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

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

**Notification for Decision by Scoot Pte. Ltd. and Tiger Airways Singapore Pte. Ltd.**

**07 August 2014**

**Case number: CCS 400/002/14**

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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 28 January 2014, CCS received a notification for decision made under section 44 of the Competition Act (Cap. 50B) by Scoot Pte. Ltd. and Tiger Airways Singapore Pte. Ltd. in relation to them entering into an Alliance Framework Agreement. Pursuant to this Alliance Framework Agreement, Scoot Pte. Ltd. and Tiger Airways Singapore Pte. Ltd. would agree to cooperate on, amongst others, scheduling, pricing, sales and marketing, service policies and other matters to improve the overall quality of the service offered to passengers on their existing routes<sup>1</sup>. A decision was sought as to whether cooperation under the Alliance Framework Agreement between Scoot Pte. Ltd and Tiger Airways Singapore Pte. Ltd. will infringe the section 34 prohibition of the Act.

2. CCS's assessment, based on the submissions and information provided by the Parties and from relevant third parties, is that the cooperation under the Alliance Framework Agreement will have the object of the prevention, restriction or distortion of competition within Singapore. However, CCS is satisfied that Scoot Pte. Ltd. and Tiger Airways Singapore Pte. Ltd. have established that the net economic benefit exclusion applies to the cooperation between Scoot Pte. Ltd. and Tiger Airways Singapore Pte. Ltd. under the Alliance Framework Agreement on the existing routes operated by them.

3. Therefore, by operation of section 35 of the Act (read with paragraph 9 of the Third Schedule of the same), cooperation under the Alliance Framework Agreement between Scoot Pte. Ltd and Tiger Airways Singapore Pte. Ltd. on the existing routes operated by them, as submitted in the notification, is excluded from the section 34 prohibition of the Act.

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<sup>1</sup> For the purposes of CCS's assessment of this notification, 9 flights operated by Scoot Pte. Ltd. and 36 flights operated by Tiger Airways Singapore Pte. Ltd. were taken into consideration by CCS as part of its competition assessment. Existing routes exclude the Singapore – Australia routes operated by the Parties. A list of the 42 routes is listed in Annex A to CCS's decision to the notification.

## **TABLE OF CONTENTS**

<b>A.</b>	<b>INTRODUCTION .....</b>	<b>4</b>
<b>B.</b>	<b>BACKGROUND TO THE NOTIFICATION .....</b>	<b>4</b>
	Parties to the Notification	4
	Existing Coordination between Scoot and Tigerair Singapore	5
	The Proposed Cooperation	6
<b>C.</b>	<b>LEGISLATIVE FRAMEWORK FOR THE SECTION 34 PROHIBITION .....</b>	<b>7</b>
<b>D.</b>	<b>COMPETITION ASSESSMENT .....</b>	<b>7</b>
	Scope of CCS's Decision	7
	Theory of Harm	7
	Relevant Markets	8
	The Object or Effect of the Prevention, Restriction or Distortion of Competition within Singapore	11
	Net Economic Benefit Exclusion	12
	Third Party Comments on the Proposed Cooperation	22
<b>E.</b>	<b>CCS'S DECISION ON THE PARTIES' NOTIFICATION FOR DECISION .....</b>	<b>23</b>

## A. INTRODUCTION

1. This decision sets out CCS's assessment on whether the notification for decision, made under section 44 of the Competition Act (Cap. 50B)(the "Act") for cooperation between Scoot Pte. Ltd. ("Scoot") and Tiger Airways Singapore Pte. Ltd. ("Tigerair Singapore")(separately a "Party" and collectively the "Parties"), will infringe the section 34 prohibition of the Act (the "Section 34 Prohibition").

2. As part of CCS's assessment of the notification for decision, a summary of the application and an invitation for comments were placed on CCS's public register on 6 February 2014 to seek third parties' feedback on the effects on competition resulting from cooperation between the Parties and on whether there will be a resulting net economic benefit ("NEB") arising for Singapore. CCS's assessment and decision is based on the submissions and information provided by the Parties and relevant third parties.

## B. BACKGROUND TO THE NOTIFICATION

### Parties to the Notification

3. As indicated in the submissions to CCS, the Parties to the notification are Scoot and Tigerair Singapore.

#### *Scoot*

4. Scoot is a medium- and long-haul low cost carrier ("LCC") based in Singapore, established in 2011 and commenced operations in June 2012<sup>2</sup>, currently flying to 12 destinations from Singapore<sup>3</sup>. Scoot operates a fleet of six wide-body aircraft (currently Boeing 777-200, and progressively being replaced by Boeing 787-800/900 between November 2014 and [§<]), which have a range of more than 10 hours, and passenger capacity of more than 330 seats. It principally operates flights of more than four hours in length, [§<]. Scoot is a wholly-owned subsidiary of Singapore Airlines Limited<sup>4</sup> ("SIA").

5. Other agreements that Scoot has entered into include<sup>5</sup>:

- a. a bilateral interline agreement with Tigerair and Tigerair Mandala<sup>6</sup>;
- b. unilateral interline agreements with SIA and SilkAir (Singapore) Pte. Ltd. ("SilkAir") for selected destinations operated by SIA and SilkAir; and

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<sup>2</sup> Paragraph 1.1.4, Form 1 of Parties submission

<sup>3</sup> <http://www.flyscoot.com/index.php/en/schedules>, accessed as of 11 April 2014

<sup>4</sup> SIA is Singapore's national flag carrier, operating air passenger services across an extensive international network of 100 scheduled destinations in 40 countries, with a fleet of over 100 aircrafts. SIA is listed on the Main Board of the Singapore Exchange

<sup>5</sup> Paragraphs 1.8.7 and 1.8.8, Form 1 of Parties submission

<sup>6</sup> The Proposed Cooperation would not affect Scoot's existing bilateral interline agreement with Tigerair Mandala or the unilateral interline agreement with SIA and SilkAir, and only involve flights which are directly serviced and operated by Scoot [§<]

- c. a Memorandum of Understanding (“MOU”) with Nok Air to establish an LCC based in Bangkok, Thailand, to be named NokScoot<sup>7</sup>, of which Scoot will have 49% shareholding.

### ***Tigerair Singapore***

6. Tigerair Singapore is a short-haul LCC incorporated in Singapore, established in 2004 and commenced operations in September 2004<sup>8</sup>, currently flying to 37 destinations from Singapore<sup>9</sup>. Tigerair Singapore operates an Airbus A320-family fleet of 23 narrow-body aircraft, as at 28 January 2014, to destinations within a four- to six-hour range from Singapore, within Asia. Tigerair Singapore is a wholly-owned subsidiary of Tigerair Holdings, which is listed on the Main Board of the SGX-ST.<sup>10</sup> Tigerair Holdings is 40% owned by SIA, with the next largest shareholder (DBS Nominees [Private] Limited) having a 1.63% ownership, and has two associate companies in which it has interests in<sup>11</sup>:

- a. 40% in Tigerair Australia (incorporated in Australia); and
- b. 35.8% in Tigerair Mandala (incorporated in Indonesia).

