

**Business Consolidation by Japan Airlines Co. Ltd. and Japan Airsystem Co. Ltd.  
through Establishment of a Holding Company**

April 26, 2002  
Fair Trade Commission

The Fair Trade Commission(hereinafter referred to as “FTC”), received a request for prior consultation from Japan Airlines Co. Ltd. (hereinafter referred to as “JAL”) and Japan Airsystem Co. Ltd. (hereinafter referred to as “JAS”) for prior consultation regarding the proposed consolidation of their business operations through a newly-created holding company. The FTC has been examining the issue of whether or not the proposed consolidation would substantially restrain competition within certain specified areas of trade.

On March 15, 2002, the FTC expressed to the parties its concern that the planned consolidation, if implemented, will likely constitute a substantial restraint of competition within the areas of domestic air passenger transport business, etc. (hereinafter referred to as “domestic air transport business”).

The parties responded on April 23, 2002, stating that they will take remedial measures detailed below.

Based on the (1)explanation and information presented by the parties in regard to the subject matter of the consultation; (2)the facts found as a result of investigations by the FTC; (3)the remedial measures now proposed to be taken by the parties; and (4)the competition promotion measures envisaged by the Ministry of land, Infrastructure and Transport as detailed below, the FTC conveyed to the parties today that the proposed consolidation if implemented is unlikely to constitute a breach of Article 10 of the Antimonopoly Law.

1. Outline of the proposed integration

With the aim of building a business structure capable of coping with the challenges of global competition, JAL and JAS now contemplate the creation of a holding company to become the parent to the parties in October 2002 and, furthermore, the integration of their businesses in the year 2004 by reorganizing the parties into separate entities carrying out different lines of business.

2. The matters of concern as expressed by the Commission

The following were the matters of concern to this Commission which raised a fear that the planned integration was likely to constitute a substantial restraint of competition:

- (1) The number of major airlines (i.e., JAL, JAS and All Nippon Airways) will be reduced from three to two, as a result of which the fare-setting actions by major airlines that have already been conducted in a “concerted” manner in the past will be further facilitated.
- (2) As the number of airlines operating on an air route decrease, the proportion of routes where Specified Flights Discount Fare is offered for all flights becomes smaller and the rates of such discounts become lower; hence competition will be seriously affected by a reduction in the number of major airlines.
- (3) In addition to the above mentioned circumstances, it is difficult for newcomers to enter the market due to factors such as limitations on the number of slots at congested airports etc. For this reason, the entry of new players is unlikely to act as a deterrent to concerted fare-setting actions.
- (4) As a result of the foregoing, the general consumers who have no bargaining power over the fares set by airlines would suffer greater disadvantage than others.

3. The remedial measures proposed by the parties and other measures

- (1) The remedial measures to be taken by the parties

The following are the remedial measures offered by the parties:

a. Steps to promote new entry

- (a) Return of takeoff-and-landing slots

Effective October 2002, the parties will return to the Ministry of Land, Infrastructure and Transport 9 turnaround slots out of the slots they currently hold at Haneda Airport.

Furthermore, should the Ministry’s “competition promotion slots” (ref: 3 (2) below) to be created with the said 9 turnaround slots prove insufficient before the planned reallocation of slots in February 2005, the parties will return to the Ministry up to 3 additional turnaround slots at Haneda.

Note: 1 turnaround slot means a combination of 1 takeoff and 1 landing (i.e. 1 return trip).

- (b) Remedial measures in favor of new airlines regarding airport facilities

The parties will make available for new airlines such airport facilities as boarding bridges, gate parking spots and check-in counters which they currently hold for themselves, should the new airlines so desire.

- (c) Cooperation with new airlines by means of undertaking various services such as aircraft maintenance

If so desired by new airlines, the parties will actively provide such services as may be needed by the new airlines when entering air transport business or continuing with or expanding their operations, e.g. aircraft maintenance services and airport ground services.

- b. Measures concerning airfares etc.

