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

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

**Application for Decision by Singapore Airlines Limited and Air New Zealand Limited**

**17 April 2014**

**Case number: CCS 400/003/14**

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**Executive Summary:**

1. On 30 January 2014, CCS received an application made under section 44(1)(b) of the Competition Act (Cap. 50B) (the “Act”) as to whether a Proposed Strategic Alliance between Singapore Airlines Limited and Air New Zealand Limited (collectively referred to as the “Parties”) would infringe the prohibition under section 34 of the Act.
2. CCS’s assessment is that the Proposed Strategic Alliance will by its nature have the object of preventing, restricting or distorting competition in the Relevant Market and have an appreciable adverse effect on competition.
3. Nonetheless, CCS is of the view that the Proposed Strategic Alliance will result in efficiencies, being an increase in capacity in the Relevant Market, and benefitting Singapore’s status as an aviation hub, outweighing the anti-competitive effects of the Proposed Strategic Alliance. CCS is of the further view that the Proposed Strategic Alliance does not impose restrictions not indispensable to the attainment of the efficiencies.
4. The Proposed Strategic Alliance therefore falls within the Net Economic Benefit Exclusion set out in section 35, read with paragraph 9 of the Third Schedule to the Act.
5. CCS further notes that third-party comments on the Proposed Strategic Alliance were either positive or neutral, with most indicating that the Proposed Strategic Alliance is likely to enhance Singapore’s position as an air hub in the region by channelling greater passenger traffic through Singapore.
6. This Notice sets out CCS’s Grounds of Decision.



## **1 INTRODUCTION**

1. Singapore Airlines Limited (“SIA”) and Air New Zealand Limited (“Air NZ”) (individually, a “Party” and collectively, the “Parties”) entered into the Proposed Strategic Alliance (defined in paragraph 23 below) on 16 January 2014.
2. On 30 January 2014, pursuant to an application (“the Application”) made under section 44 of the Competition Act (Cap 50B) (the “Act”), the Parties sought a decision from CCS that the Proposed Strategic Alliance will not infringe the prohibition under section 34 of the Act. Third-party comments were sought through the public register<sup>1</sup>, as well as through letters directed at industry players, including customers and competitors of the Parties, for their views on the Proposed Strategic Alliance.
3. This Decision sets out CCS’s analysis and decision on the Application, based on the submissions and information provided by the Parties and relevant third parties that provided their feedback on the Proposed Strategic Alliance.

## **2 THE FACTS AND PARTIES’ SUBMISSIONS**

### **2.1 The Application**

4. The Application concerns the Proposed Strategic Alliance between SIA and Air NZ, which will be given effect to through the execution of a Strategic Alliance Agreement (“SAA”), and various associated Implementing Agreements (listed in paragraph 24 below).
5. Further to Clause 6.2 of the SAA, obligations of the Parties under the Proposed Strategic Alliance will not come into force until the requisite regulatory approvals from Singapore and New Zealand have been obtained. The Parties have therefore submitted that commencement of the Proposed Strategic Alliance is conditional upon, *inter alia*, CCS issuing a decision that the Proposed Strategic Alliance does not infringe section 34 of the Act.
6. The Parties are of the view that the Proposed Strategic Alliance does not have the object or effect of appreciably preventing, restricting or distorting competition in any markets in Singapore, and would, in any event, benefit from the exclusion in paragraph 9 of the Third Schedule to the Act (the “Net Economic Benefit Exclusion”).<sup>2</sup> Notwithstanding, the Parties have made the Application to obtain commercial certainty with respect to the Proposed Strategic Alliance.

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<sup>1</sup> <http://www.ccs.gov.sg/content/ccs/en/Public-Register-and-Consultation/Public-Register-and-Consultation-items/proposed-strategic-alliance-between-singapore-airlines-ltd-and-a.html>.

<sup>2</sup> Paragraphs 2.5.1 to 2.5.3 of Form 1.



## 2.2 The Parties

### 2.2.1 SIA

7. The principal activities of SIA consist of (through itself or its subsidiaries) the provision of passenger and cargo air transportation services, engineering services, training of pilots, air charters, tour wholesaling and related services. SIA is a full-service airline and is one of the partner airlines of the Star Alliance. SIA is a Singapore-based airline offering scheduled passenger services to more than 62 destinations in Asia, North America, Australia, Europe and Africa using a fleet of 100 wide body aircraft, as at 1 January 2014.
8. SIA is a public company listed on the Mainboard of the SGX-ST. Its wholly-owned subsidiaries include:-
  - a. SilkAir (Singapore) Private Limited (“SilkAir”), which offers Economy and Business Class flights to 45 destinations within the Asia-Pacific region, with a fleet of 24 narrow body aircraft on short haul services within Asia. SilkAir is not part of the Star Alliance Partnership;
  - b. Scoot Pte. Ltd. (“Scoot”), which is a medium- and long-haul low-cost airline based in Singapore. Scoot was established in 2011 and commenced operations in June 2012. Scoot is not part of the Star Alliance Partnership. Scoot currently operates medium- and long-haul no-frills direct flights between:
    - i. Singapore to Bangkok, Gold Coast, Hong Kong, Nanjing, Perth, Sydney, Taipei and Tianjin;
    - ii. Qingdao to Shenyang; and
    - iii. Taipei to Seoul and Tokyo; and
  - c. SIA Cargo, which provides air freight transportation services worldwide.
9. As at 25 September 2013, SIA holds a 19.83% stake in Virgin Australia Holdings Limited (“Virgin Australia”).<sup>3</sup>

### 2.2.2 Air NZ

10. The principal activities of Air NZ consist of (through itself and its subsidiaries) the provision of passenger and air transportation services. Air NZ also offers engineering services that include aircraft, air motive, component maintenance, repair, and overhaul services. It also provides ground handling, booking system, travel wholesaling and retailing services.

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<sup>3</sup> Virgin Australia Holdings Limited Annual Report 2013.



11. Air NZ is New Zealand's national flag carrier, and offers air services in New Zealand and internationally. In the 12 months prior to the Application on 30 January 2014, Air NZ has carried over 13 million sector passengers on a network of 54 domestic and 34 international routes, and has on average 530 departures per day across the network.
12. Air NZ has three subsidiaries, namely Air Nelson Limited, Eagle Airways Limited and Mount Cook Group Limited, which operate regional flights within New Zealand under the Air NZ Link brand. These three companies carry almost 50% of Air NZ's total customers within New Zealand.
13. The New Zealand Government owns just over 53% of Air NZ, with the remainder owned by private investors<sup>4</sup>. Air NZ is listed on the New Zealand and Australian stock exchanges. The Air NZ board is comprised of independent directors, and as such, operates with no influence from the New Zealand Government as its majority shareholder.
14. As at 25 September 2013, Air NZ holds an equity share of 19.92% in Virgin Australia.<sup>5</sup>

## **2.3 Past and Existing cooperation between the Parties**

### **2.3.1 Members of the Star Alliance**

15. Both Air NZ and SIA are members of the Star Alliance. The Star Alliance was established in 1997, and currently has 26 members. The Star Alliance provides customers of its member airlines access to a worldwide route network, and allows frequent flyers of any member airline to earn and use frequent flyer points and access benefits across the range of Star Alliance partners.
16. The Star Alliance delivers the following benefits to Air NZ and SIA members who qualify as Star Gold (Airpoints Gold and Gold Elite, and Krisflyer Elite Gold and PPS members):
  - a. lounge access for Star Gold members (and one guest per member) when travelling on Economy Class on a Star Alliance airline;
  - b. priority reservations wait-listing (also available to Star Silver members) allowing prioritisation in any waitlist for a flight;
  - c. priority standby (also available to Star Silver members) when standby is available on a flight, where Star Gold and Star Silver members are prioritised;
  - d. priority check-in at designated Star Alliance Gold or Business Class check-in;

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<sup>4</sup> The NZ Superannuation fund also holds just under 2% interest in Air NZ.

