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Co-operative Antitrust in Remedy Design – Note by Korea

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1. Introduction

1. With the growing number of complex cross-border mergers, it has become difficult for a single competition authority to address competition concerns or ensure the effectiveness of remedies based solely on its own information and assessment.
2. To ensure the effectiveness of remedies and maintain consistency across global markets, while safeguarding market efficiency, cooperation in competition-law enforcement among competition authorities and other stakeholders is indispensable. Such cooperation enables authorities to obtain in-depth market information from market participants, develop practical and feasible remedies in consultation with the merging parties, and coordinate with foreign competition authorities and relevant ministries to manage the broader impact of remedies in an integrated manner.
3. The following sections outline the Korea Fair Trade Commission's (KFTC) framework for cooperation and remedy design, and—focusing on the Korean Air–Asiana Airlines merger—present a specific example of domestic and international cooperation and its implications.

2. The KFTC's Cooperation Mechanisms in Merger Review

4. When the Korea Fair Trade Commission (KFTC) identifies potential competition concerns during merger review, it implements a range of cooperation mechanisms to design effective remedies. These mechanisms help address information asymmetries between the authorities and stakeholders, enhance the feasibility of remedies, and balance different policy objectives.

2.1. Stakeholder Consultation Process

5. The Korea Fair Trade Commission (KFTC) has institutionalized procedures to gather broad-based input from stakeholders throughout the merger review process in order to enhance the objectivity and acceptability of both the assessment of competitive effects and the design of remedies.
6. Under the Examination Standards for Corporate Consolidation, the KFTC may consider the views of stakeholders and relevant experts in assessing competitive effects. In addition, the Guidelines on the Imposition of Corrective Measures in Corporate Consolidation provide that, in imposing and enforcing corrective measures, the KFTC may solicit opinions from interested parties—including competitors, consumers, suppliers, and subject-matter experts.
7. Stakeholder input is collected through various channels, including written inquiries, roundtable meetings, and public consultations. The primary purpose is to obtain detailed market information that the authority might not otherwise capture—such as developments in the competitive conditions of specific products or services, consumer perceptions and market responses, and potential anticompetitive conduct.

8. These stakeholder perspectives are often decisive not only in determining whether remedies are necessary, but also in specifying their content, scope, and implementation method. For example, if a divestiture is required, consultation helps identify which assets should be divested to effectively restore competition and determine the appropriate scope of divestiture. Likewise, when designing behavioral remedies (e.g., caps on price increases or obligations to maintain service quality), stakeholder input is essential to ascertain the issues of greatest concern to consumers and which measures are most effective in safeguarding competition. By assessing these views from multiple angles, the KFTC can enhance both the accuracy and the effectiveness of the remedies adopted.

2.2. The Correction Scheme Submission System

9. In 2024, the Korea Fair Trade Commission (KFTC)—drawing on comparable practices of foreign competition authorities—introduced the Correction Scheme Submission System, which enables merging parties to participate in the KFTC’s remedy-design process.

10. Where the KFTC’s examiner considers that a merger raises competition concerns and that the parties should be afforded an opportunity to submit a proposal, the examiner may notify the parties of its preliminary assessment of those concerns. The merging parties may then submit a remedy proposal to the examiner, who may request revisions if the submitted proposal is deemed insufficient to address the concerns. Where appropriate, the examiner may also seek input from experts during the evaluation.

11. As the merging parties possess the most detailed and practical knowledge of their respective industries and markets, allowing them to participate in the design of remedy proposals tends to produce measures that are more feasible and better reflect actual market conditions than those unilaterally imposed by the competition authority. The KFTC carefully examines the appropriateness, effectiveness, and feasibility of the submitted remedies. Where necessary, the KFTC may supplement or modify the proposed remedies—drawing on stakeholder input and further consultations with the merging parties—and then finalizes them as the final remedies.

12. This cooperative process helps minimize uncertainty in implementing remedies and ultimately enhances the effectiveness of measures to restore competition.

