



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

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

Application for Decision by Etihad Airways PJSC and Jet Airways (India) Limited

16 October 2014

Case number: CCS 400/006/14

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].
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EXECUTIVE SUMMARY

1. On 6 June 2014, CCS received an application for decision made under section 44 of the Competition Act (Cap. 50B) (“the Act”) by Etihad Airways PJSC (“Etihad”) and Jet Airways (India) Limited (“Jet”) (collectively referred to as “the Parties”) in relation to them entering into an Amended and Restated Commercial Cooperation Agreement (the “CCA”). Pursuant to this CCA, Etihad and Jet would agree to cooperate on, amongst others, pricing, route and schedule coordination, marketing, code-sharing, networks, customer service and resourcing decisions between the Parties (the “Proposed Commercial Alliance”). A decision was sought as to whether the Proposed Commercial Alliance will infringe the prohibition under section 34 of the Act.
2. CCS’s assessment, following its review of the submission and information provided by the Parties, and the feedback and inputs received from relevant third parties during a public consultation exercise, is that the Proposed Commercial Alliance will by its nature have the object of preventing, restricting or distorting competition within Singapore. However, CCS is satisfied that Etihad and Jet have established that the net economic benefit exclusion applies to cooperation between Etihad and Jet under the Proposed Commercial Alliance on the existing routes operated by them.
3. Therefore, by operation of section 35 of the Act (read with paragraph 9 of the Third Schedule of the same), cooperation under the Proposed Commercial Alliance between Etihad and Jet on the existing routes operated by them, as submitted in the notification, is excluded from the section 34 prohibition of the Act.
4. The Decision was conveyed to the Parties on 16 October 2014. This notice sets out the Grounds of Decision.

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INTRODUCTION

1. This Decision sets out CCS's assessment of the application ("the Application") made under section 44 of the Act, as to whether the Proposed Commercial Alliance between the Parties will infringe the prohibition under section 34 of the Act.
2. As part of CCS's assessment of the notification for decision, a summary of the application and an invitation for comments were placed on CCS's public register on 19 June 2014 to seek third parties' feedback on the Proposed Commercial Alliance.¹ Letters were also sent to industry players, including customers and competitors of the Parties, for their views on the Proposed Commercial Alliance. Three Requests for Information (the "RFIs")² were also made to the Parties to obtain further clarifications and information.
3. CCS's assessment and decision are based on the submissions and information provided by the Parties as well as information obtained from relevant third parties.

THE FACTS AND PARTIES' SUBMISSIONS

The Application

4. The Application concerns the Proposed Commercial Alliance between Etihad and Jet, the terms of which have been set out in the CCA entered into between the Parties on 19 September 2013³ and which came into force on 24 April 2013.⁴ The Parties are seeking to give effect to the cooperation provisions of the CCA, subject to regulatory approvals and compliance with applicable laws and regulations.⁵ On 6 June 2014, the Parties notified the Proposed Commercial Alliance to CCS under section 44 of the Act for a decision on whether the Proposed Commercial Alliance will infringe the prohibition under section 34 of the Act ("Section 34 Prohibition").
5. In its submissions, the Parties claimed that even if CCS finds that elements of the Proposed Commercial Alliance may have the object of the prevention, restriction or distortion of competition within the relevant air passenger services market, the Proposed Commercial Alliance has, on balance, a resulting net economic benefit ("NEB") which will satisfy the test for exclusion under paragraph 9 of the Third Schedule of the Act.⁶

Approval and Anti-trust Immunity from Authorities in Other Jurisdictions

6. According to the Parties, regulatory approvals from three other competition authorities have been sought. A notification was made to the Competition Commission of India on

¹http://www.ccs.gov.sg/content/ccs/en/Public-Register-and-Consultation/PublicRegister.detail.Proposed_Commercial_Alliance_bet_EtihadAirways_JetAirways.html

² The three RFIs were sent to the parties on 18 June 2014, 25 July 2014 and 18 September 2014. The Parties responded on 4 July 2014, 11 August 2014 and 26 September 2014 respectively.

³ CCA at Annex 3.2 of Form 1 dated 6 June 2014.

⁴ Clause 4 of the CCA.

⁵ Paragraph 2.1 and 2.2 of the CCA and paragraph 2.3 of Form 1.

⁶ Paragraph 5.1(c) of the Form 1 dated 6 June 2014.

1 May 2013 and unconditional approval was granted on 12 November 2013.⁷ Unconditional clearance was similarly obtained on 21 May 2013 in the notification made to the German Federal Cartel Office. The Parties have also submitted that an Application for Permission has been submitted to the Bureau of Business Competition Commission at the Department of International Trade of Thailand (the “Thai Competition Commission”) on 30 January 2014. The Thai Competition Commission issued its opinion on 8 July 2014 that the cooperation on the codeshare routes currently operated by the Parties between Thailand and Europe would not currently affect market competition and that the Parties may proceed accordingly.⁸

The Parties to the Application

7. As indicated in its submissions to CCS, the Parties to the Application are Etihad and Jet. A brief description of Etihad and Jet is as follows:

Etihad

8. Etihad is the national airlines of the United Arab Emirates (“UAE”) and is based in the capital of UAE, Emirate of Abu Dhabi (“Abu Dhabi”). Founded in July 2003, Etihad carried 10.2 million passengers in 2012. As of July 2013, Etihad had a fleet of 78 aircraft, and operated over 1300 flights per week to 87 passenger and cargo destinations across 55 countries.⁹
9. The Abu Dhabi International Airport (“AUH”) is one of the region’s fastest growing airports and was awarded the Skytrax Best Airport in the Middle East in 2013. It currently has a capacity of 12.5 million passengers per year and which will increase to 20 million passengers per year upon the opening of Midfield Terminal Complex in 2017.¹⁰ Abu Dhabi is an ideal transit point for passengers travelling between Australia and the South Pacific to Europe, Africa and the Middle East and passenger movements at Abu Dhabi Airport reflect this mix of traffic flows, with 50% of passengers transiting through AUH.¹¹
10. Etihad is not a member of one of the three major international aviation alliances¹² and instead sought to create one or more “virtual network” through various cooperation agreements with different airlines. The Proposed Commercial Alliance is an example of one of these alliances. To date, Etihad has made equity infusions in 8 carriers,¹³ namely Alitalia,¹⁴ Air Serbia, Air Seychelles, Etihad Regional (previously known as Darwin Airline), airberlin, Jet Airways, Virgin Australia and Aer Lingus. Etihad currently holds a 24% stake in Jet.¹⁵

⁷ <http://cci.gov.in/May2011/OrderOfCommission/CombinationOrders/C-2013-05-122%20Order%20121113.pdf>

⁸ Parties’ Response to CCS RFI Question 6 dated 26 September 2014.

⁹ Paragraph 1.1a(ii) and (iii) of Form 1.

¹⁰ Paragraph 1.1a(v) of Form 1.

¹¹ Paragraph 1.1a(vi) of Form 1.

¹² Star Alliance, oneworld and Sky Team.

¹³ <http://www.etihad.com/en/about-us/>

¹⁴ The most recent alliance announced on 8 August 2014. The transaction is due to be completed on 31 December 2014 subject to completion by Alitalia and its key private and public stakeholders of certain conditions precedent and final regulatory approvals. See: <http://www.etihad.com/en-us/about-us/news/archive/2014/alitalia-and-etihad-airways-finalise-1758-million-investment-deal/>

¹⁵ Paragraph 1.9(b) of Form 1.