7. Other agreements that Tigerair Singapore has entered into include<sup>12</sup>:

- a. a joint venture agreement with China Airlines to establish Tigerair Taiwan<sup>13</sup> of which Tigerair Holdings will have a 10% interest; and
- b. a three-year interline agreement with SpiceJet, an Indian LCC.

### **Existing Coordination between Scoot and Tigerair Singapore**

8. According to the submissions put forth, Scoot and Tigerair Singapore had, on 1 October 2012, entered into a MOU which effected a bilateral interline agreement as part of Phase 1 of the cooperation under the MOU.<sup>14</sup> The bilateral interline agreement allows passengers to purchase tickets and travel from a city on flights operated by Tigerair Singapore, and connect onto flights to destinations beyond Singapore operated by Scoot, and *vice versa*.<sup>15</sup> Phase 1 of the cooperation under the MOU involves [REDACTED]<sup>16</sup>, for example:

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

9. In relation to fares, [REDACTED].<sup>17</sup>

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<sup>7</sup> [REDACTED]

<sup>8</sup> Paragraph 1.1.5, Form 1 of Parties submission

<sup>9</sup> [http://www.tigerair.com/sg/en/destination\\_map.php](http://www.tigerair.com/sg/en/destination_map.php), accessed as of 11 April 2014

<sup>10</sup> Paragraph 1.8.2, Form 1 of Parties submission

<sup>11</sup> Tigerair Holdings disposed of 40% of its stake in Tigerair Philippines to Cebu Pacific on 20 March 2014

<sup>12</sup> Paragraph 1.8.11, Form 1 of Parties submission

<sup>13</sup> [REDACTED]

<sup>14</sup> Paragraph 2.3.1, Form 1 of Parties submission

<sup>15</sup> Paragraph 1.8.7, Form 1 of Parties submission

<sup>16</sup> Paragraph 2.3.1, Form 1 of Parties submission

<sup>17</sup> Paragraph 1.8.7, Form 1 of Parties submission

## The Proposed Cooperation

10. The Parties now seek to implement Phase 2 of the cooperation under the MOU, and accordingly entered into an Alliance Framework Agreement on 13 December 2013. Pursuant to the Alliance Framework Agreement, the Parties agree to<sup>18</sup>:

- a. [X]; and
- b. cooperate in relation to [X], scheduling, pricing, sales and marketing, service policies, [X] and other matters to improve the overall quality of service offered to passengers on their respective operations.

The Proposed Cooperation notified to CCS excludes routes between Singapore and Australia.

11. The Parties will implement cooperative procedures including necessary agreements in relation to the following:

- a. joint pricing on [X];
- b. joint scheduling on [X];
- c. joint marketing, distribution, sales representation and cooperation;
- d. joint or compatible service policies;
- e. [X];
- f. [X]; and
- g. [X].

12. The Proposed Cooperation will not involve SIA, SilkAir, NokScoot, Tigerair Australia, Tigerair Mandala, Tigerair Philippines or Tigerair Taiwan.<sup>19</sup> [X].<sup>20</sup>

(collectively the “Proposed Cooperation”)

13. The Parties also submitted that, [X].<sup>21</sup>

14. The Parties submitted that while the Proposed Cooperation will take place across their existing routes, they generally do not overlap on routes operated, with the exception of the following routes at present, which are also within the scope of the Proposed Cooperation<sup>22</sup>:

- a. between Singapore and Bangkok, Thailand;
- b. between Singapore and Taipei, Taiwan; and
- c. between Singapore and Hong Kong.

(collectively the “Overlapping Routes”).

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<sup>18</sup> Paragraph 2.3.2, Form 1 of Parties submission

<sup>19</sup> Paragraphs 1.8.2, 1.8.5(a), 1.8.9 and 1.8.11, Form 1 of Parties submission

<sup>20</sup> Paragraph 13.4 of the Alliance Agreement between Scoot and Tigerair Singapore

<sup>21</sup> Paragraph 2.3.5, Form 1 of Parties submission

<sup>22</sup> Paragraph 1.5.3, Form 1 of Parties submission

## **C. LEGISLATIVE FRAMEWORK FOR THE SECTION 34 PROHIBITION**

15. 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. 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.<sup>23</sup>

16. 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**

### **Scope of CCS's Decision**

17. The scope of CCS's decision is limited to the Proposed Cooperation notified to CCS, specifically, the Proposed Cooperation between Scoot and Tigerair Singapore on the 42 routes across their existing networks<sup>24</sup>, excluding the routes between Singapore and Australia.

### **Theory of Harm**

18. As mentioned, 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 accordance with its plain reading, "object" and "effect" are alternative and not cumulative requirements. 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

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<sup>23</sup> Paragraph 3.2 of the *CCS Guidelines on the Section 34 Prohibition*

<sup>24</sup> For the purposes of CCS's assessment of this Notification, 9 flights operated by Scoot Pte. Ltd. and 36 flights operated by Tiger Airways Singapore Pte. Ltd. were taken into consideration by CCS as part of its competition assessment. Existing routes exclude the Singapore – Australia routes operated by the Parties. A list of the 42 routes is listed in Annex A.



effect on competition in order to find an infringement under section 34 of the Act.<sup>25</sup> In assessing the object of an agreement, CCS considers the objective meaning and purpose of the decision in the economic context in which it is to be applied.<sup>26</sup>

19. Under the Proposed Cooperation, the flight operations of Scoot and Tigerair Singapore overlap on three Origin and Destination Pair (“O&D Pair”) routes involving Singapore (Overlapping Routes as specified in paragraph 14). The Parties are horizontal competitors to each other for the O&D Pair routes specified.

20. The Proposed Cooperation provides for the Parties to coordinate their decisions relating to pricing, scheduling, marketing, distribution and [X], amongst others. CCS is of the opinion that the Proposed Cooperation will amount to a price fixing and/or production control agreement between competitors. As such, CCS is of the view that coordination under the Proposed Cooperation will have the object of the prevention, restriction or distortion of competition in the relevant markets.

## **Relevant Markets**

### ***Parties’ Submissions***

21. The Parties quoted CCS and other competition authorities in their past decisions on relevant market definitions in airline joint venture agreements that the relevant market should be defined as the O&D Pair routes (CCS 400/002/12 *Qantas/Jetstar*) involving Singapore (CCS 400/006/12 *Qantas/Emirates*), further delineated by leisure and non-leisure passengers (CCS 400/002/12 *Qantas/Jetstar*).

