



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

Grounds of Decision issued by the Competition Commission of Singapore (“CCS”)

Application for Decision by Deutsche Lufthansa AG and Singapore Airlines Limited

12 December 2016

Case number: CCS 400/001/16

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 [§<].

EXECUTIVE SUMMARY

1. On 5 February 2016, the Competition Commission of Singapore (“CCS”) received a joint application for decision (“**Application**”) from Singapore Airlines Limited (“**SIA**”) and Deutsche Lufthansa AG (“**LH**”) (collectively the “**Parties**”) made pursuant to section 44 of the Competition Act (Cap. 50B) (the “**Act**”) in relation to the Parties’ proposed joint venture in the provision of scheduled air passenger services between (i) Germany; (ii) Austria; (iii) Belgium; and (iv) Switzerland (collectively the “**LH Home Markets**”); and (i) Singapore; (ii) Australia; (iii) Indonesia; and (iv) Malaysia (collectively the “**SQ Home Markets**”) (the “**Proposed JV**”). A decision was sought as to whether the Proposed JV will infringe section 34 of the Act.

2. The Parties intend to cooperate on their passenger services on the following services:
 - (a) direct services operated by either SIA or LH between Singapore-Frankfurt, Singapore-Munich, Singapore-Zurich and Singapore-Dusseldorf;
 - (b) twenty-three indirect services involving the LH Home Markets which originate or end in Singapore; and
 - (c) indirect services between the LH Home Markets and the SQ Home Markets which do not originate or end in Singapore, but which transit through Singapore.
3. CCS's assessment, following its review of the submissions and information provided by the Parties, as well as the feedback and inputs received from third-parties, is that that Proposed JV will have the object of preventing, restricting, or distorting competition within Singapore. In particular, CCS identifies significant competition concerns on the Singapore-Frankfurt and Singapore-Zurich routes. CCS is of the view that the Parties have not demonstrated that efficiencies generated by the Proposed JV would be sufficient to outweigh the competition concerns in relation to the direct Singapore-Frankfurt and Singapore-Zurich routes as well as the indirect routes that involve a Singapore-Frankfurt or Singapore-Zurich sector. However, CCS is satisfied that the Parties have demonstrated that the net economic benefit exclusion applies to cooperation between the Parties on the direct Singapore-Munich and Singapore-Dusseldorf routes as well as the indirect routes that involve a Singapore-Munich or Singapore-Dusseldorf sector.
4. In response to the competition concerns raised by CCS on the Proposed JV, the Parties have provided voluntary commitments, in particular to maintain current capacity levels on the Singapore-Frankfurt and Singapore-Zurich routes, to increase capacity on both routes of concern by a certain date, and also to carry a minimum number of Singapore point-of-sale passengers¹ ("**SIN POS passengers**") on both routes. These voluntary commitments were subjected to market testing.

¹ SIN POS passengers comprise passengers where the point-of-sale for the ticket is Singapore. It only includes passengers that travel one-way from Singapore ("**SIN**") to Frankfurt ("**FRA**") or Zurich ("**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.

5. Therefore, as long as the commitments are complied with, CCS is of the view that the Proposed JV will result in net economic benefit and qualify for the exclusion from the section 34 prohibition as set out in section 35, read together with paragraph 9 of the Third Schedule to the Act. CCS's decision that the Proposed JV is excluded is subject to conditions, such as there being no material change in circumstances as described in the Parties' submissions under the Application and their abiding by their commitments.
6. The decision was conveyed to the Parties on 12 December 2016. This notice sets out the Grounds of Decision.

TABLE OF CONTENTS

INTRODUCTION	5
THE FACTS AND PARTIES’ SUBMISSION	5
The Application for Notification of Decision	
The Parties to the Application	
The Proposed Joint Venture	
LEGISLATIVE FRAMEWORK	13
Section 34 Prohibition	
Application of Section 34 to Undertakings	
COMPETITION ASSESSMENT	14
Theory of Harm	
The Relevant Market(s)	
Object or Effect of the Prevention, Restriction or Distortion of Competition within Singapore	
Counterfactual	
The Net Economic Benefit Exclusion	
VOLUNTARY COMMITMENTS BY THE PARTIES	44
Commitments	
Market Testing	
CCS’S ASSESSMENT OF THE PARTIES’ COMMITMENTS	47
CCS’S DECISION ON THE PARTIES’ APPLICATION	49

INTRODUCTION

7. On 5 February 2016, CCS received a joint application for decision (“**Application**”) from Singapore Airlines Limited (“**SIA**”) and Deutsche Lufthansa AG (“**LH**”) (collectively the “**Parties**”) made pursuant to section 44 of the Competition Act (Cap. 50B) (the “**Act**”).
8. The Application was made in relation to the Parties’ proposed joint venture in the provision of scheduled air passenger services between (i) Germany; (ii) Austria; (iii) Belgium; and (iv) Switzerland (collectively the “**LH Home Markets**”); and (i) Singapore; (ii) Australia; (iii) Indonesia; and (iv) Malaysia (collectively the “**SQ Home Markets**”) (the “**Proposed JV**”). The Proposed JV extends to services operated by SilkAir (Singapore) Private Limited (“**MI**”), Swiss International Air Lines AG (“**LX**”) and Austrian Airlines (“**OS**”), being airlines affiliated to the Parties.
9. The Parties sought a decision as to whether the Proposed JV will infringe section 34 of the Act. CCS accepted the Application as complete on 24 March 2016, upon receiving the Parties’ clarifications on the scope of Application.
10. This decision sets out CCS’s assessment of the Application. As part of CCS’s assessment, requests for information (“**RFIs**”) were sent to aviation regulatory bodies and industry players, including 23 customers² and 23 competitors³ of the Parties, for their views on the Proposed JV. CCS received feedback from twelve third-parties.⁴ RFIs were also sent to the Parties to seek further information and clarifications for the assessment. CCS’s decision is based on the submissions and information provided by the Parties as well as information obtained from third-parties.

THE FACTS AND PARTIES’ SUBMISSION

The Application for Notification of Decision

11. The Application concerns the Proposed JV between SIA and LH, which will be given effect through the execution of a Joint Venture Framework Agreement (“**Framework Agreement**”) which was entered into on 11 November 2015.⁵

² [REDACTED]

³ [REDACTED]

⁴ [REDACTED]

⁵ Annex 2 of Form 1 submitted on 5 February 2016.

12. The Parties submitted that the Proposed JV would not likely have the effect of appreciably preventing, restricting or distorting competition within Singapore.⁶ Further, the Parties also submitted that the Proposed JV would give rise to significant net economic benefits (“**NEB**”), which would mean that section 34 of the Act would not apply to the Proposed JV, in accordance with the exclusion set out in section 35 read with paragraph 9 of the Third Schedule to the Act (the “**NEB Exclusion**”).⁷ Nevertheless, given that the Proposed JV contemplates cooperation between SIA and LH (including in respect of ticket pricing and network scheduling etc.)⁸, the Parties have made the Application to obtain CCS’s decision as to whether the Proposed JV will infringe section 34 of the Act.

Commencement and regulatory approvals

13. As set out in clause 5 of the Framework Agreement, the implementation of the Proposed JV is conditional on the Parties receiving the necessary regulatory and legal approvals.⁹ In particular, the Proposed JV is intended to be implemented as soon as the Parties receive the necessary regulatory approvals as follows:
- (a) in relation to Singapore, by notifying CCS for decision;
 - (b) in relation to Australia, by lodging an application for Authorisation to the Australian Competition and Consumer Commission; and
 - (c) in relation to any other relevant jurisdiction, a self-assessment or regulatory filing.
14. The Parties are conducting self-assessments in relation to the European Union and Switzerland.

The Parties to the Application

LH

⁶ Para 2.3.3 of Form 1 submitted on 5 February 2016.

⁷ Para 2.3.3 of Form 1 submitted on 5 February 2016.

⁸ Para 2.3.4 of Form 1 submitted on 5 February 2016.

⁹ Para 3.1.13 of Form 1 submitted on 5 February 2016; Para 5.1 of the Joint Venture Framework Agreement found in Annex 2 of Form 1 submitted on 5 February 2016.

15. LH is the parent company and the largest single operating company in the Lufthansa Group. The individual business segments of the Lufthansa Group are run as separate group companies, with the exception of Lufthansa Passenger Airlines.¹⁰
16. The Lufthansa Group is a global aviation group with a total of around 540 subsidiaries and equity investments. The principal activities of LH (through itself or its subsidiaries) consist of five main operating segments: passenger airline services, logistics services, maintenance repair overhaul services, catering services and, up to the end of 2014, information technology services. Apart from Lufthansa Passenger Airlines (which is the passenger airline business of LH), the Lufthansa Group's passenger airline service includes LX, OS, and low-cost airline Germanwings GmbH ("**Germanwings**"), amongst others.¹¹ LH is a member airline of the Star Alliance.
17. Lufthansa Passenger Airlines is the largest airline in Germany. It operates from the two biggest German hubs in Frankfurt and Munich as well as long-haul flights from Dusseldorf. Lufthansa Passenger Airlines operates a global route network of 235 destinations in 78 countries with a fleet of more than 400 aircraft.¹²
18. Details of LH's subsidiaries relevant to the Proposed JV are as follows:
 - (a) LX is the national airline of Switzerland. It serves 106 destinations in 49 countries all over the world from Zurich and Geneva. With a fleet of 95 aircraft, LX transports in the region of 16 million passengers every year. LX offers a three class product on all intercontinental routes (i.e. First, Business and Economy Class) and also operates airport-to-airport air freight services to some 120 destinations in more than 80 countries. LX is part of the Lufthansa Group, and is wholly owned by LH.¹³ LX is a partner airline of the Star Alliance.¹⁴
 - (b) OS is Austria's largest carrier and operates a global route network of around 130 destinations. The route network is particularly dense in Central and Eastern Europe with 41 destinations. OS's hub is at Vienna International Airport. The fleet of OS currently comprises 79

¹⁰ Table 1.1.2 of Form 1 submitted on 5 February 2016.

¹¹ Table 1.1.2 of Form 1 submitted on 5 February 2016.

¹² Table 1.1.2 of Form 1 submitted on 5 February 2016.

¹³ Table 1.6.2 of Form 1 submitted on 5 February 2016.

¹⁴ <http://www.staralliance.com/en/member-airlines>.

aircraft. OS is part of the Lufthansa Group, and is wholly owned by LH.¹⁵ OS is a partner airline of the Star Alliance.¹⁶

19. LH's shares are listed on the Frankfurt Stock Exchange and form a component of the DAX (Deutscher Aktienindex), a blue chip stock market index consisting of the 30 major German companies trading on the Frankfurt Stock Exchange.¹⁷ LH's global turnover for FY 2014 was EUR 17,098 million (approximately S\$25,647 million).¹⁸

SIA

20. The principal activities of SIA consist (through itself or its subsidiaries) of passenger and cargo air transportation, engineering services, training of pilots, air charters and tour wholesaling and related activities. SIA is the flag carrier of Singapore, operating air passenger services across an extensive international network of more than 60 destinations in over 30 countries, with a fleet of over 100 aircraft. SIA is a full service airline and is one of the partner airlines of the Star Alliance. SIA is listed on the Singapore Stock Exchange.¹⁹
21. MI is the only SIA subsidiary included in the Proposed JV. MI is the regional wing of SIA Group, and positions itself as a premium, short-to-medium haul regional carrier. With its hub in Singapore, the full service airline operates more than 350 weekly flights to 49 destinations in 13 countries. As at September 2015, the airline had a fleet of 29 aircraft, comprising 5 A319s, 11 A320s and 13 Boeing 737-800s. MI is wholly owned by SIA.²⁰ MI is not a partner airline of the Star Alliance.²¹ SIA's global turnover for FY 2014/15 was S\$12,418 million.²²

The Proposed JV

22. The Parties submitted that the Proposed JV relates only to scheduled air passenger services and does not extend to cooperation in respect of other services in the airline industry (such as in respect of air cargo etc.). Scheduled air passenger services are distinct from other modes of transportation and refer to the carrying of revenue passengers by operators, i.e. airlines on flights

¹⁵ Table 1.6.2 of Form 1 submitted on 5 February 2016.

