

ANNEX A

APPLICATION FOR A DECISION PURSUANT TO SECTION 44 OF THE SINGAPORE COMPETITION ACT (CAP.50B)

PROPOSED COMMITMENTS TO THE COMPETITION COMMISSION OF SINGAPORE

1. INTRODUCTION

- 1.1 Singapore Airlines Limited (“**SIA**”) and Deutsche Lufthansa AG (“**LH**”) (collectively the “**Parties**”) propose to make voluntary commitments to the Competition Commission of Singapore (“**CCS**”), in the context of the CCS’s assessment of the proposed joint venture between the Parties (“**Proposed JV**”) under section 44 of the Singapore Competition Act (Cap.50B) (the “**Act**”).
- 1.2 The voluntary commitments are made in the interests of assuring the CCS that either the Proposed JV, if carried into effect, will not infringe section 34 of the Act, or that the Proposed JV is excluded from consideration under section 34 of the Act by reason of it being an agreement with net economic benefit (and meeting the requisite requirements set out in paragraph 9 of the Third Schedule to the Act).
- 1.3 The specified commitments relate specifically to the non-stop (i.e., direct) services of the Parties between Singapore (“**SIN**”) and Frankfurt (“**FRA**”), and between SIN and Zurich (“**ZRH**”). References below to “**SIN-FRAVv**” and “**SIN-ZRHv**” refer to return services (i.e., services on both an east-to-west basis, and a west-to-east basis).
- 1.4 The Parties will appoint, at their own cost, an independent auditor to monitor compliance with the voluntary commitments, and to report to the CCS on an annual basis.
- 1.5 The Parties hereby propose to commit, as set out in section 2 and subject to the terms of section 3, to:
- (a) maintain capacity levels on the SIN-FRAVv and SIN-ZRHv routes, at levels that existed prior to the Proposed JV (in January 2016);
 - (b) increase capacity on SIN-ZRHv services by an additional 1,694 seats, through the up-gauging of Swiss International Air Lines AG (“**LX**”) aircraft on the route by 3 March 2017;
 - (c) increase capacity on SIN-FRAVv services by an additional [x] seats, [y] on the route by [z];
 - (d) carry a minimum number of Singapore point-of-sale passengers¹ (“**SIN POS passengers**”) (as further specified below) on the SIN-FRAVv route, in each calendar year; and
 - (e) carry a minimum number of SIN POS passengers (as further specified below) on the SIN-ZRHv route, in each calendar year.

¹ SIN POS passengers comprise passengers where the point-of-sale for the ticket is Singapore. It includes passengers that travel one-way from SIN to FRA or ZRH only and passengers travelling one-way from FRA or ZRH to SIN only. It also includes return travelers on direct services (i.e., SIN-FRA-SIN or SIN-ZRH-SIN). Passengers that have an interlining component to their itinerary are excluded (for instance a passenger travelling SIN-FRA-London (“**LHR**”), where the FRA-LHR sector requires interlining with another carrier). Passengers transiting FRA en route to New York (on SIA’s linked service), are excluded.

2. COMMITMENTS

2.1 Subject to section 3, the Parties hereby make the following commitments.

To maintain capacity levels on the SIN-FRAvv and SIN-ZRHvv routes

2.2 The Parties commit to maintain weekly capacity levels operated on SIN-FRAvv and SIN-ZRHvv routes, at levels that existed prior to the Proposed JV (in January 2016). Specifically, the Parties commit to maintain capacity of:

- (1) [X] seats (on an aggregated basis between the parties) on the SIN-FRAvv route;²
and
- (2) [X] seats (on an aggregated basis between the parties) on the SIN-ZRHvv route.³

2.3 Without limitation to section 3 below, the commitment specified in paragraph 2.2 above would be deemed fulfilled where the committed capacity levels in paragraphs 2.2(1) and 2.2(2) are achieved in 49 of 52 weeks during each calendar year.

To increase capacity on the SIN-ZRHvv route

2.4 The Parties commit to increase capacity by 1,694 seats on the SIN-ZRHvv service⁴, through the planned up-gauging of LX aircraft on the route by 3 March 2017 (resulting in an aggregate total of [X] seats).

2.5 Without limitation to section 3 below, the commitment specified in paragraph 2.4 above would be deemed fulfilled where the committed capacity level of [X] seats in paragraph 2.4 is achieved in 49 of 52 weeks during each calendar year, after 3 March 2017.

To increase capacity on the SIN-FRAvv route

2.6 The Parties commit to increase capacity by [X] seats on the SIN-FRAvv service⁵, [X] on the route by [X] (resulting in an aggregate total of [X] seats).

2.7 Without limitation to section 3 below, the commitment specified in paragraph 2.6 above would be deemed fulfilled where the committed capacity level of [X] seats in paragraph 2.6 is achieved in 49 of 52 weeks during each calendar year, after [X].