22. The Parties also submitted fare trends for the Singapore – Bangkok and Singapore – Hong Kong routes (data for Singapore – Taipei route was not available from the database) to show the interaction of fares on these routes by the different airlines. However, as the airlines [both Full Service Airlines (“FSA”s) and LCCs] on the routes run regular promotional campaigns, the Parties submitted that it would be difficult to identify if fares of any specific airline on the route was responding to a particular airline’s promotional campaign.<sup>27</sup>

### **Chart 1: Fare comparison for airlines on Singapore – Bangkok for 20 Dec 2013**

[X]

### **Chart 2: Fare comparison for airlines on Singapore – Hong Kong for 30 Dec 2013**

[X]

23. The Parties noted that the fares of Thai Airways on the Singapore – Bangkok route (pink lines in Chart 1) were not significantly higher than those of LCCs, with a convergence in fares closer to the date of departure of the flight and that fare adjustments by carriers on this route tend to mirror each other. The fares of United Airlines (light blue lines in Chart 2), a fifth freedom carrier on the Singapore – Hong Kong route were also not significantly higher

<sup>25</sup> 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*

<sup>26</sup> *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

<sup>27</sup> Paragraphs 1.2 to 1.4 of Parties response to CCS’s information request dated 27 March 2014



than those of LCCs, due to the marginal incremental cost to a carrier of operating a route using fifth freedom air traffic rights and that fare adjustments on this route also generally mirror each other.<sup>28</sup>

24. In addition to fares, the Parties also submitted evidence on the substitutability of the products offered by FSAs and LCCs. For example, Tigerair Singapore and Philippine Airlines operate certain flights departing Singapore for Manila and *vice versa* at close times.<sup>29</sup> With respect to flights departing Singapore, Tigerair Singapore operates a flight to Manila departing Singapore at 5.50 p.m. and Philippine Airlines operates one departing Singapore only 3 hours later at 8.50 p.m. On the return leg from Manila to Singapore, there is less than an hour different in the departure times.<sup>30</sup> Hence, it is submitted that consumers would be likely to regard these flight timings as substitutable. The Parties also submitted third party commentaries which suggested that there is an increased convergence in the service offerings of FSAs and LCCs. For example, *in many geographies, from a passenger viewpoint, the distinction between the two business models (particularly in short-haul) is also becoming increasingly blurred*<sup>31</sup>, *“from an Indian passenger’s perspective there is little to distinguish between an LCC and an FSC in economy class”*<sup>32</sup> and *“the launch of a low-cost carrier may eat into a dominant full-service carrier’s market share”*<sup>33</sup>.

25. In conclusion, the Parties submitted that the relevant markets affected by the Proposed Cooperation could be defined by O&D Pair routes, with a specific focus on the Singapore O&D pairs, which includes economy-class passengers for FSAs and all classes of seats for LCCs.<sup>34</sup>

### **CCS’s Assessment**

26. As submitted by the Parties and in reference to the approach taken in previous decisions, 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 but significant and 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 agreements<sup>35</sup> and the approach taken by the European Commission<sup>36</sup>. As such, for the purposes of assessing the Proposed Cooperation as notified

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<sup>28</sup> Paragraphs 1.7.1 to 1.7.6 of Parties response to CCS’s information request dated 27 March 2014

<sup>29</sup> Paragraph 3.6.3 of Parties response to CCS’s information request dated 28 May 2014

<sup>30</sup> Annex 2 of Parties response to CCS’s information request dated 28 May 2014

<sup>31</sup> 2013 Airline Disclosures Handbook, KPMG

<sup>32</sup> *India’s airlines, LCC and FSC, must review their business models, maybe creating space for AirAsia*, Centre for Aviation, 3 October 2013

<sup>33</sup> *Don’t laugh: Vanilla Air, Peach and other budget airlines mean business*, CNN, 2 September 2013

<sup>34</sup> Paragraph 4.2.8, Form 1 of Parties submission

<sup>35</sup> 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 *British Airways/Qantas*, CCS 400/003/06 *Qantas/Orange Star*, CCS 400/008/10 *Japan Airlines/American Airlines*, CCS 400/001/11 *Nippon Airways/Continental Airlines/United Airlines Joint Venture*, CCS 400/005/11 *SIA/Virgin Australia*, CCS 400/001/12 *SIA/Scandinavian Airlines*, CCS 400/002/12 *Qantas/Jetstar* and CCS 400/003/14 *Singapore Airlines/Air New Zealand*

<sup>36</sup> See European Commission’s decisions in Case No COMP/M.3280 – *Lufthansa/Swiss* and Case No COMP/M.4439 – *Ryanair/Aer Lingus*

by the Parties, CCS considers the 42<sup>37</sup> O&D Pair route(s) involving Singapore that are currently operated by the Parties. CCS also notes that across the O&D Pair routes operated by the Parties, only three of the O&D Pair routes between the Parties overlap, and these are:

- a. Singapore – Bangkok;
- b. Singapore – Taipei; and
- c. Singapore – Hong Kong.

27. CCS first notes that the Overlapping Routes are generally short-haul in nature. The average flight time is 2 hours 16 minutes<sup>38</sup> on the Singapore – Bangkok route, 4 hours 31 minutes<sup>39</sup> on the Singapore – Taipei route and 3 hours 42 minutes<sup>40</sup> on the Singapore – Hong Kong route.

28. Secondly, CCS considered the difference between leisure passengers and business travellers to determine if traditional characteristics defining each group (i.e. leisure passengers are typically price sensitive and may be less concerned about travel time compared to business passengers who tend to be more concerned about flexibility of travel time and are less sensitive to price) hold true for the purpose of this notification, in particular on short-haul routes. There appears to be instances where business travellers use the services of LCCs, at least for short-haul flights. An extensive survey of UK travellers revealed that 40% of domestic passengers travelling on low cost airlines from Luton and Stansted were travelling for business purposes (Civil Aviation Authority, 1998d).<sup>41</sup> Surveys have also indicated that, in both the US and the UK, business travellers have made extensive use of discounted tickets<sup>42</sup>, suggesting that business travellers are becoming price sensitive too. Hence, the traditional distinction between leisure and non-leisure passengers in the choice of flights, particularly for short-haul trips, may be increasingly blurred.

29. That being said, with regard to business and first class travellers, CCS is of the view that the products offered in business and first class travel is distinct from that in the economy class and LCC services given the additional benefits accrued to holders of business or first class tickets. These include the award of loyalty scheme rewards, a dedicated business class check-in, more leg room and seat space, premium in-flight meal service, access to airport business/first class lounges and more flexible tickets in terms of altering flight timings.<sup>43</sup> Further, CCS notes that there may be distinction between travellers that procure business/first class service as compared to travellers that procure other classes of services. For example, travellers on business or first class are generally not price sensitive. They could be wealthy individuals that would travel business/first class for leisure; senior level business representatives for which companies are willing to pay for business/first class travel; and business travellers from larger companies where the decision and booking process is outsourced.<sup>44</sup> CCS is therefore of the view that the relevant market, for the purpose of

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<sup>37</sup> List of the 42 routes operated by Scoot and Tigerair Singapore are in Annex A

<sup>38</sup> <http://www.travelmath.com/flying-time/from/Singapore/to/Bangkok,+Thailand>

<sup>39</sup> <http://www.travelmath.com/flying-time/from/Singapore/to/Taipei,+Taiwan>

<sup>40</sup> <http://www.travelmath.com/flying-time/from/Singapore/to/Hong+Kong>

<sup>41</sup> *Ibid.*

<sup>42</sup> Keith J. Mason, “*Observations of fundamental changes in demand for aviation services*”, Journal of Air Transport Management, Vol. 11, Issue 1, Jan 2005, p. 19-25

<sup>43</sup> *Ibid.*

<sup>44</sup> Thorsten Teichert, “*Customer segmentation revisited: The case of the airline industry*”, Transportation Research Part A: Policy and Practice, Vol. 42, Issue 1, Jan 2008, p. 227-242

assessing the Proposed Cooperation, should not include first or business class passenger services offered by FSAs.