¹⁶ <http://www.staralliance.com/en/member-airlines>.

¹⁷ Table 1.1.2 of Form 1 submitted on 5 February 2016.

¹⁸ Para 4.1.1 of Form 1 submitted on 5 February 2016.

¹⁹ Table 1.1.2 of Form 1 submitted on 5 February 2016.

²⁰ Table 1.6.2 of Form 1 submitted on 5 February 2016.

²¹ <http://www.staralliance.com/en/member-airlines>.

²² Para 4.1.1 of Form 1 submitted on 5 February 2016.

scheduled and performed for remuneration according to a published timetable which is open to direct booking by members of the public.²³

23. The Parties submitted that they entered into the Framework Agreement to realise the significant consumer and economic benefits, and efficiencies that can be achieved through commercial cooperation in relation to their respective networks. The Parties intend to cooperate on their passenger services on the following services:
- (a) direct services operated by either SIA or LH between Singapore-Frankfurt (“**SIN-FRA**”), Singapore-Munich (“**SIN-MUN**”), Singapore-Zurich (“**SIA-ZRH**”) and Singapore-Dusseldorf (“**SIN-DUS**”) (“**Revenue Share Routes**”);
 - (b) twenty-three indirect services involving the LH Home Markets which originate or end in Singapore (“**23 Relevant Indirect Routes**”)²⁴; and
 - (c) indirect services between the LH Home Markets and the SQ Home Markets which do not originate or end in Singapore, but which transit through Singapore ((b) and (c) collectively referred to as “**Indirect Routes**”).²⁵
24. In summary, the proposed cooperation is specific to services which have an origin in the LH Home Markets and a destination in the SQ Home Markets, or *vice versa*. Services that have both an origin and destination within the LH Home Markets, as well as services that have both an origin and destination within the SQ Home Markets are not subject to the Proposed JV. Similarly, services where the transit point is not within the LH Home Markets or the SQ Home Markets, or services involving sectors operated by a third-party airline (i.e. an airline that is not SIA, LH, MI, LX or OS) are not subject to the Proposed JV.
25. For the purposes of assessing the Application, given that section 34 of the Act specifically prohibits the prevention, restriction and distortion of competition *within* Singapore, CCS is focusing on the routes within the Proposed JV that

²³ According to the International Civil Aviation Organisation’s (ICAO) glossary of definitions at www.icao.int/dataplus_archive/Documents/GLOSSARY.docx.

²⁴ In total, there are 23 destinations within the LH Home Markets (excluding the Frankfurt, Munich, Zurich and Dusseldorf gateways) to which LH operates services (itself or through its affiliates) from these gateways. The 23 destinations are: Berlin, Hamburg, Vienna, Geneva, Brussels, Hannover, Stuttgart, Nuremberg, Dresden, Graz, Leipzig, Bremen, Basel, Cologne-Bonn, Muenster, Linz, Lugano, Salzburg, Innsbruck, Paderborn, Friedrichshafen, Westerland and Rostock-Laage.

²⁵ Appendix 1 of Responses to CCS’s Notice, submitted on 24 March 2016.

originate or terminate in Singapore i.e. the Revenue Share Routes and the 23 Relevant Indirect Routes.

Nature of cooperation under the Proposed JV

26. The Parties submitted that they will cooperate in good faith in relation to the following matters covered in the Framework Agreement:
- (a) schedule coordination and capacity management (clause 6.1.1 of the Framework Agreement);
 - (b) pricing and inventory management (clause 6.1.2 of the Framework Agreement);
 - (c) sales and marketing cooperation (clauses 6.1.3 and 6.1.4 of the Framework Agreement); and
 - (d) sharing of joint venture route results (clause 4.1 and Exhibit A of the Framework Agreement).²⁶
27. The Proposed JV contemplates cooperation for both Revenue Share Routes and Indirect Routes operated by the Parties between and within the LH Home Markets and the SQ Home Markets in respect of the following:
- (a) pricing cooperation: The Parties will align, develop and coordinate their fare structure;
 - (b) inventory management: The Parties will maintain separate inventory management systems but coordinate inventory management strategies; and
 - (c) sales and marketing: The Parties will coordinate their sales programmes and activities, and work together in marketing the Proposed JV as well as explore joint marketing on media channels.
28. In addition, in respect of the Revenue Share Routes operated by the Parties between the LH Home Markets and the SQ Home Markets (i.e. the origin and destination (“**O&D**”) pairs between SIN-FRA, SIN-ZRH, SIN-MUC, and SIN-DUS), the Proposed JV would involve the following:

²⁶ Paras 2.3.6 to 2.3.23 of Form 1 submitted on 5 February 2016.

- (a) schedule coordination: The Parties will coordinate their schedules on the direct services and the connection requirements for feeder routes, but they will not coordinate in scheduling operations on feeder routes;
- (b) capacity coordination: The Parties will coordinate capacity management, but will not be prevented from developing their networks according to their own requirements; and
- (c) revenue sharing: The Parties will share passenger revenues according to capacity production for the route.

Purpose and objective of the Proposed JV

- 29. The Parties submitted that the objective of the Proposed JV is to enhance passenger air services between the LH Home Markets and the SQ Home Markets.²⁷
- 30. In light of increased competition from [X], one of the key objectives of the Proposed JV is for the Parties to obtain critical mass with regard to the operation of services between the LH Home Markets and the SQ Home Markets. [X].
- 31. The networks of the Parties are largely complementary. SIA, having its hub in Singapore, provides comprehensive services to the South East Asia region and Australia. Similarly, LH, having European hubs in Frankfurt, Munich, Zurich, Dusseldorf and Vienna, provides comprehensive services to European destinations. Accordingly, both airlines have access to different feeder networks, resulting in the significant potential for the Parties to increase network coverage and connectivity, through the Proposed JV.
- 32. Moreover, the Proposed JV will put the Parties in a position to strengthen sales, due to the ability of the Parties to better penetrate the other airline's home markets and feeder network, particularly with regard to corporate customers (as the Parties will be in a position to offer joint corporate contracting).
- 33. The Parties submitted that the Proposed JV will also give rise to significant benefits to the travelling public. In particular, customers will benefit through increased traveling options, the expansion of services and products available to passengers, increased network connectivity, better scheduling of services, and harmonised service offerings. Contemporaneous benefits will accrue to the Singapore economy through potential increases in traffic through

²⁷ Paras 3.1.7 to 3.1.12 of Form 1 submitted on 5 February 2016.

Singapore and the promotion of Singapore as an air hub. Moreover, cost synergies between the Parties could potentially arise as a result of the Proposed JV. These submissions on benefits, by the Parties, are further elaborated on below in paragraphs 121 to 160.

Date and duration of the Proposed JV

34. The Parties entered into the Proposed JV on 11 November 2015.

35. The Proposed JV is for [X] period of [X].²⁸²⁹³⁰

Exclusivity clauses under the Proposed JV

36. CCS notes that the Framework Agreement contains clauses that restrict both SIA and LH from [X].

37. Clauses 7.1.1 and 7.2.1 prohibit [X].³¹

38. Clauses 7.1.2 and 7.2.2 prohibit [X].

39. Clauses 7.1.3 and 7.2.3 prohibit [X].³²

40. With regard to clauses 7.1.3 and 7.2.3, the Parties submitted that the commercial intent of clauses 7.1.3 and 7.2.3 of the Framework Agreement is to ensure that the commercial objective and rationale of the Proposed JV is not undermined [X].³³

41. The Parties submitted that in this regard, the restrictions within clauses 7.1.3 and 7.2.3 of the JV Framework Agreement, would only apply in respect of any [X] which would facilitate travel between the LH Home Markets and the SQ Home Markets (i.e. [X] that relate to the scope of the Proposed JV) given that such [X] would directly, or potentially, undermine the commercial rationale for the Proposed JV. Where potential [X] do not facilitate travel between the LH Home Markets and the SQ Home Markets, or do not divert traffic from the

²⁸ Paras 3.1.13 to 3.1.14 of Form 1 submitted on 5 February 2016; Clause 10.1 of the Framework Agreement.

²⁹ The IATA Northern Summer season commences on the date of Daylight Saving Time introduction in European Union countries, which is the last Sunday in March.

³⁰ The IATA Northern Winter season commences on the date Daylight Saving Time ends in European Union countries, which is the last Sunday in October.

³¹ [X].

³² [X].

³³ See Parties' further submission to CCS dated 9 November 2016.

Revenue Share Routes, they would not be subject to the restrictions in clauses 7.1.3 or 7.2.3.³⁴

42. Further, notwithstanding that the restrictions in clauses 7.1.3 and 7.2.3 of the Framework Agreement would only potentially apply in respect of the arrangements within paragraph 41, the Parties note that clauses 7.1.3 and 7.2.3 also provide for such arrangements to be entered into by mutual agreement, and this in practice would mean that such arrangements can be entered into in circumstances where no objection is raised.³⁵
43. The Parties also submitted that there is no restriction within the Framework Agreement that limits the ability of either airline to enter into interlining arrangements. Decisions whether to enter into interlining arrangements would be made unilaterally by either Party.³⁶

LEGISLATIVE FRAMEWORK

Section 34 Prohibition

44. 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”). Specifically, section 34(2) of the Act states that:

“... agreements ... may, in particular, have the object or effect of preventing, restricting or distorting competition within Singapore if they —

(a) directly or indirectly fix purchase or selling prices or any other trading conditions;

(b) limit or control production, markets, technical development or investment;
...”

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

³⁴ See Parties’ further submission to CCS dated 9 November 2016.

³⁵ See Parties’ further submission to CCS dated 9 November 2016.

³⁶ See Parties’ further submission to CCS dated 9 November 2016.

46. As a matter of enforcement policy, CCS is more likely to focus on pursuing agreements falling within the scope of the section 34 prohibition when they have an *appreciable adverse impact on competition in Singapore*. That being said, an agreement involving price-fixing, bid-rigging, market-sharing or output limitations will always be deemed to have an appreciable adverse impact on competition.³⁷

Application of Section 34 to Undertakings

47. Section 34 of the Act applies to “agreements between undertakings”. Section 2 of the Act defines “undertaking” to mean “any person, being an individual, a body corporate, an unincorporated body of persons or any other entity, capable of carrying on commercial or economic activities relating to goods or services”. The key consideration in assessing whether an entity is an undertaking for the application of the section 34 prohibition is whether it is capable of engaging, or is engaged, in commercial or economic activity.
48. Each of the Parties is a separate corporate entity carrying on commercial and economic activities related to the provision of air transport services, thereby falling within the definition of “undertaking” under the Act. Accordingly, the Proposed JV constitutes an agreement between undertakings, capable of being assessed within the scope of section 34 of the Act.

COMPETITION ASSESSMENT

Theory of Harm

49. With regard to the Revenue Share Routes and Indirect Routes as set out at paragraph 23 above, the current flight operations of SIA and LH overlap on the O&D city pairs between the LH Home Markets and the SQ Home Markets.
50. As discussed under the section of “*Nature of cooperation under the Proposed JV*” above, the Parties will coordinate on pricing, inventory management, and sales and marketing for both Revenue Share Routes and Indirect Routes operated by the Parties between and within the LH Home Markets and the SQ Home Markets.

³⁷ Para 3.2 of the *CCS Guidelines on the Section 34 Prohibition*.

