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

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

Application for Decision by Emirates and Qantas Airways Limited

28 March 2013

Case number: CCS 400/006/12

Confidential information in the original version of this Decision has been redacted from the published version on the public register. Redacted confidential information in the text of the published version of the Decision is denoted by [✂]

EXECUTIVE SUMMARY

1. On 12 October 2012, CCS received an application for decision made under section 44(1)(b) of the Competition Act (Cap. 50B) (“the Act”) as to whether the proposed alliance (“the Proposed Alliance”) between Emirates (“Emirates”) and Qantas Airways Limited (“Qantas”) (collectively referred to as “the Parties”) will infringe the prohibition under section 34 of the Act.
2. After reviewing the submission and information provided by the Parties, and the feedback and inputs received from relevant third parties during a public consultation exercise, CCS finds that the Proposed Alliance will raise competition concerns. This is specifically with regard to the coordination on price and capacity for the routes that are operated by both parties involving Singapore; viz. the Singapore-Melbourne route and the Singapore-Brisbane route (the “Relevant Routes”).
3. The Parties have, however, provided CCS with a voluntary undertaking to maintain and under certain circumstances, to increase seat capacity on the flights operated by the Parties on the Relevant Routes. Based on the voluntary undertaking provided by the Parties on the Relevant Routes, CCS is of the view that the Proposed Alliance will result in net economic benefit and qualify for the exclusion as set out in section 35 of the Act. CCS’ decision that the Proposed Alliance is excluded is subject to conditions, such as there being no material change in circumstance which includes the Parties abiding by their voluntary undertaking.
4. The Decision was conveyed to the Parties on 28 March 2013. This sets out the Grounds of Decision.

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INTRODUCTION

1. This Decision sets out CCS' assessment of the application ("the Application") made under section 44(1)(b) of the Act, as to whether the Proposed Alliance between the Parties will infringe the prohibition under section 34 of the Act.
2. CCS' assessment and decision are based on the submissions and information provided by the Parties as well as information obtained from relevant third parties.

THE FACTS AND PARTIES' SUBMISSIONS

The Application for Notification of Decision

3. The Application concerns the Proposed Alliance between Emirates and Qantas involving international air passenger transport and freight services across the Parties' respective global networks which will be given effect through the execution of the Master Coordination Agreement ("MCA"). The Proposed Alliance is expected to be implemented by April 2013 to be in time for the commencement of the International Air Transport Association ("IATA") Northern Summer 2013 Scheduling Season.
4. On 6 September 2012, the Parties entered into the MCA in relation to the Proposed Alliance. On 12 October 2012, the Parties notified the Proposed Alliance to CCS under section 44(1)(b) of the Act for a decision on whether the Proposed Alliance will infringe the prohibition under section 34 of the Act. Subject to regulatory approvals from the relevant authorities, including CCS, the Parties will cooperate for an initial term of ten years as part of the MCA.
5. As part of CCS' assessment, four Requests for Information (the "RFIs") and email clarifications¹ were sent to the Parties and a public consultation was also held to seek third parties' views on how the Proposed Alliance will impact competition along routes that involved Singapore as an Origin-Destination city pair ("OD city pair"). CCS notes that the general sentiment from key stakeholders is that the Proposed Alliance may lead to the following competition concerns and reduce Singapore's status as an air hub:
 - a. The Civil Aviation Authority ("CAAS") believed that the Proposed Alliance between Qantas and Emirates will allow their Asian networks to grow at Changi Airport, especially through a deeper partnership with Jetstar Asia. CAAS notes that the Proposed Alliance could facilitate Qantas' plans to increase passenger services to Changi Airport and develop Changi Airport as its transfer hub for Asian passengers. Further, the Proposed Alliance could benefit Changi Airport as an air cargo hub to the extent that it successfully delivers increased cargo flows to and through Singapore to Australia and vice versa. However, CAAS was less certain if the Proposed Alliance was necessary for growing the Asian network and whether it would deliver several of the other key economic benefits claimed. For instance, CAAS noted that

¹ The four RFIs were separately sent to the parties on 7 November 2012, 28 November 2012, 13 December 2012 and 19 December 2012. The Parties responded on 6 December 2012, 11 December 2012, 21 December 2012 and 21 January 2013 respectively. In addition, email clarifications were also provided to CCS on 30 October 2012, 1 November 2012, 14 November 2012, 28 November 2012, 24 January 2013, 25 January 2013, 29 January 2013, 14 February 2013, 1 March 2013 and 19 March 2013.

Emirates' plans to grow its Asian network at Changi Airport hinges more on its direct collaboration with Jetstar Asia than on the Proposed Alliance.

- b. While Vital.Org acknowledged that the Proposed Alliance may lead to benefits such as cost savings and better optimisation of the resources for the Parties, such benefits may not be realised if the Parties cut back on inventory which may then result in negative outcomes for passengers.
 - c. Changi Airport Group shared that the Proposed Alliance may lead to a duopoly consisting of the Parties and Singapore Airlines for the Singapore-Melbourne and the Singapore-Brisbane services. In addition, the Proposed Alliance may not be beneficial to Singapore as an air hub since the flights to Singapore from Australia will be reduced and the transit traffic from Australia to Europe will be lost.
 - d. Air France noted that the planes used by Qantas for its services to Singapore from Australia will be downgauged, and also result in inconvenience to Air France's passengers who wish to fly from Singapore to Australia.
 - e. Thai Airways is concerned that the Proposed Alliance will lead to a duopoly consisting of Singapore Airlines and the Parties for the Singapore-Melbourne and Singapore-Brisbane services and is of the opinion that the claimed benefits by the Parties can be achieved regardless of the Proposed Alliance.
 - f. The Singapore Aircargo Agents Association expressed that the Parties will continue to face strong competition from Singapore Airlines in the provision of air freight services after the Proposed Alliance. However the Proposed Alliance is likely to be important for the Parties since it will help the Parties to improve its load factors and allow for joint sales of air freight capacities to new destinations. On whether ocean freight can be considered as a credible substitute to air freight, the Singapore Aircargo Agents Association considered that ocean freight is unlikely to be a possible substitute to air freight given that the products carried by the latter are usually more time-sensitive in nature.
 - g. SIA Cargo shared that the increase in freight capacity between Singapore and Australia as claimed by Qantas and the improvement in Emirates' connections to New Zealand would have materialised regardless of the Proposed Alliance.
6. In its submissions, the Parties claimed that the Proposed Alliance will not restrict competition or otherwise lead to a lessening of competition in any market, however defined, given the competition dynamics and economic realities of the global aviation industry. Further, the Parties indicated that the Proposed Alliance will result in benefits which will satisfy the test for exclusion under section 34 of the Act on the basis that they result in net economic benefit to Singapore.

Approval and Anti-trust Immunity from Authorities in Other Jurisdictions

7. On 27 March 2013, the Australian Competition and Consumer Commission (“ACCC”) issued a final determination proposing to grant authorisation to the application for authorisation by the Parties for five years. According to the final determination, the ACCC is satisfied that the public benefits identified by the Parties are likely to outweigh the public detriment constituted by the lessening of competition from the Proposed Alliance through the conditions of authorisation in place.²

The Parties to the Application

8. As indicated in its submissions to CCS, the Parties to the Application are Qantas and Emirates. A brief description of Qantas and Emirates is as follows.

Qantas Airways Limited

9. Qantas is Australia’s largest domestic and international airline. The Qantas Group employs approximately 35,000 people worldwide and operates more than 6,400 domestic and 920 international flights each week using Qantas and Jetstar³ (which is a low-cost carrier offering domestic and international services predominantly focusing on servicing price-sensitive consumers). Qantas also operates airline-related businesses including airport support services, catering, freight operations, loyalty programs, defence support services and engineering.
10. The Qantas Group is currently a party to the following alliances:
 - a. The **oneworld** marketing alliances; and
 - b. An alliance with British Airways under the Restated Joint Services Agreement which will be terminated on 31 March 2013.
11. Currently, Qantas operates a total of 45 flights between Singapore and Australia weekly whereas the Jetstar Group operates a total of 34 flights between Singapore and Australia weekly.

