

Destination Regulation: A Journey into the Land of Regulation Annotated Bibliography of Legal Sources

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TOPICS:

- **Federal policy shift towards economic theory of airline industry based on competition**
- **Promoting service and regulating competition at airports**
- **Changing sales models, marketing, and customer incentives**
- **Increase in mergers, bankruptcies, and new entrants**
- **Impact of economic deregulation on other regulated aspects of the airline industry and CAB/DOT authority**
- **Preemption of state regulation of airline industry**

Topic:

Federal policy shift towards economic theory of airline industry based on competition

- Statutes and Legislation
 - Airline Deregulation Act of 1978, Pub. L. No. 95-504, 92 Stat. 1705, 1705 (1978) (providing for deregulation of domestic passenger airline service, reflecting sweeping changes in federal policy from regulating airline service as monopoly to regulating as a competitive market; Preamble: “To amend the Federal Aviation Act of 1958, to encourage, develop, and attain an air transportation system which relies on competitive market forces to determine the quality, variety, and price of air services. . . .”).
 - Civil Aeronautics Board Sunset Act of 1984, Pub. L. No. 98-443, 98 Stat. 1703 (1984) (completing abolition of the Civil Aviation Board (C.A.B.), which previously regulated the civil aviation industry in the United States, and transferring its remaining administrative responsibilities to the Department of Transportation).
- Case Law

- *Frontier Airlines, Inc. v. C.A.B.*, 602 F.2d 375, 377 (D.C. Cir. 1979) (discussing change in C.A.B. authority and approach towards promoting competition among airlines in the immediate aftermath of passage of the ADA).
- *Air Line Pilots Ass’n, Int’l v. C.A.B.*, 667 F.2d 181, 183 (D.C. Cir. 1981) (discussing how “[a]irline deregulation legislation passed in 1977 and 1978 instituted a phased program to restore a substantial measure of free market competition in air transportation.”).
- *Republic Airlines, Inc. v. C.A.B.*, 756 F.2d 1304, 1307 (8th Cir. 1985) (“The [ADA] . . . represents a fundamental change in the perspective of the federal government toward the airline industry.”).
- *Alaska Airlines, Inc. v. Brock*, 480 U.S. 678, 680 (1987) (“After 40 years of extensive regulation of the commercial-airline industry by the Civil Aeronautics Board (CAB), Congress in 1978 decided to make ‘a major change and fundamental redirection as to the manner of regulation of interstate and overseas air transportation so as to place primary emphasis on competition.’”).
- *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190 (D.C. Cir. 1991) (noting, in citing the ADA that “. . . Congress has also said that the free market, not an ersatz Gosplan for aviation, should determine the siting of the nation’s airports.”).
- *City of St. Louis v. Dept. of Transp.*, 936 F.2d 1528, 1537 (8th Cir. 1991) (discussing DOT’s role in implementing regulations over competitive airline market).
- *Arapahoe Cty. Pub. Airport Auth. v. Centennial Express*, 956 P.2d 587, 593 (Colo. 1998) (“Congress radically altered the character of commercial aviation when it amended the Federal Aviation Act and deregulated the airline industry pursuant to the [ADA]. . . . In so doing, Congress determined that market forces were better suited for promoting efficiency, innovation, low prices, variety, and quality in the air transportation industry.”).
- *Nw. Airlines, Inc. v. Indianapolis Airport Auth.*, FAA Docket No. 16-07-04, Director’s Determination (Aug. 18, 2008), <https://part16.airports.faa.gov/pdf/16-07-04b.pdf>, corrected, Errata to Director’s Determination (Oct. 7, 2008), *aff’d*, Final Decision and Order (Oct. 27, 2009). (An airport is not required to obtain the approval of the other signatory airlines before amending its land lease agreement to provide a certain tenant with a landing fee rent credit for the financing of a special use facility, where the sole cost of that facility will be borne by the aeronautical tenant that will use the facility. However, where airlines’ landing fee rate is calculated pursuant to a residual methodology, it may be unreasonable to grant rent credits to one airline in exchange for additional landed weight by that airline as it would serve to dilute the costs of that

airline's special facility improvements by spreading it to all the other signatory airlines without a reciprocal benefit.)

