Analysis of the Concession Program and Optional Leasing Strategies

PREPARED FOR:

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1. Introduction

The Commonwealth Ports Authority (CPA) retained Ricondo & Associates, Inc. (R&A) to analyze its overall concession program and evaluate its options for the future to determine what options, if any, can provide growth potential for the CPA. The CPA's Master Concession Agreement (MCA) with DFS Saipan, Inc. (DFS) is scheduled to expire in November 2015; recently, DFS communicated to the CPA that it would like to enter into negotiations to extend the term of the existing MCA.

The CPA owns and operates all six ports of entry to the Commonwealth of the Northern Mariana (the Commonwealth or CNMI). The islands of Rota, Saipan, and Tinian each have a seaport and an international airport. However, only the airports have concession programs (i.e., a structured news/gift and food/beverage sales program), and only the Saipan airport's program would be considered substantial. The CPA asked R&A to evaluate a perceived lack of service by concessionaires at the Rota and Tinian airports, as well as at all three seaports.

This report is based on information gathered by R&A staff during a site visit to Saipan, during which a variety of stakeholders in the concession program were interviewed. These stakeholders are listed in **Appendix A**. Before, during, and after the site visit, R&A reviewed the concession program data and documents provided by the CPA.

In preparing this report, R&A relied greatly on the 2011 *Resource Manual for Airport In-Terminal Concessions*, published by the Airport Cooperative Research Program (ACRP) of the Transportation Research Board as Report 54. R&A also relied greatly on the *Northern Mariana Islands Tourism Master Plan 2012-2016* by the Marianas Visitors Authority (MVA), published March 2012.

2. Existing Conditions

Existing conditions of the CPA ports of entry and their concessions programs are discussed in this section. The financial performance of the concessions program at Francisco C. Ada Saipan International Airport (SPN) is also summarized.

2.1 Facilities Assessment

The CPA owns and operates three airports and three seaports. Of the airports, SPN is the busiest by far, with approximately 500,000 annual enplaned passengers compared with approximately 10,000 and 30,000 annual passengers enplaned at Rota and Tinian International Airports, respectively. The Port of Saipan averages three passenger vessels annually at its seaports, and passenger numbers are anecdotally lower at the seaports than at the Rota and Tinian airports. Currently, there is no formal concession program at any of the seaports. When a passenger cruise ship arrives at the Port of Saipan, temporary retail kiosks are established dockside, and DFS, at times, organizes a shuttle service to its Galleria shopping mall in Garapan. Moreover, the seaport at Rota currently does not host passenger vessels, and Tinian's passenger vessels must berth at the outer anchorage. The concession programs at the three airports are discussed below; only the concession at SPN would be considered substantial.

2.1.1 SAIPAN INTERNATIONAL AIRPORT

With the exception of two landside snack bars, all of the concessions at SPN are post-security. The security screening checkpoint is a long ramp that leads to the departure concourse of the terminal, and screened passengers immediately flow into the 17,000 square foot duty-free store. There appears to be a competition for space between the security screening checkpoint and the duty-free store; the post-screening recomposure area is actually within the duty-free store. A grid of public walkways forms sections of the duty-free store, each with its particular retail theme (e.g., liquor) or brand (e.g., Gucci). The CNMI Department of Finance – Customs (Commonwealth Customs) permits purchases by the "cash and carry" method; i.e., passengers may take their purchased goods with them throughout the departure concourse rather than being required to collect their goods at the gate upon boarding. In addition, liquor and tobacco products purchased at the Galleria must be delivered to tourists at SPN at the Airport duty free store, as these products may not be consumed during their visit to the islands. These delivered purchases are regulated by the concession agreement with the CPA, even though their sales occurs off-airport.

The departure concourse is T-shaped, and passengers may exit the centrally located duty-free store through doors on either side (the doors were installed because the store is air-conditioned to a greater degree than the rest of the concourse). Each section of the duty-free store has approximately the same amount of passenger exposure. One side faces Gates 5 and 6, which primarily serve Asiana Airlines (Korea) and United Airlines' Cape Air shuttle to Guam, respectively. (Despite the seemingly "domestic" nature of a Saipan-to-Guam flight, secondary screening occurs at the gate for visa-system reasons discussed in Section 5.) This side also offers two snack bars, with one adjacent to both a bar and a passenger lounge. There also is a massage kiosk.

The other side faces Gates 1 through 4, which chiefly serve Delta Air Lines (to Tokyo) and various charter airlines (to China and Russia), and has a snack bar, a semi-enclosed passenger lounge (constructed in the past year), a massage kiosk, and a foreign exchange kiosk (for Japanese yen and U.S. dollars only). There also is an apparently unused corridor connecting the holdrooms for Gates 4 and 5, which is approximately ten feet wide.

The duty-free store consists of about 11,500 square feet of shops and about 5,500 square feet of public circulation space. In aggregate, the post-security snack bars consist of nearly 1,000 square feet, and the pre-security snack bars consist of approximately 600 square feet.

SPN also has a commuter terminal for air service to Rota and Tinian; this terminal has a snack bar.

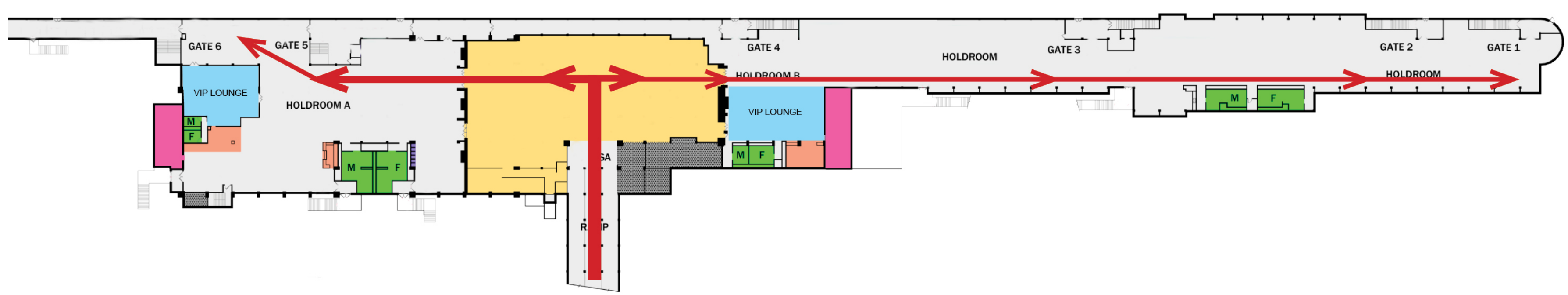
2.1.2 ROTA AND TINIAN INTERNATIONAL AIRPORTS

Although the airports at Rota and Tinian can accommodate international, long-haul service, they currently accommodate only air taxi and general aviation operations. Tinian's airport has one snack bar operated by a local concessionaire. There is no security screening at Tinian International Airport, thus minimizing dwell times in the terminal.

Rota's airport has a snack bar and a gift shop pre-security, both operated by the same local concessionaire.

Given the current level of flight activity at the Rota and Tinian airports, it is unlikely that a national or international concessionaire would be attracted to either airport for the following reasons:

- Passenger traffic is quite low, generating a demand that may be too low to result in the sales that would enable a concessionaire to recover its costs.
- Air service is unstable, as exemplified by the recent bankruptcy of Freedom Air and the service disruptions of Cape Air. Therefore, there is substantial risk to whatever demand does exist.
- Air service is local, short-haul, and operated assuming minimal passenger dwell times. Intra-CNMI travelers would be ineligible for duty-free purchases. Tourists tend to be shuttled as a group via chartered flights, minimizing time spent at an airport awaiting a flight.
- Airport infrastructure reportedly provides a lower level-of-service than at SPN. Reportedly, the concessionaire at one of the two airports experienced problems with the sewer, electricity, and air conditioning infrastructure.



LEGEND

- RESTROOMS
- SNACK BARS
- SMOKING LOUNGES
- VIP LOUNGES
- DUTY-FREE
- PASSENGER FLOWS

SOURCE: Commonwealth Ports Authority, July 2014.
PREPARED BY: Ricondo & Associates, Inc., September 2014.

EXHIBIT 2-1

NORTH

SPN Terminal Diagram with Passenger Flows

Z:\SPN\Graphics\Rawley's SPN Terminal\Exhibit 2-1 Versions 1 and 2.indd

For these reasons, this report is concentrated on the concessions program at SPN. However, the CPA's leasing strategy for its seaports and other airports is an important consideration, and is addressed in the recommendations discussed in Section 6.