Emirates

12. Emirates is a full service airline⁴ that operates international air passenger transport and air freight services around the world. It is based in Dubai, one of the seven emirates of the United Arab Emirates, and is wholly-owned by the Investment Corporation of

²Source:

<http://transition.accc.gov.au/content/index.phtml/itemId/1078153/fromItemId/278039/display/acccDecision>
[Accessed on 27 March 2013]

³ The Jetstar Group consists of Jetstar Airways (which is a wholly-owned subsidiary under Qantas) and other joint ventures set up under the Jetstar Business Model (which includes Jetstar Asia, Jetstar Pacific, Jetstar Japan and Jetstar Hong Kong as of December 2012). In this respect, Jetstar Airways is a wholly-owned subsidiary under the Qantas Group and the Qantas Group also had minority shareholdings in each of the Jetstar joint ventures.

⁴ According to the report on the *Analyses on the European Air Transport Market – Airline Business Models, a Full Service Airline* is typically an airline that focuses on providing a wide range of pre-flight and onboard services, including different service classes, and connecting flights. Source: http://ec.europa.eu/transport/modes/air/doc/abm_report_2008.pdf [Accessed on 19 March 2013]

Dubai, which in turn is wholly-owned by the government of Dubai. Emirates is the world's largest international carrier by available seat kilometres and had carried 34 million passengers worldwide between 2011-2012.

13. In addition to flying operations, Emirates has substantial investment in Singapore through dnata, formerly known as Changi International Airport Services. dnata provides services in ground handling, freight, travel, IT solutions and flight catering at Changi Airport in Singapore. As part of its involvement in Singapore, dnata has also invested in ground support services equipment and cargo facilities.
14. Currently, Emirates operates a total of 14 flights between Singapore and Australia weekly. It operates 21 direct flights and 7 indirect flights between Singapore and Dubai weekly.⁵

The Proposed Alliance

15. The Parties entered into the MCA on 6 September 2012 and the Proposed Alliance is expected to be implemented by April 2013. Under the MCA, subject to regulatory approval, the Parties will coordinate across their global networks in relation to their passenger and freight operations for an initial term of ten years with respect to:
 - a. Planning, scheduling, operating and capacity;
 - b. Sales, marketing, advertising, promotion, distribution strategies, reservation priority and pricing (including fares, rebates, incentives and discounts) (for passengers, freight customers and agents);
 - c. Connectivity and integration of certain routes;
 - d. Codeshare and interline arrangements;
 - e. Control of inventories and yield management functions;
 - f. Frequent flyer programs;
 - g. All passenger-related aspects to provide a superior, consistent level of service to customers including ground services and lounge access;
 - h. Harmonising services and product standards in order to provide a seamless product to passengers;
 - i. Harmonising IT systems;
 - j. Joint airport facilities;
 - k. Potentially joint offices for sales activities;
 - l. Potentially other aspects of operations including ground handling, catering, joint procurement and flight operations;
 - m. Where appropriate and mutually agreed, making joint applications to authorities on operational matters; and
 - n. Services and activities that are required to facilitate any of the matters referred to in any of paragraphs (a) to (m).
16. The Parties submit that the exact scope of the Proposed Alliance is anticipated to evolve and may alter from time to time. In addition, the Parties have also broadly classified certain routes into Trunk and Non-Trunk routes, according to whether flying

⁵Source:

http://www.emirates.com/sg/English/destinations_offers/timetables/FlightScheduleResults.aspx?schedule=W&itinerary=R&DepStn=DXB&ArrStn=SIN&FromDate=130118&ToDate=130119&searchType=Schedule&h=386fec32cbfda3ddf0d64b2a6f6cbde78763 [Accessed on 19 March 2013]

operations will be coordinated from the outset. The scope of the Proposed Alliance includes price and capacity coordination in relation to all Trunk and Non-Trunk routes.⁶

Table 1: Qantas Trunk and Non-Trunk Routes

Route Type – Trunk
Australia to any destination (via Dubai), including Sydney-Dubai-London Heathrow and Melbourne-Dubai-London Heathrow
Australia to Dubai (including via any intermediary point)
Route Type – Non-Trunk
All other routes operated by Qantas

Table 2: Emirates Trunk and Non-Trunk Routes

Route Type – Trunk
Dubai to any point in Australia (including via any intermediary point)
Dubai to any destination via Australia including Dubai-Sydney-Auckland, Dubai-Brisbane-Auckland, Dubai-Melbourne-Auckland and Dubai-Bangkok-Sydney-Christchurch
Route Type – Non-Trunk
All other routes operated by Emirates

17. It is anticipated that the Proposed Alliance will enhance the cooperation between Emirates and the other airlines belonging to the Jetstar Group where appropriate.
18. Following the commencement of the Proposed Alliance, Qantas will terminate the Joint Services Agreement with British Airways and the code-sharing arrangement with Air France.⁷

Commercial Rationale for Emirates

19. According to Emirates, the Proposed Alliance will generate Australian domestic feeder traffic onto Emirates' global network and will materially facilitate capacity increases,

⁶ It is stated in the Parties' submissions that whenever possible, Qantas and Emirates will enter into freesale code-sharing arrangements on all Trunk and Non-Trunk Routes. The intention of the Parties is to sell tickets on codeshare services without preference to who is the operating carrier. Where it is not legally permissible to codeshare, the Parties will enter into appropriate interline agreements.

⁷ The Joint Services Agreement with British Airways differs from the code-sharing arrangements with Air France given that the Joint Services Agreement with British Airways involves coordination in the areas of scheduling, marketing, sales, cargo, pricing, holiday products, distribution and agency arrangements, frequent flyer programs, in-flight products, information technology, purchasing and associated service activities. [X]

scheduling optimisation and increased connectivity. In particular, with respect to Singapore, the Proposed Alliance will also enable Emirates to:

- a. Better connect Emirates' services from Dubai with Qantas' and Jetstar's services to Australia and New Zealand via Singapore, which will result in passengers of the Parties having more routing options via Singapore;
- b. Better connect Emirates' services from Dubai to other destinations in Southeast Asia via Singapore, particularly in conjunction with Jetstar Asia which may result in an increase in demand from passengers of the Parties;
- c. Code-share on Qantas' services between Singapore and Australia/New Zealand thereby providing more options to Singapore consumers; and
- d. Facilitate new connections and/or shorter connecting times at Brisbane and Melbourne on Qantas' domestic and regional services thereby allowing better connections for passengers travelling between Singapore and Australia, New Zealand and the South Pacific.

Commercial Rationale for Qantas

20. According to its submissions, Qantas does not have the ability to compete on its one-stop routes to Europe effectively against mid-point carriers based in Singapore, Hong Kong, the Middle East or China because of these carriers' immediate and significant geographical advantage by virtue of their accessibility to the hundreds of millions of passengers in close proximity to these mid-point hubs and their ability to aggregate passengers from multiple cities before taking them to other destinations.
21. For the above reason, Qantas has attempted over many years to negotiate an alliance with a (structurally advantaged) mid-point carrier, including Singapore Airlines, Cathay Pacific Airlines and Malaysia Airlines. However, it has not been able to strike an appropriate commercial agreement and, as a result, Qantas has continued to lose money and contract.
22. In this context, Qantas has submitted that the Proposed Alliance is an urgent strategic imperative as it will enable the operation of its one-stop routes to Europe via Dubai and will also prevent its European network from contracting further. In addition, Qantas has also submitted that the Proposed Alliance will enable Qantas to increase dedicated capacity to Singapore and allow the optimisation of Qantas' Southeast Asia network with Singapore as a key destination and hub.

LEGISLATIVE FRAMEWORK

The Section 34 Prohibition

23. 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").

24. An agreement involving, *inter alia*, directly or indirectly fixing prices, and/or limiting or controlling production or investment, are, by its very nature, regarded as restrictive of competition to an appreciable extent.⁸
25. However, section 35 of the Act read with paragraph 9 of the Third Schedule provides for an agreement with net economic benefit (“NEB”) to be excluded from the section 34 Prohibition if such an agreement contributes to:
- a. Improving production or distribution; or
 - b. Promoting technical or economic progress,
- but which does not:
- i. Impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives; or
 - ii. Afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods and services in question.
26. In accordance to regulation 21 of the Competition Regulations 2007, the burden of proof in establishing an NEB justification lies with the party claiming it.