- *Alaska Airlines, Inc. v. L.A. World Airports*, Final Decision, Order No. 2007-6-8, Docket No. OST-2007-27331 (Dep't of Transp. June 15, 2007), 2007 DOT Av. LEXIS 437, *petitions for review granted and denied in part and remanded sub nom. Alaska Airlines, Inc. v. U.S. Dep't of Transp.*, 575 F.3d 750, 753 (D.C. Cir. 2009). (Boilerplate holdover clauses in airport lease agreements are not “written agreements” within the meaning of Section 47129(e)(1) because they are not based on a knowing and consensual agreement to a specified fee or fee methodology and for a fixed term. Holdover tenancies are not based on “written agreements” because they are outside the term of the original written agreement, their duration is too short, and the parties do not intend for such tenancies to govern their long-term contractual obligations. Fees imposed pursuant to such holdover provisions are subject to Section 47129. Terminal building rates based on fair market value are reasonable as long as the charges are based on negotiated agreements and the rates are supported by a neutral third party appraisal.)
- Secondary Materials
 - Dorothy Diane Sandell, *Deregulation – Has it Finally Arrived – The Airline Deregulation Act of 1978*, 44 J. AIR L. & COM. 799 (1979) (discussing prospects for deregulation under the ADA).
 - Michael E Levine, *Revisionism Revised? Airline Deregulation and the Public Interest*, 44 LAW & CONT. PROBLEMS 179 (Winter 1981).
 - ELIZABETH BAILEY, DAVID GRAHAM, AND DAVID KAPLAN, *DEREGULATING THE AIRLINES* (MIT Press, 1985).
 - Michael E. Levine, *Airline Competition in Deregulated Markets: Theory, Firm Strategy, and Public Policy*, 4 YALE J. ON REG. 393 (1987).
 - John W. Barnum, *What Prompted Airline Deregulation 20 Years Ago?*, Presentation to the Aeronautical Law Committee of the Business Law Section of the International Bar Association (Sept. 15, 1998).
 - Steven A. Morrison & Clifford Winston, *Another Look at Airport Congestion Pricing*, 97 AM. ECON. REV. 1970 (2007). (Current air travel delays are higher than optimal and would be reduced by airport congestion tolls. An examination of net welfare gains from optimal congestion tolls (tolling only delays caused to other airlines) versus congestion tolls traditionally recommended by economists (tolls that do not distinguish between delays airlines cause to themselves and to others) reveals minimal additional benefits from the former, while the latter would still significantly reduce delays at congested U.S. airports and have a greater likelihood than optimal tolls have of actually being implemented.)

- Benjamin D. Williams, *Playing the Slots: The FAA Gambles with Its Controversial Congestion Management Plan for New York's Busiest Airports*, 74 J. AIR L. & COM. 437 (2009). (FAA implemented a plan to manage congestion in New York's airports by capping the number of landing slots and designating a certain number of incumbent spots as up for auction to new entrant airlines. FAA acted within its authority to manage airspace and regulate the allocation of landing slots as property, and its plan was a rational, market-based solution to fairly allocating the scarce resource of landing slots.)
- Michael E. Levine, *Airport Congestion: When Theory Meets Reality*, 26 YALE J. ON REG. 37 (2009). (FAA's New York slot auction plan leaves markets incomplete by excluding many users, and the airport is a political entity whose goals often conflict with economic efficiency. This adopted mechanism serves as a large wealth transfer from airlines to FAA, which creates resistance from airlines and incentive to use money for inefficient but politically expedient purposes. An alternative blind auction proposal would be more effective, where slots are chosen at random and made available to all bidders, with the proceeds going to the previous owner and the amount of both the winning and second-highest bid being made public. This forces the slot owner to explicitly consider the value it places on a slot and to compare it to an actual cash offer that has been revealed by the auction. The airport has no monetary incentive to create scarcity, and wealth transfers are voluntary.)
- Daniel R. Polsby, *Airport Pricing of Aircraft Takeoff and Landing Slots: An Economic Critique of Federal Regulatory Policy*, 89 CALIF. L. REV. 779 (2001). (Airports have become increasingly congested in part because of a flawed system of airport slot pricing. By restricting the fees airports can charge aircraft for takeoff and landing slots, federal regulatory policy constrains airports from charging aircraft for the full opportunity costs they impose on other airport users. Opportunity cost pricing of airport resources and peak time pricing of slots would mitigate airport congestion and yield a more efficient air travel system.)
- Roy Goldberg, *Airline Challenges to Airport Abuses of Economic Power*, 72 J. AIR L. & COM. 351 (2007). (Because airports wield economic power as essential facilities, airlines should look to the following tools to protect themselves against economically unfair conduct by airports: prohibitions against unjust discrimination by an airport, laws restricting fees charged to airlines, and relevant antitrust laws.)
- Severin Borenstein and Nancy L. Rose, *How airline markets work... or do they? Regulatory reform in the airline industry*, in ECONOMIC REGULATION AND ITS REFORM: WHAT HAVE WE LEARNED? 75-76 (Univ. Chicago Press, 2014) (discussing shift in conceptualization from natural monopoly to competitive market).