<sup>5</sup> Virgin Australia Holdings Limited Annual Report 2013.



- e. baggage tagged priority and, where possible, will be available amongst the first from the flight for collection;
  - f. additional baggage of up to 20 kilogrammes or one piece; and
  - g. priority boarding.
17. As SilkAir is not a member of the Star Alliance, the above benefits do not apply to Air NZ passengers travelling on SilkAir.

#### 2.3.2 Seat Swap and Codeshare Arrangements

18. SIA and Air NZ have previously cooperated on the sectors operating directly between Singapore and New Zealand. In November 1997, Air NZ and SIA entered into a “seat swap” arrangement, whereby each airline marketed an identical number of seats on each other’s aircraft. There was no sharing of revenue or costs, but limited codeshare on beyond/behind routes, Frequent Flyer Program (“FFP”) reciprocity and joint pricing. The “seat swap” arrangement was terminated in 2002, although a codeshare arrangement remained in place for SIA sales onto Air NZ domestic and trans-Tasman services.
19. The “seat swap” arrangement was terminated due to the difference in services provided by each airline, with Air NZ operating a Boeing 767-300 aircraft and SIA operating Boeing 747-400 and 777-200 aircrafts. Under the “seat swap” arrangement, Air NZ primarily operated the Singapore-Christchurch route and SIA primarily operated the Singapore-Auckland route. The significant disparity of the on-board features of the different aircrafts meant that customers were not indifferent to travelling on either airline, which created difficulties for the “seat swap” arrangement.
20. Under the current codeshare agreement between Air NZ and SIA entered into on 1 August 2008, which evolved from the codeshare agreement between Air NZ and SIA in 2002, SIA has its code on nine New Zealand domestic sectors and nine Trans-Tasman sectors operated by Air NZ for SIA sales onto these Air NZ services. SIA currently markets and operates part of the following one-stop origin and destination (“O&D”) city-pair routes under the codeshare arrangement with Air NZ:
- a. Singapore-Christchurch (via Auckland);
  - b. Singapore-Dunedin (via Auckland or Christchurch);
  - c. Singapore-New Plymouth (via Auckland);
  - d. Singapore- Palmerston North (via Auckland);
  - e. Singapore-Queenstown (via Auckland or Christchurch); and
  - f. Singapore-Wellington (via Auckland or Christchurch).



21. While SIA has its code on certain Air NZ flights, Air NZ does not currently, and has submitted that it would not in the future, codeshare on SIA's network from New Zealand to Singapore in the absence of the Proposed Strategic Alliance, which contemplates revenue-sharing on the Alliance Sectors.<sup>6</sup> [REDACTED]

### 2.3.3 "Four Corners Asia" Offered by Air NZ

22. In addition to the above arrangements, Air NZ presently markets a "Four Corners Asia" product [REDACTED]

8 [REDACTED]

## 2.4 The Proposed Strategic Alliance

23. On 16 January 2014, the Parties entered into the SAA 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:

- a. Alliance Sectors; and
- b. Cooperation Routes<sup>9</sup>,

through the SAA and its Implementing Agreements (collectively referred to as the "Proposed Strategic Alliance").

24. Clause 4.2 of the SAA requires the Parties to use all reasonable endeavours to conclude the Implementing Agreements as soon as possible following receipt of regulatory

<sup>6</sup> An "Alliance Sector" is a direct sector between Singapore and New Zealand.

<sup>7</sup> Paragraph 1.1.14 of Form 1.

<sup>8</sup> <http://www.airnzagent.co.nz/assets/agents/fare-advice/asia/y4crasa-four-corners-asia-econ-15jul11.pdf>.

<sup>9</sup> "Cooperation Routes" means collectively the Alliance Routes and such additional routes which are only subject to the Codeshare Agreement within the scope of the Proposed Strategic Alliance. "Alliance Routes" are routes between (1) destinations in New Zealand and the jurisdictions behind New Zealand, and (2) Singapore and the jurisdictions behind Singapore as set out in the SAA that includes an Alliance Sector and a Feeder Route (if connecting). "Feeder Routes" means:

- (i) all Air NZ operated domestic sectors in New Zealand;
- (ii) all Air NZ operated sectors to or from any Air NZ Covered Jurisdiction other than New Zealand;
- (iii) all SIA or SilkAir operated sectors to or from any SIA Covered Jurisdiction other than Singapore;

which are sold as part of a connecting international journey on the Alliance Routes.



approvals in New Zealand and Singapore. Following the SAA, the Implementing Agreements which would be entered into by SIA and Air NZ to give effect to the SAA include the following:

- a. Codeshare Agreement to expand the Parties' existing limited codeshare arrangements [REDACTED], and includes the operational arrangements as between the Parties on the Cooperation Routes (being the Alliance Routes and other routes subject to the Codeshare Agreement);
- b. Special Prorate Agreement(s) to enhance the Parties' existing special prorate<sup>10</sup> agreement, [REDACTED];
- c. Premium Customer Handling and Lounge Agreement to enhance the Parties' existing arrangements pursuant to Star Alliance minimum requirements to provide reciprocal premium customer handling, including [REDACTED]<sup>11</sup>;
- d. FFP Agreement(s) to enhance the Parties' (and SilkAir's, where applicable) existing frequent flyer programme agreement, including extending FFP arrangements to the SilkAir network; and
- e. Slot Transfer Agreement to set out the arrangements by which the Parties will exchange the relevant slots in order to facilitate operations on the Alliance Sectors by Air NZ.

25. CCS understands from the Application that the Parties have executed the Codeshare Agreement and the Slot Transfer Agreement on 16 January 2014. CCS also understands that the Parties have not yet agreed on the final terms of the Special Prorate Agreement(s), the Premium Customer Handling and Lounge Access Agreement, and the FFP Agreement(s) and the Parties have submitted that they intend to ensure that these agreements reflect the benefits that are practical and appropriate to the Proposed Strategic Alliance.

## **2.5 Content of the Proposed Strategic Alliance**

26. The Proposed Strategic Alliance comprises a number of joint activities, differentiated according to routes operated by the Parties. The Proposed Strategic Alliance would

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<sup>10</sup> Prorates may be charged by an operating carrier to the marketing carrier for carriage provided.