30. CCS further considered whether scheduled air passenger transport services provided by LCCs would be substitutable with the economy class services provided by FSAs, particularly for short-haul flights. CCS recognises that FSAs' fares have become increasingly competitive and at times, would be comparable to that offered by the LCCs.<sup>45</sup> The products offered by LCCs have also become more comparable to that offered by FSAs due to improvements over time. For example, LCCs used to only offer flight timings that were considered "undesirable" by most travellers and FSAs would typically not offer flights at such timings. CCS notes that LCCs are now starting to offer better flight timings (alongside with offering a wider range of flight timings throughout the day). CCS also notes the increasing prevalence of top-up options (e.g. on-board meals, entertainment options) offered by LCCs to improve the quality of its product offering.

31. With regards to the Parties' submission on fare trends and price differences between different airlines on certain routes, CCS is of the view that such a submission is insufficient to demonstrate that scheduled air passenger transport services provided by LCCs would be substitutable with the economy class services provided by FSAs.<sup>46</sup> For example, the basis for the Parties' argument that the price difference between economy seats offered by Thai Airways and LCC seats is "not significant" is unclear. Going by the Parties' logic, where the price difference between economy seats offered by another FSA, SIA, and LCC seats on the Singapore – Bangkok leg are "significant", there would not be substitutability. As such, CCS would only go as far as to use the information on the prices of economy seats on FSAs and LCCs to inform its view of the development of the LCCs and FSAs market as well as add to the discussion regarding the substitutability of economy seats on FSAs and seats on LCCs instead of it being definitive of markets by itself.

32. As such, for the purposes of assessing the Proposed Cooperation as notified by the Parties, CCS defines the relevant market(s) as the 42 O&D Pair routes currently operated by the Parties involving Singapore, for all seats on LCCs and economy class seats on FSAs (the "Relevant Markets").

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

### ***Parties' Submissions***

33. The Parties submitted that they are each separately involved in the provision of international air passenger transport services and that the Proposed Cooperation does not have the object or effect of appreciably preventing, restricting or distorting competition in any markets in Singapore and, in any event, the Proposed Cooperation gives rise to a NEB and would therefore benefit from the NEB Exclusion.<sup>47</sup>

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<sup>45</sup> Annex 1 of Parties supplemental response (dated 8 May 2014) to CCS's information request dated 27 March 2014

<sup>46</sup> The Economics of EC Competition Law: Concepts, Application and Measurement, 4.51 *Product Prices*

<sup>47</sup> Paragraph 2.3.6, Form 1 of Parties submission

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

34. As indicated earlier, the Parties, through the Proposed Cooperation, intend to coordinate on pricing, scheduling, marketing, distribution and [X], amongst others. On the Overlapping Routes, this is equivalent 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. CCS is of the view that the Proposed Cooperation on the Overlapping Routes will have the object of the prevention, restriction or distortion of competition; an agreement involving price-fixing, bid-rigging, market-sharing or output limitations will always have an appreciable adverse effect on competition.<sup>48</sup>

### **Net Economic Benefit Exclusion**

35. As mentioned in paragraph 16 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.

36. 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.<sup>49</sup> In this case, CCS notes that the Proposed Cooperation will have the object of the prevention, restriction or distortion of competition on the Overlapping Routes of the Relevant Markets only. However, the scope of the Proposed Cooperation also includes other O&D Pair routes within the Relevant Markets, and efficiencies may be generated from those routes. Accordingly, CCS will also take any such efficiency into consideration.

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

37. The Parties submitted that the Proposed Cooperation would likely result in a NEB. Their submission is that the current existing interline agreement between them primarily provides benefits to passengers originating outside of Singapore. With the Proposed Cooperation, the Parties expect that incremental benefits will accrue to both passengers originating in and outside of Singapore.<sup>50</sup>

### **Improved scheduling and efficiency on Overlapping Routes**

38. The Parties submitted that, with the implementation of the Proposed Cooperation, they would be able to offer passengers (originating both in and out of Singapore) better scheduling of flights. In particular, there would be an opportunity for a better spread of

<sup>48</sup> Paragraph 2.20, *CCS Guidelines on the Section 34 Prohibition*

<sup>49</sup> Paragraph 10.1, Annex C to the *CCS Guidelines on the Section 34 Prohibition*

<sup>50</sup> Paragraphs 5.1.20 and 5.1.21, Form 1 of Parties submission

scheduled flight timings on the Overlapping Routes, especially where the Parties currently operate parallel or close-to-parallel flight timings. The Proposed Cooperation potentially allows for increased frequency and connectivity on the O&D Pair route and [3<].<sup>51</sup>

39. To substantiate their claims, the Parties provided examples of such potential improvements on scheduling on the Overlapping Routes. The flight schedules operated by each Party on the Overlapping Routes on a sample date of 13 February 2014 are as follows<sup>52</sup>:

**Table 1: Flight schedules of Scoot and Tigerair Singapore on Singapore – Bangkok**

Table 1: Flight schedules of Scoot and Tigerair Singapore on Singapore - Bangkok					
Flights operated by Tigerair Singapore			Flights operated by Scoot		
Flight no.	Departure time (local time zone)	Arrival time (local time zone)	Flight no.	Departure time (local time zone)	Arrival time (local time zone)
From Singapore to Bangkok					
TR2102	07:00	08:30			
TR2104	09:00	10:35			
TR2124	11:35	13:05			
TR2106	12:40	14:10			
TR2118	14:50	16:15			
TR2108	16:10	17:40			
TR2112	17:30	18:55			
TR2114	19:35	21:00			
From Bangkok to Singapore					
TR2103	09:05	12:35			
TR2105	12:00	15:45			
TR2125	13:55	17:25			
TR2107	14:40	18:20			
TR2119	16:55	20:15			
TR2109	18:10	21:35			
TR2113	19:40	23:10	TZ301	20:05	23:25
TR2115	21:45	01:15 (+1 day)			

**Table 2: Flight schedules of Scoot and Tigerair Singapore on Singapore – Taipei**

Flights operated by Tigerair Singapore			Flights operated by Scoot		
Flight no.	Departure time (local time zone)	Arrival time (local time zone)	Flight no.	Departure time (local time zone)	Arrival time (local time zone)
From Singapore to Taipei					
			TZ202	00:55	05:40
TR2992	08:30	13:10			
TR2996	11:10	15:40	TZ206 <sup>53</sup>	13:35	18:15
From Taipei to Singapore					
			TZ205 <sup>54</sup>	04:00	08:40