COMPETITION ASSESSMENT

Theory of Harm

27. Currently, the flight operations of Qantas and Emirates overlap on two Singapore OD routes, namely the Singapore-Melbourne and Singapore-Brisbane routes. This means that Qantas and Emirates are horizontal competitors on these routes. Under the Proposed Alliance, the two competing players intend to coordinate on pricing, scheduling, planning, operating and capacity with respect to, *inter alia*, these two routes. This is akin to a price fixing or/and production control agreement. As per section 34(2) of the Act, such an agreement may have the object of the prevention, restriction or distortion of competition along the two routes.

The Relevant Markets

*Parties’ Submissions – Air Passenger Services versus Freight Services*⁹

28. While the Parties did not make an explicit submission on what constitute the relevant markets in its Application, CCS notes that the Parties appear to make a distinction between the market for air passenger services and the market for air freight services. In respect of the market for air passenger services, the Parties submitted that they are currently operating and will continue under the Proposed Alliance to operate directly overlapping services in the Melbourne-Singapore route and the Brisbane-Singapore route. The Parties did not make any submission suggesting that the relevant markets might be further sub-divided along other dimensions such as the classes of travel, the number of stop-overs or the timings of the flights.

⁸ Paragraph 3.2 of the *CCS Guidelines on the Section 34 Prohibition*.

⁹ The paragraph is based on Section 6.2 of the Parties’ submissions.

29. Similar to the submission on air passenger services, the Parties did not make any explicit submission to what could possibly constitute the relevant markets for air freight services. They submitted that they will remain constrained on the provision of air freight services between Australia and Singapore given the presence of competitors: Singapore Airlines and Etihad both carry bellyhold freight, while UPS, DHL and Federal Express provide dedicated freighter services from Australia to Singapore.
30. In addition, the Parties also made an assertion that since the majority of freight to and from Singapore is carried on passenger flights, it is likely that the level of competition in the air freight services market is affected by many of the same factors as for air passenger services.

CCS' Assessment – The Relevant Air Passenger Services Markets

31. CCS notes that typically the starting point for market definition relating to the provision of scheduled air passenger services is the OD city pair. This is because passengers generally want to travel to a specific destination and will not substitute another destination when faced with a small, non-transitory increase in price. Therefore each combination of a point of origin and a point of destination can form a separate market. This approach is consistent with CCS' previous decisions on integrated airline alliance agreements and this is also the approach adopted by the European Commission.¹⁰
32. Given that the section 34 Prohibition specifically concerns the prevention, restriction or distortion of competition *in Singapore*, CCS will focus on air passenger services involving Singapore OD city pairs which are covered under the MCA. CCS has identified the following OD city pairs where the Parties currently overlap and will coordinate with the commencement of the Proposed Alliance:
 - a. Singapore – Melbourne; and
 - b. Singapore – Brisbane.

These two routes form the Relevant Air Passenger Services Markets.

CCS' Assessment – The Relevant Air Freight Services Markets

33. In relation to air freight services, CCS notes that the market definition for air freight services typically differs from the OD city pair approach for air passenger services because air freight tends to be less time-sensitive than passengers, and usually involves trans-modal transportation to other destinations “behind” and “beyond” the points of origin and destination. This is consistent to the approach taken by the European Commission.¹¹
34. CCS also notes that the market for air freight services should be assessed on a uni-directional basis due to the differences in the demand for air freight services at each end

¹⁰ This is in line with CCS' past decisions on airline cooperation agreements. Refer to CCS Grounds of Decision for cases CCS 400/002/06, CCS 400/003/06, CCS 400/008/10, CCS 400/001/11, CCS 400/005/11 and CCS 400/001/12. See also European Commission's decisions in Case No COMP/M.3280 – Lufthansa/Swiss, Case No COMP/M.4439 – Ryanair/Aer Lingus and Case No COMP/M.3280 – Air France/KLM.

¹¹ See in paragraph 43 in Case No Comp/M.5141-KLM/ MartinAir.

of the route.¹² Based on interviews with the Singapore Aircargo Agents Association in the air freight industry, CCS understands that ocean freight is unlikely to be a possible substitute to air freight given that the products carried by the latter are usually more time-sensitive in nature.¹³

35. CCS is of the opinion that there is no need to further distinguish between providers of air freight services such as cargo airlines with dedicated freighter planes and airlines with only belly space as these companies typically compete with one another for businesses from the same customers.
36. With respect to the relevant geographical market, CCS finds that unlike air passenger services where markets are typically defined by OD city pairs, the movement of freight within Australia via ground transportation from and between major gateway cities is commonplace. As such, CCS is of the view that the relevant geographical market for air freight services under this Application should be based on uni-directional OD country pairs rather than city pairs.
37. Given that the section 34 Prohibition specifically concerns the prevention, restriction or distortion of competition *in Singapore*, CCS will focus on air freight services to and from Singapore that are covered under the MCA. CCS has identified the following markets where the Parties currently overlap and will coordinate with the commencement of the Proposed Alliance:
 - a. Singapore to Australia; and
 - b. Australia to Singapore.
38. These two markets form the Relevant Air Freight Services Markets. The Relevant Air Passenger Services Markets and the Relevant Air Freight Services Markets shall collectively be referred to as the “Relevant Markets”.

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

Parties’ Submissions

39. The Parties submitted that given the highly competitive industry in which airlines (either independently, or through alliances) aggressively pursue global strategies, the Proposed Alliance will not restrict competition or otherwise result in a lessening of competition among the existing competitors in any market, however defined. Specifically, the Parties indicated that there will be no competitive detriment arising from the Proposed Alliance in respect of both passenger and freight services because:

¹² In this respect, CCS notes that defining air cargo markets by OD city pairs may not be appropriate given that freighter planes operated by Emirates may operate on a multi-destination basis such as Dubai-Singapore-Sydney-Hong Kong-Dubai (and not the reverse direction). See flights EK9822 and EK9826 in Emirates’ Freighter Schedule. Source: <http://www.skycargo.com/english/Images/WTT%202013%20Freighter%20Schedule.pdf> [Accessed on 19 March 2013].

¹³ As shared by Singapore Aircargo Agents Association, time-sensitive products may not necessarily be perishable products. They may be manufactured goods that are exported by companies who practice inventory control on a “just in time” basis.

- a. The Parties will continue to be disciplined by a number of rivals which will act as effective constraints on the Relevant Routes;
 - b. Barriers to entry and expansion will remain low;
 - c. Irrespective of whether the Proposed Alliance proceeds, in the short to medium term, Qantas' services to London will be operated via Dubai; and
 - d. The counterfactual involved a material reduction in Qantas' services to London.
40. On the number of rivals which will act as an effective competitive constraint on the Parties, the Parties submitted that the Proposed Alliance will result in Qantas/Jetstar and Emirates having a combined share of 38% of all passengers travelling between Melbourne and Singapore, and a combined share of 37% of all passengers travelling between Brisbane and Singapore. This contrasted with the Singapore Airlines' market share of 59% and 56% of passenger traffic for the Singapore – Melbourne and Singapore – Brisbane routes respectively. The Parties also submitted that the market shares of Singapore Airlines, Scoot and Tiger Airways for air passenger services between Singapore and Australia have all increased over the last ten years.¹⁴
41. To support its claim that the Proposed Alliance will not restrict competition on the Relevant Routes, the Parties maintained that they will be effectively constrained by other rivals such as Singapore Airlines, Etihad, Malaysian Airlines, Scoot, Air Asia X and Tiger Airways. The Parties further claimed that the Proposed Alliance will provoke a strong competitive response from rival carriers who will fight to retain and gain market share that might be lost to the Parties' new ability to offer improved services across a wider network at sustainable competitive prices.¹⁵ In relation to freight services between Australia and Singapore, the Parties indicated that they will remain constrained by Singapore Airlines, Etihad and other integrators such as UPS, DHL and Federal Express who operate freighter planes from Australia to Singapore.
42. The Parties submitted that the barriers to expansion and entry remain low for both the air passenger services market and the air freight services market. In relation to the air passenger services market, the Parties pointed out that low barrier to entry and expansion is evidenced by the growth of low-cost carriers such as Tiger Airways, Jetstar Asia and Air Asia. From a freight perspective, the Parties pointed out that the low barriers to entry can be seen from the fact that freight capacity are often either introduced or cancelled depending on load factors. In addition, obtaining landing rights for freighter planes is usually less of a problem because these planes usually operate during non-peak periods.
43. The Parties said that the Proposed Alliance will not adversely affect competition on the Singapore – London route given that in the short to medium term, Qantas will no longer

¹⁴ The paragraph is based on Section 6.2 and 6.5 of the Parties' submissions.