51. In addition, in respect of the Revenue Share Routes operated by the Parties between the LH Home Markets and the SQ Home Markets, the Parties will also coordinate on schedule and capacity, and engage in revenue sharing.
52. On a spectrum of alliance cooperation, the level of cooperation envisaged in the Proposed JV goes beyond arms-length code-sharing agreements; instead it involves a high level of cooperation where revenue is shared between the Parties. This would accordingly require a higher level of scrutiny where overlapping routes are concerned.
53. CCS is of the view that where the elements of coordination present in the Proposed JV are akin to a price-fixing and/or capacity control agreement on services provided by the Parties in the Relevant Markets (as defined below), these could have an appreciable adverse impact on competition in Singapore.

The Relevant Market(s)

Parties' submissions

54. The Parties submitted that given the Proposed JV applies to the provision of air passenger services between the LH Home Markets and the SQ Home Markets, this would be a relevant starting point for considering the question of market definition and accordingly in identifying the relevant markets.³⁸
55. However, the Parties also noted that it would be necessary to consider further questions as to whether it would be appropriate to broaden or narrow the above preliminary starting point in order to arrive at the relevant markets. In particular, the Parties have considered the following:
 - (a) whether it is appropriate to narrow the starting point to the provision of services on specific O&D routes;
 - (b) whether it is appropriate to identify separate markets for direct and indirect services provided on the routes;
 - (c) the substitutability of other forms of transport; and
 - (d) whether it is appropriate to identify separate markets for business and leisure travel.

Specific O&D routes

³⁸ Paragraph 5.1.4 of Form 1 submitted on 5 February 2016.

56. In relation to point (a) above, the Parties submitted that it is commonly accepted that the starting point for market definition in an assessment involving air services should be that of airport pairs or city pairs. The Parties also noted that CCS had in previous decisions stated that each combination of a point of origin and point of destination can form a separate market, as demand substitutability is limited between O&D pairings.³⁹
57. In this regard, the Parties noted that in respect of indirect services between LH Home Markets and SQ Home Markets, there are a large number of potential airline options and stopover destinations given the sheer distance between LH Home Markets and SQ Home Markets which will result in a large number of potentially feasible stopover destinations.⁴⁰
58. Accordingly, the Parties submitted that the assessment for the purposes of the Proposed JV should focus on the O&D pairs where at least one of the Parties operates a direct service, i.e., the Revenue Share Routes, namely:
- (a) SIN-FRA (on which SIA and LH operate direct services);
 - (b) SIN-ZRH (on which SIA and LX operate direct services);
 - (c) SIN-MUC (on which SIA operates direct services); and
 - (d) SIN-DUS (on which SIA operates direct services).

Separate markets for direct and indirect routes

59. The Parties noted that CCS has previously considered whether one-stop flights (or, more broadly, indirect flights) could be substitutable with direct flights, such that the one-stop flights should be included as part of the same market. In this regard, the Parties noted that in evaluating the extent of the competitive constraint exerted by one-stop flights, CCS had in *Re Proposed Strategic Alliance between Singapore Airlines Limited and Air New Zealand Limited*

³⁹ See CCS 400/002/06, Notification for Decision by Qantas Airways and British Airways of their Restated Joint Services Agreement, 13 February 2007, paragraph 63.

⁴⁰ For example, on the SIN-Berlin route, the Parties noted that at least 10 airlines i.e. Air France, Finnair, British Airways, Etihad Airways, KLM, LH, LX, Qatar Airways, SIA and Turkish Airlines operate the first leg, 11 airlines i.e. Germanwings, Finnair, Air France, British Airways, Air Berlin, KLM, LH, LX, Qatar Airways, Turkish Airlines and Scandinavian Airlines operate on the second leg, and there are potentially upwards of 11 different stopover destinations that would be feasible i.e. Istanbul, MUC, Copenhagen, Doha, ZRH, FRA, Amsterdam, Abu Dhabi, London, Helsinki, Paris. Paragraph 5.1.9 of Form 1 submitted on 5 February 2016.

noted that the factors that it would consider would include the number of non-stop services offered and the geography (circuitry of available one-stop flights).⁴¹

60. The Parties submitted that the European Commission (“EC”) has taken a similar approach. In particular, in relation to long haul flights, i.e., flights over six hours, the Parties noted that the EC considered indirect flights constitute a competitive alternative under certain conditions, in particular when (i) they are marketed as connecting flights on the O&D pair in computer reservation systems; (ii) they operate on a daily basis; and (iii) they only result in a limited increase in travelling time (maximum 150 minutes).⁴²
61. The Parties also submitted that the EC had considered in the *Ryanair/Aer Lingus III* decision⁴³ that the level of substitutability of indirect flights for direct flights largely depends on the duration of the flight, and as a general rule, the longer the flight, the higher the likelihood that indirect flights would exert a competitive constraint on direct flights.⁴⁴
62. In this regard, the Parties noted that the flights between the LH Home Markets and the SQ Home Markets as covered under the Proposed JV involve very long haul flights. The Parties also noted that the estimated duration of direct services on the Revenue Share Routes fall between 720 minutes to 750 minutes, i.e., over six hours. The Parties submitted that when considering an increase in travelling time that might be incurred through the use of indirect services, the EC indicated that an increase of up to 150 minutes would indicate that an indirect service provides a competitive alternative to a direct service. In this regard, the Parties considered that it is important to consider the 150 minutes as a proportion of a six-hour long haul service which represents a 42% increase in travel time. The Parties considered that it is this proportion of increase in travel time that is most insightful to the consideration of whether an indirect service may act as a competitive constraint to indirect services.⁴⁵
63. The Parties further submitted that it is becoming increasingly clear that passenger choices are driven by many factors such as price, ticket flexibility, scheduling of flights, availability of airport lounges, efficient check-in

⁴¹ Paragraph 5.1.17 of Form 1 submitted on 5 February 2016.

⁴² See also *Delta Air Lines/ Virgin Group/ Virgin Atlantic Limited* (Case No COMP/M.6828) at paragraph [29], where the European Commission noted that “long-haul routes (more than 6 hours flight duration), one-stop flights constitute a competitive alternative to non-stop services under certain conditions (for example if they are marketed as connecting flights on the O&D pair in the computer reservation system)”.

⁴³ Case No COMP/M.6663.

⁴⁴ Paragraph 5.1.19 of Form 1 submitted on 5 February 2016.

⁴⁵ Paragraph 5.1.21 of Form 1 submitted on 5 February 2016.

procedures, quality of on-board services, seat pitch, seat comfort and frequent flyer programmes other than total travel time or whether the flight includes a stopover. In this regard, the Parties submitted that it is only the very marginal traveller that would prioritise total travel time higher than the other factors that would heavily influence demand preferences for the vast majority of travellers.⁴⁶

64. Accordingly, the Parties submitted that with respect to very long haul flights such as those involved in the Proposed JV, indirect services (in particular one-stop flights) would provide a strong competitive constraint to direct services.⁴⁷ Further, the Parties submitted that an appropriate benchmark for the consideration of whether an indirect service constitutes a competitive alternative to a direct service would be whether it results (by route circuitousness or stopover time) in an increase of more than 42% of total journey time.⁴⁸

Substitutability of other forms of transport

65. The Parties submitted that in relation to long haul international flights, the Parties do not consider other modes of transport to be substitutable. In particular, the speed and convenience offered by air travel is unlikely to be offered by any other modes of transportation.⁴⁹ However, the Parties also submitted that the EC has been open in certain circumstances to considering how other means of transportation such as road, train or sea transportation may serve as competitive substitute for flights. The EC had noted that whether one of those alternatives is substitutable depends on a multiplicity of factors, such as the overall travel time, frequency of services and the price of the different alternatives.⁵⁰
66. The Parties submitted that while the above considerations by the EC appear to be in relation to direct flights, the same factors should also be relevant in principle to the substitutability of rail services to the second sector of indirect one-stop flights⁵¹, in particular to the destinations served by the 23 Relevant Indirect Routes. The Parties submitted that while an assessment of substitutability for the Relevant Indirect Routes requires a qualitative assessment of time sensitivity, frequency of service and price sensitivity, in

⁴⁶ Paragraph 5.1.23 of Form 1 submitted on 5 February 2016.

⁴⁷ Paragraph 5.1.24 of Form 1 submitted on 5 February 2016.

⁴⁸ Paragraph 5.1.26 of Form 1 submitted on 5 February 2016.

⁴⁹ Paragraph 5.1.6 of Form 1 submitted on 5 February 2016.

⁵⁰ Paragraph 1.1 of the Parties' further submission to CCS dated 29 June 2016.

⁵¹ Paragraph 1.2 of the Parties' further submission to CCS dated 29 June 2016.

the context of any given passenger's demand preferences, the Parties also noted that several of the destinations served by the Relevant Indirect Routes are located relatively near to the hub airports, and are connected directly by rail services. This ultimately facilitates rail services acting as a viable substitute to air services on the second sector of the itinerary, and in many cases will not result in significantly increased journey duration. The Parties noted that there are eight destinations⁵² which can be accessed faster⁵³ by taking rail services on the second sector of the journey from the hub airports, and twenty instances⁵⁴ where changing transport mode would work out considerably cheaper than taking air services only.⁵⁵ Of these, it would be both faster and cheaper to substitute rail services for the second sector for one travelling to Basel, Cologne-Bonn, Linz, Salzburg, Innsbruck, Friedrichshafen and Rostock-Laage from the hub airports.

67. In this regard, in relation to the Relevant Indirect Routes, the Parties considered that rail services could potentially act as a viable substitute for a number of passengers wanting to access the relevant destinations served by these indirect routes. The potential for passengers to take overland services in respect of the second sector of an indirect journey would constrain the actions of the Parties with regard to services to such destinations.

No separate markets for business and leisure travel

68. The Parties noted that increasingly, the distinctions between different types of passengers, their purpose of travel, and the travel characteristics that they display have become less apparent.⁵⁶ The Parties submitted that this was also recognised in the EC's *United Airlines/US Airways* merger decision⁵⁷. The Parties noted that passenger choices are driven by many more factors such as price, ticket flexibility, scheduling of flights, availability of airport lounges, efficient check-in procedures, quality of on-board service, seat pitch, seat comfort and frequent flyer programmes as compared to the past.⁵⁸

⁵² Stuttgart, Basel, Cologne-Bonn, Linz, Salzburg, Innsbruck, Friedrichshafen and Rostock-Laage.

⁵³ Rail component of the journey duration times are calculated based on the time it would take to get from the hub airport to the city centre of the destination. The data also assumes a smooth scheduling connection therefore the information is meant to be indicative only.

⁵⁴ Berlin, Hamburg, Brussels, Hannover, Nuremberg, Dresden, Graz, Leipzig, Bremen, Basel, Cologne-Bonn, Muenster, Linz, Lugano, Salzburg, Innsbruck, Paderborn, Friedrichshafen, Westerland and Rostock-Laage.

⁵⁵ Paragraphs 1.8 and 1.10 of the Parties' further submission to CCS dated 29 June 2016.

⁵⁶ Paragraph 5.1.12 of Form 1 submitted on 5 February 2016.

⁵⁷ *United Airlines/US Airways*, Case M.2041, paragraph 18.

⁵⁸ Paragraph 5.1.14 of Form 1 submitted on 5 February 2016.