2.2 Financial Performance

SPN's concessions program performs well, notwithstanding the fact that most aircraft departures occur in the pre-dawn hours when passengers would be more tired or less hungry than passengers departing during the day or evening. This factor would typically depress passengers' willingness to spend (or spend as much) as they reportedly do. The success of SPN's concessions, as summarized in **Table 2-1**, is largely to the result of excellent passenger demographics, as discussed in Section 5.

While food and beverage sales at SPN have remained flat over the past 6 years, duty-free sales have nearly doubled. This trend points to an exciting opportunity for a duty-free concessionaire at SPN. Those opportunities that are statutorily permitted are discussed in the following section.

Table 2-1: Historical and Estimated Financial Performance of SPN Concessions

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014 1/
Enplaned passengers	425,982	422,542	404,652	513,472	514,187	510,000
Percent change	-5.6%	-0.8%	-4.2%	26.9%	0.1%	-0.8%
International enplaned passengers 2/	328,000	333,000	302,000	396,000	418,000	398,000
Percent change	-7.3%	1.5%	-9.3%	31.1%	5.6%	-4.8%
Sales						
Duty-free	$9,479,867	$9,660,857	$10,693,750	$13,037,346	$14,976,666	$17,836,000
Food and beverage 3/	$829,250	$812,871	$702,780	$801,355	$915,220	$978,000
Revenues						
Duty-free	$1,516,771	$1,545,717	$1,805,564	$2,216,349	$2,609,078	$3,210,000
Food and beverage 3/	$132,680	$137,707	$119,473	$140,738	$164,740	$176,000
Effective percentage rent						
Duty-free	16.0%	16.0%	16.9%	17.0%	17.4%	18.0%
Food and beverage	16.0%	16.9%	17.0%	17.6%	18.0%	18.0%
Sales per enplaned passenger						
Duty-free (per international passenger)	$28.90	$29.01	$35.41	$32.92	$35.83	$44.82
Food and beverage 3/	$1.95	$1.92	$1.74	$1.56	$1.78	$1.92
Sales per square foot						
Duty-free	$821	$836	$926	$1,129	$1,297	$1,544
Food and beverage	$839	$823	$711	$811	$926	$989

NOTES: FY = the Fiscal Year of the Commonwealth, ending September 30th

1/ Estimate based on 9 months of historical data.

2 Excludes Guam-bound passengers.

3 Food and beverage only represents the post-security units, from which the non-restaurant passenger lounges could not be separated.

SOURCE: Commonwealth Ports Authority, July 2014.
PREPARED BY: Ricondo & Associates, Inc., August 2014.

3. Legal and Contractual Framework

The statutes that set the parameters for the CPA's Request for Proposal (RFP) process and concession agreement terms and conditions are summarized in this section. The terms and conditions of the existing MCA between the CPA and DFS are also summarized.

3.1 Commonwealth Law

Public Law 4-60 (4 CMC Division 2 Chapter 2) is the Commonwealth code that defines how the CPA may enter into a concession agreement at any or all port(s) of entry. The relevant sections are provided in **Appendix B**. Three types of agreement are prescribed: (1) Duty-free Retail Concession, (2) Master Concession, and (3) Non-duty-free Concession. These three types of agreement are described below, with emphasis added:

1. A Duty-free Retail Concession grants "the exclusive right to operate facilities at a port of entry to deliver duty-free merchandise."
   - Standard, or
   - Prepaid Concession Fee
2. A Master Concession grants "the exclusive right to operate facilities at each and every port of entry for the sale of duty-free and any other items of merchandise" (the type of the current agreement between the CPA and DFS).
3. A Non-duty-free Concession, "either in conjunction with a duty-free retail concession or separately," grants "at a port of entry…the exclusive right to use that port of entry to offer to…sell all or specified non-duty-free merchandise."

Since enactment of the Public Law in 1985, only the MCA—Option #2 above—has been used by the CPA. It appears that Options #1 and #3 would be used together as the (only legal) alternative leasing arrangement.

There are two variations to Option #1, the Duty-free Retail Concession Agreement (DFRCA). The first variation is referred to above as "standard" in that the concession agreement specifies how and when the concession fee is paid. The second variation referred to above as "prepaid concession fee" is described in 4 CMC § 2203 as an option to be selected when the CPA "determines prepayment of the duty-free retail concession fee to be desirable or necessary for purposes of construction, expanding, or improving port of entry facilities." **Table 3-1** summarizes these options.

Table 3-1: CPA Concession Agreements as Stipulated by Commonwealth Public Law 4-60

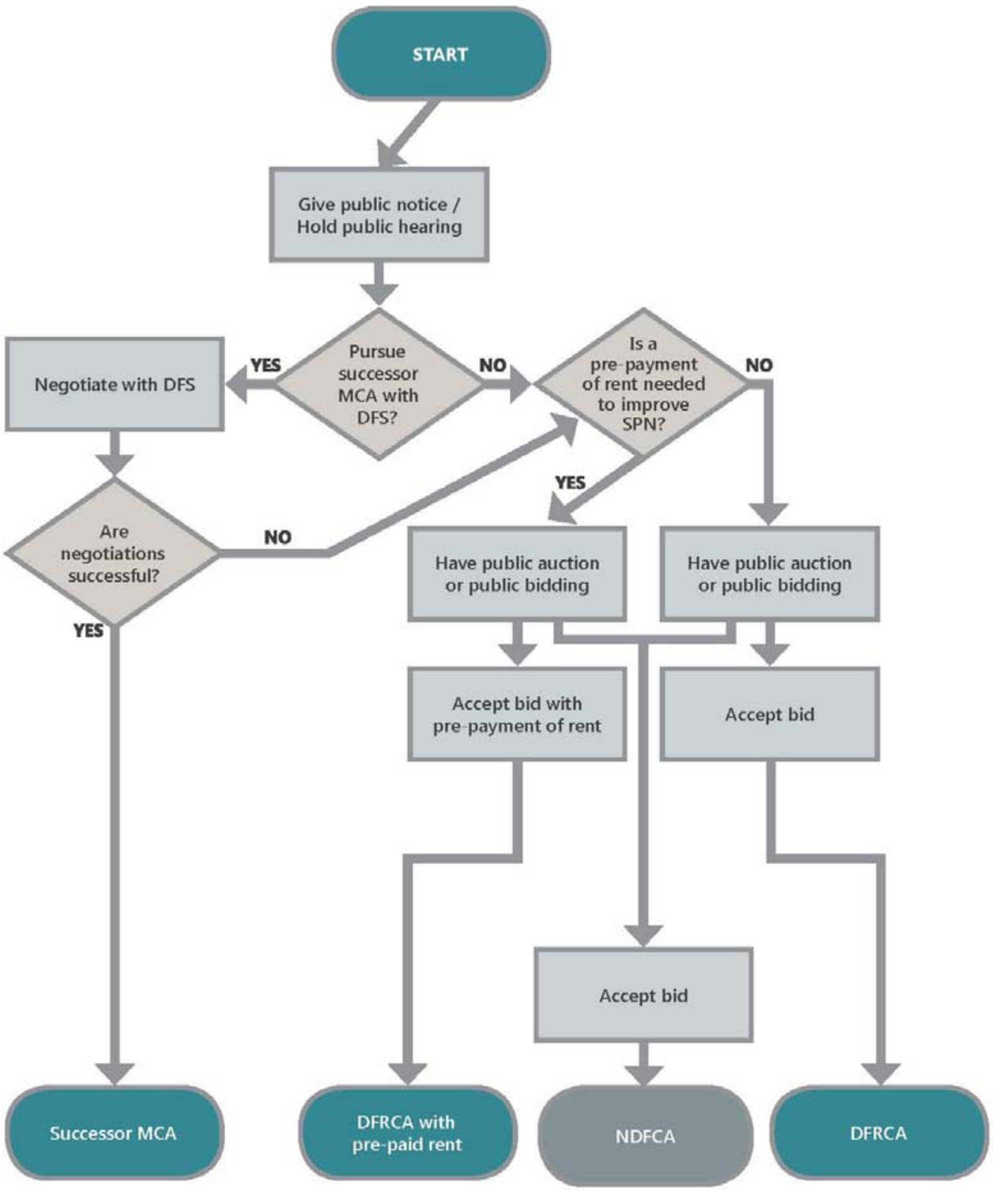
NAME	CODE SECTION	MAX. TERM	LOCATION	CATEGORIES	OTHER
Duty-free Retail Concession Agreement (DFRCA)	2202	5	SPN	Duty-free	
Pre-paid DFRCA	2203	20	SPN	Duty-free	Pre-payment of rent; Possible sales tax waiver
Non-duty-free Concession Agreement (NDFCA)	2204	n/a	SPN	All merchandise except duty-free	
Successor Master Concession Agreement (MCA)	2205	20	All ports of entry	All merchandise	Possible pre-payment of rent; Possible sales tax waiver

SOURCE: Commonwealth of the Northern Mariana Islands, Public Law 4-60 (4 CMC Division 2 Chapter 2).
PREPARED BY: Ricondo & Associates, Inc., August 2014.

