Acquisition of stock in Asiana Airlines Inc. by Korean Air Lines Co., Ltd.

Part I: Overview of the Parties

Korean Air Lines Co., Ltd. (JCN 6700150004988) and Asiana Airlines Inc. (JCN 7700150000045) are both companies headquartered in the Republic of Korea that are primarily engaged in the international air passenger transport business and the international air cargo transport business.

The table below presents abbreviations of relevant terms used in this document; the items in the left-hand column shall be referred to using the corresponding words and phrases in the right-hand column.

Left-hand column	Right-hand column
Korean Air Lines Co., Ltd.	Korean Air
A group of companies that have already formed an in-	
tegral relationship with Korean Air as the ultimate	Korean Air Group
parent company	
Asiana Airlines Inc.	Asiana Airlines
A group of companies that have already formed an in-	
tegral relationship with Asiana Airlines as the ultimate	Asiana Airlines Group
parent company	
A group of companies comprised of Korean Air and	Dartica
Asiana Airlines	Faitles
A group of companies comprised of Korean Air Group and Asiana Airlines Group	Parties Group

Part II: Outline of this Case and Applicable Provisions

This case involves a plan by Korean Air to acquire more than 50% of the voting rights of Asiana Airlines stock (hereinafter referred to as the "Action").

The applicable provision is Article 10 of the Antimonopoly Act.

In this case, the Japan Fair Trade Commission (hereinafter referred to as the "JFTC") reviewed all the businesses operated by the Parties Group that were in competitive or transactional relationships. The following is a detailed description of the results of the review of a horizontal business combination in the international air passenger transportation business and the international air cargo transportation business between Japan and South Korea, which was considered to have a relatively large impact on competition.

Part III: Background of the Case

On November 16, 2020, the Parties publicly announced their plans for the Action, and since January 2021, the Parties voluntarily submitted to the JFTC a succession of written opinions and materials arguing that the Action could not be said to substantially restrain competition.

The JFTC scrutinized the contents and materials relating to the said written opinions voluntarily submitted by the Parties Group and also requested the Parties Group to submit their internal materials (e.g., materials related to the Action used at various meetings of the Parties Group's, such as the board of directors and other meetings, and internal materials related to the analysis of competition). The submitted internal materials were also examined closely. Additionally, questionnaire surveys and interviews with competitors and users were conducted.

At the request of the Parties Group, the JFTC exchanged views with the Parties Group on several occasions.

Subsequently, on January 24, 2024, Korean Air submitted a written notification of a plan for the Action pursuant to the provisions of the Antimonopoly Act, and the JFTC received the notification and initiated the phase 1 review. The JFTC proceeded with its review of the impact of the Action on competition based on the said written notification of the plan and the written opinions and materials submitted by the Parties Group arguing that the Action would not substantially restrain competition, as well as the Parties Group's internal documents, questionnaires and interviews with competitors and users, the results of economic analysis, and other factors.

The Action 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.

Part IV: International Air Passenger Transportation Business

1. Definition of particular field of trade, etc.

- (1) Overview of international air passenger transportation business, etc.
 - A. Overview of international air passenger transportation business

and commercial distribution

"Air passenger transportation business" means the business of transporting passengers for a fee using aircraft to meet the demand of others, and "international air passenger transportation business" means air passenger transportation business between points in Japan and points outside Japan or between various places outside Japan (see Article 2, paragraphs 18 and 19 of the Civil Aeronautics Act (Act No. 231, 1952)). Hereinafter, a service involving the transportation of passengers for a fee by aircraft in response to customer demand is referred to as "air passenger transportation service."

Air carriers that provide air passenger transportation services sell tickets for their flights directly to users or through travel agencies. In some cases, airline tickets are sold to tour companies and travel agencies that handle group tours, etc. Users of air passenger transportation services include not only travelers but also business travelers on business trips.

B. Full-service carriers (FSCs) and low-cost carriers (LCCs)

Airlines that provide air passenger transportation services are classified into two types: Full-service carriers (FSCs) and Low-cost carriers (LCCs). An overview of each type is provided below.

(a) Overview of FSCs

FSCs are airlines that provide conventional services, including offering multiple seat classes such as first, business, and economy, providing inflight meals and beverages, baggage storage, lounges, and other services associated with air passenger transportation services, including compensation in the event of a flight cancellation and allowing ticket refunds. FSCs are also called network carriers because they operate a complex route network that includes short-haul, medium-haul, and long-haul flights, as well as connecting flights. The airports used by FSCs are often the major airports in each country. Many FSCs have adopted a business model in which a base airport (hub) is the center of their operations and airports in domestic and international cities are connected like the spokes on a bicycle, attracting passengers to the base airport and transporting large numbers of passengers by large aircraft to airports in domestic and international cities. To accommodate operations on a variety of routes with different operating distances and demand, FSCs use a wide variety of aircraft with different sizes.

FSC fares are higher than LCC fares which mean that the cost of operating an aircraft is higher for FSCs than for LCCs, owing to the following factors,: FSCs often use larger aircraft with more spacious seats than LCCs; they include in their fares various services incidental to air passenger transportation services, such as the provision of in-flight meals and beverages, baggage storage, and lounges; they have to schedule flights in consideration of connections between arrival and departure flights for the convenience of connecting passengers, which makes it difficult to improve the efficiency of aircraft operations; FSCs have higher training costs for flight crews and cabin crews to work on various types of aircrafts; and FSCs incur high airport usage fees due to the use of major airports.

FSCs also offer a unique point service called a frequent flyer program, which allows users to use the points (miles) they have accumulated by flying a particular airline (or an airline that has entered into an alliance with that airline), using a credit card affiliated with that airline, etc., to obtain the desired ticket without paying the fare. While a frequent flyer program provides an incentive for users to continue to use a particular airline, the airline incurs costs to maintain the frequent flyer program and operating network.

As described above, in addition to air passenger transportation services, FSCs provide various services incidental to air passenger transportation services, while fares are set at a relatively high level that incorporates the costs required to provide these services. The target users are mainly business travelers and tourists who require flexibility to accommodate sudden schedule changes or cancellations and are willing to pay for these services.

(b) Overview of LCCs

LCCs are airlines that provide low-cost air passenger transportation services by thoroughly reducing costs through simplification of various services traditionally provided in conjunction with air passenger transportation services and streamlining of operations. Specifically, the airline adopts a business model of reducing operating costs and increasing profitability by maximizing the number of seats per aircraft through narrowing seat spacing, charging for in-flight meal service, limiting reservation changes and cancellations, and reducing ticket sales costs (sales commissions to travel agencies, etc., and costs to establish and maintain local subsidiaries and branches) through direct sales centered on the company website, reducing maintenance costs and training costs for flight crews, etc., through the use of a single fleet of aircraft and by operating aircraft more efficiently by minimizing the time spent on the ground and conducting high-frequency flights.

Additionally, in terms of reducing the cost of accommodation for flight crew and cabin crew, which is one of the ways to reduce operating costs, LCC routes are generally determined in consideration of the flight time zone that allows a crew member departing from the base airport to make a round-trip flight and return to the base airport within the daily flight time limit specified in the flight rules and regulations, meaning that the routes are mainly short-distance routes, covered in a five-hour one-way trip. Accordingly, the aircraft fleet will also consist mainly of small aircraft suitable for short-haul flights.

In general, LCCs do not offer frequent flyer programs.

As described above, LCCs are able to operate at low fares by minimizing operating costs and increasing the number of seats to reduce the cost per aircraft seat, and their target user group is mainly budget tourists who accept simplified service in favor of cheaper fares.

By providing low-cost air passenger services through the thorough cost reductions described above, LCCs have grown by attracting a new group of low-cost-oriented users who had not previously used FSCs.

C. Process leading up to airlines' start of operations and coordination of arrival and departure slots

(a) Process leading up to airlines' start of operations

Since the governments of Japan and South Korea agreed on an open skies policy*1, in 2010, airlines can, in principle, freely fly into and out of airports in Japan and South Korea, except for Tokyo International Airport (hereinafter referred to as "Haneda Airport") and Gimpo International Airport (hereinafter referred to as "Gimpo Airport"), which are excluded from this agreement. However, if an airline were to fly into a Japanese airport, it would need to acquire authorization under the Civil Aeronautics Act. In addition, at certain congested airports, requests for arrival and departure (slots*2) on a desired day of the week and during a desired time period are adjusted and allocated (hereinafter referred to as "slot adjustments") by the slot coordinator described in (b) below. Therefore, it is not always possible to operate at the desired time.

In Japan, Haneda Airport and Narita International Airport (hereinafter referred to as "Narita Airport"), Kansai International Airport (hereinafter referred to as "Kansai Airport"), Fukuoka Airport, New Chitose Airport, and Chubu Centrair International Airport, listed in Table 1, are designated as congested airports by the International Air Transport Association (IATA*3). (However, congestion levels are assigned according to the degree of congestion, with Haneda, Narita, Kansai, and Fukuoka airports designated as congestion level 3 and New Chitose and Chubu Centrair International Airports are subject to the adjustment of arrival and departure slots, with the exception of

Chubu Centrair International Airport.

In South Korea, it is also necessary to obtain authorization under South Korean domestic law to enter airports; Gimpo Airport and Incheon International Airport (hereinafter referred to as "Incheon Airport") are designated as congested airports (congestion level 3); thus, similar slot adjustments are made for arrivals and departures.

Meanwhile, between Haneda Airport and Gimpo Airport, which are not subject to the open skies policy, Japanese and South Korean airlines are allowed to operate six round trips each per day (two of which are between Haneda Airport and Gimhae International Airport (Busan)) through consultations between the Japanese Ministry of Land, Infrastructure and Transport and the South Korean aviation authorities (inter-airport authority consultations). The decision as to which airline will be allocated this transportation concession is left to the discretion of the two governments. The companies that have been allocated transportation concessions will apply for specific slots at Haneda Airport and Gimpo Airport, respectively, and will have their slots adjusted accordingly.

- ¹ "Open skies policy" refers to the mutual elimination of restrictions on the number of companies, routes, and flights between two countries. This will allow airlines to open new routes or increase the number of flights in an elastic manner according to demand.
- ² According to the materials by the Ministry of Land, Infrastructure, Transport and Tourism, a slot is not defined by law, but is an opportunity for an aircraft to use the airport, air navigation facilities, control security, etc. concerned each time it takes off from or lands at the airport (source: June 2019, Haneda Departure and Arrival Slot Allocation Criteria Study Subcommittee (5th Meeting) Document 1, p. 4), and refers to specific arrival and departure times at specific airports on specific days of the week that are allocated to air carriers.
- ³ The International Air Transport Association (IATA) is an association of the world's air transport-related companies and is responsible for making decisions on matters concerning transportation operations.

(b) Slot adjustment process

As described in (a) above, each airport in the two countries is classified into three levels, Levels 1-3, according to congestion levels, with slot adjustments conducted at airports with a congestion level of Level 2 and above (such slot adjustments are conducted at each airport in each country around the world). Table 1 shows the classification of congestion levels at major Japanese airports and the slot coordinator.

Table 1: Congested airports, congestion levels, and slot coordinators in Japan

Conges- tion Level	Airport Name	Slot coordinator
Louol 2	Haneda Airport	Japan Schedule Coordi-
Level 5	Narita Airport	nation

	Kansai Airport	(JSC)*4
	Fukuoka Airport	
	New Chitose Airport	
Level 2	Chubu Centrair Interna-	None
	tional Airport	None
Lovol 1	Others (including Naha	Nono
Level 1	Airport)	none

As shown in Table 1, for Haneda, Narita, Kansai, Fukuoka, and New Chitose airports, Japan Schedule Coordination (JSC), a neutral third-party organization, is responsible for adjusting arrival and departure slots for the summer schedule (late March to late October) and winter schedule (late October to late March) in accordance with the IATA guidelines. Under the guidelines, the following priority order will be used to adjust slots at congestion level 3 airports: *5

- 1 Same slots as existing airline flights (Historic*6)
- (2) Time slot change for flights operated by existing carriers (Historic change)
- (3) Flights operated by new airlines (New entry)
- (4) Increased flights by existing airlines.
- ⁴ Japan Schedule Coordination (JSC) is an organization under the Japan Aeronautic Association (JAA), which is responsible for the coordination of slots at congested airports in Japan. JSC exists within the JAA, which is not affiliated with either the airlines or the airport companies, thereby ensuring its independence and neutral, impartial, and transparent coordination (See: https://www.schedule-coordination.jp/jpn/). An agency that performs this type of coordination work is also called a slot coordinator.
- ⁵ Although New Chitose Airport is a congestion level 2 airport, the ease of securing slots for increased flights is not much different from congestion level 3 airports, as JSC adjusts slots in accordance with IATA guide-lines.
- ⁶ "Historic" refers to the priority given to coordinate arrivals and departures with respect to slots. To make effective use of valuable slots at congested airports, if the utilization rate of slots allocated to an airline falls below 80%, the airline will no longer be able to obtain historic slots for the same time period in the following year. This rule, which was established based on the international arrival and departure quota adjustment rules set by IATA, is called the use it or lose it rule ("U/L rule").

