



Competition
Commission
SINGAPORE

Section 44 of the Competition Act (Cap. 50B)

Notice of Decision issued by Competition Commission of Singapore (CCS)

Application for Decision by Japan Airlines International Co., Ltd and American Airlines, Inc of their Alliance Agreement and Joint Business Agreement

4 July 2011

Case number: CCS 400/008/10

Confidential information in the original version of this Decision has been redacted from the published version on the public register. Redacted confidential information in the text of the published version of the Decision is denoted by [X]

Executive Summary:

1. CCS is of the view that, while the Agreements fall within the scope of the section 34 prohibition in the Competition Act (Cap 50B) (“the Act”) because they involve joint determination and coordination of all commercial aspects of the Parties’ transpacific operations, including prices for Singapore-North America Origin & Destination (O&D) city-pairs, the Parties have established that the net economic benefit exclusion applies to the Agreements.
2. Therefore, by operation of section 35 of the Act read with paragraph 9 of the Third Schedule to the Act, the Agreements are excluded from the section 34 prohibition of the Act.

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I INTRODUCTION

1. This Decision sets out CCS' analysis and decision, pursuant to an application made under section 44 of the Competition Act (Cap 50B) ("the Act"), on whether the Alliance Agreement and Joint Business Agreement ("JBA") (collectively referred to as "the Agreements") between Japan Airlines International Co., Ltd. ("JAL") and American Airlines Inc. ("American") infringes the prohibition under section 34 of the Act. CCS' analysis and decision is based on the submissions and information provided by the parties to the application for decision and from relevant third parties.¹

II THE FACTS AND PARTIES' SUBMISSIONS

II.1 The Application for Notification of Decision (the "Application")

2. American and JAL (collectively referred to as "the Parties") entered into the Agreements on 12 February 2010 and implemented them on 1 April 2011, save for the elements of the Agreements relating to Singapore, the implementation of which were subject to receipt of CCS' clearance of the same.
3. On 6 Dec 2010, the Parties notified the Agreements to CCS under section 44 of the Act. The purpose of the Application was for a decision by CCS on whether the Agreements would infringe section 34 of the Act. The Parties claim that the Agreements fall outside the purview of the section 34 prohibition as the Agreements will not result in any appreciable adverse effects on competition in Singapore and will also benefit from the net economic benefit ("NEB") exclusion.
4. A summary of the Application and an invitation for comments was placed on CCS' public register on 30 December 2010.² CCS did not receive any comments from the public. CCS also invited relevant third parties such as travel associations, regulators of the industry, key competitors and top corporate customers of the parties to comment on the Application. Fourteen of these third parties responded to CCS' request. No adverse comments were received in relation to the Agreements.

¹ CCS approached customers and competitors of the Parties for comments and views on the Agreements.

² Refer to paragraphs 96-98, below for responses received from third parties.

II.2 Singapore's Aviation Landscape³

5. Singapore is a liberal aviation port. Airlines have full flexibility to respond to market conditions and opportunities. Passengers and shippers have the widest possible travel and flight options at competitive rates. Singapore is also a popular transfer hub for international travellers and shippers. Foreign airlines operating in and out of Singapore use Singapore as a hub for services to the region and beyond.
6. To date, Singapore has established Air Services Agreements with more than 100 countries and territories, including about 40 Open Skies Agreements. Open Skies Agreements allow carriers to operate any number of flights between and beyond both signatory states, enabling them to tap traffic from third countries to improve the commercial viability of scheduled flights.

II.3 Airline alliances

7. There are currently three main global airline alliances in the world, namely **oneworld** alliance, Star Alliance and SkyTeam. The Parties belong to the **oneworld** alliance.
8. The European Commission ("EC") and the United States Department of Transport ("DOT") describe the broad spectrum of cooperation that exists between partners of global alliances today in its joint report on transatlantic alliances (see Joint Alliance Report at ¶¶ 19-20):⁴

"Members of the global alliances coordinate on a multilateral basis to create the largest possible worldwide joint network. The global alliance model generally applies to the entirety of member airlines' networks and offers a much wider scope for revenue synergies. While a "basic" level of cooperation is required by members of a global alliance – generally involving standard code-share agreements, cooperation on Frequent Flyer Programs and lounge access – some alliance members seek higher levels of cooperation to enhance the benefits of the alliance.

Although alliance members cooperate on many aspects of the customer experience, they may nonetheless remain competitors, as the level of integration between and among the members of the alliance varies greatly...."

³ CAAS' website at:

www.caas.gov.sg/caas/en/About_CAAS/Our_Strategic_Thrusts/Air_Hub_Development/Singapore_as_an_Aviation_Hub/index.html (last accessed on 15 March 2011).

⁴ Transatlantic Airline Alliances: Competitive Issues and Regulatory Approaches—A report by the European Commission and the United States Department of Transportation, 16 November 2010. ("Joint Alliance Report").

9. At one end of the spectrum of cooperation are the basic, arms-length arrangements such as code-sharing arrangements. At the other end are highly integrated joint ventures (“JVs”) which include revenue and cost sharing. The Agreements belong to the latter category. For regulatory reasons, mergers between airlines from different countries are not common.
10. In the transatlantic markets, there are currently three such integrated joint ventures. These are between Air Canada, Lufthansa, and United-Continental of the Star Alliance; American, British Airways, and Iberia of the oneworld alliance; and Air France-KLM, Alitalia, and Delta Airlines, Inc. (“Delta”) of the Sky Team. The EC and DOT note that since ownership and control restrictions will remain to limit the freedom of carriers to merge, and given that alliances result in significant benefits for carriers, global alliances and immunised JVs seem likely to continue to play an important role in the transatlantic markets.
11. In the transpacific markets, CCS notes that there are currently two integrated joint ventures between Delta and Korean Air of the Sky Team and between United Airlines, Inc. (“United”) and Asiana.⁵ The DOT and the Japanese Minister of Land, Infrastructure, Transport and Tourism (“MLITT”) have also recently approved two more integrated joint ventures. These are the joint ventures between the Parties (i.e. the Agreements) and another between United, Continental and All Nippon Airways (“ANA”). United, Continental, and ANA have also made an Application for Decision to CCS for their joint venture.⁶ The table below, taken from the DOT Show Cause Order on the US-Japan Alliance cases,⁷ provides an overview of the competitive landscape on the US-Asia market.

⁵ U.S.-Japan Alliance Case Docket DOT-OST-2010-0059, Show Cause Order, Issued by the Department of Transportation on the 6 October, 2010 (“DOT Show Cause Order”).

⁶ CCS 400/001/11.

⁷ DOT Show Cause Order.

Table 1
Onboard Share in the U.S.-Asia¹⁷ Market

Pre-transaction	Passengers	Share	Post-transaction	Passengers	Share
Delta Korean (immunized)	2,794,877	27.6%	ANA, Asiana, Continental/Continental Micronesia, United (immunized)	2,998,260	29.6%
Asiana, ¹⁸ United (immunized)	1,821,685	18.0%	Delta, Korean (immunized)	2,794,877	27.6%
JAL/JALways	1,239,218	12.2%	American, JAL/JALways (immunized)	1,643,681	16.2%
Continental/Continental Micronesia ¹⁹	779,742	7.7%	Cathay Pacific	643,734	6.4%
Cathay Pacific	643,734	6.4%	China Airlines	508,176	5.0%
China Airlines	508,176	5.0%	EVA Air	460,879	4.5%
EVA Air	460,879	4.5%	Other Traffic	1,080,564	10.7%
American	404,463	4.0%			
ANA	396,833	3.9%			
Other Traffic	1,080,564	10.7%			
Total	10,130,171	100.0%	Total	10,130,171	100.0%

Source: T-100 traffic data for the 12 months ended December 2009

12. The EC and DOT note that the stated goal of these integrated joint ventures is to become effectively indifferent to which aircraft carries a passenger physically, i.e. they seek “metal neutrality” in their cooperation. The EC and DOT also note that this form of cooperation is effectively a close substitute to a merger because it typically involves full coordination of the major airline functions on the affected routes, including scheduling, pricing, revenue management, marketing, and sales.

