

Section 57 of the Competition Act 2004

Grounds of Decision issued by the Competition and Consumer Commission of Singapore

In relation to the proposed acquisition of a majority interest in Asiana Airlines, Inc. by Korean Air Lines Co., Ltd.

Date: 8 February 2022

Case number: CCCS 400/140/2021/004

Confidential information in the original version of this Decision will be redacted from the published version on the public register. Redacted confidential information in the text of the published version of the Decision is denoted by [X].

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	THE PARTIES	1
III.	THE PROPOSED TRANSACTION.....	2
IV.	COMPETITION ISSUES	3
V.	COUNTERFACTUAL	4
VI.	RELEVANT MARKETS	5
VII.	MARKET STRUCTURE	5
VIII.	COMPETITION ASSESSMENT.....	7
IX.	EFFICIENCIES	10
X.	CONCLUSION.....	10

I. INTRODUCTION

1. On 2 July 2021, the Competition and Consumer Commission of Singapore (“**CCCS**”) accepted a joint notification from Korean Air Lines Co., Ltd. (“**Korean Air**”) and Asiana Airlines Inc. (“**Asiana**”) (collectively, the “**Parties**”) for a decision as to whether the proposed acquisition of a majority interest by Korean Air of Asiana (the “**Proposed Transaction**”), if carried into effect, would infringe the section 54 prohibition of the Act.
2. In reviewing the Proposed Transaction, CCCS conducted a public consultation and sought feedback from more than 150 third parties, including aviation regulatory bodies and the Parties’ competitors and customers in respect of air passenger transportation services and air cargo transportation services. Of the 27 substantive responses received,¹ most (16) of these third parties did not raise any competition concerns in relation to the Proposed Transaction.
3. At the end of the public consultation process and after evaluating the available information, CCCS concludes that the Proposed Transaction, if carried into effect, will not infringe section 54 of the Act.

II. THE PARTIES

Korean Air

4. Korean Air is a South-Korea based full-service carrier (“**FSC**”) with international operations, and is active in four main activities: (i) passenger air transport services; (ii) air cargo transport services, (iii) aerospace and (iv) hotel businesses.²
5. In Singapore, Korean Air provides only passenger air transport services and air cargo transport services. Korean Air operates a hub-and-spoke network with its principal hub at Incheon International Airport in South Korea.³

¹ The 27 third parties who provided substantive responses comprise: [X]

² Paragraph 10.5 of Form M1.

³ Paragraph 10.5 of Form M1.

Asiana

6. Asiana is a FSC with a global route coverage, headquartered in Seoul, South Korea.⁴ Asiana engages primarily in domestic and international airline services (including both passenger and cargo), a telecommunications business, and air transport support services, amongst others.⁵ Asiana's subsidiary, Asiana IDT, operates the telecommunications business and provides IT services, while its other subsidiary, Asiana Air Port, operates the air transport support services (air cargo loading/unloading and ground operations). Asiana's other subsidiaries include: Kumho Resort (a resort condominium and golf resort), Weihaipoint Hotel & Golf Resort, (a hotel and golf resort in Weihai, China) and Kumho T&I (other financial services).⁶ Asiana's other subsidiaries, Air Busan and Air Seoul, operate airline services, but do not operate flights to Singapore.⁷
7. In Singapore, Asiana provides only passenger air transport services and air cargo transport services.⁸

III. THE PROPOSED TRANSACTION

8. The Proposed Transaction concerns the acquisition of a majority interest in Asiana by Korean Air pursuant to the Share Subscription Agreement dated 17 November 2020 between the Parties (the "SSA"). The Parties submitted that following the Proposed Transaction, Asiana will be solely controlled by Korean Air.⁹ The Parties intend to integrate Korean Air and Asiana within [X] after obtaining merger clearance.¹⁰
9. CCCS assesses that the Proposed Transaction constitutes a merger under section 54(2)(b) of the Act as it will involve the acquisition of direct control by Korean Air over Asiana.

⁴ Paragraph 7.4 of Form M1.

⁵ Paragraph 10.6 of Form M1.

⁶ Paragraph 10.7 of Form M1.

⁷ Paragraph 7.7 of Form M1.

⁸ Paragraph 10.7 of Form M1.

⁹ Paragraphs 11.1, 11.2, 11.4 and 11.6 of Form M1.

¹⁰ Slide 20 of Annex 3 of the Parties' 4 October 2021 response to CCCS 9 September 2021 Request for Information ("RFI").