69. The Parties also submitted that there would not be any meaningful way to identify any accurate and usable information with regard to the split between business and leisure travellers on the Relevant Indirect Routes, given that the various classes of travel on an airline do not map accurately against purpose of travel or time sensitivity.
70. Accordingly, the Parties considered that it would not be meaningful, appropriate or possible to identify distinct business and leisure markets.⁵⁹

CCS's assessment

71. CCS notes the Parties' submissions above and agrees that the typical starting point for market definition relating to the provision of scheduled air passenger transport services is the O&D pair, usually a city pair.⁶⁰ Passengers generally want to travel to a specific destination and will not substitute another destination when faced with a small, but significant, non-transitory increase in price. In this regard, CCS has identified the focal product as air passenger transport services of O&D pairs covered by the Proposed JV, i.e. between the LH Home Markets and the SQ Home Markets.
72. However, as noted in paragraph 25 above, for the purposes of this Application, CCS will only be assessing O&D city pairs between Singapore and the LH Home Markets. Also, contrary to the Parties' submissions in paragraphs 56 to 58 above that the assessment should focus on the Revenue Share Routes, CCS is of the view that the focus of the assessment should also include indirect services covered under the Proposed JV between Singapore and the LH Home Markets, i.e., the Relevant Indirect Routes.
73. CCS notes the Parties' submissions that the level of substitutability of indirect flights for direct flights largely depends on the duration of the flight. In this regard, CCS notes that the EC views indirect services to be substitutable for direct services if the indirect services result in a transit time of a maximum of 150 minutes. The Parties have converted the threshold into percentage terms (150 minutes divided by 6 hours equals to 42%), implying that passengers would tolerate a proportionately longer transit time for indirect services if the flight duration exceeds six hours, even though the EC did not state this

⁵⁹ Paragraph 5.1.16 of Form 1 submitted on 5 February 2016.

⁶⁰ Please refer to CCS's Grounds of Decision for the following cases: *Qantas/British Airways* (CCS 400/002/06), *Qantas/Orangestar* (CCS 400/003/06), *JAL/American* (CCS 400/008/10), *ANA/Continental/United* (CCS 400/001/11), *SIA/Virgin* (CCS 400/005/11), *SIA/SAS* (CCS 400/001/12), *Qantas/Jetstar* (CCS 400/002/12), *Emirates/Qantas* (CCS 400/006/12), *Scoot/Tiger Airways* (CCS 400/002/14), *SIA/Air NZ* (CCS 400/003/14), *Etihad/Jet Airways* (CCS 400/006/14) and *Cebu/Tiger* (CCS 400/009/14).

explicitly. CCS notes that 42% of the actual flight time of the Parties' direct flights on the Revenue Share Routes would translate to a transit time of between 327 minutes to a maximum of 344 minutes.⁶¹ In the present case, if the 150 minutes threshold were to be used instead of the 42% threshold, fewer competitors' one-stop flights would be included in the relevant market, since the flight duration between LH Home Markets and SQ Home Markets are much longer than six hours. CCS notes that this approach would, in most cases, exclude the Gulf Carriers from the relevant markets (with the exception of Emirates on the SIN-FRA and SIN-DUS routes)⁶² which would run contrary to the Parties' submissions [38] which are gaining market share at the expense of the Parties on the affected routes.

74. CCS recognises that there is some degree of substitution between direct flights and indirect flights in relation to the flights concerned. Also, notwithstanding the concerns on the maximum allowable transit time for there to be substitution between direct and indirect flights highlighted above, CCS considers it appropriate in this particular case to define the relevant market to include one-stop indirect flights for the assessment, as even if one-stop flights are included, the extent of substitutability and closeness of competition will in any case be manifested in the actual market share trends and/or price differentials assessed over a period of time.
75. In relation to the Parties' submissions on the substitutability of other forms of transport, CCS is of the view that given the long haul nature of the direct Revenue Share Routes, it is improbable that there would be any other substitutes to air travel. With regard to the substitutability of rail services on the second sector of one-stop indirect routes between Singapore and the LH Home Markets, given CCS's conclusion on competition concerns in these routes below, CCS is of the view that there is not a need to assess whether rail

⁶¹ The flight time of direct flights of the Parties on the Revenue Share Routes is as follows:

	<i>Singapore-Frankfurt</i>	<i>Singapore-Munich</i>	<i>Singapore-Zurich</i>	<i>Singapore-Dusseldorf</i>
SIA	805 minutes	780 minutes	800 minutes	780 minutes
LH	785 minutes	-	-	-
LX	-	-	820 minutes	-

⁶² The increase in total time for the one-stop flights by the Gulf Carriers compared to the Parties' direct flights is as follows:

	<i>Singapore-Frankfurt</i>	<i>Singapore-Munich</i>	<i>Singapore-Zurich</i>	<i>Singapore-Dusseldorf</i>
Emirates	145 minutes	210 minutes	200 minutes	140 minutes
Qatar Airways	265 minutes	245 minutes	-	-
Etihad Airways	275 minutes	290 minutes	310 minutes	250 minutes

travel is a substitute to the second follow-on sector of the Relevant Indirect Routes.

76. CCS agrees with the Parties' submissions that there is not a need to identify separate markets for business travellers and leisure travellers.
77. Given the above, CCS is of the view that the relevant markets for the purposes of assessing the Proposed JV comprise of each of the O&D city pairs of the direct Revenue Share Routes and the 23 Relevant Indirect Routes between Singapore and the LH Home Markets (together the "**Relevant Markets**").

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

Parties' submissions

78. The Parties submitted that the Proposed JV will not have an appreciable adverse effect on competition in Singapore, for the following reasons:
 - (a) With regard to the Revenue Share Routes –
 - i. the Parties will remain subject to significant competitive constraints by way of competing one-stop services operated by a large number of existing competitors.⁶³ Even though the Parties have, in a static sense, a high market share on the SIN-FRA and SIN-ZRH routes, there will continue to be a vast number of competing alternative services and the Parties will remain significantly constrained in the context of the Proposed JV;⁶⁴ and
 - ii. the Parties will remain subject to significant competitive constraints in the form of potential competition, as there are no or negligible barriers to entry and expansion on the relevant routes;⁶⁵
 - (b) With regard to the 23 Relevant Indirect Routes –
 - i. the indirect services that fall within the scope of the Proposed JV will necessarily involve a sector operated between: (1) Singapore and Frankfurt; (2) Singapore and Munich; or (3) Singapore and

⁶³ Paragraph 5.1.2 of Form 1.

⁶⁴ Paragraph 5.1.72 of Form 1.

⁶⁵ Paragraphs 5.1.2 and 5.1.73 of Form 1.

Zurich. Indirect services that do not involve a SIN-FRA, SIN-MUC or SIN-ZRH sector will not be subject to coordination between the Parties.⁶⁶ In the same vein, CCS notes that the same will be applicable in relation to flights between Singapore and Dusseldorf;

- ii. for onward destinations in the LH Home Markets which use Frankfurt, Munich or Zurich as the connection points, SIA relies on existing code-share and interline arrangements with LH. In other words, there is only an overlap in respect of these destinations because of those existing code-share and interline arrangements;⁶⁷ and
- iii. with regard to the other routes involving indirect services between the LH Home Markets and the SQ Home Markets which do not originate or end in Singapore, but which transit through Singapore, the proposed coordination between the Parties under the Proposed JV will not affect an itinerary to or from Singapore.⁶⁸

Existing competition

- 79. With regard to the SIN-FRA and SIN-ZRH routes, the Parties submitted that, should they attempt to increase price on these routes, they would likely rapidly lose market share to the other airlines operating indirect services.⁶⁹
- 80. There is a wide range of alternative one-stop services that can be used to travel between Singapore and Frankfurt.⁷⁰ In particular, Emirates operates 3x daily services (21 services weekly) between Singapore and Frankfurt. In addition, Emirates flights only entail a relatively small increase in total travel time of around 16%, compared to the timing of SIA's direct flight.⁷¹
- 81. In terms of capacity, Emirates flies the SIN-FRA route using, inter alia, its Airbus A380-800 aircraft, potentially amounting to more than 1,200 seats on a daily basis, across its three daily services. Qatar Airways also provides more than 550 seats on a daily basis across its two services.⁷² By comparison, SIA

⁶⁶ Appendix 1 to the Parties' Responses dated 24 March 2016 to CCS's letter dated 17 February 2016.

⁶⁷ Appendix 1 to the Parties' Responses dated 24 March 2016 to CCS's letter dated 17 February 2016.

⁶⁸ Appendix 1 to the Parties' Responses dated 24 March 2016 to CCS's letter dated 17 February 2016.

⁶⁹ Paragraph 5.1.31 of Form 1.

⁷⁰ Paragraph 5.1.33 of Form 1.

⁷¹ Paragraph 5.1.33 of Form 1.

⁷² Paragraph 5.1.34 of Form 1.

provides around 600 seats across its two daily services and LH provides around 500 seats.⁷³

82. Similarly, there is a wide range of alternative one-stop services that can be used to travel between Singapore and Zurich.⁷⁴ In particular, Emirates operates 2x daily services (14 services weekly) between Singapore and Zurich. In addition, six other carriers operate daily indirect services on the route. KLM's service that flies via Amsterdam entails an increase in travel time of only 20% compared to the timing of the Parties' direct flights.⁷⁵
83. In relation to the SIN-MUC route, the Parties submitted that they will be subject to continued fierce competition from existing indirect services from a large number of carriers.⁷⁶ In particular, KLM, Emirates, Thai Airways, Turkish Airways, British Airways, Etihad and Qatar Airways all operate daily services (with Qatar operating 2x daily services). There are a large number of possible alternative indirect services between Singapore and Munich, all of which operate services with an increased travel time of between 7% and 17% compared to the length of LH's indirect service.⁷⁷
84. In relation to the Revenue Share Routes, the Parties submitted that they are not aware of any barriers to expansion (including any legal barriers, or barriers arising from air rights, gate access, slot availability or otherwise) with regard to the indirect services operated on these routes. Any of the airlines operating indirect services could potentially expand their frequency of services if given a reason to do so. Moreover, there may be some potential for existing carriers to better align connecting services through the stopover destinations, resulting in even shorter total travel times.⁷⁸

Barriers to entry and expansion

85. According to the Parties, the relevant Air Services Agreements ("ASAs") are liberal, and do not place any restrictions on capacity, frequency or type of aircraft for carriers designated by EU/European Economic Area ("EEA") or Singapore, with their principal place of business in an EEA Member State or Singapore, and with regulatory control maintained by either an EEA Member State or Singapore, to fly between the LH Home Markets and Singapore.⁷⁹

⁷³ Paragraph 5.1.34 of Form 1.

⁷⁴ Paragraph 5.1.53 of Form 1.

⁷⁵ Paragraph 5.1.53 of Form 1.

⁷⁶ Paragraph 5.1.43 of Form 1.

⁷⁷ Paragraph 5.1.43 of Form 1.

⁷⁸ Paragraph 5.1.45 of Form 1.

⁷⁹ Paragraph 5.1.60 of Form 1.

86. In addition to low regulatory barriers to entry, the Parties submitted that there are no barriers to entry in terms of acquiring slots at the respective airports, accessing ground services, nor are there other foreseeable barriers to entry or expansion preventing entrants or current competitors from entering or expanding in the market.⁸⁰
87. Accordingly, the Parties consider that they will remain subject to strong competitive constraints by way of potential competition, given that there are no or negligible barriers to entry or expansion on the relevant routes.⁸¹
88. The Parties also submitted that, on a broader level, the Parties' combined market share on services provided between the LH Home Markets and the SQ Home Markets has been in decline in the last 12 months, [REDACTED].⁸² The Parties accounted for roughly [30 – 40]% of the combined traffic between the LH Home Markets and the SQ Home Markets for the period between October 2014 and September 2015, as compared to around [30 – 40]% for the period between October 2013 and September 2014.⁸³

Third-parties' comments

89. One third-party⁸⁴ stated that the Parties are the only two airlines who currently operate direct flights on three routes (SIN-FRA, SIN-MUC and SIN-ZRH) and highlighted that the joint venture will result in a high risk of price-fixing between SIA and LH resulting in high prices to travellers on the three routes.
90. Another third-party⁸⁵ highlighted that most of its inter-continental flights involved travelling from Singapore to European destinations and the Proposed JV could be beneficial in expanding the range of flight options available to its employees for connections within Europe through Germany. However, it also noted that SIA and LH are currently competing on fares and expressed concern that this could potentially change as a result of the Proposed JV resulting in higher fares which could negatively impact its business in an environment where the costs of doing business are already on the rise.