13. The EC and the DOT also recognise in their joint report that such integrated airline alliances bring about potential benefits to consumers such as lower costs and increased capacity through increased density, reduction of double marginalization, fare combinability, better schedules, more seamless customer experience and frequent flyer program integration.

II.4 The Parties

II.4.1 Japan Airlines International Co., Ltd

14. JAL is a Japanese airline that is a wholly-owned subsidiary of Japan Airlines Corporation. The company also conducts business under the names Japan Airlines and JAL. JAL is a major Asian carrier and has also been a member of the oneworld alliance since 2007.

15. JAL is principally engaged in providing scheduled and non-scheduled international and Japanese domestic air transportation of persons, property and mail. JAL serves points in Asia (including Singapore), Oceania, the Americas and Europe. It has code-sharing and other cooperative arrangements mainly with its **oneworld** airline alliance partners. It also has some similar arrangements with other selected airlines.

II.4.2 American Airlines, Inc

16. American is a U.S. airline that is a wholly-owned U.S. subsidiary (incorporated in the State of Delaware) of AMR Corporation. The company also conducts business under the names American Airlines and AA. American is a founding member of the **oneworld** alliance.

17. American is principally engaged in providing scheduled and non-scheduled international and U.S. domestic air transportation of persons, property and mail. American and its affiliates serve 250 cities in 40 countries with, on average, more than 3,400 daily flights. American has code-sharing and other cooperative arrangements mainly with its **oneworld** airline alliance partners. It also has some similar arrangements with other selected airlines, but not in any Singapore air transport markets.

II.5 Cooperation between the Parties prior to the Agreements

18. The Parties have had a code-sharing relationship since 1999. American serves just a few transpacific routes with its own aircraft; most of its Asian services are conducted via code-sharing with JAL.

19. With respect to the Singapore markets, American does not operate its own aircraft to and from Singapore. Instead, it offers services to and from Singapore via code-sharing with JAL and Cathay Pacific.⁸ JAL operates between Singapore and Japan using its own aircraft, and code-shares with American for flights between Singapore and the United States via Japan.

20. A standard code-share agreement allows for certain seats on a flight operated by one carrier to be also marketed by another carrier under its two-letter designator code. Partner carriers do not coordinate on capacity, price or marketing of these code-share flights. The Parties submit that carriers remain competitors on a code-share route.

⁸ American and Cathay Pacific are fellow members of the **oneworld** alliance.

II.6 The Agreements

II.6.1 The Parties' submission on the background to enacting the Agreements

21. On 11 December 2009, the United States and Japan entered into a Memorandum of Understanding that eliminated longstanding restrictions on competition between the U.S. and Japan by bringing into force an Open Skies Agreement. On 25 October 2010, the U.S. and Japan signed the Open Skies Agreement. Against the backdrop of this liberalised aero political environment between the U.S. and Japan, the Parties entered into the Agreements.
22. American serves just a few transpacific routes with its own aircraft; most of its Asian services are conducted via code-sharing with JAL. Delta and United, which merged with Continental, have greater transpacific operations to/from the U.S. than American. In addition, each of Delta and United is a party to a joint venture with a Korean carrier that covers U.S.-Asia services. Star Alliance members United/Continental and All Nippon Airways ("ANA") are also parties to a joint venture similar to the American/JAL Joint Venture. Both joint ventures — the United/Continental-ANA Joint Venture and the American-JAL Joint Venture — have been approved by the MLITT and the DOT.
23. While the Parties have had a code-sharing relationship since 1999, they submit that their experience under this code-sharing arrangement as well as other code-sharing relationships involving other carriers has shown that more highly integrated operations generate more substantial consumer benefits. Carriers that are parties to a code-sharing arrangement have commercial incentives to act opportunistically for their own short-term financial advantage, to the detriment of the efficiencies and consumer benefits that could otherwise be delivered by a more integrated alliance.
24. On the other hand, in a more integrated metal-neutral, revenue-sharing alliance, parties are indifferent as to which party provides services in connection with transportation marketed in the alliance, allowing carriers to pool their resources and optimize joint operations. Since parties are no longer working at cross-purposes, such optimization will produce significant efficiencies and consumer benefits that will far outweigh any competitive restrictions. The efficiencies submitted by the Parties are further elaborated in the latter part of this decision.

II.6.2 The Parties' submission on scope of the Agreements

25. The Agreements broadly relate to the international air transportation of passengers. The Parties submit that they have entered into the Agreements with a view to integrating their transpacific operations and essentially operating as a single carrier

with respect to their transpacific services. According to the Parties, they will not merge in a corporate sense or form a separate corporate entity for the purposes of effecting the intended objects of the Agreements.

26. The Alliance Agreement was effective from 12 February 2010 and will continue to be in effect for [X].

II.6.2.1 The Alliance Agreement

27. The Alliance Agreement sets out the general scope of the alliance between the Parties and the areas of cooperation under the alliance. One of the key areas of cooperation is the creation and implementation of a joint transpacific business in accordance with the JBA.

28. Pursuant to sections 2.2 and 2.3 of the Alliance Agreement, the coordination between the Parties will include the following areas:

- i. Code-sharing: Each of the Parties will code-share on the services operated by the other to the extent possible.
- ii. Pricing: The Parties will cooperate in establishing fares, rates and pricing strategies for services provided under the Alliance Agreement and JBA.
- iii. Yield Management: The Parties will cooperate on inventory control and yield management as those functions relate to services provided under the Alliance Agreement. They will provide each other with access to their respective yield management systems and will consult closely in the yield management process.
- iv. Schedules: The Parties will jointly plan their respective schedules and related connecting services in order to maximize and optimize feasible routings and service options available to consumers and to minimize connecting times for the benefit of passengers.
- v. Marketing and Product Offering: The Parties will jointly market, promote and advertise the services covered by the Alliance Agreement. They will also seek to harmonize their service standards to provide seamless transportation to passengers. In addition, they will jointly develop new services where appropriate. The carriers may seek to use an alliance mark or brand to represent their alliance and to link their frequent flyer programs.

- vi. Frequent Flyer Programs: The Parties will offer reciprocal frequent flyer programs to allow members of one carrier's frequent flyer program to accrue mileage and redeem awards on the services of the other.
- vii. Sales: The Parties will jointly determine the most efficient strategies for selling alliance services, coordinating their sales forces and allocating their sales resources.
- viii. Airports: The Parties will determine how to most efficiently utilize their facilities at the common airports they serve, including sharing facilities, where appropriate. They will also provide airport lounge and club access in accordance with their lounge access agreement.
- ix. Cost Reduction: The Parties will coordinate their efforts to reduce costs and redundancies in a variety of areas, including but not limited to fuel purchasing, aircraft acquisition and design and purchase of replacement parts. They will also harmonize their IT systems.

II.6.2.2 The Joint Business Agreement

29. The JBA, which is at the heart of the alliance between the Parties, is premised on the sharing of transpacific revenue net of certain costs between the Parties.
30. The JBA covers all non-stop passenger services between Asia and North America ("non-stop transpacific services") and routes within Asia⁹ or North America¹⁰ connecting to and from the non-stop transpacific flights ("connecting services"). According to the Parties, the JBA will create a highly-integrated operation covering the Parties' transpacific networks for transportation between North America and Asia.
31. With respect to connecting services, while the Parties intend to coordinate the schedules of their nonstop transpacific flights and connecting flights to minimize connecting times for passengers, local intra-Asia O&D traffic is not covered under the scope of the Agreements.
32. The JBA includes cooperation of the Parties in the following areas:
- i. Revenue Sharing: The JBA provides for sharing of revenue from passenger fares and other agreed revenue. All passenger revenue on the transpacific segment – even if it is part of an itinerary with points outside North America or

⁹ Asia includes [X].

¹⁰ North America includes [X].

