies continued to work with the aviation industry and FAA to determine ways for airplane equipment and 5G signals to coexist safely. This agreement allowed for the companies to be able to rollout 5G frequencies in the U.S. in all areas outside of the 50 designated airports or "buffer zones" on January 19, 2022, while limiting 5G frequencies around the 50 designated airports. Since the rollout, 5G equipment has been operated at a lower power than usual near these areas, and 5G signals have been restricted around landing runways at the affected airports during the last 20 seconds of flight.

INFORMATION ON DHS BLUE LIGHTNING INITIATIVE TO COMBAT HUMAN TRAFFICKING

The U.S. Department of Homeland Security ("DHS") recently circulated information for air carriers who may wish to partner on a new program called the Blue Lightning Initiative ("BLI"). The BLI is a new initiative created by DHS to combat human trafficking by providing trainings and materials to air carriers. The training is free and includes access to 25-minute virtual training modules, BLI content, and supplemental digital awareness materials to train air carrier staff and personnel so that they can better identify human traffickers and/or victims and be able to appropriately report any suspected human trafficking activities to federal law enforcement. The training modules can also be placed on an airline's existing training platform and be offered to any airline employees. While all trainings and materials are free, interested carriers would have to sign a Memorandum of Cooperation ("MOC") to indicate agreement to a partnership with DHS regarding the initiative, and to receive trainings and associated materials.

If you have any questions, or if you are interested in participating in the initiative, please let us know and we can facilitate review and signing of a MOC and further consultation with DHS personnel.

CBP ANNOUNCES UNITING FOR UKRAINE PROGRAM

On April 21, 2022, the U.S. government in combination with U.S. Customs and Border Protection ("CBP") issued notice of a new program called "Uniting for Ukraine", or U4U, under which the U.S. Government will allow Ukrainians and certain Ukrainian non-citizens without a visa or other qualifying travel documents necessary to be admitted into the U.S., and who meet certain eligibility criteria, to obtain advance authorization to travel to the U.S. and seek entry. The program applies to Ukrainian citizens and their non-Ukrainian immediate family members. To be eligible, an individual must have been a resident in Ukraine as of February 11, 2022, and have been displaced as a result of the Russian invasion of Ukraine, have a sponsor in the U.S. who filed a Form I-134, "Declaration of Financial Support", on their behalf that has been confirmed as sufficient by USCIS, be in possession of a valid Ukrainian passport, complete certain vaccinations and other public health requirements, and pass a "rigorous" biographic screening and various security checks. Specific details on eligibility criteria and the process to apply for U4U travel authorization can be found here.

To validate an approved U4U traveler, carriers should be able to use the same measures that are currently in place to validate that a traveler has a valid visa or other required documentation in order to issue a boarding pass for air travel. CBP also notes that carriers may encounter minor Ukrainian citizens with approved U4U travel authorization who are listed as a dependent in their parent's valid Ukrainian passport. If this is the case, then the parent's valid, unexpired Ukrainian passport can be used to meet the passport requirement for dependent children that accompany the adult holder of the passport. However, if a carrier encounters a minor citizen of Ukraine who has U4U travel authorization and their

own valid passport, but is not traveling with their parent or legal guardian, the carrier is encouraged to contact CBP using the following information:

RCLG	SERVICE AREA	PHONE NUMBER
Honolulu	Asia, Pacific Rim	808-237-4632
Miami	Latin America, Caribbean	305-874-5444
New York	Europe, Africa, Mid-East	718-487-5321

Lastly, in terms of carriers who participate in Document Validation, CBP's notice states that carriers that participate in Document Validation will get the "A" code to print a boarding pass, when the Ukrainian passport number submitted through APIS has a valid associated U4U authorization on file. On the other hand, air carriers who do not participate in Document Validation will get the "Z" not applicable response code and will go through their established processes for checking documents and determining eligibility to board. Please also note, that although the U4U program allows for Ukrainian citizens and certain non-citizens to travel to the U.S. without visas or other required documents, Ukrainian nationals and non-citizens traveling to the U.S. by air must still adhere to the Centers for Disease Control and Prevention's ("CDC") guidelines for travelers entering the U.S. regarding testing, including COVID-19 testing.

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