Topic:
Promoting service and regulating competition at airports

- Statutes and Legislation
 - Airline Deregulation Act of 1978, Pub. L. No. 95-504, § 33, 92 Stat. 1732 (1978) (provision in the ADA regarding “essential air transportation”, which subsidizes air service to smaller communities that would otherwise lack service; initially set to expire after a few years, this provision has been extended up to the present day).
 - International Air Transportation Competition Act of 1979, Pub. L. No. 96-192, § 29, 94 Stat. 35, 48-49 (1980) (instituting the “Love Field amendment” that restricted interstate flights from Love Field in Dallas, Texas).
 - Airport Safety and Capacity Expansion Act of 1987, Pub. L. No. 100-223, § 202(a)(1), (2), (b)(1), 101 Stat. 1507, 1516 (1987) (extending the essential air service program through 1998).
 - Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (“AIR-21”), Pub. L. No. 106-181, Title V, § 155, 114 Stat. 88, 106th Cong. (2000) (requiring competition plans at major airports; enacted in order to compensate for reduction in effective competition at major hubs dominated by one airline).
- Case Law
 - *City of New Haven v. C.A.B.*, 618 F.2d 955, 968 (2d Cir. 1980) (declining City’s challenge to airlines’ withdrawal of service, holding remaining service satisfied needs for “essential service”).
 - *Frontier Airlines, Inc. v. C.A.B.*, 621 F.2d 369, 370 (10th Cir. 1980) (upholding C.A.B.’s decision to require airline to continue providing “back-up” service to smaller regional airports).
 - *Delta Air Lines, Inc. v. C.A.B.*, 674 F.2d 1, 2 (D.C. Cir. 1982) (discussing applicability and implementation of “Small Community Air Service” provisions of the ADA).
 - *Alaska Airlines, Inc. v. United Airlines, Inc.*, 948 F.2d 536, 538-39 (9th Cir. 1991) (describing development of computerized registration systems in the airline industry in the 1970s and 1980s).
 - *City of St. Louis v. Dept. of Transp.*, 936 F.2d 1528, 1530-31 (8th Cir. 1991) (declining City’s challenge to DOT’s approval of transferring international routes between airlines).

- *Arapahoe Cty. Pub. Airport Auth. v. FAA*, 242 F.3d 1213 (10th Cir. 2001). (An airport's ban on all scheduled air carrier service at a non-certificated (Part 139) airport that permitted unscheduled service constituted a regulation related to routes or services in violation of the Airline Deregulation Act (ADA) because it curtailed an air carrier's business decision to offer a particular service in a particular market and it significantly impacted the scope of services available to the public. While the ADA does not preempt the exercise of an airport's proprietary powers, any such regulation must be reasonable, nondiscriminatory, non-burdensome to interstate commerce, and designed not to conflict with the ADA or its policies. In this case, the airport failed to show that the ban was necessary for the safe operation of the airport or to satisfy the public's civil aviation needs.)
- Secondary Materials
 - Dorothy Diane Sandell, *Deregulation – Has it Finally Arrived – The Airline Deregulation Act of 1978*, 44 J. AIR L. & COM. 799 (1979) (criticizing inclusion of essential air service provisions in the ADA).
 - STEVEN A. MORRISON AND CLIFFORD WINSTON, *THE EVOLUTION OF THE AIRLINE INDUSTRY*, at 48 (Brookings Institute Press, 1995) (1995) (estimating economic impact of realignment of airline networks to hub-and-spoke model).
 - Severin Borenstein and Nancy L. Rose, *How airline markets work... or do they? Regulatory reform in the airline industry*, in *ECONOMIC REGULATION AND ITS REFORM: WHAT HAVE WE LEARNED?* 88-89, 92-93 (Univ. Chicago Press, 2014) (discussing shift from point-to-point service to hub-and-spoke service).
 - Steven A. Morrison & Clifford Winston, *Another Look at Airport Congestion Pricing*, 97 AM. ECON. REV. 1970 (2007). (Current air travel delays are higher than optimal and would be reduced by airport congestion tolls. An examination of net welfare gains from optimal congestion tolls (tolling only delays caused to other airlines) versus congestion tolls traditionally recommended by economists (tolls that do not distinguish between delays airlines cause to themselves and to others) reveals minimal additional benefits from the former, while the latter would still significantly reduce delays at congested U.S. airports and have a greater likelihood than optimal tolls have of actually being implemented.)
 - Gregory M. Seigel, *Attention Passengers: Your Flight Will Be Delayed — Congestion Pricing as a Solution to Airport Traffic Management*, 39 TRANSP. L.J. 165 (2012). (By setting the cost of runways and roadways to match actual costs imposed on the consumer, the decision to consume these scarce resources will shift to those willing to pay for its increased cost, and the revenues from congestion pricing can provide revenue to expand infrastructure. The adoption of a two-part landing fee is currently hindered by current