⁸⁰ Paragraph 5.1.61 of Form 1.

⁸¹ Paragraph 5.1.62 of Form 1.

⁸² Paragraph 5.1.74 of Form 1.

⁸³ Paragraph 5.1.65 of Form 1.

⁸⁴ [REDACTED]

⁸⁵ [REDACTED]

91. A third respondent⁸⁶ expressed concern that the Proposed JV would allow the Parties to be a monopoly which would significantly reduce the capacity and competition resulting in an increase of fares on the SIN-FRA and SIN-ZRH routes.
92. [§<] submitted that while the Proposed JV is likely to open up new opportunities for consumers, they are also of the view that it would be beneficial for Singapore if the Parties could commit to increase capacity to Singapore.
93. The Civil Aviation Authority of Singapore (“CAAS”) submitted that it supports the Proposed JV. [§<]
94. Vital⁸⁷ noted that the Proposed JV will bring forth a healthy level of competition for other carriers servicing the routes. Vital is of the view that the Proposed JV may help to free up capacity on SIA flights to other locations as more travellers will choose to travel via Frankfurt, Munich and Zurich to LH Home Markets. This will lead to healthy competition for the Singapore to Europe routes as SIA may choose to lower their airfare on these other routes due to freed up capacity. Vital also believes that the increase in capacity and better flight schedule will improve the traveller traffic, contributing significant economic benefits to Singapore and/or passengers travelling to and from Singapore.
95. Another third-party⁸⁸ submitted that it has no issue with the Proposed JV. It noted that the joint collaboration would harness the strengths of each Party in their respective home market and bring about positive developments in the passenger traffic. Accordingly, there would be more options for travelling passengers.

CCS’s assessment

Object of appreciably preventing, restricting or distorting competition

⁸⁶ [§<]

⁸⁷ Vital, a department under the Ministry of Finance, is a captive shared services centre which serves Ministries, Departments, Organs of State and Statutory Boards in Singapore. The suite of services includes finance services, human resource services, payroll and claims services, learning and development services, and travel management services.

⁸⁸ [§<]

96. CCS notes that the Parties intend to coordinate on pricing, inventory management, and sales and marketing on the Revenue Share Routes and the 23 Relevant Indirect Routes.⁸⁹
97. The Parties also intend to coordinate their schedules, capacity and share revenue on the Revenue Share Routes and the connection requirements for feeder routes.
98. In accordance with the *CCS Guidelines on the Section 34 Prohibition* (the “**Section 34 Guidelines**”), CCS views that price-fixing and capacity coordination in the relevant market will, *by their very nature*, be regarded as restrictive of competition to an appreciable extent.⁹⁰
99. In light of the above, given the nature and the elements of coordination and pricing, CCS finds that the Proposed JV has as its object the appreciable prevention, restriction or distortion of competition in Singapore.⁹¹

Appreciable adverse effect on competition

100. CCS highlights that, where an agreement is found to have the object of preventing, restricting or distorting competition, it would not be necessary to determine the actual effects of such agreements; since CCS considers “object” and “effect” to be alternative and not cumulative requirements of the section 34 prohibition.⁹²
101. Nevertheless, CCS notes that there are demonstrable appreciable adverse effects on competition in Singapore arising from the Proposed JV with respect to the SIN-FRA and SIN-ZRH routes.
102. CCS notes that the Parties’ combined market shares on SIN-FRA and SIN-ZRH, exceed 80%. While there are a number of competing airlines providing indirect services on these two routes, CCS is of the view that they are imperfect substitutes and as such, only pose a limited competitive constraint on the direct services offered by SIA and LH. This is evident from the fact that the airlines providing indirect services on these two routes have been in the market throughout an assessment period of four years from 2011 to 2015, and yet have not gained significant market shares, with shares remaining in the range of [1-10]%. Over the same period, the Parties have increased their market shares

⁸⁹ Paragraph 2.3.13 of Form 1.

⁹⁰ *CCS Guidelines on the Section 34 Prohibition*, paragraph 3.2.

⁹¹ *CCS Guidelines on the Section 34 Prohibition*, paragraph 3.2.

⁹² For example: *Re Pest Control Operators in Singapore* [2008] SGCCS 1, at [48]; and *Re Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand* [2009] SGCCS 2, at [70].

from [70-80]% to [80-90]% on the SIN-FRA route and maintained their market shares at [80-90]% on the SIN-ZRH route. The imperfect substitution of indirect services is manifested in the persistently low market share figures over the assessment period. As the Parties are the only two carriers offering direct flights over these two routes, they are the closest rivals to each other.

103. In comparison, the Parties' combined market shares for the SIN-MUC and SIN-DUS routes are lower, in the range of [50-60]% and [20-30]% respectively.⁹³The Parties do not directly overlap on these two routes as only SIA operates direct flights whereas LH operates one-stop flights on these routes. While the Parties' combined market shares on the SIN-MUC route is currently at 59%, they had lost substantial market share (from [80-90]% to [50-60]%) primarily to the Gulf Carriers, during the period from 2011 to 2015.⁹⁴ In other words, competition from indirect flights is keen and the pre-Proposed JV rivalry between the Parties was weaker on the SIN-MUC route.
104. For completeness, the combined market share of the Parties in each of the Relevant Markets are set out below.

Table 1: Market Shares of the Parties between October 2014 to September 2015

	O&D routes	SIA's Market Share (%)	LH*'s Market Share (%)	Post-JV Market Share (%)
Revenue Share Routes	Singapore to Frankfurt	[50-60]	[20-30]	[80-90]
	Frankfurt to Singapore	[50-60]	[20-30]	[80-90]
	Singapore to Munich	[40-50]	[10-20]	[50-60]
	Munich to Singapore	[40-50]	[10-20]	[60-70]
	Singapore to Zurich	[60-70]	[20-30]	[80-90]
	Zurich to Singapore	[60-70]	[20-30]	[80-90]
	Singapore to Dusseldorf	[0-10]	[20-30]	[20-30]

⁹³ According to the Parties' data for the period from October 2014 to September 2015.

⁹⁴ [3<]

	Dusseldorf to Singapore	[0-10]	[20-30]	[20-30]
Relevant Indirect services	Singapore to Berlin	[10-20]	[20-30]	[40-50]
	Berlin to Singapore	[10-20]	[20-30]	[40-50]
	Singapore to Hamburg	[10-20]	[30-40]	[40-50]
	Hamburg to Singapore	[10-20]	[30-40]	[40-50]
	Singapore to Vienna	[10-20]	[20-30]	[30-40]
	Vienna to Singapore	[10-20]	[20-30]	[30-40]
	Singapore to Geneva	[10-20]	[30-40]	[50-60]
	Geneva to Singapore	[10-20]	[30-40]	[50-60]
	Singapore to Brussels	[10-20]	[20-30]	[30-40]
	Brussels to Singapore	[10-20]	[20-30]	[30-40]
	Singapore to Hanover	[20-30]	[40-50]	[60-70]
	Hanover to Singapore	[20-30]	[40-50]	[60-70]
	Singapore to Stuttgart	[10-20]	[30-40]	[50-60]
	Stuttgart to Singapore	[10-20]	[40-50]	[50-60]
	Singapore to Nuremberg	[10-20]	[40-50]	[60-70]
	Nuremberg to Singapore	[10-20]	[40-50]	[60-70]
	Singapore to Dresden	[30-40]	[60-70]	[90-100]
	Dresden to Singapore	[30-40]	[50-60]	[90-100]
	Singapore to Graz	[30-40]	[60-70]	[90-100]
	Graz to Singapore	[30-40]	[60-70]	[90-100]
Singapore to Leipzig	[20-30]	[50-60]	[80-90]	

Leipzig to Singapore	[30-40]	[40-50]	[80-90]
Singapore to Bremen	[10-20]	[50-60]	[60-70]
Bremen to Singapore	[10-20]	[50-60]	[60-70]
Singapore to Basel	[0-10]	[30-40]	[40-50]
Basel to Singapore	[0-10]	[30-40]	[30-40]
Singapore-Cologne-Bonn	[10-20]	[0-10]	[20-30]
Cologne-Bonn-Singapore	[10-20]	[10-20]	[30-40]
Singapore to Muenster	[10-20]	[70-80]	[90-100]
Muenster to Singapore	[10-20]	[70-80]	[80-90]
Singapore to Linz	[20-30]	[70-80]	[90-100]
Linz to Singapore	[20-30]	[70-80]	[90-100]
Singapore to Lugano	[40-50]	[50-60]	[90-100]
Lugano to Singapore	[50-60]	[40-50]	[90-100]
Singapore to Salzburg	[10-20]	[70-80]	[80-90]
Salzburg to Singapore	[10-20]	[60-70]	[70-80]
Singapore to Innsbruck	[20-30]	[70-80]	[90-100]
Innsbruck to Singapore	[10-20]	[70-80]	[90-100]
Singapore to Paderborn	[70-80]	[10-20]	[80-90]
Paderborn to Singapore	[70-80]	[10-20]	[80-90]
Singapore to Friedrichshafen	[10-20]	[60-70]	[80-90]
Friedrichshafen to Singapore	[10-20]	[60-70]	[80-90]
Singapore to Westerland	[90-100]	[0-10]	[90-100]
Westerland to Singapore	[50-60]	[50-60]	[90-100]

Singapore-Rostock-Laage	[60-70]	[30-40]	[90-100]
Rostock-Laage-Singapore	[90-100]	[0-10]	[90-100]

Note: * denotes combined market share of LH and its affiliates – Austrian Airlines, Swissair

105. For the 23 Relevant Indirect Routes, notwithstanding the high market shares of the Parties on some routes, CCS notes that SIA relies on existing code-share and interline arrangements with LH and its affiliates to provide services for onward destinations using Frankfurt, Munich and Zurich as the connection points. In other words, SIA does not physically fly to these destinations and therefore there is no end-to-end ‘metal’ overlap between SIA and LH in respect of these destinations. The overlap occurs only because of the existing code-share and interline arrangements. Therefore, the loss in competition between the Parties on these routes is likely to be minimal.
106. CCS also notes that each of the 23 Relevant Indirect Routes would necessarily involve a sector which is a Revenue Share Route.⁹⁵
107. In relation to entry barriers, CCS notes that there appears to be no regulatory barrier for other airlines to offer direct and/or indirect services along the Revenue Share Routes and the 23 Relevant Indirect Routes. CCS notes that the air traffic rights directly between Singapore and LH Home Markets⁹⁶ is not a main concern, since other airlines can compete based on indirect services. However, CCS is of the view that without having a home base at either the origin or the destination, there may be economic barriers for airlines to offer *direct* services similar to the Revenue Share Routes.
108. In relation to countervailing buyer power, CCS is of the view that leisure consumers as individual buyers are not able to exert strong bargaining power. While some business customers are from sizeable companies, they tend to be less flexible in terms of choosing or switching to indirect services due to their business requirements. Therefore, countervailing buyer power is assessed to be low.
109. In light of the above, CCS is of the view that the anti-competitive effects of the Proposed JV would be appreciable, in particular on the SIN-FRA and SIN-ZRH routes. CCS is concerned that given the limited competition constraints on the Parties on both routes, the Parties may have the ability and incentives to profitably decrease capacity and raise prices on the SIN-FRA and SIN-ZRH

⁹⁵ Paragraph 1.9 of the Parties’ further submission to CCS dated 24 March 2016.

