

THE CIVIL AVIATION AUTHORITY OF SINGAPORE AIRPORT COMPETITION CODE

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Citation and commencement of the Code

1. This Code may be cited as the **Airport Competition Code 2009** and shall come into operation on 1 July 2009. This Code shall cover agreements in force and conduct regulated under this Code with effect from 1 July 2009. The merger provisions under this Code shall come into operation and cover all mergers regulated under this Code with effect from 1 February 2010. Mergers effected before 1 February 2010 will not be subject to the merger provisions of this Code.

Object of this Code

2. This Code is intended to:
 - (a) regulate and promote competition and fair and efficient market conduct in the operation of airports and the provision of airport services and facilities or, in the absence of a competitive market, to prevent the exercise of monopoly or market power;
 - (b) regulate, encourage, promote, facilitate and assist in the use, development and improvement of airports in Singapore;
 - (c) ensure the provision by all airport licensees of adequate and efficient airport services and facilities on such terms as the Authority thinks expedient;
 - (d) ensure the reliability of the provision of any airport services and facilities to the public;
 - (e) ensure fair and efficient market conduct by all airport licensees;
 - (f) ensure that all airport licensees are able to operate the airports in Singapore efficiently whilst maintaining independent financial viability; and
 - (g) foster the development and expansion of Singapore as an international aviation hub.

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Definitions

3. The terms used in this Code have the same meaning as assigned to them under section 2 of the Act, unless defined below or unless the context suggests otherwise:

“Act” means the Civil Aviation Authority of Singapore Act 2009 (Act No. 17 of 2009);

“agreement” means any agreement whether formal or informal, whether written or oral and whether express or implied and, unless the context suggests otherwise, includes concerted practices;

“airport licence” has the meaning assigned to it in section 2 of the Act;

“airport licensee” has the meaning assigned to it in section 2 of the Act;

“airport market” means any market in Singapore wherein an airport licensee is engaged in the provision of airport services and facilities;

“airport services and facilities” has the meaning assigned to it in section 2 of the Act;

“Authority” means the Civil Aviation Authority of Singapore established under the Act;

“authorised officer” has the meaning assigned to it in section 76 of the Act;

“Code” means the Civil Aviation Authority of Singapore Airport Competition Code;

“dominant airport licensee” has the meaning as set out in clause 11 of this Code;

“effective control” means in relation to an airport licensee, the capability to exercise decisive influence with regard to the activities of an undertaking either by reason of rights, contracts or any other means, or any combination of rights, contracts or other means. Decisive influence is capable of being exercised, in particular, by:

- (a) ownership of, or the right to use all or part of, the assets of an undertaking; or
- (b) rights or contracts which enable decisive influence to be exercised by or with regard to the composition, voting or decisions of the

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organs in relation to any matter, including but not limited to the Board or shareholders, of an undertaking;

Effective control is acquired by any person or other undertaking if he or it:

- (a) becomes a holder of the rights or contracts, or entitled to use the other means, referred to above; or
- (b) although not becoming such a holder or entitled to use those other means, acquires the power to exercise the rights derived therefrom.

“undertaking” means any person, being an individual, a body corporate, an unincorporated body of persons or any other entity, capable of carrying on commercial or economic activities relating to goods or services.

“working day” means any day which is not a Saturday, Sunday or a public holiday.

Legal basis of the Code

- 4. This Code is issued by the Authority pursuant to section 44 of the Act.

Legal effect of the Code

- 5.1 This Code imposes binding obligations on all airport licensees. These obligations are in addition to any applicable obligations contained in the Act, other statutes, subsidiary legislation, airport licences and codes of practice or directions issued by the Authority.
- 5.2 If any provision of this Code is held to be unlawful, all other provisions will remain in full force and effect.
- 5.3 For the avoidance of doubt, in the event of a conflict between any provisions of this Code and the Act or any term of an airport licence granted, the provisions of the Act and the terms of the airport licence will prevail unless otherwise provided.

Persons subject to this Code

- 6. This Code is applicable to any and all airport licensees.

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Waiver

- 7.1 The Authority may, either generally or for such time and on such conditions as specified by the Authority, waive the application of the Code or any part thereof in favour of any airport licensee, either on its own motion or following a request by an airport licensee.
- 7.2 An airport licensee seeking the waiver of one or more provisions of the Code shall submit a written request to the Authority containing the reasons supporting its request. The Authority may require additional information from the airport licensee as it sees fit.
- 7.3 The Authority shall consider the request and allow or refuse the waiver as it considers necessary and expedient in the circumstances of the case.

Variation, revocation, etc.