<sup>51</sup> Paragraph 5.1.22, Form 1 of Parties submission

<sup>52</sup> Paragraphs 13 and 14 of Parties response to CCS's information request dated 5 February 2014

<sup>53</sup> This service is only operated by Scoot on Wednesdays, Fridays and Sundays

<sup>54</sup> This service is only operated by Scoot on Mondays, Thursdays and Saturdays



TR2993	13:55	18:35			
TR2997	16:20	21:00	TZ201	15:45	20:15

**Table 3: Flight schedules of Scoot and Tigerair Singapore on Singapore – Hong Kong**

Flights operated by Tigerair Singapore			Flights operated by Scoot		
Flight no.	Departure time (local time zone)	Arrival time (local time zone)	Flight no.	Departure time (local time zone)	Arrival time (local time zone)
From Singapore to Hong Kong					
			TZ220	02:50	06:40
TR2062	06:20	10:15			
TR2052	08:20	12:20			
TR2054	11:20	15:10			
TR2066	14:15	18:10			
From Hong Kong to Singapore					
			TZ221	07:40	11:35
TR2063	10:55	15:00			
TR2053	13:00	17:05			
TR2055	15:50	19:50			
TR2067	18:45	22:50			

40. With reference to the Singapore – Bangkok route, there are effectively eight flight timings currently offered to passengers of both airlines. With the Proposed Cooperation, [X]. For example, one possibility could be for [X].

41. Similarly on the Singapore – Taipei route, the Parties submitted that [X].

42. In respect of all the Overlapping Routes, the Proposed Cooperation may allow for [X].<sup>55</sup>

43. The Proposed Cooperation would also allow the Parties to [X], and consequently allow them to compete more effectively with other airlines, including other LCCs such as Jetstar Asia and AirAsia.<sup>56</sup>

Expanded connectivity and improved scheduling on other O&D Pair routes via Singapore across the Parties' existing networks

44. According to the Parties, the Proposed Cooperation would effectively result in an expansion of the scope of the existing interline agreement between them, and would allow for possible interline connections across the entire respective networks of the Parties. This in turn allows for expanded connectivity across the networks in respect of an increased number of O&D Pair routes via Singapore for passengers originating outside of Singapore.<sup>57</sup>

45. Further, the Proposed Cooperation allows the Parties to offer better and more convenient scheduling of flights for the expanded O&D Pair routes via Singapore. One of the

<sup>55</sup> Paragraph 13.2 of Parties response to CCS's information request dated 5 February 2014

<sup>56</sup> Paragraph 5.1.23, Form 1 of Parties submission

<sup>57</sup> Paragraph 5.1.26, Form 1 of Parties submission

benefits of the improved scheduling of flights is the shortening of layover times, and this would make the Parties' offerings on the O&D Pair routes a more attractive option for passengers originating outside of Singapore. All in all, the Parties submitted that the expanded connectivity and improved scheduling across their respective networks would allow them to compete more effectively with other carriers. By aligning their service policies, including terms and conditions offered to passengers, the Parties would be able to ensure consistency of their service policies, which would improve the attractiveness of their offerings.<sup>58</sup>

46. The Parties submitted that currently, [REDACTED]. AirAsia (which operates a short-haul network) contributes to 34% of AirAsia X's (which operates on medium- to long-haul routes) traffic, and that given the significant similarity in respect of the destinations that are operated by AirAsia and Tigerair Singapore (i.e. short-haul routes)<sup>59</sup> and by AirAsia X and Scoot (i.e. medium- to long-haul routes)<sup>60</sup> from Kuala Lumpur, Malaysia and Singapore respectively, the same could be replicated given the Proposed Cooperation.<sup>61</sup> This is also consistent with [REDACTED].<sup>62</sup>

47. Based on the lower bound assumption of 34%, the Proposed Cooperation is envisaged to contribute to the potential increase in passenger traffic for Scoot's services on the Overlapping Routes as approximately:

- a. Singapore – Bangkok: [REDACTED] passengers a year;
- b. Singapore – Taipei: [REDACTED] passengers a year; and
- c. Singapore – Hong Kong: [REDACTED] passengers a year.<sup>63</sup>

48. [REDACTED].<sup>64</sup>

49. In addition, from the perspective of both Parties, [REDACTED].<sup>65</sup> Further, within the period from October 2012 to March 2014, there were also periods<sup>66</sup> where [REDACTED].<sup>67</sup>

50. As elaborated earlier regarding the existing overlapping flights provided by the Parties on the Singapore – Bangkok and Singapore – Taipei routes, the Parties submitted that [REDACTED]. Assuming that [REDACTED], Scoot submitted that [REDACTED].<sup>68 69</sup>

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<sup>58</sup> Paragraph 5.1.27, Form 1 of Parties submission

<sup>59</sup> As submitted by the Parties, 28 out of 40 destinations operated by Tigerair Singapore are also operated by AirAsia

<sup>60</sup> As submitted by the Parties, seven out of 12 destinations operated by Scoot are also operated by AirAsia X

<sup>61</sup> Paragraphs 2.1 to 2.3 of Parties response to CCS's information request dated 27 March 2014

<sup>62</sup> Paragraph 2.5 of Parties response to CCS's information request dated 27 March 2014

<sup>63</sup> Paragraph 2.7.3 of Parties response to CCS's information request dated 27 March 2014

<sup>64</sup> Paragraph 2.8 of Parties response to CCS's information request dated 27 March 2014

<sup>65</sup> From Scoot's perspective, [REDACTED]. From Tigerair Singapore's perspective, [REDACTED].

<sup>66</sup> [REDACTED]

<sup>67</sup> Paragraphs 4.1 to 4.4 of Parties response to CCS's information request dated 27 March 2014

<sup>68</sup> [REDACTED]

<sup>69</sup> Paragraphs 5.1 and 5.2 of Parties response to CCS's information request dated 27 March 2014



Expansion of Parties' existing networks through introducing new routes, and increasing capacity across the Parties' networks

51. The Parties submitted that the expanded connectivity across their respective networks is likely to give rise to increased capacity. The Parties also submitted that the increased level of passenger traffic on the Parties' services might lead to the Parties potentially being able to consider expanding their overall capacity on the Overlapping Routes, where it is commercially viable to do so, resulting from an increase in distribution breadth, transfer feeder traffic, brand awareness and perception and pricing.<sup>70</sup> The Parties stated that, [X]. The Proposed Cooperation is expected to increase the flow of passengers originating outside of Singapore who travel on their networks, and consequently increase the level of feeder traffic for routes operated by the Parties outside of Singapore.<sup>71</sup>

52. The increased feeder traffic would also allow the Parties to offer new routes originating outside of Singapore that would not have been offered in the absence of the Proposed Cooperation, as the level of demand is more likely to cross the level where the operation of such additional routes is justified. This in turn expands the Parties' respective networks. An example of a potential new route cited by the Parties is the O&D Pair of Singapore – [X].<sup>72</sup>

53. In a similar vein, the Parties submitted that the increase in feeder traffic would justify the increase in capacity offered on flights beyond Singapore, which in the absence of the Proposed Cooperation, [X].<sup>73</sup>