landing fee arrangements as well as the statutory requirement that landing fees be revenue neutral. DOT and FAA should encourage the use of congestion pricing.)

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| Topic: Changing sales models, marketing, and customer incentives |
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- Case Law
 - *Republic Airlines, Inc. v. C.A.B.*, 756 F.2d 1304, 1316-17 (8th Cir. 1985) (upholding a CAB determination to only temporarily grant antitrust immunity to airlines who were parties to agreements that limited the sale of airline tickets through particular agents).
 - *Nader v. C.A.B.*, 657 F.2d 453, 455 (D.C. Cir. 1981) (discussing extent of CAB oversight of ticket fares under the ADA).
 - *New York v. Trans World Airlines, Inc.*, 728 F. Supp. 162, 178-79 (S.D.N.Y. 1989) (discussing how the ADA did not affect state regulation of deceptive advertising practices).
 - *Morales v. TWA*, 504 U.S. 374, 388 (1992) (considering state regulation of airline frequent flier programs; a key ADA preemption case in which the Supreme Court held that states could not bar allegedly deceptive airline fare advertisements through enforcement of their general consumer protection statutes; the case gives broad interpretation to the ADA’s language preempting state regulation “relating to” airline rates, routes and service).
 - *Cont’l Airlines, Inc. v. Am. Airlines, Inc.*, 824 F. Supp. 689 (S.D. Tex. 1993) (antitrust case considering airline pricing subsequent to the ADA).
 - *Union Flights, Inc. v. S.F. Int’l Airport*, FAA Docket No. 16-99-11, Director’s Determination (Feb. 15, 2000), <https://part16.airports.faa.gov/pdf/16-99-11b.pdf>. (An airport’s practice of charging a minimum landing fee on all carriers operating aircraft weighing less than a threshold landing weight is reasonable when supported by the airport’s cost accounting methodology, even if the resulting landing fee rate is higher for smaller aircraft.)
 - *Brendan Airways, LLC v. Port Auth. of N.Y. & N.J.*, Final Decision, Order No. 2005-6-11, Docket No. OST-05-20407 (Dep’t of Transp. June 14, 2005), 2005 DOT Av. LEXIS 370. (Airport fees calculated based on a compensatory methodology must be based on actual, recurring costs. The existence of a reasonable alternative method to allocate indirect costs does not render the method used by the airport unreasonable. An airport is not obligated to credit concession revenues to the airlines.)