11. Etihad has a range of relationships with other airlines, including as of November 2013, 46 codeshare arrangements¹⁶ and 180 interline agreements.¹⁷ These partnerships exist to support Etihad's existing route structure and to extend the reach and breadth of Etihad's network.
12. Currently, Etihad operates a daily direct non-stop service through Changi Airport on the Abu Dhabi – Singapore – Brisbane route.¹⁸

Jet

13. Jet, which is based in Mumbai, commenced its operations in 1993 and is the second largest airline in India. Jet operates to over 51 destinations within India and 20 international destinations. In India, other than its main hub in Mumbai, Jet also has secondary hubs in Delhi, Kolkata, Chennai, Bengaluru and Pune. In Europe, Jet's hub which is situated in Brussels, Belgium serves as a transit point for services between North America and the Indian subcontinent, and over 80 European destinations with Jet's partner airlines. As of September 2013, Jet operates a fleet of 100 aircraft.¹⁹
14. Jet has a low-cost carrier subsidiary Jet Airways Konnect which was launched on 8 May 2009. As of September 2013, Konnect with its fleet of 13 aircraft, flies to 55 domestic destinations and operates over 430 flights a day.
15. As of September 2013, Jet has codeshare agreements with 15 airlines, including American Airlines, Air Canada, All Nippon, Alitalia, Brussels Airline, Etihad, Emirates, JetKonnect, Kenya Airlines, Malaysia Airlines, Qantas, South African Airways, United Airlines and Virgin Atlantic.
16. Currently Jet operates twice daily direct non-stop services to Delhi, Mumbai and Chennai from Singapore Changi Airport respectively.²⁰

The Proposed Alliance

17. The Parties entered into the CCA²¹ on 19 September 2013 and which came into force on 24 April 2013. Under the CCA, the Parties have agreed to integrate [✂], jointly set

¹⁶ Etihad places its "code" on another carrier's operated flight or another carrier places its "code" on an Etihad-operated flight. As of November 2013 Etihad has Codeshare Arrangements with Aer Lingus, Air Astana, Air Berlin, Air Canada, Air France, Air Malta, Air New Zealand, Air Seychelles, Alitalia, All Nippon Airways, American Airlines, Asiana Airlines, Bangkok Airways, Belavia, Brussels Airlines N.V., China Eastern Airlines, Cyprus Airways, Czech Airlines, FlyBE, FlyNiki, Garuda Indonesia, Hainan Airlines, Jat Airways, Jet, Kenya Airways, KLM, Korean Air, Malaysia Airlines, Middle East Airlines, National Air Services, Olympic Airlines, Philippine Airlines, RAK Airways, Royal Air Maroc, Safi Airways Ltd, Saudi Arabian Airlines, Siberia Airlines (S7), SNCF (French Railway), South African Airways, Sri Lankan Airlines, TAP-Air Portugal, Turkish Airlines, Ukraine International Airlines, Vietnam Airlines, Virgin Australia Airlines, Yemenia Yemen Airways. Paragraph 1.1a(x) of Form 1.

¹⁷ Etihad can sell another carrier's sector as part of an Etihad-marketed flight or another carrier can sell an Etihad sector as part of its marketed flight.

¹⁸ 9W Singapore-Schedule information Tab titled Summary provided in Parties submission dated 4 July 2014.

¹⁹ Paragraph 1.1(b)(ii) and (iii) of Form 1.

²⁰ 9W Singapore-Schedule information Tab titled Summary provided in Parties submission dated 4 July 2014.

²¹ The Parties first entered into a cooperation agreement on 24 April 2013. The CCA entered into on 19 September 2013 was the final amendment to the cooperation agreement.

prices, jointly schedule, market and distribute their air passenger and cargo services to the extent permitted by applicable laws. They will also consider joint purchasing opportunities for fuel, aircraft, spare parts, equipment and catering supplies, joint training of personnel as well as third party external services such as insurance and technological support. Unless terminated earlier in accordance with relevant provisions in the CCA, the CCA is to continue in force so long as Etihad has an equity stake in Jet.

18. In particular, subject to regulatory approvals and compliance with applicable laws and regulations, the CCA calls for agreements in the following areas²²:
- a. [X];
 - b. [X];
 - c. [X];
 - d. [X];
 - e. [X];
 - f. [X];
 - g. [X];
 - h. [X];
 - i. [X]; and
 - j. [X].
19. The Parties will also work to establish²³:
- a. Joint route and schedule coordination;
 - b. Joint pricing, [X], marketing, distribution, sales representation and cooperation, [X];
 - c. Joint and reciprocal airport representation and handling;
 - d. Joint and reciprocal technical handling; and
 - e. Cargo “belly-hold” and [X] dedicated freighter capacity through Abu Dhabi.
- [X].
20. Specifically on routes between Europe and Singapore, the Parties seek to cooperate on²⁴:
- a. Joint pricing;
 - b. Joint route and schedule coordination;
 - c. Joint marketing;
 - d. [X];
 - e. [X];
 - f. Frequent flyer and any other affinity and/or reward programs;
 - g. [X];
 - h. [X];
 - i. [X];
 - j. [X];
 - k. [X]; and/or
 - l. [X].
21. In addition, pursuant to the CCA, Jet will use Abu Dhabi as its hub for services to and from Africa, North and South America and the UAE (the “Exclusive Territory”) and

²² Paragraph 2.3(c) of Form 1 and 2.1 of the CCA.

²³ Paragraph 2.3(d) of Form 1 and Clause 2.3 of the CCA.

²⁴ Paragraph 2.3(h) of Form 1.

that Jet will refrain from Code-Sharing with any other airline (or *vice-versa*) where the impact of which would result in the bypass of the Abu Dhabi hub for traffic to and from the Exclusive Territory.²⁵ [X].²⁶

22. To the extent that the CCA and the cooperation contemplated under it also extends to future subsidiaries of Jet, the Parties are unable to estimate the number of future agreements expected to be entered into.²⁷ Pursuant to regulation 9(5) of the Competition Regulations 2007,²⁸ CCS exercises its discretion not to give a decision on parts of the agreement or proposed conduct between the parties and their related corporations which are prospective at the time of this Application. In particular, CCS's assessment and decision will not be applicable to any future agreements entered into pursuant to the CCA between Etihad and future subsidiaries of Jet. The Parties have submitted, to which CCS agreed, that the CCS need not give a decision on parts of the agreement or proposed conduct between the Parties (and their related corporations) which are prospective at the time this Application is made.²⁹ There is insufficient information/evidence available at this point in time to enable CCS to come to an informed decision on such future agreements.
23. Further, Etihad agreed to acquire 24% shareholding in Jet on the 24 April 2013, the same day the CCA came into force and it was stated that the acquisition was made with a view to building a closer relationship between the airlines.³⁰ CCS understands that Etihad does not have any current plans to increase its stakes in Jet.³¹ The Parties have submitted that Etihad's continued equity stake in Jet is not contingent upon the CCS's approval of its application.³² It is further stated in the CCA that the CCA shall continue in force unless terminated earlier in accordance with the CCA, for so long as Etihad has an equity stake in Jet.³³

Commercial Rationale for Etihad

24. [X]^{3435 36}

Commercial Rationale for Jet

25. It was submitted that in the period prior to Etihad's investment and the execution of the CCA, Jet experienced financial challenges. In order to ensure the continued success of the airline, Jet took a commercial approach of private investment from Etihad and to

²⁵ Clause 2.2.5 of the CCA.

²⁶ Clause 2.2.6 of the CCA. [X] See Parties' Response to CCS RFI Question 14 dated 4 July 2014.

²⁷ Paragraph 3.4 of Form 1.

²⁸ Regulation 9(5) of the Competition Regulations 2007 states that "The Commission may determine an application for a decision under section 44, 52, 7 or 58 of the Act by exercising its discretion not to give a decision, whereupon the Commission shall give notice to the applicant of that fact".

²⁹ Paragraph 3.4 of Form 1.

³⁰ Introduction paragraph (C) of the CCA.

³¹ Parties' Response to CCS RFI Question 2 dated 26 September 2014.

³² Parties' Response to CCS RFI Question 3 dated 26 September 2014.

³³ Clause 4 of the CCA.

³⁴ Parties' Response to CCS RFI Question 12 dated 4 July 2014 and to CCS RFI Question 7 dated 26 September 2014.

³⁵ [X]

³⁶ Parties' Response to CCS RFI Question 7 dated 26 September 2014.

rationalise its network and operations to focus on its areas of strength, namely the domestic Indian market and a limited number of international market. The CCA is the manner in which it will ensure the continued viability and success of Jet; through working with a partner with complementary network strengths to better service the Indian market.³⁷

26. As stated above, Jet serves mostly the Indian domestic market and at present, has limited ability to compete with other airlines in terms of intercontinental travel and business/corporate travel for Singapore travellers to Europe and European travellers to Singapore. Therefore, the Proposed Commercial Alliance enables Jet to draw on Etihad's intercontinental network for travel to and from Singapore in competition with other alliances and greatly improve Jet's ability to compete in market segments of intercontinental travel and Europe-Singapore travel. It is also submitted that the increased network will allow Jet to attract higher-yielding corporate customers who often seek a comprehensive intercontinental travels solution which Jet is unable to provide on its own.³⁸

LEGISLATIVE FRAMEWORK

Section 34 Prohibition

27. Section 34 of the Act 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. Specifically, 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 —

- a. directly or indirectly fix purchase or selling prices or any other trading conditions;
- b. limit or control production, markets, technical development or investment;
- c. share markets or sources of supply;
- d. apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or
- e. make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.”