54. Also, as discussed earlier, the Parties submitted that the Proposed Cooperation would allow them to better match supply with demand by deploying appropriate aircraft capacity for different levels of demand. [X].<sup>74</sup> [X].<sup>75</sup>

55. [X].<sup>76, 77</sup>

Wider choice for passengers and efficiencies in marketing and distribution channels

56. Further, the Parties submitted that through the joint marketing, distribution, sales representation and cooperation envisaged under the Proposed Cooperation (in particular [X]), they would be able to offer a wider choice of flights on each of their distribution channels. As a consequence of the Proposed Cooperation, the Parties would be able to [X].<sup>78</sup>

Strengthening of Singapore's position as an air hub

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<sup>70</sup> Paragraphs 1.2 and 1.3 of Parties response to CCS's information request dated 28 April 2014

<sup>71</sup> Paragraph 5.1.30, Form 1 of Parties submission

<sup>72</sup> Paragraphs 15.1 and 15.2 of Parties response to CCS's information request dated 5 February 2014

<sup>73</sup> Paragraph 5.1.33, Form 1 of Parties submission

<sup>74</sup> Diagram 1 of Parties response to CCS's information request dated 28 April 2014

<sup>75</sup> Paragraphs 1.9 to 1.12 of Parties response to CCS's information request dated 28 April 2014

<sup>76</sup> [X]

<sup>77</sup> Paragraphs 1.16 to 1.17 of Parties response to CCS's information request dated 28 April 2014

<sup>78</sup> Paragraph 5.1.35, Form 1 of Parties submission

57. Finally, the Parties submitted that the Proposed Cooperation would reinforce Singapore's status as an air hub with improved connectivity to various international destinations. This is a consequence of the improved connectivity and scheduling for O&D Pair routes via Singapore and expansion of the Parties' networks to offer new routes and potential increased capacity under the Proposed Cooperation. With the benefits of the Proposed Cooperation, there would be more passengers originating from outside of Singapore using Singapore as a stopover, which in turn would result in an increase in the number of tourists in Singapore. Further, the increased connectivity of Singapore would allow Singapore to compete more effectively against other major air hubs in the region and encourage passengers to transfer in Singapore as opposed to other regional stopover points.<sup>79</sup>

***Parties' Submissions – Not Imposing Restrictions which are Not Indispensable to the Attainment of the Objectives***

58. In respect of improving scheduling and deployment of aircrafts between departure windows, in the absence of the joint pricing and [X] under the Proposed Cooperation, [X]. Further, [X].

59. The Proposed Cooperation would also be necessary for the Parties to introduce new routes. In the absence of the Proposed Cooperation, [X].<sup>80</sup>

60. In respect of widening choices for passengers and efficiencies in marketing and distribution channels, in the absence of the Proposed Cooperation, the Parties would not be able to [X] and thus [X].<sup>81</sup>

61. Finally, regarding the strengthening of Singapore's position as an air hub, the Parties submitted that the increase in number of passengers resulting from the Proposed Cooperation would increase the volume of stop overs in Singapore. The increased connectivity would also allow Singapore to compete better against other regional airports.<sup>82</sup>

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

62. The Parties submitted that the Proposed Cooperation would not have an appreciable adverse effect on competition. The basis of their submission is as follows<sup>83</sup>:

- a. the Parties do not operate overlapping service generally, with the exception of the Overlapping Routes;
- b. in respect of the Overlapping Routes, the Parties are not the closest competitors to each other and will continue to be constrained by other competitors; and
- c. for other Singapore O&D Pair routes, currently operated by one but not the other Party, that are included in the scope of the Proposed Cooperation, the

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<sup>79</sup> Paragraph 5.1.38, Form 1 of Parties submission

<sup>80</sup> Paragraphs 16.4 to 16.9 of Parties response to CCS's information request dated 5 February 2014

<sup>81</sup> Paragraphs 16.10 and 16.11 of Parties response to CCS's information request dated 5 February 2014

<sup>82</sup> Paragraph 16.12 of Parties response to CCS's information request dated 5 February 2014

<sup>83</sup> Paragraph 16.13 of Parties response to CCS's information request dated 5 February 2014

Parties are not actual or close potential competitors and their focuses are complementary.

63. On the Overlapping Routes, other LCCs and FSAs will continue to compete in the same market. The respective share of each airline as provided by the Parties is set out in the table below<sup>84</sup>:

**Table 4: Market Shares (by number of passengers and seats) on the Overlapping Routes**

<b>Carrier</b>	<b>Share (August 2013 to December 2013) By no. of passengers</b>	<b>Share (August 2013 to January 2014) By no. of seats</b>
<b>Singapore-Bangkok</b>		
Thai Airways	[20-30]%	[20-30]%
Tigerair Singapore	[20-30]%	[10-20]%
SIA	[10-20]%	[20-30]%
Thai AirAsia	[10-20]%	[10-20]%
Jetstar Asia	[10-20]%	[10-20]%
Scoot	[0-10]%	[0-10]%
Cathay Pacific Airways	[0-10]%	[0-10]%
Myanmar Airways International Company Ltd.	[0-10]%	[0-10]%
Ethiopian Airlines	[0-10]%	[0-10]%
Others	[0-10]%	[0-10]%
<b>Singapore-Taipei</b>		
Scoot	[20-30]%	[20-30]%
SIA	[10-20]%	[20-30]%
China Airlines	[10-20]%	[10-20]%
Jetstar Asia	[10-20]%	[10-20]%
EVA Air	[10-20]%	[0-10]%
Tigerair Singapore	[0-10]%	[10-20]%
TransAsia Airways Corporation	[0-10]%	[0-10]%
Others	[0-10]%	[0-10]%
<b>Singapore-Hong Kong</b>		
Cathay Pacific Airways	[40-50]%	[40-50]%
SIA	[30-40]%	[20-30]%
Tigerair Singapore	[10-20]%	[10-20]%
Jetstar Asia	[0-10]%	[10-20]%
United Airlines	[0-10]%	[0-10]%
Scoot	[0-10]%	[0-10]%
Others	[0-10]%	[0-10]%

64. The Parties submitted that while the combined passenger and capacity shares of the Parties on two of the Overlapping Routes exceed 20%, the Proposed Cooperation will not

<sup>84</sup> Paragraph 11.1 of Parties response to CCS's information request dated 5 February 2014

give rise to an appreciable restriction in competition on the said routes and they continue to be constrained by existing and potential rivals which operate on the Overlapping Routes.<sup>85</sup> In particular, the Parties highlighted that:

- a. competitors such as Cathay Pacific Airways, China Airlines, EVA Air, Jetstar Asia, Thai AirAsia and Thai Airways have passenger and capacity shares which are comparable with, or greater than, the Parties' individual shares. In particular, competitors such as Thai Airways and Cathay Pacific Airways have shares which are generally comparable with the Parties' combined shares<sup>86</sup>;
- b. where the shares of the competitors are not currently on par with the Parties', the competitors still have their individual competitive strengths; and
- c. for instance, where the LCC is part of an airline group, the LCC would have the ability to respond to any increase in prices or reduction in the quality of services or flight offerings.<sup>87</sup>

