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

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

Notification for Decision by Qantas Airways and Jetstar Airways

5 September 2013

Case number: CCS 400/002/12

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. On 6 August 2012, CCS received a notification for decision made under section 44 of the Competition Act (Cap. 50B), by Qantas Airways Limited and Jetstar Airways Pty Limited, on behalf of Jetstar Asia Airways Pte Ltd, Valuair Limited, Jetstar Japan Co., Ltd, Jetstar Pacific Airlines Aviation Joint Stock Company, Jetstar Hong Kong Airways Limited, Japan Airlines Corporation, Vietnam Airlines Company Limited, China Eastern Airlines Co. Ltd and any other future Jetstar branded low cost carrier that may be established. A decision was sought as to whether the Proposed Conduct between the parties listed above will infringe the Section 34 Prohibition of the Act.

2. Pursuant to regulation 9(5) of the Competition Regulations 2007, CCS exercises its discretion not to give a decision on parts of the Proposed Conduct which are prospective; in particular, the parts which involve future Jetstar branded joint ventures that have yet to be established at/about¹ the time the Notification was made.

¹ The initial Jetstar Hong Kong Shareholders Agreement was executed on 24 August 2012 and Jetstar Hong Kong was established on 4 September 2012. The Notification was received by CCS on 6 August 2012. For the purposes of this assessment and decision, CCS considers Jetstar Hong Kong to be a Jetstar JV which has been established about the time the Notification was made.

3. CCS's assessment, based on the submissions and information provided by the Applicants and from relevant third parties, is that the Proposed Conduct will have the object of the prevention, restriction or distortion of competition within Singapore. However, CCS is satisfied that the Applicants have established that the net economic benefit exclusion applies to the Proposed Conduct within the Relevant Markets.

4. Therefore, by operation of section 35 of the Act (read with paragraph 9 of the Third Schedule of the same), the Proposed Conduct, within the Relevant Markets, is excluded from the Section 34 Prohibition of the Act.

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A. INTRODUCTION

1. This Decision sets out CCS's assessment of the notification for decision ("the Notification") made by Qantas Airways Limited ("Qantas Airways") and Jetstar Airways Pty Limited ("Jetstar Airways") (together the "Applicants") under section 44(1)(b) of the Competition Act (Cap. 50B) ("the Act"), on whether the Proposed Conduct between Qantas Airways, Jetstar Airways, Jetstar Asia Airways Pte Ltd ("Jetstar Asia"), Valuair Limited², Jetstar Japan Co., Ltd ("Jetstar Japan"), Jetstar Pacific Airlines Aviation Joint Stock Company ("Jetstar Pacific"), Jetstar Hong Kong Airways Limited ("Jetstar Hong Kong"), Japan Airlines Corporation ("Japan Airlines"), Vietnam Airlines Company Limited ("Vietnam Airlines") and China Eastern Airlines Co. Ltd ("China Eastern Airlines") (collectively referred to as "the Parties") will infringe the prohibition under section 34 of the Act.

2. CCS's assessment and decision are based on the submissions and information provided by the Applicants and relevant third parties.

B. BACKGROUND TO THE NOTIFICATION

The Notification for Decision

3. According to the submissions put forth, the international aviation regulatory environment has made it difficult for Qantas Airways to wholly own or majority own airlines outside Australia. In this respect, the Jetstar Pan-Asia Strategy (the "Strategy") pursued by Qantas Airways will enable the:

- a. Investment in Jetstar joint ventures ("Jetstar JV") in a number of Asian jurisdictions by Qantas Airways/Jetstar Airways (generally the minority owner) and local partners (generally full service airlines) to operate low cost carriers ("LCCs") under the Jetstar brand and business model;
- b. Coordination between each Jetstar JV and its Full Service Airline ("FSA") shareholder; and
- c. Coordination of each Jetstar JV with each other and with each of Qantas Airways and Jetstar Airways pursuant to the Joint Venture Coordination Agreement ("JVCA").

4. To operationalise the Strategy, the Parties would coordinate on network, scheduling, pricing, marketing, purchasing, customer service and resourcing decisions ("the Proposed Conduct"). The Proposed Conduct was notified to CCS on 6 August 2012 under section 44(1)(b) of the Act for a decision on whether the Proposed Conduct will infringe section 34 of the Act.

5. In its submission, the Applicants claimed that the Proposed Conduct is pro-competitive, efficiency enhancing and will deliver significant benefits to Singapore consumers in the form of more choice, greater access to lower fares and more destinations through the integrated Jetstar network.

² Valuair was acquired by Jetstar Asia in 2005; and is also a wholly-owned subsidiary of Newstar Investment Holdings Pte Ltd. The Valuair brand is retained for Jetstar Asia's scheduled services to major cities in Indonesia. For the purposes of this Notification, the terms Valuair and Jetstar Asia will be interchangeably used.

6. As part of CCS's market assessment, a summary of the Application and an invitation for comments was placed on CCS's public register on 6 August 2012 to seek third parties' feedback on how the Proposed Conduct will affect competition between the airlines and whether there will be a resulting Net Economic Benefit ("NEB") arising for Singapore.

The Applicants to the Notification

7. As indicated in the submissions to CCS, the Applicants to the Notification are Qantas Airways and Jetstar Airways respectively.

Qantas Airways

8. Qantas Airways is part of the Qantas Group, which was incorporated in Queensland, Australia in 1920. It is now Australia's largest domestic and international airline. As of June 2011, Qantas Airways has a total fleet of 283 aircraft and its network consists of 208 destinations in 46 countries.³ The Qantas Group employs approximately 35,000 people worldwide and operates more than 5,700 domestic and 970 international flights each week through Qantas Airways and Jetstar Airways.

9. As of December 2012, Qantas Airways is a party to the following:

- a. Alliance with the International Airlines Group pursuant to a Joint Services Agreement;
- b. Alliance with American Airlines pursuant to a Joint Business Agreement; and
- c. The **oneworld** global airline marketing alliance.

10. Qantas Airways flies to 23 destinations from Singapore, of which 16 routes are operated via its code-share partners and the Jetstar Group^{4,5}.

Jetstar Airways

11. Jetstar Airways is a wholly-owned subsidiary of Qantas Airways, set up in 2004 to operate low cost, domestic based services in Australia. It has evolved to serving various international locations in the Asia Pacific Region.

12. Jetstar Airways is also the licensor of the Jetstar Business Service Agreement ("BSA") with Jetstar JVs. The BSAs set out how Jetstar Airways will license its business systems and "know-how" to each of the existing Jetstar JVs in order to leverage a common brand, go to market model and support in relation to:

- a. Network, scheduling and fleet strategy;
- b. Product;

³ Source: <http://www.forbes.com/companies/qantas-airways/> (accessed in December 2012).

⁴ The Jetstar Group is currently the largest low-cost airline in the Asia Pacific by revenue and has flown over 75 million passengers since it was launched in 2004. Collectively, the Jetstar Group employs over 7,000 staff across the Asia-Pacific region and operates approximately 3,000 weekly flights to over 60 destinations in 17 countries or territories with a combined operating fleet of 86 aircraft.

⁵ Source: <http://www.qantas.com.au/travel/airlines/route-maps/global/en> (accessed on 20 January 2013).

- c. Pricing and distribution⁶; and
- d. Sales, marketing and customer service activities.

13. Jetstar Asia, Jetstar Pacific, Jetstar Japan and Jetstar Hong Kong operate under individual BSAs entered into with Jetstar Airways.

Other Parties to the Proposed Conduct That Are Not Applicants to the Notification

Jetstar Asia

14. Jetstar Asia was established in December 2004 and is wholly-owned by Orangestar Investment Holdings (“Orangestar”). In turn Orangestar is wholly-owned by Newstar Investment Holdings Pte Ltd (“Newstar”) which is effectively owned by the Qantas Airways and Westbrook Investments Pte Ltd through the following shareholding structure:

- a. Westbrook Investments Pte Ltd, a Singapore-based company, with a 51% shareholding; and
- b. Jetstar Asia Holdings Pty Limited, a wholly-owned subsidiary under the Qantas Group, with a 49% shareholding.

15. From its base in Singapore, Jetstar Asia operates over 400 weekly flights to 27 destinations across 15 countries and territories in the Asia-Pacific region.

Jetstar Pacific

16. Jetstar Pacific was established in 2008 and it is an incorporated joint venture in Vietnam, headquartered in Ho Chi Minh. It is owned by the following entities:

- a. Qantas Asia Investment Company Singapore Pte Ltd, a wholly-owned subsidiary of the Qantas Group, with a 30% shareholding;
- b. Vietnam Airlines with a 67% shareholding; and
- c. Saigon Tourist Holding Company and Mr. Luong Hoai Nam (a Vietnam citizen) with a total of 3% shareholding.

17. Jetstar Pacific currently flies to domestic destinations within Vietnam and, subject to the necessary regulatory approval, Jetstar Pacific intends to commence international services to North East Asia and South East Asia [§<].⁷

Jetstar Japan

18. Jetstar Japan was established in August 2011. It is wholly-owned by an incorporated joint venture in Japan which in turn is owned by the following entities:

- a. Jetstar International Group Holdings Co. Ltd, a wholly-owned subsidiary of the Qantas Airways, with a 33.33% shareholding;
- b. Japan Airlines with a 33.33% shareholding;
- c. Mitsubishi Corporation with a 16.65% shareholding; and

⁶ [§<]

⁷ Letter from Qantas Airways dated 17 July 2013.

- d. Century Tokyo Leasing Corporation which acquired a 16.65% shareholding from Mitsubishi Corporation on 27 March 2012.

19. Jetstar Japan received its Air Operator's Certificate on 6 April 2012 from Japan's regulatory authority, the Ministry of Land, Infrastructure and Transport. In addition, the airline has started domestic operations in July 2012⁸ and will commence international operations in [§<].⁹

Jetstar Hong Kong

20. The initial Jetstar Hong Kong Shareholders Agreement was executed on 24 August 2012 and Jetstar Hong Kong was established on 4 September 2012¹⁰. A Restated and Amended Shareholders Agreement was executed on 5 June 2013 following the addition of Go Harvest Investments Limited, a wholly-owned subsidiary of Shun Tak Holdings Limited as a new investor. As a result of the transaction, the shareholding structure for Jetstar Hong Kong is as follows:

- a. Jetstar International Group Holdings Co Limited, a wholly-owned subsidiary of the Qantas Airways, with 33.3% shareholding;
- b. China Eastern Airlines with 33.3% shareholding; and
- c. Go Harvest Investments Limited, a wholly owned subsidiary of Shun Tak Holdings Limited with 33.3% shareholding.