(2) Scope of services

As described in (1) A above, international air passenger transportation services cater to the carriage of passengers between points in Japan and points outside of Japan or between places outside of Japan for a fee, using aircraft to meet the demand of others. In this case, the scope of services has been defined as "international air passenger transportation services."

As described in (1) B above, while operators of international air passenger transportation services are divided into FSCs and LCCs according to differences

in various services incidental to air passenger transportation services provided to passengers, etc., for passengers as users, their requirement is to arrive at their destinations within a reasonable time, and in this respect, the two types of operators are considered to have a certain degree of demand-side substitutability. Further, since Japan-South Korea routes are short-distance flights, the impact of differences in the levels of various services that accompany air passenger transport services is considered to be relatively small. Therefore, both type of operators were defined as the same scope of services.

However, FSCs and LCCs are differentiated to a certain degree in terms of service level and price range; therefore, the degree of competitive constraint from LCCs against FSCs (relatively weak compared to the competitive constraint between FSCs) was taken into consideration when considering the impact of the Action on competition as described in 3 below. These differences between FSCs and LCCs were also considered while assessing the remedial measures proposed by the Parties (hereinafter referred to as the "Remedy").*7

⁷ Both of the Parties are FSCs, and both of the Parties Group have LCCs.

(3) Geographic scope

In this case, a geographic scope was defined for each route (round trip) that originates and terminates at a specific departure airport (origin) and arrival airport (destination). Based on the operation status, etc., of the Parties Group, the following 10 routes for which both of the Parties Group own slots and operate passenger flights were examined in this case: Tokyo-Seoul, Osaka-Seoul, Sapporo-Seoul, Nagoya-Seoul, Fukuoka-Seoul, Okinawa-Seoul, Tokyo-Busan, Osaka-Busan, Sapporo-Busan, and Fukuoka-Busan (these 10 routes are hereinafter referred to as the "10 overlapping routes").

Since airports located in the same city or its vicinity are substitutable options, they were defined as being in the same geographic scope. Specifically, Narita and Haneda airports, as well as Incheon and Gimpo airports, are located relatively close to the center of each city (Tokyo or Seoul), less than 100 kilometers from each other, so they are defined as the same geographic scope ("Tokyo" for Narita and Haneda airports, "Seoul" for Incheon and Gimpo airports). *8

⁸ In addition to the Kansai International Airport, Osaka Prefecture has the Osaka International (Itami) Airport, but since there are no direct flights between Japan and South Korea at this airport, "Osaka" does not include Osaka International (Itami) Airport in the definition.

(4) Assumptions for consideration in the review of this case

As the COVID-19 pandemic has had a particularly large impact on the market environment in the international air passenger transportation business, the review of this case was conducted based on a market environment that excludes the impact of COVID-19, and the market environment in 2019, before the spread of COVID-19, was used as the premise for the review as a similar market environment. Changes in market conditions after that year (e.g., competitors' operating status), which are expected to continue even if the impact of COVID-19 is no longer significant in the future, are to be considered separately.

(5) Form of business combination

Since both of the Parties Group provide international air passenger transportation services within the geographic scope defined in (3) above, this case constitutes a horizontal business combination with regard to such services.

2. Applicability of Safe-Harbor criteria

The market shares (based on the number of passengers) of the 10 overlapping routes in 2019 are shown in Table 2 through Table 11, respectively, and none of them falls under the Safe-Harbor criteria*9 for a horizontal business combination.

Therefore, the JFTC examines in 3 below whether the Action leads to a substantial restraint of competition.

Tuble 2. Market share of the Tokyo beourfoute To (2013)		
Rank	Company Name	Market Share
1	Asiana Airlines Group	Approx. 30%
2	Korean Air Group	Approx. 25%
3	Company A and Company B	Approx. 10%
4	Company C	Approx. 10%
5	Company D	Approx. 10%
6	Company E	Approx. 5%
7	Company F	Approx. 5%
8	Company G	0%-5%
Total 100%		100%
Combined market share and rank: Approx. 55%, 1st rank		
HHI after the Action: Approx. 3,400		
HHI increments: 1,500		

Table 2. Market share	of the Tokyo-Seoul route*10 (2019)
Table 2: Market Share	of the Tokyo-Seoul Toule To (2019]

Table 3: Market share of Osaka-Seoul route (2019)

Rank	Company Name	Market Share
1	Korean Air Group	Approx. 30%
2	Asiana Airlines Group	Approx. 25%
3	Company H	Approx. 20%
4	Company I	Approx. 10%
5	Company J	Approx. 10%
6	Company K	Approx. 5%
	Total	100%
Combined market share and rank: Approx. 55%, 1st rank		
HHI after the Action: Approx. 3,600		
HHI increments: Approx. 1,500		

Table 4: Market share of Sapporo-Seoul route (2019)

Rank	Company Name	Market Share
1	Korean Air Group	Approx. 35%
2	Asiana Airlines Group	Approx. 20%
3	Company L	Approx. 20%
4	Company M	Approx. 10%
5	Company N	Approx. 10%
6	Company O	Approx. 5%

Total	100%
Combined market share and rank: Approx	x. 55%, 1st rank
HHI after the Action: Approx. 3,700	
HHI increments: Approx. 1,4	:00

Table 5: Market share of Nagoya-Seoul route (2019)

Rank	Company Name	Market Share
1	Company P	Approx. 35%
2	Korean Air Group	Approx. 25%
3	Asiana Airlines Group	Approx. 25%
4	Company Q	Approx. 20%
Total 100%		
Combined market share and rank: Approx. 50%, 1st rank		
HHI after the Action: Approx. 3,700		
HHI increments: Approx. 1,200		

Table 6: Market share of Fukuoka-Seoul route (2019)

Rank	Company Name	Market Share
1	Korean Air Group	Approx. 40%
2	Asiana Airlines Group	Approx. 20%
3	Company R	Approx. 20%
4	Company S	Approx. 10%
5	Company T	Approx. 10%
	Total	100%
Combined market share and rank: Approx. 60%, 1st rank		
HHI after the Action: Approx. 4,000		
HHI increments: Approx. 1,500		

Table 7: Market share of Okinawa-Seoul route (2019)

Rank	Company Name	Market Share
1	Asiana Airlines Group	Approx. 25%
2	Korean Air Group	Approx. 25%
3	Company U	Approx. 15%
4	Company V	Approx. 15%
5	Company W	Approx. 10%
6	Company X	Approx. 10%
	Total	100%
Combined market share and rank: Approx. 50%, 1st rank		
HHI after the Action: Approx. 3,100		
HHI increments: Approx. 1,200		

Table 8: Market share of Tokyo-Busan route (2019)

Rank	Company Name	Market Share
1	Asiana Airlines Group	Approx. 30%
2	Company Y	Approx. 30%
3	Korean Air Group	Approx. 25%
4	Company Z	Approx. 15%
	Total	100%

Combined market share and rank: Approx. 55%, 1st rank
HHI after the Action: Approx. 4,200
HHI increments: Approx. 1,500

Table 9: Market share of Osaka-Busan route (2019)

Rank	Company Name	Market Share
1	Asiana Airlines Group	Approx. 30%
2	Korean Air Group	Approx. 25%
3	Company AA	Approx. 20%
4	Company BB	Approx. 10%
5	Company CC	Approx. 10%
6	Company DD	0%-5%
Total 100%		
Combined market share and rank: Approx. 55%, 1st rank		
HHI after the Action: Approx. 3,700		
HHI increments: Approx. 1,600		

Table 10: Market share of Sapporo-Busan route (2019)

11		
Company Name	Market Share	
Asiana Airlines Group	Approx. 45%	
Korean Air Group	Approx. 30%	
Company EE	Approx. 15%	
Company FF	Approx. 10%	
Total 100%		
Combined market share and rank: Approx. 75%, 1st rank		
HHI after the Action: Approx. 6,000		
HHI increments: Approx. 2,800		
	Company Name Asiana Airlines Group Korean Air Group Company EE Company FF Total market share and rank: Approx. 6 HHI after the Action: Approx. 6	

Table 11: Market share of Fukuoka-Busan route (2019)

Rank	Company Name	Market Share
1	Asiana Airlines Group	Approx. 60%
2	Company GG	Approx. 25%
3	Korean Air Group	Approx. 15%
Total 100%		
Combined market share and rank: Approx. 75%, 1st rank		
HHI after the Action: Approx. 6,200		
HHI increments: Approx. 1,900		

⁹ The "Guidelines to Application of the Antimonopoly Act Concerning Review of Business Combination" (May 31, 2004, the JFTC: hereinafter referred to as the "Guidelines"), 1 Part IV. 1 (3) above states that with respect to a horizontal business combination, (1) if the Herfindahl–Hirschman index (HHI: an index of the concentration ratio of the market, calculated as the sum of the squares of the market shares of each business operator in a certain field of trade) after the business combination is 1,500 or less, (2) if the HHI after the business combination is between 1,500 and 2,500 and the increment of HHI is 250 or less, or (3) if the HHI after the business combination is 150 or less, then it is

normally considered that the effect of a horizontal business combination may not be substantially to restrain competition in any particular field of trade. These criteria are called the "Safe Harbor criteria."

¹⁰ As a general rule, the percentages are stated in increments of 5%, such as "approximately 30%" for 27.5% and above and 32.5% and below. Thus, the total value is not necessarily 100. The same applies hereinafter.

3. Impact of the Action on competition

(1) Substantial restriction on competition through unilateral conduct

A. Positions of the Parties Group and competitors and the

conditions of competition in the market, etc.

With regard to 7 routes out of the 10 overlapping routes, (namely, Osaka-Seoul, Sapporo-Seoul, Nagoya-Seoul, Fukuoka-Seoul, Osaka-Busan, Sapporo-Busan, and Fukuoka-Busan), (1) the combined market share of the Parties Group after the Action will be as high as approximately 50%-75% and the Parties will be ranked first in terms of market share, with a large gap from the second-ranked competitors and below; (2) in particular, for the Seoul routes (excluding Tokyo-Seoul), only the Parties Group operates FSCs, so competition between FSCs will be completely lost after the Action (the competitive closeness between FSCs is important as a competitive constraint and because there is a definite difference between FSCs and LCCs in fares and service levels, the competitive constraint from LCCs against FSCs is relatively weak; thus, the disappearance of competition between FSCs has a large impact on competition on these routes); (3) although some of the competitors are planning to increase the number of flights, the market share situation between the Parties Group and the competitors will not change significantly because the Parties Group is also planning to increase flights; thus, the JFTC finds that the competitive constraint from the competitors will be limited.

B. Entry

(a) Institutional barriers to entry

As stated in 1(1)C(a) above, Haneda Airport and Gimpo Airport are not subject to the open skies policy, and airlines may not freely fly into and out of these airports.

In addition, there are restrictions on arrival and departure slots for many Japanese and South Korean airports associated with the overlapping routes. Specifically, the Haneda, Narita, Kansai, Fukuoka, Gimpo, and Incheon airports, which are designated as congestion level 3 airports, and the New Chitose Airport, as a congestion level 2 airport, need to have their slots adjusted when entering congested time slots, etc. For congestion level 3 airports, as described in 1(1)C(b) above, the priority for New entry is subordinate to that of Historic and Historic change.

However, the existence of slot adjustment may not be a barrier to entry for congestion level 3 airports, as there have been several cases of entry in the past.

(b) Practical barriers to entry

For an airline to enter a particular new route, in addition to securing slots, the airline must make arrangements such as securing aircraft, coordinating flight crew and cabin crew, and selecting a contractor for ground operation services at the origin and destination airports. While it is difficult to make a generalized argument about the high or low barriers to entry because of these arrangements as their difficulty level varies depending on the circumstances of each operator seeking to enter the market, these arrangements are at least not recognized as barriers to entry that are generally restrictive to international air passenger carriers that are already operating other routes.

(c) Degree of substitutability

In air passenger transportation, the demand of passengers is to arrive at their destination within a reasonable time, and the differences between operators in this respect are small.

Regarding the difference between FSCs and LCCs, if the same type of airline as an existing airline on the route in question enters the market (e.g., the existing airline is an LCC and a new LCC enters the market), the difference in fare and service level is relatively small, so substitution is possible without problems.

However, given that there are certain differences in fares and service levels between FSCs and LCCs as described in 1(1)B above, even if an LCC enters the market, its substitutability with FSCs will be limited.

(d) Degree of potential for entry

Several LCCs have entered the Tokyo-Seoul route since 2019, the year on which this review is based.

According to the results of a survey conducted by the JFTC on airlines, for routes other than the Tokyo-Seoul route, assuming that demand recovers to the same level as before the COVID-19 pandemic and that the Parties Group alone raises fares by about 5%–10%, no airlines specifically responded that they would consider entering the route within a certain period of time (roughly within two years) from the time of responding to the survey.

(e) Summary

Based on the above, the JFTC finds that there is competitive pressure from entry for the Tokyo-Seoul route, where there has actually been market entry since 2019, but not for the other routes, since there is no realistic possibility of market entry on those routes.

