

The JFTC's Review Results Concerning Acquisition of Asiana Airlines Inc. by Korean Air Co., Ltd. (Overview)

(Tentative Translation)

I. Parties

Korean Air Co., Ltd. is a company headquartered in the Republic of Korea mainly providing international airline services, including air passenger and air cargo services. Asiana Airlines Inc. is also a company headquartered in the Republic of Korea mainly providing international airline services, including air passenger and air cargo services.

The abbreviations of the Parties, etc. are shown in the attached table.

II. Outline of the Case and Related Provisions of Law

This is the share acquisition case according to which Korean Air will acquire more than 50% of voting rights in Asiana Airlines (hereinafter referred to as the "Transaction").

The relevant provision of law is Article 10 of the Antimonopoly Act.

III. Reviewing Process

- January 24, 2024: The JFTC received the notifications regarding the Transaction (the commencement of the phase 1 review).
- January 31, 2024: The JFTC notified the Parties that it would not issue a cease and desist order.

The Transaction was/has been also reviewed by overseas competition authorities and the JFTC conducted the review while exchanging information with the Australian Competition and Consumer Commission, the U.K. Competition and Markets Authority, the U.S. Department of Justice, the European Commission, the Korea Fair Trade Commission, and the State Administration for Market Regulation of China.

IV. Definition of Particular Fields of Trade, etc.

1 International Air Passenger Services

(1) Scope of Services

International air passenger services provide passenger transportation service, between a certain point in Japan and another certain point outside Japan, or between various points outside Japan, for a certain fee in response to the needs of passengers. The JFTC defined the relevant service market as "International air passenger services."

In general, enterprises that operate international air passenger services are divided into full-service carriers (hereinafter referred to as "FSC") and low-cost carriers (hereinafter referred to as "LCC") based on differences in the services they provide to passengers. However, the JFTC concluded that both FSC and LCC belonged to the same relevant service market. The reasons for this are as follows; (a)

there is a certain degree of demand-side substitutability between FSC and LCC, (b) the impact of differences in service levels and other factors is not significant because the route between Japan and South Korea is a short-haul flight.

Having said that, it cannot be denied that there is a certain degree of differentiation in service levels and price ranges between FSC and LCC, and that competitive constraints from LCC on FSC are relatively weak compared to competitive constraints between FSCs. Therefore, the degree of competitive constraints from LCC on FSC was considered in the substantial analysis for each route. Also, the difference between FSC and LCC was taken into consideration when examining the adequacy of the proposed remedies¹.

(2) Geographical scope

The JFTC defined the relevant geographical markets based on the so-called O&D approach. That is, every combination of an airport (or city, where relevant) of origin to an airport (or city, where relevant) of destination is defined as a distinct market. The JFTC specified and examined 10 overlapping routes where the Parties are active, namely Tokyo-Seoul, Osaka-Seoul, Sapporo-Seoul, Nagoya-Seoul, Fukuoka-Seoul, Okinawa-Seoul, Tokyo-Busan, Osaka-Busan, Sapporo-Busan and Fukuoka-Busan.

Note that, since airports located in the same city or nearby area can be substitutable, they belong to the same geographical market. Specifically, Narita International Airport and Haneda Airport belong to the same geographical market, and Incheon International Airport and Gimpo International Airport belong to the same geographical market because they are located within a relatively short distance, less than 100 km from the center of each city (namely Tokyo and Seoul, respectively).

2 International Air Cargo Services

(1) Scope of Services

International air cargo services provide cargo transportation service, between a certain point in Japan and another certain point outside Japan, or between various points outside Japan, for a certain fee in response to the needs of various customers. The JFTC defined the relevant service market as “International air cargo services.” The transportation services provided by integrators² and sea freight forwarding services are defined as distinct services adjacent to the international air cargo services.

(2) Geographical scope

Customers of air cargo services between Japan and South Korea are forwarders,³ who have developed a nationwide land transportation network. Thus, unlike in the air passenger services,

¹ Both Korean Air and Asiana Airlines are FSCs, and both Korean Air Group and Asiana Airlines Group have LC C(s) in the group respectively.

² The term “Integrators” means air freight carriers that own aircraft and provide door-to-door transportation services by integrating land and air transportation.

³ The term “Forwarders” means air freight carriers that perform a series of operations necessary for freight transportation such as collection from shippers, transport to airports, cargo assembly, document preparation, customs clearance, and delivery to consignees on behalf of shippers.

forwarders can alternatively select all airports in Japan and South Korea. They select airlines that offer more favorable conditions for shippers in terms of lead time, fares, etc., without being limited to the arrival and departure airports.