21. Jetstar Hong Kong will be a low-fare carrier based in and operated from Hong Kong. Subject to regulatory approval, Jetstar Hong Kong plans to fly short haul services to Greater China, Japan, South Korea and Southeast Asia in [§<]¹¹. It will operate a fleet of A320 aircraft configured for 180 passengers and is expected to grow to 18 aircraft by 2015.¹²

22. While the Notification was put forward to CCS by the Applicants (namely Qantas Airways and Jetstar Airways), CCS notes that the FSAs holding ownership shares in their respective Jetstar JVs are also part of the Proposed Conduct. These airlines are:

China Eastern Airlines

23. China Eastern Airlines is a full service airline offering international and domestic services from Shanghai to 182 cities in 30 countries. During 2010, it accounted for approximately 31.1% of the total passenger traffic volume and 19% of the total freight volume on routes to and from Shanghai. As of December 31, 2010, it had a fleet of 355 aircraft, including 337 passenger jets each with a seating capacity of over 100 seats and 18 freighters.¹³

24. As mentioned above, China Eastern Airlines has a 33.3% shareholding of Jetstar Hong Kong. In addition, China Eastern Airlines also holds controlling shares of over 24

⁸ Source: <http://www.jetstar.com/au/en/about-us/our-company>.

⁹ Letter from Qantas Airways dated 17 July 2013.

¹⁰ For the purposes of this assessment and decision, CCS considers Jetstar Hong Kong to be a Jetstar JV which has been established by the time the Notification was made.

¹¹ Letter from Qantas Airways dated 17 July 2013.

¹² Information as provided by Qantas Airways via email on 31 July 2013.

¹³ Source: <http://www.forbes.com/companies/china-eastern-airlines/> (accessed in December 2012).

subsidiaries which include Shanghai Airlines, China Eastern Yunnan Airlines, China Cargo Airlines Co., Ltd and China United Airlines.¹⁴

25. Currently, China Eastern Airlines operates flights to Shanghai (on a daily basis) and Kunming (on a four times per week basis) from Singapore.¹⁵

Japan Airlines

26. Japan Airlines is a full service airline offering international and domestic services to more than 225 airports in 38 countries (together with its code-share partners). Japan Airlines operates an average of approximately 22,000 international and domestic flights a month, with a fleet of some 200 aircraft that includes Boeing 777s, 767s, 737-800s, and Brazilian-made regional jets, Embraer E170.

27. Japan Airlines has 33.33% shareholding of Jetstar Japan. In addition, Japan Airlines also wholly owns four other subsidiaries which are J-Air, JAL Express, JALways and Japan Transocean Air.

28. Currently, Japan Airlines operates daily flights to Tokyo from Singapore and offer onward connections to more than 15 domestic destinations in Japan.¹⁶

Vietnam Airlines

29. Vietnam Airlines is a full service airline offering international and domestic services to 20 destinations across Vietnam and 26 other international locations. Vietnam Airlines is based in Hanoi and is wholly owned by the Vietnamese Government.

30. Vietnam Airlines is the FSA shareholder of Jetstar Pacific also owns a number of companies in Vietnam's aviation industry.¹⁷

31. Currently, Vietnam Airlines flies to Hanoi and Ho Chi Minh from Singapore daily.

¹⁴ Source: http://hk.ceair.com/muovc/main/en_HK/Static_pages/AboutChinaEastern.html (accessed in December 2012).

¹⁵ Source: http://uk.ceair.com/muovc/main/en_GB/Static_pages/RouteMap.html (accessed in January 2013).

¹⁶ Source: [http://jal.innosked.com/\(S\(jcg5vyfexagn5s55i0dh1l45\)\)/Default.aspx?lang_id=EN®ion_id=JAPAN](http://jal.innosked.com/(S(jcg5vyfexagn5s55i0dh1l45))/Default.aspx?lang_id=EN®ion_id=JAPAN) (accessed in January 2013).

¹⁷ Source: http://www.vietnamairlines.com/wps/portal/en/site/about_us/subsidiaries_and_affiliates!/ut/p/c5/04_SB8K8xLLM9MSSzPy8xBz9CP0os3hnd0cPE3MfAwN_M1MzAyM3F0tvd2MXQ4MgE6B8JJK8u6-vm4GReaiFeZCrn6GBgSkB3V76Uek5-UIAe8JBNUw62SOJo_FJpC8AQ7gaKDv55Gfm6pfkBtRGey6wGAKyGB0w!!/dl3/d3/L3dDb0EvUU5RTGtBISevWUZSdndBISevNi9DR0FINDdMMDBPNjU2MDJGRDILRzNEMTBGNg!!/ (accessed in December 2012).

Existing Coordination within the Jetstar Group via the Jetstar Business Service Agreements

32. As mentioned above, Jetstar JVs are parties to BSAs entered into with Jetstar Airways. The BSAs are bilateral agreements between Jetstar Airways (the licensor) and the respective Jetstar JVs. The BSAs [REDACTED]¹⁸:

- a. [REDACTED];
- b. [REDACTED];
- c. [REDACTED];
- d. [REDACTED];
- e. [REDACTED]; and
- f. [REDACTED].¹⁹

33. In relation to fares, [REDACTED].²⁰[REDACTED].

34. The BSAs also govern the behaviour of the Jetstar JVs in situations where there are overlaps in the passenger routes provided either by two or more Jetstar JVs, and/or with Jetstar Airways itself.²¹ In such instances:

- a. [REDACTED];
- b. [REDACTED];
- c. [REDACTED];
- d. [REDACTED]; and
- e. [REDACTED].

The Proposed Conduct

35. Specifically, the Proposed Conduct has three limbs of coordination and they are between:

- a. Qantas Airways, Jetstar Airways and all the Jetstar JVs which include Jetstar Asia, Jetstar Japan, Jetstar Pacific, Jetstar Hong Kong and other future Jetstar JVs, which allows coordination in:
 - i. Network and scheduling decisions including routing, frequencies, aircrafts types, product specifications, aircraft configurations, connection requirements and range of times for any services;
 - ii. Sales and marketing initiatives including the offering of customer rebates, incentives and discounts;
 - iii. Holiday products and joint promotions;
 - iv. Pricing and inventory decisions including agreement on fares and new fare products;
 - v. Product distribution channels;

¹⁸ [REDACTED]

¹⁹ [REDACTED]

²⁰ Response (dated 3 December 2012) to Q3 of CCS's second RFI notice to the Applicants (dated 14 November 2012).

²¹ [REDACTED]

- vi. Frequent flyer and other loyalty programs;
- vii. In-flight products or services;
- viii. Information technology;
- ix. Joint purchasing and procurement including, but not limited to, back office functions, fleet acquisitions and engineering services;
- x. Customer service activities and initiatives; and
- xi. Sharing of experience and learning including the secondment of personnel.

(the “First Limb” of the Proposed Conduct)

- b. Each Jetstar JV and its respective local partner airlines shareholder (in relation to overlapping or potentially overlapping services), namely:
 - i. Jetstar Pacific and Vietnam Airlines;
 - ii. Jetstar Japan and Japan Airlines; and
 - iii. Jetstar Hong Kong and China Eastern Airlines;

in areas of network, scheduling, pricing, marketing, purchasing, customer service and resourcing decisions, (the “Second Limb” of the Proposed Conduct); and

- c. A Jetstar JV, its local partner airline shareholder and any other airline in the Jetstar Group to the extent they overlap or potentially overlap in areas of network, scheduling, pricing, marketing, purchasing, customer service and resourcing decisions (the “Third Limb” of the Proposed Conduct).

In relation to overlapping routes between a FSA and a Jetstar JV of which the FSA is not a shareholder, there is no coordination of scheduling, pricing, marketing, purchasing, customer service and resourcing. If, however, an overlapping route is operated by a FSA, its Jetstar JV and another Jetstar JV of which the FSA is not a shareholder, coordination of scheduling, pricing, marketing, purchasing, customer service and resourcing will occur, namely:

- i. [REDACTED];
- ii. [REDACTED];
- iii. the FSA will not directly coordinate with the Jetstar JV of which the FSA is not a shareholder.²²

36. The First Limb of the Proposed Conduct is governed by the JVCA²³ that was entered into by Qantas Airways, Jetstar Airways and the Jetstar JVs on 22 June 2012. Future Jetstar

²² Response (dated 5 October 2012) to Q14 of CCS’s first RFI notice to the Applicants (dated 21 August 2012).

²³ Specifically under the JVCA, Qantas Airways, Jetstar Airways and the Jetstar JVs propose to operate as a single, fully integrated organisation by coordinating their operations and activities in the Asian region to include all network and scheduling decisions, sales and marketing initiatives, holiday products and joint promotions, pricing and inventory decisions, product distribution channels, frequent flyer and other loyalty programmes, in-flight services or products, information technology, joint purchasing and procurement, customer services activities, and other sharing of experiences and learning through secondment of key personnel.

JVs, once they are set up, would also accede to the JVCA. The JVCA provides for multilateral coordination, and “sits above” the BSAs.²⁴

37. CCS notes that there are currently no formal agreements in place to govern the cooperation detailed in the Second and Third Limbs of the Proposed Conduct. With respect to the Proposed Conduct, it was submitted that coordination will not take place between the following parties:

- a. Qantas Airways and Japan Airlines;
- b. Qantas Airways and Vietnam Airlines;
- c. Qantas Airways and China Eastern Airlines;
- d. Qantas Airways and any other local partner airline which becomes a shareholder of a future Jetstar JV;
- e. The Jetstar Group and Japan Airlines except as between Jetstar Japan and Japan Airlines on overlapping or potentially overlapping routes;
- f. The Jetstar Group and Vietnam Airlines except as between Jetstar Pacific and Vietnam Airlines on overlapping or potentially overlapping routes;
- g. The Jetstar Group and China Eastern Airlines except as between Jetstar Hong Kong and China Eastern Airlines on overlapping or potentially overlapping routes;
- h. The Jetstar Group and any other local partner airline which becomes a shareholder of a future Jetstar JV except as between the relevant future Jetstar JV and its local airline shareholder on overlapping or potentially overlapping routes; and
- i. Any of Japan Airlines, Vietnam Airlines, China Eastern Airlines and any local partner airline which becomes a shareholder of a future Jetstar JV.

38. The Applicants also submitted that each Jetstar JV would be responsible for implementing with another Jetstar JV any coordination agreed with its local partner airline shareholder (FSA) on those routes where there is an overlap or potential overlap between the Jetstar JVs and the respective FSAs. As mentioned above, there would be no direct coordination between a Jetstar JV and an unrelated FSA.

39. To this extent, the Applicants submitted that ring fencing protocols would be implemented and that comprehensive compliance training would be given to the JET (and its executives) as a safeguard to ensure that there is no actual or potential coordination between any of the above airlines (the “Ring Fencing Protocols”).²⁵ In this regard, the Applicants have agreed that [§<].²⁶ In addition to that, the Applicants have clarified that [§<].²⁷

²⁴ Response (dated 5 October 2012) to Q10 (iv) of CCS’s first RFI notice to the Applicants (dated 21 August 2012).

²⁵ Response (dated 3 December 2012) to Q4 of CCS’s second RFI notice to the Applicants (dated 14 November 2012).

²⁶ Response (dated 23 January 2013) to Q8 of CCS’s third RFI notice to the Applicants (dated 21 December 2012).

²⁷ Response (dated 3 December 2012) to Q4 of CCS’s second RFI notice to the Applicants (dated 14 November 2012).

