

Domestic Airlines

1548th Commissioners' Meeting (2021)

Case: Domestic airline companies violated the Fair Trade Law by jointly deciding domestic airfares through mutual understandings

Keyword(s): Airlines, domestic air route, price negotiation

Reference: Fair Trade Commission Decision of June 16, 2021 (the 1548th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.110041, No.110042 and No.110043

Industry: Air Transport (5100)

Relevant Law(s): Article 15(1) of the Fair Trade Law

Summary:

1. The FTC received a complaint stating that UNI Airways Corporation (hereinafter referred to as "UNI Air"), Mandarin Airlines Co., Ltd. (hereinafter referred to as "Mandarin Airlines") and Far Eastern Air Transport Corporation (hereinafter referred to as "Far Eastern Air") had held 2 meetings in January 2019 to negotiate and decide their airfares for domestic air routes in violation of Article 15 of the Fair Trade Law. Therefore, the FTC initiated the investigation.
2. Findings of the FTC after investigation:
The FTC's investigation showed that UNI Air, Mandarin Airlines and Far Eastern Air met on January 10 and 31 in 2019. In the two meetings they established the mutual understandings to "maintain the airfares for Taipei, Taichung and Kaohsiung to Penghu, Taipei Taichung and Kaohsiung to Kinmen, and Taipei to Taitung after April 2019" and to "keep the group tickets for the third quarter of 2019 not any lower than the prices in the previous year." As the three companies together accounted for 100% market shares in the relevant market, the above practice could affect the supply-demand function of the market. It was in violation of the regulation against concerted actions set forth in Article 15(1) of the Fair Trade Law.
3. Grounds for disposition:
 - (1) During the discussions on January 10 and 31 in 2019, none of the representatives from the three airline companies opposed the idea of maintaining airfares. They all approved or supported it, and all the representatives either were responsible for airfare decision in their

companies or had the authority to decide ticket prices. In other words, when they approved or supported the idea of maintaining the airfares or not lowering the prices, it was enough to make each company to avoid lowering the prices or keep the airfares at the same level as in 2018. In consequence, the prices of tickets for the air routes in concern were affected. The mutual understandings and consensus on the decision of future ticket prices achieved would weaken the incentive and motivation for the companies in question to offer more competitive ticket prices. Therefore, it was a concerted action to assure the companies in question could maintain the airfares or not to lower the prices.

- (2) Although the three airline companies contended the “promise” achieved during the two meetings was merely given without serious consideration because they were in the same business. It was not mutual understandings associated with the airfares. They also argued that in reality the agreement was not a restriction on any company and the actual prices still had to be determined according to the supply-demand condition in the market. However, mutual understanding regarding a concerted action did not necessarily depend on whether the agreement was binding or whether there was any legal effect. At the same time, it also had nothing to do with whether the concerted action was really executed after the mutual understandings were established or whether the parties involved actually obtained profits. The companies in question also argued that no mutual understandings on prices existed, they were never bound by such mutual understandings, the ticket prices were in fact determined in accordance with the supply-demand condition in the market, and they did not agree with or support the proposal of other companies. Nonetheless, the understanding was inside the minds of those attending the meetings, the representatives from other airline companies would be unable to guess. In other words, the price decisions of the companies in question would be very likely to be influenced by the competitors’ promises and their support for maintaining ticket prices (not lowering the prices).
- (3) The three airline companies were aware of the increase of supply and decrease of demand in the market in 2019. They met to exchange ideas and discuss the possibility of maintaining the airfares for the seven air routes at concern and not lowering group ticket prices in the third quarter of 2019. In the end, they reached the same understanding and consensus on ticket pricing in the future. The ticket prices for the air routes in question were thus affected and the decision could also prevent the competition risk resulted from any one of the companies adjusting or maintaining prices on its own.

Objectively speaking, there was already the abstract danger of influencing the supply-demand function in the market.

- (4) The transport service on the seven air routes was either provided by two or all three of the airline companies. In other words, the total market share of the three companies achieved 100% on any of the air route. Under such circumstances, when the three companies met and establish the mutual understandings of “maintaining plane ticket prices after April 2019” and “keeping group ticket prices at least at the same level as the year before, price competition for the air routes in concern would become impossible. Consumers could not obtain price benefits from competition among the companies. Therefore, the above-mentioned practice of the three airline companies would have an effect on the supply-demand function in the air transport service market associated with the seven air routes. The conduct was in violation of Article 15(1) of the Fair Trade Law. For this reason, the FTC imposed administrative fines of NT\$1.6 million on UNI Air, NT\$0.95 million on Mandarin Airlines and NT\$0.85 million on Far Eastern Air respectively.

Appendix:

Uni Airways Corporation’s Uniform Invoice Number: 22958771

Mandarin Airlines Co., Ltd.’s Uniform Invoice Number: 23988865

Far Easter Air Transport Corp.’s Uniform Invoice Number: 03522003

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