28. An agreement will fall within the scope of the Section 34 Prohibition if it has as its object or effect the appreciable prevention, restriction or distortion of competition,

³⁷ Parties' Response to CCS RFI Question 4 dated 11 August 2014.

³⁸ Paragraph 5.1(l) – (n) of Form 1.

unless it falls within an exclusion in the Third Schedule of the Act or meets all of the requirements specified in a block exemption order.

29. Any agreement between undertakings might be said to restrict the freedom of action of the parties. This does not, however, necessarily mean that the agreement will be prohibited. CCS does not adopt such a narrow approach and will assess an agreement in its economic context. As a matter of enforcement policy, CCS may pursue infringing agreements provided they have an *appreciable adverse impact on competition in Singapore*. That being said, an agreement involving price-fixing, bid-rigging, market-sharing or output limitations will always be deemed to have an appreciable adverse effect on competition.³⁹

Application of Section 34 to Undertakings

30. Section 34 of the Act applies to “agreements between undertakings”. Section 2 of the Act defines “undertaking” to mean “any person, being an individual, a body corporate, an unincorporated body of persons or any other entity, capable of carrying on commercial or economic activities relating to goods or services.” The key consideration in assessing whether an entity is an undertaking for the application of the Section 34 Prohibition is whether it is capable of engaging, or is engaged, in commercial or economic activity.
31. Each of the Parties is a separate corporate entity carrying on commercial and economic activities relating to the provision of air transport services, thereby falling within the definition of “undertakings” under the Act. The Section 34 Prohibition does not apply to agreements where there is only one undertaking, i.e. agreements between entities which form a single economic entity.⁴⁰ The Parties submitted that Etihad had a 24% shareholding in Jet but that [X].⁴¹ [X].⁴² Etihad does not have veto power over the decisions of the Board.⁴³ Based on the foregoing, CCS is of the view that for the purpose of the Application, Etihad and Jet do not form a single economic entity. Accordingly, the Proposed Commercial Alliance constitutes an agreement between undertakings, bringing it within the scope of section 34 of the Act.

COMPETITION ASSESSMENT

Theory of Harm

32. Currently, the flight operations of Etihad and Jet overlap on 28 Singapore Origin and Destination (“O&D”) city pairs. This means that the Parties are horizontal competitors to each other for the O&D city pairs specified. Under the Proposed Commercial Alliance, the Parties intend to work together to agree on concluding cooperative procedures relating to, *inter alia*, route and schedule coordination; joint pricing; [X]; and joint marketing for the air passenger and air freight services covered under the CCA. The elements of coordination present in the Proposed Commercial Alliance are akin to a price fixing and/or production control agreement between competitors. As per

³⁹ Paragraph 3.2 of the *CCS Guidelines on the Section 34 Prohibition*.

⁴⁰ Paragraph 2.7 of *CCS Guidelines of the Section 34 Prohibition*.

⁴¹ Paragraph 1.9(b)(iv) and Paragraph 1.1(a)(viii) of Form 1.

⁴² Clause 3.2.1 of Shareholder Agreement dated 19 September 2013.

⁴³ Parties’ Response to CCS RFI Question 1 dated 4 July 2014 and Clause 3.4.3 of Shareholder Agreement dated 19 September 2013.

section 34(2) of the Act, agreements, decisions or concerted practices with elements relating to price fixing and/or production control may have the object or effect of preventing, restricting or distorting competition within Singapore.

Relevant Market

33. CCS first defined the relevant market to assess the level of competition and the consequent effects of the Proposed Commercial Alliance on competition in Singapore.

The Parties' Submissions

Scheduled Air Passenger Transport Services

34. The Parties submitted that the relevant market affected by the Proposed Commercial Alliance is the market for the supply of international air passenger transport services as defined by the Singapore O&D city pairs affected by the Proposed Commercial Alliance. The Parties highlighted that the cooperation through the Proposed Commercial Alliance will only relate to the Singapore-Europe routes.⁴⁴ In particular, the Parties submitted that there are two overlapping Singapore O&D city pairs which both Parties operate on a one-stop basis. These are the Singapore – London and Singapore – Brussels routes.⁴⁵
35. The Parties also submitted that since neither of the Parties offer non-stop services between Singapore and Europe, the potential distinction between business travellers (where length of travel time is a significant factor to consider in choosing between airlines) and leisure passenger travellers (where length of travel time is less of a consideration) is not relevant to the current Application. As such, the Parties are of the view that the relevant markets to be considered for this Application should be the markets for these two overlapping O&D city pair routes.⁴⁶
36. Upon closer examination by CCS of O&D city pair routes operated by each of the Parties, the Parties provided further submissions on Singapore O&D city pairs that both parties operate in.⁴⁷ These additional overlapping Singapore O&D city pairs routes are:

Figure 1: table of overlapping Singapore O&D city pair routes

Destination from Singapore to	Number of stops	
	Etihad	Jet
Paris	1	1
Toronto	1	1
New York	1	1
Mumbai	1	0
Ahmedabad	1	1
Hyderabad	1	1
Bengaluru	1	1

⁴⁴ Paragraph 4.2(e) of Form 1.

⁴⁵ Paragraphs 4.2(c) to 4.2(g) and Annex Q4.2 of Form 1. The Singapore – London and Singapore – Brussels services on Etihad will connect via Abu Dhabi. The Singapore – London and Singapore – Brussels services on Jet will connect via a gateway city in India (i.e. the flights connect via Delhi or Mumbai).

⁴⁶ Paragraphs 4.2(c) and 4.2(d) of Form 1.

⁴⁷ Parties' Response to CCS RFI Question 4(iii) dated 4 July 2014 and Parties' Response to CCS RFI Question 1 dated 11 August 2014.

Kochi	1	1
Kozhikode	1	1
Delhi	1	0
Chennai	1	0
Trivandrum ⁴⁸	1	1
Jaipur	1	1
Abu Dhabi	0	1
Bahrain	1	1
Dammam	1	1
Doha	1	1
Jeddah	1	1
Kuwait	1	1
Muscat	1	1
Riyadh	1	1
Colombo	1	1
Dhaka	1	1
Kathmandu	1	1
Hong Kong	1	1
Bangkok	1	1

37. As shown in **Figure 1**, 22 of these routes are operated by the Parties on a one-stop basis. There are four non-stop services. These are: 1) the non-stop service operated by Etihad on the Singapore – Abu Dhabi route; 2) non-stop service operated by Jet on the Singapore – Mumbai route; 3) non-stop service operated by Jet on the Singapore – Delhi route; and 4) non-stop service operated by Jet on the Singapore – Chennai route.⁴⁹
38. The Parties submitted that a number of the Singapore O&D city pairs identified in **Figure 1** are theoretical as one or both Parties have negligible market share.⁵⁰ In particular, the Parties submitted that travel between destinations from Singapore to cities in East Asia and Southeast Asia are back haul routes for one or both of the carriers (i.e. these routes on Etihad are via Abu Dhabi and these routes on Jet are via their hubs in India). For example, the Parties submitted that a passenger travelling from Singapore to Bangkok has the option to select a non-stop flight with total flying time of 2:30 hours. However if the passenger were to fly on Etihad, the passenger would travel via the Singapore – Abu Dhabi – Bangkok route and it would take approximately 22 hours to reach the same destination. Similarly, if the passenger were to fly on Jet, the passenger would travel on the Singapore – Mumbai – Bangkok route and the entire journey would take approximately 21 hours to reach from Singapore to Bangkok. Due to the long total travel time of such routing vis-à-vis the alternative non-stop services, no reasonable customer would choose this option and hence Etihad does not market the back haul routes as it is not commercially practical. As such, the Parties are of the view that such back haul routes cannot compete with the non-stop services.⁵¹

⁴⁸ Also known as Thiruvananthapuram.