8. The Authority may, from time to time, review, add to, vary or revoke this Code in accordance with the Act.

Consultation with other regulatory authorities

9. The Authority may, where necessary and / or appropriate, engage and / or consult with other regulatory authorities in Singapore in order to achieve the object of this Code.

Prohibition of agreements that prevent, restrict or distort competition

- 10.1 Agreements entered into, or concerted practices by, an airport licensee, whether directly or indirectly, which have as their object or effect the prevention, restriction or distortion of competition within any airport market are prohibited.
- 10.2 An agreement may exist on one of two bases:
 - (a) an agreement can be established through direct evidence of an express agreement, such as a signed document;
 - (b) an agreement can be established using circumstantial evidence that demonstrates the existence of an agreement, whether oral or written or of a concerted practice.

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- 10.3 Unless it is expressly provided to the contrary, an agreement between an airport licensee and any undertaking over which the airport licensee can exercise effective control shall not constitute an agreement.
- 10.4 Agreements may, in particular, have the object or effect of preventing, restricting or distorting competition within an airport market in Singapore if they:
- (a) directly or indirectly fix prices, or any other trading conditions, for the provision of airport services and facilities or for any other goods or services in relation to such provision;
 - (b) limit or control services, markets, technical development or investment in relation to airport services and facilities or for any other goods or services in relation to such provision;
 - (c) allocate or share markets or sources of supply for airport services and facilities or for any other goods or services in relation to such provision; or
 - (d) result in an agreement to boycott any other person in relation to the provision of airport services and facilities or for any other goods or services connected with such provision.

Dominance

- 11.1 An airport licensee will be deemed to be a dominant airport licensee if it has the ability to exercise significant market power in any airport market.
- 11.2 In determining whether an airport licensee has the ability to exercise significant market power in an airport market, the Authority will take into account the following non-exhaustive factors:
- (a) the market share of the airport licensee;
 - (b) the existence of actual competitors and the possibility of potential competitors entering the airport market in a timely and effective manner; and
 - (c) the extent of countervailing buyer power.
- 11.3 As long as there is only one airport licensee in an airport market, this airport licensee will be deemed to be a dominant airport licensee.

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Duties of a dominant airport licensee

- 12.1 A dominant airport licensee must not directly, or indirectly through an undertaking it has effective control over, use its position in a manner that unreasonably prevents, restricts, or distorts or is likely to unreasonably prevent, restrict or distort competition in an airport market.
- 12.2 A dominant airport licensee must act in a competitively fair manner and shall not engage in undue discrimination thereby abusing its dominant position so as to adversely affect an airport market.
- 12.3 A dominant airport licensee shall not enter into any agreement to outsource, delegate or require the performance of airport services and facilities with the aim and / or outcome of avoiding the achievement of the object of this Code.

Prohibition of mergers which substantially lessen competition

- 13.1 Mergers between an airport licensee and other undertakings that may be expected to result in a substantial lessening of competition in any airport market are prohibited.
- 13.2 An airport licensee shall ensure that any undertaking over which an airport licensee can exercise effective control does not enter into a merger with other undertakings that may be expected to result in a contravention of Clause 13.1.
- 13.3 A merger is deemed to occur if —
 - (a) an airport licensee and one or more other undertakings, previously independent of one another, merge;
 - (b) an airport licensee acquires direct or indirect effective control of the whole or part of one or more other undertakings; or
 - (c) the result of an acquisition by an airport licensee of the assets (including goodwill), or a substantial part of the assets, of another undertaking is to place the airport licensee in a position to replace or substantially replace the other undertaking in the business or, as appropriate, the part concerned of the business in which that undertaking was engaged immediately before the acquisition.
- 13.4 The creation of a joint venture by an airport licensee and one or more other undertakings to perform, on a lasting basis, all the functions of an autonomous economic entity shall constitute a merger under the Code.

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- 13.5 A merger shall not be deemed to occur if all of the undertakings involved in the merger are, directly or indirectly, under the effective control of the same undertaking.
- 13.6 Notwithstanding anything in this clause 13, an airport licensee, or any other undertaking over which an airport licensee can exercise effective control, shall not without the prior written approval of the Authority enter into a merger with one or more other undertakings which may have an effect on any airport market.