C. Competitive pressure from adjacent markets

Since all Japan-South Korea routes are short-haul flights, there is no evidence of competitive pressure from transiting flights. In addition, there are no other circumstances that suggest competitive pressure from adjacent markets.

D. Competitive pressure from users

There is no evidence of competitive pressure from users in any of these routes.

E. Management situation of the Parties Group

The Parties argued that Asiana Airlines' business performance was deteriorating; that Asiana Airlines, as one of the Parties, could not find a noncompetitive buyer to replace Korean Air, given that its business performance was further deteriorating owing to the spread of COVID-19; and that a flexible decision should be made considering the risk of business failure of Asiana Airlines and the impact on consumer convenience and maintenance of international exchange on Japan-South Korea routes. In the review of this case, the JFTC determined that the said assertion by the Parties is not an explicit assertion of facts, etc. falling under B.(a)*11 and (b)*12 of Part IV.2(8) above (Financial Conditions of the Parties Group) of the Guidelines. Even if a claim based on the relevant section of the Guidelines were made by the Parties, it cannot be accepted for the following reasons:

- After reviewing the financial data for Asiana Airlines (non-consolidated) submitted by the Parties for the third quarter of 2022, the JFTC found that the performance of the international passenger and cargo divisions had improved significantly and it was unclear that Asiana Airlines was likely to go bankrupt and exit the market in the near future.
- There is possibility of the existence of a buyer to replace Korean Air that is less competition-restrictive and It is not impossible that there are buyers who would have a lesser impact on competition than the Action.
- ¹¹ When a party to the combination has recorded continuous and significant ordinary losses or has excess debt or is unable to obtain finance for working capital and it is obvious that the party would be highly likely to go bankrupt and exit the market in the near future without the business combination. Moreover, it is difficult to find any business operator that can rescue the party with a combination that would have less impact on competition than the business operator that is the other party to the combination.
- ¹² When the performance of a business department of a party to the combination is extremely poor such as recording continuous and significant losses and it is obvious that the party would be highly likely to exit the market in the near future without the business combination. Moreover, it is difficult to find any business operator that can rescue the business department with a combination that would have less impact on competition than the business operator that is the other party to the combination.

F. Results of economic analysis

(a) Overview

With respect to the air passenger transportation business, the JFTC outsourced outside experts to conduct two economic analyses.*13 Specifically, it conducted (1) a price analysis (see (b)a) below; confirmation of the robustness*14 of the regression analysis results on the impact of the number of operators in the market on fares submitted by the Parties Group) and (2) an analysis of price increase incentives using GUPPI*15 (see (b)b) below; review of the presence or absence of a price increase incentive after this Action by calculating GUPPI). As a result, the results of the regression analysis submitted by the Parties Group, which stated that "the number of operators in the market will not affect fares unless the number of operators decreases from two to one," were not robust, and the analysis showed that there is a price increase incentive for at least one of the Parties on 8 of the 10 competing routes.

- ¹³ The JFTC outsources economic analysis to outside experts as necessary, such as when it is necessary to conduct advanced economic analysis in light of the importance and complexity of a business combination case. In this case, given the complexity of the aviation industry and other factors, the JFTC decided to outsource the economic analysis to an outside expert; it engaged the services of UTokyo Economic Consulting Inc. (UTEcon). In selecting the contractor, the JFTC concluded a negotiated contract with UTEcon, which submitted the best proposal through a planning competition.
- ¹⁴ "Robustness" meaning that even if the assumptions are changed slightly, the estimated results do not differ significantly.
- ¹⁵ Gross Upward Pricing Pressure Index (GUPPI) is an index used to evaluate whether and to what extent there is an incentive to raise prices through business combinations, and generally, a GUPPI value exceeding 5% is considered to indicate an incentive to raise prices. The GUPPI, which represents an incentive for Company A to raise its price due to the business combination of Company A and Company B, is defined as "diversion ratio from Company A to Company B × ((Company B's price Company B's marginal cost) / Company B's price) × Company B's price / Company A's price." In the international air passenger transportation business, the GUPPI value for the FSCs of one Party was calculated by adding together the GUPPI for diversion from FSCs of one party to FSCs of the other party and the GUPPI for diversion from FSCs of one party to the LCCs of the other party.

The "diversion ratio" in the GUPPI formula refers to the percentage of the volume of demand for one good or service that is transferred from the other good or service out of the volume of lost demand for the other good or service because of a price increase of the other product or service. It is an indicator used to evaluate the degree of competition among differentiated firms or goods or services. In addition, "marginal cost" refers to the cost required to provide one additional unit of goods or services.

(b) Details

a) Price analysis

First, the following three methods were used to confirm whether the result of the economic analysis that "the number of operators in the market will not affect fares unless the number of operators decreases from two to one", obtained from the regression analysis*16 using the fare data submitted to the JFTC by Parties Group and the number of operators on each route, was robust. The results showed that the economic analysis by the Parties Group was not robust.

¹⁶ Specifically, the results of a linear regression model estimating the percentage of fare reduction when one more operator is added in the market showed that an increase in the number of operators does not have a significant effect on fares. A method called spline regression analysis, involving estimation using dummy variables (a dummy variable is a variable that is "1" if a condition is met and "0" if it is not met) for each number of operators, showed that fares would fall by about 6% if the number of operators in the market increased from one to two, but there was no significant fall in fares when the number of operators increased from two to three or from three to four (the coefficients were positive and not statistically significant).

In conducting the economic analysis, the Parties Group outsourced the work to an economic consulting firm other than UTEcon, which was commissioned by the JFTC.

a Analysis including excluded data

In the economic analysis by the Parties Group, routes with an average of less than 24 monthly flights and routes with 5 or more competitors were excluded from the analysis data. Therefore, as a first approach, the JFTC conducted an analysis including these factors and showed that the number of operators affects the FSC fares of the Parties even when the number of operators present in the market is other than reduced from two to one*17.

¹⁷ Specifically, the estimated results of the linear regression model indicated that an increase of one enterprise would decrease fares by about 2.6% (statistically significant at the 1% level). The estimated results of the spline regression analysis also showed that fares decreased significantly as the number of operators increased from one to two, four to five, five to six, and six to seven. In addition, the coefficient showing the effect of increasing the number of operators from two to three was a positive value (fares will increase) and not statistically significant in the economic analysis conducted by the Parties, whereas the estimated result in this analysis was a negative value (fares will decrease) and not statistically significant.

b Analysis incorporating which competitors are operating a route

Although the economic analysis by the Parties Group assumed that the presence of a competitor would have a similar impact on the fares of the Parties regardless of which airline it was, the impact on the fares of the Parties would vary depending on which specific airline the competitor was. Therefore, the second method of analysis, which considered not the number of operators but whether or not each competitor is operating on each route as a dummy variable, showed that the presence of one of the Parties significantly lowered the FSC fares of the other Party and that the presence of most of the other competitors does not affect the FSC fares of the Parties.

c Analysis of the impact of one of the Parties on the FSC fares of the other Party

The impact of the presence of one of the Parties on the FSC fares of the other Party is expected to vary depending on the market structure (the number of competing LCCs and competing FSCs). Therefore, as a third method, the JFTC analyzed the impact of the presence or absence of one of the Parties on the FSC fares of the other Party based on the market structure*18. The results indicated that Korean Air fares fell significantly with the presence of Asiana Airlines in the market structure where neither a competing LCC nor a competing FSC exists and also in the market structure where only one competing LCC exists and no competing FSC exists. With regard to Asiana Airlines fares, the JFTC found that under a market structure with no competing FSCs, the fares significantly declined because of the presence of Korean Air regardless of whether there are 0, 1, 2, 3 or more competing LCCs (i.e., regardless of the number of competing LCCs) *19(these results are also consistent with the analysis in b), below).

¹⁸ Specifically, a dummy variable was created for each market structure, and the effect of each market structure was obtained by adding, with regard to the fares of one of the Parties, (1) the estimated coefficient value of the dummy variable related to the presence or absence of the other Party and (2) the estimated coefficient value of the intersection term between the dummy variable related to the presence or absence or absence of the other Party and the dummy variable for each market structure.

When determining the effect of each market structure, a linear constraint test between the coefficients was performed (Wald test was performed to calculate the test statistic following the F distribution, and the statistical significance of the coefficients was confirmed by checking their p-values).

¹⁹ Regarding the market structure where other FSCs exist, there are no observed values (there are no routes with that market structure), or even if there are observed values, there is no variation in the presence of Korean Air, so it was not possible to estimate the effect of the presence or absence of Korean Air on Asiana Airlines fares.

b) Analysis of incentives to raise fares using GUPPI

a Purpose and method

Next, the GUPPI was calculated to estimate whether the Parties have an incentive to raise prices on each of the competing routes after the Action. The diversion ratio required to calculate the GUPPI were calculated based on market share for each of the competing routes*20. In addition, marginal costs were estimated by estimating the Parties' cost functions using the four models in c below (for convenience, referred to as "Models (1) to (4)"), using data on costs,*21 number of passengers, and fuel unit prices*22 submitted by the Parties.

- 20 The diversion ratio based on market share is a method of calculating the diversion ratio as "diversion ratio from Company A to Company B = market share of Company B / (1 - market share ofCompany A). Since it is generally known that the calculation of diversion ratio using market shares is based on relatively strong assumptions, in this case, the JFTC decided to be very cautious and use diversion ratio based on market shares and GUPPI based on such diversion ratio. First, the direction of possible bias related to the diversion between FSCs and LCCs as a result of the above assumption was examined to confirm that the above assumption is a modest one in the analysis of international passenger transportation business. The JFTC made the additional assumption that 20% of the diversion to external goods (i.e., the amount of demand that shifts out of the market due to a price increase of one of the Parties alone, such as by the cancellation of travel by the Parties' users) occurs in the international passenger transportation business; further, even if the GUPPI value exceeds 5%, the IFTC did not immediately evaluate that there is an incentive to raise prices but instead verified for each route whether the critical diversion ratio to external goods at which the GUPPI value becomes 5% exceeds 20%. Based on this, the IFTC determined that there is an incentive to raise prices only in cases when the critical diversion ratio exceeds 20%.
- ²¹ The start of the period under analysis varies depending on which of the Parties is being examined, with the earliest being January 2013 and the latest being January 2018. In addition, since the accounting standards of one of the constituents of the Parties Group under analysis were changed in December 2019, the period covered by the analysis ended in November 2019.
- ²² The JFTC used the Singapore market transaction price index (MOPS = Mean of Platts Singapore) for kerosene, which is used as fuel for aircraft.

b Costs used to estimate marginal costs

The "marginal cost" in the air passenger transportation business is the additional cost of providing air passenger transportation service for one passenger. In addition to the variable costs of passenger transportation*23 that arise in proportion to the number of passengers, the elements that make up marginal costs include the variable flight costs*24, aircraft costs*25, and fuel costs (hereinafter collectively referred to as "total variable flight costs") that are linked to the number of passengers to a certain extent.

Here, the JFTC estimated the marginal costs for each route of the FSCs and LCCs of the Parties Group by adding up the variable passenger transportation costs (the "average variable passenger transportation costs") estimated for each route in Table 12 and the increase in the total variable flight costs that arise from increasing the number of passengers by one (hereinafter referred to as "marginal total variable flight costs").

- ²³ In-flight meals, in-flight service fees, ground passenger fees, passenger insurance, reservation agent fees, air facility charges, credit card fees, etc.
- ²⁴ Flight and accommodation allowances for flight crew and cabin crew, aircraft maintenance, etc.
- ²⁵ This includes depreciation and leasing costs, which initially appear similar to fixed costs, but with an additional variable aspect because as the number of passengers increases, more aircraft or larger aircraft will need to be deployed.

Table 12: Estimation methodology for average variable passenger transportation
costs and marginal total variable flight costs

	0
Average variable passenger transpor- tation costs	Variable passenger transportation costs were expressed as a function with variables such as flight distance (the "variable passenger transportation cost function"), and the coefficient of this function was estimated econometrically.
Marginal total varia- ble flight costs	Total variable flight costs were expressed as a function with variables such as passenger num- bers, flight distance, and fuel unit price (the "total variable flight cost function"), and the coefficient of this function was estimated econometrically.

c Model used to estimate average variable passenger

transportation costs and marginal total variable flight costs

A summary of the models (1) through (4) used to estimate marginal costs, that is, average variable passenger transportation costs and marginal total variable flight costs is shown in Table 13*26.