¹⁵ Based on the Parties' submissions in section 6.3, the Parties pointed out that since Emirates' announcement that it would commence services from Adelaide to Dubai from November 2012, Singapore Airlines had immediately stepped up the marketing of its services from Adelaide. In particular, Subhas Menon (Singapore Airlines' Vice President for South West Pacific) reportedly said that the extra three flights a week Singapore added to existing services in July 2012 (to Adelaide) were a sign of things to come and that the new schedule would make it far more attractive for passengers to connect through Singapore, particularly to Europe.

provide direct services from Singapore to London irrespective of whether the Proposed Alliance proceeds.¹⁶

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

44. An agreement will fall within the scope of the section 34 Prohibition if it has as its object or effect the prevention, restriction or distortion of competition within Singapore. In this context, when an agreement has as its object the restriction of competition, it is unnecessary to prove that the agreement will have an anticompetitive effect in order to find an infringement of section 34 Prohibition.¹⁷ In assessing the object of an agreement, CCS considers the objective meaning and purpose of the decision in the economic context in which it is to be applied.¹⁸
45. Given that the Proposed Alliance allows the Parties to coordinate in pricing (relating to fares, rebates, incentives and discounts), scheduling, planning, operating and capacity, CCS is of the opinion that pricing coordination would be akin to a price fixing agreement, and capacity coordination would be akin to a production control agreement. In this respect, CCS is of the view that the coordination in pricing and capacity between the Parties will have the object of the prevention, restriction or distortion of competition ***within the Relevant Air Passenger Services Markets and the Relevant Air Freight Services Markets.***¹⁹
46. As set out at paragraph 2.20 of the *CCS Guidelines on the Section 34 Prohibition*, CCS is of the opinion that the price and capacity coordination within the Relevant Markets by the Parties would by their very nature be regarded as restrictive of competition to an appreciable extent. CCS will next consider whether the coordination within the Relevant Markets qualifies for the NEB exclusion under the Act.
47. Notwithstanding that it is not necessary to prove appreciable adverse effect on competition, CCS notes that, in this case, the Parties' combined market shares are:
 - a. 60.4% for Singapore –Melbourne air passenger services;
 - b. 58.5% for Singapore-Brisbane air passenger services;
 - c. [X] % for Singapore-Australia air freight services; and
 - d. [X] % for Australia-Singapore air freight services.

The aggregate market shares of the Parties exceed 20% in each of the Relevant Markets affected by the Proposed Alliance²⁰.

¹⁶The Parties also indicated that Qantas will discontinue its Singapore-Frankfurt services irrespective of whether the Proposed Alliance proceeds.

¹⁷ See *The Community v Interbrew NV and others (re the Belgian beer cartel)* in Case IV/37.614/F3 [2004] CMLR 2; *Argos Limited and Littlewoods Limited v OFT* in [2004] CAT 24 and CCS 500/003/08 *Bus Cartel Case* at paragraph 70.

¹⁸ *Compagnie Royale Asturienne des Mines SA and Rheinzink GmbH v Commission* [1984] ECR 1679 at paragraph 26 and CCS 600/008/06 *Pest Control Case* at paragraph 49.

¹⁹ In *European Night Services v Commission*, the General Court referred to agreements 'containing obvious restrictions of competitions such as price fixing, market sharing or the control of outlets' – T-374/94 etc [1998] ECR II -3141, [1998] 5 CMLR 718.

²⁰ Paragraph 2.19 in the *CCS Guidelines on the Section 34 Prohibition*.

Table 3: Market Shares for Singapore-Melbourne services

Airlines	Market Share
Singapore Airlines	37.30%
Jetstar Airways	24.70%
Qantas	18.90%
Emirates	16.80%
British Airways	0.70%
Malaysia Airlines	0.30%
Royal Brunei Airlines	0.30%
Other Airlines	1%
Total	100%

Source: Changi Airport Group/ IATA Airport IS

Table 4: Market Shares for Singapore-Brisbane services

Airlines	Market Share
Singapore Airlines	36.60%
Jetstar Airways	2.50%
Qantas	16.10%
Emirates	39.90%
British Airways	0.70%
Etihad	3.30%
Other Airlines	1.1%
Total	100%

Source: Changi Airport Group/ IATA Airport IS

Table 5: Market Shares for Singapore-Australia Air Freight Services (Belly-Hold and Freighter Planes) by the Parties and other airlines by alphabetical order

Airlines	Market Share
Qantas Airways	[✂]
Jetstar Airways	[✂]
Emirates	[✂]
British Airways	[✂]
Etihad	[✂]
Scot	[✂]
Silk Air	[✂]
Singapore Airlines	[✂]
Total	100%

Source: Changi Airport Group

Table 6: Market Shares for Australia-Singapore Air Freight Services (Belly-Hold and Freighter Planes) by the Parties and other airlines by alphabetical order

Airlines	Market Share
Qantas Airways	[X]
Jetstar Airways	[X]
Emirates	[X]
British Airways	[X]
Etihad	[X]
Scoot	[X]
Silk Air	[X]
Singapore Airlines	[X]
United Parcel Services	[X]
Total	100%

Source: Changi Airport Group

48. Given that non-Australian owned airlines are not allowed to operate domestic air passenger flights within Australia, the exclusive coordination between Emirates and Qantas may have an impact on competition in OD city pairs such as Singapore-Melbourne and Singapore-Brisbane which are key gateway cities to other domestic locations in Australia. This is because air passengers who choose to travel to other domestic cities in Australia may be less inclined to choose other airlines that are unable to offer onward connections through Melbourne or Brisbane. As such, the inability of the other airlines flying the Relevant Routes to aggregate air passengers for onward connections may be a key consideration in their willingness to increase capacity even though there are no 3rd/4th restrictions on air traffic between Singapore and Australia. This aggravates the adverse effects on competition on these two routes.

The Net Economic Benefit Exclusion

49. An agreement that falls within the scope of the section 34 Prohibition may have strong NEB justification. If so, it is excluded from the section 34 Prohibition.
50. In general, the assessment of the benefits flowing from an agreement will be made within the confines of each relevant market to which the agreements relate. However, where two (or more) markets are closely related, efficiencies generated in these separate markets may be taken into account.²¹

“Contributes to improving production or distribution or promoting technical or economic progress”

51. Paragraph 10.4 of Annex C to the *CCS Guidelines on the Section 34 Prohibition* sets out the criteria to be taken into account in using an NEB argument, viz:
- 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

²¹ Paragraph 10.1 of Annex C to the *CCS Guidelines on the Section 34 Prohibition*.

- c. The efficiencies must be of a significant value, enough to outweigh the anti-competitive effects of the agreement.

- 52. In evaluating the third factor, the likelihood and magnitude of the claimed efficiencies will need to be verified. The Parties are expected to substantiate each efficiency claimed, by demonstrating how and when each efficiency will be achieved. Unsubstantiated claims are not accepted. Further, the greater the increase in market power that is likely to be brought about by the anti-competitive behaviour, the more significant the benefits have to be.
- 53. The types of efficiencies stated in the criteria are broad categories intended to cover all objective economic efficiencies. There is considerable overlap between the various categories. There is no need therefore to draw clear and firm distinctions between the various categories.²²

“Not Imposing Restrictions which are not Indispensable to the Attainment of the Objectives”

- 54. Paragraph 10.9 of *Annex C to the CCS Guidelines on the Section 34 Prohibition* states that an agreement will not be regarded as indispensable if there are other economically practical and less restrictive means of achieving the efficiencies. Annex C of the *CCS Guidelines on the Section 34 Prohibition*, at paragraph 10.8, 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.”*
- 55. In this context, the Proposed Alliance or the Individual Restrictions would be considered as indispensable if their absence eliminates or significantly reduces the efficiencies or makes them much less likely to materialise. The Proposed Alliance or the Individual Restrictions 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.²³

Relevant markets for the assessment of NEB

- 56. Paragraph 10.1 of *Annex C to the CCS Guidelines on the Section 34 Prohibition* states that, in general, the assessment of benefits flowing from agreements would be made within the confines of each relevant market to which the agreements relate. However, when two (or more) markets are closely related, efficiencies generated in these separate markets may be taken into account.
- 57. In this case, the two relevant product markets, namely the Relevant Air Passenger Services Market and the Relevant Air Freight Services Market, are separate but closely related. As such, CCS will consider the efficiencies generated from the Proposed Alliance, both as a whole and by relevant product markets.
- 58. In this regard, CCS notes that [X] % of the air freight flown in the Relevant Air Freight Services Markets is carried by passenger planes that fly in the Relevant Air Passenger Services Markets. CCS is satisfied that any efficiencies arising from the Proposed

²² Paragraph 10.5 of Annex C to the *CCS Guidelines on the Section 34 Prohibition*.