Asia – is part of the revenue sharing pool. The net result will be that the Parties share in substantially all of their total transpacific revenue. Revenue from the JBA will be shared based on formulas that have been agreed upon; the specific figures for those formulas will be negotiated by the Parties. The revenue shared will be net of certain cost attributed to their joint non-stop transpacific services and intra-Asia or intra-North America services that connect to their joint non-stop transpacific services.

- ii. [X].
- iii. Revenue Management/Capacity Planning: The Parties will manage capacity planning and published pricing by consensus. As new growth and capacity are added over time, the Parties will strive to maintain a balance between them, allocating aircraft in a manner that maximizes efficiencies. Neither party will have the right to force the other party to reduce any service operated at the time the JBA is implemented.
- iv. Sales/Marketing: The Parties will have a contractual obligation to sell transportation on the joint network without preference to which party actually operates the flight. Each party will align its sales forces with the other, where possible.
- v. Schedule Coordination: The Parties will coordinate transpacific and connecting schedules in order to minimize passenger connecting time and maximize passenger convenience and service. The Parties will jointly plan transpacific services.
- vi. Revenue Planning: The Parties will coordinate the development of revenue plans.
- vii. Joint Product Development and Quality Control: The Parties will consult on product development and seek to align passenger handling policies and service procedures. The Parties will coordinate on quality control measures.
- viii. Frequent Flyer Programs: The Parties will offer separate but fully reciprocal frequent flyer programs.
- ix. Cost Synergies: The Parties will work together to reduce costs in a wide range of operational areas.
- x. Governance: [X].

II.7 Approvals and anti-trust immunity from authorities in other jurisdictions

33. On 6 October 2010, the DOT issued a Show Cause Order tentatively approving the alliance. A final order for immunity from U.S. antitrust laws (“U.S. Final Order”) was issued on 10 November 2010. On 22 October 2010, the MLITT issued a final order approving the agreements and immunizing them from the Japanese antitrust laws. [REDACTED]¹¹¹².

II.8 Implementation of the Agreements

34. The Parties implemented the Agreement on 1 April 2011, save for the elements of the Agreements relating to Singapore, the implementation of which were subject to receipt of CCS’ clearance of the same. A number of changes have been planned for the parties’ transpacific business, and most of these changes became effective on or about 1 April 2011.

35. The Parties submit that they have aligned their 2011 summer schedules to achieve reduced connection and overall travel times, a better choice of flight times and increased connection opportunities to destinations beyond gateway cities. Furthermore, beginning in the 2011 summer season, the Parties submit that they will improve customer experience through content sharing on the airlines’ websites, online booking capability and check-in regardless of which airline is being flown, more aligned operational policies and procedures, facility co-locations and more coordinated pricing and programs for travel agencies and corporations.

36. The Parties have made this Application under section 44 of the Competition Act, in relation to the section 34 prohibition. On the basis of the Parties’ submission, CCS proceeded to assess the Notification accordingly.

III LEGISLATIVE FRAMEWORK

III.1 Section 34 Prohibition

37. Section 34 prohibits agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition within Singapore.

¹¹ [REDACTED]

¹² [REDACTED]

38. Section 34(2) of the Act states that “... agreements ... may, in particular, have the object or effect of preventing, restricting or distorting competition within Singapore if they —

- i. directly or indirectly fix purchase or selling prices or any other trading conditions;
- ii. limit or control production, markets, technical development or investment;
- iii. share markets or sources of supply ... ”

39. An assessment of whether an agreement infringes the section 34 prohibition requires an analysis of whether an agreement between undertakings has an anticompetitive object or actual preventive, distortive or restrictive effects on competition. Further as a matter of enforcement policy, CCS will pursue infringing agreements if they have an appreciable adverse impact on competition in Singapore.

III.2 The Net Economic Benefit exclusion

40. The NEB exclusion, set out in section 35 of the Act read with paragraph 9 of the Third Schedule to the Act, provides that the section 34 prohibition shall not apply to: “ any agreement which contributes to –

- a) improving production or distribution; or
- b) promoting technical or economic progress,
but which does not –
 - i) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; or
 - ii) afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question.”

41. The burden of proof in establishing the NEB exclusion lies on the party claiming it.¹³

III.3 Application of section 34 prohibition to undertakings

42. The section 34 prohibition applies to “agreements between undertakings”. Section 2 of the Act defines “undertaking” to mean “any person, being an individual, a

¹³ Regulation 21 of the Competition Act (Cap 50B), Competition Regulations 2007.

body corporate, an unincorporated body of persons or any other entity, capable of carrying on commercial or economic activities relating to goods or services.” The Parties are corporate entities carrying on commercial and economic activities relating to air transport services and fall within the definition of “undertakings” under the Act. CCS is of the view that the Agreements are agreements between undertakings, which means that they will be subject to the section 34 prohibition.

IV CCS’ ASSESSMENT

IV.1 Theory of Harm

43. As stated in section II.6.2 above, the Agreements involve the Parties integrating their transpacific operations and essentially operating as a single carrier, whereby they will cooperate on key parameters of competition, including pricing. These elements of cooperation may amount to price-fixing; output control; and/or market sharing that prevent, restrict or distort competition in various Singapore O&D routes covered by the Agreements.
44. In assessing this Theory of Harm, CCS also considers any net economic benefits which may arise from the Agreements.

IV.2 Parties’ submission

IV.2.1 The relevant markets

45. The Agreements broadly relate to the international air transportation of passengers.
46. The Parties note that in the DOT’s Show Cause Order,¹⁴ the DOT conducted three levels of analysis in respect of the Parties’ application for immunity in the U.S. For the purposes of this Application therefore, the Parties submit three levels of analysis for the relevant competitive markets, comprising a broad network level, a country-pair level and a city-pair level.
47. These analyses demonstrate that (i) **oneworld** has by far the smallest share of bookings made by the global alliances; (ii) when data is further examined on a country-pair basis, the shares of the Parties and the **oneworld** alliance are the lowest; and (iii) at a narrower city-pair level of analysis, the Parties and **oneworld** are clearly the smallest in practically all of the relevant U.S.-Singapore city-pair markets.

¹⁴ U.S.-Japan Alliance Case Docket DOT-OST-2010-0059, Show Cause Order, Issued by the Department of Transportation on the 6 October, 2010

48. Nevertheless, in view of CCS' approach in determining the relevant markets in cases CCS 400/002/06 and CCS 400/003/06,¹⁵ the Parties submit that the city-pair level analysis should be the prime analytical tool for this Application, although the network level and country-pair analyses might also be instructive.

IV.2.2 Object or Effect the Prevention, Restriction or Distortion of Competition within Singapore

49. The Parties consider that the provisions of the JBA referred to in paragraph 32 may raise questions of compatibility with the section 34 prohibition. However, the Parties submit that the Agreements will not result in any appreciable adverse effects on competition in Singapore. In this connection, the Parties provided information in relation to the market shares pertaining to passenger bookings on the three levels (network, country, and city-pair) using Marketing Information Data Transfer ("MIDT") data. See Appendix A for the Parties' submissions in relation to market shares.

IV.2.3 Net Economic Benefit

50. The Parties take the view that the Agreements are likely to fall under the NEB exclusion. While the integration of the Parties' operations and services as contemplated in the Agreements may not contribute directly to improving production or promoting technical or economic progress, the efficiencies the Agreements create will contribute to improving the distribution of air transportation services.

51. The Parties submit that the Agreements are based on metal neutrality or indifference as to which airline actually carries a customer, allowing the Parties to pool their resources and optimize joint operations. The Parties submit that this proposed arrangement between the Parties is, however, only possible through provisions in the Agreements detailing how the Parties' operations will be integrated, including joint planning and management of capacity, pricing and revenue management. As such, while the Agreements may contain restrictions, such restrictions are necessary in order to attain the efficiencies contemplated by the Agreements referred to in the paragraph above.