²⁶ Details are as follows (subscript *a* indicates airline, *I* indicates route, and *t* indicates year and month). First, the variable passenger transportation cost functions for Models (1) and (3) are as follows:

$$\frac{Variable \ passenger \ transportation \ costs}{number \ of \ passengers} \Big)_{ait} = \gamma_0 + \gamma_1 distance_i + \gamma_2 Asiana \ dummy(d.)_a + \epsilon_{ait}$$

The variable passenger transportation cost function for Model 2 is as follows:

$$\left(\frac{Variable \ passenger \ transportation \ costs}{number \ of \ passengers} \right)_{ait} \\ = \gamma_1 distance_i + \gamma_2 Asiana \ d_{\cdot a} \\ + \sum_{j} \gamma_{3j} city \ d_{\cdot ij} + \epsilon_{ait}$$

The variable passenger transportation cost function for Model (4) is as follows:

 $\begin{pmatrix} Variable \ passenger \ transportation \ costs \\ \hline number \ of \ passengers \\ = \sum_{j} \gamma_{1j} \ route \ d_{\cdot ij} + \gamma_2 Asiana \ d_{\cdot a} + \epsilon_{ait}$

In addition, the total variable flight cost function for Model 1 is as follows:

(Variable flight costs + aircraft costs + fuel costs)_{ait}

 $= \beta_0 + \beta_1 number of passengers_{ait} \times distance_i$

+ β_2 number of passengers_{ait} × distance_i × fuel unit price_t + β_3 fuel unit price_t + β_4 Asiana $d_{\cdot a} + \epsilon_{ait}$

To these, city dummies were added for Model (2) and route dummies for Model (3), respectively.

Furthermore, the total variable flight cost function for Model 4 is as follows:

(Variable flight costs + aircraft costs + fuel costs)_{ait}

 $= \beta_0 + \beta_1$ number of passengers_{ait} × route d._i

+ β_2 number of passengers_{ait} × route $d_{\cdot i}$ × fuel unit price_t

 $+ \beta_3 fuel unit price_t + \beta_4 Asiana d_{ait} + \epsilon_{ait}$

The summary of these is as follows:

Marginal cost_{ait}

 $= \widehat{\gamma_0} + \widehat{\gamma_1} distance_i + \widehat{\gamma_2} Asiana d_a$

+
$$\hat{\beta}_1$$
distance_i+ $\hat{\beta}_2$ distance_i × fuel unit price_t
+ $\hat{\beta}_4$ Asiana d._a

Each $\hat{\gamma}$ represents an estimate of the coefficient of the variable passenger transportation cost function, and each $\hat{\beta}$ represents an estimate of the coefficient of the total variable flight cost function. In Model (2), $\hat{\gamma}_0$ is replaced by $\sum_j \hat{\gamma}_{3j} city d_{\cdot ij}$, and in Model (3), $\hat{\gamma}_0$ is replaced by $\sum_j \hat{\gamma}_{4j} route d_{\cdot ij}$. In Model (4), $\hat{\gamma}_1 distance_i$ is replaced by $\sum_j \hat{\gamma}_{1j} route d_{\cdot ij}$.

	The model is specified using "number of passengers ×	
Model 1	flight distance" as a quantitative variable but not using use	
	dummy variables representing routes or cities as explana-	
	tory variables.	
Model (2)	This model is based on Model ① but controls for city-spe-	
Model (2)	cific fixed effects.	
Madal (2)	This model is based on Model $\widehat{(1)}$ but controls for fixed ef-	
Model (3)	fects by route rather than by city.	
Model ④	This model is specified using "number of passengers" as	
	the quantitative variable and allowing its coefficient to	

Table 13: Summary of Models (1) to (4)

vary from route to route.

The JFTC statistically tested which of these models (1) through (4) was superior; Model (3) emerged as the recommended model based on statistical tests. *27

²⁷ When the Akaike Information Criterion (AIC), a statistical indicator used for model selection, was used to verify this, Model ③ had the smallest AIC value (the smaller the AIC value, the more predictive the model is; in addition, the results of the F-test and J-test were not contrary to the AIC results, which favored Model ③).

d Results

Base on, the above, the JFTC calculated the GUPPI for each of the 10 competing routes (Tokyo-Seoul, Osaka-Seoul, Sapporo-Seoul, Nagoya-Seoul, Fukuoka-Seoul, Okinawa-Seoul, Tokyo-Busan, Osaka-Busan, Sapporo-Busan, and Fukuoka-Busan). As a result, it was possible to broadly classify the routes into four patterns: (i) routes where an incentive to raise fares is recognized regardless of the model adopted to estimate marginal costs (hereinafter simply referred to as the "adopted model"); (ii) routes where an incentive to raise fares is recognized when the recommended model (Model (3)) based on statistical testing is adopted although the conclusion differs depending on the adopted model; (iii) routes where an incentive to raise fares is not recognized when the recommended model (Model (3)) based on statistical testing is adopted although the conclusion differs depending on the adopted model; and (iv) routes where an incentive to raise fares is not recognized regardless of the adopted model. Of these, (i) and (ii) were evaluated as routes where there is an incentive to raise fares. The JFTC concluded that for the seven routes other than Okinawa-Seoul, Sapporo-Busan, and Tokyo-Busan, at least one of the Parties has an incentive to raise fares.

The results of the above GUPPI analysis were based on market share data as of 2019 and did not incorporate the facts of subsequent withdrawals by enterprises, etc. Therefore, the JFTC updated the market share figures, which are the premise for the calculation, based on the facts of withdrawals by enterprises, etc. that occurred after 2019, and recalculated the GUPPI for each route. *28 The above recalculation results in an incentive to raise fares for at least one of the Parties for 8 of the 10 competing routes, excluding the Okinawa-Seoul and Tokyo-Busan routes.

²⁸ In recalculating the GUPPI, ① the JFTC decided to use more accurate aviation statistics data from the Korea Airports Corporation as the underlying market share data; ② in addition to analyzing the price increase incentives of the Parties (FSCs), ③ for routes where only LCCs belonging to the Parties Group competed with each other due to the withdrawal of the Parties (FSCs), the price increase incentives for the LCCs were also analyzed by calculating the GUPPI of the LCCs in question.

G. Summary

As stated in A–F above, for 7 of the 10 overlapping routes (namely, Osaka-Seoul, Sapporo-Seoul, Nagoya-Seoul, Fukuoka-Seoul, Osaka-Busan, Sapporo-Busan, and Fukuoka-Busan), the following were recognized: (1) the combined market share of the Parties Group after the Action will be high at approximately 50% to approximately 75%, ranking first in market share, and the gap with the second-placed and lower competitors will become large; (2) especially for the Seoul routes (excluding the Tokyo-Seoul route), the Parties are the only FSCs, so competition between FSCs will be completely lost after the Action; (3) while some competitors plan to increase the number of flights, the Parties Group also plans to increase the number of flights, so the market share situation between the Parties Group and competitors will not change significantly, and the competitive constraint from competitors will be limited; (4) there is no pressure from new entrants, adjacent markets, or users. Furthermore, (5) the economic analysis showed that the Parties Group had an incentive to raise prices after the Action.

Therefore, on the above seven routes (Osaka-Seoul, Sapporo-Seoul, Nagoya-Seoul, Fukuoka-Seoul, Osaka-Busan, Sapporo-Busan, and Fukuoka-Busan), the Action could easily create a situation in which the Parties Group, on their own, could freely influence prices, etc. to some extent, which would substantially restrain competition.

With regard to the Tokyo-Seoul route, the economic analysis described in F above showed that there will be upward pressure on prices after the Action, but since competition between FSCs would remain after the Action and there would be pressure from an increase of the number of flights by competitors and new entries, unilateral conduct is not likely to substantially restrict competition.

(2) Substantially restraining competition through coordinated conduct

Owing to the existence of multiple competitors even after the Action and the fact that FSCs and LCCs have different business conditions and cost structures, meaning that coordinated conduct is considered difficult, it was not found that there would be substantial restraint on competition resulting from coordinated conduct between the Parties Group and competitors on any of the 10 competing routes.

(3) Summary

The Action will substantially restrain competition on 7 of the 10 overlapping routes (namely, Osaka-Seoul, Sapporo-Seoul, Nagoya-Seoul, Fukuoka-Seoul, Osaka-Busan, Sapporo-Busan, and Fukuoka-Busan) through the unilateral conduct of the Parties Group.

4. Proposal of Remedy by Korean Air*29

Korean Air proffered the following (1-5) as Remedies:

- (1) The Parties shall transfer the slots held by one Party of the Parties Group to a specific international passenger air transportation enterprise (here-inafter referred to as the "Passenger Remedy Taker") for the seven routes in 3(3) above (however, prior to the transfer of the slots by the Parties, the Passenger Remedy Taker will carry out the general IATA slot application procedure, and the Parties will transfer the slots only if the Passenger Remedy Taker is unable to obtain the slots through said application procedure; the same shall apply to (2) below). The Parties shall contractually obligate the Passenger Remedy Taker to, among other things, continue to operate nonstop service for the number of slots acquired on the route to which the slots are transferred for a period of at least three years from the time the slots are acquired. (Remedial measure to achieve increased supply or entry of competitors.)
- (2) If the number of slots to be transferred pursuant to (1) above is fewer than the number of slots held by the relevant Party of the Parties Group, the Parties Group shall accept requests from unspecified international air passenger transportation enterprises to transfer slots for the shortfall (in principle, 10 years from the date of execution of the Action; hereinafter, this method is referred to as "Open Slot Commitment"). (Remedial measure to promote the expansion of supply or entry of competitors.)
- (3) To supplement the competitiveness of international air passenger transportation enterprises to which slots are transferred as a result of the remedial measures in (1) and (2) above, the Parties shall establish support measures such as concluding lounge use agreements, ground handling service agreements, etc., if desired by the said enterprises.
- (4) The Parties Group shall continue to take necessary remedial measures to maintain competition after the closing date of the Action until the time when the expansion of supply or entry by Passenger Remedy Takers becomes a reality (i.e., (i) the start of the 2025 IATA Winter Timetable or (ii) the time when a Passenger Remedy Taker to whom a slot is transferred starts selling tickets for passenger transportation services in the slot to be transferred, or the time when the necessary procedures for the slot transfer of the operation of the service start, whichever is earlier).
- (5) The Parties shall appoint an independent third party as a monitoring trustee (hereinafter referred to as the "Slot Transfer Monitoring Trustee") and have the Slot Transfer Monitoring Trustee continuously monitor the implementation of measures (1) to (4) above and report regularly to the JFTC.

In addition, Korean Air offered to make the following items a prerequisite for the Action:

- The Parties shall enter into an agreement with Passenger Remedy Takers for the slot transfer. If a Passenger Remedy Taker wishes to enter into any of the various agreements described in ③ above, the Parties shall also enter into such various agreements.
- The Parties shall select a person responsible for the slot transfer based on the remedial measures in (1) and (2) above within one week from the Article 9 Notice Date and report the name of such person to the JFTC.

- The Parties shall formulate the details of the remedial measures necessary to maintain competition based on the advice of the Slot Transfer Monitoring Trustee and submit said details to the JFTC for its confirmation within six months of the Article 9 Notice Date.
- The Parties shall submit to the JFTC a draft trustee mandate with the Slot Transfer Monitoring Trustee for confirmation within two weeks of the Article 9 Notice Date and shall execute such trustee mandate with the Slot Transfer Monitoring Trustee within one week of the date of such confirmation.
- The Parties shall receive (or have reasonable prospects of receiving) all confirmations, etc. necessary to implement the remedies from other authorities (including but not limited to the Korea Fair Trade Commission, the Ministry of Land, Infrastructure and Transport, and the European Commission) pertaining to the Action (this item is a matter common to the international air cargo transportation business).

As described in 4(3), Part V below, there are several preconditions for the implementation of the Action in the international air cargo transportation business, and all of these conditions must be met in order for the Parties to implement the Action.

²⁹ The description of the Remedy in this Case relates to the facts as of the date of the notice that a cease and desist order will not be issued (the date on which the JFTC notified Korean Air that it would not issue a notice regarding the Action [Notice of Hearing of Opinions Concerning the Cease and Desist Order] under Article 50, Paragraph 1 of the Antimonopoly Act, pursuant to Article 9 of the Rules on Applications for Authorizations, Reports, and Notifications Pursuant to Articles 9 to 16 of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade [Fair Trade Commission Rules No. 1 of 1953]; hereinafter referred to as the "Article 9 Notice Date") and does not, in principle, include any changes that occurred after the Article 9 Notice Date or any confirmation by the JFTC.

5. Assessment of the Remedy

(1) Review of the adequacy of the Remedy

- A. Number of slots to be transferred, slot transferee, etc.
 - (a) Basic approach and results of review

A remedy, in principle, should be a structural one such as a business divestment and should be able to restore the competition lost through the business combination so that the Parties Group cannot freely influence prices, etc. to some extent. The most effective of such remedial measures are those that create new independent competitors or strengthen existing competitors so that they become effective competitive constraints (Guidelines 7-1 and 2(1)). In light of this principle, the basic remedy in the context of the passenger transportation business is considered to be the transfer of "all slots owned by either of the Parties of the Parties Group." Furthermore, as described in 1(2) above in the scope of services, given that there is a difference in the assessment of

competitive pressure between FSCs and LCCs, the most straightforward remedy would be to transfer the slots owned by the Parties (FSCs) to competing FSCs and the slots owned by the LCCs belonging to the Parties Group (the "Parties Group LCCs") to competing LCCs.