⁹⁶ The freedoms of the air are a set of commercial aviation rights granting a country's airlines the privilege to enter and land in another country's airspace.

routes post-Proposed JV. In any event, as set out in paragraphs 96 to 99 above, CCS finds that the Proposed JV has as its object the appreciable prevention, restriction or distortion of competition in relation to the Revenue Share Routes and the Relevant Indirect Routes in Singapore, and therefore, it would not be necessary to determine the actual effects of such agreements.

Counterfactual

Parties' submissions

110. The Parties submitted that should the Proposed JV not eventuate, [REDACTED].⁹⁷⁹⁸

111. The Parties further submitted that this would likely result in [REDACTED].⁹⁹¹⁰⁰¹⁰¹

112. [REDACTED]:

(a) [REDACTED].¹⁰²

(b) [REDACTED].¹⁰³¹⁰⁴

(c) [REDACTED].¹⁰⁵¹⁰⁶

113. In light of the above, SIA has estimated in **Table 2** below, on a best case basis, the likely reductions in capacity of services on the relevant routes that would arise should the Proposed JV not eventuate, [REDACTED].¹⁰⁷

Table 2: Estimated changes in SIA capacity in the absence of the Proposed JV

Route	Capacity (Weekly seats)			
	SIA current capacity	Planned capacity	Estimated in absence of Proposed JV	Difference with planned capacity

⁹⁷ Presentation slides submitted by SIA to CCS dated 10 June 2016, Slide 14; Paragraph 2.4 of the Parties' further submission to CCS dated 19 July 2016.

⁹⁸ Paragraph 2.4 of the Parties' further submission to CCS dated 19 July 2016.

⁹⁹ Paragraph 2.5 of the Parties' further submission to CCS dated 19 July 2016..

¹⁰⁰ Paragraph 3.41 of the Parties' further submission to CCS dated 19 July 2016.

¹⁰¹ Paragraph 3.42 of the Parties' further submission to CCS dated 19 July 2016.

¹⁰² Presentation slides submitted by SIA to CCS dated 10 June 2016, Slide 14.

¹⁰³ Paragraph 3.43 of the Parties' further submission to CCS dated 19 July 2016.

¹⁰⁴ Paragraph 3.43 of the Parties' further submission to CCS dated 19 July 2016.

¹⁰⁵ Paragraph 3.43 of the Parties' further submission to CCS dated 19 July 2016..

¹⁰⁶ Presentation slides submitted by SIA to CCS dated 10 June 2016, Slide 14; Paragraph 3.44 of the Parties' further submission to CCS dated 19 July 2016.

¹⁰⁷ Paragraph 3.45 of the Parties' further submission to CCS dated 19 July 2016.

		under the Proposed JV		under the Proposed JV
SIN-DUS	[X]	[X]	[X]	[X]
SIN-ZRH	[X]	[X]	[X]	[X]
SIN-MUC	[X]	[X]	[X]	[X]
SIN-FRA	[X]	[X]	[X]	[X]
Total	[X]	[X]	[X]	[X]
SIA code-share destinations with LH	[X]	[X]	[X]	[X]

114. Further to the above, any reductions in capacity arising from a lower frequency of service may have very detrimental consequences [X].

115. LH has also estimated in **Table 3** below the likely reductions in capacity of its services on the relevant routes that would arise should the Proposed JV not eventuate and [X].

Table 3: Estimated changes in LH Capacity in the absence of the Proposed JV

Route	Capacity (Weekly seats)			
	LH current capacity	Planned capacity under the Proposed JV	Estimated in absence of Proposed JV	Difference with planned capacity under the Proposed JV
SIN-DUS	[X]	[X]	[X]	[X]
SIN-ZRH	[X]	[X]	[X]	[X]
SIN-MUC	[X]	[X]	[X]	[X]
SIN-FRA	[X]	[X]	[X]	[X]
Total	[X]	[X]	[X]	[X]

116. The Parties further submitted that capacity increases on the SIN-DUS, SIN-ZRH, SIN-MUC and SIN-FRA routes will not be realised if the Proposed JV is not implemented.¹⁰⁸

117. Additionally, in the absence of the Proposed JV, [X].¹⁰⁹

CCS's assessment

¹⁰⁸ Paragraph 3.41 of the Parties' further submission to CCS dated 19 July 2016.

¹⁰⁹ Paragraph 5.1.41 of Form 1.

118. CCS notes that the most appropriate counterfactual to the Proposed JV is the prevailing conditions of competition as this provides a reliable indicator of future competition without the Proposed JV. However, CCS will take into account likely and imminent changes in the structure of competition, i.e., consider the most likely and potentially most immediate outcome in order to reflect as accurately as possible the nature of rivalry without the Proposed JV.
119. In this case, CCS notes that although the Parties submitted documents indicating [X] instead of entering into the Proposed JV with SIA, there is insufficient evidence to show that without the Proposed JV with SIA, [X].¹¹⁰¹¹¹ Therefore, while CCS acknowledges that it may be possible that [X] in the absence of the Proposed JV, CCS notes that it is subject to a number of factors, one of which is whether there could be [X] in the absence of the Proposed JV. There are also uncertainties regarding the [X] and accordingly this gives rise to many different counterfactual permutations.
120. Therefore, in light of the above uncertainties regarding the Parties' submitted counterfactual, CCS will use the status quo prior to the Proposed JV as the basis of assessing the claimed benefits by the Parties below.

The Net Economic Benefit Exclusion

121. Paragraph 9 in the Third Schedule to the Act provides that the section 34 prohibition shall not apply to “any agreement which contributes to (1) improving production or distribution; or promoting technical or economic progress; but which does not (2) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; and (3) afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question” i.e. NEB Exclusion. The three limbs operate cumulatively.
122. In assessing claims made under the first limb of the NEB Exclusion, CCS notes that the aim of the analysis is to ascertain what are the objective benefits created by the agreement and the economic importance of such efficiencies. The efficiencies are not assessed from the subjective viewpoint of the parties.¹¹² The types of efficiencies stated in the criteria are broad categories intended to cover all objective economic efficiencies. There is considerable

¹¹⁰ Appendix 1 of the Parties' further submission to CCS dated 19 July 2016.

¹¹¹ Appendix 1 of the Parties' further submission to CCS dated 19 July 2016.

¹¹² *CCS Guidelines on the Section 34 Prohibition*, Annex C, paragraph 10.3.

overlap between the various categories. There is no need therefore to draw clear and firm distinctions between the various categories.¹¹³

123. Therefore, the efficiency claims must be substantiated as follows:

- (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.¹¹⁴

124. In relation to paragraph 123(c) above, CCS notes that the likelihood and magnitude of the claimed efficiencies must be verified i.e. they must be backed up and substantiated by the Parties by demonstrating how and when each efficiency will be achieved.

125. Under the second limb of the NEB Exclusion, paragraph 10.9 of Annex C to the Section 34 Guidelines states that an agreement will not be regarded as indispensable if there are other economically practical and less restrictive means of achieving the efficiencies. Paragraph 10.8 of the Section 34 Guidelines further states that the criterion implies a two-fold test - *“both the agreement itself, and the individual restrictions of the agreement, must be reasonably necessary to attain the efficiencies.”*

126. In this context, the Proposed JV or the specific proposed areas of cooperation would be considered as indispensable if their absence eliminates or significantly reduces the efficiencies or makes them much less likely to materialise. The Proposed JV or the proposed areas of cooperation will not be regarded as indispensable if there are other economically practical and less restrictive means of achieving the efficiencies, or if the Parties are capable of achieving efficiencies on their own.

127. Further, the greater the increase in market power that is likely to be brought about, the more significant the benefits will have to be. CCS will assess each benefit/efficiency claimed in turn on the above basis.

Parties' submissions

Increases in capacity and frequency

¹¹³ CCS Guidelines on the Section 34 Prohibition, Annex C, paragraph 10.5.

¹¹⁴ CCS Guidelines on the Section 34 Prohibition, Annex C, paragraph 10.4.

128. The Parties submitted that they have plans to increase capacity by a total of [X] and increase frequency on the SIN-FRA, SIN-ZRH, SIN-MUC and SIN-DUS routes. The table summarising the increases in capacity and frequency can be found in **Annex A** below.
129. CCS notes that the planned increases seem to have been confirmed partially for the SIN-ZRH route whereby LH recently announced that it will increase capacity using the newest aircraft in LX's fleet commencing in September 2016,¹¹⁵ as well as the SIN-MUC route whereby the delinking of SIA's Manchester and Munich services would result in an increase of capacity to both destinations by October 2016¹¹⁶. However for the SIN-FRA route and the SIN-DUS route, [X].

Increased passenger numbers and tourists to Singapore, and benefits to Singapore's economy

130. The Parties submitted that LH would be incentivised by the Proposed JV to push its connecting traffic (either to or from Europe) through Singapore using the Revenue Share Routes rather than other Asian gateways, resulting in a possible increase of between [X] travellers travelling through Singapore in each direction per year.¹¹⁷
131. Accordingly, Singapore stands to benefit from an increase in transiting passenger numbers and in tourism. An increase in connecting traffic through Singapore brings about considerable benefits for Singapore as a hub as it supports (and grows) services operated from that hub. It also has financial benefits for Singapore as that connecting traffic will spend on goods and services in Singapore and a proportion of such traffic may have extended stays in Singapore.¹¹⁸ The Parties submitted that the Proposed JV opens up the potential for more than [X] travellers in each direction to be eventually steered through Singapore en route to their final destination, rather than travelling through Bangkok, Hong Kong or Kuala Lumpur.¹¹⁹

Better accessibility through expanded code-sharing

¹¹⁵ <https://www.lufthansagroup.com/en/press/media-relations-asia-pacific/singleview/archive/2016/september/06/article/4647.html>.

¹¹⁶ https://www.singaporeair.com/en_UK/nz/media-centre/press-release/article/?q=en_UK/2016/July-September/ne2116-160721.

¹¹⁷ Paragraph 3.54 of the Parties' further submission to CCS dated 19 July 2016.

¹¹⁸ Paragraph 3.57 of the Parties' further submission to CCS dated 19 July 2016.

¹¹⁹ Paragraph 3.53 of the Parties' further submission to CCS dated 19 July 2016.

132. The Parties submitted that travellers would benefit from expanded code-sharing in contemplation of the Proposed JV, which will increase the number of accessible destinations in the LH Home Markets for Singapore travellers. [X].¹²⁰

Introduction of new routes and services

133. The Parties submitted that [X].¹²¹

134. [X].¹²²

135. The Parties submitted that [X] would be a direct result of the successful implementation of the Proposed JV, and would not likely be viable in its absence.¹²³

136. Further, the Parties also noted the introduction of 3x weekly services from Singapore to Dusseldorf on 21 July 2016 utilising an A350-900 aircraft. The Parties submitted that while they did not collectively discuss the introduction of this service and it was an independent decision made by SIA, the service was facilitated by the Proposed JV due to the anticipated leverage that would be possible with regard to each of SIA's and LH's strengths in Asia and Europe respectively. In particular, the prospect of the Proposed JV was directly relevant to the confidence of SIA that the service can be viable and sustainable such that SIA could be confident to proceed to introduce the service.¹²⁴

Better corporate account offerings and benefits

137. The Parties submitted that the Proposed JV creates benefits for Singapore corporate travellers. Singapore corporate travellers will have access to LH and SIA flights and enjoy the same benefits, enjoy a broader range of inventory and fares under the same contract, have more flexible travel options and accumulate benefits earned from separate contracts under one scheme.¹²⁵

Others

¹²⁰ Paragraph 3.64 of the Parties' further submission to CCS dated 19 July 2016.

¹²¹ Paragraph 3.16 of the Parties' further submission to CCS dated 19 July 2016.

¹²² Paragraph 3.18 of the Parties' further submission to CCS dated 19 July 2016.

¹²³ Paragraphs 3.16 and 3.19 of the Parties' further submission to CCS dated 19 July 2016.