In addition, the international air cargo service is not expected to be used for round-trip services. Therefore, the main customers of the flights from Japan to South Korea are forwarders located in Japan whereas the main customers of the flights from South Korea to Japan are forwarders located in South Korea. Thus, for the air cargo services, the geographical scope shall be defined as "route from Japan to South Korea" and "route from South Korea to Japan" instead of individual airport pairs.

The JFTC examined the route from Japan to South Korea in particular, which could have a large impact on Japanese customers.

3 Types of Business Combination

Since both parties are competing in the same relevant markets as defined above, the Transaction constitutes a horizontal acquisition.

V. Substantial Assessment

1 International Air Passenger Services Market

(1) Substantial Assessment of Unilateral Effect

With respect to 7 routes (namely Osaka-Seoul, Sapporo-Seoul, Nagoya-Seoul, Fukuoka-Seoul, Osaka-Busan, Sapporo-Busan, and Fukuoka-Busan) out of the 10 overlapping routes, the JFTC found that:

- (a) the combined market shares of the Parties Group after the Transaction would be very high at approximately 50% to 75%, which would place the Parties Group in the first position in terms of market share, and the gap between the Parties Group and the second and lower ranks would be large;
- (b) in particular, with regard to the Seoul-related route (except for the Tokyo-Seoul), since only the Parties Group operates as the FSC, competition between FSCs will be completely lost after the Transaction (The close rivalry between FSCs is important as competitive constraints, whereas the competitive constraints by LCC on FSC is relatively weak due to differences in fares and service levels between LCC and FSC. Therefore, the loss of competition between FSCs could have a significant impact on competition.);
- (c) although some of the competitors plan to increase their flight frequency, the situation of market share between the Parties Group and the competitors will not change significantly since the Parties Group also plans to increase their flight frequency. Thus, the competitive constraints from the competitors will be limited;
- (d) there will be no competitive pressure from new entrants; and
- (e) as a result of economic analysis (including analysis of competitive closeness and upward pricing pressure), it was found that the Parties Group would have an incentive to raise prices

after the Transaction (The results of economic analysis show that there will be upward pricing pressure even on routes where there has been no competition between FSCs.).

(2) Substantial Assessment of Coordinated Effect

With respect to all 10 overlapping routes, the JFTC concluded that it would not be likely that effective competition would be restrained by coordinated conduct after the Transaction due to the following reasons: (a) there are multiple competitors even after the Transaction; (b) concerted practice is difficult because business model and cost structure of the FSC and LCC are different.

(3) Conclusion for the Substantial Assessment of International Air Passenger Services

For the above reasons, the JFTC concluded that the Transaction would substantially restrain competition in the international air passenger services market on 7 routes (namely Osaka-Seoul, Sapporo-Seoul, Nagoya-Seoul, Fukuoka-Seoul, Osaka-Busan, Sapporo-Busan and Fukuoka-Busan) out of the 10 overlapping routes.

2 International Air Cargo Services Market

(1) Substantial Assessment of Unilateral Effect

With respect to the international air cargo services route from Japan to South Korea, the JFTC found that:

- (a) the combined market share of the Parties Group would exceed 60% after the Transaction, which would place the Parties Group in the first position in terms of market share, and the gap between the Parties Group and the second and lower ranks would be large;
- (b) before the Transaction, Asiana Airlines has tended to offer lower prices than Korean Airlines;
- (c) the Parties and the competitors had been differentiated from each other in terms of whether or not they can operate large dedicated freighters and whether or not they arrive at or depart from airports in western Japan, although the competitors had a certain amount of supply capacity;
- (d) concern regarding the ability of new entrants to respond in the event of unforeseen circumstances (such as damage or missing of cargo) had been raised by a large number of customers, and thus the competitive pressure by new entrants would be limited;
- (e) competitive pressure from adjacent markets such as integrators, indirect freight, and sea freight forwarding services are also limited;
- (f) due to the differentiation between the Parties and competitors, it is difficult for customers to switch business partners, therefore, countervailing buyer power is limited; and
- (g) the economic analysis indicated that the prices of the Parties had been closely related to each other (historical price analysis), and there would be an incentive for the Parties Group to raise prices after the Transaction (simulation analysis of the incentive for raising prices).

(2) Substantial Assessment of Coordinated Effect

The JFTC concluded that it would not be likely that effective competition in the international air cargo route from Japan to South Korea would be substantially restrained by coordinated conducts after the Transaction due to the following reasons: (a) the international air cargo route from Japan to South Korea would be a decentralized market with a large number of competitors even after the Transaction; (b) there is no sufficient evidence to demonstrate the price transparency.

(3) Conclusion for the Substantial Assessment of International Air Cargo Services

For the above reasons, the JFTC concluded that the Transaction would substantially restrain competition in the international air cargo services regarding the route from Japan to South Korea.