- Secondary Materials

- Michael E. Levine, *Airline Competition in Deregulated Markets: Theory, Firm Strategy, and Public Policy*, 4 YALE J. ON REG. 393, 413-14 (1987) (discussing mechanisms for varying service).
- STEVEN A. MORRISON AND CLIFFORD WINSTON, *THE EVOLUTION OF THE AIRLINE INDUSTRY*, at 49-61 (Brookings Inst. Press 1995) (discussing how frequent-flyer programs created a competitive advantage for larger airlines relative to smaller airlines with less-extensive networks).
- Laynie Giles, *Interpreting the Airline Deregulation Act of 1978: Federal Preemption Over State Deceptive Advertising Laws*, 22 TRANSP. L.J. 87 (1994).
- Richard de Neufville, *Planning Airport Access in an Era of Low-Cost Airlines*, 72 J. AM. PLANNING ASS'N 347 (2006). (The rise and dominance of low-cost airlines, where air transport serves a mass market focused on costs, means that cost-effective modes of public transport that distribute passengers and employees effectively over metropolitan regions are preferable to special-purpose, high-speed modes of airport access. Planners should pay special attention to a range of rubber-tired, high-occupancy vehicles such as bus rapid transit, which can respond to the evolving needs of travelers and employees.)
- Severin Borenstein and Nancy L. Rose, *How airline markets work... or do they? Regulatory reform in the airline industry*, in *ECONOMIC REGULATION AND ITS REFORM: WHAT HAVE WE LEARNED?* 77-86, 92-93 (Univ. Chicago Press, 2014) (discussing increasing fare variation and impact of loyalty programs and service differentiation).
- Gregory M. Seigel, *Attention Passengers: Your Flight Will Be Delayed — Congestion Pricing as a Solution to Airport Traffic Management*, 39 TRANSP. L.J. 165 (2012). (By setting the cost of runways and roadways to match actual costs imposed on the consumer, the decision to consume these scarce resources will shift to those willing to pay for its increased cost, and the revenues from congestion pricing can provide revenue to expand infrastructure. The adoption of a two-part landing fee is currently hindered by current landing fee arrangements as well as the statutory requirement that landing fees be revenue neutral. DOT and FAA should encourage the use of congestion pricing.)

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| <p style="text-align: center;">Topic:</p> |
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| <p style="text-align: center;">Increase in mergers, bankruptcies, and new entrants</p> |
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- Case Law

- *Braniff Master Executive Council of Air Line Pilots Ass'n Intern. V. C.A.B.*, 693 F.2d 220, 231-32 (D.C. Cir. 1982) (discussing labor and expedited CAB procedural timelines for assessing merger agreements under the ADA).

- *Cont'l Airlines, Inc. v. Am. Airlines, Inc.*, 824 F. Supp. 689, 697 n.13, 705 n.42 (S.D. Tex. 1993) (discussing the cause of bankruptcies after the ADA).
- Secondary Materials
 - Stephen E. Creager, *Airline Deregulation and Airport Regulation*, 93 YALE L.J. 319 (1983) (discussing capacity issues at airports and accommodation of new entrants).
 - Melvin A. Brenner, *Airline Deregulation – A Case Study in Public Policy Failure*, 16 TRANSP. L.J. 179 (1988).
 - Alfred E. Kahn, *Airline Deregulation – A Mixed Bag, But a Clear Success Nevertheless*, 16 TRANSP. L.J. 229 (1988).
 - Andrew R. Goetz and Paul Stephen Dempsey, *Airline Deregulation Ten Years After: Something Foul in the Air*, 54 J. AIR L. & COM. 927 (1989).
 - Paul Stephen Dempsey, *Airport Landing Slots: Barriers to Entry and Impediments to Competition*, 26 AIR & SPACE L. 20 (2001). (The ability to hoard landing slots creates barriers to entry and monopolized markets in air travel, resulting in higher fares and reduced competition. The leasing of slots to other carriers should be prohibited; dormant slots should be recaptured by FAA and distributed to another carrier. Carriers should not be permitted to sell slots. Variable landing fees higher during periods of peak demand should be adopted to ration slots to airlines which value the slots most highly, but new entrants must also be guaranteed access without fees in order to prevent larger carriers from buying up and hoarding slots.)
 - John Sabel, *Airline-Airport Facilities Agreements: An Overview*, 69 J. AIR L. & COM. 769 (2004). (Incumbent airlines can deter new entrants by making it difficult for them to obtain necessary terminal facilities, especially gate space, by tying up existing gates, limiting construction of additional space, and subleasing gate space to new entrants at above-market prices. Incumbent airline control over landing slots similarly prevents new entrants from gaining long-term access to airports. Current airport use agreements generate revenue that subsidize infrastructure while helping incumbent airlines maintain long-term presence. A nationwide formula for allocation of costs and revenues may help avoid potential future disputes over airport fee structures.)
 - Severin Borenstein and Nancy L. Rose, *How airline markets work... or do they? Regulatory reform in the airline industry*, in ECONOMIC REGULATION AND ITS REFORM: WHAT HAVE WE LEARNED? 87-88, 89-90 (Univ. Chicago Press, 2014) (discussing a sharp rise in new entrant airlines, as well as an increase in bankruptcies and mergers).