52. The Parties submit that as a result of the efficiencies the Agreements attain, rather than eliminating competition, **oneworld** will become a stronger competitor against the other two global alliances—SkyTeam and Star Alliance—which currently have

¹⁵ Qantas & British Airways Restated Joint Services Agreement, CCS 400/002/06, and Qantas & OrangeStar Alliance Co-operation Agreement, CCS 400/003/06.

significantly larger U.S.-Asia market shares. The approval of the proposed alliance is thus vital for **oneworld** to compete effectively with Star Alliance and SkyTeam.

IV.2.3.1 Enhanced inter-alliance competition

53. The Parties submit that transpacific coordination between them—key members of **oneworld**—will add a credible competitive element to the global alliance picture in Singapore. Today, **oneworld** lags behind the other two global airline alliances with respect to transpacific presence and market shares.

54. The Parties outline that on U.S.-Singapore markets, Star Alliance's shares dwarf those of **oneworld**. In the top 25 U.S.-Singapore markets, **oneworld**'s share exceeds Star Alliance only in one market—American's headquarters and primary hub Dallas/Fort Worth—and even there, Star Alliance has a sizeable share. The Parties submit that the joint business will allow the Parties to grow stronger and compete more effectively against key Star Alliance and SkyTeam members; and that they will be able to achieve efficiencies and enhance their services in ways that will benefit and attract customers.

IV.2.3.2 Metal neutrality

55. The Parties submit that the Agreements are premised on metal neutrality, or a commercial indifference as to which airline actually operates the aircraft for an itinerary marketed by the alliance, as they will share all transpacific revenues.

56. Metal neutrality maximizes consumer benefits by removing each carrier's incentive to act opportunistically for its own short-term financial advantage, to the detriment of the efficiencies and consumer benefits that could otherwise be delivered by the alliance. In other words, revenue-sharing and metal neutrality provide the Parties with commercial incentives to more closely integrate than will otherwise be the case. The experience of code-share partners over the years demonstrates that, for the above reasons, closer integration will generate more substantial efficiencies and consumer benefits.¹⁶

57. For example, the Parties each operate a daily nonstop flight between New York-JFK and Tokyo-Narita, and these flights depart within 30 minutes of each other.¹⁷ The Parties submit that without a revenue-sharing joint venture, there will be no

¹⁶ See, e.g., Warren L. Dean, Jr. & Jeffrey N. Shane, *Alliances, Immunity, and the Future of Aviation*, 22 The Air & Space Lawyer 1 (Nov. 4, 2010) enclosed in Annex 14 of the Parties' Form I.

¹⁷ AA 167 departs New York at 1130, and arrives in Tokyo at 1535, while JL 5 departs New York at 1200 and arrives in Tokyo at 1620.

incentive for either carrier to change its departure time to offer a wider range of options to customers, as it will likely result in lower onboard revenue for the carrier moving its flight away from the “peak” time, even though it will generate more revenue for the two carriers combined.

58. The parties submit that revenue-sharing in a metal-neutral joint venture removes this inefficient disincentive, allowing the carriers to spread out their operations, giving local passengers more choice and flexibility, while providing enhanced connecting opportunities for connecting passengers, including Singapore customers. The Parties provide the example of their Chicago-Tokyo and Los Angeles-Tokyo overlapping flights which currently operate at nearly the same peak hour time. They plan to spread out these overlapping flights.
59. The Parties submit that while there is no metal overlap between the Parties on most of the behind/beyond segments of transpacific itineraries, the benefits of metal neutrality across the Pacific will also flow to behind/beyond passengers, including Singapore passengers. For example, metal neutrality will cause the Parties to combine their transpacific networks in a seamless manner, with a view towards making their joint transpacific services as efficient and convenient as possible. Passengers on behind/beyond routes such as Singapore will benefit from the network schedule optimization undertaken by the Parties. Also, efficiencies that the Parties gain on transpacific services, such as economies of scale and density, will lower costs for the airlines, allowing them to pass such cost savings on to all customers.
60. The Parties submit that they also expect revenue sharing and metal neutrality to spur capacity growth on the transpacific flights, which could result in more options and improved connectivity for Singapore passengers. Metal neutrality means that neither JAL nor American have a commercial reason to route a Singapore passenger over a particular U.S. gateway city in order to ensure that the passenger flies on its own aircraft across the Pacific, even if such routing is less convenient and more time-consuming for the passenger.
61. The Parties also set out that they are planning to significantly expand their code-sharing operations under the alliance. For example, in January 2011, American began code-sharing on JAL-operated flights between Singapore and Haneda, which will soon allow a convenient connection to American’s new Haneda-New York service. Absent metal neutrality on the transpacific flights, JAL might not steer Singapore passengers to the American-operated Haneda-New York flight, preferring instead to keep them on JAL-operated Singapore-Narita-New York flights. The Parties suggest that this example illustrates that Singapore passengers

could lose attractive options and increased flexibility if the Parties do not implement their joint business.

IV.2.3.3 Combinable Fare and Elimination of Double Marginalisation

62. The Parties submit that a number of empirical studies have concluded that more integrated alliances deliver lower fares than code-sharing and inter-lining arrangements alone.¹⁸
63. First, the Parties submit that the JBA will benefit consumers through fare combinability, i.e., the ability to put together itineraries using one carrier for the outbound transpacific segment and another carrier for the return. Commercial and legal realities prevent airlines from offering combinable fares absent metal neutrality. While **oneworld** has been able to test limited fare combinability in smaller non-home countries (e.g., Italy, where no **oneworld** carrier is based), diversion and disruption of yield management have prevented the alliance from moving forward with this program on a larger scale.
64. Absent fare combinability, the Parties outline that the only way for a customer to enjoy the benefits of cheaper round-trip fares is to select a single-metal online itinerary, limiting the number of frequencies available. If a customer wants the benefit of a combined schedule, one-way fares must be used, resulting in a far higher overall price. Fare combinability gives the customer the best of both worlds through access to the alliance with a combined, broader schedule and discounted fares.
65. The Parties submit that these benefits, however, cannot be delivered without a highly-integrated joint venture. Yield management of round-trip fares requires a carrier to take expected load factors on both segments into consideration.¹⁹ Absent an exchange of yield management information, the Parties consider it will be difficult to ensure balance in city-pairs where both carriers have a significant presence.

¹⁸ See, e.g., Jan K. Brueckner and W. Tom Whalen, The Price Effects of International Airline Alliances, *Journal of Law & Economics*, 43: 503-545 (2000); W.T. Whalen, A Panel Data Analysis of Code Sharing, Antitrust Immunity, and Open Skies Treaties in International Aviation Markets, *Review of Industrial Organization* 30: 39-61 (2007) (finding, in a review of international airline cooperation between 1990 and 2000, that U.S. DOT-immunized alliances are associated with 50% higher passenger volumes and 16% to 21% lower fares than non-immunized alliances) enclosed in Annex 14 of Form 1.

¹⁹ For example, a carrier may hold open low-value inventory on a relatively full flight if it is linked to the sale of a return flight expected to depart with a large number of empty seats.

66. Secondly, the Parties submit that the JBA will also benefit consumers by eliminating or reducing double marginalization, i.e., the practice of each carrier in a multi-carrier itinerary adding its own mark-up to the price. In its Show Cause Order, the DOT observes that “studies have pointed to fare reductions and welfare gains that occur when cooperating alliances eliminate or reduce two separate mark-ups, or double marginalization, on interline routes.”²⁰ A recent empirical study by Whalen (2007)²¹ also shows that “online” fares (i.e. fares of services operated by a single carrier on both legs) are 16-22% lower compared to inter-line fares. Fares associated with immunized alliances have fares 13-20% lower than interline fees while fares associated with non-immunized code-sharing were only 5-9% lower than inter-line fares.

67. The Parties submit that partners in a revenue-sharing joint venture have the commercial incentives to eliminate or reduce such double marginalization by jointly setting prices, engaging in metal-neutral revenue sharing and eliminating the payment of code-share commissions to the marketing carrier on such routes.

68. For example, [X].

IV.2.3.4 Expanded and Enhanced Route and Schedule Options

IV.2.3.4.1 *New transpacific routes and services*

69. The Parties submit that the proposed JBA will facilitate more transpacific flights for oneworld customers, which will benefit both local and connecting passengers.