VI. Proposed Remedies

1 International Air Passenger Services Market

(1) Outline of Remedies for the International Air Passenger Services

The Parties proposed to undertake the following remedies to address the competition concerns described in the section V.

- (a) The Parties shall divest slots⁴ held by one of the Parties Group on the routes concerned to specified remedy takers, which are international air passenger carriers (hereinafter referred to as the "Slot Divestment").
- (b) In case where the number of slots to be divested by the Slot Divestment above is less than the number of slots held by one of the Parties Group described in (a) above on the routes concerned, the Parties shall offer the slot divestment to unspecified international air passenger carrier for the shortfall and the Parties shall accept the request from the potential remedy takers (hereinafter referred to as the "Open Slot Commitment.") (In principle, duration of the Open Slot Commitment is 10 years from the date of completion of the Transaction).
- (c) In order to complement the competitiveness of the specified remedy takers of the Slot Divestment set out in (a) and potential remedy takers of the Open Slot Commitment set out in (b), the Parties shall provide such remedy takers with a range of support measures, such as a lounge use agreement and a ground handling service agreement, etc., in case that the remedy takers would request to do so.
- (d) Each Parties Group shall take necessary interim measures to maintain competition between Parties even after the completion of the Transaction until the time when the expansion or entry by the remedy takers set out in (a) above becomes a reality. Such interim period shall be until (1) the start of the 2025 IATA⁵ Winter Season, or (2) at the time when the remedy takers set out in (a) above commence the ticketing of the passenger transport service for the slots to be

⁴ A "slot" is an opportunity (landing slot) for carriers to use an aerodrome, air navigation facilities, air traffic control, etc., each time it takes off or lands at an aerodrome. International air passenger carriers are assigned specific arrival and departure times on specific days of the week at specific airports.

⁵ The International Air Transport Association (IATA) is the global association of air transport companies and is responsible for determining matters necessary for transport operations. The IATA Winter Season starts on the last Sunday of October every year.

transferred or at the time when the slot divestment procedure commences, whichever comes earlier.

- (e) The Parties shall appoint a suitable Monitoring Trustee, who will continuously monitor the performance of the above measures and make periodic reports to the JFTC.

(2) Adequacy of the Proposed Remedies

The JFTC found that the remedies proposed by the Parties for the passenger services could create new independent competitors or effective competitive constraints, leading the Parties Group not to be able to freely influence prices, etc. Thus, the JFTC concluded that the remedies proposed by the Parties for the passenger services are adequate to restore the competition that would be lost due to the Transaction.

2. International Air Cargo Services Market

(1) Outline of Remedies for the International Air Cargo Services

The Parties proposed to undertake the following remedies to address the competition concerns described in the section V.

- (a) Asiana Airlines shall divest its global air cargo business operated by its dedicated freighters to an independent third party (to be selected by the date of completion of the Transaction) that has sufficient resources, expertise, and incentive to maintain and develop the divested business (hereinafter referred to as the “Freighter Business Divestment.”).
- (b) The Parties Group shall enter into Block Space Agreement(s) (BSA)⁶ with certain carrier(s) (to be selected by the date of completion of the Transaction) that has sufficient resources, expertise, and incentive to maintain and develop its air cargo business, and shall provide such certain carrier(s) with cargo space of flights from Japan to South Korea at a certain competitive price.
- (c) The Parties shall appoint a suitable Monitoring Trustee, who will continuously monitor the performance of the measures described in (a) and (b) above and make periodic reports to the JFTC.
- (d) With regard to the Freighter Business Divestment described in (a) above, the Parties shall appoint a Divestiture Trustee as necessary to ensure the execution of the Freighter Business Divestment.

(2) Adequacy of the Proposed Remedies

The JFTC found that the remedies proposed by the Parties for the cargo services could create effective competitive constraints by combining multiple measures, leading the Parties Group not to be able to freely influence prices, etc. after the Transaction. Thus, the JFTC concluded that the remedies proposed by the Parties for the cargo services are adequate to restore the competition that would be lost

⁶ The term “BSA” means an agreement to provide a certain amount of cargo space to competitors.

as a result of the Transaction.

VII. Conclusion

As a result of the review, based on the premise that the Parties would implement their proposed remedies, the JFTC concluded that it could not establish that the Transaction would substantially restrain competition in any particular fields of trade.

The abbreviations of the Parties, etc.

Korean Air Co., Ltd.	Korean Air
Group of companies that have already formed an integral relationship with Korean Air as the ultimate parent company	Korean Air Group
Asiana Airlines Inc.	Asiana Airlines
Group of companies that have already formed an integral relationship with Asiana Airlines as the ultimate parent company	Asiana Airlines Group
A group of companies comprised of Korean Air and Asiana Airlines	Parties
A group of companies comprised of Korean Air Group and Asiana Airlines Group	Parties Group