<sup>11</sup> Covered Jurisdictions refer to both the SIA Covered Jurisdictions and the Air NZ Covered Jurisdictions, as set out in Schedule 2 of the SAA, or as agreed by the Parties in accordance with the SAA.



involve varying levels of coordination between the Parties which would include, *inter alia*,:

- a. revenue sharing;
- b. coordination of pricing; and
- c. coordination of capacity and scheduling.

27. In summary, the Parties propose to implement:

- a. in relation to services operated on Alliance Routes and in the Covered Jurisdictions:
  - i. reciprocal codesharing;
  - ii. joint pricing and coordinated revenue management;
  - iii. joint sales and marketing;
  - iv. optimising connection requirements for Feeder Routes to maximise performance of the Proposed Strategic Alliance;
  - v. aligning frequent flyer programmes and premium customer handling (including lounge access), the terms of which are set forth in separate implementing agreements; and
  - vi. joint procurement as deemed necessary and appropriate by the Parties;
- b. in relation to services operated on the Alliance Sectors, all of the coordination noted above as well as:
  - i. revenue sharing;
  - ii. network planning including scheduling, routing, capacity, frequency of flights and aircraft types;
  - iii. coordinating operational requirements;
  - iv. aligning airport operations;
  - v. to the extent practical, harmonise the customer experience; and
  - vi. joint procurement as deemed necessary and appropriate by the Parties; and
- c. in relation to Cooperation Routes other than Alliance Routes, codesharing under the Codeshare Agreement.

28. The Parties have also expressed an intention for current flights operated by SIA using B777-200ERs for the Auckland-Singapore route to be withdrawn and replaced with a similar service by Air NZ using B777-200ERs under the Proposed Strategic Alliance.



The Parties intend for SIA to operate seasonal flights on the Auckland-Singapore route using an A380 and to continue operating the daily Christchurch-Singapore route using B777-200ERs.

## **2.6 Commercial Rationale of the Proposed Strategic Alliance**

29. The Parties have entered into the SAA as they have determined that there are significant consumer and economic benefits, and efficiencies that can be achieved through close and long-term commercial cooperation which goes beyond the existing arrangements between SIA and Air NZ.
30. Specifically, the Parties have submitted that their objectives in entering into the SAA are to provide, *inter alia*, the following benefits:
  - a. sustainably increase capacity of services on Alliance Sectors and offer consumers greater access to low fare inventory;
  - b. provide consumers with greater network and loyalty benefits than would be available under the Parties' existing arrangements as members of the Star Alliance;
  - c. harmonisation of service standards and sales policies of the Parties, including fares, discounts and handling of groups, in Covered Jurisdictions in order to take full advantage of the benefits of the Proposed Strategic Alliance, and in a manner which promotes an efficient and clear customer service;
  - d. offer improved services, which are expected to result in the Parties achieving greater overall combined passenger numbers and combined revenue from their operations on the Alliance Routes than they could on a stand-alone basis;
  - e. offer a wider choice of journey options to passengers by increasing frequencies and coordinating networks and schedules on the Alliance Sectors, and through codesharing on the Alliance Routes;
  - f. expand the reach of the Parties' networks through codesharing on the Alliance Routes, in particular, on Air NZ's network, through the introduction of codesharing on SIA and SilkAir services;
  - g. develop new Alliance Sectors;
  - h. provide consumers with access to:
    - i. a larger inventory of seats, including in the lowest fare booking classes;
    - ii. online service to more destinations;
    - iii. a greater selection of routings; and
    - iv. lower overall average fares, through access to more lower priced inventory;



- i. cooperate in generating other service enhancements and efficiencies for customers, including:
    - i. seamless transfers between flights operated by each of the Parties;
    - ii. improved access to lounge facilities;
    - iii. improved recovery times in the event of a disruption; and
    - iv. improved benefits accrual and redemption by members of each Party's respective frequent flyer schemes (including SilkAir) when travelling on the other Parties' services;
    - v. achieve increased load factors, increasing overall operational efficiency and hence reducing operating costs per passenger;
  - j. cooperate in achieving cost savings, cost sharing and other efficiencies which should lower the overall operating costs on the Alliance Routes; and
  - k. joint procurement, as deemed necessary and appropriate by the Parties.
31. The parties submit that the Proposed Strategic Alliance will put Air NZ and SIA in a stronger position to compete with the recent alliance between Qantas Airways Limited ("Qantas") and Emirates (the "Qantas/Emirates alliance"). As submitted by the Parties, the Proposed Strategic Alliance seeks to provide for Air NZ and SIA customers a similar network as that in the Qantas/Emirates alliance, which was intended to create a seamless premium global air services operation that better connects New Zealand to Australia, Europe, including the UK, the Middle East and Northern Africa, as well as other potential regions in the future (subject to air traffic rights), by bringing together two complementary brands, networks and business models.

#### **SIA's Commercial Rationale**

32. SIA views the Proposed Strategic Alliance as an opportunity for penetration into the New Zealand and Pacific Rim markets, and to grow and develop services and traffic flow within the Alliance Sectors. These would otherwise have been difficult to achieve at the individual level.
33. With the Proposed Strategic Alliance, SIA submits that it will be able to increase its network reach and provide more connecting and convenient options for customers within domestic New Zealand, and behind and beyond markets. SIA will be able to achieve potential capacity growth by introducing an A380 aircraft to service the Auckland-Singapore sector in place of the B777-300 aircraft presently deployed (an increase from 278 seats to 471 seats).
34. By combining services including codeshare opportunities with Air NZ, SIA will be able to efficiently grow the network traffic between Singapore and markets beyond and behind Singapore including Europe, India, Southeast Asia, South Africa and the UK.



## Air NZ's Commercial Rationale

35. The core rationale of the Proposed Strategic Alliance is to increase the number of passengers travelling on the Parties' combined services. The commercial arrangements achieve this by, *inter alia*, incentivising the deployment of additional capacity on the Alliance Sectors.
36. Under the Proposed Strategic Alliance, capacity growth could be enabled through:
- combining each Party's distribution and sales strength in their respective home markets to grow traffic on the Alliance Routes;
  - combining services between the Parties with expanded codesharing that will provide customers (in particular, New Zealand outbound customers for Air NZ and New Zealand inbound customers for SIA) with a greater network, with more connecting options for behind and beyond markets; and
  - in doing the above, attracting more passengers, including higher yielding passengers who value additional frequencies and connections, increasing load factors and revenue.
37. For Air NZ, the Proposed Strategic Alliance also provides an opportunity for efficient, sustainable growth of its Pacific Rim network, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
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[REDACTED]
  - [REDACTED]

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<sup>12</sup> [REDACTED]  
[REDACTED]







44. CCS understands that as at the time of this decision, the NZ MOT is deliberating on the Parties' submissions, as well as third-party comments received on the Proposed Strategic Alliance.