²³ Paragraph 10.10 of Annex C to the *CCS Guidelines on the Section 34 Prohibition*.

Alliance in the Relevant Air Passengers Services Markets will also benefit the Relevant Air Freight Services Markets. Accordingly, CCS will focus on the Relevant Air Passenger Services Market in the assessment of the NEB.

Parties' Submissions - Promotion of Singapore as an Aviation Hub and Increased Dedicated Qantas Singapore Capacity – Flying To, Not Through Singapore²⁴

59. The Parties indicated in its submissions that the Proposed Alliance will result in increased dedicated Qantas' capacity for OD city pairs between Australia and Singapore, with total point to point capacity between Australia and Singapore projected to increase by approximately 42%. In its submissions, Qantas explained that irrespective of whether the Proposed Alliance proceeds, Qantas' services to Europe will be operated via Dubai in the short to medium term.²⁵ As a result, Qantas argued that by shifting its transiting airport for its European services from Singapore to Dubai, Qantas will be better able to schedule its flights for OD city pairs between Australia and Singapore based on *the benefit of trade with Singapore rather than being dictated by landing slots at London Heathrow*. This would allow an increase in dedicated capacity for OD city pairs between Australia and Singapore.
60. Further, the Parties indicated that the Proposed Alliance will enable both Qantas and Emirates to market their code on each other's services. This means that both carriers will be able to offer double daily frequency option within the Relevant Air Passenger Services Markets.²⁶

CCS' Assessment – the Increase in Qantas' dedicated capacity to Singapore by flying to, not through Singapore, can be achieved absent the Proposed Alliance.

61. With regard to Qantas' increase in its dedicated capacity for its services between Singapore and Australia (as a result of flying its Australia-European services via Dubai, instead of Singapore), CCS is of the opinion that such benefits cannot be attributed to a direct result of the Proposed Alliance, let alone the specific price and capacity coordination within the Relevant Air Passenger Services Markets by the Parties. CCS notes that Qantas had already announced that it will unilaterally terminate its Sydney-Singapore-Frankfurt services, its Melbourne-Singapore-London Heathrow services and will provide its London Heathrow services via Dubai irrespective of whether the Proposed Alliance proceed.²⁷ This goes to show that the increase in dedicated capacity would have materialised regardless of whether the Parties proceed with the Proposed Alliance or with the coordination in the Relevant Air Passenger Services Markets.
62. On the claimed benefits relating to the improved schedules and timing by Qantas, CCS notes that Qantas would have proceeded with the change in the schedules and timings for the services between Singapore and Australia regardless of the Proposed Alliance or the specific price and capacity coordination within the Relevant Air Passenger Services Markets. As submitted by the Parties, the improvements in schedules and timing of services between Singapore and Australia by Qantas are made possible because the new schedules are based on *the benefit of trade with Singapore rather than*

²⁴ The paragraphs are based on Section 5.2 of the Parties' submissions.

²⁵ Qantas currently operates flights to London and Frankfurt in Europe via Singapore from Australia.

²⁶ Answers to Question 6 in the Response dated 6 December 2012 to CCS' RFI dated 7 November 2012.

²⁷ Section 2.1 of the Parties' submissions.

being dictated by landing slots at London Heathrow. Qantas has stated that even in the absence of the Proposed Alliance, it will still unilaterally terminate its services between Singapore and London. Based on this scenario, Qantas' decisions on the flight schedules between Singapore and Australia would depend on the benefit of trade with Singapore, and this cannot be considered as a benefit that arises as a consequence of the Proposed Alliance.

63. With regard to the claimed benefit that the Proposed Alliance will allow the Parties to offer a double daily frequency option for the Singapore-Melbourne and Singapore-Brisbane services, CCS notes that the so-called additional "options" are not arising from a net increase in the frequency of physical flights operated by Qantas and Emirates combined. Instead, the increase is merely due to a cross-selling of each other's codes for the existing flights of the Parties. As such, this cannot be considered as a benefit that arises as a consequence of the Proposed Alliance.

Parties' Submissions - Accelerated Deployment of Emirates Capacity on Singapore Services²⁸

64. According to the Parties, the Proposed Alliance allows Emirates to expedite the deployment of additional capacity to Singapore given the expected increase in demand due to the enhanced connection opportunities Singapore provides. With the Proposed Alliance, the Parties claimed that passengers travelling on Emirates' Dubai-Singapore-Melbourne services will be expected to shift to Qantas' new non-stop Dubai-Melbourne services therefore increasing the number of seats for the Dubai-Singapore services and Singapore-Melbourne services.
65. In this context, the Parties illustrated that each time Emirates added non-stop capacity between Dubai and Australia; more seats become available on the one-stop Dubai-Australia services via Singapore, resulting in an immediate increase in Singapore-bound passengers. Specifically, the Parties pointed out that when Emirates upgauged its non-stop Dubai-Melbourne services (by 96 seats per flight), the number of passengers travelling on its Dubai-Singapore services (as part of the Dubai-Singapore-Melbourne services) increased by [X] seats per flight in the following months. Using the same reasoning, the Parties estimated that an additional non-stop Dubai-Brisbane services will also help to free up [X] seats per flight for its Dubai-Singapore services (as part of the Dubai-Singapore-Brisbane services).
66. In addition, the Parties are confident that Emirates' increase in capacity is likely to be matched by increased demand given that its Dubai-Singapore services operate at very high seat factors. Specifically, Emirates indicated that that its seat factors for Dubai-Singapore averaged [X] % in the 12-month period ending October 2012 and [X] % for peak months from June to September 2012. Over the same period, Emirates had also increased its capacity for its Dubai-Singapore services by [X] %.

CCS' Assessment – the Proposed Alliance does not lead to Accelerated Deployment of Emirates Capacity on Singapore Services

67. With regard to the claimed benefit that the Proposed Alliance or the coordination within the Relevant Air Passenger Services Markets will help to accelerate the deployment of additional Emirates capacity to Singapore, CCS notes that Emirates has unilaterally

²⁸ The paragraphs are based on Section 5.3 of the Parties' submissions.

upgraded its flights between Dubai and Singapore (EK354 and EK355) from B777 to A380 as of 1 December 2012²⁹, pre-dating the planned commencement of the Proposed Alliance in April 2013. In the announcement of this development on its website, Emirates made no mention of the onward connection to destinations in Australia in relation to this development.³⁰

68. CCS notes that Emirates' plans to upgauge its capacity for its Dubai-Singapore-Brisbane and Dubai-Singapore-Melbourne services could well be a result of demand conditions rather than the Proposed Alliance or the coordination within the Relevant Air Passenger Services Markets. This is because Emirates' Singapore-Dubai services have always operated at very high seat factors (averaging at [X] % for the 12 month period ending October 2012).³¹
69. On the contrary, if the Proposed Alliance was to allow some of the passengers travelling on Emirates' Dubai-Singapore-Brisbane and Dubai-Singapore-Melbourne services the option to switch to Qantas' new non-stop Dubai-Brisbane and Dubai-Melbourne services, this would mean that the seats vacated by these passengers would result in an increase in the number of seats for Emirates' Singapore-Dubai services and Singapore-Melbourne/Brisbane services. Emirates would first have to make up the loss of passengers to fill the vacated capacity, before it could accelerate the deployment of additional capacity beyond today's level.
70. In any case, CCS notes that the increase in capacity as argued by Emirates would be a direct result of the commencement of direct flights between Australia and Dubai, which is the part of the Proposed Alliance that is outside the Relevant Air Passenger Services Markets involving Singapore OD routes.
71. For the above reasons, CCS does not accept that the claimed benefit in relation to Emirates' increase in capacity between Dubai and Singapore is a direct result of the Parties' coordination in the Relevant Air Passenger Services Markets.