Notifications of mergers to the Authority

- 14.1 Under this Code, airport licensees shall notify the Authority, in the form prescribed by the Authority, of all mergers which may have an effect on any airport market to which it is a party to.
- 14.2 Pursuant to clause 14.1, the Authority may make a decision as to —
- (a) whether clause 13 will be contravened by the merger, if carried into effect; and
 - (b) if it will not be contravened, whether it is because of the effect of an exclusion in clause 24.
- 14.3 In assessing whether a substantial lessening of competition has occurred in any airport market, the Authority may have regard to the consideration set out in section 7(2)(c) of the Act and clause 2(g) of this Code of fostering the development and expansion of Singapore as an aviation hub. Such considerations include the impact of the merger on the competitiveness of Singapore as an aviation hub.
- 14.4 The Authority will endeavour to complete its review of the notification within a 30 working days review period following the receipt of a complete notification pursuant to clause 14.1. In any case in which the Authority determines that the notification raises novel or complex issues, the Authority will notify the airport licensee that it intends to extend the review period by a further indicative period of up to 90 working days at any time during the end of the 30 working day review period.
- 14.5 Where the Authority makes a decision that a merger will not contravene clause 13, the Authority may, if it thinks fit, state that the decision shall be valid only for the period it specifies therein.

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- 14.6 Before the expiry of the period referred to in clause 14.5, if any, an application may be made by the airport licensee to the Authority for a decision for that period to be extended.
- 14.7 Without limitation to clause 14.1, an airport licensee may consult with the Authority for guidance as to whether clause 13 is likely to be contravened in respect of an anticipated merger which the airport licensee is a party to. Any guidance provided by the Authority in respect of the likelihood of the anticipated merger contravening clause 13 will be based on the information provided by the airport licensee, non-binding on the Authority, and will not constitute a decision under clause 14.2.
- 14.8 The Authority may, where necessary and / or appropriate, conduct a public consultation to provide interested parties with an opportunity to comment on a merger which has been notified to the Authority pursuant to clause 14.1. In those cases in which the Authority does not conduct a public consultation, the Authority may nonetheless request comments from individuals or entities where appropriate.
- 14.9 If the Authority concludes that a merger does not contravene clause 13, it shall take no further action against the airport licensee with respect to the merger unless it has reasonable grounds for suspecting that the information on which it based its decision was incomplete, false or misleading in a material particular.

Powers of the Authority to investigate and to obtain information

- 15.1 The Authority may investigate any agreement, conduct, anticipated or completed merger involving an airport licensee if it has reasonable grounds to believe that any clause of this Code has been, or may be contravened. The Authority may choose to investigate on its own initiative or upon a complaint made by any person, either natural or legal.
- 15.2 The Authority may also require a person to produce a specified document or provide it with specified information:
- (a) when it has reasonable grounds for suspecting that any features, or combination of features, of an airport market prevents, restricts or distorts competition in connection with the provision of any airport services and facilities in Singapore; or
 - (b) in considering an application for guidance filed pursuant to clause 22 or a notification filed pursuant to clause 14.1.

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15.3 For the purposes of clauses 15.1 and 15.2, the Authority or any authorised officer may by written notice:

- (a) require any airport licensee or other person to furnish, within a reasonable period specified in the notice, and in such form and manner as may be specified in the notice, all documents and information relating to any matter which the Authority considers relevant;
- (b) require any airport licensee or other person, in relation to the documents and information furnished under clause 15.3(a):
 - (i) to provide an explanation of the document or information which is furnished; and
 - (ii) if the document or information is not furnished, to state, to the best of his knowledge and belief, why it was not furnished and where it may be obtained from;
 - (iii) if the information is recorded otherwise than in legible form, to be made available to the Authority in legible form.

15.4 The power to require documents and information under clause 15.3 includes the power, if the documents are produced, to keep the document or information, or any copy or extract thereof.

15.5 A notice under clause 15.3 will indicate:

- (a) the subject matter and purpose for which the information is required;
- (b) the nature of the offences under clause 18;
- (c) the time and place at which any document is to be produced or any information is to be provided; and
- (d) the manner and form in which it is to be produced or provided.

Power to enter premises

16.1 The Authority or any authorised officer may, at any time after the expiry of the period referred to under clause 15.3, enter any building or place where the Authority has reason to believe that any document or information, in respect of which it has given notice, may be found, and seize or take extracts or copies of any such document or information.

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- 16.2 The Authority or any authorised officer may, but is not required to, provide written notice to the occupier of the premises referred to in clause 16.1. Such notice may:
- (a) give at least two working days' notice of the intended entry;
 - (b) indicates the subject matter and purpose of the investigation; and
 - (c) indicates the nature of the offence specified under clause 18.
- 16.3 The Authority shall be entitled without payment to keep any document or information, or any copy or extract thereof, obtained under clause 16.1.
- 16.4 Subject to clauses 15.4 and 16.3, the Authority may take possession of any original document if such action appears to be necessary for preserving the document or preventing interference with it, or if it is not reasonably practicable to take copies of the document on the premises. Original documents taken or retained by the Authority will be returned within 3 months.