## **2.9 Singapore's Aviation Landscape<sup>16</sup>**

45. Singapore is a liberal aviation port. Airlines have full flexibility to respond to market conditions and opportunities. Passengers and shippers have wide travel and flight options at competitive rates. Singapore is also a popular transfer hub for international travellers and shippers. Foreign airlines operating in and out of Singapore can use it as a hub for services to the region and beyond.
46. To date, Singapore has established Air Services Agreements ("ASAs") with more than 100 countries and territories, including about 40 Open Skies Agreements. Open Skies Agreements allow carriers to operate any number of flights between and beyond both signatory states, enabling them to tap traffic from third countries to improve the commercial viability of scheduled flights.<sup>17</sup> Notably, in November 2007, Singapore concluded a landmark agreement with the United Kingdom that includes unlimited "hubbing" and cabotage rights.<sup>18</sup>
47. Singapore is a signatory to the Multilateral Agreement for the Liberalisation of Air Transportation ("MALIAT"), a multilateral Open-Skies Agreement to which New Zealand is also a party. The key features of the MALIAT include:
- a. an open route schedule;
  - b. open traffic rights including seventh freedom cargo services;
  - c. open capacity;
  - d. airline investment provisions which focus on effective control and principal place of business, but protect against flag of convenience carriers;
  - e. multiple airline designation;
  - f. third-country code-sharing; and
  - g. a minimal tariff filing regime.<sup>19</sup>
48. The MALIAT allows both Singapore and New Zealand carriers to fly passenger services between and beyond each of the Parties' territory without restrictions in routing, capacity and frequency (i.e. unlimited 3<sup>rd</sup>/4<sup>th</sup>/5<sup>th</sup> freedom traffic rights). In addition, Singapore and New Zealand are Parties to the separate Protocol under MALIAT which

<sup>16</sup> CAAS website at <http://bit.ly/ezKkgi> (last accessed on 16 April 2014).

<sup>17</sup> [http://app.mot.gov.sg/page\\_air.aspx?p=/Air\\_Transport/Aviation\\_Hub/Liberal\\_Air\\_Services\\_Regime.aspx&AspxAutoDetectCookieSupport=1](http://app.mot.gov.sg/page_air.aspx?p=/Air_Transport/Aviation_Hub/Liberal_Air_Services_Regime.aspx&AspxAutoDetectCookieSupport=1).

<sup>18</sup> [http://www.caas.gov.sg/caas/en/About\\_CAAS/Our\\_Strategic\\_Thrusts/Air\\_Hub\\_Development/Air\\_Services\\_Policy/](http://www.caas.gov.sg/caas/en/About_CAAS/Our_Strategic_Thrusts/Air_Hub_Development/Air_Services_Policy/).

<sup>19</sup> <http://www.maliat.govt.nz/>.



allows for unlimited 7<sup>th</sup> freedom traffic rights for passenger services, and for the carriage of domestic traffic (i.e. cabotage).

49. The very liberal ASA framework between Singapore and New Zealand means that legal and regulatory barriers to operating and marketing services between the two countries are low and carriers from both sides can enter the market and offer such services in response to demand.<sup>20</sup>

### 3 LEGISLATIVE FRAMEWORK

#### 3.1 Section 34 Prohibition

50. 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. 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;
  - c. share markets or sources of supply;
  - d. apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or
  - e. make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.”
51. An agreement will fall within the scope of the section 34 prohibition if it has as its object or effect the appreciable prevention, restriction or distortion of competition, unless it falls within an exclusion in the Third Schedule of the Act or meets all of the requirements specified in a block exemption order.
52. Any agreement between undertakings might be said to restrict the freedom of action of the parties. This does not, however, necessarily mean that the agreement will be prohibited. The CCS does not adopt such a narrow approach and will assess an agreement in its economic context. As a matter of enforcement policy, CCS may pursue infringing agreements provided they have an *appreciable adverse impact on competition in Singapore*. That being said, an agreement involving price-fixing, bid-rigging, market-

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<sup>20</sup> <http://www.maliat.govt.nz/agreement/article8.php>.



sharing or output limitations will always be deemed to have an appreciable adverse effect on competition.<sup>21</sup>

### **3.2 Application of Section 34 to Undertakings**

53. 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.
54. Each of the Parties is a separate corporate entity carrying on commercial and economic activities relating to air transport services, thereby falling within the definition of “undertakings” under the Act. Accordingly, the Proposed Strategic Alliance constitutes an agreement between undertakings, bringing it within the ambit of section 34 of the Act.

## **4 COMPETITION ASSESSMENT**

### **4.1 Relevant Market**

55. Before considering the level of competition in a relevant market and the consequent effects of the Proposed Strategic Alliance on competition, an important first step is to define the relevant market.

#### ***The Parties’ Submissions***

56. The Parties submitted that the relevant market primarily affected by the Proposed Strategic Alliance is the market for the supply of scheduled air passenger transport services defined by the Singapore O&D city pairs affected by the Proposed Strategic Alliance. The Parties highlighted that the cooperation between the Parties pursuant to the Proposed Strategic Alliance only applies to the Alliance Sectors operating directly between Singapore and New Zealand, and more broadly, the Cooperation Routes.<sup>22</sup>

#### ***CCS’s Assessment***

57. The essential task in market definition is to define all the products on the demand side that buyers regard as reasonable substitutes for the product under investigation (the “focal product”), and then to identify all the sellers who supply the focal and substitute products, or who could potentially supply them.<sup>23</sup>

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<sup>21</sup> Paragraph 3.2 of the *CCS Guidelines on the Section 34 Prohibition*.

<sup>22</sup> Paragraph 4.2.4 of Form 1.

<sup>23</sup> Paragraph 2.1 of the *CCS Guidelines on Market Definition*.



58. CCS notes that the typical starting point for the market definition relating to the provision of scheduled air passenger transport services is the O&D pair routes of air services, usually city pairs. 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. This approach is consistent with CCS's previous decisions on similar airline alliance agreements and this is also the approach adopted by the European Commission.<sup>24</sup>
59. Given the section 34 prohibition specifically concerns the prevention, restriction or distortion of competition in Singapore, CCS will focus on air passenger services involving Singapore O&D city pair routes which are covered under the scope of the Proposed Strategic Alliance, i.e. O&D city pairs between Singapore and gateway cities within New Zealand<sup>25</sup> (the "Singapore-New Zealand O&D City Pairs" or the "Relevant Market"). This market features direct competition between SIA and Jetstar Airways Pty. Ltd.<sup>26</sup> ("Jetstar Airways"), with their combined services catering for approximately [REDACTED]<sup>27</sup> of passenger traffic in the market. Further competition is provided by one-stop services (particularly via Australia), catering for nearly [REDACTED]<sup>28</sup> of passenger traffic in the market.

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<sup>24</sup> Refer to CCS Grounds of Decision for cases CCS 400/003/06, CCS 400/008/10, CCS 400/001/11, CCS 400/005/11, CCS 400/001/12 and CCS 400/002/12.

<sup>25</sup> According to the Parties' *Responses to CCS's Information Request dated 27 February 2014* the Alliance Sectors have been stated to comprise of the Auckland-Singapore and Christchurch-Singapore routes.