Although the Remedy described in 4 above may seem to partially deviate from the most straightforward remedy described in the following four points (from (b) to (e) below), it is possible to evaluate that the Remedy is intended to create new independent competitors or to create effective competitive constraints so that the Parties Group after the Action will not be able to freely influence prices, etc., and that the Remedy will restore the competition in the international air passenger transportation market that will be lost as a result of the Action*30.

30 If the Parties Group was to transfer slots internally after the Action to increase or decrease the number of slots or/and the number of flights held by the group's FSCs (i.e., the Parties) (hereinafter referred to as "internal transfer"; for example, all slots of an LCC of the Parties Group on the Osaka-Seoul route are internally transferred to the FSC within the group, or conversely, all slots of an FSC within the group are internally transferred to the LCC of the Parties Group), the effect of the remedial measure in this case, which involves the slot transfer, may be diminished depending on the specific content of the internal transfer. With respect to such internal transfer, it is considered necessary to make an individual evaluation based on the market conditions at that time. Therefore, in the event that the Parties intend to conduct internal transfer, the Parties shall report the specific details of the planned internal transfer to the JFTC and the Slot Transfer Monitoring Trustee in advance, and the JFTC will determine whether to approve it on a case-by-case basis, based on the advice of the Slot Transfer Monitoring Trustee.

(b) The Open-Slot Commitment is used on some routes

With respect to the routes for which the Open-Slot Commitment is to be adopted as described in 4 (2) above, at the time at which the Action is implemented, Passenger Remedy Takers have not been identified for "all" of the slots owned by the Parties, and some slots will be offered under the Open Slot Commitment (a remedial measure to expand supply or promote entry by competitors). Since some slots subject to the Open Slot Commitment will continue to be used by the Parties Group as long as no slot transfer appears, there is a discrepancy from the most straightforward remedy described in (a) above to that extent *31.

However, in cases where it is deemed impossible to take a business transfer as a remedy owing to reasons such as a transferee of all or a part of a business division of the Parties Group not being readily available, it may be exceptionally determined that the problem of competition in a particular field of trade can be solved by promoting imports and market entry, etc. (Guidelines, Article 7-2(2) a.). In light of the following points, the JFTC exceptionally determined that the Open Slot Commitment is acceptable as a remedial measure to promote entry.

- (1) Although the Parties approached several potential Passenger Remedy Takers for the slot transfer, taking into account the competitive situation such as existing competitors on each route and their market shares, one of the Parties of the Parties Group was unable to find a Passenger Remedy Taker who could take on "all" of the slots held by one of the Parties Group in terms of some routes.
- (2) Considering that the availability of slots at congested airports may be a barrier to supply expansion and entry in the passenger business, the Open Slot Commitment can be evaluated as a remedial measure to remove such barriers.
- (3) The Parties shall supplement the competitiveness of the transferees by establishing supportive measures for the transferees under the Open Slot Commitment, such as entering into various agreements as described in 4 (3) above.
- (4) The Parties have committed to properly design and implement the specifics of the Open Slot Commitment, including factors such as the scope of recipients and the timing and content of communications regarding the Open Slot Commitment.
- ³¹ In the Open Slot Commitment, since it is not known to which competitor the slots will be transferred, there may be a discrepancy in that it is not known whether the slots held by the Parties (FSCs) will be offered to the competing FSCs and the slots held by the LCCs of the Parties Group will be offered to competing LCCs, but this point is omitted here since it is common to the considerations in (d) below.

(c) Only the slots owned by the Parties (FSCs) are transferred, not those owned by the LCCs of the Parties Group

The "all slots owned by either of the Parties Group" to be transferred could be considered to mean all slots owned by the FSCs and LCCs in one Party of the Parties Group on routes operated by both FSCs and LCCs in the same group (e.g., if Asiana Airlines Group's slots were to be transferred, all slots held by Asiana Airlines, Air Seoul Co., Ltd. [JCN 1700150079184], and Air Busan Co., Ltd. [JCN 2700150004629] would be transferred), but the content of the Remedy proposed by Korean Air includes a case in which only the slots owned by the Parties (FSC) will be transferred, and the slots owned by the LCCs in the Parties Group will not be transferred.

In this case, after confirming the existing competitors on the route after the Action, the JFTC found that there were already many competing LCCs, and competition among LCCs was expected to be active even after the Action, so it was concluded that transferring the slots held by LCCs of the Parties Group was not necessarily needed, taking into account the individual circumstances of each route.

(d) Recipients of FSC/LCC slot transfers are not equivalent services (there is a possibility that the transferee of the Parties' [FSC] slots may be a competing LCC rather than a compete-

ng FSC)

As stated in (a) above, the most straightforward remedy would be to transfer the slots held by the FSCs to the competing FSCs and the slots held by LCCs of the Parties Group to competing LCCs, but the Remedy proposed by Korean Air includes cases where the slots held by the FSCs could be transferred to LCCs instead of FSCs.

In this case, if there are reasonable circumstances such as the Parties' inability to find a competing FSC transferee despite the Parties' efforts to search for one, the JFTC has determined that even if the transferee is an LCC, this would be an effective constraint on the Parties Group after the Action, and therefore, it is acceptable considering the following points:

- (1) It is recognized that there is a certain degree of substitutability between FSCs and LCCs, that they compete in the same market, and that the impact of differences in service levels, etc. is considered to be relatively small, especially since Japan-South Korea routes are short-haul flights. In addition, the Parties have agreed to support transferee (e.g. Passenger Remedy Takers), for example, by concluding a lounge use agreement, ground handling service agreement, etc., and have also made provisions for measures to supplement competitiveness in the event that a transfer recipient becomes an LCC.
- (2) The competitive pressure of the competing LCCs as a whole on the Parties Group is expected to be strengthened by the slot transfer of one of the Parties Group (FSCs) to a competing LCC (although there are differences in the evaluation of competitive pressure between FSCs and LCCs, the competitive pressure of LCCs is considered to be effective to a certain extent against FSCs).

(e) There is a possibility that the number of slots held by the Parties Group may not be reduced

In the details of the Remedy proposed by Korean Air, as described in 4 (1) and (2) above, the slot transfer by the Parties is limited to cases where the transferees (Passenger Remedy Taker) applies for slots under the general IATA slot application procedures and is unable to obtain slots under the said application procedures. Thus, in theory, the number of slots held by a competitor (Passenger Remedy Taker) could theoretically increase on any of the seven routes subject to the Remedy, but the number of slots held by the Parties Group might not be reduced. This situation seems to be a deviation from the most straightforward remedy described in (a) above.

However, if such a situation arises, on routes other than Sapporo-Busan, considering the hypothetical market share based on the number of slots and seats (estimated) in case the number of slots owned by the Parties Group does not decrease and the number of slots of the competitor increases, and the fact that the competitor (Passenger Remedy Taker) that will enter the market or increase the number of slots as a result of the slot transfer (including LCCs), the competitiveness of the competitor will be supplemented by the conclusion of the various contracts described in 4 (3) above, the Remedy proposed by Korean Air can be evaluated as a remedial measure that creates a new independent competitor or strengthens existing competitors so that they have an effective competitive constraints and, therefore, are deemed acceptable.

On the other hand, on the Sapporo-Busan route, if the number of slots held by the Parties Group had not decreased and the number of slots and seats (estimated) of the competitors increased, it was considered that even if the slot transfer (41) above) was implemented, it might still cause competition concerns, considering the hypothetical market share based on the number of slots and seats (estimated). Therefore, with respect to the Sapporo-Busan route, in the event that the number of slots held by the Parties Group does not decrease because of the general IATA slot application procedure on the part of the competitor (Passenger Remedy Taker), the Parties have proposed that the number of slots not decreased (i.e., those that are no longer subject to transfer) be made available for the Open Slot Commitment. With regard to the Sapporo-Busan route, the JFTC considered this additional proposal and determined that it would be exceptionally acceptable.

For the seven routes subject to the Remedy, at least one of the airports on either the South Korean or Japanese side is a congested airport that requires slot coordinators to adjust slots, so it is unlikely that competitors (Passenger Remedy Takers and transferees through the Open Slot Commitment) will be able to obtain slots during convenient peak hours through the general IATA slot application procedure (meaning that it is unlikely that the number of slots for the Parties Group will be reduced at all). Having said that, all of the seven routes was examined individually as described above, and the necessary remedial measures were included to ensure the adequate remedy is to be implemented.

B. Interim measures until the slot transfer becomes a reality

The Parties have committed to take "remedial measures necessary to maintain competition" even after the implementation of the Action until such time as the supply by Passenger Remedy Takers expands or they attain entry, and the time frame for the interim measures is considered reasonable.

The details of the "remedial measures necessary to maintain competition" are to be formulated by the Parties based on the advice of the Slot Transfer Monitoring Trustee and submitted to the JFTC within six months from the Article 9 Notice Date and approved by the JFTC by the date of execution of the Action (the JFTC's confirmation in this regard approval is a prerequisite for the execution of the Action).

(2) Ensuring the implementation of the Remedy

The Parties shall appoint a Slot Transfer Monitoring Trustee and shall have the Slot Transfer Monitoring Trustee monitor the implementation of the Remedy and report periodically to the JFTC. In light of the following circumstances, monitoring by an independent third party may be a sufficient measure to ensure implementation.

First, the entity that will be the Slot Transfer Monitoring Trustee shall be confirmed to have no doubts about its eligibility from the standpoints of (1) track record (confirming that it has experience as a monitoring trustee and knowledge of the aviation industry), (2) capability (confirming the number of staff and their career histories, and whether or not they can communicate with the JFTC in Japanese), and (3) conflicts of interest and independence (confirming current or past transaction history with the Parties Group, whether there are interlocking officers with the Parties Group, and whether a remuneration system is in place to ensure the independence of the monitoring trustee) and shall be entrusted upon obtaining confirmation from the JFTC.

In addition, with respect to the details of mandates and authority to the Slot Transfer Monitoring Trustee, a draft trustee mandate is to be submitted by the Parties to the JFTC within two weeks from the Article 9 Notice Date and approved by the JFTC by the date of the execution of the Action (obtaining the JFTC's approval in this regard is a prerequisite for the execution of the Action).

Part V: International Air Cargo Transportation Business

- 1. Definition of particular field of trade, etc.
 - (1) Overview of international air cargo transportation business and commercial distribution

A. Overview

An "air cargo transportation business" refers to a business that transports cargo using aircraft for a fee in response to the demand of others, and an "international air cargo transportation business" refers to an air cargo transportation business conducted between a point in Japan and a point outside Japan or between various points outside Japan (see Article 2, Paragraphs 18 and 19 of the Civil Aeronautics Act).

International air cargo transportation enterprises include airlines (FSCs and LCCs) that operate international air passenger transportation businesses, as well as transportation enterprises called integrators that collect cargo from shippers and deliver it to destinations on a door-to-door basis (see Figure 2).

Further, among enterprises operating international passenger air transportation businesses, there are enterprises who own cargo aircraft (hereinafter referred to as "freighters") and enterprises who do not own freighters and transport cargo only by loading it into the cargo compartment of passenger aircraft called "bellies" (hereinafter referred to as "passenger belly"), and there is a significant difference in the amount of cargo that can be loaded between the former and the latter.

Furthermore, even for enterprises that use passenger belly transport, there are differences in the amount and method of loading between relatively large aircraft (hereinafter referred to as "wide-body passenger aircraft") that carry containers and pallets called Unit Load Devices (hereinafter referred to as "ULDs"), which are also used by freighters, and small aircraft (hereinafter referred to as "narrow-body passenger aircraft") that do not carry ULDs and can only load small cargo packed in carton boxes in bulk.

Figure 1: Image of an air cargo container



(Source: Korean Air website)

B. Commercial distribution

Airlines (carriers), including those of the Parties Group, enter into contracts with air transport enterprises (hereinafter referred to as "forwarders") requested by shippers to transport air cargo from a specific airport to the destination airport. Forwarders enter into fixed-term contracts with airlines to basically secure a certain amount of cargo loading space (hereinafter referred to as "space") on aircraft in advance but may also enter into spot contracts to purchase space each time sudden demand arises (see Figure 2).

Figure 2: Schematic diagram of air cargo transportation



Carriers (airlines):	Provide space and perform airport-to-airport transportation of cargo under a transportation contract with a forwarder
Forwarders:	Carry out a series of tasks required for cargo transportation on behalf of the shipper, such as collection from the shipper, transportation to the airport, assembly of the cargo, preparation of documents, customs clearance, and delivery to the consignee Forwarders do not have their own air transportation means but procure space mainly from airlines to transport cargo entrusted by shippers and consignees.
Integrators:	Own aircraft and provide door-to-door transportation services to shippers and consignees by integrating ground and air transportation

(2) Scope of services

A. Basic approach

The international air cargo transportation business involves transporting cargo for a fee using aircraft between points in Japan and points outside Japan

or between points outside Japan in response to demand from others. In the present Case, the scope of services was defined as "international air cargo transportation services" provided by airlines, including the Parties Group, considering the circumstances described below from B to E.