Commonwealth code also prescribes the process by which the CPA may pursue its concession leasing strategy. The primary step in this process is set forth in 4 CMC § 2206, which states that "after public notice and public hearing that the award of [any of the aforementioned concessions] by negotiation with the then-incumbent concessionaire is…in the best interest of the Commonwealth, it shall offer [the concession]…if the CPA and the then-incumbent concessionaire agree upon terms and conditions for the contract." As there is an incumbent Master Concessionaire (DFS), the process is as diagrammed on **Exhibit 3-1.**

It is uncommon for an airport operator's contractual process to be so specifically prescribed by its legal/political superstructure. This language was enacted 2 months before the CPA and DFS executed a Master Concession Agreement, described in the following section. This coincidence exemplifies the special relationship between the CPA and DFS, as was also exemplified in 1985 when DFS guaranteed via a $15 million Letter of Credit the CPA-issued bonds, the proceeds of which were used to fund a terminal expansion at SPN. Furthermore, DFS is one of the largest employers in the Commonwealth, and is reportedly active in the community. The 1985 Series A Bonds have since been refunded, and the Letter of Credit is no longer in effect. The useful life of terminal improvements typically is either 30 or 40 years (ending in 2015 or 2025, respectively). These sections of the Commonwealth code, however, do not have a sunset provision (i.e., a clause stating when the statute shall no longer be in effect).

Exhibit 3-1: Concession Leasing Strategy Process



SOURCE: Commonwealth of the Northern Mariana Islands, Public Law 4-60 (4 CMC Division 2 Chapter 2).
PREPARED BY: Ricondo & Associates, Inc., August 2014.

3.2 The Master Concession Agreement

The existing MCA is a successor to the 1985 MCA. The 1985 MCA expired in 2005, but its successor was executed in 1997, extending the term to 2015. **Table 3-2** summarizes all of the CPA's concession agreements with DFS or the entity it succeeded.

Table 3-2: Historical List of CPA Duty-free Concession Agreements

YEAR OF EXECUTION	STATED TERM (YEARS)	EFFECTIVE TERM (YEARS)	START YEAR	END YEAR	LOCATIONS	CATEGORIES	OTHER
1974	15	11	1974	1985	SPN	Food and beverage and retail/duty-free	Pre-payment of $6 million
1985	20	20	1985	2005	All ports	All merchandise	Debt guarantee; sales tax waiver
1997	10	10	2005	2015	All ports	All merchandise	Payment of $1 million; sales tax waiver; 1996 Agreement

SOURCE: Rex I. Palacios, *An Evaluation of Policy and Management Alternatives Available*, May 1999.
PREPARED BY: Ricondo & Associates, Inc., August 2014.

The 1985 MCA granted exclusive concession privileges to DFS and the 1997 Successive MCA extended those privileges. The exclusivity is both locational (i.e., all airports and seaports) and categorical (i.e., all types of merchandise sold or delivered). However, under current practices, the MCA is not truly as exclusive as originally stipulated. The MCA is no longer exclusive to each and every port of entry as it no longer applies to the Rota and Tinian airports. Moreover, the exclusivity over all types of merchandise sold no longer applies. While the food and beverage concessions are provided by a subordinate concessionaire, two snack bars at SPN exist outside that agreement. Also, one advertising concessionaire is subordinate to DFS, yet another exists outside of the provisions of the MCA. Perhaps most significantly, a 1996 "Agreement to Enter into Subconcession Agreements" formally permitted the CPA to execute concession agreements with concessionaires other than DFS. This 1996 Agreement was a pre-condition of, and followed by, the 1997 Successive MCA.

As presented in Table 3-2, the term of the original (1985) MCA was 20 years and the term of the 1997 successor MCA is 30 years. Taken in sequence, the CPA has granted DFS or the entity it succeeded exclusive concession privileges at SPN for 41 years.

Both the 1985 and 1997 MCAs established a concession fee to be paid as a percentage of gross sales. (An overview of rate-setting methodologies is presented in Section 4.2.) The percentages graduated every few years or so, increasing from 11.75 percent in 1985 to 18.00 percent today. The MCA also incorporates a warehouse fee; in accordance with Amendment 1 to the MCA, DFS pays a nominal ($1.15 per square foot) rent for approximately 17,000 square feet of storage and support space on the arrival level of the terminal building.

All three types of agreements involve some form of financial assistance by DFS to the CPA. In 1974, DFS provided a rental prepayment of $6.0 million; in 1985, DFS provided a Letter of Credit to back the 1985 Series A Bonds; , and in 1997, DFS provided a $1.0 million payment out of "consideration" per § 2(c) of the 1997 Successive MCA.

Both the 1985 and 1997 MCAs include a waiver of CNMI sales tax. On behalf of the CNMI, the CPA waives the imposition of all taxes and permit fees on DFS (as permitted by 4 CMC § 2203). Had it been levied, the sales tax would have been capped at 4 percent. In Fiscal Year (FY) 2013, DFS reported gross sales of approximately $15.0 million, 4 percent of which is $600,000.

4. Industry Norms

Industry conventions—chiefly in the United States—for the major categories of concessions, comparing these standard practices to practices at SPN are summarized in this section. A brief discussion of the recent duty-free experience at A.B. Won Pat International Airport at Guam (GUM) is also provided.

4.1 In-Terminal Concessions

4.1.1 DUTY FREE

A duty-free store is a special type of retail store that typically sells luxury goods with a unique value proposition. This proposition is twofold: (1) sales are exempt from import duties, excise tax, and sales tax, and (2) the distribution network is streamlined, directly from manufacturers to the concessionaire (thus eliminating middlemen). In the United States, sales are restricted to international departing passengers, but Commonwealth Customs permit sales to Guam-bound passengers (although not those connecting in Guam to return to Rota or Tinian). In some countries, such as Brazil, duty-free shops are also available to international arriving passengers.

At airports that predominantly serve international passengers, the duty-free shop is the main anchor of the passenger experience, and many terminals are designed or improved to specifically accommodate duty-free offerings. Duty-free shops tend to be large and have fine finishes (to accentuate a luxury shopping experience); hence, a substantial tenant investment is often required.

International passengers tend to be the highest-spending category of passenger, for reasons pertaining to average dwell time and the propensity to make nonessential purchases. A trip's purpose tends to be leisure, the flight length long, and often the passenger comes from a country with a tax regime that magnifies the duty-free value proposition. Concessionaires try to tailor their shops to passenger demographics, which they track with each purchase. East Asian passengers (such as those from Japan, Korea, and China) are recognized in the industry as the highest duty-free spenders.

4.1.2 OTHER RETAIL

Typically, a basic concession program will have a newsstand, bookstore, or sundry items—sometimes combined into one "convenience retail" unit. Larger programs include specialty retail, which offers branded or themed lines of merchandise, such as candy, sunglasses, or local products. At SPN, the DFS store offers many specialty retail concepts.

Another subcategory of retail is vending. Vending machines at airports provide not just snacks and soft drinks, but also sundries and electronic gear. Such machines are "open" at all hours, while a store may be closed at night or during off-peak hours. Vending machines also require a small footprint and minimal capital investment.

4.1.3 FOOD AND BEVERAGE

According to ACRP Report 54, *Resource Manual for Airport In-Terminal Concessions*, "food and beverage concessions generally occupy the most space and are the most productive in terms of sales and revenue." A food and beverage unit is considered to be an essential element of the passenger experience, as the passenger is likely to want some sustenance before a flight on which a meal may not be served. These units typically have a kitchen, which constitutes a significant investment by both the concessionaire (equipment) and the airport operator (infrastructure). Some food and beverage concepts, however, do not require a kitchen, such as bars, snack bars, and coffee shops.

4.1.4 SERVICES

Services consist of a wide range of amenities that passengers can pay for. Because service units tend not to sell merchandise, they tend to have a much lower capital investment, more flexible hours of operation, and may even be portable. As such, they could fall outside of the MCA, in accordance with 4 CMC § 2201 (c), and as discussed in Section 3.1 of this report.

Examples at SPN are the massage kiosks and the foreign exchange booth. (Because foreign exchange is effectively dependent on international traffic, airport operators may categorize it separately.) Other service concepts found elsewhere typically include shoeshine stations, automated teller machines and fee-based wireless Internet.