Complaints

- 17.1 Any person who suspects that an airport licensee involved in the provision of airport services and facilities is engaged in an agreement, conduct or merger that contravenes the Code may submit a written complaint to the Authority. A complaint may be submitted in respect of an anticipated merger or a completed merger.
- 17.2 The complaint shall contain, as far as is possible, specific information concerning:
- (a) the identity of the complainant including, but not limited to, name, registration or other identification numbers, and contact information;
 - (b) the nature of the relationship between the complainant and the airport licensee;
 - (c) the specific airport services and facilities to which the complaint relates;
 - (d) a detailed description of the alleged agreement, conduct or merger, why the agreement, conduct or merger is deemed to be in violation of this Code and the relevant clauses of this Code that are allegedly contravened;

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- (e) the effect of the alleged agreement, conduct or merger on the complainant and on other undertakings; and
 - (f) the start date and, if the alleged agreement or conduct is no longer in place, the end date of the activity. In the case of completed mergers, the date on which the merger was carried into effect.
- 17.3 The complainant shall submit to the Authority a written declaration that the information provided to the Authority is true and correct to the best of the complainant's knowledge.
- 17.4 The complainant shall, as far as is possible, provide the Authority with copies of all relevant documents and materials for the purposes of the Authority's investigation into the complaint, including but not limited to any documents such as receipts, correspondence, whether by way of email or other written means, external notes and other written information not strictly deemed as correspondence, internal notes and any other supporting material along with its application.
- 17.5 The Authority will endeavour to respond to the complainant with its preliminary decision as to whether a formal investigation pursuant to the complaint will be undertaken within 30 working days from the receipt of the complaint.
- 17.6 If the Authority decides to undertake an investigation under clause 15.1 pursuant to the complaint, it will endeavour to respond to the complainant with its final decision within 120 working days from the receipt of the complaint.
- 17.7 The Authority reserves the right to extend the time periods in clauses 17.5 and 17.6 if the Authority is of the opinion that the alleged activity is highly complex in nature or that the evidence provided by the complainant was insufficient and a further investigation is necessary or for any other reason as may be deemed necessary and reasonable in the Authority's sole discretion.

Offences

- 18.1 Any person who, without reasonable excuse, fails to produce a document or provide the Authority with specified information when required under clause 15 shall be guilty of an offence under section 82(3) of the Act and shall be liable on conviction to a fine not exceeding \$10,000.

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18.2 Any person who:

- (a) intentionally alters, suppresses or destroys any document or information which he has been required by a notice under clause 15 to furnish; or
- (b) in furnishing any document or information required under clause 15, makes any statement which he knows to be false in a material particular or recklessly makes such a statement,

shall be guilty of an offence under section 82(4) of the Act and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both.

Legal privilege

19. No person shall be required to produce or disclose any document or any other material that is privileged by reason of it being made:

- (a) in connection with or in contemplation of legal proceedings and for the purposes of those proceedings; or
- (b) between a professional legal adviser and his client.

Interim directions by the Authority

20.1 If the Authority:

- (a) has reasonable grounds for suspecting that clause 10, 12 or 13 has been, or may be contravened by an airport licensee but has not completed its investigations into the matter; and
- (b) considers that it is necessary for it to act under this clause as a matter of urgency for the purpose of:
 - (i) preventing serious, irreparable damage to a particular person or category of persons; or
 - (ii) protecting the public interest,

the Authority may give such interim directions to the airport licensee as it considers appropriate for that purpose.

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- 20.2 Before giving an interim direction under this clause, the Authority shall give written notice to the airport licensee stating that the Authority proposes to make the interim direction, setting out the nature of the interim direction, its reasons for the interim direction and the intended effect of the interim direction, and giving the airport licensee an opportunity to make representations by specifying a time period which shall not be less than 30 working days within which the airport licensee may make representations.
- 20.3 An interim direction by the Authority may, in particular, include provisions requiring the airport licensee to:
- (a) modify or terminate the agreement which is suspected to be a contravention of clause 10;
 - (b) modify or cease the conduct which is suspected to be a contravention of clause 12; or
 - (c) modify or suspend the merger which is suspected to be a contravention of clause 13.
- 20.4 Where the Authority issues an interim direction, the Authority shall endeavour to complete its investigations within 21 working days from the issue of the interim direction.