B. Substitutability among international air cargo transportation enterprises

Forwarders are the users of international air cargo transportation services provided by airlines, including the Parties Group, whereas shippers are usually the users of international air cargo transportation services, from pickup to delivery, supplied by integrators. In questionnaires and interviews with forwarders, many forwarders responded that integrators are not substitutes for airlines that mainly transport air cargo; thus, the demand-side substitutability between international air cargo transportation services provided by integrators and international air cargo transportation services provided by airlines is limited.

Therefore, the international air cargo transportation services provided by airlines, including those of the Parties Group, and the international air cargo transportation services provided by integrators were defined as a different scope of service.

C. Substitutability between cargo types

The types of cargo for air cargo transportation include normal cargo, called "general cargo," as well as "special cargo," such as dangerous goods and long cargo that must be transported by freighter rather than passenger belly. However, especially on routes from Japan to South Korea, airlines that own freighters account for the majority of air cargo transportation capacity, so even if the scope of services were defined as "special cargo" transportation only so that it excluded "general cargo" transportation, the competition situation would not change significantly.

Therefore, at least in this case, there is little need to subdivide the scope of services by the type of cargo.

D. Substitutability between aircraft types

Aircraft used for air cargo transportation include freighters, wide-body passenger aircraft, and narrow-body passenger aircraft, the difference being that the first two can carry ULDs, while the latter cannot carry ULDs and can only be loaded in bulk. However, especially on routes from Japan to South Korea, airlines that own freighters account for the majority of air cargo transportation capacity, so even if the scope of services were defined as cargo transport by aircraft that can accommodate ULDs so that it excluded cargo transport by narrow-body passenger aircraft that cannot accommodate ULDs, the competition situation would not change significantly.

Therefore, at least in this case, there is little need to subdivide the scope of services by the type of aircraft.

E. Substitutability between transportation methods

Cargo transportation between Japan and South Korea includes international

air cargo transportation services using aircraft as well as ocean cargo transportation using ships. There is also a method of ocean cargo transportation called Ro-Ro transportation (short for Rolling-on, Rolling-off), in which the cargo is loaded onto a truck in Japan, transported to South Korea by ship, and then transported to the destination on the truck without reloading after arriving in South Korea.

There is a considerable difference in price and transit time between international air cargo transportation services and ocean cargo transportation. Cargo transportation users usually use both ocean cargo transportation and international air cargo transportation services, choosing the less expensive ocean cargo transportation services when the shipper allows the use of ocean cargo transportation because of the time required or the type of cargo and using international air cargo transportation services when the aforementioned method is not allowed. Thus, demand-side substitutability between international air cargo transportation services and ocean cargo transportation is not recognized.

Therefore, international air cargo transportation services and ocean freight transportation (including Ro-Ro transportation) are defined as different scopes of service.

(3) Geographic scope

Forwarders, who are the users of air cargo transportation between Japan and South Korea, have established a nationwide domestic land transportation network. Thus, forwarders can alternatively select all routes to/from Japan and South Korea, rather than each route to/from a specific departure airport and arrival airport, as in air passenger transportation, and select an airline that offers more favorable conditions to the shipper in terms of lead time, fares, etc., without necessarily being bound by departure and arrival airports. In addition, international air cargo transportation services are not anticipated to be used for round-trip flights, and the main users are forwarders located in Japan for flights from Japan to South Korea and forwarders located in South Korea for flights from South Korea to Japan.

Therefore, with regard to the air cargo transportation business, in this case, the geographic scope was defined not for individual routes but for the entirety of the Japan-to-South Korea routes and the entirety of the South Korea-to-Japan routes. In particular, the Japan-to-South Korea route was reviewed from the perspective of the significant impact on Japanese users.

(4) Assumptions for consideration in the review of this case

In the international air cargo transportation business, the impact of COVID-19 has led to an increase in passenger flight cancellations and a decrease in passenger belly cargo transportation, while the disruption of ocean cargo transportation has led to an increase in cargo transportation by freighters. Therefore, the review of this case will be conducted based on a market environment that excludes the impact of COVID-19, and the market environment in 2019 (before the spread of COVID-19) will be used as the premise for the review as a similar market environment. Changes in market conditions after that year (e.g., competitors' operating conditions), which are expected to continue even if the impact of COVID-19 is no longer significant in the future, are to be separately considered.

(5) Form of business combination

Since both Parties of the Parties Group provide international air cargo transportation services within the geographic scope defined in (3) above, this case constitutes a horizontal business combination pertaining to international air cargo transportation services on routes from Japan to South Korea.

2. Applicability of Safe-Harbor criteria

The market share (based on payload) of routes from Japan to South Korea in 2019 is as shown in Table 14. Since the HHI after the Action is approximately 5,100 and the increase in HHI is approximately 2,200, it does not fall under the safe-harbor criteria for horizontal business combinations.

Therefore, the JFTC examines in 3 below whether the Action leads to a substantial restraint of competition.

(2019)		
Rank	Company Name	Market Share
1	Korean Air	Approx. 40%
2	Asiana Airlines	Approx. 25%
3	Company HH	Approx. 15%
4	Company II	Approx. 10%
5	Company JJ	Approx. 5%
6	Company KK	0%-5%
7	Company LL	0%-5%
-	Others	0%-5%
Total 100%		
Combined share/rank: Approx. 70%, 1st rank		
HHI after the Action: Approx. 5,100		
HHI increments: Approx. 2,200		

Table 14: Market share of air cargo transportation from Japan to South Korea

3. Impact of this Action on competition

(1) Substantial restriction on competition through unilateral conduct

- A. Positions of the Parties Group and competitors and the conditions of competition in the market, etc.
 - (a) Market share and rankings

The market share and ranking of the air cargo transportation business on routes from Japan to South Korea in 2019 are as shown in Table 14. After the Action, the Parties' combined market share exceeded 60%, giving them a high position.

(b) Conditions of existing competition between the Parties, etc.

According to the results of the survey and interviews with forwarders, Korean Air offers relatively high fares and is unwilling to sell space at a reduced price, while Asiana Airlines tends to offer relatively low fares. In addition, as will be discussed in detail in Section F below, the results of the economic analysis (user questionnaire and historical price measurement analysis) show that Korean Air and Asiana Airlines are the closest competitors. Since the Action will cause the loss of this close competition, the effect on competition is significant.

(c) Competitors' market share, excess capacity, and degree of differentiation

As shown in Table 14, the combined market share of the Parties after the Action is more than 60%, while the market share of the second and lower ranked competitors is approximately 15% or less, indicating a large disparity between the Parties and their competitors.

In addition, based on the following circumstances, considering the results of questionnaires and interviews with forwarders, the competitors have a certain degree of excess capacity but are significantly differentiated from the Parties Group in terms of whether they operate large freighters and whether they operate flights to and from airports in western Japan. The competitors are considered to be at a competitive disadvantage in this regard, so it is recognized that the competitive constraints from the competitors is limited.

- Certain competitors may not be able to stably supply sufficient space to forwarders, as they do not supply all of their space to forwarders because of contractual relationships with certain enterprises.
- Some competitors transport air cargo by freighter, but some only operate small aircraft with about half the payload of the freighters operated by the Parties.
- Many of the competitors do not transport air cargo to and from airports in Western Japan such as Kansai Airport and Kitakyushu Airport and are considered to be at a disadvantage in terms of competitiveness to the Parties, who transport air cargo by freighter to and from Kansai Airport and Kitakyushu Airport in addition to flights departing from and arriving at Narita Airport.
- There are several LCC airlines that provide air cargo transportation only by passenger belly on routes from Japan to South Korea, and there are airlines that operate wide-body passenger aircraft and narrow-body passenger aircraft, but all of them are smaller in capacity compared to freighters. In particular, narrow-body passenger aircraft are not equipped with ULDs and can only handle bulk cargo, which limits their carrying capacity and convenience compared to freighter.
- On routes from Japan to South Korea, it is possible to transport air cargo by chartering cargo aircraft, etc., known as charter flights, but the use of charter flights is considered to be limited to cases where there is a volume of cargo that can be chartered for the entire aircraft or where there is a volume of cargo that cannot be handled by a normal regular contract. Thus, the use of charter flights by forwarders is considered to be limited.

B. Entry

Entry pressure is considered limited for the following reasons.

Since 2019, there have been several competitors who have entered Japan-South Korea routes, but none of them have sufficient capacity, such as having freighters with the same capacity as the Parties. In the questionnaire and interviews with forwarders, some expressed opinions of concern about whether a new entrant would be able to operate a service stably and continuously, whether it would be able to handle situations such as cargo damage or loss, and whether it would be able to provide international cargo transportation services of the same quality as the Parties; and others said that they would have to be cautious about using a new entrants whose handling quality and operational stability are unclear.

C. Competitive pressure from adjacent markets

As a result of questionnaire and interviews with forwarders as users, many forwarders indicated that they did not use transit flights for routes from Japan to South Korea; thus, no competitive pressure from transit flights was recognized. Further, there are no circumstances that suggest competitive pressure from adjacent markets such as integrators, ocean cargo transportation, etc.

D. Competitive pressure from users

As a result of questionnaires and interviews with forwarders as users, many forwarders responded that it would be difficult to switch from the Parties to competitors because, as described in A(c) above, competitors are significantly differentiated from the Parties in terms of whether they operate large freighters and whether they have flights to and from airports in western Japan, etc.; thus, competitive pressure from users is limited.

E. Management situation of the Parties Group

As stated in 3(1)E, Part IV, above, there are no circumstances that fall under B.(a) and (b) of Part IV.2(8) of the Guidelines in this case.

F. Results of economic analysis

(a) Overview

Four economic analyses were conducted with regard to the air cargo transportation business, including (1) price analysis (see (b)a) below; a review of whether the cargo fares of the Parties are mutually restrained by regression analysis using the prices of the Parties and their competitors); (2) analysis based on customer surveys (see (b)b) below; a review of the closeness of competition between the Parties using the results of a user survey on where respondents would switch if one of the Parties increases its price); (3) simulation analysis (see (b)c) below; a review of whether there is an incentive to raise prices after the Action through a simulation analysis using the information from the user survey); and (4) GUPPI analysis (see (b)d) below for a review of whether there is an incentive to raise gup of whether there is an incentive to raise gup of whether there is an incentive to raise gup of whether there is an incentive to raise prices after the Action through a simulation analysis (see (b)d) below for a review of whether there is an incentive to raise gup of whether there is an incentive to raise gup of whether there is an incentive to raise gup of whether there is an incentive to raise gup of whether there is an incentive to raise gup of whether there is an incentive to raise gup of whether there is an incentive to raise gup of whether there is an incentive to raise gup of whether there is an incentive to raise gup of whether there is an incentive to raise gup of whether there is an incentive to raise gup of whether there is an incentive to raise gup of whether there is an incentive to raise gup of whether there is an incentive to raise gup of whether there is an incentive to raise gup of whether there is an incentive to raise gup of whether there is an incentive to raise gup of whether there is an incentive to raise gup of whether there is an incentive to raise gup of whether there is a gup of whether there is an incentive t

analyses resulted in the following findings: the Parties are in close competition in terms of fares; it is unlikely that users will switch to competitors in response to price increases by one of the Parties; and the Action will create incentives for the Parties to raise prices (see (b) below for details of the four economic analyses).

(b) Details

a) Price analysis

In the price analysis, to analyze the relationship between the fares of the Parties from a longer-term perspective and to verify whether the Parties are acting as a mutual restraint on each other, the JFTC conducted an econometric economic analysis based on monthly data on the fares of the Parties from January 2017 to December 2021, which was obtained from the Parties and other sources. In the analysis, the JFTC employed a model that takes into account the costs of the Parties (average variable costs), fares of competitors, share based on the supply capacity of the parties, real GDP in South Korea, and impact of COVID-19 likely to affect the fares of the Parties (simultaneous estimation of a fixed effects model using route-specific panel data; simultaneous equation model). After removing these effects and inherent differences by route, the existence of close competition in fares among the Parties was examined.

The results showed that Korean Air's fares have a strong impact on Asiana Airlines' fares and that the impact of Korean Air's fares is relatively larger than the impact of competitors' fares on Asiana Airlines' fares. Asiana Airlines' fares were also found to have a substantial impact on Korean Air's fares. These results suggest that the fares act as a mutual restraint between the Parties.

The results did not change significantly even if the model was modified by changing the fares of competitors, which is an exogenous variable, to a variable one period (one month) earlier or by not considering route-specific differences. This indicates that the analysis results are robust.

b) Analysis based on user surveys

First, to determine whether the Parties are close competitors, the JFTC conducted a user survey in which respondents were asked which airline they would switch to if one of the Parties raised its prices by 5%-10% (multiple responses allowed). The result showed that the percentage of users who would choose the other Party as an alternative was the highest, suggesting that the Parties are in the closest competitors with each other.

Next, when asked about the demand volume that would be considered for switching in the above scenario (hereinafter referred to as the "switched consigned volume") and the allocation of that volume to the alternative, the percentage of users who answered "will not switch" to the other Party and competitors was about 80% (based on the consignment weight ratio as of 2020; the same applies below). Meanwhile, only about 17% of users responded that they "will partially switch" their demand to the other Party and competitors (the remaining responses were "unclear as to how exactly they would respond"). As a result, it was confirmed that if one of the Parties were to raise its prices by 5%–10%, the amount of demand from consumers switching to the other Party and competitors would be limited.