70. The Parties submit that the JBA will strengthen the Parties’ ability to maintain and expand their nonstop services on transpacific routes, particularly given the high cost of providing international air services and an extremely challenging economic environment in which airline industry losses routinely reach into billions of dollars. The JBA will allow the Parties to: expand their networks; American will be able to serve more points in Japan and Asia through JAL’s intra-Japan and intra-Asia flights; and JAL will be able to serve more points in North America through American’s intra-U.S. and intra-North America flights. The carriers will gain feeder traffic from their expanded network, thereby allowing them to grow capacity on their transpacific flights.

²⁰ U.S. DOT Show Cause Order.

²¹ See W.T. Whalen, A Panel Data Analysis of Code Sharing, Antitrust Immunity, and Open Skies Treaties in International Aviation Markets, *Review of Industrial Organization* 30: 39-61 (2007).

71. The Parties submit that econometric and other empirical analyses of transatlantic airline alliances predict that the Parties will add more seats across the Pacific to accommodate the larger volumes of connecting traffic generated by their expanded network. These analyses indicate that integrated alliances increase their nonstop service on trunk routes, a trend that is particularly strong on hub-to-hub routes.²² There is abundant evidence that integrated transatlantic alliances have “added or expanded non-stop service between [their] U.S. and European hubs.”²³
72. The Parties also note that the DOT and the EC have each found that such alliances achieve economies of density from carrying more passengers and having better capacity utilization.²⁴ Specifically, the DOT and the EC concluded (see Joint Alliance Report at ¶¶ 99-100):

Perhaps one of the most fundamental potential benefits from consolidation or cooperation arises from economies of scale, or lower per-unit costs from an increased level of output. By participating in an alliance, airlines can enjoy lower per-passenger costs when they increase the number of passengers carried on their existing network, a phenomenon known as economies of density. When two airlines cooperate, by joining their respective feeder flows, the alliance may serve a larger pool of customers and can realise cost savings by carrying additional passengers over trunk routes.

73. The Parties submit that while economies of density provide advantages to airlines, consumers may realise some of the benefits as well. If markets are competitive and consumers are price-sensitive, firms may face an incentive to pass cost reductions along in an attempt to undercut their rivals’ fares. Furthermore, economies of density may incentivise carriers to increase capacity to meet demand, giving travellers more flight options and better timing of itineraries.

IV.2.3.4.2 *New Behind/Beyond Connectivity*

74. The Parties submit that the joint venture will also create better behind/beyond connectivity with an integrated American/JAL network. The Parties will market and sell each other’s behind/beyond flights as if such flights were their own. They will work together to make connections seamless and to optimize connecting time

²² See R. Bennett *et al.*, *International Airline Alliance Development* (July 2009), pp. 40-41 enclosed in Annex 14 of Form I

²³ See C. Shapiro & T. Sullivan, *Airline Antitrust Immunity*, DOT-OST-2004-19214, 7/6/05, p. 13 enclosed in Annex 14 of Form I.

²⁴ Transatlantic Airline Alliances: Competitive Issues and Regulatory Approaches—A report by the European Commission and the United States Department of Transportation, 16 November 2010. (“**Joint Alliance Report**”).

for passengers. JAL's network will add 65 unique points to American's Asia network, while American will add 232 unique points to JAL's network in North and South America. In total, this will create 15,080 new integrated airport-pairs.

75. These new and improved connections will allow **oneworld** to be more competitive with Star Alliance and SkyTeam on transpacific routes, as well as for global corporate accounts. Today, Star Alliance and SkyTeam have integrated hub operations at Seoul (United/Asiana and Delta/Korean) and fifth freedom hubs at Narita (United and Delta). **oneworld** has none. American currently serves only three cities in Asia with its own aircraft - Tokyo, Shanghai and Beijing; while JAL serves only six cities in North America using its own aircraft. By expanding and integrating the American/JAL network, consumers will enjoy the benefits of more robust network competition among the three global alliances, resulting in improved service and lower fares.
76. American has already announced its intention to begin a new service coincident with the start of the JBA from Los Angeles to eight other U.S. points. The Parties submit that this will create two new Singapore code-share routes and reduce significantly the travel time of passengers on six other Singapore code-share routes. In addition, another nine new Singapore routes will be created by domestic schedule changes by American, for a total of twelve new online O&D routes (based on minimum connecting times).
77. The two new online routes created by new services from Los Angeles are Singapore-Boise, Idaho via Tokyo and LAX and Singapore-Sacramento, California via Tokyo and LAX.
78. The nine new online routes involving Singapore created by American's schedule changes include:
 - i. Singapore – Aguascalientes, Mexico via Tokyo and Dallas/Fort Worth (DFW);
 - ii. Singapore – Charlotte, North Carolina via Tokyo and Chicago (ORD);
 - iii. Singapore – Evansville, Indiana via Tokyo and ORD;
 - iv. Singapore – Flint, Michigan via Tokyo and ORD;
 - v. Singapore – Jacksonville, Florida via Tokyo and DFW;
 - vi. Singapore – Kansas City, Missouri via Tokyo and ORD;
 - vii. Singapore – Quad City, Illinois via Tokyo and ORD;
 - viii. Singapore – Savannah, Georgia via Tokyo and DFW; and
 - ix. Singapore – San Angelo, Texas via Tokyo and DFW.

79. The six routes involving Singapore on which the travel time will be significantly decreased for passengers on JAL-operated transpacific services, because such passengers will be able to connect at Los Angeles instead of Chicago, are:

- i. [REDACTED];
- ii. [REDACTED];
- iii. [REDACTED];
- iv. [REDACTED];
- v. [REDACTED]; and
- vi. [REDACTED].

80. There are three additional routes where travel times will also decrease. These are:

- i. [REDACTED];
- ii. [REDACTED]; and
- iii. [REDACTED].

81. The Parties submit that the situation on gateway routes is more complicated. Until very recently, JAL operated two daily flights between Singapore and Tokyo, Narita. Now, JAL operates one daily flight between Singapore and Tokyo, Narita and a second daily flight between Singapore and Tokyo, Haneda. The shift from Narita to Haneda was implemented largely because Haneda is much closer to downtown Tokyo and is therefore very convenient for local passengers travelling between Singapore and Tokyo. In addition, the switch allows Singapore passengers to connect with new services operated by the Parties between Haneda and San Francisco and New York, respectively.

82. Furthermore, the Parties submit shifting one of the daily flights to Haneda has improved some connections. For example, if passengers connect through Haneda when travelling between Singapore and New York during the IATA 2011 summer season, they will save time when compared to the Narita connections in the IATA 2010 summer season. The connecting time for passengers travelling from Singapore to New York will be reduced by fifty-minutes, and the connecting time for passengers travelling from New York to Singapore will be reduced by five minutes. Also, Singapore business passengers can take advantage of the convenience of using the closer-in Haneda airport if they decide to stop over in Tokyo on their way to or from New York.

83. The Parties also submit that, as American continues to optimize its JFK-Haneda operation, there are seven new potential connections to Singapore via Tokyo and New York. While these are not necessarily new O&Ds, they are new for JFK. The cities include [X]. The Parties suggest this is a benefit to customers because it provides additional routing options and will in many cases diminish elapsed travel time.
84. On the other hand, the Parties outline that the shift to Haneda has lengthened some of the connecting times between Singapore and U.S. gateways, particularly in the westbound direction. However, on balance, in weighing the trade-off between improved connectivity and enhanced convenience to local Singapore-Tokyo passengers and those Singaporean passengers making a stopover in Tokyo (and particularly business passengers), JAL indicates it has opted in favour of the greater convenience provided by the Singapore-Haneda service.
85. The Parties are just beginning the process of examining and adjusting their joint services to ensure optimal scheduling across their combined transpacific network. To date, the process has focused mainly on transpacific flights. The Parties submit that if they have antitrust clearance from CCS, they will work jointly to enhance convenience for Singaporean passengers, including by improving connectivity for such passengers travelling between Singapore and North America.