65. In respect of the Overlapping Routes, the Parties further submitted that the barriers to entry are low, as Singapore has open skies agreements with Thailand, Hong Kong and Taiwan. The Parties elaborated that [X].<sup>88</sup> There is also empirical evidence of new entrants to the Overlapping Routes, for instance, Lion Air set up Thai Lion Air in Bangkok on 4 December 2013 and there are plans for the operation of Singapore – Bangkok flights in 2014.<sup>89</sup>

66. In relation to the fifth freedom air traffic rights (i.e. the right granted by one country to another country to put down and take on, in the territory of the first country, traffic coming from or destined to a third country), Singapore has granted such rights to a large number of countries:

- a. Singapore – Bangkok: [X];
- b. Singapore – Taipei: [X]; and
- c. Singapore – Hong Kong: [X].<sup>90</sup>

67. Lastly, the Parties highlighted that demand for the products offered by LCCs is highly price elastic and that the LCCs in Asia offer near-identical products. Given the intense existing and potential competition, there is no opportunity for the Parties to deviate in terms of prices, service standards or flight offerings without being competitively constrained. Thus there is no possibility of elimination of competition under the Proposed Cooperation.<sup>91</sup>

### ***CCS's Assessment on the Net Economic Benefits***

68. As discussed earlier, CCS is of the opinion that the Proposed Cooperation on the Overlapping Routes will have the object of the prevention, restriction or distortion of competition in the Relevant Markets. In accordance with the *CCS Guidelines on the Section*

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<sup>85</sup> Paragraph 16.18 of Parties response to CCS's information request dated 5 February 2014

<sup>86</sup> Paragraph 16.19.1 of Parties response to CCS's information request dated 5 February 2014

<sup>87</sup> Paragraph 16.19.2 of Parties response to CCS's information request dated 5 February 2014

<sup>88</sup> Paragraph 16.20.1 of Parties response to CCS's information request dated 5 February 2014

<sup>89</sup> Paragraph 16.20.2 of Parties response to CCS's information request dated 5 February 2014

<sup>90</sup> Paragraph 6.2 of Parties response to CCS's information request dated 27 March 2014

<sup>91</sup> Paragraph 16.21 of Parties response to CCS's information request dated 5 February 2014

34 *Prohibition*, CCS views that price-fixing and capacity coordination on the Overlapping Routes will, by their very nature, be regarded as restrictive of competition to an appreciable extent. However, in light of the Parties' submissions on NEB, CCS will assess the relevant efficiencies and competition landscape.

69. When assessing the NEB, along with the criteria mentioned in paragraph 16, paragraph 10.4 of Annex C to the *CCS Guidelines on the Section 34 Prohibition* sets out the criteria to be taken into account, namely that:

- a. the claimed efficiencies must be objective in nature;
- b. there must normally be a direct causal link between the agreement and the claimed efficiencies; and
- c. the efficiencies must be of a significant value, enough to outweigh the anti-competitive effects of the agreement.

70. 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.<sup>92</sup>

The Proposed Cooperation will improve production or distribution or promote technical or economic progress

71. CCS accepts the Parties' submissions that the Proposed Cooperation will improve production or distribution or promote technical or economic progress.

72. CCS notes that, in the absence of the Proposed Cooperation, it would be unlikely for any of the Parties to unilaterally shift the timing of its services to one that does not overlap with the other Party. Unilaterally, airlines schedule their departure flight timings to be evenly spaced out across the day to capture as much passenger demand as possible, and will not sacrifice the additional passenger demand just so as to not provide a flight timing that is too near that of its competitor. Also, CCS acknowledges that [X].

73. Similarly, an airline would not shift the departure and arrival timings of its existing flights to better match that of airlines without the Proposed Cooperation. Without the Proposed Cooperation, the potential in increase capacity would likely not occur, and the possibility of the introduction of new flights (e.g. Singapore – [X]) would be even more unlikely.

74. CCS notes comments from Changi Airport Group ("CAG"), Civil Aviation Authority of Singapore ("CAAS") and VITAL that in their opinion, the Proposed Cooperation would lead to there being increased frequencies of flights offered, more destinations served and higher passenger traffic through the expanded network.<sup>93</sup> CCS notes that these benefits would accrue to both passengers on O&D Pair routes involving Singapore, as well as transit passengers via Singapore.

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<sup>92</sup> Paragraph 10.5 of Annex C to the *CCS Guidelines on the Section 34 Prohibition*

<sup>93</sup> Responses from CAG, CAAS and VITAL dated 26 February 2014, 16 April 2014 and 14 April 2014 respectively

75. The potential increase in passenger numbers (between [X] to [X] a year) on the Overlapping Routes is regarded by CCS to be fairly significant, and as shown from the recently concluded Market Study in the Aviation Industry in Singapore<sup>94</sup>, an increase in passenger numbers have shown to be the main result of airline joint venture agreements.

76. CCS accepts the Parties' submission that [X]. CCS also notes that further cost savings might arise from the elimination of the current operation of parallel or close-to-parallel flights. Since lower cost is an indication of more efficient operations, CCS is satisfied that the Proposed Cooperation will improve production or distribution or promote technical or economic progress.

77. As shown from the results of the Market Study mentioned above, it cannot be taken as given that cost savings from airlines alliances would translate into reduction in passenger fares. In CCS's view, whether cost savings would translate into fare reduction would depend on the extent of competition post-alliance, which will be dealt with under the third limb of the NEB test below. If the Proposed Cooperation would not afford the possibility of eliminating competition in the Relevant Markets, then fare reductions arising from the cost savings are more likely to materialise, and such benefits would accrue to both passengers on O&D Pair routes involving Singapore, as well as transit passengers via Singapore.

The Proposed Cooperation will not impose restrictions which are not indispensable to the attainment of these objectives

78. CCS accepts the Parties' submission that in the absence of the joint pricing and [X] under the Proposed Cooperation, [X], and that [X]. The benefits as described earlier are unlikely to be achieved with a lower level of cooperation (e.g. codesharing agreement between the Parties), and CCS therefore deems that the Proposed Cooperation will not impose restrictions which are not indispensable to the attainment of the submitted benefits.

79. CAAS has also commented that in their opinion, the Proposed Cooperation is indispensable for the achievement of the claimed benefits.<sup>95</sup>

The Proposed Cooperation will not afford the possibility of eliminating competition in respect of a substantial part of the goods or services in question

80. CCS notes that the Proposed Cooperation involves the object of the prevention, restriction or distortion of competition only on the Overlapping Routes. As such, while the assessment of economic benefits under the first two limbs of the NEB test was based on the entirety of the Relevant Markets, the assessment of harm on competition (or lack thereof) in this limb would focus on the Overlapping Routes.

81. CCS is of the view that the Proposed Cooperation will not afford the possibility of eliminating competition in respect of a substantial part of the goods or services in question for the following reasons.