⁴⁹ 9W Singapore-Schedule information Tabs titled ‘9W Operating Schedule’ and ‘EY Operating Schedule’ provided in Parties submission dated 4 July 2014.

⁵⁰ Parties’ Response to CCS RFI Question 4(iii) dated 4 July 2014.

⁵¹ Parties’ Response to CCS RFI Question 2 dated 11 August 2014.

Scheduled Air Freight Transport Services

39. The Parties submitted that neither party has dedicated freighter services to India, however both Parties carry freight in the cargo holds of passenger aircraft. For the purpose of this application, insofar as freight is carried on passenger flights, the Parties are of the view that the level of competition in the air freight services market is affected by the same factors for air passenger transport services.⁵²

CCS's Assessment

Scheduled Air Passenger Transport Services

40. For the purposes of defining the market, CCS would first consider all the products on the demand side that buyers regard as reasonable substitutes for the product under investigation (the "focal product"), and then to identify all the sellers who supply the focal and substitute products, or who could potentially supply them.⁵³
41. CCS notes that the typical starting point for the market definition relating to the provision of scheduled air passenger transport services is the O&D pair routes of air services, usually city pairs. Passengers generally want to travel to a specific destination and will not substitute another destination when faced with a small, non-transitory increase in price. Therefore, each combination of an O&D city pair can form a separate market. This approach is consistent with CCS's previous decisions on similar airline alliance agreements and this is also the approach adopted by the European Commission.⁵⁴
42. As the Section 34 Prohibition specifically concerns the prevention, restriction or distortion of competition in Singapore, CCS will focus on scheduled air passenger transport services O&D city pair routes involving Singapore which are within the scope of the Proposed Commercial Alliance. Hence, for the purpose of assessing the Proposed Commercial Alliance as notified by the Parties, CCS considers all the non-stop and one-stop O&D city pair routes involving Singapore that are currently operated by the Parties. From these routes, CCS has identified the non-stop and one-stop Singapore O&D city pairs where the Parties currently overlap (collectively, the "Overlapping Routes"). These can be broadly categorised into:

Figure 2: Table of Overlapping Routes currently operated by the Parties
(All services are on a one-stop basis unless otherwise indicated)

Europe	North America	India	Middle East	Other Asia
Singapore – Paris	Singapore – Toronto	Singapore – Mumbai*	Singapore – Abu Dhabi**	Singapore – Colombo
Singapore – London	Singapore – New York	Singapore – Ahmedabad	Singapore – Bahrain	Singapore – Dhaka
Singapore – Brussels		Singapore – Hyderabad	Singapore – Dammam	Singapore – Kathmandu

⁵² Paragraph 4.2(a) of Form 1.

⁵³ Paragraph 2.1 of the *CCS Guidelines on Market Definition*.

⁵⁴ Refer to CCS Grounds of Decision for cases CCS 400/003/06, CCS 400/008/10, CCS 400/001/11, CCS 400/005/11, CCS 400/001/12, CCS 400/002/12 and CCS400/003/14. See also European Commission's decisions in Case No COMP/M.3280 – Lufthansa/Swiss, Case No COMP/M.4439 – Ryanair/Aer Lingus and Case No COMP/M.3280 – Air France/KLM.

		Singapore – Bengaluru	Singapore – Doha	Singapore – Hong Kong
		Singapore – Kochi	Singapore – Jeddah	Singapore – Bangkok
		Singapore – Kozhikode	Singapore – Kuwait	
		Singapore – Delhi*	Singapore – Muscat	
		Singapore – Chennai*	Singapore – Riyadh	
		Singapore – Trivandrum ⁵⁵		
		Singapore – Jaipur		

Notes:

*Jet currently operates non-stop service on these routes.

**Etihad currently operates non-stop service on this route.

43. With regard to the 28 Overlapping Routes, CCS notes that non-stop services are unavailable for eight routes in the market, namely, Singapore – Brussels; Singapore – Toronto; Singapore – Kozhikode; Singapore – Jaipur; Singapore – Bahrain; Singapore – Dammam; Singapore – Muscat and Singapore – Kuwait.⁵⁶
44. CCS notes that the Parties operate one-stop services on the majority of the Overlapping Routes listed in Figure 1, and there is no overlap of non-stop services from both parties in any of these routes. As such, in assessing the relevant market, CCS considers whether the Overlapping Routes are subject to competitive constraints from the non-stop services. CCS notes that studies have shown that passengers in the US indicate a preference for non-stop services.⁵⁷ CCS further notes that in its latest Market Study on the Airline Industry (the “Market Study”),⁵⁸ while passengers in general will select a non-stop flight when available, leisure passengers may accept the one-stop flights if offered sufficient discount.⁵⁹ Although these studies are not specific to Singapore, CCS notes that they focused mainly on whether one-stop services are good alternatives to non-stop services, while the opposite, i.e. whether non-stop services are good alternatives to one-stop services, which is the main consideration of the present case⁶⁰, does not seem to attract much research interest. In general, CCS is of the view that the

⁵⁵ Trivandrum is also known as Thiruvananthapuram.

⁵⁶ [8].

⁵⁷ Steven Berry and Panle Jia “Tracing the Woes: An empirical Analysis of the Airline Industry”, *American Economic Journal: Microeconomics* 2, August 2010, p. 1 – 43.

⁵⁸ 11 February 2014 Summary Report on Net Economic Benefit of Joint Ventures. Accessible at: <http://www.ccs.gov.sg/content/dam/ccs/PDFs/MarketStudies/2014-02-11%20ICF%20SH-E%20CCS%20Airline%20Study%20Summary%20Report.pdf>

⁵⁹ Research conducted by George Mason University shows that the elasticity of demand for leisure travel is -1.6, implying that leisure passengers are sensitive to price changes. This means that they will choose a one-stop flight rather than a non-stop flight if the latter was appreciably more expensive. See Centre for Air Transportation Systems Research, ‘Airline Economics’, George Mason University, 2009.

⁶⁰ As the focal products are the Overlapping Routes operated by the Parties which are mainly one-stop services, CCS is concerned as to whether the non-stop services would be viewed by passengers as viable substitutes to the focal products. It is not necessary for CCS to consider whether the Overlapping Routes impose competitive constraints on the non-stop services. In other words, only one-way substitution is relevant for the purpose of CCS’s assessment.

benefits of non-stop services as compared to connecting services are similar if not superior (e.g. more convenience and shorter total travel time), and that non-stop services are good substitutes to connecting services (i.e. flights with one or more stops).

45. CCS is of the view that it is not necessary to define the relevant market more narrowly as a narrower market definition would not affect CCS's conclusion on the competitive outcomes in this case.
46. In light of the foregoing, for the purpose of assessing the Proposed Commercial Alliance as notified by the Parties, CCS defined the Relevant Scheduled Air Passenger Transport Services Markets as the provision of scheduled air passenger transport services on all the O&D city pair routes involving Singapore that are currently operated by the Parties.

Scheduled Air Freight Transport Services

47. In relation to air freight services, CCS notes that the market definition for scheduled air freight transport services typically differs from the O&D city pair approach for scheduled air passenger transport services. This is because air freight tends to be less time-sensitive than passengers, and usually involves trans-modal transportation to other destinations "behind" and "beyond" the points of origin and destination. This is the approach taken by CCS in its previous decision on a similar airline alliance agreement.⁶¹ This is the approach taken by the European Commission as well.⁶²
48. In line with the approach taken by the European Commission⁶³, CCS notes that the market should be assessed on a uni-directional basis due to the differences in the demand for scheduled air freight transport services at each end of the route. CCS is of the view that there is no need to further distinguish between cargo airlines with dedicated freighter planes and airlines with only belly space as these companies typically compete with one another for businesses from the same customers.⁶⁴
49. With respect to the relevant geographical market, given that the air freight is less time sensitive and that it usually involves trans-modal transportation to other destinations within the country as noted above, CCS is of the view that the relevant geographical market for air freight services for the purpose of this assessment should be based on uni-directional O&D country pairs rather than city pairs. CCS has identified the following overlapping O&D country pairs involving Singapore:

Figure 3: Overlapping O&D Country Pairs for Scheduled Air Freight Transport Services

Singapore to Canada	Canada to Singapore
Singapore to United States of America	United States of America to Singapore
Singapore to France	France to Singapore
Singapore to England	England to Singapore
Singapore to Belgium	Belgium to Singapore
Singapore to India	India to Singapore

⁶¹ Refer to CCS Grounds of Decision for case CCS 400/006/12.

