

Taiwan Fair Trade Commission Guidelines on Domestic Airline Mergers and Concerted Actions

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On 8 January 2008 the Fair Trade Commission (FTC) revoked its Guidelines for Handling Civil Air Transportation Enterprises' Merger Filings and Guidelines on Unendorsed Ticket Transfers between Airline Companies, and issued Guidelines for Handling Merger and Concerted Action Cases of Domestic Civil Air Transportation Enterprises. The new Guidelines are intended to enable the FTC to effectively handle domestic civil air carriers' merger filings and applications for permission to engage in concerted actions, in order to maintain the orderly conduct of trade, uphold consumers' interests, and assure fair market competition, following the major changes in the competitive environment in Taiwan's domestic air transportation market since the entry into service of the Taiwan High-Speed Rail (THSR). The main points of the new Guidelines are as follows:

- Market definition: The definition of markets for civil air carriers' merger filings and concerted action applications will in principle be based on the "city pair" as the smallest market unit. However, the following factors should also be considered:

1. Substitutability of other air routes originating from areas close to the point of departure.
2. Substitutability between air, high-speed rail, conventional rail, road, and water transportation modes.
3. Other factors relevant to the definition of domestic air transportation markets.

When assessing substitutability between different routes and different modes of transportation, the following factors should be considered:

1. Distance traveled and time required for journey.
2. Passenger characteristics and time cost of journey.

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3. Whether service providers have the ability to collectively or individually make small but significant non-temporary price adjustments without adversely affecting their profitability.

- Market share: Besides considering such information as the service volume, sales quantity, service value, and sales value of the enterprise compared to the totals for the related markets, the market share of a domestic air carrier may also be calculated by either of the following methods:

1. Market demand basis: The number of passengers carried by, or the turnover of, a specific domestic civil air carrier, expressed as a proportion of the total number of passengers carried by, or the total turnover of, all civil carriers in the relevant market.

2. Market supply basis: The number of seats made available by a specific domestic civil air carrier, expressed as a proportion of the total number of seats made available by all civil carriers in the relevant market.

When calculating a domestic civil air carrier's market share in a relevant market, the FTC may, in addition to applying the above criteria, adopt other bases for calculation appropriate to the characteristics of the relevant market, including the ticket prices, number of departures, time overlap, or extent of substitutability of the THSR route against air routes in western Taiwan; the proportions of the passenger numbers or operating revenue of the entire THSR route accounted for by specific subsections of the route; and the cost of substitution between the THSR and air carrier.

- Factors to be considered when determining the impact of a merger on competition:

1. Market structure: The number of market participants, market share in terms of passenger journeys, and degree of market concentration.

2. Barriers to entry: The possibility and timeliness of market participation by potential competitors, and whether they can exert competitive pressure on existing enterprises in the market.

3. Unilateral effects: The ability of the surviving enterprise, being freed from the constraints of market competition, to increase the price of its goods or the remuneration for its services.

4. Coordinated effects: Whether the reduced number of market participants makes it easier for the surviving enterprise to reach collective agreements with other competitors and to monitor and be monitored by such competitors; or whether in the absence of collective agreements, mutual dependence between oligopolistic vendors effectively hampers market competition.

5. Countervailing power: The ability of existing or potential trading counterparties to deter the surviving enterprise from increasing its price for goods or services.

The less overlap there is between air routes operated by participating enterprises, the less significant the effect of the merger will be in restricting competition. Conversely, the greater the degree of overlap between the routes operated by participating enterprises, the greater the restriction of competition that will result from the merger.

If after a merger there will remain at least three similarly sized competitors within the relevant market, and there is reason to believe that the merger will not lead to significant anti-competition effects, then in principle it can be assumed that the merger will not restrict competition to a significant degree.

- Factors to be considered when determining the effects of a merger on economic efficiency:

1. Reduced operating costs: Is the merger conducive to creating economies of scale and scope, thereby reducing operating costs?

2. Network rationalization: Is the merger conducive to readjustment of the air route network, so as to provide services more efficiently?

3. Efficient use of resources: Is the merger conducive to efficient use of assets or resources, such as aircraft fleets, maintenance, service counters, and takeoff and landing time slots?

4. Convenience of service: Is the merger conducive to providing air transport services with a greater frequency of scheduled departures and a broader network coverage area?

5. Promoting competition: Is the merger conducive to creating competitors of similar scale, thus promoting competition in the relevant markets?

6. Failing enterprises: Other than by merging with another enterprise, would an enterprise participating in the merger be unable to continue operation and have to withdraw from the market, or could it combine with another enterprise with less likelihood of restriction of competition?

Justifications on grounds of efficiency presented by the participating enterprises must be directly related to the merger that is the subject of the filing, and must be achievable only by means of a merger. If economic efficiency grounds put forward do not stem from the merger,

or could be achieved in other ways that do not have the effect of restricting competition, then they cannot be accepted as justifications.

• Factors to be considered for approval of concerted actions: If the type of concerted action meets any of the qualifying conditions set out in the proviso to Article 14 Paragraph 1 the Fair Trade Act, the FTC may apply the following review criteria on a case-by-case basis:

1.The state of competition between different modes of transportation in relevant markets.

2.Conduciveness to consumer choice between relatively reasonable ticket prices and high-quality service.

3.The degree of influence on service provision or ticket prices on other air routes.

4.The possibility that the elimination of cross-subsidies between domestic and international air routes will lead to unfair treatment of passengers on other routes

5.Benefits to the overall economy and the public interest.

The provisions requiring approval of concerted actions will not be applied to joint actions made pursuant to the Civil Aviation Act and not contrary to the legislative spirit of the Fair Trade Act.