3. 3. Case of Cooperation in Merger Review: The Korean Air–Asiana Airlines Merger

3.1. Overview

13. In November 2020, Korean Air announced its plan to acquire Asiana Airlines and filed a merger notification in January 2021. The transaction involved the two largest airlines in the Korean aviation market—Korean Air as the leading carrier and Asiana Airlines as the second—raising significant concerns over potential monopolization on numerous routes. The merger was therefore assessed as likely to generate anticompetitive effects, including fare increases, deterioration in service quality, and barriers to entry.

14. In May 2022, the Korea Fair Trade Commission (KFTC) concluded that, among 87 overlapping domestic and international passenger routes operated by both airlines, the merger was likely to produce anticompetitive effects such as higher fares on 40 routes (26 international and 14 domestic). To address these concerns, the KFTC imposed structural remedies, requiring the surrender of traffic rights and airport slots on the affected routes so that the combined market share for each route would fall below 50 percent. In parallel,

behavioral remedies were imposed as complementary measures—such as a prohibition on fare increases and an obligation to maintain seat capacity—until the completion of the structural remedies.

15. The KFTC also explicitly stated that it could amend its remedies to ensure consistency with those imposed by other competition authorities. Following the completion of merger reviews by the authorities in the United States, the European Union, the United Kingdom, and Japan, the KFTC adopted an amendment decision in December 2024 to revise and supplement both the structural and behavioral remedies, thereby finalizing its merger review. The KFTC is currently monitoring the implementation of these remedies.

16. Throughout the merger review and the monitoring of remedies, the KFTC benefited significantly from cooperation with competition authorities in other jurisdictions, as well as from extensive input gathered from stakeholders and experts, which enabled a more precise assessment of anticompetitive effects and the development of effective remedies.

3.2. Consultation with Stakeholders

17. Given the impact of the Korean Air–Asiana Airlines merger, the Korea Fair Trade Commission (KFTC) sought and reviewed input from a broad range of stakeholders. These perspectives served as a key reference for identifying routes of potential competitive concern and setting the direction for remedy design.

18. The KFTC requested input from approximately 50 domestic and foreign airlines competing with Korean Air and Asiana Airlines, from Star Alliance (of which Asiana is a member), from consumer and economic civil society organizations—such as the Citizens’ Coalition for Economic Justice, People’s Solidarity for Participatory Democracy, and the Korea National Council of Consumer Organizations—and from independent experts, on the Korean Air–Asiana Airlines merger and on competitive conditions in the air transport market.

19. The stakeholders provided specific input concerning potential monopolization on specific routes, possible fare increases, and consumer detriment that could arise from the integration of the frequent-flyer programs, all of which contributed to the KFTC’s competitive assessment.

20. To further enhance transparency and stakeholder participation, the KFTC also conducted a two-week public consultation in connection with its approval of the integration plan for the frequent-flyer programs of Korean Air and Asiana Airlines. The KFTC fully disclosed the proposed frequent-flyer program integration plan to the public and broadly invited comments from a wide range of stakeholders, including consumers. After comprehensively reviewing the feedback received, the KFTC amended and approved the integration plan.

21. In addition, the KFTC appointed a Monitoring Trustee, comprising experts in competition law, consumer affairs, aviation, and accounting. The trustee reviews Korean Air’s implementation of the remedies each quarter and reports its findings to the KFTC.

3.2.1. Cooperation with Foreign Competition Authorities

22. Given that the competitive conditions on the air transport routes affected by the Korean Air–Asiana Airlines merger are inherently cross-border, the Korea Fair Trade Commission (KFTC) established a cooperative merger-review framework with leading

competition authorities, including those of the United States, European Union, Japan, and the United Kingdom.

23. The KFTC held approximately 30 conference calls with eight competition authorities—including those of the United States, the European Union, and the United Kingdom—to exchange information on the progress of each authority’s review, their respective assessments of potential anticompetitive effects, and the directions of the remedies under consideration.