IV. COMPETITION ISSUES

Parties' submission for passenger air transport services

10. The Parties submitted that they mainly overlap in the supply of passenger air transport services on the direct origin-destination (“**O&D**”) pair between Singapore to Seoul/Incheon (SIN-ICN)¹¹ vv¹² (non-stop) (“**Overlapping Passenger Air Transport Route**”).¹³
11. For completeness, the Parties submitted that there are other theoretical overlaps with respect to services having a stopover in Seoul (with the origin or destination being Singapore). CCCS has verified that for each of these routes¹⁴, either the combined market share of the Parties is small (less than [10-20]%) or the incremental market share is *de minimis* (less than [0-10]%) in FY2019.¹⁵ Therefore, CCCS considers that these routes are unlikely to raise competition concerns.

Parties' submission for air cargo transport services

12. The Parties submitted that they mainly overlap in the supply of air cargo transport services on the following routes involving Singapore:
 - (a) Singapore to South Korea; and
 - (b) South Korea to Singapore (collectively referred to as “**Overlapping Air Cargo Transport Routes**”).¹⁶

¹¹ The Parties submitted that the Parties consider that ICN and GMP airports are substitutable for passengers travelling to and from Seoul. That said, this is of little practical relevance since no flight to Singapore departs from Gimpo (and vv). Accordingly, the overlapping route relevant for consideration should be SIN-ICN vv.

¹² vv stands for vice versa.

¹³ Paragraph 15.1 of Form M1.

¹⁴ The routes are SIN-SYD (Sydney) vv, SIN-CAN (Guangzhou) vv, SIN-DLC (Dalian) vv, SIN-NKG (Nanjing) vv, SIN-PEK (Beijing) vv, SIN-PVG (Shanghai) vv, SIN-SHE (Shenyang) vv, SIN-SZX (Shenzhen) vv, SIN-TAO (Qingdao) vv, SIN-TSN (Tianjin) vv, SIN-XIY (Xi'an) vv, SIN-TPE (Taipei) vv, SIN-CDG (Paris) vv, SIN-FRA (Frankfurt) vv, SIN-HKG (Hong Kong) vv, SIN-FCO (Rome) vv, SIN-CTS (Hokkaido) vv, SIN-FUK (Fukuoka) vv, SIN-HND (Tokyo) vv, SIN-KIX (Osaka) vv, SIN-NGO (Tokoname) vv, SIN-NRT (Tokyo) vv, SIN-OKA (Okinawa) vv, SIN-MNL (Manila) vv, SIN-BCN (Barcelona) vv, SIN-IST (Istanbul) vv, SIN-LHR (London) vv, SIN-GUM (Guam) vv, SIN-JFK (New York City) vv, SIN-LAX (Los Angeles) vv, SIN-ORD (Illinois) vv, SIN-SEA (Seattle) vv, SIN-SFO (San Francisco) vv, SIN-YNJ (Yanji) vv, SIN-ULN (Ulaanbaatar) vv, SIN-PUS (Busan) vv, SIN-HNL (Honolulu) vv, SIN-TAS (Tashkent) vv, and SIN-WEH (Weihai) vv.

¹⁵ Paragraph 15.2 of Form M1. Paragraph 3.3.1 of the Parties' 11 June 2021 response to CCCS's 29 April 2021 RFI.

¹⁶ Paragraph 15.3 and 20.27 and footnote 38 of Form M1.

13. For completeness, the Parties submitted that there are other theoretical overlaps between Singapore and onward cargo destinations from South Korea, as well as between Singapore and other countries.¹⁷ CCCS has verified that for each of these routes in FY2019¹⁸, either the Parties' combined market share is small ([0-10]% or less), the Parties' incremental market share is small ([0-10]% or less) or the Parties' incremental cargo sales volume on the route is *de minimis* (less than 30 tons).¹⁹ Therefore, CCCS considers that these routes are unlikely to raise competition concerns.

Focus of CCCS's assessment

14. On vertical effects, the Parties submitted that although they overlap vertically in the provision of aircraft ground handling, maintenance, repair and overhaul services, flight training services and the aerospace business²⁰, and the provision of passenger and air cargo transport services, the Proposed Transaction does not give rise to competition concerns. In the absence of any third party feedback or information suggesting otherwise, CCCS does not consider it likely that the Proposed Transaction will raise any vertical concern.
15. Accordingly, CCCS has focused its assessment on whether the Proposed Transaction will lead to horizontal effects in relation to:
- (a) the provision of passenger air transport services on the Overlapping Passenger Air Transport Route²¹; and
 - (b) the provision of air cargo transport services on the Overlapping Air Cargo Transport Routes²².