⁶² See paragraph 43 in Case No Comp/M.5141-KLM/MartinAir.

⁶³ See paragraphs 77-78 of Case No. Comp/M.6828- Delta Air Lines/Virgin Group/Virgin Atlantic Limited, and paragraphs 35, 38 and 44 of Case No. Comp/M.5141-KLM/MARTINAIR.

⁶⁴ If anything, dedicated freight services are likely to be a superior product to non-dedicated ones due to dedicated capacity and scheduling.

Singapore to UAE	UAE to Singapore
Singapore to Bahrain	Bahrain to Singapore
Singapore to Saudi Arabia	Saudi Arabia to Singapore
Singapore to Qatar	Qatar to Singapore
Singapore to Kuwait	Kuwait to Singapore
Singapore to Oman	Oman to Singapore
Singapore to Bangladesh	Bangladesh to Singapore
Singapore to Sri Lanka	Sri Lanka to Singapore
Singapore to Nepal	Nepal to Singapore
Singapore to Thailand	Thailand to Singapore
Singapore to Hong Kong	Hong Kong to Singapore

50. In light of the foregoing, for the purpose of assessing the Proposed Commercial Alliance as notified by the Parties, CCS defined the Relevant Scheduled Air Freight Transport Services Markets as the provision of scheduled air freight transport services on all uni-directional O&D country pair routes involving Singapore that are currently operated by the Parties.
51. The Relevant Scheduled Air Passenger Transport Services Market and Relevant Scheduled Air Freight Transport Services Market shall collectively be referred to as the “Relevant Markets”.

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

The Parties’ Submissions

52. According to the Parties’ submissions, the combined market share of the Parties on the Singapore – London and Singapore – Brussels routes is [X]. As such, the cooperation between them will not cause appreciable adverse effect on the markets.⁶⁵
53. With regard to the Overlapping Routes from Singapore to destinations in Europe, Middle East and to Toronto, the Parties further submitted that apart from Etihad’s hub of Abu Dhabi, [X].⁶⁶
54. As indicated earlier, the Parties submitted that the Overlapping Routes involving Singapore to cities in India and to cities in other parts of Asia are back haul routes for one or both of the carriers (i.e. these routes on Etihad are via Abu Dhabi and these routes on Jet are via their hubs in India). The Parties submitted examples to illustrate that travelling on these back haul flights will take considerably longer than the non-stop services or more logical one-stop services. Hence these back haul services do not compete with non-stop services offered by multiple carriers or with more logical one-stop services. Etihad does not market the back haul routes as it is not commercially practical. Further, Etihad has not more than [0-10]% market share on the Overlapping Routes involving Singapore to cities in India and to cities in other parts of Asia. The Parties also submitted that the competitive impact of any such cooperation would be

⁶⁵ Paragraph 5.1(x) of Form 1.

⁶⁶ Parties’ Response to CCS RFI Question 4(iii) dated 4 July 2014.

negligible given the market shares of one or both of the Parties on the respective routes.⁶⁷

55. In any event, the Parties submitted that the Proposed Commercial Alliance has, on balance, a resulting NEB as it contributes to improving production or distribution or promoting technical or economic progress and it does not impose on the Parties restrictions which are not indispensable to the attainment of those objectives or afford the Parties the possibility of eliminating competition in respect of a substantial part of the relevant air passenger services market. Hence the Proposed Commercial Alliance would qualify for the NEB exclusion under Paragraph 9 of the Third Schedule of the Act.⁶⁸

CCS's Assessment

56. CCS notes the Parties intend to work together to agree on concluding cooperative procedures relating to, *inter alia*, route and schedule coordination; joint pricing; [X]; and joint marketing for the air passenger and air freight services covered under the CCA. In the Relevant Markets, this is equivalent to a price fixing and/or production control agreement which can be regarded as restrictive of competition to an appreciable extent. CCS is of the view that the Proposed Commercial Alliance in the Relevant Markets will have the object of the prevention, restriction or distortion of competition in the Relevant Markets; an agreement involving price-fixing, bid-rigging, market-sharing or output limitations will always have an appreciable adverse effect on competition.

Counterfactual

57. As indicated above, the Parties have submitted that Etihad's continued equity stake in Jet is not contingent upon CCS's approval.⁶⁹ It is further stated in the CCA that the CCA shall continue in force unless terminated earlier in accordance with the CCA, for so long as Etihad has an equity stake in Jet. CCS notes that both Parties had already entered into codeshare agreements in September 2013, before the CCA came into force.⁷⁰ Jet currently codeshares its flights on O&D city pairs of Singapore – Delhi, Singapore – Mumbai, and Singapore – Chennai, with Etihad.⁷¹ Parties submitted that they would continue to codeshare irrespective of the outcome of the Decision, but would not collaborate on pricing and other competitively sensitive issues absent CCS approval.⁷²
58. As further set out in clause 7.3 of the CCA, in the event that the Parties do not obtain regulatory and competition/anti-trust approvals to the extent necessary to fully implement the cooperation anticipated by the CCA, the Parties shall agree upon what cooperation can be achieved and implemented within the regulatory and competition/anti-trust approvals obtained and/or granted. The Parties may determine as part of their consideration that no commercially beneficial and meaningful cooperation

⁶⁷ Parties' Response to CCS RFI Question 1 dated 11 August 2014.

⁶⁸ Paragraph 5.1(c) of Form 1.

⁶⁹ Parties' Response to CCS RFI Question 3 dated 26 September 2014.

⁷⁰ Paragraphs 1a)(x) and 1b)(v) of Form 1.

⁷¹ [X].

⁷² Ibid.

can be achieved. In this case, the Parties shall mutually decide whether to terminate the CCA.⁷³

59. As such, in the absence of the Proposed Commercial Alliance, a counterfactual could see the Parties continuing this codeshare agreement.

The Net Economic Benefit Exclusion

60. An agreement that falls within the scope of the Section 34 Prohibition may, on balance, have a resulting NEB if it contributes to improving production or distribution or promoting technical or economic progress and it does not impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives and it does not 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.
61. The burden of proof in establishing the benefit of the NEB exclusion for individual agreements lies on the party which claims it.⁷⁴
62. 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 generated in these separate markets may be taken into account.⁷⁵
63. CCS notes that air freight flown by the Parties in the Relevant Scheduled Air Freight Transport Services Markets is fully carried by their passenger planes that fly in the Relevant Scheduled Air Passenger Transport Services Markets. CCS is satisfied that the efficiencies arising from the Proposed Commercial Alliance in the Relevant Scheduled Air Passengers Transport Services Markets will similarly benefit the Relevant Scheduled Air Freight Transport Services Markets. However, as the extent of competitive constraints may not be the same between the two sets of relevant markets, CCS will need to assess whether the similar benefits would be sufficient to outweigh any detriment to competition in the Relevant Scheduled Air Passengers Transport Services Markets and the Air Freight Transport Services Markets respectively.

Parties' Submissions – Contributes to Improving Production or Distribution or Promoting Technical or Economic Progress

Enhanced Products and Services

64. The Parties submitted that the Proposed Commercial Alliance will immediately increase the choice of journey options for passengers. Passengers will have access to better connections and a broader schedule on either Jet or Etihad code. Moreover, Jet passengers will have access to enhanced Etihad products and services, including reciprocal frequent flyer benefits, lounge access, and similar amenities.⁷⁶

⁷³ Clause 7.3 of the CCA.

⁷⁴ Regulation 13(a) of the Competition (Notification) Regulations 2007.

⁷⁵ Paragraph 10.1 of Annex C to the CCS Guidelines on the Section 34 Prohibition.

⁷⁶ Paragraph 5.1(f) of Form 1.