C. LEGISLATIVE FRAMEWORK FOR THE SECTION 34 PROHIBITION

40. 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 (“the Section 34 Prohibition”). An agreement involving, *inter alia*, directly or indirectly fixing prices, and/or limiting or controlling production or investment, is by its very nature, regarded as restrictive of competition to an appreciable extent.²⁸

41. However, as set out in section 35 of the Act when read with paragraph 9 of the Third Schedule, an agreement with a NEB may be excluded from the Section 34 Prohibition if such an agreement 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 these objectives; or
- ii. Afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods and services in question.

In accordance to regulation 21 of the Competition Regulations 2007, the burden of proof in establishing the NEB exclusion lies with the party claiming it.

D. COMPETITION ASSESSMENT

Theory of Harm

42. Currently, under the Proposed Conduct, the flight operations of:

- a. Qantas Airways, Jetstar Airways and the various Jetstar JVs overlap or potentially overlap on nine Origin and Destination Pair (“O&D Pair”) routes involving Singapore (as specified in paragraph 49);
- b. The various FSAs and their respective Jetstar JVs (namely Japan Airlines and Jetstar Japan, Vietnam Airlines and Jetstar Pacific, and China Eastern Airlines and Jetstar Hong Kong) overlap or potentially overlap on six O&D Pair routes involving Singapore (as specified in paragraph 51); and
- c. The various FSAs, its respective Jetstar JVs (namely Japan Airlines and Jetstar Japan, Vietnam Airlines and Jetstar Pacific, and China Eastern Airlines and Jetstar Hong Kong) and another Jetstar JV overlap or potentially overlap on five O&D Pair routes involving Singapore (as specified in paragraph 52).

²⁸ Paragraph 3.2 of the *CCS Guidelines on the Section 34 Prohibition*.

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These airlines are horizontal competitors to each other for the O&D Pair routes specified. Under the Proposed Conduct, the competing airlines intend to coordinate on pricing, scheduling, planning, operations and capacity. This is akin to a price fixing and/or production control agreement which can be regarded as restrictive of competition to an appreciable extent on the specified O&D Pair routes.

The Relevant Markets

*Applicants' Submissions – the Markets for Leisure Air Travel Services in Asia*²⁹

43. Although the Applicants did not consider it necessary to define the relevant market or markets with precision, the Applicants submitted that the Proposed Conduct would primarily affect the markets for leisure air travel services. In particular, the Applicants considered that leisure passengers are price-sensitive consumers who are less concerned about travel time, fare flexibility and comfort and are more likely to be open to different destinations within a broader geographic region where such destinations have common attributes for the leisure passenger. Accordingly, in the face of a small but significant non-transitory increase in price, a leisure travel passenger in Singapore is likely to switch between destinations within Asia (and may be willing to travel indirectly to a particular destination), which may be contrasted to the business passengers who generally required point to point, direct and time sensitive services and is less price sensitive. Accordingly, there may be a market for air travel services acquired by leisure passengers between Singapore and other destinations in Asia (i.e. Singapore – Asia market).

44. In total, the overlapping routes and the Parties involved in coordination (as well as *potential* coordination with Parties that have not yet started operations on the routes but may do so in the future) that are identified by the Applicants are:³⁰

- a. Singapore – [X]: As between Jetstar Asia and *potentially* Jetstar [X];
- b. Singapore – [X]: As between [X], Jetstar Asia and *potentially* Jetstar [X]³¹;
- c. Singapore – [X]: As between [X], Jetstar Asia and *potentially* Jetstar [X];
- d. Singapore – [X]: As between [X] and Jetstar Asia;
- e. [X]: As between Jetstar [X] and Jetstar Asia (operated under Singapore Air Traffic Rights);
- f. Singapore – Perth: As between Qantas Airways and Jetstar Asia³²;
- g. Singapore – Denpasar: As between Jetstar Asia and Jetstar Airways³³;
- h. Singapore – [X]: As between Jetstar Asia and *potentially* Jetstar [X]³⁴;
- i. Singapore – [X]: As between [X] and *potentially* Jetstar [X]³⁵;

²⁹ Paragraphs 6.5 to 6.23 of the submissions put forth by the Parties.

³⁰ Routes are submitted by the Applicants in paragraphs 6.13 to 6.21 of the submissions unless otherwise stated

³¹ The Applicants subsequently informed CCS that [X] (Letter from Qantas Airways dated 17 July 2013).

³² Response (dated 28 September 2012) to Q9 of CCS's first RFI notice to the Applicants (dated 21 August 2012).

³³ Response (dated 28 September 2012) to Q9 of CCS's first RFI notice to the Applicants (dated 21 August 2012).

³⁴ Update to CCS (dated 18 October 2012) by the Applicants in relation to CCS's first RFI notice to the Applicants (dated 21 August 2012).

³⁵ Tab 41, revised Form 1 (dated 25 July 2012).

- j. Singapore – [X]: As between Jetstar Asia, Jetstar Airways *potentially* Jetstar [X] and *potentially* [X]³⁶;
- k. Singapore – [X]: As between *potentially* Jetstar [X], *potentially* Jetstar Asia and *potentially* [X]³⁷;
- l. Singapore – [X]: As between *potentially* Jetstar [X], *potentially* Jetstar Asia and *potentially* [X]³⁸; and
- m. Singapore – [X]: As between *potentially* Jetstar [X], *potentially* Jetstar Asia and *potentially* [X]³⁹.

CCS's Assessment – The Relevant Markets for Air Passenger Services

45. CCS notes that, typically, the starting point for market definition relating to the provision of scheduled air passenger transport services is the O&D Pair routes of air services, usually a city-pair. 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 a point of origin and a point of destination can form a separate market. This approach is consistent with CCS's previous decisions on similar integrated airline alliance agreements⁴⁰ and the approach taken by the European Commission.⁴¹ As such, CCS considers that the relevant market is not a Singapore-Asia market.

46. CCS agrees with the Applicants that there are fundamental differences between leisure and non-leisure passengers for air services along the overlapping routes. Typically, leisure passengers who are price-sensitive may be less concerned about travel time and fare flexibility relative to passengers who may travel by business class or first class. Specifically, CCS is of the view that the relevant markets for the purpose of assessing the Proposed Conduct should not include first or business class passengers of the FSAs given the substantial differences in air fares based on the O&D Pair routes submitted by the Applicants.

Table 1: Comparison of Fares by Classes for Singapore – Ho Chi Minh

Carrier	Class of Travel	Fares
Singapore Airlines	First Class	N/A
	Business Class	\$1151.60
	Economy Class	\$471.60 - \$541.60
Vietnam Airlines	First Class	N/A
	Business Class	\$657.60

³⁶ Tab 41, revised Form 1 (dated 25 July 2012). While the Applicants submit that none of the Jetstar JVs currently operate on this route, CCS notes that Jetstar Asia operates its Singapore – [X] services via [X] whereas Jetstar Airways offer direct Singapore – [X] services.

³⁷ Response (dated 28 September 2012) to Q12 of CCS's first RFI notice to the Applicants (dated 21 August 2012). While the Applicants submit that Japan Airlines would potentially operate on this route, CCS notes that it already does so.

³⁸ Response (dated 28 September 2012) to Q12 of CCS's first RFI notice to the Applicants (dated 21 August 2012).

³⁹ Response (dated 28 September 2012) to Q12 of CCS's first RFI notice to the Applicants (dated 21 August 2012).

⁴⁰ This is in line with the CCS's past decisions on similar airline cooperation agreements: Refer to CCS Grounds of Decision for cases CCS 400/002/06, CCS 400/003/06, CCS 400/008/10, CCS 400/001/11, CCS 400/005/11 and CCS 400/001/12.

⁴¹ See 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*.

	Economy Class	\$337.60 - \$407.60
Jetstar Asia	Economy Class	\$173.00

Flights are selected for the period 11-17 April 2013 and accessed through the respective airlines' websites on 16 January 2013

Table 2: Comparison of Fares for Singapore – Hong Kong

Carrier	Class of Travel	Fares
Singapore Airlines	First Class	\$4313.30
	Business Class	\$2233.30
	Economy Class	\$613.30 - \$693.30
Cathay Pacific	First Class	\$5583.30
	Business Class	\$2023.30
	Economy Class	\$553.30 - \$583.30
Jetstar Asia	Economy Class	\$323.95

Flights are selected for the period 11-17 April 2013 and accessed through the respective airlines' websites on 16 January 2013

47. The Applicants acknowledged that the FSAs and the LCCs⁴² often compete aggressively for passenger traffic on overlapping routes and network, and that FSAs and LCCs operate in the same product market and compete for passengers who could either trade up to the services provided by the FSAs or for the right price discount move to the LCC product.⁴³ For the purpose of this Notification, CCS agrees that the economy class services provided by the FSAs would be in the same relevant product market as the air passenger services provided under the Jetstar Group, as they compete for these leisure passengers.

48. Given that the Notification specifically concerns the impact of the Proposed Conduct in Singapore, CCS will focus on air passenger services for Singapore O&D Pair routes that are covered under the Proposed Conduct. In particular, CCS will concentrate on the following routes on which the Parties overlap (currently or imminently) and will coordinate with the commencement of the Proposed Conduct. These routes have been classified into three groups to correspond to the three limbs of the Proposed Conduct:

The Relevant Markets relating to the First Limb of the Proposed Conduct (“The First Relevant Markets”)

49. The First Relevant Markets comprise economy-class air passenger services on:

- a. Singapore – [X]: As between Jetstar Asia and *potentially* Jetstar [X];
- b. Singapore – [X]: As between Jetstar Asia and *potentially* Jetstar [X];
- c. Singapore – Perth: As between Qantas Airways and Jetstar Asia;
- d. Singapore – Denpasar: As between Jetstar Asia and Jetstar Airways;
- e. Singapore – [X]: As between Jetstar Asia and *potentially* Jetstar [X];
- f. Singapore – [X]: As between Jetstar Asia, Jetstar Airways and *potentially* Jetstar [X];

⁴² The Parties have defined “Low Cost Carriers” to be airlines which offer everyday low fares and focuses strictly on establishing and maintaining a low cost base through the maximisation of productive efficiency for short haul operations in paragraph 3.5 of the submissions. In this respect, Jetstar Airways and the various Jetstar JVs are considered to be “Low Cost Carriers”. In contrast, the Applicants see the FSA model as one that is designed to meet the needs of high yielding consumers and which its operations relied on servicing a mix of passengers that includes those who are price-sensitive.

⁴³ Paragraphs 7.29 to 7.33 of the submissions put forth by the Applicants.

- g. Singapore – [X]: As between *potentially* Jetstar Asia and *potentially* Jetstar [X];
- h. Singapore – [X]: As between *potentially* Jetstar Asia and *potentially* Jetstar [X];
- i. Singapore – [X]: As between *potentially* Jetstar Asia and *potentially* Jetstar [X].

50. The Singapore – [X], Singapore – [X], Singapore – [X] and [X] routes were not considered by CCS to be part of The First Relevant Markets because:

- a. [X]⁴⁴;
- b. [X]⁴⁵;
- c. [X]⁴⁶; and
- d. [X] route does not include Singapore as an O&D Pair.