V. COUNTERFACTUAL

16. The Parties have raised the Failing Firm Defence (“FFD”). Specifically, Asiana has submitted that “*absent the [Proposed] Transaction, Asiana would in all*

¹⁷ Paragraph 15.4 of Form M1; Annex 6 of the Parties' 11 June 2021 response to CCCS's 29 April 2021 RFI.

¹⁸ The routes are Singapore to Europe, Singapore to Hong Kong, Europe to Singapore, Hong Kong to Singapore, Singapore to Mongolia, Singapore to Russian Federation, Singapore to Uzbekistan, Singapore to Vietnam, Singapore to China, China to Singapore, Singapore to Japan, Japan to Singapore, Singapore to North America and North America to Singapore.

¹⁹ Paragraph 3.3.2 of the Parties' 11 June 2021 response to CCCS's 29 April 2021 RFI. Paragraph 2.8 of the Parties' 2 July 2021 response to CCCS's 15 June 2021 RFI.

²⁰ The Parties submitted at paragraph 6.1 of the Parties' 10 December 2021 Response that Asiana has no flight training business or aerospace business in Singapore.

²¹ SIN-ICN vv.

²² Singapore to South Korea and South Korea to Singapore.

likelihood have ceased operations between Singapore and South Korea because of its financial difficulties, and Asiana cannot be rehabilitated but for the [Proposed] Transaction”²³.

17. CCCS is unable to conclude based on the information submitted that Asiana will indeed fail in the absence of the Proposed Transaction. Accordingly, CCCS considers the appropriate counterfactual to be the pre-merger conditions of competition.
18. In relation to the pre-merger conditions of competition, CCCS considers the pre-COVID-19 conditions of competition to better reflect the counterfactual, on the basis that absent the Proposed Transaction, the recovery of the industry can be expected to bring the state of competition nearer to the pre-COVID-19 conditions than the status quo. Therefore, where relevant, the CCCS has placed more weight on pre-COVID-19 data.

VI. RELEVANT MARKETS

19. Based on the Parties’ submissions and third parties’ feedback, for the purpose of the competition assessment, CCCS assesses the relevant markets to be the:
 - a. market for the provision of direct bidirectional passenger transport services along the Overlapping Passenger Air Transport Route (i.e. SIN-ICN vv (non-stop) route)²⁴; and
 - b. markets for the provision of direct and indirect unidirectional air cargo transport services along the Overlapping Air Cargo Transport Routes (i.e. Singapore-South Korea route and South Korea-Singapore route).

VII. MARKET STRUCTURE

(a) Market Shares

Passenger air transport services

²³ Paragraph 23.4 of Form M1.

²⁴ CCCS considers it unclear whether indirect flights form the same relevant product market as direct flights for SIN-ICN vv route. That said, CCCS is of the view that the Proposed Transaction is unlikely to result in a substantial lessening of competition even if a market comprising of direct flights only is used for the competitive assessment and as such, there is no need to conclude on whether indirect flights are within the relevant product market.

20. Although third parties' feedback indicate that the Parties are each other's closest competitor, CCCS notes that the Parties are the second and third largest players based on the Parties' market share estimates (by passengers flown) on the Overlapping Passenger Air Transport Route. The market leader, Singapore Airlines ("SIA") (together with its fully owned subsidiary, Scoot) will remain a strong competitor with comparable or higher market share than the merged entity on the Overlapping Passenger Air Transport Route.²⁵

Air cargo transport services

21. The Parties' estimates of the combined market share (by cargo weight) of the merged entity is high at around [50-60]% for the Singapore-South Korea route, and over [40-50]% for the South Korea-Singapore route for the pre-COVID-19 period in 2018 and 2019.²⁶ However, for both routes, SIA will remain a sizable competitor to the merged entity with [40-50]% market share on the South Korea to Singapore route and [30-50]% market share on the Singapore to South Korea route for the years 2018 and 2019 (pre-COVID-19).²⁷

(b) Barriers to Entry and Expansion

Passenger air transport services

22. CCCS notes that a number of potential new entrants have been allocated slots at Changi Airport, which amounts to [X] of the Parties' combined flight frequency prior to December 2019.²⁸ While the potential new entrants have not commenced passenger air transport services on the Overlapping Passenger Air Transport Route, CCCS notes that there is strong interest to do so. Therefore, CCCS is of the view that the barriers to entry for the Overlapping Passenger Air Transport Route appear to be no higher than moderate and certainly not insurmountable.