65. For Singapore customers, this will create additional choices for online travel from Singapore to Europe. Through Etihad's European network, the Parties can create broader and denser services between Singapore and Europe, which could not be otherwise achieved by either Applicant on a standalone basis.⁷⁷ The opportunities for online connections are a significant public benefit that is valued by consumers for the following reasons:
- a. International quality standard across the networks of the Parties;
 - b. Increased convenience;
 - c. The increased likelihood of making the connecting flight in the event of a delay on a journey sector;
 - d. The increased ability to purchase flexible and more attractive fares;
 - e. Reduced likelihood of luggage being lost;
 - f. The ability to fly on one's preferred air service brand and to accrue points and status credits; and
 - g. In relation to codeshare services, lower prices.⁷⁸
66. Singapore consumers will be able to benefit from an optimised Jet schedule to feed into Etihad's Abu Dhabi hub, which in turn has multiple flights to Europe, North America, South America, Africa and Asia.⁷⁹
67. In terms of increased frequencies for Singapore customers, while still working on the details, the Parties are of the opinion that the impact will be mainly felt between various Indian cities and Abu Dhabi, which will allow Singapore passengers more access to more destinations using either Jet (via India) or Etihad.⁸⁰

The Etihad Network – Expanded Network and More Destinations

68. The Proposed Commercial Alliance enables Jet to complement an intercontinental network for travel to and from Singapore in competition with member carriers of alliances, such as the Star Alliance. Likewise, the Alliance will allow better competition with Emirates.⁸¹
69. The ability for Jet to grow its intercontinental network will enable it to more fully compete against such carriers and improve competition. Jet currently has limited ability to compete with other airlines in terms of intercontinental travel and business/corporate travel for Singapore travellers to Europe and European travellers to Singapore. In fact, Jet serves mostly the Indian domestic market. The Proposed Commercial Alliance will greatly improve Jet's ability to compete in market segments of intercontinental travel and Europe -Singapore travel.⁸²

⁷⁷ Paragraph 5.1(g) of Form 1.

⁷⁸ Paragraph 5.1 (h) of Form 1.

⁷⁹ Parties' Response to CCS RFI Question 11 dated 4 July 2014.

⁸⁰ Ibid.

⁸¹ Paragraph 5.1 (m) of Form 1.

⁸² Paragraph 5.1 (n) of Form 1.

Enhanced Economic Efficiencies

70. The Parties submitted that the proposed integration of scheduling and [X] and sharing of resources between the Parties will minimise the chances of any operational problems, reduce administrative costs and result in the optimal utilisation of each of the Parties' resources. It will increase the Parties' ability to mitigate any losses and inconvenience arising due to disruptions in schedules, ultimately benefitting the consumer. Cost benefits will also be derived from better overhead and manpower efficiencies and economies in supplier procurement. Other benefits include reduced handling and overhead costs, wider network reach and sharing of best practices in order to provide better quality of services.⁸³
71. The Parties will be able to realise efficiencies from joint marketing and distribution arrangements, [X] and joint airport operations ([X]), in the form of cost savings rather than duplicating these services, if they were to operate individually.⁸⁴
72. Offering a common ground experience will also enhance the credibility of any alliance (on a regional level) and present opportunities to leverage efficiencies from [X] existing operational staff. Sharing handling facilities in key stations will facilitate a customer convenience factor for export deliveries and import collections while allowing a more seamless and integrated interface where Etihad and Jet's networks overlap. Etihad has an established network with air berlin, Virgin Australia, Air Seychelles, Etihad Regional, Air Serbia and Aer Lingus and therefore network oversight can be enhanced by shared quality audit platforms.⁸⁵
73. Joint setting of prices under the Proposed Commercial Alliance will enable the Parties to reduce or do away with double marginalisation, or the individual profit mark-ups, for each of their services. This will allow for reduced and more competitive fares to consumers. This will also incentivise the Applicants to sell inventory on each other's flights, which provides for a more efficient use of total inventory between both airlines.⁸⁶
74. The integration of the Parties' cargo operations and marketing leverages the combined network strengths of Etihad and Jet to drive increased demand and loyalty from the market place, thus enabling the Parties to compete more effectively.⁸⁷
75. Investment could be made in developing a common electronic platform for cargo operations enabling, but not limited to,:
- a. Interrogation of schedules and inventory;
 - b. Accepting bookings;
 - c. Track and trace;
 - d. Product information and station characteristics;
 - e. Distributing Air waybills; and
 - f. Processing claims.⁸⁸

⁸³ Parties' Response to CCS RFI Question 12 dated 4 July 2014.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Paragraph 5.1(q) of Form 1.

⁸⁷ Parties' Response to CCS RFI Question 12 dated 4 July 2014.

⁸⁸ Ibid.

76. Additionally, other areas of air cargo activity could be combined to leverage efficiencies such as:
- a. Unit Load Device (ULD) procurement;
 - b. ULD distribution;
 - c. In-market customer events;
 - d. Quality audits; and
 - e. Revenue accounting.⁸⁹
77. The Parties submitted that the projected annual efficiencies, cost savings and/or incremental revenue as a result of the implementation of the Proposed Commercial Alliance to be [X].⁹⁰
78. While the aforementioned efficiencies are not Singapore-specific, they are cooperation specific. Moreover, given the competitive aviation landscape in Southeast Asia and in particular Singapore, which is one of the world's key aviation hubs, competition will incentivise the Parties to pass on a substantial portion of the realised benefits in very tangible ways:
- a. Lower prices;
 - b. Increased frequencies;
 - c. Enhanced hard and soft products;
 - d. Innovative products and services; and
 - e. Enhanced loyalty programs.

Benefits to Tourism Industry

79. Tourism plays an important role in the Singapore economy. More convenient and lower priced flights can bring more leisure travellers to Singapore and stimulate growth to the tourism industry.⁹¹

Parties' submission – Any restrictions contemplated are indispensable to attainment of the above objectives

80. The Parties submitted that the Proposed Commercial Alliance is indispensable to achieving the above objectives and neither Party will be able to achieve these on its own accord.⁹²
81. In order for the Proposed Commercial Alliance to function optimally, the Parties must be permitted to coordinate their key activities, including the [X]reciprocal sales representation, scheduling, fare mix, passenger amenities and fares.⁹³

⁸⁹ Ibid.

⁹⁰ Parties' Response to CCS RFI Question 3c dated 11 August 2014.

⁹¹ Paragraph 5.1(t) of Form 1.

⁹² Paragraph 5.1(u) of Form 1.

⁹³ Paragraph 5.1(v) of Form 1.

Parties' submission – Will not afford the Applicants the possibility of eliminating competition in respect of a substantial part of the relevant air passengers services markets

82. The Parties submitted that as the combined market share of the Applicants in the Overlapping Routes is [X], therefore the cooperation between the Parties will not cause appreciable adverse effect on the markets. The Proposed Commercial Alliance also does not afford the Applicants the possibility of eliminating competition in respect of a substantial part of the services within the relevant markets.⁹⁴

CCS's Assessment on the Net Economic Benefits

83. When assessing the NEB, along with the criteria mentioned in paragraph 60, paragraph 10.4 of Annex C to the *CCS Guidelines on the Section 34 Prohibition* sets out the criteria to be taken into account, namely that:
- a. The claimed efficiencies must be objective in nature;
 - b. There must normally be a direct causal link between the agreement and the claimed efficiencies; and
 - c. The efficiencies must be of a significant value, enough to outweigh the anti-competitive effects of the agreement.
84. In evaluating the third factor, the likelihood and magnitude of the claimed efficiencies will need to be weighed against the anti-competitive effects resulting from the agreement. Generally, the greater the increase in market power that is likely to be brought about, the more significant the benefits will have to be for the agreement to result in a NEB.
85. The types of efficiencies stated in the criteria are broad categories intended to cover all objective economic efficiencies. There is considerable overlap between the various categories. There is no need therefore to draw clear and firm distinctions between the various categories.⁹⁵
86. As mentioned in paragraph 56, CCS is of the view that the Proposed Commercial Alliance on the Overlapping Routes will have the object of the prevention, restriction or distortion of competition in the Relevant Markets and in this respect, CCS will assess if the Proposed Commercial Alliance will satisfy the NEB exclusion from the Section 34 Prohibition.

The Proposed Commercial Alliance will Improve Production or Distribution or Promote Technical or Economic Progress

87. CCS agrees with the Parties' submission that the Proposed Commercial Alliance will improve production or distribution or promote technical or economic progress.
88. The Parties submitted that the Proposed Commercial Alliance will result in the following efficiencies and CCS has assessed each in turn:

⁹⁴ Paragraph 5.1(x) of Form 1.