¹²⁴ Paragraphs 3.1 to 3.3 of the Parties' further submission to CCS dated 19 July 2016.

¹²⁵ Paragraph 3.61 of the Parties' further submission to CCS dated 19 July 2016.

138. The Parties submitted that the Proposed JV will lead to more competitive fares, an improvement of existing services and increased competition on the routes, particularly with respect to the Gulf Carriers.

CCS's assessment on Net Economic Benefit

First limb – improving production or distribution; or promoting technical or economic progress

Increases in capacity and frequency

139. The Parties submitted that the Proposed JV would lead to planned increases in capacity and service frequency on the Revenue Share Routes. CCS notes that the Parties have submitted internal documents which laid out the network plans for SIA and LH separately on these routes should the Proposed JV proceed.¹²⁶ CCS is of the view that these claimed benefits are objective in nature, arise directly as a consequence of the Proposed JV, and are relatively significant. In particular, CCS notes that on average, across the Revenue Share Routes, there will be an increase by [X] of the current capacity. The numbers are [X] for SIN-MUC [X], SIN-DUS [X] and SIN-ZRH [X] whereas there is [X] increase in capacity for SIN-FRA [X]. The Parties submitted that the Proposed JV would maintain LH as a carrier that flies to and from Singapore, and help to grow its capacity and frequency levels over time. This in turn will make Singapore more attractive as an aviation hub to other carriers. This will also make it easier for the Parties to explore more partnership options in the future, which will further increase connectivity to and from Singapore, to the benefit of Singapore travellers.

140. CCS notes, however, the Parties did not provide the breakdown between capacity increases for Singapore origin/destination passengers on the direct routes vis-à-vis connecting/transiting passengers.¹²⁷ CCS is also mindful that the Parties have submitted that the planned increases in capacity and service frequencies are subject to a number of factors in particular the performance of the Proposed JV, overall market growth, fuel prices, global economic conditions, and the availability of suitable airport slots. In other words, the claimed benefits on increases in capacity and frequency may not materialise if any of these factors change.

¹²⁶ See Parties' further submission to CCS dated 19 July 2016.

¹²⁷ For instance, the Parties indicated that out of SIA's increased capacity on the SIN-DUS route from [X] to [X],[X] would potentially be made available for Singapore passengers. However, the Parties did not give similar indications for other Revenue Share Routes, specifically the SIN-FRA, SIN-ZRH and SIN-MUC routes.

Increased passenger numbers and tourists to Singapore, and benefits to Singapore's economy

141. CCS notes that a claimed key benefit arising from the Proposed JV is that LH would be incentivised under the revenue sharing arrangements in the Framework Agreement to push connecting traffic across the Revenue Share Routes and accordingly through Singapore. The Parties submitted that LH currently carries about [X] passengers (average both ways) yearly through other Asian gateways i.e. Bangkok, Hong Kong and Kuala Lumpur between Europe and SQ Home Markets and notes that the Proposed JV opens up the potential for these passengers to be steered through Singapore en route to their destinations instead of through these other Asian gateways. CCS is of the view that this figure appears to be very optimistic and should be viewed with caution or at the very most, as an upper bound because not all passengers would choose to transit through Singapore for a multitude of reasons. In this regard, CCS considers that the Parties' estimate of a direct increase of between [X] passengers through Singapore in each direction as a result of the Proposed JV would be more likely to be realised.
142. CCS is of the view that this claimed benefit is objective in nature as it is based on the projected increase in passengers estimated to be routed through Singapore as a result of the Proposed JV, and a causal link can be made between the benefit and the Proposed JV (albeit an indirect one as it is contingent on the planned increases in service frequency and capacity to be realised). The benefit, while an estimate due to the prospective nature of the Proposed JV, is significant because, if realised, the increase is [X] the number of passengers that LH currently carries through Singapore to other countries including the SQ Home Markets.
143. The Parties also submitted that Singapore passengers would not be displaced as a result of the increased flow of connecting traffic as the plans under the Proposed JV to increase frequency and capacity will support the expected increase in the numbers of passengers. However, CCS notes that the point on displacement was not quantified or verified with any supporting evidence to show the impact on Singapore origin/destination passengers. CCS is concerned that an increase in connecting passengers would leave fewer seats available for Singapore-originating passengers, especially on the SIN-FRA and SIN-ZRH routes where the Proposed JV would result in a significant loss of competition.
144. In addition, CCS notes that the above would also have a knock-on effect on Singapore's tourism industry. The Parties submitted that if the passengers transiting through Singapore were to clear immigration, they could potentially

lead to an increase in tourism receipts – about S\$1,000 per passenger based on the Singapore Tourism Board’s estimated nights per stay and average daily expenditure date.

Better accessibility through expanded code-sharing

145. In respect of the Parties’ submissions on expanded code-sharing arrangements, CCS is of the view that any expanded code-sharing arrangements would have a significant benefit to passengers travelling to LH Home Markets via the hubs served by the Revenue Share Routes. Passengers would, as a result of the code-sharing arrangements, be able to access more European cities seamlessly and be able to choose their preferred routes by fares or cities, as there are more destinations accessible via multiple hubs. However, CCS notes that there are currently code-sharing arrangements in place between SIA and LH in the European hubs, and in fact, for one-stop air travel to destinations in the LH Home Markets, using FRA, MUC or ZRH as the connection points, SIA’s code-share and interline arrangements are solely with LH. Further, these expanded code-sharing arrangements were in place pre-Proposed JV. In light of the above, CCS is of the view that the claimed benefit of better accessibility through expanded code-sharing does not satisfy the first limb of the NEB Exclusion.

Introduction of new routes and services

146. CCS notes the Parties’ submission that the Proposed JV has led to the introduction of a route, namely between SIN-DUS by SIA, and planned new routes [X] by LH and additional SIA services between Singapore and Europe, [X].

147. In relation to SIN-DUS, CCS notes the Parties’ submissions that the announcement of the new service was two days prior to the execution of the final Framework Agreement, that the Parties did not collectively discuss the introduction of the service (and ancillary items such as the aircraft to be use and the frequency of service), and such decisions on the new service was made independently by SIA.¹²⁸ The Parties were also unable to provide supporting documents that the Proposed JV is indispensable for the introduction of the SIN-DUS service. As such, CCS does not accept the Parties’ submission that the introduction of SIN-DUS was a result of the Proposed JV, i.e., there is no causal link between the JV agreement and this claimed benefit. However, CCS also notes the Parties’ submission that the SIN-DUS service will be facilitated by the Proposed JV, as the sustainability of the service and plans for increased

¹²⁸ Paragraphs 3.1 and 3.2 of the Parties’ further submission to CCS dated 19 July 2016.

capacity and frequency expansion in the future are contingent on the Proposed JV being in place. This has been considered separately as part of the claimed benefit on increased capacity and frequency above at paragraphs 139 to 140 .

148. In relation to [X] and the other additional SIA services from Singapore to Europe, CCS notes that the plans are tentative and have not been discussed with each partner. Therefore, CCS is of the view that this cannot qualify as a claimed benefit arising from the Proposed JV.
149. Given CCS's view that the introduction of new routes and services do not satisfy the first limb of the NEB Exclusion, there is no need to proceed with assessing this benefit under the second and third limbs.

Better corporate account offerings and benefits

150. In relation to this claimed benefit, CCS notes that corporate benefits resulting from the Proposed JV are not significantly different from the benefits that a normal traveller would enjoy. For instance, the Parties submitted that corporate travellers will be able to travel either on LH or SIA flights and enjoy the same benefits in respect of both. Also, corporate travellers will have more flexible travel options and can fly and return on different airlines. In this regard, CCS is of the view that there is no need to evaluate this claimed benefit separately.

Others

151. The Parties also claimed that the Proposed JV will lead to more competitive fares, an improvement of existing services and increased competition on the routes, particularly with respect to the Gulf Carriers. However, these claims have not been quantified or substantiated. As such, CCS will not proceed with assessing these benefits under the second and third limbs.

Second limb – restrictions which are not indispensable to the attainment of those objectives

152. In relation to the claimed benefits of increases in capacity and frequency, the Parties submitted that the Proposed JV is crucial to enable the potential realisation of the planned capacity increases. Access to LH's demand pool in Europe and conversely SIA's demand pool in Australia and South East Asia would be required in order to support the planned levels of capacity and service frequencies.

153. Without the Proposed JV, the Parties noted that capacity on the Revenue Share Routes would be less likely to increase organically. [X]. In relation to the other benefits - increased passenger numbers and tourists to Singapore and benefits to Singapore's economy, the Parties submitted that they will only materialise when LH is properly incentivised to move traffic through Singapore, i.e., through the Proposed JV which allows for revenue sharing on the trunk routes and supported by fare harmonisation creating metal neutrality, and enhanced prorate arrangements. Similarly for the claimed benefit of better accessibility through expanded code-sharing, the Parties noted that where they have agreed to cooperate to channel traffic over both of their networks in a metal neutral fashion, the concern about diversion of traffic is avoided and the Parties are thereby incentivised to expand code-sharing arrangements.
154. CCS accepts the Parties' submissions that, short of a Proposed JV, which incorporates schedule coordination, capacity management, inventory management, pricing and sales cooperation, there would be no incentive and it would not be possible in practice for the Parties to align their flights on the Revenue Share Routes, which will in turn lead to the claimed benefits as set out above.
155. In relation to the exclusivity clauses under the Proposed JV as set out in paragraphs 36 to 39 above, CCS notes the Parties' submission that each Party will not unreasonably object to the other's [X] is not likely to diminish the viability of the Proposed JV. CCS also notes the Parties' clarification that the restrictions in clauses 7.1.3 and 7.2.3 will not be applicable to [X] that do not relate to the scope of the Proposed JV (given that [X] would not directly, or potentially, undermine the commercial rationale for the Proposed JV).
156. CCS notes that the 'reasonableness' in the exercise of the exclusivity clauses would be subject to interpretation on the facts of each case. Arguably, any code-sharing arrangement involving the SQ or LH Home Markets could "potentially" undermine the Proposed JV since such code-sharing would always improve the connectivity of a third-party airline. However, in light of the Parties' submissions set out in paragraphs 40 to 43 above, CCS is of the view that, so long as the exercise of the exclusivity clauses are limited to the scope as set out in the Parties' clarifications, and to circumstances that would materially undermine the Proposed JV, such clauses would be reasonably necessary in protecting the commercial interests of the Proposed JV and accordingly, for the attainment of the economic benefits.

Third limb – afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question

157. In assessing this third limb of the NEB Exclusion, CCS notes paragraph 10.12 of Annex C to the Section 34 Guidelines states that CCS will take into account the degree of competition prior to the agreements, and also the reduction in competition that the agreements bring about. Accordingly, in a market where competition is already relatively weak, this factor may be more important. CCS also notes that the *EC Guidelines on the application of Article 101(3) of the Treaty* states that:

“...[u]ltimately the protection of rivalry and the competitive process is given priority over potentially pro-competitive efficiency gains which could result from restrictive agreements... When competition is eliminated, the competitive process is brought to an end and short-term efficiency gains are outweighed by longer-term losses stemming inter alia from expenditures incurred by the incumbent to maintain its position (rent seeking), misallocation of resources, reduced innovation and higher prices.”¹²⁹

158. In this regard, as highlighted in paragraph 102 above, in relation to the SIN-FRA and SIN-ZRH routes, CCS is of the view that SIA and LH are effectively each other’s closest competitors with persistently high combined market shares over an extended period of time, and competition would likely be eliminated in respect of a substantial part of the services on these two routes under the Proposed JV.

159. In relation to SIN-MUC and SIN-DUS, as highlighted in paragraph 103 above, CCS notes that SIA and LH do not directly overlap on these routes as only SIA operates direct flights with LH operating one-stop flights. The combined market shares on the SIN-MUC and SIN-DUS routes are also lower. In this regard, CCS is of the view that the Proposed JV does not afford the Parties the possibility of eliminating competition in respect of a substantial part of the services for these two routes.