Air cargo transport services

23. Based on the Parties' submissions and third parties' feedback, CCCS is of the view that barriers to entry for the provision of air cargo transport services on the Overlapping Air Cargo Transport Routes appear to be relatively lower than that

²⁵ Paragraph 12.2 of Parties' 10 December 2021 response to CCCS's 22 November 2021 RFI.

²⁶ Annex 1 of Parties' 30 August 2021 response to CCCS's 5 July 2021 RFI.

²⁷ Annex 1 of Parties' 30 August 2021 response to CCCS's 5 July 2021 RFI.

²⁸ [X]

of the provision of passenger air transport services on the Overlapping Passenger Air Transport Route.

(c) Countervailing Buyer Power

24. CCCS notes that the top customers of the Parties generally do not account for a high proportion of their respective sales for any of the relevant markets, and therefore customers of the Parties are unlikely to be commercially significant to the extent that they will possess sufficient countervailing buyer power to discipline the merged entity's pricing.

VIII. COMPETITION ASSESSMENT

(a) Non-coordinated effects

Passenger air transport services

25. CCCS is of the view that that non-coordinated effects are unlikely to arise from the Proposed Transaction on the Overlapping Passenger Air Transport Route for the following reasons:
- (a) SIA will remain a strong competitor with comparable or higher market share than the merged entity, and will likely continue to exert substantial competitive constraint on the merged entity post-Proposed Transaction.
 - (b) The merged entity will face some degree of competition from potential new entrants which will further constrain the ability of the merged entity to raise prices (or reduce output or quality) post-Proposed Transaction. CCCS notes that the potential new entrants will mitigate any concern that passengers of Korean nationality would prefer to fly with a carrier in which they can be served in their own language and be left with only one option following the Proposed Transaction.

Air cargo transport services

26. CCCS is of the view that that non-coordinated effects are unlikely to arise from the Proposed Transaction on the Overlapping Air Cargo Transport Routes for the following reasons:

- (a) SIA will continue to exert significant competitive constraint on the merged entity post-Proposed Transaction, given that SIA will remain a sizable competitor to the merged entity based on pre-COVID-19 market shares.²⁹
- (b) Polar Air Cargo is able to exert some competitive constraint on the Parties post-Proposed Transaction.³⁰ For example, Polar Air Cargo may be able to increase the proportion of South Korea bound goods and reduce the proportion for non-South Korea bound goods, in response to changes in route profitability. Polar Air Cargo, as a US airline, may also be able to increase its number of flights on the Singapore to South Korea route, by using the fifth freedom rights. Further, the Open Skies Agreements signed between US and Singapore and between US and South Korea allow Polar Air Cargo to operate any number of flights between Singapore and South Korea.
- (c) The entry and potential entry by new entrants will exert some competitive constraint on the merged entity. As mentioned above, potential new entrants have been allocated slots at Changi Airport. It has been reported on 24 December 2021 that Air Premia has commenced direct air cargo transport service from Incheon to Singapore. The potential new entrants when they enter, can carry a total of [REDACTED] of cargo for each Overlapping Air Cargo Transport Route for each year.³¹ In relation to the Singapore – South Korea route, the total capacity of the potential new entrants makes up [REDACTED] and [REDACTED] of the merged entity’s total cargo carried in 2019 and 2021 Q1 respectively. For the South Korea - Singapore route, the total

²⁹ This is supported by data from Seoul Regional Aviation Administration (FOIS) of total cargo sales for the period 2018 to 2020 that the diversion ratio of each of the Parties to SIA (including its subsidiary Scoot) is broadly similar if not higher than that of the diversion ratio to the other Party for the Overlapping Passenger Air Transport Routes. Specifically, on the South Korea-Singapore route, the diversion ratios from Korean Air to Asiana and SIA (including its subsidiary Scoot) are at [0-10]% and [0-10]% respectively, and the diversion ratios from Asiana to Korean Air and SIA (including its subsidiary Scoot) are at [10-20]% and [10-20]% respectively. On the Singapore-South Korea route, the diversion ratios from Korean Air to Asiana and SIA (including its subsidiary Scoot) is at [10-20]% and [0-10]% respectively, and the diversion ratios from Asiana to Korean Air and SIA (including its subsidiary Scoot) are at [10-20]% and [10-20]% respectively. Paragraph 10.1, 10.2, 11.1 and 11.2 of Parties’ 20 January 2022 Response.