- (a) Measures concerning airfares

Normal fares will be cut by 10% across the board on all the main routes operated by the parties and will not be raised during a period of at least three years.

Specified Flights Discount Fares and Advance Purchase Discount Fares will be granted for all flights on all the main routes operated by the parties in competition with another major airline and on the main routes on which the parties will become the sole carrier. The level of such discounts will be identical with that prevailing on the routes currently operated by three competing airlines.

- (b) Promotion of competition and enhancement in the level of services provided by means of an expanded route network

The parties will seek entry into or increase the frequency of flights on the routes where another major airline is the sole carrier or is predominant in the number of flights.

- (2) Additional competition promotion measures envisaged by the Ministry of Land, Infrastructure and Transport

Reflecting the changing circumstances in the recent times and with the aim of improving the level of services provided to users through promotion of competition, the Ministry is now adopting the following additional competition promotion measures:

- a. Measures adopted until February 2005

The Ministry will create “competition promotion slots” to be used by new airlines in order to expand their operations in competition with major airlines, utilizing the 9 slots at Haneda given up by the parties as part of their remedial measures (plus up to 3 more slots if necessary) until an overall review of slot

allocation is undertaken in February 2005 (see Note).

The creation of these “competition promotion slots” will make it possible for the new airlines, whose slots at Haneda have so far been limited to only as much as 6 each, to be allocated more than 6 slots at this airport.

Note: By virtue of the revised Civil Aeronautics Law effective since February 2000, the use of congested airports is now made subject to the permission of the Minister of Land, Infrastructure and Transport. The duration of the permission is limited to 5 years. The takeoff- and-landing slots currently in use are due to expire in February 2005, when they will be called in and reallocated.

- b. The overall review of takeoff-and-landing slots allocation scheduled in February 2005

In February 2005, when the present allocation of takeoff-and-landing slots is to be reviewed, all the existing slots will undergo an overall review and the existing competition promotion slots will be increased so as to provide new airlines with sufficient slots, enabling them to expand their business operations on an equal competitive footing with major airlines. This will encourage the new airlines to become an effective deterrent force.

- c. Support given to new airlines in regard to the use of airport facilities

The Ministry will ask major airlines to cede to new airlines such terminal spaces as the latter may find essential for their business, such as boarding bridges, gate parking spots, check-in counters, etc.

Where the new airlines have not filled all the competition slots, the unused slots may be temporarily used by major airlines if such use is conducive to enhancing competition among air carriers, e.g. where a major airline seeks entry into a route hitherto monopolized by another carrier, provided that such temporary use shall be conditional upon the major airline concerned ceding to new airlines such airport facilities as boarding bridges, gate parking spots, check-in counters, etc.

- d. Support given to new airlines in regard to providing various services, such as aircraft maintenance

The Ministry will ask major airlines to actively support new airlines by assisting in or undertaking various services, including aircraft maintenance services, necessary for the new airlines when entering air transport business and continuing

with their operations.

(3) Present situations of new airlines

a. Existence of new airlines who are already operating on certain specific air routes

There exist two new airlines who are operating on certain specific air routes and to whom 6 takeoff-and-landing slots are allocated at Haneda Airport (see Note).

Note: Skymark Airlines Co. Ltd. and Hokkaido International Airline Co. Ltd.

b. Existence of a new airline planning for a full-scale business development

One of the new airlines referred in paragraph a. above is currently preparing itself for a further expansion of its business by training its flight crew in-house and conducting maintenance and ground services independently. The new airline is formulating concrete plans of actions to take should an additional allocation of 9 slots at Haneda take place at this stage.

This company is also making concrete plans for a full-scale business development on an equal footing vis-à-vis major airlines not only on the routes it is currently operating but also on other routes, if the slots allocated to it are substantially increased after February 2005, following the overall review of slots allocation.

c. Existence of airlines planning for future entries

In addition to the above, there exist two other new airlines (see Note) planning to enter the market by February 2005, by receiving allocation of the presently unallotted slots at Haneda reserved for new airlines. Even after that allocation takes place, there will still remain 5 more unused slots for eventual allocation to new airlines.