IV.2.3.5 Corporate accounts

86. According to the Parties, over the years, global corporate customers (comprised of time-sensitive business travellers) are moving away from dealing with individual airlines and toward alliance contracts. Alliance contracts are comprehensive arrangements between corporate accounts and carriers that have antitrust immunity and can offer combined fares and schedules.
87. The Parties submit that the JBA will increase the attractiveness and competitiveness of their corporate products, particularly for companies that are substantial users of transpacific and intra-Asia services. The Parties indicate that Singapore is a key destination in Asia and must be part of the Agreements if they are to be competitive with other carriers and global alliances.
88. According to the Parties, to be competitive when a corporate customer requests a bid, an alliance must be prepared to offer three things: simplicity, discounts and access to a global network. The Parties submit that even those corporate customers receptive to a oneworld bid provide feedback that Star Alliance and SkyTeam are able to use their more-integrated alliances to offer superior discount programs. The oneworld product is little more than a stapling of individual carrier contracts

together in an alliance wrapper. Such a product cannot effectively compete in the marketplace. Revenue-sharing under the JBA will also create the commercial incentives necessary to promote and sell integrated alliance products.

89. Under the Agreements, the Parties submit that they will be able to participate fully with each other in corporate travel agreements, expand the scope of their joint offerings to corporate clients, offer smaller corporate accounts comprehensive and fully-integrated price/service proposals. Benefits to corporate customers will include discounted travel over a broader carrier network; increased ability to qualify for volume discounts; simplified travel management (one contract and one point of contact for administration); harmonized discounts that are easy to implement and communicate to staff; and specialized reports that will enable the corporate customer to manage travel more effectively and qualify for additional discounts.

IV.2.3.6 Joint Procurement and Marketing

90. The Parties plan to engage in joint purchasing in an effort to reduce costs. These activities may include obtaining volume discounts, common specifications for goods and services, joint bidding and negotiations with suppliers and the use of standardized contracts for acquiring goods and services. Costs can be reduced across a wide range of products and services, such as maintenance, field station support, catering services, aircraft and ground equipment acquisition and sales, distribution channels, fuel and information technology.
91. The Parties suggest that the Agreements will also allow the Parties to combine their sales forces, with each carrier focusing its sales efforts in a single region. The Parties submit that combining sales forces will reduce costs and strengthen the metal neutrality associated with the Agreements, as competing goals will be replaced by a common economic interest.

IV.2.3.7 Joint Product Development

92. The Parties submit that they will work together to integrate and improve their products and develop joint products. The Parties refer to the DOT Show Cause Order which states that product quality improvements arise from immunized alliances and that the Parties are more likely to invest in product quality improvements.

IV.2.3.8 Estimated cost savings arising from implementation of the JBA

93. The Parties expect to achieve substantial cost savings through the implementation of their joint venture. Actions taken to date in anticipation of the joint venture have

already resulted in significant savings. [X]. In these areas alone, the Parties consider cost savings [X] will amount to [X].²⁵

IV.2.4 Weak Feasibility of other Commercial Arrangements

94. The Parties submit that a favourable decision for the Agreements is essential in order to effectively compete with the other two global alliances, SkyTeam and Star Alliance. According to the Parties, a stand-alone code-share agreement will not deliver the same benefits as the Agreements as it will not provide the Parties with the incentive to sell each other's services equally with their own. The Parties submit that the revenue-sharing joint venture provides the commercial incentives to sell the carriers' joint services without regard to which carrier is operating the aircraft and that such "metal neutrality" will allow the Parties to optimize their joint services.

IV.2.5 The Counterfactual

95. The Parties submit that absent the Agreements, the Parties could only cooperate through a code-share relationship under which one or both of the Parties displays the other Party's designator code on their flights, but the Parties do not coordinate on aspects of the code-share flights such as capacity, price and marketing i.e. the Parties remain competitors on the code-share routes. The Parties submit that such an arm's length code-share relationship will prevent the Parties from generating the benefits of a truly integrated network because their self interests will not be adequately aligned.

IV.3 Response from Third Parties

96. CCS posted information on the Application on the public register of its website and invited interested parties to comment on the Application. CCS also approached competitors and corporate customers of the Parties for comments on the Agreements. CCS did not receive any adverse comments from third parties in relation to the Agreements. One airline which is also part of a similar joint venture in transatlantic markets is of the view that integrated cooperation such as metal neutral joint ventures enhances commercial opportunities for participating carriers and gives rise to enhanced services and opportunities for customers.

97. One corporate customer considers that the Agreements are likely to bring about more competitive pricing and greater flexibility in ticketing terms. They also anticipate that the Agreements will create an opportunity to foster healthier

²⁵ The Parties estimate the cost saving from [X].

competition for transpacific flights involving Singapore. Further, passengers may expect better flight connectivity which will result in a reduction of the total flight time. The corporate customer also considers that the economic benefits for Singapore will be an increase in the options available in terms of shorter flight connections, reduction in transit-time wastage, and more competitive air fares available for the Singapore-Japan-United States routes.

98. The Civil Aviation Authority of Singapore (CAAS) did not have any comment on the Application per se but noted that the Singapore-US trans-Pacific O&D markets would be more competitive for the benefit of consumers if legal and regulatory barriers of entry in the form of 5th freedom restrictions beyond Tokyo can be lifted through further air services liberalisation between Singapore and Japan.

IV.4 CCS' Assessment

IV.4.1 The relevant markets

99. In CCS' past decisions on airline cooperation agreements,²⁶ CCS typically uses the starting point for market definition relating to the provision of scheduled air passenger transport services as the O&D pair, usually a city-pair. Passengers generally want to travel to a specific destination and will not be prepared to substitute another destination when faced with a small increase in price. Therefore, each combination of a point of origin and point of destination can form a separate market.
100. Given that the Application specifically concerns the impact of the Agreements in Singapore, CCS will restrict its consideration and analysis of the Agreements to air passenger transport services on Singapore O&D city pair routes which are covered under the scope of the Agreement, i.e. O&D city-pairs between Singapore and cities in North America (defined in the Agreements as the United States, Canada, and Mexico) ("the relevant markets").

IV.4.2 Object or Effect the Prevention, Restriction or Distortion of Competition within Singapore

101. An agreement will fall within the scope of the section 34 prohibition if it has as its object or effect the prevention, restriction or distortion of competition within Singapore. In this context, when an agreement has as its object the restriction of competition, it is unnecessary to prove that an agreement will have an

²⁶ Qantas & British Airways Restated Joint Services Agreement, CCS 400/002/06 and Qantas & OrangeStar Alliance Co-operation Agreement, CCS 400/003/06.

anticompetitive effect in order to find an infringement of section 34. In assessing the object of an agreement, CCS considers the objective meaning and purpose of the agreement in the economic context in which it is to be applied.²⁷

102. In considering whether the Agreements have the object of preventing, restricting and distorting competition between the parties with respect to their transpacific business on Singapore-North America O&D city-pair markets, CCS observes that the Agreements involve the cooperation between the Parties in all the commercial aspects of the Parties' transpacific operations, including pricing (see Section II.6.2 at page 9).
103. CCS also notes that the Parties intend to integrate their transpacific business beyond mere code-sharing through the Agreements and effectively act as a single carrier with respect to their transpacific business. Under the Agreements, the Parties will share revenue on transpacific routes and coordinate in a number of key parameters of competition including pricing, capacity, scheduling and sales and marketing (see section II.6.2.)
104. Unlike under the current (pre-alliance) code-sharing arrangements where Parties may still compete, under the Agreements the Parties will cease to compete with respect to their transpacific services. In striving towards metal neutrality in respect of their transpacific business, the Parties will have little ability (due to the obligations set out in the Agreements) and incentives (due to their revenue sharing arrangements) to compete with each other in respect of O&D city-pair markets between Singapore and North America.
105. CCS is of the view that, given the level of integration on the Parties' transpacific operations and close level of coordination on key parameters of competition, including pricing, the Agreements by their very nature have the object of appreciably preventing, restricting and distorting competition in the relevant markets. However, as will be discussed below, by operation of section 35 of the Act read with paragraph 9 of the Third Schedule to the Act, the Agreements are excluded from the section 34 prohibition of the Act.