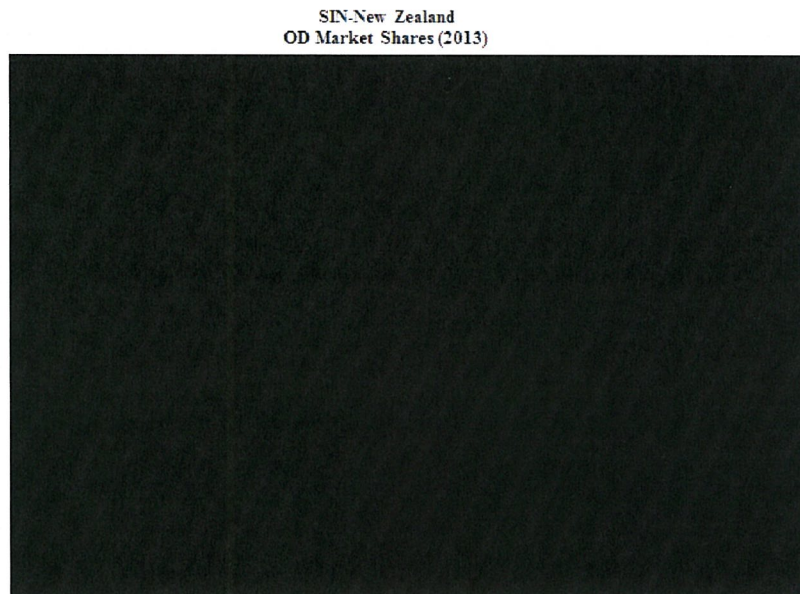
<sup>26</sup> Jetstar Airways operates direct flights between Singapore and Auckland, and one-stop flights between Singapore and Christchurch/Wellington, with the one-stop in Auckland.

<sup>27</sup> Source: Changi Airport Group; CAAS/MOT.

<sup>28</sup> Source: Changi Airport Group; CAAS/MOT.



**Figure 1: Airline Shares on the Singapore-New Zealand O&D City Pair Market<sup>29</sup>**



Source: CAAS / MOT

60. In evaluating the extent of the competitive constraint exerted by one-stop services, CCS considered, *inter alia*, factors such as the number of non-stop services offered and geography (circuitry of available one-stop services). In line with the approach taken by European Commission and the United States Department of Transportation, this is assessed on a route-by-route basis.<sup>30</sup> CCS notes that currently there are a limited number of non-stop services in the Relevant Market as the direct services are only provided by SIA and Jetstar Airways. CCS also considered the geographical locations of New Zealand and Singapore, and notes that the connections in Australia are *en route* for O&D passengers in the Relevant Market. This is not observed for the other one-stop services with a connection in Kuala Lumpur, Bangkok, Hong Kong and Guangzhou. Further, with no capacity and routing restrictions for direct services between Singapore and Australia<sup>31</sup>, and between Australia and New Zealand<sup>32</sup>, CCS finds that one-stop services with a connection in Australia provide a viable alternative to direct services provided by SIA on the Singapore-New Zealand O&D City Pairs.

<sup>29</sup> Figure 1 shows market shares based on all passengers travelling between Singapore and New Zealand, including Auckland, Christchurch, and all secondary New Zealand points. The market shares shown are only for direct flights from Singapore to New Zealand and for one-stop flights from Singapore to New Zealand via Australia, which represent █% of the Singapore-New Zealand O&D City Pairs. The one-stop flights from Singapore to New Zealand connecting through the other hubs make up the other █% of the Singapore-New Zealand O&D City Pairs and are insignificant. Thus these have been excluded from the chart.

<sup>30</sup> *Transatlantic Airline Alliances: Competitive Issues and Regulatory Approaches*, a report by the EC and the United States Department of Transportation dated 16 November 2010.

<sup>31</sup> <http://www.austlii.edu.au/au/other/dfat/treaties/1967/25.html>

<sup>32</sup> <http://www.austlii.edu.au/au/other/dfat/treaties/2003/18.html>



61. CCS also notes the recent announcement by Jetstar Airways of plans to cease its direct services on the Singapore-Auckland O&D city pair route as of 21 July 2014.<sup>33</sup> For long-haul markets such as that between Singapore and New Zealand, business travelers will in general select non-stop flights when available. Leisure travelers, on the other hand, seem more likely to accept the one-stop flights if offered a sufficient discount.<sup>34</sup> Given that starting fares for one-stop services with a connection in Australia can be up to 50%<sup>35</sup> lower than starting fares for direct services on the Singapore-Auckland O&D City Pair, CCS views Jetstar Airways' cessation of direct services on the Singapore-Auckland O&D city pair route as having a likely impact on passenger traffic, such that more leisure passengers (with preference for Jetstar Airways' direct services) would choose to fly on the indirect one-stop services given the greater range of fare options available. From industry sources, CCS gathers that Jetstar Airways is likely to [REDACTED]

62. CCS will therefore consider the impact of the Proposed Strategic Alliance on competition for both direct and one-stop services operating on the Singapore-New Zealand O&D City Pairs.

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

##### ***CCS's Theory of Harm***

63. With regard to the Alliance Sectors and the Alliance Routes as set out in the Proposed Strategic Alliance,<sup>38</sup> the current flight operations of SIA and Air NZ overlap or potentially overlap on the O&D city pairs between Singapore and New Zealand by way of (i) SIA's non-stop service between Singapore and Auckland and Air NZ's one-stop service between Singapore and Auckland<sup>39</sup>, and (ii) SIA's non-stop service between

<sup>33</sup> For instance, see [http://www.nzherald.co.nz/business/news/article.cfm?c\\_id=3&objectid=11223039](http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11223039).

<sup>34</sup> Research conducted by George Mason University shows that the elasticity of demand for leisure travel is -1.6, implying that leisure passengers are sensitive to price changes. This means that they will choose a one-stop flight rather than a non-stop flight if the latter was appreciably more expensive. See Centre for Air Transportation Systems Research, 'Airline Economics', George Mason University, 2009.

<sup>35</sup> For instance, return fares for one-stop flights on Etihad/Air NZ on the Singapore-Auckland route through Brisbane with a flight time of close to 13 hours each way start from approximately S\$1000, whereas return fares for direct flights on SIA on the same route with a flight time of between 10 to 11 hours each way start from approximately S\$2000.

<sup>36</sup> Paragraph 11 of the Civil Aviation Authority of Singapore and Ministry of Transport joint submission on the Proposed Strategic Alliance between SIA and Air NZ dated 21 March 2014.

<sup>37</sup> Notes of conference call with Qantas Airways Limited / Jetstar Airways Pty. Ltd. dated 25 March 2014.

<sup>38</sup> Annex 4 to Form 1, Strategic Alliance Agreement between SIA and Air NZ dated 16 January 2014, Schedule 2.

<sup>39</sup> Air NZ operates this service through Brisbane via an interlining agreement with Etihad Airways.



Singapore and Christchurch and Air NZ's one-stop service between Singapore and Christchurch<sup>40</sup>.