Parties' Submissions - Expedited Expansion of the Jetstar Asia Network and Increased Connectivity for Passengers Travelling To Asia from Singapore³²

72. The Parties explained they will market Singapore as a hub for same day services to and from Asia as a result of the Proposed Alliance. Specifically, the Proposed Alliance will facilitate increased connectivity between Emirates' services to and from Singapore and the services operated across Asia by the various airlines belonging to the Jetstar Group. In this respect, the Parties opined that the majority of the cities serviced by the various airlines belonging to the Jetstar Group would not be large enough to justify a direct Emirates service and can only be viably served via a gateway airport in the region, such as Singapore. An enhanced cooperation between Emirates and the various airlines within the Jetstar Group would facilitate and encourage Emirates passengers from Dubai and other countries to connect with these regional services via Singapore. In addition, the Parties indicated that as a result of the Proposed Alliance, a retiming of Qantas' flights, in conjunction with a Qantas code on existing Emirates services, will facilitate more "same day" connections throughout Asia and potentially allow

²⁹ Answers to Question 19 in the Response dated 6 December 2012 to CCS' RFI dated 7 November 2012.

³⁰ *Fly the Emirates A380 from Singapore from 1st December 2012* in **Annex A**

³¹ Answers to Question 11 in the Response dated 6 December 2012 to CCS' RFI dated 7 November 2012.

³² The paragraphs are based on Section 5.4 of the Parties' submissions.

passengers of both Qantas and Emirates to connect to other destinations via Singapore using the Parties' interline and code-share partners to other cities such as Siem Reap, Haikou, Kunming, Naning, and Hanoi. With the Proposed Alliance, Emirates may also facilitate more connections via Singapore to Bali (Denpasar) and other key destinations through the airlines within the Jetstar Group.

73. Finally, the Parties opined that the expanded network and the enhanced interconnectivity will also deliver benefits to freight customers which will improve the transit of time-sensitive freight such as perishable items.

CCS' Assessment – the Proposed Alliance may lead to Expedited Expansion of the Jetstar Asia Network and Increased Connectivity for Passengers Travelling to Asia from Singapore

74. With the Proposed Alliance, there is a possibility that there may be increased connectivity between Emirates' services to and from Singapore with the services across Asia operated by Jetstar Asia. In particular, CCS notes that the cooperation with Jetstar Asia will allow passengers who travel with Emirates to transit to locations such as Phnom Penh, Penang, Hangzhou and Taipei that it currently does not serve via Singapore. This would improve connections.³³ Similarly, passengers from Jetstar Asia would also be able to connect to Emirates' services to Colombo and Dubai, which are locations that it currently does not serve via Singapore, thereby enhancing Singapore's hub status.
75. While the Proposed Alliance may be necessary to the code-sharing arrangements between Emirates and Jetstar Asia, CCS notes that the price and capacity coordination within the Relevant Air Passenger Services Markets may not be indispensable to the expedited expansion of the Jetstar Asia network and the increase in connectivity claimed. Specifically, given that the cooperation between Emirates and Jetstar Asia involves only plain code-sharing agreement without price and capacity coordination within the Relevant Air Passenger Services Markets, it would be fair to say that the expedited expansion of the Jetstar Asia's network would have been achieved in any case, without requiring the price and capacity coordination proposed in the Relevant Air Passenger Services Markets.

Parties' Submissions - Increase in Tourism & Employment³⁴

76. Under the Proposed Alliance, the Parties submitted that Emirates will provide long-haul traffic feed direct to Singapore as well as for travel to destinations serviced by airlines within the Jetstar Group. This will increase the number of both transit and terminator passengers at Changi Airport, leading to increased airport revenues. In addition, the Proposed Alliance will allow Emirates to extend the option of flying to Perth, Sydney and Auckland via the air services of either Qantas or the Jetstar Group for the Singapore-Perth, Singapore-Sydney and Singapore-Auckland markets. This will allow Emirates' passengers to transit in Singapore for a few days, and increase inbound tourism to Singapore.
77. The Parties submitted that the Proposed Alliance will result in increased tourism and a greater number of passengers travelling to and from Singapore. This will lead to an

³³A list of destinations that Emirates currently serves in the Asia-Pacific region can be found in http://www.emirates.com/sg/English/destinations_offers/destinations/alldestinations.aspx?r=192393 [Accessed on 19 March 2013].

³⁴The paragraphs are based on Section 5.3 of the Parties' submissions.

increase in employment, Singapore's Gross Domestic Product ("GDP"), trade and government revenues.

CCS' Assessment – the Proposed Alliance does not lead to Increase in Tourism & Employment

78. CCS is of the view that any benefit in relation to an increase in tourism and employment would be a derivative of other underlying benefits claimed by the Parties in relation to capacity increase and feeder traffic. Given that these underlying benefit claims are not substantiated in the first instance, CCS does not accept that any consequential increase in tourism and employment would stand as a separate benefit on its own.
79. In any case CCS notes that the Parties are unable to quantify the likely contributions to GDP and employment in Singapore arising from the Proposed Alliance, or the increase in inbound tourism to Singapore. In particular, the Parties are unable to furnish any evidence showing likely changes in travelling patterns of passengers (such as spending a few days break in Singapore before flying to Perth, Sydney or Auckland via Qantas/airlines within the Jetstar Group). As such, CCS is of the view that the Parties have failed to demonstrate that the Proposed Alliance would directly result in an increase in tourism and employment in Singapore.

Parties' Submissions - Enhanced Economic Efficiencies³⁵

80. The Parties submitted that as the coordination contemplated by the Proposed Alliance matures, the Parties will be able to achieve higher aircraft utilisation, generate cost savings and improve operational efficiencies which may allow for more competitive fares to consumers in Singapore. In particular, where Qantas and Emirates have parallel operations on certain directly overlapping routes, the Proposed Alliance will enable the carriers to select aircraft to service joint passenger demand, thereby exploiting economies of scale in aircraft size and reducing unit costs.
81. In addition, the Proposed Alliance will achieve other forms of economic benefits by enabling the Parties to invest in improved facilities, better aircraft and other customer enhancements. Finally, cost savings and efficiencies will be delivered from having identical distribution platforms, IT systems and common marketing and sales activities.

CCS' Assessment – the Proposed Alliance does not lead to Enhanced Economic Efficiencies

82. CCS notes the Parties' submissions that the Proposed Alliance will allow the Parties to achieve higher aircraft utilisation, generate cost savings and improve operational efficiencies which may allow for more competitive fares to consumers in Singapore. In addition, it was also indicated that for overlapping routes, the Proposed Alliance will enable the Parties to select the appropriate aircraft to service joint passenger demand, thereby exploiting economies of scales and reducing unit costs.
83. In terms of redeployment of aircrafts, CCS is not convinced that the claimed economic efficiencies would be a result of the Proposed Alliance. As CCS observed above, both Qantas and Emirates have already redeployed its aircrafts, unilaterally and respectively, prior to the commencement of the Proposed Alliance. In terms of aircraft utilisation, CCS notes the Parties' submission that both Qantas and Emirates will be increasing

³⁵ The paragraphs are based on Section 5.7 of the Parties' submissions.

dedicated capacity for the Singapore OD segments via re-routing pass-through passengers elsewhere. With the projected increase in dedicated capacity, the Parties have not demonstrated in concrete terms how better aircraft utilisation is to be achieved.

84. While the Parties have claimed that the costs savings and operational efficiencies generated by the Proposed Alliance will lead to lower fares for consumers in Singapore, CCS notes that they have not been able to provide supporting evidence to demonstrate so.³⁶

Parties' Submissions - Enhanced Customer Experiences And Product Innovation³⁷

85. The Parties claimed that the Proposed Alliance will allow the Parties to inform and learn from each other, leading to further product and service improvements. In particular, the Parties will coordinate their product and service offerings to ensure a world-class, seamless premium end-to-end service to customers including through:
- a. Reciprocal lounge access;
 - b. Improved customer service and disruption handling – all itineraries will be included on the same ticket and fare rules and commercial policies will be aligned;
 - c. additional premium services³⁸; and
 - d. Joint corporate dealing/corporate travel procurement.
86. In addition, the Proposed Alliance will benefit approximately 200,000 Singapore-based members of both Emirates and Qantas' frequent flyer programs given the immediate expansion of opportunities to earn and redeem points across the combined Qantas and Emirates networks.