Decisions and directions by the Authority

- 21.1 If the Authority intends to make a decision or issue a direction on the basis that clause 10, 12 or 13 has been or may be contravened by an airport licensee, it shall notify its proposed decision or direction to the airport licensee.
- 21.2 The airport licensee will have the right to make written representations to the Authority within 28 working days following the date the notification was received.
- 21.3 The Authority will review the representations of the airport licensee and serve on the airport licensee a notice of its final decision within 30 working days after the last representations have been received.
- 21.4 Where the Authority makes a final decision that clause 10, 12 or 13 has been or may be contravened by an airport licensee, and subject to sections 39, 40 and 45 of the Act, the Authority may:
- (a) issue directions to the airport licensee to bring the contravention to an end;

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- (b) issue directions to the airport licensee to take such action to remedy, mitigate or eliminate any adverse effect on the airport market; or
- (c) require the airport licensee to pay such penalty as the Authority may think appropriate, subject to a maximum of \$1,000,000.

Request for the Authority to examine agreements and / or conduct

22.1 An airport licensee who believes that:

- (a) an agreement it has entered into may contravene the prohibition set out in clause 10; or
- (b) its conduct may contravene the prohibition set out in clause 12,

may apply in writing to the Authority for guidance as to whether clause 10 or 12 is likely to be contravened.

22.2 The Authority may levy a fee for reviewing applications that are made under this clause of not more than \$10,000 as it deems necessary.

22.3 On an application by an airport licensee under clause 22.1, the Authority may give the airport licensee guidance as to whether or not, in its view, the agreement or conduct contravenes or is likely to contravene clause 10 or 12 respectively.

22.4 If the Authority considers that such agreement or conduct by the airport licensee is likely to contravene either clause 10 or 12, its guidance may indicate whether the agreement or conduct is likely to be excluded under clause 24.

22.5 An airport licensee who has been notified of the guidance by the Authority and who takes the view that the Authority has not taken into consideration all of the facts that have been presented, and this is established on the facts, can make further written representations to the Authority within 30 working days from the date of the notification of the guidance to have the matter reconsidered. The Authority will review the matter one further time and issue its final guidance as provided in clause 22.3 or 22.4.

22.6 If an agreement or a conduct to which clause 10 or 12 could apply has been notified by an airport licensee to the Authority under this clause, no penalty shall be imposed by the Authority in respect of any contravention of clause 10 or 12 by such agreement or conduct which occurs during the period:

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- (a) beginning with the date on which the notification was given; and
 - (b) ending with such date as may be specified in a notice in writing given to the airport licensee by the Authority when the guidance has been issued.
- 22.7 If the Authority concludes that an agreement or conduct does not contravene either clause 10 or 12, it shall take no further action against the airport licensee with respect to the agreement or conduct unless:
- (a) it has reasonable grounds for believing that there has been a material change of circumstance since it gave its guidance;
 - (b) it has reasonable grounds for suspecting that the information on which it based its guidance was incomplete, false or misleading in a material particular; or
 - (c) it receives a complaint from a third party.
- 22.8 If the Authority concludes that an agreement or conduct contravenes or is likely to contravene either clause 10 or 12 and the agreement or conduct is not likely to be excluded under clause 24, it shall notify the airport licensee in writing within 30 working days from the receipt of the application under clause 22.1. The notification must give the airport licensee a reasonable period of time to put an end to the contravention.
- 22.9 If the airport licensee does not put an end to the contravention within the reasonable period provided by the Authority in clause 22.8, the Authority may initiate an investigation under clause 15 or issue a decision under clause 21.

Appeals

23. An airport licensee aggrieved by any direction or decision of the Authority and / or any resulting penalty or obligation may appeal to the Minister, in accordance with Part IV Division 5 of the Act.

Exclusion

24. An agreement, conduct or merger entered into by an airport licensee will not be found to be a contravention of clause 10, 12 or 13 where it is established by the airport licensee to the satisfaction of the Authority that such agreement, conduct or merger entered into:

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- (a) was required to comply with legal requirements, including but not limited to such conditions as may be imposed on the airport licensee under its airport licence;
- (b) was required to avoid conflict with international obligations of the Government of Singapore or the Authority;
- (c) was required to satisfy public interest obligations;
- (d) was directly related and necessary to the implementation of a merger approved by the Authority;
- (e) in relation to an agreement, gives rise to net economic benefits in any airport market;
- (f) in relation to a conduct by a dominant airport licensee, is objectively justified; or
- (g) in relation to a merger involving an airport licensee which may have an effect on any airport market, gives rise to net economic efficiencies in any airport market.

1 February 2010