Furthermore, to understand how much demand would be switched to the other Party and competitors if one of the Parties were to raise fares by 5%–10%, the ratio of the switched consigned volume to the other Party and competitors by the survey respondents was calculated based on the demand of the survey respondents who answered "will not switch" and the demand that the survey respondents who answered "will partially switch" would maintain without switching, as well as the switched consigned volume to the other Party and competitors by the survey respondents who answered "will partially switch." As a result, the percentage of such switched consigned volume was approximately 5% when Korean Air raised its prices by 5%–10% and approximately 8% when Asiana Airlines raised its prices similarly. This result suggests that the degree of impact on one party firm caused by consumers who responded "partially switch" to switch a portion of their demand volume to a competitor is limited.

c) Simulation analysis of incentives to raise prices due to the Action

If one of the Parties were to raise prices on a standalone basis, although the amount of sales per unit would increase by the price increase, it may not necessarily result in an increase in final sales due to a decrease in the demand as a result of the price increase. However, if a part (or all) of the decrease in demand due to the price increase of one of the Parties is converted to the other Party through the Action, then the relevant Parties can also capture such demand through the Action and the sales of the Parties after the Action may ultimately increase after the price increase. Based on this concept, a simple simulation analysis was conducted to verify whether or not there is an incentive*32 for the Parties to raise prices after the Action based on the data on switched consigned volume and its allocation to switching destinations obtained from the user questionnaire. The details are as follows.

First, for a 5%–10% price increase, the magnitude of one Party's standalone profit before the price increase*33 and profit after the price increase*34 were compared in 1% increments (when the price increase rates were 5%, 6%, 7%, 8%, 9%, and 10%) to evaluate whether one of the Parties had an incentive to increase its prices alone (standalone profit case).

Next, since it is considered that after the Action, an incentive for

one of the Parties to raise prices would be created, taking into consideration the profits converted to the other Party, the JFTC evaluated the existence of an incentive to raise prices after the Action by comparing, for a price increase of 5%–10%, the size of the profits of one of the Parties before the price increase and the size of the joint profits of the two Parties,*35 which are the sum of its own profits after the price increase, and the profits converted to the other Party, in the same manner in 1% increments to evaluate whether there is an incentive to raise prices after the Action (joint profit case). The JFTC then compared the standalone profit case with the joint profit case to see whether the Action would create an incentive for each of the Parties to raise prices.

As a result of the above analysis, the results for Korean Air showed that, with respect to the standalone profit case, there is no incentive for Korean Air to raise prices by more than 5% on a standalone basis since the profit in the case of a price increase of 5% or more is less than Korean Air's standalone profit before the price increase. However, with respect to the joint profits case, since the other Party's profits are incorporated as its own profits through the Action, the profits in the case of a price increase of 5% or more exceeded Korean Air's profits on a standalone basis before the price increase. Thus, the result was that Korean Air would have an incentive to raise prices due to the Action because profits would increase if prices were raised after the Action rather than on a standalone basis.

In the case of Asiana Airlines, with respect to the standalone profit case, there is no incentive for Asiana to raise prices by more than 5% on a standalone basis, since the profit in the case of a price increase of 5% or more is less than Asiana's standalone profit before the price increase. However, with respect to the joint profit case, the profit in the case of a price increase of 7% or more exceeded the profit of Asiana Airlines on a standalone basis before the price increase. Therefore, it was also found that the Action would create an incentive to raise prices for Asiana Airlines, although not as much as Korean Air.

³² An incentive to raise prices due to the Action is when the profits of one of the Parties alone will decrease when it raises prices compared to its profits before the price increase, while the profits of one of the Parties after the Action will increase compared to its profits before the price increase.

For the convenience of the simulation, the price preceding the Action was set to 1. Furthermore, for the sake of convenience in the calculation, it was assumed that the cost level did not change before and after the Action, the unit cost (unit cost of fixed and variable costs) was set to zero, and profits were assumed as equal to sales (if it is assumed that the cost level did not change before and after the Action, the simulation results will not be affected whether the unit cost is at a constant level or zero).

- ³³ Actual values for the year 2019 were used.
- ³⁴ Price of one of the Parties before the Action × (1 + rate of price increase) × (demand volume before the Action – quantity switched over to competitors after the price increase).
- ³⁵ Price of one of the Parties before the Action × (1 + rate of price increase) × (demand volume before the Action – quantity switched over to competitors after the price increase) + price of the other Party before the Action × quantity switched over to the other Party.

d) Analysis of incentives to raise fares using GUPPI

In calculating the GUPPI, *36 the JFTC used the average monthly fares of the Parties from 2017 to 2021 and the average variable costs obtained from the accounting data of the Parties as an approximation of the marginal costs. *37 The JFTC also estimated the diversion ratio*38 using market share data obtained from the Parties and other sources.

The GUPPI from Korean Air to Asiana Airlines was calculated to be in excess of 5%, resulting in a price increase incentive to Korean Air as a result of the Action. Similarly, the GUPPI from Asiana Airlines to Korean Air was calculated to be in excess of 5%, indicating that Asiana Airlines would have an incentive to raise prices as a result of the Action.

- ³⁶ For more information on GUPPI, see footnote 15. To restate the definition of GUPPI, the GUPPI which represents an incentive for Company A to raise its price due to the business combination of Company A and Company B is defined as "diversion ratio from Company A to Company B × ((Company B's price Company B's marginal cost) / Company B's price) × Company B's price / Company A's price."
- ³⁷ Assuming a linear cost function, marginal costs and average variable costs are the same.
- ³⁸ See footnote 20 for diversion ratio. To restate the definition of diversion ratio based on market share, the diversion ratio from Company A to Company B is "Company B's market share / (1 – Company A's market share)."

G. Summary

As stated above, it was found that (1) the combined market share of the Parties after the Action will exceed 60%, ranking first, and the gap with the secondranked and lower companies would be significant; (2) Asiana Airlines has a tendency to offer lower prices than Korean Air, and the close competition between the Parties will be lost post the Action, meaning that the Action will have a significant negative impact on competition; (3) Although the competitors have a certain degree of excess capacity, the Parties and competitors are differentiated in terms of whether they operate large freighters and whether they operate flights to and from airports in western Japan; (4) Many users have expressed concerns about the ability of new entrants to respond to unforeseen circumstances (damage or loss of cargo, etc.) and stable and continuous operation, meaning that entry pressure is limited; (5) Competitive pressure from adjacent markets such as integrators, ocean cargo transportation, and transit flights is also limited; and (6) Because the Parties and competitors are differentiated, it is difficult for users to change their business partners, meaning that competitive pressure from users is limited. In addition, (7) the economic analysis suggested that the Parties exert a mutual restraining influence on each other and that the Parties will have an incentive to raise their prices after the Action.

Therefore, in the air cargo transportation market for routes from Japan to South Korea, it is considered that the Action could easily create a situation in which the Parties Group alone is able to freely influence prices, etc. to some extent, which would substantially restrain competition.

(2) Substantial restraint of competition through coordinated conduct

In the international air cargo market from Japan to South Korea, it was not found that the concerted actions of the Parties Group and competitors would substantially restrain competition, considering that there would still be many competitors after the Action and there is insufficient evidence to prove that information on competitors' trading conditions, such as prices and quantities, was easily available.

(3) Summary

The Action will substantially restrain competition in the international air cargo transportation market from Japan to South Korea by the unilateral conduct of the Parties Group.

4. Proposal of Remedy by Korean Air

In response to the concerns identified by the JFTC based on the Antimonopoly Act with regard to the air cargo transportation market on routes from Japan to South Korea, Korean Air proposed to divest Asiana Airlines' air cargo transportation business using freighters worldwide, including Japan, to a third party in its entirety, as outlined below (hereinafter referred to as the "Freighter Business Divestment"; the transferees is referred to as "Cargo Remedy Takers"). In addition, Korean Air proposed to enter into a so-called Block Space Agreement (BSA: A party with whom a BSA is concluded is referred to as a "BSA Remedy Taker") under which a certain amount of space provided by Korean Air would be provided to competitors and to encourage price competition by providing space to BSA Remedy Takers at a certain competitive price.

(1) Freighter business divestment

A. Scope of divested business

- The scope of the divested business includes all tangible assets such as aircraft, labor, facilities, equipment, etc. in the air cargo transportation business using freighters, as well as intangible assets such as contracts, authorizations, licenses, and slots (including all slots for freighter flights at Narita Airport and Kansai Airport) to enable effective business operations by a Cargo Remedy Taker (hereinafter referred to as the "Divested Business").
- The air cargo transportation business using passenger belly (hereinafter referred to as "Belly Operation") is not included in the scope of the

divested business (meaning that Belly Operation will remain with the Parties after the Action).

B. Covenants

- The Parties shall maintain or cause to be maintained the economic viability, marketability, and competitiveness of the Divested Business in accordance with "fair business practices" until the divestment of the Divested Business is implemented and shall minimize to the extent possible the risk of loss of the potential competitiveness of the Divested Business.
- Asiana Airlines shall maintain the entire scope of its cargo business, including the Divested Business, separate from Korean Air from the effective date (the Article 9 Notice Date or the date agreed upon by the JFTC and the Parties as the effective date of the Remedy with regard to the cargo business*39; the same applies below) until the closing of the Action. In addition, Korean Air shall appoint a Hold Separate Manager to operate the Divested Business under the supervision of the monitoring trustee (the monitoring trustee for the freighter business divestment is hereinafter referred to as the "divestment monitoring trustee") immediately after the closing of the Action.
- Korean Air shall take necessary measures to ensure that it does not acquire confidential information regarding the Divested Business after the Action is implemented.
- ³⁹ Considering that a divestment of the freighter business is a remedy also in the European Commission's decision (see European Commission/Case No. M.10149), the JFTC and Korean Air have agreed to set the effective date as February 13, 2024, the date on which the European Commission conditionally approved the Action.

C. Cargo Remedy Taker

- Cargo Remedy Taker is required to meet the following requirements:
- 1 It must be independent of, and not related to, the Parties Group.
- (2) It must have the financial resources, proven expertise, and incentive to maintain and develop the Divested Business as a viable and active competitor in competition with the Parties and other airlines.
- ③ It must have an air operator certificate.
- (4) The acquisition of the Divested Business by the Cargo Remedy Taker must not carry the risk of giving rise to significant competitive concerns.
 - The Parties shall obtain the approval of the JFTC on the selection of the Cargo Remedy Taker and the terms and conditions of the divestment of the Divested Business prior to the closing of the Action. In addition, the divestment of the Divested Business to the Cargo Remedy Taker shall be implemented within six months of the closing of the Action.

D. Divestment monitoring trustee and Divestiture trustee

• The Parties shall appoint an independent third party, the divestment monitoring trustee, as an organization to monitor the status of compliance with the freighter business divestment and shall have it monitor the performance of the business divestment, monitor prevention of damage

to the value of the Divested Business before the implementation of the business divestment, and monitor separation of the business between Korean Air and Asiana Airlines until the closing of the Action. After the closing of the Action, the Parties shall have the divestment monitoring trustee observe the status of implementation of the Remedy such as segregation from the Parties any confidential information of the Divested Business and shall also have it report regularly to the JFTC.

• In the event that a Cargo Remedy Taker is not selected by the prescribed deadline, an independent third party, the Divestiture Trustee, shall sell the business on behalf of the Parties. The Parties shall have the Divestiture Trustee report periodically to the JFTC on the progress of the business divestment.

(2) Block Space Agreement (BSA)

A. Overview

- The Parties shall provide BSA Remedy Takers with defined space for cargo transportation on Korean Air aircraft at wholesale prices that the BSA Remedy Takers can offer to users at competitive prices.
- As support measures for BSA Remedy Takers, the Parties shall provide BSA Remedy Takers with measures including ground handling support and transport services by truck at airports in South Korea.

B. Target routes and quantities

- BSA Remedy Takers may choose from among routes departing from Narita Airport, Kansai Airport, and Kitakyushu Airport served by Korean Air and arriving at Incheon Airport or other airports in South Korea.
- If Korean Air suspends the operation of cargo aircraft on any of the above routes for a period of one IATA season or more (referring to one period during the summer schedule (late March to late October) or winter schedule (late October to late March)), it shall notify the JFTC in advance of such suspension, together with specific reasons (profit margin, utilization record of the BSA counterparty, etc.), through the monitoring trustee (see E. below; the monitoring trustee for the BSA is hereinafter referred to as the "BSA monitoring trustee") who monitors the implementation status of the BSA and obtain the JFTC's consent. However, for routes departing from Kitakyushu Airport, it is sufficient to notify the JFTC in advance of such suspension, and prior consent is not required only in cases where the cargo transportation volume of the space that the BSA Remedy Taker could have used at the airport is appropriately transferred to Kansai Airport, Narita Airport, and/or other airports in Japan, and the BSA Remedy Taker agrees to such transfer.
- The space that Korean Air will provide to BSA Remedy Takers via a BSA shall be in such volumes as to create a competitor comparable to Asiana Airlines.