4.1.5 GAMING

Among U.S. airports, gaming is currently available at certain airports in the State of Nevada. Gaming is available at Las Vegas McCarran International Airport and at Reno-Tahoe International Airport, and consists of electronic devices that operate as slot machines, card games, and the like. The Reno-Tahoe Airport Authority receives approximately $2.00 in gaming revenue per enplaned passenger at Reno-Tahoe International Airport, and Clark County, Nevada, receives slightly more than half that amount at Las Vegas McCarran International Airport.[1] In absolute terms, revenue to each airport operator is in the millions of dollars.

Gaming units tend to be arranged in clusters, and tend to be in the middle of areas with great passenger exposure. Therefore, gaming units compete for prime space with other concession categories. Gaming, however, does not require back-of-house space or a storefront. The concession staff need not be centrally

1 Sources: Reno—NBC News www.nbcnews.com, "Airports look to land new revenue sources" dated July 2008 (accessed August 2014); Las Vegas—www.casino.org, "Like McCarran Airport in Vegas? Thank Michael Gaughan's Slot Machines" dated June 2013 (accessed August 2014).

positioned. It is not uncommon for gaming to be co-located with a bar, where age restrictions would already apply.

The possibility of gaming at CPA airports was discussed in 2000, but no gaming facilities have been developed at CPA airports. While gaming is legal according to Commonwealth law, and casino-style gaming is legal on Rota and Tinian, it is restricted on Saipan to a short list of designated locations. Presently, SPN is not one of those locations. Because gaming does involve the sale of merchandise, it should not be subject to the MCA, in accordance with 4 CMC § 2201 (c) and as discussed in Section 3.1 of this report. However, the Successive MCA prohibits "amusement and gambling devices" in § 8(q). Gaming-specific concessionaires operate at airports and casinos.

4.1.6 ADVERTISING

Advertising at airports traditionally consists of wall-mounted displays. These displays are often illuminated, and many at SPN are backlit. Most displays, similar to those at SPN, are static, but some newer advertising programs have more dynamic—even interactive—presentations. At international tourist destinations, such as Rota, Saipan, and Tinian, the advertising tends to promote hotels and leisure activities, and tends to be located along the passenger arrivals flows.

Advertising occupies minimal, if any, premises. Because advertising does not sell merchandise, it should not be subject to the Master Concession Agreement, in accordance with 4 CMC § 2201 (c) and as discussed in Section 3.1 of this report. Nevertheless, the Successive MCA covers Advertising in § 3(h).

Table 4-1 summarizes the concession categories discussed in this section, noting whether or not the category is part of the program at SPN and whether or not the category is subject to the DFS MCA.

Table 4-1: Summary of Major Concessions Categories

CATEGORY	AT SPN?	UNDER MCA?
Duty-free	Yes	Yes
Other retail	No	Yes
Food and beverage	Yes	Yes and no
Services	Yes	No
Gaming	No	Prohibited
Advertising	Yes	Yes and no

SOURCES: Commonwealth Ports Authority and Ricondo & Associates, Inc., August 2014.
PREPARED BY: Ricondo & Associates, Inc., August 2014.

Although the two passenger lounges at SPN are operated by the food and beverage subconcessionaire, airline or third-party lounges are not generally considered elements of a concession program, at least in terms of space planning. Theoretically a lounge could be considered a service unit that may have a food and beverage offering. These lounges could be considered counterproductive to a concession program, as they sequester (typically affluent) passengers from the airport's shops and restaurants.

4.2 Concession Agreements

The Master Concession Agreement is standard practice at smaller airports, where there may be limitations in both demand and administrative capabilities. Some smaller airports have successful concessions programs with two concessionaires: one retail and one food and beverage.

Concession agreements typically formalize the minimum level of investment by a concessionaire in its units, usually expressed as a cost per square foot. This amount is derived by some function of projected sales per square foot, and is of particular concern for concessionaires building out space with special finishes, fixtures, or equipment, such as duty-free and food and beverage. It is not uncommon for longer-term agreements to also have a midterm investment requirement.

Term length for duty-free and food and beverage concession agreements tend to be long in order to guarantee a reasonable return on investment to the concessionaire. All concessionaires, but especially those in these two categories, invest a significant amount of money in their units before they even open. Several years of generating income are needed to recover that investment (plus profit). ACRP Report 54 stated that, among small-hub U.S. airports with a duty-free concession agreement, the average term length is 7 to 8 years. The ACRP report also states that extension option periods for duty-free were either 2, 3, or 5 years. By comparison, the term of the existing MCA is 10 years.

Another way that concession agreements attempt to guarantee return is in granting exclusivity as a legal means to limit competition. Typically, exclusivity covers the sale of specific types of merchandise (which could range from duty-free goods to soda-fountain drinks) or a specific part of a facility (one among multiple terminals, or inside a terminal but not outside). By comparison, the MCA granted exclusivity to DFS for all types of merchandise and for all ports of entry, although both privileges have been weakened, as discussed in Section 3.2.

A third key way in which the concession agreement can guarantee return for the concessionaire is the same as the way it guarantees return for the airport operator, which is through facility rentals. While a wide variety of rate-setting methodologies exist, two, non-mutually-exclusive methods are typically used by airport operators to collect concession rent: percentage rent or fixed fee (most commonly set as a minimum annual guarantee {MAG}). A MAG is a fixed fee that is either a static concession fee or the minimum amount above which a concessionaire pays percentage rent. Other variations of rental methodologies exist, such as a per-passenger modifier, but such variations are not addressed in this report.

Percentage Rent

At its simplest, this methodology consists of the payment of rent as a specified percentage of gross sales. Percentage rent is generally accepted as fair, because the rent increases with the concessionaire's ability to afford it. It is not uncommon for the percentage to graduate as gross sales reach specified thresholds (for example, 15 percent on the first $1.0 million of sales, and 20 percent on all sales above $1.0 million). Also, it is not uncommon for the percentage to vary according to type of merchandise (for example, 20 percent on alcohol and 15 percent on everything else).

Regarding duty-free concession agreements, ACRP Report 54 states that "airports charging a percentage rent reported percentages ranging from a low of 10 percent to a high of 30 percent, with 20 percent being the most common." The current MCA provides for DFS paying a percentage rent (currently 18 percent) to the CPA. ACRP Report 54 also states that 42 percent of responding U.S. airports did not charge percentage rent for duty-free, noting that all of these airports were small- or medium-hubs. Instead, the operators of these airports charged a fixed fee, which typically is a MAG.

Minimum Annual Guarantee

According to ACRP Report 54, among small-hub U.S. airports with a duty-free concession, 100 percent of those responding charged a MAG. A MAG is considered desirable because it protects the airport operator in a down year, and in doing so, removes some risk from projected airport revenues, which may appeal to lenders and credit-rating agencies. However, a particularly bad year (or successive bad years) can cause hardship for a concessionaire if it is compelled to pay the MAG, and a concessionaire in unfavorable conditions is less likely to operate a program in the way an airport operator would desire. When this occurs, the concessionaire often appeals for rent relief or a lower MAG calculation.

A MAG can be established in many ways. Usually there are two different objectives: one for setting the MAG in the initial year of the concession agreement, and one for adjusting the MAG in future years. The first year's MAG can be part of a prospective concessionaire's bid package, and it is reasonable to assume that a MAG would be an element in agreement negotiations. Generally, a typical expectation in the industry is that the MAG in the first year of an agreement (Year One MAG) is 80 percent to 85 percent of current or projected revenues to the airport operator. The MAGs in subsequent years (Future Year MAGs) can be adjusted in any number of ways, but generally they increase at the rate of sales growth (i.e., the recently demonstrated financial performance of the concession) or with the Consumer Price Index (i.e., the recently demonstrated increase in the cost of doing business).

Additional Charges

Other than the aforementioned concession rent, a concessionaire might pay other fees and charges to an airport operator. For example, DFS also pays a nominal license fee ($1,000 per year) and per-square-foot rent on arrivals level storage space. Other charges across the industry include those associated with utilities, employee parking or badging, and the cleaning of adjacent public/shared areas. It is understood that DFS pays for its own air conditioning system and janitorial services for the more than 5,000 square feet of public walkways throughout its stores.

4.3 Benchmarking

It is difficult to benchmark SPN as there are no perfectly comparable airports. SPN is a small airport that primarily accommodates international passengers, whereas most international gateways are significantly larger. It is a U.S.-regulated airport with principally East Asian passengers; most (but not all) U.S. airports have concessions programs built to domestic passenger preferences.

With approximately 500,000 annual enplaned passengers, SPN qualifies as a small-hub airport according to the Federal Aviation Administration (FAA).[2] However, with approximately 400,000 annual international enplaned passengers, SPN ranks as the 24th busiest international gateway, with more international passengers than the large-hub airports such as those serving Baltimore, San Diego, or Tampa (according to data from Airports Council International – North America).