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<sup>94</sup> <http://www.ccs.gov.sg/content/dam/ccs/PDFs/MarketStudies/2014-02-11%20ICF%20SHE%20CCS%20Airline%20Study%20Summary%20Report.pdf>

<sup>95</sup> Response from CAAS dated 16 April 2014

82. With the Proposed Cooperation, the Parties will not be operating on the Overlapping Routes with no threat of competition, including potential threats. The other airlines operating on those routes, for example Thai AirAsia, Jetstar Asia, Thai Airways and Cathay Pacific, do have substantial market shares themselves. The presence of these other airlines would pose substantial competitive pressures on the Parties after the Proposed Cooperation. CAG, CAAS and VITAL share similar views on it being unlikely that the Proposed Cooperation would eliminate competitive pressures.<sup>96</sup>

83. CCS regards the presence of LCCs as an important source of competitive pressure on pricing capabilities of airlines on O&D Pair routes. Other than the Parties, there are a number of other LCCs operating on the Overlapping Routes, like Thai AirAsia and Jetstar Asia. These LCCs, which operate on a similar business model as the Parties, can be considered as being able to impose competitive pressures on the decisions of the Parties.

84. CCS also accepts the Parties' submission that the barriers to potential entry are not high due to Singapore's open skies agreements with Thailand, Hong Kong and Taipei, and particularly, the numerous countries to which Singapore has granted fifth freedom air traffic rights to operate the on the Overlapping Routes. The presence of United Airlines on the Singapore – Hong Kong route, and Cathay Pacific on the Singapore – Bangkok route indicates that it is viable for airlines to operate these routes through fifth freedom air traffic rights.

#### Conclusion on the NEB Exclusion

85. Based on CCS's assessment, CCS is satisfied that the NEB exclusion applies to the Proposed Cooperation and consequently, the Proposed Cooperation, as notified by the Parties, being exempt from the Section 34 Prohibition of the Act.

#### **Third Party Comments on the Proposed Cooperation**

86. The comments received by CCS from third parties (on the Proposed Cooperation generally) were used by CCS in coming to the conclusion that the Proposed Cooperation resulted in a NEB, and they indicated that they were, generally, in favour of the Proposed Cooperation. A summary of the third party comments is provided here.

87. Firstly, third parties indicated that the Proposed Cooperation would strengthen Singapore's position as an air hub. CAG opined that under the Proposed Cooperation, better Scoot-Tigerair Singapore network and scheduling could lead to enhanced connecting flight options at Changi Airport and enable Scoot and Tigerair Singapore to compete more effectively in the region, consequently, strengthening Changi's position as an air hub. This view is also shared by VITAL<sup>97</sup> and CAAS, who both further elaborated that the complementary nature of the flights offered by the Parties in the Proposed Cooperation would

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<sup>96</sup> Responses from CAG, CAAS and VITAL dated 26 February 2014, 16 April 2014 and 14 April 2014 respectively

<sup>97</sup> 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.



help to drive traveller traffic through Singapore and, thus, promote tourism in Singapore and raise Singapore's competitiveness as an air hub.

88. Secondly, CAG is of the view that the Proposed Cooperation, in respect of scheduling and marketing, can stimulate demand on existing routes and support existing vulnerable routes from Singapore. In a similar vein, CAAS raised that there would be increased frequencies offered, more destinations served and higher passenger traffic through the expanded network via the Proposed Cooperation. VITAL's feedback was that the Proposed Cooperation is likely to bring about a wider selection of flight combinations from Singapore connecting onto carriers' existing networks, as well as better flight schedules and more competitive pricing of fares. Further, VITAL noted that the Proposed Cooperation is likely to enhance ground handling operations and increase the number of travellers on Scoot and Tigerair Singapore's networks.

89. CAAS noted that the Proposed Cooperation would be indispensable for such benefits to arise as revenue sharing would be necessary align commercial incentives to sustain the partnership, and would only be viable under the Proposed Cooperation.

90. Further, third parties indicated that it was unlikely that the Proposed Cooperation would eliminate competitive pressures in the Overlapping O&D Pair routes. CAG pointed to multiple competing carriers in the relevant markets with significant market shares, low barriers for competitors to expand capacity on the routes and the fact that there are other viable alternatives to the non-stop service proposed. This was concurred by both CAAS and VITAL.

#### **E. CCS'S DECISION ON THE PARTIES' NOTIFICATION FOR DECISION**

91. CCS finds that by operation of section 35 of the Act (read with paragraph 9 of the Third Schedule of the same), the Proposed Cooperation between Scoot and Tigerair Singapore, as notified for assessment by the Parties, on the existing routes<sup>98</sup> operated by the Parties is excluded from the Section 34 Prohibition.

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

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

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

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<sup>98</sup> For the purposes of CCS's assessment of this Notification, 9 flights operated by Scoot Pte. Ltd. and 36 flights operated by Tiger Airways Singapore Pte. Ltd. were taken into consideration by CCS as part of its competition assessment. Existing routes exclude the Singapore – Australia routes operated by the Parties. A list of the 42 routes is listed in Annex A to CCS's decision to the notification.

- a. a significant reduction in the number of competing carriers or a significant reduction in the level of competition in the Relevant Markets;
- b. significant changes to the scope of the Proposed Cooperation; and
- c. changes in the operations of the Parties which have a significant impact on the Singapore market.



Toh Han Li  
Chief Executive  
Competition Commission of Singapore

## Relevant Markets as assessed by CCS under the Proposed Cooperation

Destinations to/from Singapore		Tigerair Singapore	Scoot
Bangladesh	Dhaka	✓	
Cambodia	Phnom Penh	✓	
China	Guangzhou	✓	
	Shenzhen	✓	
	Haikou (Hainan)	✓	
	Lijiang (Yunnan)	✓	
	Ningbo	✓	
	Xi' an	✓	
	Shenyang		✓
	Tianjin		✓
	Nanjing		✓
	Qingdao		✓
Chinese Taipei	Taipei	✓	✓
Hong Kong SAR	Hong Kong	✓	✓
India	Bangalore	✓	
	Cochin	✓	
	Hyderabad	✓	
	Chennai	✓	
	Thiruvananthapuram	✓	
	Tiruchirappali	✓	
Indonesia	Bandung	✓	
	Jakarta	✓	
	Denpasar (Bali)	✓	
	Surabaya	✓	
Japan	Tokyo		✓
Korea	Seoul		✓
Macau	Macau	✓	
Malaysia	Kuala Lumpur	✓	

	Langkawi	✓	
	Penang	✓	
Maldives	Malé	✓	
Myanmar	Yangon	✓	
Philippines	Cebu	✓	
	Kalibo (Boracay)	✓	
	Manila (NAIA and Clark)	✓	
Thailand	Bangkok	✓	✓
	Chiang Mai	✓	
	Phuket	✓	
	Hat Yai	✓	
	Krabi	✓	
Vietnam	Hanoi	✓	
	Ho Chi Minh City	✓	
<b>Total Routes flown (excluding Australia)</b>		<b>36</b>	<b>9</b>

Source: Parties' submissions and Parties' respective websites, accessed as of 17 July 2014