160. In summary, having considered the NEB arguments and supporting documents put forth by the Parties, CCS is of the view that significant competition concerns remain in relation to the Revenue Share Routes of SIN-FRA and SIN-ZRH. In particular, CCS notes that the Proposed JV would afford the Parties the possibility of eliminating competition in respect of a substantial part of the services on these two routes.

¹²⁹ Paragraph 105 of the *EC Guidelines on the application of Article 81(3) of the Treaty*.

161. With regard to the 23 Relevant Indirect Routes, given that these routes would necessarily involve a Revenue Share Route as highlighted above in paragraph 106 above, CCS is of the view that any benefits that accrue on any of the Revenue Share Routes would naturally also likely to accrue on the 23 Relevant Indirect Routes. However, CCS also notes that the concern in relation to the displacement of Singapore-originating passengers as highlighted in paragraph 143 above would still remain. Notwithstanding, as highlighted in paragraph 105 above, CCS is of the view that the loss in competition between the Parties on these routes is not likely to be significant (given that there is no direct overlap between SIA and LH in respect of these destinations). As such, CCS is of the view that the claimed benefits by the Parties as a result of the Proposed JV would likely be sufficient to outweigh the loss of competition on the Relevant Indirect Routes.

VOLUNTARY COMMITMENTS BY THE PARTIES

Commitments

162. In response to the competition concerns raised by CCS on the Proposed JV, in particular on the SIN-FRA and SIN-ZRH routes, the Parties have provided the following voluntary commitments (the “**Commitments**”):
- (a) maintain capacity levels on the SIN-FRA and SIN-ZRH routes, at levels that existed prior to the Proposed JV (in January 2016);
 - (b) increase capacity on SIN-FRA services by an additional [X] seats, [X] on the route by [X];
 - (c) increase capacity on SIN-ZRH services by an additional 1,694 seats, through the up-gauging of LX aircraft on the route by 3 March 2017;
 - (d) carry a minimum number of Singapore SIN POS passengers on the SIN-FRA route, in each calendar year¹³⁰; and
 - (e) carry a minimum number of SIN POS passengers on the SIN-ZRH route, in each calendar year¹³¹.

¹³⁰ Calculated as 95% of the aggregate number of all SIN POS passengers carried by the Parties on SIN-FRAvv services in 2016.

¹³¹ Calculated as 95% of the aggregate number of all SIN POS passengers carried by the Parties on SIN-ZRHvv services in 2016.

163. The Parties submitted that the Commitments are subject to the following qualifications, where it would be temporarily suspended for the period where any of the following circumstances arise:

- (a) force majeure¹³²;
- (b) 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-FRA and/or SIN-ZRH 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-FRA or SIN-ZRH routes)¹³³;
- (c) delays in aircraft deliveries, resulting from circumstances outside the control of the Parties, which impact the ability of the respective airlines to implement the commitment capacity increases;
- (d) any development that could result in an imminent decline (i.e., within the next financial year) of expected quarterly revenue on either the SIN-FRA or SIN-ZRH routes by more than 5% compared to revenue from the relevant route; and
- (e) any development which either of the Parties assess could potentially have an adverse financial impact on either airline, requiring a cancellation or variation of services to ensure the continued financial viability of the airline.

164. CCS notes that the Commitments will be in place for the duration of the Proposed JV, including any prolongation or renewal of the Proposed JV. The Commitments will be released with immediate effect should the Proposed JV be terminated at any time.

¹³² Involving circumstances which directly or indirectly affect the SIN-FRA or SIN-ZRH routes, 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 (j) any other safety or security related developments which require cancellation of flights, or variations to flight schedules.

¹³³ 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.

165. CCS notes and accepts, after a period of five years from the date of the commencement of the Commitments, the Parties may make an application to CCS, supported by reasons, for any or all of the Commitments to be varied, substituted or released.
166. CCS also notes that the Parties will appoint, at their own cost, an independent auditor (“**Independent Auditor**”), subject to the approval of CCS on the identity of the Independent Auditor as well as on terms and conditions to be agreed with CCS. The Parties will appoint the Independent Auditor within three (3) months from the date of this Grounds of Decision.
167. The Independent Auditor will provide to CCS, on a yearly basis for each calendar year¹³⁴, a report which monitors the compliance by the Parties of the Commitments.
168. A copy of the Commitments can be found at **Annex B**.

Market Testing

169. CCS conducted a market testing of the Commitments between 10 and 17 October 2016 with the third-parties that had previously expressed competition concerns with the Proposed JV (during the earlier round of public consultation) on whether the Commitments would seek to address their concerns.
170. One third-party¹³⁵ responded to say that they do not have further competition concerns with regard to the Proposed JV. Two other third-parties¹³⁶ did not respond to CCS’s market testing.
171. [X] was of the view that the Commitments are generally acceptable but proposed the following commitments for the Parties to consider in place of the Commitments in paragraph 162(a) to (c) above to better safeguard competition [X]:
- (a) maintain current capacity for each of the four online points, i.e. besides FRA and ZRH, to also include MUC and DUS [X]. Specifically for SIN-ZRH, [X] proposes for the carriers to maintain seat capacity, taking into consideration the up-gauged capacity by LX;

¹³⁴ Within three (3) months following the completion of the calendar year to which each report relates, with the first report to be provided to CCS by 31 March 2018 (for the 2017 calendar year).

¹³⁵ [X]

¹³⁶ [X]

- (b) demonstrate progressive increment in seat capacity following the commencement of the Proposed JV at the regional level (i.e. LH Home Markets of Germany, Switzerland, Austria and Belgium); and
 - (c) regular evaluation of opening potential new routes from LH Home Markets to Singapore [X].
172. With regard to points (a) and (b) of [X] suggested commitments, CCS notes that given the competition concerns are only on the SIN-FRA and SIN-ZRH routes, it would be disproportionate for the Parties to commit to maintain capacity on all four of the Revenue Share Routes. Further, in relation to [X] point to take into consideration LX's up-gauge on the SN-ZRH route, CCS notes that in the Parties' Commitments to increase capacity on SIN-ZRH services by an additional 1,694 seats through the up-gauging of LX aircraft on the route will need to be fulfilled by 3 March 2017. The Parties would then have to maintain the increased capacity on the route beyond 3 March 2017 in order to continue to fulfil the Commitments to CCS.
173. With regard to point (c) of [X] suggested commitments, CCS is of the view that it would be difficult to be enforced as a commitment, and more importantly, it would again be disproportionate to the competition concerns identified.

CCS'S ASSESSMENT OF THE PARTIES' COMMITMENTS

174. CCS notes that the commitments to increase capacity on both the SIN-FRA and SIN-ZRH routes correspond to the Parties' claimed benefits that the Proposed JV would lead to increases in the capacity and frequency of services on these two routes. As a result, CCS notes that the firm commitment by the Parties to realise these specific claimed benefits on capacity increases post-Proposed JV would serve to alleviate CCS's concern on the likelihood of these claimed benefits being realised and also make the rest of the claimed benefits more likely to be realised.
175. With regard to the specific competition concerns that the Proposed JV will afford the Parties the possibility of eliminating competition in respect of a substantial part of the services on the SIN-FRA and SIN-ZRH routes, CCS is of the view that the commitments to maintain and subsequently increase capacities on the two routes would make it more difficult for the Parties to raise prices post-Proposed JV, as there are weaker incentives to do so with more seats to sell on both routes. In addition, CCS notes that while there are some barriers to entry, they are not insurmountable; and the Parties are still subject to some degree of competition by other airlines offering indirect

services on these routes. CCS is further of the view that while maintaining and increasing capacities would only have an oblique impact on competition as compared to a straightforward price commitment, this allows for CCS to strike a balance between addressing the competition concerns and yet allowing the Parties the flexibility to respond to changes in market conditions.

176. CCS also notes that the commitment to carry a minimum number of SIN POS passengers on both the SIN-FRA and SIN-ZRH routes would ensure that passengers originating and/or ending in Singapore would not be adversely affected by any increase in connecting passengers due to the Proposed JV. Such a commitment in absolute number rather than percentage terms would minimise disincentives for the Parties to carry more of the connecting passengers, so long as there are seats available. This directly addresses the concern highlighted in paragraph 143 that an increase in connecting passengers would leave fewer seats available for passengers originating and/or ending in Singapore, especially on the SIN-FRA and SIN-ZRH routes where the Proposed JV would result in a significant loss of competition.
177. CCS notes that there are certain qualifications as set out in paragraph 3 of the Commitments which allow for a temporary suspension of the said Commitments if these specified scenarios¹³⁷ were to be realised. CCS notes that the qualifications are clear, specific and relatively narrow in scope and purpose. CCS accepts that the Parties' ability to fulfil its commitments to maintain or increase capacity as planned would be severely hampered if the listed scenarios were to occur, most of which are outside the control of the Parties. Therefore, CCS is of the view that the qualifications are reasonable in the circumstances.
178. CCS also notes that paragraphs 3.10(3) and 3.10(4) of the Commitments allows for the Parties to apply to CCS to seek a variation, substitution or release of the commitments in relation to SIN POS passengers¹³⁸ should the Parties not meet or are of the view they would be unlikely to meet the said commitments. In the event of such an application, CCS will take into consideration all relevant factors that may include, *inter alia*, route-specific profit margins¹³⁹ and relative yield¹⁴⁰ between SIN POS passengers and connecting passengers in determining whether to grant the approval to vary, substitute or release the relevant commitments. This is to ensure that the need

¹³⁷ Paragraph 3.3 of the Commitments.

¹³⁸ Paragraphs 2.8 and 2.9 of the Commitments.

¹³⁹ Defined as $1 - (\text{Passenger cost per ASK} / \text{Passenger revenues per RPK})$. Unit cost is calculated based on ASK rather than RPK in order to avoid endogenous increase in unit cost caused by an exercise of market power to raise prices and reduce the number of passengers.

¹⁴⁰ Passenger revenues divided by RPK for SIN POS and non-SIN POS passengers respectively.

for a release or variation of the commitments arises from a genuine deterioration of market conditions, rather than an exercise of market power to reduce output.

179. In conclusion, CCS is of the view that the Commitments provided by the Parties would be sufficient to mitigate the competition concerns and to increase the likelihood that the claimed benefits would be realised. Similarly, in relation to any of the 23 Relevant Indirect Routes that involves a sector on the SIN-FRA or SIN-ZRH routes, the Commitments would also mitigate any competition concerns and increase the likelihood of realising benefits.

CCS'S DECISION ON THE PARTIES' APPLICATION

180. For the reasons stipulated in this decision, CCS concludes that as long as the Commitments are complied with, the Proposed JV will qualify for the exclusion set out in section 35, read together with paragraph 9 in the Third Schedule to the Act.

181. 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.

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

- (a) non-compliance to the Commitments;
- (b) significant change to the scope of the Proposed JV;
- (c) reduction in the number of competing carriers in the Relevant Markets;
- (d) material changes in the operations of the Parties which will have a significant impact on the Relevant Markets;

- (e) material changes in the factual information submitted by the Parties under this Application; and
- (f) changes in parties to the Proposed JV.



Toh Han Li
Chief Executive
Competition Commission of Singapore

Planned capacity and service frequency increases

Route	Pre-proposed JV				Post-Proposed JV				Planned change in capacity	Planned change in service frequency	Method
	SIA		LH		SIA		LH				
	Capacity	Frequency (weekly)	Capacity	Frequency (weekly)	Capacity	Frequency (weekly)	Capacity	Frequency (weekly)			
SIN-DUS	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
SIN-ZUR	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
SIN-MUC	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
SIN-FRA	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
Total	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]

Source: The Parties' submissions