Perhaps the best comparison to SPN is GUM. GUM is a medium-hub airport—substantially larger than SPN—but it is similar in terms of geography, terminal layout, and passengers. Unfortunately, GUM does not report data to *Airport Revenue News*, the standard repository for U.S. and Canadian airport concessions. However, in July 2014, a new duty-free program opened at GUM under a new concessionaire, and many elements of that negotiation were made public.

The A.B. Won Pat International Airport Authority, Guam granted its duty-free concessionaire exclusivity on a prescribed list of merchandise. For a 10-year agreement term, the exclusivity lessened in year five. Percentage rent is to be levied at 30.1 percent, over and above a MAG of $15.0 million. (As GUM has about three times the international passengers as SPN, the airport operator is better able to set a percentage rent and a MAG that is on the high end of the range of that received at U.S. airports.) Percentage rent on any future space would be 25 percent. There appears to be no waiver of sales tax or other fees. Finally, the concessionaire helped fund the improvement of the public restrooms near its shops.

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[2] According to the FAA, a large-hub airport enplanes at least 1.00 percent of all enplaned passengers nationwide. A medium-hub airport enplanes between 0.25 percent and 1.00 percent, and a small-hub airport enplanes between 0.05 and 0.25 percent.

5. Demand

Tourism is the principal driver of demand at CPA ports of entry. For decades, CNMI tourism was dependent on Japanese travelers. While the relationship was symbiotic in good times, it has since exposed the risk in having a lack of diversity in the visitor mix. Recently, the mix has been more diverse.

The CNMI has a great opportunity in the near term to expand Chinese tourism. With the continued stagnancy of the Japanese economy and population—and hence its tourists to the CNMI—a Chinese-heavy tourism industry is the most likely path toward growth in the CNMI and for CPA ports of entry. This opportunity, however, has the obvious risk of a new lack of diversity in the visitor mix. Although this potential lack of diversity could present a problem in a later decade, a once-in-a-generation opportunity for the CPA to benefit from this potential increase in Chinese tourists exists over the next 10 years.

5.1 Historical and Existing Demand

Since the 1970s, the predominant nationality of tourists to the CNMI has been Japanese. In 2005, Japan Airlines (JAL) discontinued service to SPN (14 flights per week) at a time when Japanese visitors accounted for about 75 percent of tourists to the CNMI. Since JAL discontinued service at SPN, it was necessary for the CNMI tourism industry to pursue tourists from as many markets as possible to diversify demand. Today, no one country dominates the SPN market, as the approximate split among the four predominant tourist nationalities is 30/30/30/10 (Japan/Korea/China/Russia).

Nevertheless, the number of passengers (and the amount of concession spend) at CPA ports is directly dependent on tourism, and tourism is subject to the effects of world events. Crises of the economic, epidemic, and political varieties can (and do) drastically reduce passenger travel demand, thus shocking local economies. Also, when airlines fail or reallocate resources, the CNMI has suffered, as nearly all of its tourists arrive by plane.

While historical and existing demand at the Rota and Tinian airports is most likely insufficient to warrant interest from most concessionaires, it would be ill-advised to assume that those airports could not accommodate substantial concession programs, particularly if tourism to those islands result in the provision of direct flights to non-CNMI destinations.

The same general case could be made for the seaports. If the seaports are developed to accommodate passenger traffic and if they host passengers in sufficient numbers and predictability, a concessionaire might want to develop outlets there. However, that has not been and presently is not the case.

5.2 Projected Demand

The issues and trends of tourists from the four major countries-of-origin visiting the CNMI are discussed in this section.

5.2.1 PROJECTED PASSENGER DEMAND

5.2.1.1 Summary

Japan

Over several decades, Japan has been the origin of most tourists to the CNMI. The Northern Mariana Islands were part of the Japanese empire between the world wars, and Saipan is approximately 1,500 miles from Tokyo (making it one of the nearest major cities). Until recently, Japan boasted the second-largest economy (as measured by gross domestic product) in the world. However, its population is slowly decreasing, and the JAL withdrawal from SPN occurred amid a decade (or more) of stagnation in the Japanese economy. China has surpassed Japan as the world's second-largest economy. In short, the long-term trend of Japanese tourism to the CNMI is not likely to be one of growth.

While Japan no longer dominates market share at SPN, it still accounts for nearly one-third of tourists to the CNMI. Japan remains the historical source of the vast majority of foreign investment in the CNMI's tourism infrastructure, so there is great interest on the part of the MVA in stabilizing, if not growing, its market share. In February 2011 the CNMI began to subsidize certain Japan-CNMI air service routes, but the demand for travel did not increase following the March 2011 earthquake, tsunami, and nuclear crisis. It should be noted that more than 40 percent of Japanese tourists to the CNMI are repeat visitors, and the Japanese have long been reputed to be prolific duty-free customers.

Korea

Korea provides a stable tourism market for the CNMI. Outbound travel restrictions were lifted by the Republic of Korea in 1989, and Korean traveler contributions to the local tourism economy increased only in this century. Over the past decade, Korean direct investment in the tourism infrastructure of the CNMI has been substantial. In recent years, Koreans have accounted for approximately one-third of the CNMI tourist market. Korean visitor spending patterns at duty-free shops are similar to, if perhaps slightly less than, that of their Japanese counterparts.

China

China has well over one billion residents, and travel by Chinese visitors to foreign lands appears to be a rapidly growing trend. The CNMI is particularly well-positioned to capture some of this market. First, the CNMI is relatively close to China, with most coastal cities a 4-to-6-hour flight away. Second, Chinese shoppers anecdotally feel more secure purchasing luxury goods if they are made in the United States, as they are more confident in its provenance or authenticity. Third, the CNMI could be considered an early participant in the Chinese tourism market, as it was the first U.S. location granted Approved Destination Status by the Chinese

Government in 2005, thereby allowing the marketing of the CNMI within China. Fourth, and perhaps most importantly, is the special legal arrangement by which Chinese tourists may visit the CNMI without a visa.

As summarized in the *Northern Mariana Islands Tourism Master Plan 2012-2016* by the Marianas Visitors Authority, in November 2009, U.S. Customs and Border Protection (CBP) became responsible for immigration control, yet created a Guam/CNMI visa waiver program by which the federal government would consider waiving the visa requirement for Chinese (and Russian) tourists. Although a formal visa waiver has not yet been granted, in December 2009, the U.S. Secretary of the Department of Homeland Security (DHS) granted the CNMI a parole system, "under which a temporary visa-free entry system is allowed for Chinese and Russian tourists. While this system is subject to change, it is currently a significant competitive advantage over other destinations which require US visas" (including Guam).

The Chinese tourism market is big, growing, high-spending (at least in duty-free), and established. However, it is fragile, as the parole system can be rescinded at any time at the discretion of the DHS Secretary.

Russia

Russia is considered an emerging market by the MVA, and it has a tourist profile different from those of the East Asian countries discussed previously. Allegedly only 15 percent of Russia's 140 million residents have left the country, but the trend is toward more travelers—from 2009 to 2010, Russia had the greatest increase in outbound tourists of any country in the world.[3] Russia's market share has increased from 1.5 percent of visitors to the CNMI in 2011 to approximately 8 percent in 2014. Similar to Chinese visitors, Russian travelers may visit the CNMI without a visa; unlike the Chinese, Russian travelers may also visit Guam (since January 2012). The Russian tourists that do visit the CNMI tend to stay for a week and a half and, with such long stays, tend to spend significant amounts, according to the *Northern Mariana Islands Tourism Master Plan 2012-2016*.

5.2.1.2 Range of Passenger Forecasts

A reasonable starting point in developing passenger forecasts is to determine the long-term historical trend. However, CPA airports have experienced some severe volatility year-over-year, creating a long-term trend of successive crises more than stable growth. From 2008 to 2014 (estimated), the number of enplaned passengers increased at a compound annual growth rate of 2.1 percent. Perhaps more importantly, the year-over-year fluctuations during the past 6 years have not been severe, unlike the longer-term history. In the baseline passenger forecasts presented in this report, an annual growth of 2.1 percent was assumed.

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[3] United Nations, World Tourism Organization, *Barometer*, 2010 and 2011.

5.2.2 SUPPORTABLE SPACE ANALYSIS

5.2.2.1 Food and Beverage

LSG Lufthansa Service Saipan (LSG), the food and beverage subconcessionaire at SPN under DFS, does not separate revenues between its snack bars and its passenger lounges. Therefore, and because passengers in the lounges can only buy food or drinks from the snack bars, all in-terminal sales reported by LSG were treated as a reflection of demand in this analysis. FY 2014 sales are estimated to be approximately $975,000, yielding a spend rate of $1.92 per enplaned passenger.