CCS' Assessment – the Proposed Alliance may lead to Enhanced Customer Experiences and Product Innovation

87. CCS accepts that under the Proposed Alliance, customers belonging to each of the Parties will enjoy:
- a. Reciprocal lounge access;
 - b. Improved customer services and disruption handling;
 - c. Additional premium services (such as priority check-in and boarding, chauffer airport transfers and priority baggage handling); and
 - d. Joint corporate dealing/corporate travel procurement.

³⁶ Answers to Question 5 in the Response dated 6 December 2012 to CCS' RFI dated 7 November 2012

³⁷ The paragraphs are based on Section 5.8 and 5.9 of the Parties' submissions.

³⁸ The Parties claimed that premium class passengers (including high tier frequent flyers) travelling on either of the Applicants' services to key domestic or international destinations will benefit from a range of premium services including priority check-in and boarding, chauffeur airport transfers (at selected destinations) and priority baggage handling.

88. CCS also notes that the Proposed Alliance will benefit approximately 200,000 Singapore-based members of both Emirates and Qantas' frequent flyer programs given the immediate expansion of opportunities to earn and redeem miles across the Parties' global networks.
89. While CCS is not raising objections to the coordination between the Parties on lounge access, customer service, disruption handling, check-in and boarding, airport transfers, baggage handling, corporate marketing and frequent flyer programmes, CCS notes that these benefits can be achieved without the price and capacity coordination that is being proposed within the Relevant Air Passenger Services Markets. In this respect, global marketing alliances such as Star Alliance, oneworld and the Sky Team have often offered these benefits to customers belonging to other partner airlines, without any specific price and capacity coordination requirements.

CCS' Assessment - the Coordination within the Relevant Air Passenger Services Markets is not indispensable to the Enhanced Customer Experiences and Product Innovation

90. CCS is of the view that the price and capacity coordination within the Relevant Air Passenger Services Markets is not indispensable to the enhanced customer experiences and product innovation. It is therefore not convinced that the Proposed Alliance will not have achieved this benefit for its customers across its global networks absent the price and capacity coordination within the Relevant Air Passenger Services Markets.
91. While the Parties have claimed that it would be confusing and impractical to be able to jointly price for the Australia-Singapore-Dubai-London route. CCS does not agree with this, and sees little benefit to passengers in the Singapore market arising from such joint pricing.

Parties' Submissions - Competitive Response from Rivals & Long Term Sustainability of Qantas³⁹

92. According to the Parties, the Proposed Alliance will benefit consumers by provoking competitive fares and product/service offerings from rival carriers. In particular, the Parties expect a strong, pro-competitive response from Singapore Airlines, Etihad, Malaysia Airlines, Virgin Australia, British Airways, Scoot and AirAsia. Given that the loss of any percentage of passenger shares has profit implications for a carrier, it is expected that there will be intensified competition for the marginal passenger on all relevant routes.
93. Finally, the Proposed Alliance, which involved Qantas linking with a structurally advantaged mid-point carrier for the first time, will improve the international competitiveness of Qantas, a key Australian business and iconic brand which makes a significant contribution to Singapore. In particular, the Parties claimed that a strong and efficient Qantas will be in the long-term interest of Singapore by providing comprehensive and sustained network coverage to Australia for Singaporean travellers and businesses.

³⁹ The paragraphs are based on Section 5.10 and 5.11 of the Parties' submissions.

CCS' Assessment – the Proposed Alliance does not lead to Competitive Responses from Rivals or lead to Long Term Sustainability of Qantas

94. CCS is of the view that there are competition concerns that would arise from price and capacity coordination in the Relevant Air Passenger Services Markets. It notes that the coordination between the Parties would result in a loss of independent rivalry between Qantas and Emirates in the Relevant Air Passenger Services Markets. In addition, CCS is unable to accept the argument that an increase in competition would arise from a restriction of competition by means of price and capacity coordination, given that they are akin to price fixing and production controls.

Parties' Submissions - Increase in Freight Capacity between Singapore and Australia⁴⁰

95. As a result of rerouting Qantas' European services via Dubai and having increased dedicated capacity flying between Singapore and Australia, the Parties opined that the Proposed Alliance will result in an increase of [X] % in terms of freight capacity between Singapore and Australia.
96. In addition, the Proposed Alliance will also increase scheduling flexibility by enabling both Qantas and Emirates to sell double daily frequency option between each of Singapore and Brisbane and Melbourne. The Parties opined that this will enable freight customers in Singapore to have increased choices in relation to when and how they send freight between Australia and Singapore with the option of morning and afternoon northbound departures.

CCS' Assessment – the Proposed Alliance does not lead to Increase in Freight Capacity between Singapore and Australia

97. CCS notes that freight capacity could be freed up on the Singapore-Australia routes, given that freight headed for Europe would go via Dubai. However, similar to the Relevant Air Passenger Services Markets, Qantas had already announced that it had unilaterally terminated its Sydney-Singapore-Frankfurt services, its Melbourne-Singapore-London Heathrow services and will also provide its London Heathrow services via Dubai regardless of whether the Proposed Alliance proceeds. It follows that the increase in dedicated capacity would have materialised regardless of whether the Proposed Alliance proceeds, or the price and capacity coordination within the Relevant Air Freight Services Markets.
98. With regard to the Parties' argument that the Proposed Alliance or the price and capacity coordination within the Relevant Air Passenger Services Markets will allow the Parties to offer a double daily frequency option within the Relevant Air Freight Services Markets, CCS notes that the benefit is achieved merely via cross-selling each other's existing flights rather than an aggregate increase in the frequency of physical flights between the Parties. As such, CCS does not accept that the claimed benefit is significant enough to outweigh the anti-competitive effects of the coordination within the Relevant Air Freight Services Markets.

⁴⁰ Answers to Question 1 and Question 2 in the Response dated 19 December 2012 to CCS' RFI dated 28 November 2012.

Parties' Submissions - Improving Connections for Freight Activities via Singapore⁴¹

99. According to the Parties, the Proposed Alliance will facilitate a Special Pro Rate Agreement (the "Freight SPA") between Qantas and Emirates to improve the movement of freight between points of sales and destinations that are not necessarily linked by either Qantas-only or Emirates-only services. In practice, the Proposed Alliance will allow the Qantas freight sales team to sell to destinations that are otherwise not possible. As an illustration, the Parties indicated that the Qantas freight sales team in Singapore would be able to sell freight to and from Singapore to London Heathrow even though Qantas no longer operates a Singapore-London service. In particular, the journey would be sold using Emirates on the Singapore-Dubai service and Qantas on the Singapore-London service which enables Singapore to become an effective transshipment point between the Qantas and Emirates networks.
100. Likewise, as a result of the Proposed Alliance, the Emirates freight sales team in Singapore will be able to sell and market additional destinations in both Australia and New Zealand (via Qantas' freight and passenger planes) using the Freight SPA between Qantas and Emirates, thus providing a new option for Singapore exporters and importers. [✂]
101. The Parties claimed that they would need the ability to discuss price, market opportunities and capacity in order to work collaboratively to best pursue customer opportunities across their networks and align or adjust joint capacity to better service customers' needs.⁴²

CCS' Assessment – the Proposed Alliance may not lead to the Improving Connections for Freight Activities via Singapore

102. CCS acknowledged that the Proposed Alliance will improve the movement of freight between points of sales and destinations that are not necessarily linked by either Qantas-only or Emirates-only services. Given that Qantas operates domestic flights within Australia, it is likely that the Proposed Alliance will minimise connection times for freight carried by Emirates to various destinations in Australia.
103. However, CCS is not convinced that price and capacity coordination within the Relevant Air Freight Services Markets is indispensable to the achievement of the NEB claimed.
104. For the provision of air freight services between Singapore to New Zealand via Australia, CCS is of the view that code-sharing arrangements between the Parties would be sufficient to ensure options for customers who wish to transport goods from Singapore to New Zealand using Emirates' services. CCS understands that airlines may enter into code-sharing arrangements for air freight services to jointly service common sectors.⁴³ In any case, CCS notes that price and capacity coordination within the Relevant Air Freight Services Markets may not provide any new options to Singapore

⁴¹ Answers to Question 1 and Question 2 in the Response dated 19 December 2012 to CCS' RFI dated 28 November 2012.

⁴² Answers to Question 1 in the Response dated 19 December 2012 to CCS' RFI dated 28 November 2012.