Furthermore, there exist other new carriers who are operating as new entrants in the area of domestic air transport without being allocated any slots at Haneda.

Note: Skynet Asia Airways Ltd. and Lequios Airlines Co. Ltd.

4. The judgment of this Commission

(1) The enhanced likelihood of effective competition as a result of business expansion, etc. by new airlines

a. The return and reallocation of takeoff-and-landing slots

(a) Evaluation of situation prior to February 2005

Whereas the new airlines who are operating with 6 slots already allocated to them are unable to increase the number of their flights any further in the present

circumstances mentioned above, one is planning to increase the frequency of its services by 9 more return flights prior to the review of takeoff-and landing slots allocation by the Ministry of Land, Infrastructure and Transport scheduled in February 2005. Such business expansion by the new airline concerned is now made possible by the parties' remedial measure of returning 9 slots at Haneda and by the creation of competition promotion slots by the Ministry. The creation of slots by the Ministry yield the 9 additional slots necessary to meet the requirements of the expansion plan. Also, in view of the parties' willingness to give up an additional of 3 slots if the new airlines require more than 9 slots, it is considered likely that the new airlines would be able to expand their business without difficulty until February 2005.

It follows, therefore, that effective competition is likely to continue until February 2005, albeit on certain specific air routes only.

(b) Evaluation of situation following the overall review of takeoff-and-landing slots in February 2005

As to the takeoff-and-landing slots to be allotted from February 2005, the Ministry intends to implement an overall review of all the existing slots and further increase its competition promotion slots so as to enable new airlines to expand their operations on an equal competitive footing with major airlines.

The existence of a new airline that has concrete plans to compete with major airlines in its bid for full-scale business development once the necessary number of slots is obtained, and the positive effects produced by the undermentioned measures related to airport facilities, indicate that the growth of such a new airline into a competitive carrier capable of effectively challenging major airlines, is a highly probable outcome.

b. Evaluation of measures regarding access to airport facilities by new airlines

The remedial measures proposed by the parties and the competition promotion measures envisaged by the Ministry, together with similar steps that may be taken by another major airline who is not a party to the proposed merger, will contribute to and facilitate the business expansion, etc. of the new airlines by providing greater support related to airport facilities.

c. Evaluation of the cooperative measures undertaken through the provision of various services, such as cooperating aircraft maintenance, to benefit new airlines

The remedial measures proposed by the parties and the competition promotion measures envisaged by the Ministry, together with similar steps that may be taken by another major airline, will lead to various services such as aircraft maintenance being provided more readily, and will contribute to and facilitate the business expansion of the new airlines who will now find it easier to ask other carriers to undertake such services.

(2) Measures related to airfares, etc.

The following remedial measures proposed by the parties are considered, to a certain extent, worthy of positive evaluation as it outlines a means through which general consumers may benefit from the efficiency achieved by the integration.

- a reducing normal fares;
- b increasing the number of Specified Flights Discount Fares and Advance Purchase Discount Fares; and,
- c seeking entry into or increasing the frequency of flights on the routes where another major airline is currently a sole carrier or is predominant in the number of flights.

(3) Conclusion

For the foregoing reasons the FTC considers that the implementation of the proposed integration plan would not constitute a substantial restraint of competition within the area of domestic air transport business.

Furthermore, in order to ensure that the proposed remedial measures are effectively implemented, the FTC will ask the parties to take the necessary steps prior to the integration where feasible and will also continue to monitor progress. At the same time, the FTC will continue to be conscious of all the relevant issues, maintain surveillance over competition in the area of domestic air transport business, and keep close contact with the Ministry of Land, Infrastructure and Transport with a view to promoting competition in this area. Furthermore, an announcement will be made whenever necessary to report on the progress of these steps.