IV.4.3 Net Economic Benefit²⁸

106. An agreement that falls within the scope of section 34 may, on balance, have a NEB if it contributes to improving production or distribution or promoting

²⁷ See CCS 600/008/06 *Pest Control Case* at paragraph 49

²⁸ Refer to Paragraph 9 of the Third Schedule to the Act.

technical or economic progress and it does not impose on the undertakings concerned restrictions, which are not indispensable to the attainment of those objectives or afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question. Individual agreements possessing these characteristics are excluded from the section 34 prohibition.

107. In general, the assessment of the benefits flowing from an agreement will be made within the confines of each relevant market to which the agreements relate. However, where two (or more) markets are closely related, efficiencies are considered.

IV.4.3.1 Contribution to improving the production or distribution of goods, or to promoting technical or economic progress.

108. The Parties submit that the Agreements will contribute to improving the distribution of air transportation services through efficiencies created by the alliance.

109. The Parties submit that the Agreements are based on metal neutrality and that through the efficiencies arising from the Agreements, they will be better able to compete with other carriers from other global alliances. As such, the Agreements will enhance inter-alliance competition. The Parties submit that the Agreements will generate the following efficiencies (set out in Section IV.2.3):

- i. Increase in schedule choices and lower fares through fare combinability;
- ii. Lower fares through elimination of double marginalisation;
- iii. Expanded and enhanced route and schedule options through;
 - o New transpacific routes and services; and
 - o New behind/beyond connectivity.
- iv. Improved product offerings to corporate customers through joint deals;
- v. Reduction in cost through joint procurement and marketing; and
- vi. Product quality improvements through joint product development.

110. CCS notes from the DOT Show Cause Order,²⁹ the DOT considers that the claimed benefits are likely to accrue to consumers and the likelihood that the benefits will be realised is supported by both the DOT's historical experience in reviewing antitrust immunity cases and several independent third party studies of immunised alliances. DOT also refers to studies which show that immunised alliances are associated with higher passenger volumes and lower fares through reduction of double marginalisation. DOT further observes that product quality improvements, expanded frequent flyer coordination, and other benefits arose from immunized alliances in the transatlantic market, and saw no fundamental reason why these benefits would not also be achieved in the transpacific market as a result of granting immunity to the Parties

111. CCS notes that the EC and the DOT also recognised that the following potential benefits would be generated under a metal neutral integrated JV in the Joint Alliance Report: lower costs and increased capacity through increased density; reduction of double marginalization; fare combinability; better schedules; more seamless customer experience; and frequent flyer program integration.³⁰

112. CCS is of the view that the efficiencies claimed by the parties under Section IV.2.3 are generally objective in nature. The ability to offer better joint contracts to corporate customers can be an objective benefit to the extent that corporate customers value alliance contracts. The Parties also substantiate their claims on efficiencies with evidence relating to the magnitude and likelihood that these efficiencies will be realised – including empirical studies; experience of similar joint ventures in the transatlantic markets; and specific examples of new and improved connectivity for Singapore passengers. CCS also notes that there will not be any decrease in the number of flights for Singapore passengers flying to Tokyo.

113. On balance, CCS is of the view that the Agreements will, in general, improve the production and distribution of air passenger transport in Singapore through the efficiencies the Parties submit.

IV.4.3.2 Not imposing restrictions which are not indispensable to the attainment of these objectives

114. Under this criterion, CCS considers the indispensability of both the Agreements as a whole and the individual restrictions, particularly the

²⁹ U.S. DOT Show Cause Order

³⁰ Transatlantic Airline Alliances: Competitive Issues and Regulatory Approaches—A report by the European Commission and the United States Department of Transportation, 16 November 2010. (“**Joint Alliance Report**”)

coordination of prices. The Agreements or the individual restrictions are indispensable if their absence would eliminate or significantly reduce the efficiencies, or make them much less likely to materialise. The Agreements/restrictions will not be regarded as indispensable if there are other economically practical and less restrictive means of achieving the efficiencies, or if the Parties are capable of achieving efficiencies on their own.³¹

115. The Parties submit that absent the Agreements, the Parties can only cooperate through code-sharing arrangements and, with such an arm's length code-share relationship, it will prevent the Parties from generating the benefits of a truly integrated network because their self-interests will not be adequately aligned (see section IV.2.5).

116. CCS is of the view that it is possible that some types of efficiencies the Parties claim may be achieved through code-sharing arrangements. For example, an expansion in the scope of current code-sharing arrangements between the Parties alone may potentially also lead to expanded route options and enhanced connectivity for Singapore consumers. In this regard, CCS notes that the Parties intend to expand their code-share operations under the Agreements beyond their current code-share arrangements.

117. However, CCS agrees with the Parties that more integrated cooperation, beyond mere code-sharing, will bring about significantly greater efficiencies for Singapore passengers, specifically in relation to introduction of more capacity on transpacific routes, enhanced connecting opportunities for Singapore passengers (through potential reductions in connection time and the spreading out of schedules of transpacific services) throughout the day and lower fares through fare combinability.

118. In relation to the increase in capacity on transpacific routes, the Parties submit that the JBA will strengthen the Parties' ability to maintain and expand their non-stop services on transpacific routes, particularly given the high cost of providing international air service. Through the Agreements, the Parties will gain feeder traffic from their expanded network, thereby allowing them to grow capacity on their transpacific flights. The Parties also submit that econometric analyses of transatlantic airline alliances predict that the Parties will add more seats across the Pacific to accommodate the larger volumes of connecting traffic generated by their expanded network.

³¹ CCS Guidelines on the section 34 prohibition, Annex C, Paragraph 10.9

119. In relation to fare combinability, the Parties submit that commercial and legal realities prevent airlines from offering combinable fares absent metal neutrality (see paragraph 63). In their Joint Alliance Report, the EC and the DOT also note that a key component of an agreement designed to achieve “metal-neutrality” is fare combinability. Achieving fare combinability requires airlines to harmonise their fare class maps and rules. Absent an integrated alliance, airlines may not necessarily have the incentive to make these detailed changes to their pricing and selling processes because they remain focused on pricing and selling their own flights.³²

120. In relation to new and improved connectivity for Singapore passengers, CCS is of the view that the Agreements will provide the Parties with greater incentives, compared to a code-sharing arrangement, to coordinate their schedules to provide for improved connection times for Singapore passengers as well as to spread out their schedules throughout the day (rather than only at “peak” demand timing) to offer local as well as connecting passengers, including Singapore passengers more options (see paragraph 74 to 85).

121. In the Joint Alliance Report, the EC and the DOT³³ also note that while arm’s length coordination permits certain basic accommodations, such as minor adjustments in schedules to provide for better connections, carriers not operating in an integrated alliance agreement still face an economic incentive to independently make decisions on flight schedules to maximise their individual revenue. On the other hand, carriers in a deeper cooperation arrangement involving revenue sharing and other forms of integration may develop the incentive to schedule flights based on optimal traffic flows across the entire network. This can greatly increase the options available to consumers by spreading out of flights throughout the day instead of clustering of flights during peak demand timings.

122. In relation to the issue of whether joint-pricing in the Singapore-North America O&D city-pair markets is indispensable, CCS considered whether efficiencies that flow from the agreement will be eliminated or significantly reduced, or less likely to materialise³⁴, if the joint-pricing component is taken out with respect to Singapore O&D markets only.

123. The Parties submit in Form 1 that metal neutrality between them is only possible through provisions in the Agreements detailing how the Parties’

³² *Ibid.*

³³ *Ibid.*

³⁴ CCS Guidelines on the section 34 prohibition, Annex C, Paragraph 10.10

operations will be integrated, including joint pricing, planning and management of capacity, and revenue management. As such, while the Agreements may contain restrictions, such restrictions are necessary in order to attain the claimed efficiencies in paragraph 109.

