

Strategic Alliance of Airlines under the Fair Trade Law

I. Background

The aviation industry is characterized by economies of scale, economies of scope, and high fixed cost. Airlines often form strategic alliances or sign pooling agreements due to economic considerations, in hopes of securing their position in the aviation market with growingly stiff competition. Under the trend of globalization, cooperation between airlines has gradually shifted from resources sharing on a single route to forming alliances, and it has created considerable profits for the alliances. As alliances expand their cooperation and reaching higher levels of integration, regulating airline alliances has become a major aviation policy issue in countries around the world. This research report systematically analyzes and organizes regulations and practical experiences of European and American countries based on observations and understanding of the aviation industry and strategic alliances of airlines, and uses this as a basis for evaluating control measures that should be adopted for strategic alliances and pooling schemes of airlines. This report will provide a basis for the FTC to handle future cases.

II. Recommendations

This study found that there are many forms of cooperation between strategic alliances or through pooling agreements between airlines. While the FTC has discussed these forms of cooperation in the past, however, the Regulations for Civil Aviation Industry Pooling Permit has not been applicable to many relevant cases since the regulations were enacted in 2003. The FTC also does not have any further information on the contents of pooling agreements and implementation situation in domestic and international routes, or the cooperation method of the strategic alliance between China Airlines and EVA Airways. In addition, the Fair Trade Law does not categorize the degree strategic alliances or pooling agreements between airlines hinders competition order in the market. This study makes the following recommendations:

i. Reexamine the operating model of strategic alliances and contents of pooling agreements between airlines, and then categorize the cooperation method of alliances or pooling, as well as the degree it hinders competition order in the market.

Based on the FTC's past experience, cooperation methods of strategic alliances and pooling agreements between airlines can be divided into the following categories: 1. Cooperation methods that have significant anti-competition effects; 2. Cooperation methods that have anti-competition effects, but can enhance overall economic efficiency; 3. Cooperation methods that do not have anti-competition effects under normal circumstances. The first type of concerted action severely hinders competition order in the market and is strictly prohibited by the Fair Trade Law, while other types of concerted action have a relatively mild effect. Once the degree that strategic alliances or pooling agreements between airlines hinders competition order in the market is categorized, it can provide a basis for future law enforcement.

ii. Continue to monitor the development of strategic alliances and pooling agreements between

airlines and effectively grasp market trends.

Strategic alliances and pooling agreements have become important operation strategies of airlines. Airlines that join strategic alliances or sign pooling agreements can expand their network of routes, provide more options to passengers, provide better services, reduce cost, and break through legal limitations, and there is a growingly trend of competition between alliances in the aviation industry. However, there are many cooperation methods between airlines, and quite a few involve high level of integration. Hence, preventing airlines from restricting competition or hindering fair competition through alliances or pooling has become an important topic of concern to the FTC. Therefore, the FTC should continue to closely monitor the development of strategic alliances and pooling agreements between airlines to maintain trading order and protect consumers' interests.

iii. Strengthen communication, coordination and cooperation with the competent authority of civil aviation concerning applications or pooling agreements of airlines, and jointly maintain fair competition in the market.

Article 3 of the Regulations for Civil Aviation Industry Pooling Permit stipulates that: "Airlines shall submit the following documents to the Civil Aeronautics Administration, which will transfer the documents to the Ministry of Transportation and Communications for approval, when apply for pooling; the Ministry of Transportation and Communications may attach conditions, time limits, restrictions or encumbrances: 1. Pooling implementation plan; 2. Pooling agreement draft; 3. Where the pooling constitutes concerted action set forth in Article 7 of the Fair Trade Law, the airline shall attach a permit from the FTC." Considering that the FTC does not have any further information on the contents of pooling agreements and implementation situation in domestic and international routes, or the cooperation method of the strategic alliance between China Airlines and EVA Airways, whether or not pooling agreements between airlines constitute concerted action set forth in Article 7 of the Fair Trade Law, and whether or not it affects market functions, e.g. production, goods trade, or service supply and demand, requires further examination by the FTC. Hence, it is recommended that the FTC should strengthen its opinion exchange and cooperation with the competent authority of aviation to maintain competition order in the market.