

## ANTITRUST

**KFTC sanctions airlines for abuse of market position****Korean Air rebate program for travel agencies is deemed an anticompetitive practice**

On March 10, 2010, the KFTC imposed significant sanctions on Korean Air and Asiana Airlines, the two leading Korea-based carriers, for business practices that the KFTC found to have been abusive of their local market-dominating position and designed to suppress competition from low-cost carriers. In issuing a corrective order, and imposing administrative fines of KRW 10.4 billion (approx. US\$10 million) on Korean Air and KRW 640 million on Asiana, the KFTC concluded that the carriers engaged in unfair practices tending to exclude competitors, and that Korean Air conducted resale price maintenance, in violation of the Monopoly Regulation and Fair Trade Act.

In a key part of its decision, the KFTC found that Korean Air and Asiana threatened travel agencies with retaliation in various forms in case they dealt in low-cost carrier tickets, such as allocating to the travel agencies fewer seats during peak periods or fewer seats for major routes, or offering them smaller price discounts.

What makes the decision especially notable, however, is the analysis given to Korean Air's practice of rebates for "loyal" travel agencies. This, Korean Air argued, was a volume-based incentive program of a kind widely used in the industry, including by Asiana (which was not subject to a similar finding). The KFTC decided that, whatever the ostensible rationale, Korean Air's rebate program was designed to curb expansion by competitors, and also to stem discounts to customers in an act of resale price maintenance. The rebate program was the basis for KRW 9.8 billion (about 90%) of Korean Air's total fine.

Thus, a rebate system that Korean Air insists is a legitimate and commonplace marketing tool, has been classed by the KFTC as an unfair business practice. The case is drawing considerable scrutiny, from the airline industry and others. Meanwhile it is widely expected that Korean Air, at least, will appeal the KFTC decision to the administrative law courts.

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