IV.4.3.2.1 *The Parties' submission on the importance of joint-pricing*

124. Specifically on the issue of joint pricing, the Parties submit that if joint-pricing in respect of the Singapore-North America O&D city-pair markets is removed from the Agreements, they will not share any part of the revenue obtained from Singapore O&D passengers. They submit that pricing cooperation also has a broad impact on other areas of the joint business, including inventory management and schedule coordination. Pricing is not a stand-alone functionality - it is central to the various activities that the alliance needs to perform in order to be effective. Without joint-pricing and revenue-sharing in respect of Singapore O&D markets, the Parties will remain competitors and will consider only their individual interests instead of their collective interest. On the other hand, if there is revenue sharing with coordinated prices, each of the Parties will be assured of its fair share of revenue; hence the Parties will seek to maximize revenue by competing with other alliances rather than try to get more revenue from its own partner. With metal neutrality, the Parties will be focused on "how they can provide the best service with the best schedule and lowest prices rather than on how to get a few dollars more from their own partner".

125. The Parties submit that they will not implement the Agreements on Singapore routes without CCS' clearance with respect to price cooperation and revenue sharing on the Singapore routes. The Parties submit that non-implementation of the Agreements in Singapore will result in loss of significant benefits for Singapore passengers.

126. For example, without the ability to jointly set prices, the Parties will not be able to offer better product offerings to corporate customers through joint deals. Without joint-pricing and revenue-sharing, double marginalisation will still exist as each party will try to recover its cost from the segment it operates (and charge the other party a mark-up above this cost) instead of jointly setting a price that will recover the total cost of operating both segments. The Parties will also not have the incentive to offer combinable fares if there is no revenue sharing; passengers will lose out in terms of more schedule options and potential lower fares. The Parties also submit that absent revenue sharing, they will have less incentive to provide optimal scheduling to Singapore passengers. For example, JAL submits that if it is not sharing revenue with American for Singapore passengers, it may have

incentives to steer Singapore passengers away from transpacific flights operated by American towards transpacific flights operated by JAL.

127. Overall, CCS is of the view that the integrated cooperation between the Parties, including joint-pricing and revenue-sharing for O&D city pair markets between Singapore and North America, is necessary to attain the additional efficiencies beyond those that can be achieved through mere code-share arrangements. In attaining these efficiencies, the joint-pricing element is not isolatable from other aspects of the alliance, and Singapore is not isolatable from the skeleton US-Japan alliance. As such CCS is of the view that this condition is met.

IV.4.3.3 Not affording the possibility of eliminating competition in respect of a substantial part of the products in question

128. Under this criterion, CCS will take into account the degree of competition *prior* to the Agreements, and also the *reduction* in competition that the Agreements bring about. Accordingly, in a market where competition is already relatively weak, this factor may be more important. Given the long-haul nature of Singapore-North America routes, almost all the Singapore-North America services stop over at one or more intermediate points. CCS notes that currently only Singapore Airlines operates non-stop flights to North America;³⁵ the rest of the carriers on O&D city pairs between Singapore and North America offer one-stop (or more) services. In this regard, CCS notes that there are a number of carriers that provide services from Singapore to various cities in North America via their respective hubs in Asia and Europe. The existence of other significant players on the Singapore-North America city pairs is therefore likely to continue to impose competitive pressure on the Parties.

129. Given the above, CCS is of the view that the Agreements will not bring about a substantial reduction or elimination of competition in respect to the relevant markets. In any event, CCS notes that the combined market shares of the Parties for Singapore-North America routes are generally low (see **Appendix A**).

IV.4.4 Conclusion on CCS' Assessment

130. In conclusion, CCS takes the view that the Agreements involve the joint determination and coordination of all commercial aspects of the Parties'

³⁵ The only non-stop flights from Singapore to the United States are business class service flights operated by Singapore Airlines from Singapore to New York and Los Angeles.

transpacific operations, including pricing. Therefore, by their very nature, the Agreements have the object of preventing, restricting and distorting competition between the parties with respect to their transpacific business on Singapore O&D city-pair markets. However, CCS considers that the Parties have established that the Agreements bring about a net economic benefit.

V CCS' DECISION ON THE PARTIES' APPLICATION

131. Based on the foregoing, by operation of section 35 of the Act read with paragraph 9 of the Third Schedule, CCS concludes that the Parties' Agreements are excluded from the section 34 prohibition in the Act,.

132. For completeness, Section 46 of the Act provides that, if CCS determines an application under section 44 by making a decision that the agreement has not infringed the section 34 prohibition, CCS shall take no further action with respect to the notified agreement unless:

- i. It has reasonable grounds for believing that there has been a material change of circumstance since it gave its decision; or
- ii. It has reasonable grounds for suspecting that the information on which it based its decision was incomplete, false or misleading in a material particular.

133. To this end, factors which CCS may consider as material changes of circumstance include, but are not limited to, the following:

- i. A reduction in the number of competing carriers in the respective point-to-point routes for the scheduled passenger air transport market;
- ii. Significant changes to the scope of revenue sharing for example to include other Singapore O&D routes;
- iii. Changes in the operations of the Parties which have a significant impact on the Singapore market; and
- iv. Changes in parties to the Agreements.



Yena Lim
Chief Executive
Competition Commission of Singapore

United States to Singapore

Online Shares of Selected Carriers- Top 25 Markets 1 June 2009 to 31 May 2010

Market	City Pair	Market Bookings	JAL	AA	AA+JL	SQ	UA/CO/NH	oneworld	Sky	Star
SFOSIN	SFOSIN	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
LAXSIN	LAXSIN	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
JFKSIN	NYCSIN	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
EWR SIN	NYCSIN	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
IAHSIN	HOUSIN	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
ORDSIN	CHISIN	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
IAD SIN	WASSIN	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
SEASIN	SEASIN	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
BOSSIN	BOSSIN	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
HNL SIN	HNL SIN	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
DFW SIN	DFW SIN	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
SANSIN	SANSIN	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
ATLSIN	ATLSIN	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
MSP SIN	MSP SIN	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
PDX SIN	PDX SIN	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
DENSIN	DENSIN	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
AUSSIN	AUSSIN	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
PHX SIN	PHX SIN	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
MCO SIN	ORLSIN	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
LASSIN	LASSIN	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
MIASIN	MIASIN	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
MSY SIN	MSY SIN	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
DTW SIN	DTW SIN	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
CVG SIN	CVG SIN	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
PHL SIN	PHL SIN	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]

Source: MIDT

MIDT provides data on the worldwide booking activities of travel agencies and airline carriers. It is used to track passenger market shares as reflected by the market bookings received, and is relied on by the Applicants as the data source for the market share figures provided in their Application.

Singapore to United States

Online Shares of Selected Carriers- Top 25 Markets 1 June 2009 to 31 May 2010

Market	City Pair	Market Bookings	JAL	AA	AA+JL	SQ	UA/CO/NH	oneworld	Sky	Star
SINSFO	SINSFO	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
SINLAX	SINLAX	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
SINJFK	SINNYC	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
SINEWR	SINNYC	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
SINIAH	SINHOH	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
SINORD	SINCHI	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
SINIAD	SINWAS	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
SINSEA	SINSEA	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
SINBOS	SINBOS	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
SINHNL	SINHNL	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
SINDFW	SINDFW	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
SINMSP	SINMSP	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
SINATL	SINATL	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
SINSAN	SINSAN	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
SINPDX	SINPDX	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
SINDEN	SINDEN	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
SINMCO	SINORL	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
SINPHX	SINPHX	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
SINLAS	SINLAS	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
SINAUS	SINAUS	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
SINMIA	SINMIA	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
SINDTW	SINDTT	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
SINMSY	SINMSY	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
SINPHL	SINPHL	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
SINRDU	SINRDU	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]

Source: MIDT

MIDT provides data on the worldwide booking activities of travel agencies and airline carriers. It is used to track passenger market shares as reflected by the market bookings received, and is relied on by the Applicants as the data source for the market share figures provided in their Application.