To carry a specific number of SIN POS passengers⁶ on SIN-FRAvv and SIN-ZRHvv route

2.8 The Parties commit to carry a minimum number of SIN POS passengers⁷ on the SIN-FRAvv route in each calendar year.

2.9 The Parties commit to carry a minimum number of SIN POS passengers⁸ on the SIN-ZRHvv route in each calendar year.

² The [X] seats currently comprise: [X] seats flown by LH, and [X] seats flown by SIA. SIA currently operates 14 weekly services on the SIN-FRA vv route, where 7 of these 14 weekly services continue from FRA to New York. Capacity of SIA on the SIN-FRAvv route in respect of the linked services has been calculated at 50% of the total capacity of the linked flight, based on an assumption that all services are operated using an A388L aircraft.

³ The [X] seats currently comprise: [X] seats flown by LX, and [X] seats flown by SIA.

⁴ Being [X] seats in each direction.

⁵ Being [X] seats in each direction.

⁶ As defined in footnote 1.

⁷ Calculated as 95% of the aggregate number of all SIN POS passengers (as that term is defined above in footnote 1) carried by the Parties on SIN-FRAvv services in 2016.

⁸ Calculated as 95% of the aggregate number of all SIN POS passengers (as that term is defined above in footnote 1) carried by the Parties on SIN-ZRHvv services in 2016.

3. COMMENCEMENT, SUSPENSION AND RELEASE OF THE COMMITMENTS

Commencement of the commitments

- 3.1 The commitments will commence on either the date on which a positive decision is received by the Parties from the CCS in respect of the Notification, or the effective date of a positive decision received by the Parties from the Australian Competition and Consumer Commission (“**ACCC**”), whichever is the later.
- 3.2 The commitments will continue to apply in respect of any prolongation or renewal of the Proposed JV.

Suspension of the commitments

- 3.3 The voluntary commitments, outlined in paragraphs 2.2 to 2.9, would be temporarily suspended for the period where any of the following circumstances arise:
- (1) force majeure (involving circumstances which directly or indirectly affect the SIN-FRAVv or SIN-ZRHv services, including but not limited to):
 - (a) natural disasters;
 - (b) war;
 - (c) strikes (including airport or transport worker strikes etc);
 - (d) terrorist attacks;
 - (e) disease outbreak;
 - (f) airspace closures;
 - (g) airport closures;
 - (h) adverse weather conditions; or
 - (i) any other safety or security related developments which require cancellation of flights, or variations to flight schedules.
 - (2) Aircraft maintenance requirements with regard to a specific aircraft as determined by either of the Parties, or technical problems associated with a specific type of aircraft necessitating maintenance or repair as determined by the manufacturer and/or aviation authorities. For the avoidance of doubt, such requirements may arise in respect of aircraft deployed directly by the Parties on the SIN-FRAVv and/or SIN-ZRHv routes, or may arise in respect of other aircraft in the fleet of either of the Parties (where such maintenance requirements indirectly affect the deployment, operation or sustainability of services, and or capacity, on the SIN-FRAVv or SIN-ZRHv routes). Where aircraft maintenance (affecting compliance with the commitments in paragraphs 2.2 to 2.9) is conducted by either of the Parties, details of such maintenance shall be provided to the CCS in the yearly audit report (as described in section 4 below).
 - (3) Delays in aircraft deliveries, resulting from circumstances outside the control of the Parties, which impact the ability of the respective airlines to implement the committed capacity increases, set out above in paragraphs 2.4 and 2.6.
 - (4) Any development that, in the assessment of either of the Parties, could result in an imminent decline (i.e., within the next financial year) of expected quarterly revenue on either the SIN-FRAVv or SIN-ZRHv routes (by more than 5% compared to revenue from the relevant route during the equivalent quarter of the preceding year).
 - (5) Any development that could potentially have an adverse financial impact on either airline, requiring a cancellation or variation of services to ensure the continued financial viability of either airline.
- 3.4 In the circumstances set out above in paragraph 3.3(1) to 3.3(5), the Parties retain the right to effect any required changes immediately as determined by either of the Parties, and to notify the CCS:

- (1) at the point that the yearly audit report (as described below in section 4) is provided to the CCS, where variations to capacity are temporary and restored to committed levels within 14 days of the commencement of the variation; or
 - (2) within 30 days of the commencement of the variation to committed capacity levels, where variations to capacity are not restored to committed levels within 14 days of the commencement of the variation.
- 3.5 In respect of notifications made to the CCS in accordance with paragraph 3.4(1) or 3.4(2) above, the Parties will seek the retroactive approval of the CCS for the variation from the relevant capacity commitment(s).