Topic:
Impact of economic deregulation on other regulated aspects of the airline industry and CAB/DOT authority

- Case Law
 - *Air Line Pilots Ass’n, Int’l v. C.A.B.*, 667 F.2d 181, 182 (D.C. Cir. 1981) (“The central issue in these consolidated cases is whether the Airline Deregulation Act of 1978, which provides for phased restoration of market competition in the airline industry, also raises the minimum safety standards for new carrier applicant and creates an expanded role for the Civil Aeronautics Board (CAB). . . . We hold that the 1978 Act left the CAB’s safety mandate unchanged.”).
 - *San Diego Unified Port Dist. v. Gianturco*, 651 F.2d 1306, 1313 n.15 (9th Cir. 1981) (noting that the ADA and other legislation “are some indication that Congress has not changed its collective mind regarding the wisdom of forbidding local regulation of the sources of aircraft noise”).
 - *Diefenthal v. C.A.B.*, 681 F.2d 1039, 1048 (5th Cir. 1982) (holding that the ADA did not alter CAB’s authority to regulate airline quality of service).
 - *Braniff Master Exec. Council of Air Line Pilots Ass’n Int’l. v. C.A.B.*, 693 F.2d 220, 227-28 (D.C. Cir. 1982) (finding that ADA altered CAB’s authority to consider labor performance agreements in assessing mergers).
 - *Alaska Airlines, Inc. v. Brock*, 480 U.S. 678, 683 (1987) (upholding a portion of the ADA concerning a labor-related duty-to-hire program, while holding it severable from an unconstitutional congressional-veto provision).
 - *New England Legal Found. v. Mass. Port Auth.*, 883 F.2d 157, 172-73 (1st Cir. 1989) (discussing broad preemptive power of the ADA notwithstanding deregulation and continued DOT oversight).
 - *Long v. Trans World Airlines, Inc.*, 704 F. Supp. 847, 853-55 (N.D. Ill. 1989) (discussing implications of ADA and subsequent case law in regards to airline employee labor protections).
 - *New York v. Trans World Airlines*, 728 F. Supp. 162, 178-79 (S.D.N.Y. 1989) (discussing how the ADA did not affect state regulation of deceptive advertising practices).

- *Frontier Airlines, Inc. v. United Air Lines, Inc.*, 758 F. Supp. 1399, 1408-09 (D. Colo. 1989) (discussing preemption of state regulation of computerized reservation systems under ADA and subsequent legislation).
- *City of St. Louis v. Dept. of Transp.*, 936 F.2d 1528, 1535-36 (8th Cir. 1991) (discussing DOT's adoption of certain powers from the C.A.B. regarding approval of international routes).
- *Air Transp. Ass'n of Am. v. City and Cty. of S.F.*, 992 F. Supp. 1149, 1155, 1180-89 (1998) (local ordinance prohibiting publicly owned airport from doing business with companies that discriminated against employees based on sexual orientation was not necessarily preempted by the ADA).
- *Port Auth. of N.Y & N.J. v. Dep't of Transp.*, 479 F.3d 21, 28, 35 (D.C. Cir. 2007) (Section 47129's expedited resolution of airport-air carrier disputes concerning airport fees is limited to U.S. carriers only. A particular year's charge for costs incurred on canceled capital projects, which covered planning costs incurred over multiple years, did not serve as a reasonable forecast for future single-year charges.)
- *Air Transp. Ass'n of Am., Inc. v. U.S. Dep't of Transp.*, 613 F.3d 206, 214-15 (D.C. Cir. 2010). (DOT's interpretation of the statutory prohibition of unjust discrimination in airport landing fees is entitled to deference when establishing policies allowing airports to institute certain fees to reduce congestion. It is not unreasonable or unjust for peak load users to pay more than off-peak users, or for airlines landing small aircrafts at a peak time to be charged more than those with large aircrafts, because the peak price is being used to allocate a scarce resource, and these fees are used precisely to alter scheduling profitability to reduce congestion.)
- Secondary Materials
 - John W. Freeman, *State Regulation of Airlines and the Airline Deregulation Act of 1978*, 44 J. AIR L. & COM. 747, 757-68 (1979) (discussing aspects of state regulation potentially in conflict with, and thus preempted by, the ADA).
 - Roy Goldberg, *A Tale of Two Airports: Why DOT Found Unjust Discrimination against Airlines at LAX But Not at Newark*, 2004-08 ISSUES AVIATION L. & POL'Y 10,131. (The 2005 Newark Airport case illustrated that there are circumstances in which an airport can subject airlines to disparate fee structures. The LAX decision demonstrated that if the complainant airlines support their complaint with evidence regarding the factual situation at the airport and showing a material amount of discrimination, the airport cannot escape a finding of unjust discrimination.)