The Relevant Markets relating to the Second Limb of the Proposed Conduct (“The Second Relevant Markets”)

51. The Second Relevant Markets comprise economy-class air passenger services on:

- a. Singapore – [X]: As between [X] and *potentially* Jetstar [X];
- b. Singapore – [X]: As between [X] and *potentially* Jetstar [X];
- c. Singapore – [X]: As between *potentially* [X] and *potentially* Jetstar [X];
- d. Singapore – [X]: As between [X] and *potentially* Jetstar [X];
- e. Singapore – [X]: As between *potentially* [X] and *potentially* Jetstar [X]; and
- f. Singapore – [X]: As between *potentially* [X] and *potentially* Jetstar [X].

The Relevant Markets relating to the Third Limb of the Proposed Conduct (“The Third Relevant Markets”)

52. The Third Relevant Markets comprise economy-class air passenger services on:

- a. Singapore – [X]: As between [X], Jetstar Asia and *potentially* Jetstar [X].
- b. Singapore – [X]: As between Jetstar Asia, Jetstar Airways, *potentially* [X] and *potentially* Jetstar [X];
- c. Singapore – [X]: As between [X], *potentially* Jetstar Asia and *potentially* Jetstar [X];
- d. Singapore – [X]: As between *potentially* [X], *potentially* Jetstar Asia and *potentially* Jetstar [X]; and
- e. Singapore – [X]: As between *potentially* [X], *potentially* Jetstar Asia and *potentially* Jetstar [X].

⁴⁴ Letter from Qantas Airways dated 17 July 2013.

⁴⁵ Paragraph 6.19 of the Applicants’ Form 1

⁴⁶ Response (dated 3 December 2012) to Q10 of CCS’s second RFI notice to the Applicants (dated 14 November 2012)

Prospective Conduct

53. Pursuant to regulation 9(5) of the Competition Regulations 2007⁴⁷, CCS exercises its discretion not to give a decision on parts of the Proposed Conduct which are prospective; in particular, the parts which involve future Jetstar JVs that have yet to be established at/about⁴⁸ the time when the Notification was made.⁴⁹ There is insufficient information/evidence available at this point in time to enable CCS to come to an informed decision on these parts.

54. As such, the following assessment and decision by CCS will not be applicable to the parts of the Proposed Conduct which involve coordination between/with future Jetstar JVs which have yet to be established at/about the time when this Notification was made.

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

Applicants' Submissions

55. According to the Applicants' submissions, the Proposed Conduct will result in Singapore customers having more choices, greater access to lower fares and more destinations through the development and growth of an integrated network of airlines under the Jetstar Group. In particular the Applicants also submitted that the Proposed Conduct will increase competition between the FSAs and the LCCs and increase tourism and employment. In addition, the Applicants submitted that the Proposed Conduct is plainly pro-competitive and efficiency enhancing and will bring significant benefits to consumers. Absent the Proposed Conduct, the Applicants will not continue to establish or support the Jetstar JVs in Asia or be in a position to achieve the objectives of the Jetstar Pan-Asia Strategy.

CCS's Assessment – The Object of the Prevention, Restriction or Distortion of Competition

56. 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 the agreement will have an appreciable adverse effect on competition in order to find an infringement of section 34.⁵⁰ In assessing the object of an

⁴⁷ Regulation 9(5) of the Competition Regulations 2007 states that "The Commission may determine an application for a decision under section 44, 51, 57 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".

⁴⁸ The initial Jetstar Hong Kong Shareholders Agreement was executed on 24 August 2012 and Jetstar Hong Kong was established on 4 September 2012. The Notification was received by CCS on 6 August 2012. For the purposes of this assessment and decision, CCS considers Jetstar Hong Kong to be a Jetstar JV which has been established about the time the Notification was made.

⁴⁹ In this regard, paragraph 1.7 of *CCS Guidelines on Filing Notifications for Guidance or Decision with Respect to the Section 34 Prohibition and Section 47 Prohibition* states that "Notification cannot be made in respect of prospective agreements (i.e. agreements where the parties have yet to enter into the agreement) or prospective conduct".

⁵⁰ See CCS 600/008/06 *Collusive Tendering for Termite Treatment/Control Services by Certain Pest Control Operators in Singapore* and CCS 500/003/08 *Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand*.

agreement, CCS considers the objective meaning and purpose of the decision in the economic context in which it is to be applied.⁵¹

57. In the current Notification, the Proposed Conduct provided for three limbs of coordination for the Parties to coordinate in decisions relating to network, scheduling, pricing marketing, purchasing, customer services and resourcing decisions. In this respect, CCS will distinguish between the three limbs of coordination in the Proposed Conduct and assess if each limb of the Proposed Conduct will have the object or effect the prevention, restriction or distortion of competition within Singapore.

The Coordination of Pricing and Capacity in the First Limb of the Proposed Conduct has the Object of the Prevention, Restriction or Distortion of Competition within Singapore

58. Given that the First Limb of the Proposed Conduct will involve the coordination of pricing and capacity between Qantas Airways, Jetstar Airways, Jetstar Asia, Jetstar Japan, Jetstar Pacific and Jetstar Japan, CCS is of the opinion that it will amount to a price fixing and/or production control agreement between competitors. As such, CCS is of the view that the coordination envisaged under the First Limb of the Proposed Conduct will have the object of the prevention, restriction or distortion of competition in the First Relevant Markets.

59. However, given that Jetstar Airways is a wholly-owned subsidiary under Qantas Airways, there is a presumption that Qantas Airways would have total control of, and consequently decisive influence over Jetstar Airways' affairs.⁵² As such, CCS is of the opinion that any agreements made between these two specific undertakings would not fall within the Section 34 Prohibition. In this respect, CCS notes from *Viho v European Commission* that the European Court of Justice concluded that the then Article 81(1) of the Treaty Establishing the European Community (now Article 101(1) of the Treaty of the Functioning of the European Union) had no application to the allocation of tasks within the Parker Pen group. Specifically at paragraph 15 of its judgment, the European Court of Justice noted that Parker Pen held 100% of the shares in the subsidiary companies and had directed their sales and marketing activities:

*"Parker and its subsidiaries thus form a single economic unit within which the subsidiaries do not enjoy real autonomy in determining their own course of action in the market but carry out the instructions issued to them by the parent company controlling them."*⁵³

60. Therefore, with the exception of coordination between Qantas Airways and Jetstar Airways (which CCS views as a single economic entity), CCS views that coordination under the First Limb of the Proposed Conduct would have the object of the prevention, restriction or distortion of competition and would, by its very nature, be regarded as restrictive of competition to an appreciable extent.⁵⁴

⁵¹ *Compagnie Royale Asturienne des Mines SA and Rheinzink GmbH v Commission* [1984] ECR 1679 at paragraph 26 and CCS 600/008/06 *Pest Control Case* at paragraph 49.

⁵² See *Akzo Nobel NV v Commission* Case T-112/05 [2007] ECR II-000.

⁵³ Case C-73/95 P [1996] ECR I-5457, [1997] 4 CMLR 419, paragraph 16.

⁵⁴ CCS Guidelines on the Section 34 Prohibition at paragraph 3.2.

61. However, CCS notes that cooperation between Qantas Airways/Jetstar Airways and Jetstar Asia is already governed by the cooperation agreement previously notified by Qantas Airways and Orangestar. The cooperation agreement was found by CCS to benefit from the NEB exclusion, and as such, is excluded from the Section 34 Prohibition.⁵⁵ Therefore, this part of the Proposed Conduct (which is covered by the abovementioned cooperation agreement) will not be further assessed in this Notice of Decision.

The Coordination of Pricing and Capacity in the Second Limb of the Proposed Conduct has the Object of the Prevention, Restriction or Distortion of Competition

62. As mentioned above at paragraph 35, the Second Limb of the Proposed Conduct will involve coordination between the FSA and its respective Jetstar JV in areas of network, scheduling, pricing, marketing, purchasing, customer service and resourcing decisions.

63. In this respect, CCS considers that Second Limb of the Proposed Conduct will amount to a price fixing and/or production control agreement between competitors. As such, CCS is of the view that the coordination under the Second Limb of the Proposed Conduct will have the object of the prevention, restriction or distortion of competition in the Second Relevant Markets.

64. In accordance with the *CCS Guidelines on the Section 34 Prohibition*, CCS views that the price and capacity coordination in the Second Relevant Markets will by their very nature be regarded as restrictive of competition to an appreciable extent.⁵⁶

The Coordination of Pricing and Capacity in the Third Limb of the Proposed Conduct has the Object of the Prevention, Restriction or Distortion of Competition

65. As mentioned above at paragraph 35, where an overlapping route is operated by a FSA, its Jetstar JV and another Jetstar JV of which the FSA is not a shareholder, coordination of scheduling, pricing, marketing, purchasing, customer service and resourcing will occur, namely:

- a. [X]; and
- b. [X].

66. In this respect, CCS considers that the Third Limb of the Proposed Conduct will amount to a price fixing or/and production control agreement between competitors. As such, CCS is of the view that the coordination envisaged under the Third Limb of the Proposed Conduct will have the object of the prevention, restriction or distortion of competition in the Third Relevant Markets.

67. In accordance with the *CCS Guidelines on the Section 34 Prohibition*, CCS views that the price and capacity coordination in the Third Relevant Markets would by their very nature be regarded as restrictive of competition to an appreciable extent.⁵⁷

⁵⁵ CCS 400/003/06 - *Notification of Decision by Qantas Airways and Orangestar Investment Holdings in respect of their Cooperation Agreement*.

⁵⁶ *CCS Guidelines on the Section 34 Prohibition* at paragraph 3.2.

⁵⁷ *Ibid*.

The Net Economic Benefit Exclusion

68. As mentioned in paragraph 41 above, 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 or 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.

69. 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.⁵⁸

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

70. The Applicants submitted that the Proposed Conduct is important in delivering the economic efficiencies and potential cost savings associated with joint purchasing and with network, schedule and pricing decisions. By way of example, the Applicants submitted that all network decisions will require coordination in order to implement an effective dual brand strategy, such that the appropriate mix of FSA and LCC capacity is deployed to maximise overall profitability as well as to establish an optimal Jetstar presence by ensuring the Jetstar JVs cooperate and complement each other rather than compete with each other. All pricing decisions should also be coordinated to ensure that Jetstar Airways, the existing Jetstar JVs and the future Jetstar JVs are able to sell as “one” on a single website and share knowledge about pricing structures in a way that maximises profitability.

Lower Fares as a Result of Cost Savings

71. The Applicants submitted that the Proposed Conduct will enable the Jetstar JVs to achieve the scale necessary to generate cost savings and efficiencies to offer even lower fares to Singapore consumers. These cost savings will be achieved across the spectrum of business activities including:

- a. Higher utilisation of significant fixed costs including aircraft, crew and airport facilities (due to the flexibility to operate the routes using an existing Jetstar JV or a future Jetstar JV at either end);
- b. Common network planning and pricing/revenue management;
- c. Single go-to market approach including common advertising, promotions and distribution platforms;
- d. Higher load factors through optimised scheduling and load coordination; and
- e. Fare combinability through centralised network scheduling and ticketing.