Space productivity is almost $1,000 in sales per square foot, which is good relative to industry standards, but is more a reflection of a small denominator (square footage) than a large numerator (sales). Assuming that terminal space would be reconfigured so that all passengers flow into a food and beverage "zone" upon exiting the duty-free store, and that a newer product would be more attractive to customers, a 25 percent improvement factor was applied. Allowing a small 200-square-foot snack bar to remain near the door of each smokers' patio, the central zone could support about 1,500 square feet of concession space. This area may be too small to attract much interest from concessionaires in the opportunity at SPN, but it is possible. Another drawback to the SPN opportunity is the time-of-day issue: most aircraft departures occur in the very early morning, which is not a typical time for a meal or an alcoholic beverage.

5.2.2.2 Duty Free

Demand exists at SPN for a large duty-free store, but it is useful to know if the store is right-sized. Excluding the square footage used for passenger circulation, the store is estimated to be productive at approximately $1,500 in sales per square foot in FY 2014. This amount excludes the demand of Guam-bound passengers, which DFS estimated at $7 per enplaned passenger.[4] Across U.S. airports with a duty-free offering, this amount reflects a good level of space productivity. The range presented in ACRP Report 54 for a medium-hub U.S. airport was $500 to $1,700; no surveyed small-hub airports had a duty-free shop. (Note that a very high productivity indicates that a store is too busy, and that sales are being unrealized because some customers choose to forego the congestion.)

The design year for this analysis is FY 2021, which would be the approximate midpoint of a 10-year concession agreement beginning in November 2015. At 2.1 percent annual passenger growth, international passengers (excluding those Guam-bound) would number 456,000 in FY 2021. An improvement factor of 10 percent was assumed; i.e., a refreshed shopping experience with some new finishes or brands would induce an additional 10 percent in sales to international passengers. (This is a conservative assumption; if the security screening checkpoint were optimized, an improvement factor of 15 percent could be expected.) FY 2021 gross sales are projected to be nearly $22.0 million (in 2014 dollars). (Guam-bound passengers would spend an additional $500,000 annually.)

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[4] Guam-bound passengers are excluded because (1) their purchases are 85 percent tobacco, which requires minimal space or presentation; (2) relative to the other SPN passengers, a store would not be planned to target Guam-bound passengers; and (3) there is the risk that an arrivals duty-free shop could be built at GUM, which would capture much of this demand.

To accommodate this future demand, the duty-free store probably would need an additional 3,000 square feet (of shops, excluding public circulation) just to maintain its current level of space productivity. Considering $1,700 in sales per square foot as the upper limit, SPN's duty-free store should be expanded by no fewer than 1,500 square feet.

Exactly how the duty-free store would be expanded is not a subject of this report, but, as noted in Section 2, there is a competing need for adjacent space for an improved passenger screening security checkpoint. These expansions could potentially be components of the same project.

6. Options Considered

The three agreement options identified in Section 3.1 are discussed in this section.

6.1 Paths and Decision Points

6.1.1 OPTION #1: SUCCESSOR MASTER CONCESSION AGREEMENT

This option would be an extension of the status quo. Administratively, this option would be the easiest for at least two reasons: (1) the solicitation process would be effectively bypassed by direct negotiations with DFS, and (2) DFS would continue, as Master Concessionaire, to be the operator of the SPN food and beverage concession program (via a subconcessionaire). An important consideration is whether or not the status quo is worth extending. This option would postpone the opportunity to establish a future relationship with a different duty-free concessionaire.

The food and beverage program at SPN—which is and would continue to be under the successor MCA—yields revenues that indicate excellent sales. (Counterintuitively, these sales are generated at snack bars that appear to have minimal capital and operating costs.) If the CPA wishes to initiate a new concessions program or secure a new subconcessionaire, DFS has a wide range of contacts in the industry, some of which could provide the desired improvements. However, if the CPA is content with the existing program and the revenues it generates, the successor MCA is the direct way to maintain the existing program.

As long as demand is insufficient to result in a successful program at the non-SPN ports of entry, it may prove difficult to attract national or international concessionaires to opportunities at those locations.

6.1.2 OPTION #2: DUTY FREE RETAIL CONCESSION AGREEMENT

This option would open the concession to a public process, theoretically establishing an RFP process by which the CPA could benefit from the assumed competition of bids from multiple concessionaires.

While it is reasonable to assume that multiple duty-free concessionaires would be attracted to the opportunity, the CPA should note that this would separate the food and beverage program at SPN (into a non-duty-free concession agreement [NDFCA]). It is unclear whether or not the food and beverage opportunity at SPN is sufficient to interest the national and international food and beverage concessionaires (although a terminal reconfiguration that forces all departing passengers into a food and beverage "zone" should be an improvement). Also, the CPA would have to determine that it is adequately equipped to bear the administrative burden of managing its own food and beverage concession program at SPN.

A fatal flaw of this option is the statutorily prescribed 5-year agreement term. A term of this length is uncommonly short for a duty-free concession, and we believe that it would prevent a concessionaire from investing in a product of a high enough quality to satisfy both the CPA and its international passengers.

6.1.3 OPTION #3: DUTY FREE RETAIL CONCESSION AGREEMENT-PREPAID

This option is predicated on the CPA determining a need for a prepayment of rent as a source of funds to implement a capital improvement project. At the time this report was prepared, no such need had been identified and, therefore, this option would be not yet be able to be initiated. However, potential capital improvements (as discussed in Section 6.2) could be considered by the CPA. These include expansion of the duty-free offering, expansion of the security screening checkpoint, and reconfiguration of a food and beverage "zone" through which all departing passengers would flow.

Commonwealth Code permits up to a 20 year agreement term—most likely longer than needed for a concessionaire to achieve a return on its investment.

As with Option #2, this option would introduce the need for the CPA to execute an NDFCA for a food and beverage concessionaire at SPN.

6.2 Other Recommendations

The following are some additional recommendations for CPA consideration as it contemplates the future of its concession program:

- **Saipan International Airport**
  - Terminal Configuration – Departures Level
    - Expand the duty-free store
    - Expand/widen the security screening checkpoint
    - Ensure passenger flow through the duty-free store and into one food and beverage zone
      - Could be two snack bars or a proper restaurant
      - A zone that 100 percent of passengers would be exposed to could have sufficient demand to attract a concessionaire willing to invest in a kitchen
  - Terminal Configuration – Arrivals Level
    - Expand CBP facilities, probably by reducing the space for existing duty-free storage
    - Introduce a small duty-free shop in the baggage claim area
    - Modernize the advertising program to use more energy-efficient displays

- Other
  - Evaluate the introduction of gaming at SPN (electronic machines, not a casino)
    - New revenues to improve the creditworthiness and cash position of the CPA
    - Gaming need not compete with the duty-free offering. If positioned well, gaming machines could increase dwell times in the central zone, and probably have a symbiotic effect on food and beverage
  - Other Retail
    - As most SPN passengers are international tourists, demand for English-language or local reading material is low, so there would be no immediate need for a newsstand or bookstore
    - Duty-free shops already include one or two sections for gift items
    - Local handicraft merchants are not likely to be able to produce a sufficient amount of goods to build out or staff an in-airport store

- **Rota and Tinian International Airports**
  - Based on historical passenger numbers, a concessionaire is unlikely to view a shop at either airport as a profitable opportunity
  - A duty-free store in the concession program at these airports would be impractical, as there are no direct flights to international destinations (excluding Guam)
  - A successor MCA theoretically could include language that compels the concessionaire to operate stores at these airports, but it is very likely that these stores would lose money, and the concessionaire would expect something in return (e.g., longer term, lower rent)
  - Infrastructure at these airports reportedly would have to be improved to support improved concession programs
  - The economy and infrastructure of Rota and Tinian may improve at some future time to the point that concessionaires—including a duty-free concessionaire—may see viable opportunities at these island airports and the CPA should be prepared to facilitate those opportunities, should they arise
- **Seaports**
  - Based on historical passenger numbers, a concessionaire is unlikely to view shops at the seaports as profitable opportunities
  - A successor MCA theoretically could include language that compels the concessionaire to operate stores at the seaports, but it is very likely that these stores would lose money, and the concessionaire would expect something in return (e.g., longer term, lower rent)
- **Statute**: Remove or sunset the Commonwealth Code that sets the parameters for the RFP process and the types of concession agreements that can be executed

Appendix A

List of Interviewed Stakeholders

Appendix A List of Interviewed Stakeholders

Commonwealth Ports Authority Staff

- Skye Aldan, Comptroller
- JoyAnn DeLeon Guerrero, Enforcement/Lease Compliance Officer
- Martin Mendiola, Rota Ports Manager
- Joseph Mendiola, Tinian Ports Manager

Other Stakeholders

- Marian Aldan-Pierce, DFS Saipan, Inc.
- Jim Beighley, Marian Aldan-Pierce
- Perry Tenorio, Marianas Visitors Authority
- Alex Sablan, Saipan Chamber of Commerce
- Jill Arenovski, Saipan Chamber of Commerce
- Shaun Christian, Star Marianas Air

Appendix B

Commonwealth Code

§ 2201. Definitions.