Full release or substitution or variation of the commitments

- 3.6 The commitments will be released with immediate effect should the Proposed JV be terminated for any reason, at any time.
- 3.7 Where either of the Parties consider that there has been, or is likely to be, a material change in market conditions or operating circumstances or competitive conditions in respect of either of the SIN-FRAvv or SIN-ZRHvv routes, arising from any circumstance or development directly or indirectly connected to those routes and not contemplated in paragraphs 3.1 to 3.5 above, the Parties may make an application to the CCS (supported by reasons) for any commitment specified within paragraph 2.2 to 2.9 to be varied, substituted or released.
- 3.8 In respect of any application made by either Party under paragraph 3.7 any variation, substitution or release of any commitment would be subject to the express approval of the CCS.
- 3.9 Without limitation to paragraph 3.7, after a period of 5 years from the date of the commencement of the commitments in accordance with paragraph 3.1, the Parties may make an application to the CCS, supported by reasons, for any or all of the commitments in paragraphs 2.2 to 2.9 to be varied, substituted or released. Any subsequent, variation, substitution or release of the commitments in accordance with the application of the Parties would be subject to the express approval of the CCS.

Inability to meet the commitments within paragraph 2.8 and 2.9

- 3.10 Where the Parties have not met, or are of the view that they are unlikely to be able to meet, one of the commitments specified in paragraph 2.8 and 2.9 in any relevant calendar year:
- (1) the Parties will notify the CCS as soon as reasonably practicable following the Parties becoming aware that they have not met (or are unlikely to meet) the relevant commitment;
 - (2) when notifying the CCS in accordance with paragraph 3.10(1), the Parties will inform the CCS of the reasons why the relevant commitment has not been met, and provide the CCS with information (within the possession or custody or control of the Parties) that would support the stated reasons (or aid in the CCS's assessment of such);
 - (3) where the Parties have not met a relevant commitment, the Parties may discuss with the CCS, in good faith, the possible release of the commitment for the period in which the Parties did not meet the relevant commitment;
 - (4) where the Parties are unlikely to meet a relevant commitment, the Parties may discuss with the CCS, in good faith, a possible variation, substitution or release of the relevant commitment, for the period in which the Parties are unlikely to meet the relevant commitment;

- (5) where the CCS is satisfied that the relevant commitment has not been met (or is unlikely to be met) due to a circumstance or development outside the control of Parties, the Parties acknowledge that the CCS may accept a proposed variation, substitution or release of the relevant commitment;
- (6) where the CCS is not satisfied that the failure to meet the relevant commitment is due to a circumstance or development outside the control of Parties, the Parties acknowledge that the CCS may make a determination that the relevant commitment has been breached, and take such action as the CCS deems necessary in accordance with the Singapore Competition Act (Cap.50B); and
- (7) where the CCS has accepted a variation, substitution or release of a relevant commitment, unless specified otherwise by the CCS at the point at which it makes such a determination known to the Parties, the varied, substituted or released commitment shall apply to the period for which the Parties have not met or are unlikely to meet the relevant commitment.

4. INDEPENDENT AUDITOR AND ANNUAL AUDIT REPORTS

- 4.1 The Parties will appoint, at their own cost, an independent auditor (“**Independent Auditor**”) (within 3 months of a positive decision being issued by the CCS in respect of the pending Notification, and if there are conditions, such conditions being acceptable to the Parties), whose appointment (and the terms and conditions of that appointment) will be subject to the approval of the CCS.
- 4.2 The Independent Auditor will provide to the CCS, on a yearly basis for each calendar year⁹, a report which monitors compliance of the Parties (over the preceding calendar year) with the commitments outlined in paragraphs 2.2 to 2.9 (“**Report**”).
- 4.3 Specifically, the Report will specify:
 - (1) the aggregate route capacity provided by the Parties on each of the SIN-FRAVv and SIN-ZRHv routes;
 - (2) whether the committed capacity levels in paragraph 2.2 have been operated on a 49 out of 52 week basis;
 - (3) where relevant and if required, whether the committed capacity increases in paragraphs 2.4 and 2.6 have been implemented by the relevant specified date;
 - (4) where relevant and if required, whether the committed capacity levels in paragraphs 2.5 and 2.7 have been operated on a 49 out of 52 week basis;
 - (5) the total aggregate number of SIN POS passengers carried on the SIN-FRAVv and SIN-ZRHv routes;
 - (6) whether the committed passenger carriage numbers in paragraphs 2.8 and 2.9 have been achieved; and
 - (7) where relevant and if required, reasons for any variations from the committed capacity levels and passenger numbers outlined in paragraphs 2.2 to 2.9 above.

⁹ Within three months following the completion of the calendar year to which each Report relates, with the first Report to be provided to the CCS by 31 March 2018 (for the 2017 calendar year).