

# First Successful Merger: First Ever Voluntary Notification and Application of an Anticipated Merger Approved under the Malaysian Aviation Commission Malaysia ("Merger Notification") — Korean Air Lines Co Ltd and Asiana Airlines Inc

In November 2020, Korean Air Lines Co Ltd ("Korean Air") had entered into a share subscription agreement with Asiana Airlines Inc ("Asiana") which had been in a situation of financial distress. The merger of the two airlines (collectively referred to as "Airlines") required regulatory approval from competition and antitrust agencies of other jurisdictions, which included but were not limited to, Korea, UK, US, EU, Malaysia and Singapore.

For the Merger Notification in Malaysia, our team handled the filing of the notice and application for the anticipated merger in conjunction with clients and instructing foreign counsel. This Merger Notification was the first ever successful Merger Notification under the **Malaysian Aviation Commission Act 2015**. In fact, it is the first Merger Notification under any statute or regime in Malaysia.

The Merger Notification between the Airlines was approved by the Malaysian Aviation Commission ("MAVCOM") in September 2021. In MAVCOM's final decision, they approved

## Competition Law Update

APRIL 2022

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the merger and accepted the failing firm defence put forth by the Airlines as Asiana could not be “*rehabilitated but for the Anticipated Merger*”.

MAVCOM concluded that the merger, if carried into effect, would not infringe the prohibition in section 54 of the **Malaysian Aviation Commission Act 2015**. Particularly, the relevant flight route (which was an overlapping route between the Airlines) would not act as a barrier to entry to other competitors as, amongst the others, a “*hypothetical price increase above the competitive levels will attract entry or expansion by competing carriers*”.

On 22 February 2022, the Korea’s Fair Trade Commission announced that it had granted a conditional approval for Korean Air’s proposed acquisition of 63.88% of shares in Asiana Airlines subject to certain actions to be undertaken thereafter.

This Merger Notification sets an important precedent for subsequent merger notifications in Malaysia and has an impact wider than just the aviation industry, especially in the light of the proposed merger control legislation by the Malaysia Competition Commission. While Malaysia does not have a fully-fledged merger control regime, the sectoral regulators for air transport (MAVCOM) and telecommunications (Malaysian Communications and Multimedia Commission) can consider competition concerns in deciding whether to approve mergers which are regulated by such sectoral regulators.

To read the final MAVCOM decision, please refer to <https://tinyurl.com/y4w5nzw3>.

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