⁹⁵ Paragraph 10.5 of Annex C to the *CCS Guidelines on the Section 34 Prohibition*.

89. Enhanced products and services – CCS does not accept that the Proposed Commercial Alliance will allow customers access to better connections and a broader schedule on either Party's code. CCS notes that prior to the Proposed Commercial Alliance, the Parties were already in Codeshare Agreements with one another. As such, passengers of either Party would already have access to connections and schedules provided by the Parties. In terms of increasing flight frequency for Singapore customers, CCS notes that there is currently no concrete plan on how this will be realised by the Parties. CCS further notes that the Parties consider that *"Singapore services are one part of the overall network and the parties must consider their entire respective networks when making such determinations"*.⁹⁶ That said, CCS agrees with the Parties submission that passengers might gain from the reciprocal frequent flyer benefits, [X], and similar amenities. Overall, CCS is of the opinion that the Proposed Commercial Alliance may have limited effect in enhancing products and services of the Parties.
90. Expanded Network and more destinations – CCS accepts that the Proposed Commercial Alliance will enable Jet to complement an intercontinental network and enable it to more fully compete against more established airlines. CCS notes that Jet currently flies to 20 international destinations with few intercontinental destinations. Furthermore, based on the figures provided, Jet's market share in the intercontinental routes is small. The Proposed Commercial Alliance allows Jet to tap on Etihad's network and thereby allow it to compete in the market segment of intercontinental travel and Europe-Singapore travel.
91. Enhanced Economic Efficiencies – CCS notes that joint setting of prices by the Parties may reduce double marginalisation for routes jointly served by the Parties. However, in the absence of available figures, it is not possible to quantify the benefits arising from lower fares, or even the possibility of lower fares. In this regard, CCS notes that in its Market Study,⁹⁷ integrated alliances have not been found to result in a general decrease in individual fares (i.e. fares in each ticket class).
92. In addition, without actual data, CCS is unable to quantify the efficiencies for Singapore passengers that could result from more integrated cooperation between the Parties. In this regard, we note that the Parties have not submitted concrete plans on integration of flight services that can or will result in reductions in connection time.
93. CCS agrees that joint operations and sharing of resources will avoid duplication cost and reduce administrative cost. In this regard, CCS notes the Parties have projected annual efficiencies, cost savings and/or incremental revenue as a result of the implementation of the Proposed Commercial Alliance to be [X].⁹⁸
94. As shown from the results of the Market Study mentioned above, it cannot be taken as given that cost savings from airlines alliances would translate into reduction in passenger fares. In CCS's view, whether cost savings would translate into fare reduction would depend on the extent of competition post-alliance, which will be dealt with under the third limb of the NEB test below. If the Proposed Commercial Alliance

⁹⁶ Parties' Response to CCS RFI Question 3b dated 11 August 2014.

⁹⁷ 11 February 2014 Summary Report on Net Economic Benefit of Joint Ventures. Accessible at: <http://www.ccs.gov.sg/content/dam/ccs/PDFs/MarketStudies/2014-02-11%20ICF%20SH-E%20CCS%20Airline%20Study%20Summary%20Report.pdf>

⁹⁸ Parties Response to CCS RFI Question 3c dated 11 August 2014.

would not afford the possibility of eliminating competition in the Relevant Markets, then fare reductions arising from the cost savings are more likely to materialise.

95. Benefits to tourism – CCS is not satisfied that the Proposed Commercial Alliance will bring about benefits to tourism in Singapore as the Parties have not substantiated their claims of such. Further, [X] provided feedback that the effect of the Proposed Commercial Alliance on Singapore's position as an air hub is uncertain. [X] were of the view that Singapore may lose some Singapore-Europe O&D traffic and Oceania transfer to the AUH hub as Etihad's base-load of feed from India following from the Proposed Commercial Alliance would boost direct connectivity of India to Europe.⁹⁹

The Proposed Commercial Alliance will not Impose Restrictions which are not Indispensable to the Attainment of these Objectives

96. CCS accepts that the Proposed Commercial Alliance is indispensable to the attainment of the enhanced economic efficiencies and expanded networks for Jet. CCS acknowledged that the cost savings and expanded networks for Jet may not materialise in the absence of the Proposed Commercial Alliance, i.e. with only codeshare agreements in place between the Parties. However, CCS rejects that the Proposed Commercial Alliance is indispensable for the enhancement of products and services, in terms of reciprocal frequent flyer benefits, [X], and similar amenities. CCS notes that these benefits can be achieved without the price and schedule coordination that is proposed within the Proposed Commercial Alliance. In this respect, marketing alliances such as Star Alliance, SkyTeam and oneworld have often offered these benefits to customers belonging to other partner airlines, without specific price and schedule coordination requirements.

The Proposed Commercial Alliance will not Afford the Possibility of Eliminating Competition in the Relevant Markets

Relevant Scheduled Air Passenger Transport Services Markets

97. CCS looked at the Parties' market share figures as one of the factors in assessing if the Proposed Commercial Alliance affords the possibility of eliminating competition on the Overlapping Routes. A table listing the market share figures of all the Overlapping Routes are shown in **Annex A**. CCS is satisfied that routes in which the Parties operate but do not overlap are unlikely to have competition concerns.
98. With the exception of the Singapore-Abu Dhabi, Singapore-Chennai and Singapore-Jaipur routes, CCS notes that the Parties do not have significant market shares in any of the Overlapping Routes.
99. In relation to the Singapore-Abu Dhabi route, CCS notes that Etihad has a market share of about [80-90]% while Jet has a market share of about [0-10]%.¹⁰⁰ Based on the market share figures, it is unlikely that Jet is a strong competitive constraint to Etihad, which has largest market share in the Singapore-Abu Dhabi route prior the Proposed

⁹⁹ [X].

¹⁰⁰ 9W Singapore-Schedule information Tab titled Overlapping ODs provided in Parties submission dated 4 July 2014.

Commercial Alliance. Therefore it is unlikely that the Proposed Commercial Alliance will afford the Parties the possibility of eliminating competition on this route.

100. In relation to the Singapore-Chennai route, CCS notes that Jet has a market share of about [30-40]% while Etihad has a market share of about [0-10]%.¹⁰¹ Based on the market share figures, it is unlikely that Etihad is a strong competitive constraint to Jet, which has the largest market share in the Singapore-Chennai route prior the Proposed Commercial Alliance. Therefore it is unlikely that the Proposed Commercial Alliance will afford the Parties the possibility of eliminating competition on this route.
101. Similarly, for the Singapore-Jaipur route, CCS notes that Jet has a market share of about [80-90]% while Etihad has a market share of about [0-10]%.¹⁰² Based on the market share figures, it is unlikely that Etihad is a strong competitive constraint to Jet, which has the largest market share in the Singapore-Jaipur route prior the Proposed Commercial Alliance. Therefore it is unlikely that the Proposed Commercial Alliance will afford the Parties the possibility of eliminating competition on this route.
102. Further, none¹⁰³ of the third party respondents, including various airlines, voiced any competition concerns regarding the Proposed Commercial Alliance. [X] is of the view that the combined market share of Etihad and Jet remains limited on Singapore-Paris, Singapore-London and Singapore-Brussels routes and accordingly does not believe that the Proposed Commercial Alliance would not lead to the substantial elimination of competition on these routes in the short to medium term.¹⁰⁴
103. [X] provided feedback that the Proposed Commercial Alliance will have minimal impact on the traffic from Singapore to all regions, and would introduce more non-direct travel options for passenger travelling between Singapore to other regions.¹⁰⁵
104. [X] submitted that the Proposed Commercial Alliance is unlikely to decrease competition for the O&D travel between Singapore and the destination in the overlapping networks of the Parties, given the limited network overlap between the Parties.¹⁰⁶

Relevant Scheduled Air Freight Transport Services Markets

105. As noted above, air freight flown by the Parties in the Relevant Scheduled Air Freight Transport Services Markets is fully carried by their passenger planes that fly in the Relevant Scheduled Air Passenger Transport Services Markets. Within the Relevant Scheduled Air Freight Transport Services Market, the Parties compete with i) the air passenger carriers that carry cargo; and ii) the dedicated air freight carriers. According to Changi Airport's website, there are 15 airlines operating over 300 weekly pure freighter flights from Changi Airport.¹⁰⁷ With the additional competitive pressure from

¹⁰¹ Parties' Response to CCS RFI Question 1 dated 11 August 2014.