Topic:
Preemption of state regulation of airline industry

- Case Law
 - *San Diego Unified Port Dist. v. Gianturco*, 651 F.2d 1306, 1313 n.15 (9th Cir. 1981) (noting that the ADA and other legislation “are some indication that Congress has not changed its collective mind regarding the wisdom of forbidding local regulation of the sources of aircraft noise”).
 - *Midway Airlines v. Cty. Of Westchester*, 584 F. Supp. 436, 440 n.18 (S.D.N.Y. 1984) (“The legislative history is unmistakably clear that Congress did not intend that the preemptive force of [the ADA] would interfere with ‘long recognized powers of the airport operators to deal with noise and other environmental problems at the local level.’” 124 Cong. Rec. 37419 (1978) (quoting remarks of of Senator Kennedy)).
 - *Air Transp. Ass’n v. Pub. Utils. Comm’n of Cal.*, 833 F.2d 200, 207 (9th Cir. 1987) (considering in dicta the applicability of the ADA to a state public utilities commission regulation of recorded telephone calls).
 - *Fed. Express Corp. v. Cal. Pub. Utils. Comm’n*, 716 F. Supp. 1299, 1300, 1305 (N.D. Cal. 1989) (declining to hold that ADA covered purely intrastate movement of cargo company so as to preempt state regulation by public utilities commission).
 - *Frontier Airlines, Inc. v. United Air Lines, Inc.*, 758 F. Supp. 1399, 1406-09 (D. Colo. 1989) (discussing preemption in the context of the ADA).
 - *Morales v. TWA*, 504 U.S. 374 (1992) (discussing air travel industry enforcement guidelines, and state action pursuant to guidelines, pre-empted by ADA provisions prohibiting regulation of rates, routes, and services; a key ADA preemption case (see discussion above)).
 - *Am. Airlines v. Wolens*, 513 U.S. 219, 222, 232-34 (1995) (holding ADA preempts passenger’s consumer fraud claims; another key ADA preemption case limiting state regulation of the airline industry; however, the Court held that a common law claim of breach of contract was not preempted because it simply sought to hold the airline to its prior contractual agreements).
 - *Travel All Over the World v. Kingdom of Saudi Arabia*, 73 F.3d 1423 (7th Cir. 1996) (holding airline’s violation of its own self-imposed contractual undertakings not preempted under the ADA).

- *Air Transp. Ass'n of Am. v. City & Cty. of S.F.*, 992 F. Supp. 1149 (1998).
 - *Taj Mahal Travel, Inc. v. Delta Airlines, Inc.*, 164 F.3d 186, 193-95 (3d Cir. 1998) (discussing case law interpretation of ADA preemption in the context of state tort law, concluding that the ADA does not preempt such claims).
 - *Arapahoe Cty. Pub. Airport Auth. v. FAA*, 242 F.3d 1213 (10th Cir. 2001). (While the ADA does not preempt the exercise of an airport's proprietary powers, any such regulation must be reasonable, nondiscriminatory, non-burdensome to interstate commerce, and designed not to conflict with the ADA or its policies. In this case, the airport failed to show that the ban was necessary for the safe operation of the airport or to satisfy the public's civil aviation needs.)
- Secondary Materials
 - John W. Freeman, *State Regulation of Airlines and the Airline Deregulation Act of 1978*, 44 J. AIR L. & COM. 747 (1979).
 - Laynie Giles, *Interpreting the Airline Deregulation Act of 1978: Federal Preemption Over State Deceptive Advertising Laws*, 22 TRANSP. L.J. 87 (1994).