⁵⁸ Paragraph 10.1 of Annex C to the *CCS Guidelines on the Section 34 Prohibition*.

72. In addition, the Jetstar JVs will also share key IT services and other reporting and operational systems which will result in a reduction of costs. Without the Proposed Conduct, these costs would be higher for each airline which would be likely to result in higher prices for consumers. Other cost savings will be possible in respect of engineering, airport and ground handling charges as a result of increased volumes.

More Consumer Choice and an Enhanced Consumer Experience

73. According to the Applicants, the Proposed Conduct will enable existing Jetstar JVs and future Jetstar JVs to stimulate demand on new or existing routes and continue to grow the network to meet demand. As a result, Singapore consumers will have increased options in respect of air travel in Asia because they will have access to a network of Jetstar JVs which would not exist if the Proposed Conduct were not permitted.

74. In this respect, the Applicants opined that the Proposed Conduct will provide Singapore consumers with a new and convenient 'one-stop' shop to book itineraries across the Jetstar network. As there will be one website for all Jetstar flights, a Singapore consumer can quickly and easily understand the choices on offer and book a complex itinerary involving multiple Jetstar-branded airlines in the one transaction. Further, the Proposed Conduct will also provide Singapore consumers with a consistent Jetstar experience involving the various Jetstar airlines. This in turn will meet consumer expectations for one branding concept delivering a consistent and coordinated approach from marketing and sales to flying experience regardless of the actual airline that the passenger flew on.

An Expanded Network and More Destinations

75. According to the Applicants, the Proposed Conduct will enable Qantas Airways and the Jetstar businesses to offer a greater variety of schedule options to Singapore consumers via the cost savings described above, the pooling of revenue and the coordination of prices and schedules. In particular, the coordination of the schedules between Jetstar Airways, existing Jetstar JVs and future Jetstar JVs and cross network selling will provide Singapore consumers with services to many destinations within Asia such that each entity will have the benefit of accessing increased complementary traffic to provide a broader range of international services. For example, Jetstar Asia services from Singapore to various destinations in Asia could be coordinated with potential Jetstar Japan flights to allow the Jetstar brand to offer more options to Singapore consumers on the Singapore to Japan market which are not currently available from the Jetstar JVs.

76. In addition, the Applicants pointed out that pursuant to the Proposed Conduct, the various Jetstar JVs will have an incentive to maximise combined revenue by ensuring their schedules remain complementary where possible. This will in turn provide multiple frequencies and ensure the maximum competition for other incumbent carriers. As an example, the Applicants submitted that in order for Jetstar Japan to offer an early morning (i.e. 7am-9am) Hong Kong-Japan flight, it would require an overnight stay of aircraft and crew in Hong Kong which would be uneconomical given Jetstar's LCC model. However, by allowing cooperation between Jetstar Hong Kong and Jetstar Japan, Jetstar Hong Kong will be able to offer a morning Hong Kong-Japan flight using an aircraft based in Hong Kong, enhancing the Jetstar brand's service offering to consumers, while Jetstar Japan can instead offer a morning Japan – Hong Kong service.

77. Finally, the Applicants suggested that the schedule and pricing coordination can also allow the integrated Jetstar network to offer connecting fares to consumers and compete on routes that cannot otherwise be serviced directly. As an example, the Applicants pointed out that [§<].

Enhanced Economic Efficiencies

78. The Applicants indicated that the Proposed Conduct will result in significant and enduring economic efficiencies. In this respect, Qantas Airways, Jetstar Airways, existing Jetstar JVs and future Jetstar JVs will share facilities, expertise and assets. This cooperation will enable the Jetstar JVs to reduce costs and quickly and efficiently establish an integrated airline network in Asia. In particular, the Proposed Conduct will deliver improved aircraft utilisation across the network by determining which Jetstar JV will most efficiently service a particular route and by optimising schedules. This will result in a more streamlined and efficient network structure that is best placed to offer highly competitive fares to consumers.

79. In addition, the Applicants pointed out that there are also significant efficiencies and direct cost savings associated with joint purchasing and joint sales and marketing. The Proposed Conduct will grant the Jetstar JVs the scale necessary to obtain lower costs across the entire spectrum of operations including in relation to airport, engineering and ground handling services and the acquisition of aircraft themselves. By coordinating and managing central sales and marketing functions and providing consumers with a single website, the Jetstar Group will be able to ensure consistent consumer messaging while reducing advertising costs and avoiding duplication.

80. Finally, the Applicants suggested that significant efficiencies will be achieved through the sharing of knowledge and expertise including in relation to revenue management systems and ancillary revenue. This cross fertilisation will allow the various Jetstar JVs to learn from each other in developing and investing in more sophisticated systems for the delivery of services to consumers.

Increased Competition and Innovation

81. According to the Applicants, the Proposed Conduct will enable the Parties to achieve cost savings and efficiencies which will increase its ability and incentive to enhance innovation across their networks. Given the likelihood of strong competition from other LCCs over the short to medium term, innovations in technology, the flying experience and strong branding (as well as ancillary offerings) are likely to become attractive to Singapore consumers. For instance the Applicants pointed out that the launch of Jetstar Airways in Australia has allowed the Qantas Group to successfully and profitably service price-sensitive markets in Australia, while at the same time improve the Qantas brand and the consumer experience through the introduction of hot meals, free beer and wine after 4pm and investment in lounges and next generation check-in technology. These innovations would not otherwise be viable in price-sensitive markets.

82. In this regard, the Applicants noted that any innovative products introduced by the Jetstar Group in respect of its operations will usually elicit a competitive response from competing LCCs.

Increased Tourism and Employment

83. The Applicants submitted that the contribution of air tourism to the economy goes well beyond activity in the tourism sector itself. Given the large population base in Asia, the Applicants submitted that the Proposed Conduct will provide significant economic benefits to the Singapore economy in the form of increased tourism and employment by increasing the potential for a very significant number of residents of Asian countries to come to Singapore via the new integrated Jetstar network.

84. In this respect, as Asian economies continue to grow, residents in Asia are likely to seek leisure travel including to Singapore. Further, residents in other countries outside Asia (such as Australia and New Zealand) will be able to fly to Singapore via the Jetstar network at low prices. This will further increase tourism and employment opportunities.

85. In respect of the Second and Third Limbs of the Proposed Conduct, the Applicants also submitted that it is impossible to quantitatively attribute the resulting NEB to each limb of coordination, as all of the Proposed Conduct is essential in contributing to the full realisation of the resulting NEB to Singapore. To maximise total profitability to each Jetstar JV, Jetstar Airways must offer its expertise in successfully developing and executing a LCC business (including a two-brand strategy where relevant) to the joint venture, while the local partner must contribute its deep understanding of the local aviation and commercial environment to the joint venture. This is critical given the regulations surrounding the provision of commercial air transport services in any country. For instance, [3<]. As such, the ‘natural’ shareholder in any airline is another airline.⁵⁹

86. Jetstar Airways and the local investor (where it is a local FSA) can combine their experience, expertise and know-how to operate the Jetstar JV. For example, all network decisions will require coordination between the FSA investor and the Jetstar JV in order to implement an effective dual-brand strategy, where relevant, such that the appropriate mix of FSA and LCC capacity is deployed to maximise overall profitability as well as to establish an optimal Jetstar presence.

Applicants’ Submissions – Not Imposing Restrictions which are Not Indispensable to the Attainment of the Objectives⁶⁰

87. In light of the Jetstar business model, it is imperative that all Jetstar JVs can coordinate operations. As mentioned above, this coordination will produce a significant NEB including lower costs through costs savings, increased consumer choice, increased network expansion and more destinations, economic efficiencies, increased competition and increased tourism. Importantly these benefits cannot be achieved without the Second Limb of the Proposed Conduct.

88. As the international aviation regulatory environment makes it impossible for the Qantas Group to wholly or majority own airlines outside of Australia, the investment in the Jetstar JVs could only occur through joint venture arrangements with local investors

⁵⁹ Response (dated 24 January 2013) to Q1(c) of CCS’s third RFI notice to the Applicants (dated 21 December 2012).

⁶⁰ Response (dated 5 October 2012) to Q23 of CCS’s first RFI notice to the Applicants (dated 21 August 2012).

(generally FSAs). Accordingly, in order to successfully enter the Asian market and offer consumers in Asia a single-branded airline and business model, Qantas Airways has established minority-owned joint ventures in different Asian jurisdictions with the local expertise and investment of FSAs (where applicable). While Jetstar Airways can offer its experience in successfully developing and executing a LCC business, the local partner contributes a deep understanding of the local aviation and commercial environment. This is critical given the particular regulations surrounding the provision of commercial air transport services in any country.⁶¹

89. [REDACTED]

90. [REDACTED]⁶²

Applicants' Submissions – Not Affording the Possibility of Eliminating Competition in Respect of a Substantial Part of the Products in Question

91. The Applicants submitted that the Proposed Conduct will not have an appreciable adverse effect on competition in the Singapore – Asia market which consists of approximately 55 airlines. In this respect, the combined market share (by capacity) of the various airlines that propose to coordinate operations in this market is insignificant as set out in the table below⁶³:

Table 3: Market Shares of Airlines in the Singapore-Asia market

Coordinating Airlines	Market share (by capacity)	
	Individual	Total
Jetstar Airways	0.55%	7.47%
Jetstar Asia	6.27%	
Japan Airlines	0.65%	
Jetstar Airways	0.55%	8.52%
Jetstar Asia	6.27%	
China Eastern Airlines	1.70%	
Jetstar Airways	0.55%	7.73%
Jetstar Asia	6.27%	
Vietnam Airlines	0.91%	

Source Diiomi

92. In addition, the Proposed Conduct will not have an appreciable adverse effect on competition on any of the overlapping routes operated by the Parties.

⁶¹ Response (dated 24 January 2013) to Q1(c) of CCS's third RFI notice to the Applicants (dated 21 December 2012).

⁶³ Market share data reflects a sample week of the published schedules for July 2012. Applicants have submitted market share figures of the relevant Parties in the entire Asia market. Market share figures by O&D Pair routes (by the Applicants as well as those by CCS) are set out below.

93. For the Singapore – [X] route, the Applicants indicated that this route is serviced by many airlines including [X]. Further, [X], a [X] based LCC, had announced that it is proposing to commence services on this route in the future. The market shares data for the Singapore – [X] services can be found in Table 4.