64. Under the Proposed Strategic Alliance, the Parties intend to coordinate on pricing, scheduling and planning for the services operated on the Alliance Routes and in the Covered Jurisdictions. In addition, the Parties intend to engage in revenue sharing and joint capacity planning (i.e. metal-neutrality) in relation to services operated on the Alliance Sectors.
65. On a spectrum of alliance cooperation, the level of cooperation envisaged in the Proposed Strategic Alliance goes beyond basic, arms-length code-sharing arrangements to extend to a very high level of cooperation where revenue is shared between the Parties. This would accordingly require a higher level of scrutiny where overlapping routes are considered.

#### **Range of cooperative behaviours**

#### **Level of Cooperation**

Revenue, cost and benefit sharing; joint ventures.

Direct coordination (fares, routes, scheduling).

Code sharing.

Frequent flyer points and lounge access.

Interlining.

**High**



**Low**

66. CCS is of the view that where the elements of coordination present in the Proposed Strategic Alliance are akin to a price-fixing and/or capacity control agreement on services provided by the Parties in the Relevant Market, these could have an appreciable adverse impact on competition in Singapore.

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

67. The Parties submitted that the Proposed Strategic Alliance will not have an appreciable adverse effect on competition in markets affecting Singapore for the following reasons:
  - a. for routes between Singapore and New Zealand where the Parties may overlap in, namely, (i) SIA's non-stop service between Singapore and Auckland, and Air NZ's one-stop service between Singapore and Auckland via an interlining agreement with Etihad Airways, and (ii) SIA's non-stop service between Singapore and Christchurch, and Air NZ's one-stop service between Singapore and Christchurch via interlining agreement with Etihad Airways, the Proposed

<sup>40</sup> Air NZ operates this service through Brisbane via an interlining agreement with Etihad Airways.



Strategic Alliance is not likely to have any significant effect on competition due to the low passenger shares and the interline nature of Air NZ's existing service;

- b. in any event, the Parties will continue to be constrained by their competitors on overlapping Singapore-New Zealand O&D city pairs; and
- c. other routes which the Parties may overlap on (i.e. New Zealand-London) do not contain a Singapore-New Zealand O&D city pair, and therefore should not be a concern to CCS as they will not have an effect on competition in Singapore.

*Low competitive effect of the Proposed Strategic Alliance on overlapping Singapore-New Zealand O&D City Pairs*

68. The Parties submitted that the Proposed Strategic Alliance will have minimal impact on competition between the Parties with regard to the Singapore-New Zealand O&D City Pairs. Specifically, the current service operated by SIA faces a negligible competitive constraint from the indirect service operated by Air NZ and Etihad Airways due to the low passenger shares of Air NZ<sup>41</sup> and the interline nature of the Air NZ flight. The Parties also submit that Air NZ will not operate direct flights between Singapore and New Zealand in the absence of the Proposed Strategic Alliance.

*Parties will continue to be constrained by competitors on Singapore-New Zealand O&D City Pairs*

69. The Parties also submitted that the Proposed Strategic Alliance would not give rise to an appreciable restriction of competition on the Singapore-New Zealand O&D City Pairs generally, as the Parties will continue to be effectively constrained by other rivals operating on the same O&D city pairs.<sup>42</sup>
70. With respect to direct flights, Jetstar Airways is the only other operator of direct services between New Zealand and Singapore. Jetstar Airways operates three return services per week on Auckland-Singapore and *vice versa*. Jetstar Airways is a wholly-owned subsidiary of Qantas, and markets itself as a low cost carrier. However, Jetstar Airways does advertise a business fare, with a separate business cabin on some flights.
71. A number of airlines operate one-stop services to Singapore from New Zealand, and vice versa. The largest provider of one-stop services is the joint services by the Qantas/Emirates alliance, which offer a variety of services through its Australian hub. The Qantas/Emirates alliance flies to Singapore from six Australian destinations, including Melbourne, Sydney and Brisbane. Given the frequency of its services to New Zealand from these airports, passengers from Singapore have the choice of a range of

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<sup>41</sup> For illustration, the Parties provided Air NZ's passenger numbers for the Singapore-Auckland route, which totalled [REDACTED] passengers for the period of July 2012 and June 2013. In comparison, SIA's passenger numbers on the same route for the same period was [REDACTED]. The Parties have submitted that Air NZ's passenger numbers on the Singapore-Christchurch route are [REDACTED]

<sup>42</sup> Paragraph 5.1.6 of Form 1.



one-stop options provided by the Qantas/Emirates alliance, apart from the services currently operated by the Parties from Singapore to New Zealand (and *vice versa*). These services are particularly attractive to passengers travelling to main centres other than Auckland or Christchurch, as they will have to travel on a one-stop service to get to such other centres, whether or not they travel with the Qantas/Emirates alliance or SIA.<sup>43</sup>

72. Other carriers operating one-stop services between New Zealand and Singapore include Malaysia Airlines System Berhad (via Kuala Lumpur), China Southern Airlines Company Limited (via Guangzhou), Thai Airways (via Bangkok) and Cathay Pacific Airways Limited (via Hong Kong).

*Other overlapping routes between the Parties do not contain a Singapore-New Zealand O&D city pair*

73. The Parties also submitted that other overlapping routes<sup>44</sup> between the Parties do not contain a Singapore-New Zealand O&D city pair and do not relate to competition in a market affecting Singapore, and thus are not relevant to the CCS's assessment of the Proposed Strategic Alliance. The Parties also highlight that some of these overlapping routes which are directly operated by the Parties are marketed by the Parties on a codeshare, or interline basis with another carrier. Specifically, Air NZ does not directly operate services to any of the overlapping routes except for Auckland to London, and Auckland to Denpasar, but has interline agreements with a number of other carriers. With respect to Auckland to Denpasar, Air NZ operates a direct service on a seasonal basis (approximately five months of the year), whereas SIA is differentiated in that it operates a one-stop service on this route.

#### ***CCS's Assessment***

74. CCS agrees with the Parties' submissions that the Proposed Strategic Alliance will have minimal impact on competition between the Parties with regard to direct services operated on the Singapore-New Zealand O&D City Pairs. In particular, we note that Air NZ does not operate direct flights between Singapore and New Zealand, and will not be considered as a competitor for direct services operating on the Singapore-New Zealand O&D City Pairs. In this regard, CCS further notes the Parties' submission that Air NZ will not operate direct flights between Singapore and New Zealand in the absence of the Proposed Strategic Alliance.<sup>45</sup> There will thus be no reduction in competition on the Singapore-New Zealand O&D City Pairs for direct services subsequent to the Proposed Strategic Alliance.
75. Nonetheless, in respect of one-stop services operating on the Singapore-New Zealand O&D City Pairs, Air NZ, through an interlining arrangement with Etihad Airways, operates a single daily service to Singapore via Brisbane, Australia, on an Air NZ

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<sup>43</sup> Paragraphs 5.1.7 and 5.1.8 of Form 1.

<sup>44</sup> Referenced as Annex 1 to this Decision.

<sup>45</sup> Paragraph 5.1.2 of Form 1.



service from either Auckland or Christchurch to Brisbane and connecting to an Etihad Airways flight from Brisbane to Singapore (and *vice versa*).<sup>46</sup> As such, the Parties presently operate on overlapping routes in the Relevant Market.