For the purpose of this chapter:

(a) "Duty-free merchandise" means any merchandise with regard to which Commonwealth tariffs, duties, excise tax, sales tax, gross revenue tax and/or any other tax has been waived (regardless of whether the waiver is implemented by direct forgiveness of the tax, refund of tax previously paid or by other means).

(b) "Duty-free retail concession" means a contract between the Commonwealth Ports Authority and a person which grants that person the exclusive right to operate facilities at a port of entry for the sale of duty-free merchandise, and the exclusive right to use that port of entry to deliver duty-free merchandise, sold in less than a wholesale quantity, to or for the direct or indirect benefit of a departing individual (regardless of the time or place of the individual's departure and regardless of the time or place of the order and/or payment for the merchandise).

(c) "Master concession" means a contract between the Commonwealth Ports Authority and a person which grants that person the exclusive right to operate facilities at each and every port of entry for the sale of duty-free and any other item of merchandise (including, without limitation, food and beverages intended for on-premises consumption), and the exclusive right to use each and every port of entry to deliver duty-free and any other item of merchandise, sold in less than a wholesale quantity, to or for the direct or indirect benefit of a departing individual (regardless of the time or place of the individual's departure and regardless of the time or place of the order and/or payment for the merchandise). Provided, that the holder of the master concession may grant permission for a minority business, small business and/or business owned by a handicapped individual to engage in the on-premises sale of one or more specified type of merchandise at a port of entry (but not in the use of a port of entry for delivery of merchandise ordered and/or paid for elsewhere). Provided further, that if the Commonwealth Ports Authority substantially redevelops and renovates a sea port of entry, and wishes to offer new concession rights for use of that sea port of entry, the Commonwealth Ports Authority shall, upon completion of such redevelopment and renovation, terminate the rights and obligations under the master concession that relate to that sea port of entry; however, if the new concession rights for use of that sea port of entry are offered by public auction or public bid, the master concessionaire shall be accorded a full opportunity to seek such rights; if such rights are offered pursuant to 4 CMC § 2206, the master concessionaire shall be considered the then-incumbent concessionaire; and if such rights are offered in any other manner, the master concessionaire shall retain such rights if it meets the best bona fide offer for such rights made by another person.

(d) "Person" means any individual, partnership, proprietorship, company, corporation, joint venture, association, or other enterprise or entity.

(e) "Port of entry" means any publicly owned or operated sea or air port in the Commonwealth, together with all related lands and facilities. These include, but are not limited to:

(1) Saipan:

(A) Tanapag Harbor; and

(B) Saipan International Airport.

(2) Tinian:

(A) Tinian Harbor; and

(B) West Tinian International Airport.

(3) Rota:

(A) Rota Harbor; and

(B) Rota International Airport.

(f) "Tax" means any tax, impost, levy, tariff, duty or assessment.

Source: PL 4-60, § 2 (§ 2201).

Commission Comment: PL 4-60 took effect September 12, 1985. PL 4-60, § 2 repealed and reenacted title 4, division 2, chapter 2. According to PL 4-60, § 1:

> Section 1. Legislative Findings. The Legislature finds that the Commonwealth's ports of entry, especially Saipan International Airport, are critical to the Commonwealth's economy and are essential to the promotion of the flow of persons and commerce into and out of the Commonwealth. For example, tourism is and will continue to be an important Commonwealth industry. It is a leading source of jobs and income for the people of the Commonwealth, and directly or indirectly provides a leading source of Commonwealth revenue. All of the Commonwealth's visitors arrive and depart through and make use of Saipan International Airport or one of the other ports of entry. Thus, the Legislature finds that the operation of functional, accommodating and properly maintained ports of entry is a matter of compelling public interest.
>
> The Commonwealth has received and continues to receive substantial revenues for the use of ports of entry for the sale and delivery of duty-free and other merchandise. Among other things, those revenues provided the financing for the construction of the terminal at Saipan International Airport. In the future, they will be needed to finance construction, expansion and improvement of facilities at Saipan International Airport and improvements at other ports of entry, and for other important purposes for the Commonwealth. Additionally, a high quality concession can enhance the attractiveness and convenience of port of entry facilities, and can itself be an attraction to visitors.
>
> In order to prevent interference with the safe and efficient operation of port of entry facilities, deterioration of the quality of services and merchandise offered, reduction of vital revenues to the Commonwealth and impairment of the economy of the Commonwealth, the Legislature further finds that it is in the Commonwealth's interests to regulate the use of the ports of entry for the sale and delivery of duty-free and other merchandise.
>
> The Commonwealth has previously mandated that no more than one duty-free retail concession shall be permitted at each port of entry. (See 4 CMC § 2202(a).) Because the exclusivity and therefore the value of the concession could be undermined by others seeking to use the port of entry to deliver duty-free merchandise ordered and/or paid for elsewhere,

§ 2202. Duty-Free Retail Concession: Establishment; Operation and Maintenance; Transfer; Fees Generally.

(a) Subject to the conditions and restrictions of this chapter, the Commonwealth Ports Authority may grant to any person the privilege of establishing, operating, and maintaining a duty-free retail concession in any port of entry. The Commonwealth Ports Authority may lease, rent, or let any land or building or any part thereof or any interest therein, situated in any port of entry, to any person, to establish a duty-free retail concession. A duty-free retail concession may also grant such rights in addition to those set forth in 4 CMC § 2201(b), and contain such other terms and conditions, not in conflict with the provisions of this chapter, as the Commonwealth Ports Authority deems reasonable and proper.

(b) Only one duty-free retail concession shall be permitted at each port of entry. Apart from the duty-free retail concession for a port of entry (or the master concession, as described in this chapter), the Commonwealth Ports Authority shall confer no right upon, nor suffer nor allow, any person to use any port of entry to offer to sell or sell duty-free merchandise, or to deliver duty-free merchandise, sold in less than a wholesale quantity, to or for the direct or indirect benefit of a departing individual (regardless of the time or place of the individual's departure and regardless of the time or place of the order and/or payment for the merchandise).

(c) Except as otherwise provided in this chapter, each duty-free retail concession shall be advertised for public auction or public bidding and be granted to that financially responsible person of good moral character and reputable experience who, in the sole opinion of the Commonwealth Ports Authority, makes the best offer or bid. The Commonwealth Ports Authority may reject any or all such offers or bids if, in its sole opinion, to do so would be in the best interests of the Commonwealth.

(d) Bids or offers for a duty-free retail concession shall be accepted only in conformance with precise terms and conditions which among others shall include hours of business, standards of operation, reasonableness of prices charged and appropriate record keeping, cash handling and audit procedures all in accordance with generally accepted accounting principles.

(e) Except as otherwise provided in this chapter, the term of duty-free retail concession shall not exceed five years, and shall not be extended without public auction or bids.

(f) The duty-free retail concession may not be sold or assigned without the express prior written approval of the Commonwealth Ports Authority of the financial responsibility, moral character, and reputable experience of the proposed purchaser or assignee. The approval shall not be withheld unreasonably. The approval, if given, shall be without charge or levy upon the seller, purchaser or assignee as a condition to the approval.

(g) The Commonwealth Ports Authority may set such concession fee for a duty-free retail concession as it deems appropriate.

(h) In addition to the concession fee, there shall be a business gross revenue tax of 4.0 percent of the gross sales of each duty-free retail concession, which shall be paid within 15 days after the last day of each calendar month and be a part of the General Fund of the Commonwealth Treasury. The business gross revenue tax may not be increased during the term of a concession granted by the Commonwealth Ports Authority. Provided, however, that the business gross revenue tax shall not apply to any concession under this chapter if the holder of the concession has made a payment in respect of bonds issued by the Commonwealth Ports Authority.

Source: PL 4-60, § 2 (§ 2202), modified.

Commission Comment: With respect to the references to the "Commonwealth Ports Authority," see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the Commission comment to 1 CMC § 2001.

§ 2203. Grant of Duty-Free Retail Concession on Prepaid Concession Fee Basis.