Table 4: Market Shares of Airlines in the Singapore – [X] market

Singapore – [X]		
Carrier	Calendar Year 2011	
	Total Capacity	Market Share
[X]	[X]	[30 – 40]%
[X]	[X]	[30 – 40]%
[X]	[X]	[0 – 10]%
Jetstar Asia	[X]	[0 – 10]%
[X]	[X]	[0 – 10]%
[X]	[X]	[0 – 10]%
[X]	[X]	[0 – 10]%
[X]	[X]	[0 – 10]%
[X]	[X]	[0 – 10]%
Jetstar [X]	—	—
Total	[X]	100.00%

94. In relation to the Singapore – [X] and Singapore – [X] routes, the Applicants indicated that to the extent that [X], Jetstar [X] together with [X] and Jetstar Asia would have an aggregate market share of approximately [40 – 50]% and [30 – 40]% for the Singapore – [X] and Singapore – [X] services respectively (by 2011 capacity data). Despite this, the Proposed Conduct will not lessen competition on these routes because:

- [X], Jetstar Asia and Jetstar [X] will have no ability or incentive to increase price or decrease services;
- In any event, the other existing airlines on this route will act as genuine and credible constraints on the coordinating parties;
- [X], Jetstar Asia and Jetstar [X] will increase competition by lowering fares and stimulating demand which in turn will result in new entry or expansion; and
- New entry and expansion will further constrain [X], Jetstar Asia and Jetstar [X].

95. The market share data as submitted by the Applicants for the Singapore – [X] and Singapore – [X] routes can be found in Tables 5 and 6.⁶⁴

⁶⁴ Market share data reflects a sample week of the published schedules for July 2012.

Table 5: Market Shares of Airlines in the Singapore – [REDACTED] Market

Singapore – [REDACTED]		
Carrier	Calendar Year 2011	
	Total Capacity	Market Share
[Party to the Proposed Conduct]	[REDACTED]	[40 – 50]%
[REDACTED]	[REDACTED]	[30 – 40]%
[REDACTED]	[REDACTED]	[10 – 20]%
Jetstar Asia	[REDACTED]	[0 – 10]%
Total	[REDACTED]	100.00%

Table 6: Market Shares of Airlines in the Singapore – [REDACTED] Market

Singapore – [REDACTED]		
Carrier	Calendar Year 2011	
	Total Capacity	Market Share
[REDACTED]	[REDACTED]	[20 – 30]%
[REDACTED]	[REDACTED]	[20 – 30]%
Jetstar Asia	[REDACTED]	[10 – 20]%
[Party to the Proposed Conduct]	[REDACTED]	[10 – 20]%
[REDACTED]	[REDACTED]	[0 – 10]%
Total	[REDACTED]	100.00%

96. The Applicants also submitted that the introduction of new LCCs on routes will result in increased competition on those routes. For instance: (i) when Jetstar Asia commenced operations on the Singapore – Guangzhou route, Singapore Airlines matched Jetstar Asia’s frequency of services and China Southern Airlines increased the frequency of its services to operate at the same time as Jetstar Asia; and (ii) when Jetstar Asia commenced operations on the Singapore – Hong Kong route, Cathay Pacific reacted with lower pricing more in line with Jetstar Asia’s pricing, resulting in significantly lower prices than before Jetstar Asia had commenced operations.⁶⁵ The Applicants also submitted instances when an unrelated LCC, Tiger Airways, commenced operations on the Singapore – Hong Kong route, and overall market capacity grew without compromising capacity for existing players.⁶⁶

CCS’s Assessment on the Net Economic Benefits

97. When assessing the NEB, along with the criteria mentioned in paragraph 41, 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:

⁶⁵ Response (dated 5 October 2012) to Q20(f) of CCS’s first RFI notice to the Applicants (dated 21 August 2012).

⁶⁶ Paragraph 29 of the Parties’ Supplementary Submission to the CCS, dated 14 March 2013.

- 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.

98. 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.

99. 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.⁶⁷

100. All three limbs of the Proposed Conduct provide for coordination among the Parties in decisions relating to network, scheduling, pricing, marketing, purchasing, customer services and resourcing. In this respect, CCS will assess if each limb of the Proposed Conduct will satisfy the NEB exclusion from the Section 34 Prohibition.

CCS's Assessment on the First Limb of the Proposed Conduct under the Net Economic Benefits Exclusion

Coordination under the First Limb of the Proposed Conduct will Improve Production or Distribution or Promote Technical or Economic Progress

101. CCS agrees with the Applicants' submissions that the First Limb of the Proposed Conduct will improve production or distribution or promoting technical or economic progress.

102. In analysing if the First Limb of the Proposed Conduct will improve production or distribution or promoting technical or economic progress, CCS considers that the First Limb of the Proposed Conduct will result in the following efficiencies.

103. Economic Efficiencies and Cost Savings – CCS is of the view that the First Limb of the Proposed Conduct is likely to enable the Jetstar Group to maintain and further improve its low-cost base by using group volume as leverage to obtain lower prices from suppliers. For example under the Proposed Conduct, the Jetstar Group will be able to make joint purchases of engineering and ground handling services. Further, given that the various Jetstar JVs will sell their services under common channels and marketing programs, and that passengers are only allowed to purchase the air travel tickets of airlines within the Jetstar Group using the common booking engine, CCS is of the view that the First Limb of the Proposed Conduct will achieve cost savings by reducing duplications in these areas.

⁶⁷ Paragraph 10.5 of Annex C to the *CCS Guidelines on the Section 34 Prohibition*.

Figure 1: Common Booking Engine for Airlines under the Jetstar Group

1. Select departing flight
Singapore to Perth

Wed 23 Jan	Thu 24 Jan	Fri 25 Jan	Sat 26 Jan	Sun 27 Jan	Mon 28 Jan
\$252.33	\$292.33	\$432.33	\$332.33	\$432.33	\$332.33

Tue, Jan 29, 2013

Departs	Arrives	Flight detail	Price
17:00 PM Singapore	23:10 PM Perth	Direct flight J18 (A320neo)	\$292.33

Starter Economy cabin
What is included?

Prices quoted are per adult passenger in SGD and include airport taxes, fees and taxes. A booking and service fee of \$5.00 per passenger per flight applies. Unless otherwise stated, fares are non-refundable, limited changes are permitted charges apply. Starter fares include 10kg carry-on baggage. Additional fees apply for checked-in baggage, which will be available for purchase on this next page. Additional checked baggage after booking costs more at the airport, over the phone and on our web site. 7kg per item cabin baggage limit applies on flights to/from Perth.

Operated by:
 Jetstar Airways
 Jetstar Asia
 Jetstar Pacific
 Garuda
 Virgin
 Jetstar Japan

2. Booking Summary

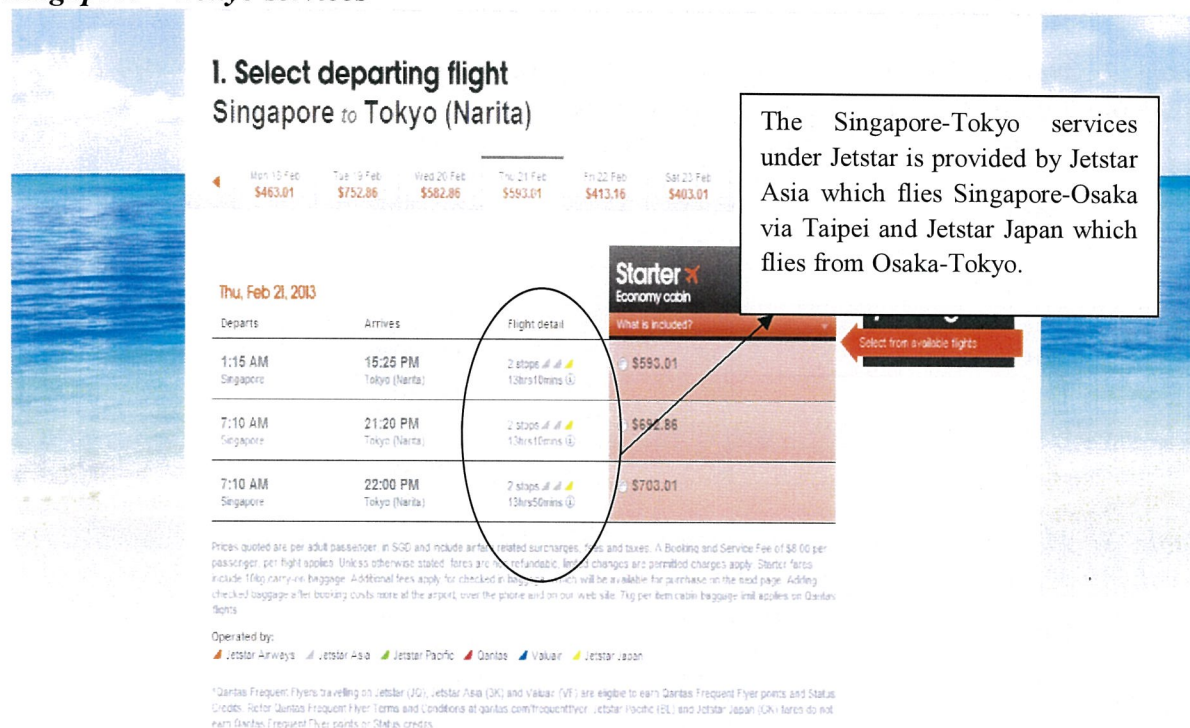
104. Expanded Network and More Destinations – CCS accepts that the First Limb of the Proposed Conduct will result in an expanded network and more destinations for Singapore consumers because these consumers will be able to utilise an integrated Jetstar JV's network which would otherwise not exist. In this respect, CCS accepts that Singapore consumers will be able to take advantage of the Jetstar network and travel to new destinations that will otherwise not be possible without the cooperation of the various Jetstar JV's. Singapore customers will not be able to have the added option of flying with Jetstar from Singapore to [X] if Jetstar Asia does not coordinate with Jetstar [X]. With coordination, Jetstar Asia will fly Singapore – [X] and Jetstar [X] will fly [X], effectively providing Singapore customers with the option of travelling Singapore – [X] on the Jetstar network.

105. CCS notes that under the First Limb of the Proposed Conduct, Singapore consumers will be able to utilise the Jetstar network and fly to locations such as Auckland, Christchurch, and other Australian destinations, as well as Danang, Hanoi, and Tokyo, and enjoy a consistent Jetstar experience offered by the various Jetstar JV's.⁶⁸

106. In addition to being able to enjoy a consistent Jetstar experience through current connections, there is also the potential introduction of new flights by the Jetstar JV's. Jetstar Japan, Jetstar Hong Kong and Jetstar Pacific intend to start international operations, serving numerous routes that have Singapore as part of an O&D Pair. Jetstar Asia is also considering launching new flights on routes it did not previously fly [X].

⁶⁸ Source: Jetstar's Route map in <http://www.jetstar.com/sg/en/planning-and-booking/where-we-go/route-map> (accessed on 16 January 2013)

Figure 2: Coordination between Jetstar Asia and Jetstar Japan in the Provision of Singapore – Tokyo services



107. Scheduling and Pricing – CCS accepts that the Proposed Conduct will result in optimised schedules as described in paragraph 76. In particular, CCS notes that the coordination by the Jetstar JVs in scheduling and pricing will allow consumers to enjoy a consistent and seamless “Jetstar” experience for any direct/indirect flights. [X].