76. Under the Proposed Strategic Alliance, the Parties intend to coordinate on pricing, scheduling and planning for the services operated on the Alliance Routes and in the Covered Jurisdictions. The Parties will also engage in metal-neutrality, including revenue sharing and joint capacity planning, for services operated on the Alliance Sectors. Given these elements of coordination on the affected routes, CCS is of the opinion that the Proposed Strategic Alliance would amount to price-fixing and/or output control (i.e. capacity coordination) between competitors, having the object of the prevention, restriction or distortion of competition in the Relevant Market.
77. In accordance with the *CCS Guidelines on the Section 34 Prohibition* (the “*CCS 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.<sup>47</sup>
78. Notwithstanding that it is not necessary to prove appreciable adverse effect on competition, CCS further notes that the combined market share of the Parties in the Relevant Market would exceed the 20% threshold set out in the *CCS Guidelines*.<sup>48</sup>

**Figure 2: Singapore – New Zealand O&D Market Shares in 2013<sup>49</sup>**

Airline	Market Share
Air NZ (one-stop services)	██████████
Jetstar Airways (direct services)	██████████
SIA (direct services)	██████████
Virgin Australia (one-stop services)	██████████
Other one-stop services which includes Qantas, Emirates and Jetstar Airways	██████████
<b>Total</b>	<b>100%</b>

Source: CAAS / MOT

## 5 THE NET ECONOMIC BENEFIT EXCLUSION

79. An agreement will not be prohibited if it falls within an exclusion in the Third Schedule of the Act.<sup>50</sup> The Net Economic Benefit Exclusion set out at paragraph 9 of the Third

<sup>46</sup> Paragraph 5.1.3 of Form 1.

<sup>47</sup> Paragraph 3.2 in the *CCS Guidelines on the Section 34 Prohibition*.

<sup>48</sup> Paragraph 2.19 in the *CCS Guidelines on the Section 34 Prohibition*.

<sup>49</sup> The market shares shown are only for direct flights from Singapore to New Zealand and for one-stop flights from Singapore to New Zealand via Australia, which represent ██████████ of the Singapore-New Zealand O&D City Pairs. The one-stop flights from Singapore to New Zealand connecting through the other hubs make up the other ██████████ of the Singapore-New Zealand O&D City Pairs and are ██████████. Thus these have been excluded from the table.

<sup>50</sup> Refer to section 35 of the Act.



Schedule to the Act, provides that the section 34 prohibition shall not apply to “any agreement which 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 those objectives; or
  - ii. afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question.”

80. The burden of proof in establishing the benefit of the Net Economic Benefit (“NEB”) Exclusion for individual agreements lies on the party which claims it.<sup>51</sup>

***Contributes to improving production or distribution or promoting technical or economic progress***

81. Paragraph 10.4 of Annex C to the *CCS Guidelines* sets out the criteria to be taken into account in assessing claims made under the NEB Exclusion, 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
- c. The efficiencies must be of a significant value, enough to outweigh the anti-competitive effects of the agreement.

82. 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. CCS will not accept unsubstantiated claims. 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.

***Imposing restrictions which are indispensable to the attainment of the objectives***

83. Paragraph 10.9 of Annex C to the *CCS 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 further states that the criterion implies a two-fold test – both the agreement itself, and the individual restrictions of the agreement (“Individual Restrictions”), must be reasonably necessary to obtain the efficiencies.

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<sup>51</sup> Regulation 13(a) of the Competition (Notification) Regulations 2007.



84. In this context, the Proposed Strategic 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 Strategic 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 the efficiencies on their own.<sup>52</sup>

***Relevant markets for the assessment of NEB***

85. In general, the assessment of NEB flowing from agreements would be made within the confines of each relevant market to which the agreement relates.

**5.1 The Parties' Submissions**

***Potential increase in capacity on the Singapore-Auckland route***

86. The Parties submitted that the Proposed Strategic Alliance will likely result in a potential increase in capacity on the Singapore-Auckland route through increases in frequencies and seat capacity, designed to increase total capacity on the Auckland-Singapore route by up to 30%. This increase in capacity is likely to be through a mixture of:
- a. an increase in frequencies from 12 to 14 weekly flights. This will be achieved by withdrawing SIA's SQ281 and SQ282 flights which currently operate five times a week<sup>53</sup> and replacing it with a daily Air NZ service; and
  - b. an increase in the number of seats available on existing frequencies. This will be achieved through the seasonal introduction of an SIA A380 aircraft which seats 471 on the route in place of a B777-300 aircraft which seats 278, and the increased number of seats on the Air NZ B777-200ERs with 312 seats replacing the current SIA B777-200ERs service with 278 seats.
87. The measures described above are, if implemented depending on market conditions, designed to increase total capacity on the Auckland-Singapore route by up to 30% over time,<sup>54</sup> a substantial increase on a route where there has been little increase in capacity in the last five years.
88. The Parties submitted to CCS a QSI Report prepared by Seabury APG which estimates that the additional benefits which the Proposed Strategic Alliance offers will attract over [REDACTED] additional passengers to the Parties' services per year, including an additional [REDACTED]

<sup>52</sup> Paragraph 10.9 of Annex C to the *CCS Guidelines*.

<sup>53</sup> SQ281/282 operates up to seven times per week during peak periods between December and February.

<sup>54</sup> [REDACTED]



██████████ passengers per year who would not have travelled between New Zealand and Singapore at all, in the absence of the Proposed Strategic Alliance.

89. The Parties further submitted that one of the main objectives of the Proposed Strategic Alliance is to utilise Air NZ's customer loyalty, brand awareness and local knowledge to fill new capacity from Auckland to Singapore. Passengers could also leverage on the increased offerings under the Proposed Strategic Alliance to travel through Singapore to New Zealand and connect onto Air NZ's domestic and Pacific Island network. Without this, the Parties are not likely to be able to increase capacity commercially on the route. In particular, without the feeder traffic that Air NZ can provide, SIA is not likely to increase capacity on its Singapore-New Zealand routes commercially.

Premium customer handling, lounge and FFP benefits

90. The Parties submitted that the Proposed Strategic Alliance would enhance the customer experience by ensuring a consistent end-to-end product offering for customers who enjoy the high quality of service and products that both airlines provide. The Parties noted that while the Parties' membership of the Star Alliance means that there is a degree of reciprocity regarding the lounge access and FFP benefits, the Proposed Strategic Alliance would provide additional benefits over and above the existing Star Alliance benefits, to the extent practical. For instance, the Parties have estimated that Air NZ's Airpoint members will earn an additional ██████████ ██████████ Airpoints Dollars and Status Points per annum as a result of the Proposed Strategic Alliance.
91. The Parties have also submitted that the Proposed Strategic Alliance would provide for reciprocal FFP arrangements in relation to SilkAir, SIA's regional subsidiary, to the extent practical. SilkAir operates more than 300 weekly flights to 45 destinations in 12 countries in the Asia Pacific region. The Star Alliance FFP arrangements between the Parties do not include SilkAir, so the benefits to Air NZ customers of obtaining Airpoints Dollars and Status points, and other frequent flyer benefits, such as lounge access and additional baggage, and the ability to spend Airpoints Dollars on SilkAir flights would be wholly due to the Proposed Strategic Alliance.
92. Finally, the Parties submit that the Premium Customer Handling and Lounge Agreement aims to provide additional benefits to Air NZ Airpoints members and SIA Krisflyer members, as deemed appropriate and to the extent practical, which could include priority seating towards the front of the aircraft, additional guests in lounges, and additional benefits to Elite or PPS members' partners, such as lounge access and additional baggage. Air NZ Koru Club members on Alliance Routes would also receive benefits including lounge access in Auckland and Singapore, and selected points, to the extent practical. Star Alliance arrangements do not currently provide any of these benefits to Air NZ Koru Club members.