C. BSA Remedy Taker

- BSA Remedy Taker is required to meet the following requirements:
- 1 It must be independent of, and not related to, the Parties Group.
- (2) It must have the financial resources, proven expertise, and incentive to

maintain and develop the air cargo transportation business as a viable and active competitor in competition with the Parties and other airlines.

- (3) It must have an air operator certificate.
- (4) The conclusion of a BSA by the BSA Remedy Taker must not carry the risk of giving rise to significant competitive concerns.
- The Parties shall obtain the approval of the JFTC for the selection of BSA Remedy Takers and the terms of the agreement before the execution of the Action and shall enter into a BSA with BSA Remedy Taker and commence operations (providing space by BSA) within six months of such execution.

D. Agreement period

- The term of a BSA shall be five years and shall be automatically renewed on a yearly basis thereafter unless otherwise requested in writing by the BSA Remedy Taker.
- When the total term of the BSA reaches nine years, Korean Air may request the JFTC to approve the termination of the BSA, giving specific reasons in light of the opinion of the BSA monitoring trustee, and if the JFTC approves the request, or if the JFTC does not raise any objections from the perspective of the Antimonopoly Act even after 120 days have passed since the date of the request for approval, the BSA will automatically terminate when the period of the BSA reaches 10 years. If the JFTC objects and requests a certain remedy, Korean Air shall consult with the JFTC regarding an alternative remedy to the BSA, and until such consultations are completed, the existing BSA shall continue.
- The Parties may terminate or reduce the volume of the BSA with prior approval by the JFTC in the event of a material change in supply and demand, even during the agreement period.

E. BSA monitoring trustee

The Parties shall appoint an independent third party, the BSA monitoring trustee, to monitor the performance of the BSA and shall have the BSA monitoring trustee monitor the performance of the BSA and report periodically to the JFTC.

F. Ringfencing measures

To ensure that a coordinated effect does not arise between the Parties and a BSA Remedy Taker in the implementation of the BSA, the Parties shall take appropriate ring fencing measures, such as not sharing confidential information of BSA Remedy Taker (customer name, quantity, price, etc.) obtained in the course of consultations between the Parties and the BSA Remedy Taker on the price of space offered, etc. The details of the ringfencing measures shall be approved in advance by the JFTC.

(3) Prerequisites for the Action

Korean Air also offered to make the following items a prerequisite for the Action.

• The business divestment monitoring trustee, an independent third party, has been appointed by Korean Air with the approval of the JFTC as an organization to monitor compliance with remedial measures related to the

sale of the Divested Business in the cargo business.

- The plan regarding the remedial measures to be taken prior to the execution of the Action in preparation for the company split and spin-off procedures shall be delivered by Korean Air to the business divestment monitoring trustee within six weeks of the effective date.
- Korean Air or the Divestiture Trustee has executed a binding purchase agreement for the sale of the Divested Business, and the JFTC has approved the buyer and terms of sale of the Divested Business in accordance with the Remedy for the cargo business.
- A BSA shall be concluded between Korean Air and BSA Remedy Takers.
- The Parties shall submit to the JFTC a draft trustee mandate with the BSA monitoring trustee within two weeks of the effective date for approval and shall execute such trustee mandate with the monitoring trustee with respect to the BSA within one week of the date of receipt of such approval.
- The Parties shall receive (or have reasonable prospects of receiving) all confirmations, etc. necessary to implement the remedies from other authorities (including but not limited to the Korea Fair Trade Commission, the Ministry of Land, Infrastructure and Transport, and the European Commission) pertaining to the Action (this is a matter common to the international air passenger transportation business).

As described in 4, Part IV above, there are also several preconditions for the implementation of the Action in the international air passenger transportation business as well, and all of these conditions must be met in order for the Parties to implement the Action.

5. Assessment of the Remedy

(1) General remarks

As stated in 5(1)A(a) in Part IV above, a remedy, in principle, should be a structural remedial measure such as a business divestment and should be able to restore the competition lost through the business combination so that the Parties Group cannot freely influence prices, etc. to some extent. The most effective remedial measures are those that create new independent competitors or strengthen existing competitors so that they become effective competitive constraints. (Guidelines 7-1 and 2(1)). In light of this basis, in the cargo business, the most straightforward remedy in the Action is to divest whole of Asiana Airlines' international air cargo transportation business to other enterprises.

Although it would be most desirable to include belly operations in the business divestment, it is considered acceptable to take multiple measures in combination rather than alone as long as that combination can restore the competition that would be lost (Guidelines, Article 7-2). The Remedy in 4 above, by combining multiple remedial measures, creates an effective competitive constraints that prevents the Parties Group from freely influencing prices, etc. to a certain extent after the Action, and can be evaluated as restoring the competition in the international air cargo transportation market that would be lost as a result of the Action.

As stated in 4(1)A above, belly operations are not included in the scope of Korean Air's proposed divestment of the freighter business, and Asiana Airlines' belly operations will remain with the Parties Group after the Action. Passenger flights are numerous on routes from Japan to South Korea, and belly operations account for a certain amount of total traffic on Asiana's cargo business on routes from Japan to South Korea. Therefore, it can be evaluated that it is appropriate to use a BSA as a remedy in addition to the freighter business divestment because some additional remedy is considered necessary to compensate for the exclusion of belly operations from the scope of the freighter business divestment.

(2) Divestment of the freighter business

The proposal for the freighter business divestment can be evaluated as appropriate, with no particular problems regarding the type of remedies (effectiveness of the freighter business divestment itself as a remedy), transferee, timing of implementation, etc., as described below.

A. Type

As stated in 4(1) above, the freighter business divestment is the most straightforward remedy in the Action, as it divests Asiana Airlines' air cargo transportation business using freighters to a Cargo Remedy Taker and is, therefore, deemed effective.

B. Transferee (Cargo Remedy Taker)

This divestment can be evaluated as appropriate because the transferee, the Cargo Remedy Taker, will be selected before the execution of the Action, and the transfer agreement will be concluded after obtaining approval from the JFTC, including eligibility.

In addition, the Cargo Remedy Taker shall be considered to be an independent and strong competitor in the air cargo transportation market for routes from Japan to South Korea if it meets each of the requirements described in 4(1)C above.

C. Timing of implementation

This divestment can be evaluated as appropriate in the view point of the implementation timing, because, as stated in 4(1)C above, although the business divestment will not take place before the closing of the Action, the deadline for the divestment, within six months of the execution from the Action, is clearly stipulated.

D. Interim measures until the implementation of the Remedy

As described in 4(1)C above, the business divestment is to be implemented after the closing of the Action, so it is considered necessary to take interim measures such as measures to prevent negative effects on competition and measures to prevent damage to the value of the Divested Business, etc. until the divestment.

This divestment can be evaluated as appropriate because, as stated in 4(1)B above, the hold-separate between Asiana Airlines and Korean Air, including the Divested Business until the execution of the Action (maintaining the independence of the businesses of both companies) is assured in the Remedy, and the divestment monitoring trustee is to monitor such business separation and the value of the Divested Business until the execution of the business divestment.

(3) Regarding the BSA

The BSA proposed by the Parties can be evaluated as appropriate, with no particular problems regarding the type (effectiveness of the BSA itself as a remedy), counterparty, timing of implementation, etc., as described below.

A. Type

While a structural remedy such as a business divestment is a desirable remedy, in the event that demand is declining and it is not easy to find a buyer for all or part of the business divisions of the Parties Group (e.g., manufacturing, sales, and development divisions) and the product is mature and services such as research and development and product improvements in response to consumer demand are not very important, it may be deemed effective to set up a contractual right for a competitor to purchase a product at a price equivalent to the production cost of the product (by entering into a long-term supply contract) as a remedy (the so-called "establishment of a cost-based take-over right"; Guidelines, Article 7, Paragraph 2 (1)).

In principle, structural remedial measures such as business divestment should also be taken with regard to belly operations. However, belly operations are basically cargo transport services using passenger aircraft, with the premise of passenger transport. As described in 4, Part IV above, with the Open-Slot transfer in the Remedy for passenger business, some slots have been left open because no specified transferee could be found. Given these circumstances, it is thought to be difficult to find a recipient and to take structural remedial measures such as business divestment with respect to the belly operation.

Furthermore, since the BSA is to provide space supplied by Korean Air at a price that allows BSA Remedy Takers to offer it to users at competitive price, it is similar in structure to "establishing a contractual right for a competitor at a price equivalent to the production cost of the relevant goods" and can be evaluated as a measure to create new independent competitors or to strengthen existing competitors so that they have competitive constraints. Therefore, the BSA is deemed effective as a remedy.

B. Counterparty (BSA Remedy Taker)

This BSA can be evaluated as appropriate because the Parties are to obtain the approval of the JFTC on the selection of BSA Remedy Takers and the terms of the agreement before the execution of the Action and then enter into a BSA with BSA Remedy Taker.

In addition, the BSA Remedy Taker shall be considered to be an independent and strong competitor in the air cargo transportation market for routes from Japan to South Korea if it meets each of the requirements described in 4(2)C above.

C. Quantity of space provided through the BSA

As stated in 4(1)A above, Asiana Airlines' belly operations are excluded from the scope of the freight business divestment; therefore, even if the freight business divestment is executed, Asiana Airlines' belly operations will remain with the Parties Group after the Action.

From the perspective of "restoring the competition lost after the Action," it would be appropriate for the BSA to provide BSA Remedy Taker with a quantity of space equivalent to Asiana Airlines' belly operations. The quantity of space provided by the BSA in this case is equivalent to the amount of transportation by Asiana Airlines' belly operations and can, therefore, be evaluated as appropriate from the viewpoint of quantitative comparison.

D. Timing of Implementation

As stated in 4(2)C above, the provision of space through the BSA from the Parties to BSA Remedy Taker will not take place prior to the closing of the Action; however, this BSA can be evaluated as appropriate because there are stipulations that said provision will begin within six months of the closing of the Action.

E. Interim measures until the implementation of the Remedy

As stated in 4(2)C above, since the provision of space by the BSA to BSA Remedy Takers from the Parties will begin after the closing of the Action, it is necessary to take interim measures to ensure that no negative effect on competition will occur in the meantime.

This BSA can be evaluated as appropriate in this regard too. Because, as stated in 4(1)B above, the separation of the Asiana Airlines and Korean Air businesses is assured in the Remedy as well as in the freighter business divestment, and the monitoring trustee is to monitor the separation including the said business separation.

F. Ringfencing measures

As described in 4(2)F above, the Parties proposed the measures to block information sharing with BSA Remedy Taker, the details of which are subject to prior approval by the JFTC, and these measures can be evaluated as appropriate from the perspective of preventing a possible coordinated effect from arising because of sharing of business information between the two parties.

(4) Ensuring the implementation of the Remedy

A. Monitoring trustee

The Parties shall appoint independent third-party monitoring trustees (the divestment monitoring trustee and the BSA monitoring trustee) and shall have such monitoring trustees monitor the implementation of the freighter business divestment and the BSA and report periodically to the JFTC.

In light of the following circumstances, monitoring by an independent third party may be a sufficient measure to ensure implementation.

- The Parties shall submit to the JFTC a draft trustee mandates detailing the delegation of duties and authority to the monitoring trustees within two weeks of the effective date, and upon obtaining the approval of the JFTC, shall enter into trustee mandates with the monitoring trustees within one week of receipt of said approval.
- The entity that will be monitoring trustee shall be confirmed by the JFTC to be eligible from the standpoints of ① track record (confirming that it has experience as a monitoring trustee and knowledge of the aviation industry), ② capability (confirming the number of staff and their career histories and whether or not they can communicate with the JFTC in Japanese), and ③ conflicts of interest and independence (confirming current or past transaction history with the Parties Group, whether there

are interlocking officers with the Parties Group, and whether a remuneration system is in place to ensure the independence of the monitoring trustee) and shall be selected upon obtaining confirmation from the JFTC.

B. Divestiture Trustee

In cases where a business divestment is included as part of a remedy package, such remedy package may include the condition that an independent third party, a divestiture trustee, may sell the business on behalf of the Parties if a transfer agreement is not executed within a certain period of time in order to avoid a situation where the business divestment is not implemented by the deadline specified in the remedy.

In this case, as described in 4(1)D above, said condition is included in the contents of the freighter business divestment, and if a Cargo Remedy Taker is not selected within a certain period of time, the divestiture trustee may sell the Divested Business on behalf of the Parties. Further, the JFTC will determine the eligibility of such business divestiture trustee from the same perspective as described in A. above, and the trustee will be appointed upon approval by the JFTC. Therefore, it is considered that this could be a sufficient measure to ensure performance.

Part VI: Conclusion

As a result of the review, based on the premise that the Remedies proposed by the Parties is implemented, the JFTC concluded that it could not establish the Action would substantially restrain competition in a particular field of trade.