24. The Korean Air–Asiana Airlines transaction marks the first merger between full-service carriers (FSCs) ever reviewed by the KFTC. As the KFTC had no prior experience in reviewing mergers between FSCs, the review experiences shared by other authorities, particularly those of the United States and the European Union, provided valuable references. The KFTC’s approach to defining the relevant market for passenger services—by pairing the origin and destination (O&D) of each route—was developed with reference to examples and insights shared through cooperation with foreign competition authorities.

25. Information-sharing also proved valuable for remedy design. During the review process in 2021, the KFTC had no official mechanism allowing the merging parties to participate in remedy design; accordingly, the examiner directly designed the remedies. Such an approach required the authority to possess sufficient information to design effective remedies. In this regard, information obtained through exchanges with foreign competition authorities—such as their experience reviewing mergers between FSCs, the remedies submitted by Korean Air and Asiana Airlines to foreign authorities, and the corresponding feedback from those authorities—materially assisted the KFTC in designing appropriate remedies.

26. At present, the KFTC continues to cooperate with foreign competition authorities and the Monitoring Trustees appointed by them in overseeing the implementation of remedies. The KFTC maintains close communication with the authorities of the European Union, the United Kingdom, China, and Japan, as well as with their designated Monitoring Trustees, to share updates on the implementation of structural remedies and any notable developments related to remedy monitoring in real time.

3.2.2. Cooperation with the Ministry of Land, Infrastructure and Transport (MOLIT)

27. The air transport industry is highly regulated, and matters such as the allocation of airport slots and traffic rights and the operation of airports fall within the remit of the Ministry of Land, Infrastructure and Transport (MOLIT). From the outset of the merger review to the present, the Korea Fair Trade Commission (KFTC) has maintained close cooperation with MOLIT. In particular, the KFTC has institutionalized a cooperative framework with MOLIT to draw on the ministry’s sector expertise and policy perspective, and to enhance the effectiveness of remedies.

28. On October 25, 2021, the KFTC and MOLIT signed a Memorandum of Understanding (MOU) to cooperate on merger review. Under this MOU, the two agencies agreed to cooperate on: (i) sharing data and information—such as the state of the air transport market—and updates on review progress; (ii) obtaining MOLIT’s advice on the design of remedies; (iii) conducting consultations with foreign competition and aviation authorities; and (iv) monitoring the implementation of remedies once finalized.

29. After the review was finalized in December 2024, the KFTC and MOLIT signed an additional MOU on March 6, 2025 to cooperate on monitoring the implementation of remedies. Under this MOU, the KFTC and MOLIT cooperate on: (i) monitoring behavioral

remedies, including obligations to maintain airfares and seat capacity; (ii) preparing and monitoring the merger-related frequent-flyer program integration plan; and (iii) overseeing the implementation and supervision of KFTC-imposed remedies, including the surrender and reallocation of airport slots and traffic rights.

4. Conclusion: Key Implications

30. This report underscores the importance of cooperation in competition-law enforcement in the design and implementation of merger remedies and introduces key mechanisms operated by the Korea Fair Trade Commission (KFTC), such as the stakeholder consultation process and the Correction Scheme Submission System. The case of the Korean Air–Asiana Airlines merger demonstrates that such cooperation plays a decisive role in developing effective and practical remedies in complex cross-border merger reviews.

31. In merger reviews involving complex cross-border structures, cooperation among merging parties, stakeholders, and competition authorities across jurisdictions is essential to address information asymmetries and enhance the precision and practicality of remedies. In addition, cooperation with relevant government ministries allows competition authorities to pursue competition law objectives while taking into account the specific characteristics of the industry and reconciling different policy goals. This, in turn, helps prevent unintended consequences of remedies and contributes to the overall effectiveness of government policy.

32. Competition authorities should strengthen their role not merely as regulators but as cooperative partners dedicated to fostering sound competition and promoting innovation. The KFTC’s review of the Korean Air–Asiana Airlines merger can be regarded as an important example of how cooperation in competition-law enforcement can effectively address challenges arising from complex market conditions and cross-border mergers, ultimately advancing the fundamental goal of competition law—enhancing consumer welfare.