³⁰ This is consistent with FOIS data of total cargo sales for the period 2018 to 2020 that the diversion ratio for each of the Parties to Polar Air Cargo on the Korea-Singapore route is not insignificant. From Korean Air’s perspective, the diversion ratio with Polar Air Cargo is at [0-10]% while the diversion ratio with Asiana is at [0-10]%. From Asiana’s perspective, the diversion ratio with Polar Air Cargo is at [0-10]% while the diversion ratio with Korean Air is at [10-20]%. Paragraph 10.1, 10.2 of Parties’ 20 January 2022 Response. Paragraph 26.1 of Form M1.

³¹ [REDACTED], [REDACTED], [REDACTED].

capacity of the potential new entrants makes up [X] and [X] of the merged entity's total cargo carried in 2019 and 2021 Q1 respectively;

- (d) Integrators may exert some competitive constraints on the merged entity through their ability to increase the proportion of South Korea/Singapore bound goods or to operate additional flights on the Overlapping Air Cargo Transport Routes; and
 - (e) Indirect flights are a viable substitute to direct flights and will exert some degree of competitive constraint on the merged entity post-Proposed Transaction.
27. CCCS observes that air freight fees have increased from 2019 to 2020, though this may be attributed to the effects of the pandemic during which frequency of passengers' flights transporting passengers and cargo have been reduced, and the global supply and logistics chain have been disrupted and is not a true reflection of the merged entity' ability to raise prices because of the Proposed Transaction given that changes in air freight fees were observed to be more stable pre-COVID-19.
28. Based on the above, CCCS is of the view that based on the collective competitive constraint imposed by the various sources, non-coordinated effects are unlikely to arise from the Proposed Transaction for the provision of direct bidirectional passenger transport services on the Overlapping Passenger Air Transport Route and for the provision of direct and indirect unidirectional air cargo transport services on the Overlapping Air Cargo Transport Routes.

(b) Coordinated effects

Passenger air transport services

29. CCCS recognises that the Proposed Transaction leads to more symmetrical market shares between the merged entity and SIA, which may align their incentives to coordinate. CCCS also recognises that passenger air transport services appear to be relatively homogeneous, and air fares for individual passengers are easily accessible on a real-time basis via the airlines' websites. Be that as it may, CCCS is of the view that the entry and potential entry of new players will be sufficient to disrupt any coordinated behaviour.

Air cargo transport services

30. CCCS considers that the Proposed Transaction is unlikely to give rise to coordinated effects in the Overlapping Cargo Air Transport Routes due to:
- (a) a low degree of price transparency which would make it difficult for air cargo transportation service providers to monitor one another, given that procurement is typically done via direct negotiations;
 - (b) a high level of excess capacity which would make coordination more difficult if some firms have a strong incentive to utilise their excess capacity;³² and
 - (c) entry and potential entry of new players which will disrupt any coordinated behaviour.

IX. EFFICIENCIES

31. Given that the competition assessment does not indicate that the Proposed Transaction will result in a substantial lessening of competition for the provision of direct bidirectional passenger transport services on the Overlapping Passenger Air Transport Route and for the provision of direct and indirect unidirectional air cargo transport services on the Overlapping Air Cargo Transport Routes, it is not necessary for CCCS to assess the efficiencies claimed by the Parties.

X. CONCLUSION

32. For the reasons above and based on the information available, CCCS assesses that the Proposed Transaction, if carried out into effect, will not infringe the section 54 prohibition.

³² In particular, SIA and the other passenger airlines that offer air cargo transportation service on the Overlapping Air Cargo Transport Routes using the available belly hold space in passenger aircrafts are likely to have strong incentive to utilise their excess belly hold space capacity in their passenger flights, since excess belly hold space cannot be kept as inventory for future sales.

33. In accordance with section 57(7) of the Act, the decision will be valid for a period of one year from the date of CCCS's decision.

Sia Aik Kor

Chief Executive

For and on behalf of the Competition and Consumer Commission of Singapore