Coordination under the First Limb of the Proposed Conduct will Not Impose Restrictions which are Not Indispensable to the Attainment of these Objectives

108. CCS is of the view that the various Jetstar entities are operating under a single model, with a single brand, an integrated network and a common sales platform. The extent of operational integration is beyond even that of a typical “metal-neutral” alliance, and the corresponding efficiencies are usually achievable by a single economic entity only. In this instance, however, CCS notes that the foreign ownership and control restrictions in the various countries concerned render it impossible to establish a regional Jetstar model through the structure of a single economic entity. Taking into account this regulatory constraint, CCS accepts that a JV structure, coupled with the coordination between the Jetstar JVs under the First Limb, is indispensable to the attainment of the objectives of the regional Jetstar model.

Coordination under the First Limb of the Proposed Conduct will Not Afford the Possibility of Eliminating Competition in respect of a Substantial Part of the Goods or Services in Question

109. CCS looked at the Parties’ market share figures as one of the factors in assessing if coordination under the First Limb of the Proposed Conduct within the First Relevant Market

affords the possibility of eliminating competition on those routes. The tables below show the respective market share figures.⁶⁹

Table 7: Market Shares for Singapore – [X] Services (January 2012 – April 2013) Involving Jetstar Asia and potentially Jetstar [X]

Carrier	Passenger Numbers	Market Share
	Economy	Economy
[X]	[X]	[40 – 50]%
[X]	[X]	[30 – 40]%
[X]	[X]	[10 – 20]%
Jetstar Asia	[X]	[10 – 20]%
[X]	[X]	[0 – 10]%
Others	[X]	[0 – 10]%
Jetstar [X]	(potentially)	(potentially)
Total	[X]	100%

Table 8: Market Shares for Singapore – [X] Services (January 2012 – April 2013) Involving Jetstar Asia and potentially Jetstar [X]

Carrier	Passenger Numbers	Market Share
	Economy	Economy
[X]	[X]	[20 – 30]%
[X]	[X]	[20 – 30]%
[X]	[X]	[20 – 30]%
[X]	[X]	[10 – 20]%
Jetstar Asia [X]	[X]	[0 – 10]%
Others	[X]	[10 – 20]%
Jetstar [X]	(potentially)	(potentially)
Total	[X]	100%

Table 9: Market Shares for Singapore – [X] Services (January 2012 – April 2013) Involving Jetstar Asia and potentially Jetstar [X]

Carrier	Passenger Numbers	Market Share
	Economy	Economy
[X]	[X]	[20 – 30]%
Jetstar Asia	[X]	[10 – 20]%
[X]	[X]	[10 – 20]%
[X]	[X]	[10 – 20]%
Others	[X]	[20 – 30]%
Jetstar [X]	(potentially)	(potentially)
Total	[X]	100%

Table 10: Market Shares for Singapore – [X] Services (January 2012 – April 2013) Involving Jetstar Asia, Jetstar Airways and potentially Jetstar [X]

Carrier	Passenger Numbers	Market Share
	Economy	Economy
[X]	[X]	[60 – 70]%
Jetstar Asia	[X]	[10 – 20]%
Jetstar Airways	[X]	[10 – 20]%

⁶⁹ Source: IATA Airport IS data from Changi Airport Group, January 2012 to December 2012 and January 2013 to April 2013

[X]	[X]	[0 – 10]%
[X]	[X]	[0 – 10]%
Others	[X]	[0 – 10]%
Jetstar [X]	(potentially)	(potentially)
Total	[X]	100%

Table 11: Market Shares for Singapore – [X] Services (January 2012 – April 2013)
Involving potentially Jetstar Asia and potentially Jetstar [X]

Carrier	Passenger Numbers	Market Share
	Economy	Economy
[X]	[X]	[20 – 30]%
[X]	[X]	[20 – 30]%
[X]	[X]	[10 – 20]%
[X]	[X]	[10 – 20]%
[X]	[X]	[0 – 10]%
Others	[X]	[10 – 20]%
Jetstar Asia	(potentially)	(potentially)
Jetstar [X]	(potentially)	(potentially)
Total	[X]	100%

Table 12: Market Shares for Singapore – [X] Services (January 2012 – April 2013)
Involving potentially Jetstar Asia and potentially Jetstar [X]

Carrier	Passenger Numbers	Market Share
	Economy	Economy
[X]	[X]	[80 – 90]%
[X]	[X]	[0 – 10]%
[X]	[X]	[0 – 10]%
[X]	[X]	[0 – 10]%
[X]	[X]	[0 – 10]%
Others	[X]	[0 – 10]%
Jetstar Asia	(potentially)	(potentially)
Jetstar [X]	(potentially)	(potentially)
Total	[X]	100%

Table 13: Market Shares for Singapore – [X] Services (January 2012 – April 2013)
Involving potentially Jetstar Asia and potentially Jetstar [X]

Carrier	Passenger Numbers	Market Share
	Economy	Economy
[X]	[X]	[80 – 90]%
[X]	[X]	[0 – 10]%
[X]	[X]	[0 – 10]%
[X]	[X]	[0 – 10]%
[X]	[X]	[0 – 10]%
Others	[X]	[0 – 10]%
Jetstar Asia	(potentially)	(potentially)
Jetstar [X]	(potentially)	(potentially)
Total	[X]	100%

110. With the exception of the Singapore – [X] route, CCS notes that Qantas Airways, Jetstar Airways and the various Jetstar JVs do not have significant market shares in any of the O&D Pair routes within the First Relevant Markets.

111. In relation to the **Singapore** – [X] route, the combined market share of the Parties is the second highest at [20 – 30]%. However, CCS considers that any market power which the Parties may have is likely to be constrained by Singapore Airlines which has [60 – 70]% of the market share on this route. CCS therefore considers that coordination between the Parties under the First Limb of the Proposed Conduct is unlikely to afford them the possibility of eliminating competition on this route.

112. As such, CCS is of the view that the First Limb of the Proposed Conduct does not afford the Parties the possibility of eliminating competition in respect of a substantial part of the services within the First Relevant Markets.

113. Based on the Applicants’ submissions and the absence of any evidence to the contrary, CCS is satisfied that the NEB exclusion applies to the First Limb of the Proposed Conduct. For the avoidance of doubt, the exclusion from the Section 34 Prohibition of the First Limb of the Proposed Conduct applies only to coordination between Qantas Airways, Jetstar Airways and the Jetstar JVs (Jetstar Asia, Jetstar Pacific, Jetstar Japan and Jetstar Hong Kong) named in the JVCA at the time the Notification was made, and only on the routes (current or potential) operated by these specified Parties.

114. As mentioned in paragraphs 53 and 54 above, pursuant to regulation 9(5) of the Competition Regulations 2007, CCS exercises its discretion not to give a decision on parts of the Proposed Conduct which are prospective; in particular, the parts which involve future Jetstar JVs that have yet to be established at/about⁷⁰ the time when the Notification was made. There is insufficient information/evidence available at this point in time to enable CCS to come to an informed decision on these parts. As such, CCS’s assessment and decision will not be applicable to the parts of the Proposed Conduct which involve coordination between/with future Jetstar JVs which have yet to be established at/about the time when this Notification was made.

CCS’s Assessment on the Second and Third Limbs of the Proposed Conduct under the Net Economic Benefits Exclusion

115. The NEB assessment for the Second and Third Limbs of the Proposed Conduct will be carried out together. CCS considers the Third Limb of the Proposed Conduct to be, in essence, a combination of the First and Second Limbs of the Proposed Conduct. As mentioned above at paragraph 35, the Third Limb of the Proposed Conduct involves coordination between a Jetstar JV, its local FSA shareholder and any other airline in the Jetstar Group to the extent they overlap or potentially overlap; in particular:

- a. [X];
- b. [X]; but
- c. the FSA will not directly coordinate with the Jetstar JV of which the FSA is not a shareholder.

⁷⁰ Supra, at footnote 51.

116. Since coordination within the Jetstar Group has already been assessed by CCS to have a resulting NEB, the NEB assessment that follows will focus mainly on the coordination between the Jetstar JVs and their respective FSA shareholders.

117. Notwithstanding the above, each route in the Second and Third Relevant Markets will ultimately be assessed individually since CCS considers the different O&D Pairs to be separate markets.

Coordination under the Second and Third Limbs of the Proposed Conduct will Improve Production or Distribution or Promote Technical or Economic Progress

118. As will be elaborated in paragraphs 120 to 122 below, CCS accepts the Applicants' submission that coordination between Jetstar JVs and their respective FSAs is indispensable to the investment in the Jetstar JVs. To this end, CCS considers that the benefits of improving production or distribution or promote technical or economic progress brought about by the First Limb of the Proposed Conduct (set out in paragraphs 71 to 86) can also be attributed to the Second and Third Limbs of the Proposed Conduct.

119. Further, the Applicants submitted that together, the FSA and its Jetstar JV can operate a dual-brand strategy that will grow the market, increase capacity and increase competition. CCS considers that with the potential introduction of a new LCC (Jetstar [X], on the Singapore – [X] and Singapore – [X] routes and Jetstar [X] on the Singapore – [X], Singapore – [X], Singapore – [X] and Singapore – [X] routes), consumers in Singapore may benefit from additional flight options and an increase in capacity and competition on these routes.

Coordination under the Second and Third Limbs of the Proposed Conduct will Not Impose Restrictions which are Not Indispensable to the Attainment of these Objectives

120. An agreement is indispensable if its absence will eliminate or significantly reduce the efficiencies that flow from the agreement, or make them much less likely to materialise.⁷¹

121. CCS notes that due to international aviation regulation requiring majority national ownership in airlines, Qantas Airways is not able to establish its own brand of airlines in countries outside Australia without the partnership of local shareholders. Also, because of the expertise required in the aviation industry, the national airlines are usually the 'natural' shareholders in the Jetstar JVs.⁷²

122. CCS acknowledges that it would be difficult for Qantas Airways to set up its own brand of airlines outside Australia without partnership with local shareholders; and agrees with the Applicants' submissions set out in paragraphs 89 and 90 above that coordination between Jetstar JVs and their respective FSAs is indispensable to the investment in the Jetstar JVs.

⁷¹ Paragraph 10.10 of Annex C to the *CCS Guidelines on the Section 34 Prohibition*.

⁷² [X]

123. As such, CCS considers that coordination under the Second and Third Limbs of the Proposed Conduct is indispensable to the attainment of the benefits set out in paragraphs 118 and 119 above.