At any port of entry where the Commonwealth Ports Authority determines prepayment of the duty-free retail concession fee to be desirable or necessary to supplement available public funds for purposes of constructing, expanding, or improving port of entry facilities, including space for the concession, it may require offers or bids on the basis of a prepaid minimum concession fee. In such instances, and if the best offer or bid provides for a prepaid concession fee acceptable to the Commonwealth Ports Authority:

(a) The Commonwealth Ports Authority may grant a duty-free retail concession, for a term which may be up to 20 years from the effective date of the concession, plus extensions beyond 20 years in the event of default by the Commonwealth Ports Authority, in the manner provided by law; and

(b) On behalf of the Commonwealth government, and notwithstanding any other provision of law, the Commonwealth Ports Authority may waive the imposition of all taxes and business license and permit fees and requirements on the holder of the concession, its property or its customers, relating to operations under the concession, except for the concession fee, the license fee provided for in 4 CMC § 2208, and a business gross revenue tax in accordance with the terms set forth in 4 CMC § 2202(h).

The Commonwealth Ports Authority may reject any or all such offers or bids if, in its sole opinion, to do so would be in the best interest of the Commonwealth.

Source: PL 4-60, § 2 (§ 2203).

Commission Comment: With respect to the references to the "Commonwealth Ports Authority," see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the Commission comment to 1 CMC § 2001.

§ 2204. Non-Duty-Free Concession.

Subject to the conditions and restrictions of this chapter, either in conjunction with a duty-free retail concession or separately, the Commonwealth Ports Authority shall, if it deems it in the best interests of the Commonwealth, offer and award one or more non-duty-free concessions at a port of entry, including:

(a) The exclusive right to use that port of entry to offer to sell and sell all or specified non-duty-free merchandise (including, without limitation, food and beverages for on-premise consumption);

(b) The exclusive right to use that port of entry to deliver all or specified non-duty-free merchandise, sold in less than a wholesale quantity, to or for the direct or indirect benefit of a departing individual (regardless of the time or place of the individual's departure and regardless of the time or place of the order and/or payment for the merchandise); and

(c) Such other rights, terms, and conditions, not in conflict with the provisions of this chapter, as the Commonwealth Ports Authority deems appropriate.

Source: PL 4-60, § 2 (§ 2204), modified.

Commission Comment: In the January 1997 code revision, the Commission split this section into subsections. With respect to the references to the "Commonwealth Ports Authority," see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the Commission comment to 1 CMC § 2001.

§ 2205. Master Concession.

(a) Notwithstanding any other provision of law, the Commonwealth Ports Authority shall promptly proceed to determine whether it is in the best interests of the Commonwealth to offer and award a master concession. In making this determination, the Commonwealth Ports Authority may take into account any factors it may deem appropriate, but shall not be required to hold hearings, take evidence or make findings of fact. If the Commonwealth Ports Authority determines that a master concession is in the best interests of the Commonwealth, it shall enter into such a contract with one person for a term which may be up to 20 years from the effective date of the concession, plus extensions beyond 20 years in the event of default by the Commonwealth Ports Authority, in the manner provided in 4 CMC § 2206. The Commonwealth Ports Authority may lease, rent, or let any land or building or any part thereof or any interest therein, situated in any port of entry, to any person to establish a master concession, and may engage in such other conduct as is appropriate or incident to the award, execution or enforcement of such a concession. The concession agreement may grant such rights in addition to those set forth in 4 CMC § 2201(c), and contain such other terms and conditions, not in conflict with the provisions of this chapter, as the Commonwealth Ports Authority deems appropriate, including, without limitation, concession fees, hours of business, standards of operation, reasonableness of prices charged and appropriate record keeping, cash handling and audit procedures all in accordance with generally accepted accounting principles. On behalf of the Commonwealth government, and notwithstanding any other provision of law, the Commonwealth Ports Authority may waive the imposition of all taxes and business license and permit fees and requirements on the holder of a master concession, its property or its customers, relating to operations under concession, except for the concession fee, the license fee provided for in 4 CMC § 2208, and a business gross revenue tax in accordance with the terms set forth in 4 CMC § 2202(h).

(b) Upon expiration of any master concession, the Commonwealth Ports Authority may enter into another master concession with one person for a term of up to 20 years, plus extensions in the event of default by the Commonwealth Ports Authority, if, based upon any factors it may deem appropriate, and without any requirement to hold hearings, take evidence or make findings of fact, if it deems such conduct to be in the best interests of the Commonwealth. If the Commonwealth Ports Authority enters into a successive master concession, it shall do so in the manner provided in 4 CMC § 2206.

(c) Notwithstanding any other provision of law, if the Commonwealth Ports Authority awards a master concession, the provisions of this chapter relating to duty-free retail concessions and non duty-free concessions shall be superseded, insofar as they are inconsistent with the provisions for a master concession, for such time as a master concession is in effect; and the Commonwealth Ports Authority shall, apart from the master concession, confer no right upon, nor suffer nor allow, any person to use any port of entry to offer to sell or sell duty-free or any other type of merchandise, except as specifically provided in 4 CMC § 2201(c), or to deliver duty-free or any other type of merchandise, sold in less than a wholesale quantity, to or for the direct or indirect benefit of a departing individual (regardless of the time or place of the individual's departure and regardless of the time or place of the order and/or payment for the merchandise).

(d) A master concession shall not become effective in any manner that would impair the rights granted to any person by the Commonwealth Ports Authority, the Mariana Islands Airport Authority, the Commonwealth or the government of the Trust Territory of the Pacific Islands under any existing contract.

Source: PL 4-60, § 2 (§ 2205).

Commission Comment: With respect to the references to the "Commonwealth Ports Authority," see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the Commission comment to 1 CMC § 2001.

§ 2206. Award of Concession by Negotiation.

(a) Notwithstanding any other provision of law, if the Commonwealth Ports Authority determines after public notice and a public hearing that the award of a duty-free retail concession, non duty-free concession or master concession by negotiation with the then-incumbent concessionaire is, in its sole judgment, in the best interest of the Commonwealth, it shall offer and award the duty-free retail concession, non duty-free concession or master concession to the then-incumbent concessionaire by negotiation, if the Commonwealth Ports Authority and the then-incumbent concessionaire agree upon terms and conditions for the contract. In making this determination, the Commonwealth Ports Authority may take into consideration any factors it may deem appropriate, but need not take evidence or make findings of fact. For purposes of the first duty-free retail concession or non duty-free concession at a port of entry, or the first master concession, the "then-incumbent concessionaire" shall be the then-incumbent duty-free retail concessionaire at Saipan International Airport.

(b) If the Commonwealth Ports Authority determines that it would not be in the best interests of the Commonwealth to offer a duty-free retail concession, non duty-free concession, or master concession to the then-incumbent concessionaire, or the Commonwealth Ports Authority and the then-incumbent concessionaire are unable to agree upon applicable terms and conditions, the Commonwealth Ports Authority may award the duty-free retail concession, non duty-free concession, or master concession pursuant to the procedures set forth in 4 CMC §§ 2202 or 2203.

Source: PL 4-60, § 2 (§ 2206).

Commission Comment: With respect to the references to the "Commonwealth Ports Authority," see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the Commission comment to 1 CMC § 2001.

§ 2208. License Fee.

There shall be paid to the Commonwealth government as a license fee the sum of $1,000 each year by any person who is granted a privilege to establish, operate, and maintain a duty-free retail concession in any port of entry, or a master concession. The license fee may not be increased during the term of a concession granted by the Commonwealth Ports Authority.

Source: PL 4-60, § 2 (§ 2208).

Commission Comment: With respect to the reference to the "Commonwealth Ports Authority," see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the Commission comment to 1 CMC § 2001.

§ 2209. Regulations.

The Commonwealth Ports Authority and Director of Finance may each promulgate such rules and regulations as it deems necessary to carry out the provisions and intent of this chapter.

Source: PL 4-60, § 2 (§ 2209).

Commission Comment: With respect to the references to the "Commonwealth Ports Authority" and the "Director of Finance," see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the Commission comment to 1 CMC § 2001.

§ 2212. Use of Funds.

Notwithstanding any other provision of law, the Commonwealth Ports Authority may, in a concession agreement and/or bond indenture, provide for any or all funds due or payable to the Commonwealth Ports Authority from any source to be paid to or deposited with a trustee provided for by such concession agreement and/or bond indenture, for use and distribution by the trustee in accordance with the provisions of such concession agreement and/or bond indenture; and such amounts may be paid, deposited, used and distributed as provided for by the concession agreement and/or bond indenture.

Source: PL 4-60, § 2 (§ 2212).

Commission Comment: With respect to the references to the "Commonwealth Ports Authority," see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the Commission comment to 1 CMC § 2001.