⁴³ Singapore Airline Cargo currently code-shares with China Cargo for air freight services to Bangkok and Beijing.

customers given that Emirates already operates the following services between Australia and New Zealand:

- a. Melbourne – Auckland (seven times weekly);
- b. Brisbane – Auckland (seven times weekly);
- c. Sydney – Auckland (seven times weekly); and
- d. Sydney – Christchurch (seven times weekly).⁴⁴

CCS' Assessment of the NEB Exclusion

105. In summary, CCS notes that the NEB claims are either not a result of the price and capacity coordination within the Relevant Markets or are not indispensable to the attainment of the NEB claims. Further, CCS is not convinced that the exclusion of the Relevant Markets from the MCA will jeopardise the integrity of the overall Proposed Alliance given that the Relevant Air Passenger Services Markets form only six out of the 319 trunk and non-trunk routes jointly served by the Parties.

VOLUNTARY UNDERTAKING BY THE PARTIES

106. In response to the competition concerns raised by CCS on the Relevant Markets as a result of the Proposed Alliance, the Parties provided an undertaking voluntarily to CCS in relation to the Relevant Markets (“the Undertaking”) to ensure that the Proposed Alliance will maintain a minimum e dedicated capacity to Singapore and to increase the capacity if certain conditions are triggered.

107. According to the Undertaking, the Parties will make available not less than 100% of the seat capacity for each of the OD city pair on a weekly basis for the entire duration of the Proposed Alliance:

- a. Qantas will provide 3290 seats and Emirates will provide 4956 seats for the OD city pair of Singapore-Melbourne (both ways) on a weekly basis; and
- b. Qantas will provide 3290 seats and Emirates will provide 4956 seats for the OD city pair of Singapore-Brisbane (both ways) on a weekly basis.

108. In addition for each of the OD city pair, the Parties may need to increase the seat capacities if the following conditions are met for any 12 month period on a rolling basis at the request of CCS:

- a. The Parties’ aggregated load factors exceeds [X] % for each of the OD city pair; and
- b. The Parties’ aggregated route profitability exceeds [X] % for each of the OD city pair;

109. In particular, CCS will conduct a review for an upward revision for each of the OD city pair when the Parties meet an aggregate load factor of [X] % **and** an aggregate route

⁴⁴ Source: http://www.emirates.com/sg/English/destinations_offers/destinations/alldestinations.aspx?r=192393 [Accessed on 19 March 2013].

profitability of above [x] % for any 12 month period on a rolling basis (the “trigger points”).

110. Specifically, the number of seats for the first revision will see the Parties increasing its capacity by [x] seats per week both ways (which is the difference between the [x] and [x] aircraft).
111. If the Parties meet the trigger points after the first revision, the second revision will require the Parties to increase its capacity by up to [x] seats per week both ways (which is the difference between the [x] and the [x] aircraft). In addition, if the Parties meet the trigger points after the second revision, the subsequent revision will require the Parties to increase its capacity by up to [x] seats per week both ways (which is the difference between the [x] and [x] aircraft).⁴⁵
112. The Undertaking provides for the Parties to apply to CCS for a variation of the seat capacities if there are:
 - a. Force Majeure Events
 - b. Exceptional Circumstances
 - c. Material Change in Market Conditions; or
 - d. Material Adverse Financial Performance
113. To ensure that the conditions in the Undertaking are complied with, the Parties will, at their own cost, appoint an Independent Auditor to report to CCS on the Parties’ compliance with the Undertaking.
114. If either though the report submitted by the Independent Auditor, or by other means, CCS assesses and finds that the Parties have failed to comply with the terms of the undertaking, CCS reserves the right to take action from the year the undertaking was not complied with.

CCS’ Assessment of the Undertaking- The Undertaking Leads to an Improvement in Production of Air Passenger Services & Freight Capacity for the Relevant Markets

115. CCS is of the view that the Undertaking provided by the Parties (and brought about by the Proposed Alliance) will result in an improvement in production in the Relevant Markets. CCS notes in particular that the Undertaking will ensure that, notwithstanding a decrease in total seat capacities supplied by the parties, the Parties commit to minimum seat capacities and will specifically increase the number of seats supplied by Qantas dedicated to passengers flying *to* and *from* Singapore as an origin or destination in the Relevant Air Passenger Services Markets, as opposed to transit passengers *via* Singapore.

⁴⁵ In the review for any subsequent increase in seat capacities after the second revision, the Parties will meet CCS in good faith to discuss the review and options for capacity changes.

Table 7 – Change in Seat Capacities for the Relevant Air Passenger Services Markets

Qantas ⁴⁶	Singapore-Melbourne		Singapore-Brisbane	
	O/D capacity	Total capacity ⁴⁷	O/D capacity	Total capacity
Pre-Alliance ⁴⁸	80,203 ⁴⁹	355,992	51,748 ⁵⁰	355,992
Post-Alliance ⁵¹	[X]	171,080	[X]	171,080
% change	+ [X] %	-52%	+ [X] %	-52%

Source: Changi Airport Group, IATA Airport IS, Qantas

CCS’ Assessment of the Undertaking- The Undertaking is Indispensable to the Improvement in the Production of Air Passenger Services & Freight Capacity for the Relevant Markets

116. Given that the nature of the Undertaking is reflective of the confidence of the parties in yielding the improvements in production in the Relevant Markets from the Proposed Alliance, CCS is convinced that the Undertaking would not have been made in the absence of the Proposed Alliance or in a lesser form of the same. It follows that there are no other feasible or practical ways of achieving the improvement in production of air passenger services with the same degree of certainty and hence the Proposed Alliance is indispensable.

CCS’ Assessment of the Undertaking- No Substantial Elimination of Competition in the Relevant Markets

117. Given the Parties have committed to seat capacities which lead to an improvement in production post the Proposed Alliance and together with the trigger points, CCS is convinced that the Undertaking will also help to mitigate any unilateral concerns such as a reduction in seat capacities by the Parties in the Relevant Markets. As such, CCS considers that the Proposed Alliance is unlikely to substantially eliminate competition in the Relevant Markets.

118. In addition, CCS notes that the Proposed Alliance will not substantially eliminate competition on the Relevant Markets as the Parties will continue to face competition from other carriers such as Singapore Airlines and Etihad. Specifically, CCS notes that Singapore Airlines continues to be a strong competitor in each of the Relevant Markets.

CCS’ DECISION ON THE PARTIES’ APPLICATION

119. CCS does not find that the Proposed Alliance in relation to the Parties’ operations along the OD city pairs outside the Relevant Markets to be objectionable under the Act. However, CCS finds that the price and capacity coordination between the Parties on the Relevant Markets will give rise to competition concerns.

⁴⁶ No change in the number of seats supplied by Emirates based on B777 aircraft deployed

⁴⁷ Based on daily two-way flights for 52 weeks a year

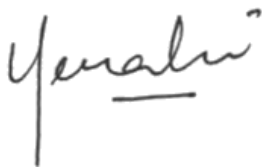
⁴⁸ Rolling 12 months ending September 2012

⁴⁹ Based on actual passenger data pre-alliance from Changi Airport Group, IATA Airport IS

⁵⁰ Based on actual passenger data pre-alliance from Changi Airport Group, IATA Airport IS

⁵¹ [X] % based on the Answers to Question 9 in the Response dated 6 December 2012 to CCS’ RFI dated 7 November 2012

120. CCS further finds that the Undertaking provided by the Parties will result in net economic benefit. Therefore, for as long as the Undertaking is complied with, CCS is satisfied that the Proposed Alliance (as expressly stipulated in the MCA as of 6 September 2012) will qualify for the exclusion set out in section 35 of the Act. Accordingly, CCS decides that the Proposed Alliance is excluded from section 34 Prohibition of the Act for as long as the Undertaking is complied with.
121. 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.
122. To this end, factors which CCS may consider as material changes of circumstance include, but are not limited to, the following:
- a. Material change or non-compliance to the conditions in the Undertaking provided by the Parties;
 - b. Significant change to the scope of coordination as expressly detailed in the MCA as of 6 September 2012;
 - c. Reduction in the number of competing carriers in the Relevant Markets;
 - d. Changes in the operations of the Parties which will have a significant impact on the Relevant Markets; and
 - e. Changes in Parties to the Proposed Alliance.



Yena Lim
Chief Executive
Competition Commission of Singapore

ANNEX A



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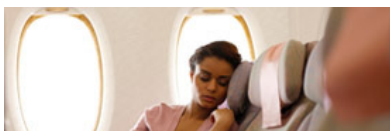
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