¹⁰² Ibid.

¹⁰³ [X].

¹⁰⁴ [X].

¹⁰⁵ [X].

¹⁰⁶ [X].

¹⁰⁷ Changi Airport Cargo Connectivity. Retrieved from: <http://www.changiairportgroup.com/cag/html/business-partners/air-cargo/cargo-connectivity.html> on 29 September 2014.

the dedicated air freight carriers (which is not present in the Relevant Scheduled Air Passenger Transport Services Markets), the Parties are likely to face more competitive constraints in the Relevant Scheduled Air Freight Transport Services Markets.

106. In addition, given that the Relevant Scheduled Air Freight Transport Services Markets is defined as country O&D pair instead of O&D city pairs as per the Relevant Scheduled Air Passenger Transport Services Markets, as well as the relative insensitivity to time, routing and number of stops, CCS is of the view that there are more alternatives to the scheduled air freight transport services provided by the Parties within the overlapping O&D country pairs.
107. As the analysis has shown that the Proposed Commercial Alliance does not afford the Parties the possibility of eliminating competition in the Relevant Scheduled Air Passengers Transport Services Markets, CCS is satisfied the same conclusion can be applied to the Relevant Scheduled Air Freight Transport Services Market.
108. As such, CCS is of the view that the Proposed Commercial Alliance does not afford the Parties the possibility of eliminating competition in the Relevant Markets.

Conclusion on the NEB Exclusion

109. Based on CCS's assessment, CCS is satisfied that while the Proposed Commercial Alliance will improve production or distribution or promote technical or economic progress, the benefits accrued from the Proposed Commercial Alliance are not substantial.
110. However, given that the Proposed Commercial Alliance has minimal adverse impact on competition in the Relevant Markets, CCS is satisfied that, on the balance, the efficiencies accrued from the Proposed Commercial Alliance outweighs the anti-competitive effect of the Proposed Commercial Alliance.
111. Based on the above, CCS is satisfied that the NEB exclusion applies to the Proposed Commercial Alliance.

CCS's DECISION ON THE PARTIES' APPLICATION

112. Based on the foregoing, the CCS concludes that the Proposed Commercial Alliance does not infringe the Section 34 Prohibition because of the effect of the NEB exclusion set out in section 35, read with paragraph 9 of the Third Schedule to the Act.
113. For completeness, section 46 of the Act provides that, if CCS has determined 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:
 - a. It has reasonable grounds for believing that there has been a material change of circumstance since it gave its decision; or
 - b. It has reasonable grounds for suspecting that the information on which it based its decision was incomplete, false or misleading in a material particular.

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

- a. Changes in parties to the Proposed Commercial Alliance;
- b. Changes in the business plans associated with the operations of the Proposed Commercial Alliance and of the Parties which have a significant impact on the Singapore market; and
- c. A reduction in the number of competing carriers in the Relevant Markets.

115. The Parties are requested to notify CCS of any changes as set out in paragraph 114 above within 10 working days from the date of occurrence of such event.



Toh Han Li
Chief Executive
Competition Commission of Singapore

Destination (Singapore to)	Total Market Size (PAX)	EY Share	9W Share	Largest Carrier	2 nd Carrier	3 rd Carrier	4 th Carrier	5 th Carrier	Largest Carrier
Abu Dhabi	[<]	[80-90]%	[0-10]%	EY [80-90]%	UL [0-10]%	QR [0-10]%	9W [0-10]%	AB [0-10]%	
Ahmedabad	[<]	[0-10]%	[10-20]%	SQ [50-60]%	AI [20-30]%	9W [10-20]%	VA [0-10]%	TG [0-10]%	
Bahrain	[<]	[0-10]%	[0-10]%	QR [30-40]%	EK [20-30]%	SQ [10-20]%	UL [10-20]%	EY [0-10]%	
Hong Kong	[<]	[0-10]%	[0-10]%	CX [50-60]%	SQ [30-40]%	UA [0-10]%	MH [0-10]%	3K [0-10]%	
Bengaluru	[<]	[0-10]%	[0-10]%	SQ [70-80]%	MH [10-20]%	UL [0-10]%	MI [0-10]%	9W [0-10]%	
Brussels	[<]	[0-10]%	[0-10]%	SQ [20-30]%	LH [10-20]%	QR [10-20]%	LX [0-10]%	TK [0-10]%	
Chennai	[<]	[0-10]%	[30-40]%	9W [30-40]%	AI [30-40]%	SQ [20-30]%	MI [0-10]%	MH [0-10]%	
Colombo	[<]	[0-10]%	[0-10]%	UL [30-40]%	CX [20-30]%	EK [20-30]%	SQ [20-30]%	MH [0-10]%	
Dammam	[<]	[0-10]%	[0-10]%	QR [30-40]%	EK [20-30]%	UL [10-20]%	9W [0-10]%	EY [0-10]%	
Delhi	[<]	[0-10]%	[20-30]%	SQ [40-50]%	9W [20-30]%	AI [10-20]%	MH [0-10]%	UL [0-10]%	
Dhaka	[<]	[0-10]%	[0-10]%	SQ [40-50]%	BG [40-50]%	MH [0-10]%	TG [0-10]%	9W [0-10]%	
Doha	[<]	[0-10]%	[0-10]%	QR [70-80]%	UL [10-20]%	EK [0-10]%	SQ [0-10]%	9W [0-10]%	
Bangkok	[<]	[0-10]%	[0-10]%	TG [50-60]%	SQ [30-40]%	CX [0-10]%	3K [0-10]%	TZ [0-10]%	
Hyderabad	[<]	[0-10]%	[0-10]%	MI [30-40]%	SQ [30-40]%	MH [10-20]%	AI [0-10]%	9W [0-10]%	
Jaipur	[<]	[0-10]%	[80-90]%	9W [80-90]%	SQ [10-20]%	AI [0-10]%	EY [0-10]%	N/A	
Jeddah	[<]	[10-20]%	[0-10]%	SQ [40-50]%	SV [20-30]%	EY [10-20]%	EK [0-10]%	UL [0-10]%	
Kathmandu	[<]	[0-10]%	[0-10]%	MI [40-50]%	SQ [20-30]%	MH [10-20]%	TG [10-20]%	9W [0-10]%	
Kochi	[<]	[0-10]%	[0-10]%	MI [40-50]%	SQ [30-40]%	MH [10-20]%	9W [0-10]%	UL [0-10]%	
Kozhikode	[<]	[0-10]%	[10-20]%	SQ [20-30]%	EK [20-30]%	9W [10-20]%	AI [10-20]%	QR [10-20]%	
Kuwait	[<]	[0-10]%	[0-10]%	EK [30-40]%	UL [20-30]%	QR [20-30]%	SQ [0-10]%	EY [0-10]%	
London	[<]	[0-10]%	[0-10]%	SQ [50-60]%	BA [20-30]%	EK [0-10]%	QF [0-10]%	QR [0-10]%	
Mumbai	[<]	[0-10]%	[20-30]%	SQ [40-50]%	9W [20-30]%	AI [10-20]%	MH [0-10]%	UL [0-10]%	
Muscat	[<]	[0-10]%	[0-10]%	UL [20-30]%	QR [20-30]%	EK [20-30]%	SQ [10-20]%	WY [0-10]%	
New York	[<]	[0-10]%	[0-10]%	SQ [50-60]%	CX [10-20]%	UA [10-20]%	DL [0-10]%	EK [0-10]%	
Paris	[<]	[0-10]%	[0-10]%	SQ [40-50]%	AF [30-40]%	EK [0-10]%	QR [0-10]%	MH [0-10]%	
Riyadh	[<]	[0-10]%	[0-10]%	SQ [60-70]%	SV [10-20]%	EK [10-20]%	UL [0-10]%	EY [0-10]%	
Trivandrum	[<]	[0-10]%	[0-10]%	MI [60-70]%	SQ [30-40]%	AI [0-10]%	9W [0-10]%	EK [0-10]%	
Toronto	[<]	[0-10]%	[0-10]%	AC [30-40]%	CX [30-40]%	BR [0-10]%	SQ [0-10]%	UA [0-10]%	

Source: Parties' submissions