Coordination under the Second and Third Limbs of the Proposed Conduct will Not Afford the Possibility of Eliminating Competition in respect of a Substantial Part of the Goods or Services in Question

124. Similar to the assessment for the First Limb of the Proposed Conduct, CCS looked at the Parties' market share figures as one of the factors in assessing if coordination under the Second and Third Limbs of the Proposed Conduct within the Second and Third Relevant Markets affords the possibility of eliminating competition on those routes. The tables below show the respective market share figures⁷³:

Table 14: Market Shares for Singapore – [X] Services (January 2012 – April 2013) Involving [X] and potentially Jetstar [X]

Carrier	Passenger Numbers	Market Share
	Economy	Economy
[Party to the Proposed Conduct]	[X]	[30 – 40]%
[X]	[X]	[20 – 30]%
[X]	[X]	[20 – 30]%
[X]	[X]	[10 – 20]%
[X]	[X]	[0 – 10]%
Others	[X]	[0 – 10]%
Jetstar [X]	(potentially)	(potentially)
Total	[X]	100%

* [X]⁷⁴

Table 15: Market Shares for Singapore – [X] Services (January 2012 – April 2013) Involving [X], Jetstar Asia and potentially Jetstar [X]

Carrier	Passenger Numbers	Market Share
	Economy	Economy
[X]	[X]	[20 – 30]%
Jetstar Asia	[X]	[10 – 20]%
[Party to the Proposed Conduct]	[X]	[10 – 20]%
[X]	[X]	[10 – 20]%
Others	[X]	[20 – 30]%
Jetstar [X]	(potentially)	(potentially)
Total	[X]	100%

Table 16: Market Shares for Singapore – [X] Services (January 2012 – April 2013) Involving Jetstar Asia, Jetstar Airways, potentially [X] and potentially Jetstar [X]

Carrier	Passenger Numbers	Market Share
	Economy	Economy
[X]	[X]	[60 – 70]%

⁷³ Source: IATA Airport IS data from Changi Airport Group, January 2012 to December 2012 and January 2013 to April 2013.

⁷⁴ [X], letter from Qantas dated 17 July 2013.

Jetstar Asia	[X]	[10 – 20]%
Jetstar Airways	[X]	[10 – 20]%
[X]	[X]	[0 – 10]%
[X]	[X]	[0 – 10]%
Others	[X]	[0 – 10]%
Jetstar [X]	(potentially)	(potentially)
[Party to the Proposed Conduct]	(potentially)	(potentially)
Total	[X]	100%

Table 17: Market Shares for Singapore – [X] Services (January 2012 – April 2013)
Involving [X], potentially Jetstar Asia and potentially Jetstar [X]

Carrier	Passenger Numbers	Market Share
	Economy	Economy
[X]	[X]	[20 – 30]%
[X]	[X]	[20 – 30]%
[Party to the Proposed Conduct]	[X]	[10 – 20]%
[X]	[X]	[10 – 20]%
[X]	[X]	[0 – 10]%
Others	[X]	[10 – 20]%
Jetstar Asia	(potentially)	(potentially)
Jetstar [X]	(potentially)	(potentially)
Total	[X]	100%

Table 18: Market Shares for Singapore – [X] Services (January 2012 – April 2013)
Involving potentially [X], potentially Jetstar Asia and potentially Jetstar [X]

Carrier	Passenger Numbers	Market Share
	Economy	Economy
[X]	[X]	[80 – 90]%
[X]	[X]	[0 – 10]%
[X]	[X]	[0 – 10]%
[X]	[X]	[0 – 10]%
[X]	[X]	[0 – 10]%
Others	[X]	[0 – 10]%
Jetstar Asia	(potentially)	(potentially)
Jetstar [X]	(potentially)	(potentially)
[Party to the Proposed Conduct]	(potentially)	(potentially)
Total	[X]	100%

Table 19: Market Shares for Singapore – [X] Services (January 2012 – April 2013)
Involving potentially [X], potentially Jetstar Asia and potentially Jetstar [X]

Carrier	Passenger Numbers	Market Share
	Economy	Economy
[X]	[X]	[80 – 90]%
[X]	[X]	[0 – 10]%
[X]	[X]	[0 – 10]%
[X]	[X]	[0 – 10]%
[X]	[X]	[0 – 10]%
Others	[X]	[0 – 10]%

Jetstar Asia	(potentially)	(potentially)
Jetstar [X]	(potentially)	(potentially)
[Party to the Proposed Conduct]	(potentially)	(potentially)
Total	[X]	100%

125. With the exception of the Singapore – [X], Singapore – [X] and Singapore – [X] routes, the combined market shares of the Parties in the Second and Third Relevant Markets are not assessed by CCS to be significant.

126. In relation to the **Singapore** – [X] route, the combined market share of the Parties is the second highest at [20-30]%. However, CCS considers that any market power which the Parties may have is likely to be constrained by Singapore Airlines which has [60-70]% of the market share on this route. CCS therefore considers that coordination between the Parties under the Second and Third Limbs of the Proposed Conduct is unlikely to afford them the possibility of eliminating competition on this route

127. In relation to the **Singapore** – [X] route, CCS notes that [X].

128. Taking into account the market shares of all the airlines on the **Singapore** – [X] route, CCS considers that the proposed coordination may afford the Parties the possibility of eliminating competition. CCS sent out a Request for Information (“RFI”) to eight parties to gather their feedback on the level of competition as well as on the Proposed Conduct on this route in particular. CCS received two responses to this RFI, and the general feedback gathered was that this route can be generally considered to be competitive.

129. One of the respondents provided feedback that Vietnam Airlines is state-owned, and in turn controls Vietnam Airlines Engineering Company (maintenance, repair and overhaul), Noibai Catering Services and Vietnam Air Catering. Furthermore, slot allocation at the Vietnam airport is controlled by Airports Corporation of Viet Nam, which is also state-owned. The respondent provided that these factors, taken together, may afford Vietnam Airlines a certain degree of control over the fate of new entrants. However, CCS has not received any evidence to suggest that Vietnam Airlines has played a role in restricting access to essential facilities or preventing new entrants from obtaining slots at the Vietnam airport; or evidence to show that Vietnam Airlines in fact has the ability to do so by virtue of its ownership structure.⁷⁵ The same respondent noted that Jetstar Asia is unlikely to be well-placed to influence barriers to entry.

130. While slot constraints at airports (including the one in Ho Chi Minh) can be a barrier to entry, CCS notes the presence of three LCCs (Jetstar Asia, Tiger Airways and AirAsia), with the possible introduction of a fourth LCC (VietJet Air, a Vietnamese LCC) on this route. [X].⁷⁶

131. The presence of LCCs on routes can generally be thought to increase the level of competitiveness. Over the last few years, LCCs in Asia have been rapidly expanding and steadily eroding the market share of FSAs. This trend shows no signs of abating as the

⁷⁵ [X]

⁷⁶ [X]

region's LCCs continue to order new aircraft at ferocious rates.⁷⁷ CCS also accepts the Applicants' submissions as stated in paragraph 0 that the introduction of LCCs on routes have led to increased capacity and reduced prices from existing airlines on those routes.

132. On balance, CCS views coordination under the Second and Third Limbs of the Proposed Conduct on the Singapore – [X], Singapore – [X], Singapore – [X], Singapore – [X], Singapore – [X] and Singapore – [X] routes as not affording the possibility of eliminating competition.

133. Therefore, in relation to the Second Limb of the Proposed Conduct, CCS is satisfied that the NEB exclusion applies to the Proposed Conduct:

- i. Between [X] and Jetstar [X] on the Singapore – [X] and Singapore – [X] routes; and
- ii. Between [X] and Jetstar [X] on the Singapore – [X], Singapore – [X], Singapore – [X] and Singapore – [X] routes.

134. In relation to the Third Limb of the Proposed Conduct, CCS is satisfied that the NEB exclusion applies to the Proposed Conduct:

- i. Between [X], Jetstar Asia and Jetstar [X] on the Singapore – [X] route;
- ii. Between Jetstar Asia, Jetstar Airways, [X] and Jetstar [X] on the Singapore – [X] route; and
- iii. Between [X], Jetstar Asia and Jetstar [X] on the Singapore – [X], Singapore – [X] and Singapore – [X] routes.

Third Party Comments on the Proposed Conduct

135. The comments received by CCS from third parties (on the Proposed Conduct generally) indicated that key stakeholders were generally of the view that the cooperation between Qantas Airways and the various Jetstar entities would lead to better connections from Singapore and also strengthen Singapore's status as an air hub. For example, some of the benefits cited by Vital⁷⁸ (a key customer) are improved flight connections, extended route coverage, more competitive airfares and greater cost savings. The Civil Aviation Authority of Singapore ("CAAS") also cited similar benefits like increased connectivity options and lower fares for passengers.⁷⁹

⁷⁷ *Low-cost airline growth in Asia*, Airline Leader, Appendix 11 of the Parties' Submissions

⁷⁸ Vital is a government department formed on 5 July 2006 under the Ministry of Finance, as part of the Singapore Public Sector's effort to aggregate common administrative services and reap economies of scale to bring about greater business value for the whole of Government.

⁷⁹ CAAS's response (dated 31 October 2012) and revised response (dated 23 January 2013) to CCS's RFI.

E. CCS'S DECISION ON THE PARTIES' APPLICATION

136. Pursuant to regulation 9(5) of the Competition Regulations, CCS exercises its discretion not to give a decision on parts of the Proposed Conduct which are prospective; in particular, coordination which involves future Jetstar JVs that have yet to be established at/about⁸⁰ the time the Notification is made.

137. Save for the above, CCS finds that by operation of section 35 of the Act (read with paragraph 9 of the Third Schedule of the same), the Proposed Conduct, within the Relevant Markets, is excluded from the Section 34 Prohibition of the Act. In particular:

- a. In relation to the First Limb of the Proposed Conduct, CCS is satisfied that the NEB exclusion applies to all coordination between Qantas Airways, Jetstar Airways and the named Jetstar JVs (Jetstar Asia, Jetstar Pacific, Jetstar Japan and Jetstar Hong Kong) as set out in the JVCA that was entered into on 22 June 2012. For the avoidance of doubt, this exclusion from the Section 34 Prohibition of the First Limb of the Proposed Conduct applies only to coordination between Qantas Airways, Jetstar Airways and the Jetstar JVs (Jetstar Asia, Jetstar Pacific, Jetstar Japan and Jetstar Hong Kong) named in the JVCA at the time the Notification was made, and only on the routes (current or potential) operated by these specified Parties.
- b. In relation to the Second Limb of the Proposed Conduct, CCS is satisfied that the NEB exclusion applies to the Proposed Conduct:
 - i. Between [X] and Jetstar [X] on the Singapore – [X] and Singapore – [X] routes; and
 - ii. Between [X] and Jetstar [X] on the Singapore – [X], Singapore – [X], Singapore – [X] and Singapore – [X] routes.
- c. In relation to the Third Limb of the Proposed Conduct, CCS is satisfied that the NEB exclusion applies to the Proposed Conduct:
 - i. Between [X], Jetstar Asia and Jetstar [X] on the Singapore – [X] route;
 - ii. Between Jetstar Asia, Jetstar Airways, [X] and Jetstar [X] on the Singapore – [X] route; and
 - iii. Between [X], Jetstar Asia and Jetstar [X] on the Singapore – [X], Singapore – [X] and Singapore – [X] routes.

138. 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

⁸⁰ Supra, at footnote 51.

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.

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

- a. A reduction in the number of competing carriers in the respective O&D Pairs which form the Second and Third Relevant Markets;
- b. Significant changes to the scope of the Proposed Conduct; and
- c. Changes in the operations of the Parties which have a significant impact on the Singapore market.



Yena Lim
Chief Executive
Competition Commission of Singapore