More choice of flights and better connectivity

93. The Parties submitted that the Proposed Strategic Alliance would immediately provide better connectivity to points beyond each of Auckland and Christchurch (for SIA) and beyond Singapore (for Air NZ). Through codeshare and interline arrangements contemplated under the Proposed Strategic Alliance, passengers will be able to purchase online journeys across the international and New Zealand domestic networks offered by the Parties. Increased connectivity arises from two sources:
- a. Air NZ customers will have increased access to routes beyond Singapore, including Europe, India, Indonesia, Malaysia, Thailand, the Philippines and Vietnam. This includes a codeshare on SilkAir, which currently operates very few codeshare arrangements with other airlines. The Proposed Strategic Alliance will promote Singapore as an alternative gateway to Asian destinations, and the UK and Europe, for Air NZ customers, while preserving the benefits of travelling on a single airline code throughout their journey; and
  - b. SIA customers will have increased access to domestic New Zealand and Pacific Island destinations, and will be able to travel on SIA codes throughout.
94. The Parties are of the view that the improved connectivity will in turn give rise to specific benefits including:
- a. increased convenience;
  - b. the increased ability to purchase flexible fares;
  - c. the ability to fly on one's preferred air service code, and to accrue points and status credits; and
  - d. in relation to codeshare services, favourable prices. Unlike separate 'mix and match' fares, flights that are part of favourable codeshare services will be available under the Proposed Strategic Alliance, and are not subject to double marginalisation.
95. The Parties further submit that this greater connectivity would not occur in the absence of the Proposed Strategic Alliance which ensures that the Parties have an economic incentive to maximise combined revenue, and that their flight schedules remain complementary.

Lower fares

96. The Parties submitted that the increase in capacity on the Singapore-Auckland O&D city pair will result in a significantly greater number of seats available in each fare class, including the lower fare classes. All other things being equal, the Parties believe that a carrier with a higher number of seats available will release a relatively greater number of seats which are priced lower.







[REDACTED]

Not imposing restrictions which are not indispensable to the attainment of the objectives

101. The Parties submitted that the restrictions in the Proposed Strategic Alliance are indispensable to the NEB claimed.

102. The Parties submit that increased capacity would not be achieved in the absence of a metal-neutral arrangement under the Proposed Strategic Alliance. In a simple codeshare agreement, the Parties would continue to have an incentive to maximise their own individual economic benefits. Accordingly, a party to a codeshare agreement would be unwilling to cede a particular timing or route to their codeshare partners where that party considers it will be giving up a profitable service.

103. Pursuant to the Proposed Strategic Alliance, each Party will share in the revenue generated regardless of which Party actually transports the passenger under the Proposed Strategic Alliance. As such, the Parties will seek to win a passenger's booking for the Proposed Strategic Alliance by creating a joint network with the best spread of routes, frequencies and the most competitive fares. With the alignment of financial incentives, carriers that are part of an integrated alliance will strive to grow and optimise the convenience and scope of their overall product offering. The lower fares and improved scheduling will also contribute towards increased demand, and over time, growth in capacity.

104. The Parties further submit that revenue sharing under the Proposed Strategic Alliance provides an incentive to deliver other benefits, such as an expanded codeshare. [REDACTED]

[REDACTED]

105. Further, [REDACTED]

106. Lastly, the Parties submit that [REDACTED]



## 5.2 CCS's Assessment

### Potential increase in capacity on the Singapore-Auckland route

107. CCS has assessed the Parties' submission on potential increase of capacity on the Singapore-Auckland route, and note in particular that quantified data submitted by the Parties show a market-supportable increase in flight frequencies and number of seats on existing frequencies.
108. CCS is of the view that a potential increase in capacity on the Singapore-Auckland route can be attributed to the Proposed Strategic Alliance. The quantification of this benefit in the QSI report submitted by the Parties, namely the stimulation of over [REDACTED] additional passengers to the Parties' services per year, including an additional [REDACTED] passengers who would not have travelled between New Zealand and Singapore at all in the absence of the Proposed Strategic Alliance, supports this. The [REDACTED] additional passengers would represent an approximate [REDACTED]<sup>57</sup> increase in passenger movement based on a total of [REDACTED] passengers in the Relevant Market in 2013. In addition, CCS accepts the Parties' submission that in the counterfactual, the Parties would not increase capacity in the Relevant Market.
109. CCS notes the Parties' submission that Air NZ would not consider entering the market for direct services between Singapore and New Zealand [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]<sup>58</sup> [REDACTED]  
[REDACTED]
110. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
111. Also CCS notes that the passenger movements between Singapore-Auckland are stagnating and have shown a small decrease in 2013. CCS also notes the Parties' submission that one of the main objectives of the Proposed Strategic Alliance is to utilise Air NZ's customer loyalty, brand awareness and local knowledge to fill new capacity from Auckland to Singapore. Passengers could also leverage on the increased

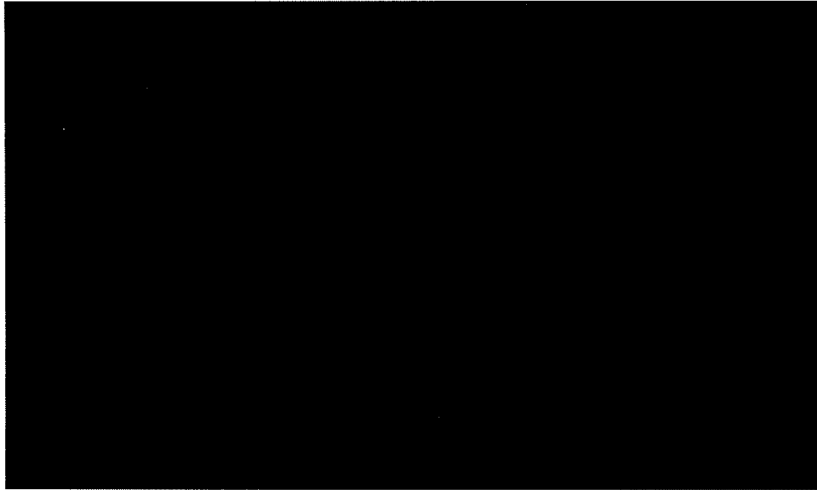
<sup>57</sup> According to industry figures provided by the Changi Airport Group in its submissions to CCS dated 25 February 2014, the total passenger movement on the Singapore-New Zealand O&D City Pairs in 2013 was [REDACTED], comprising of [REDACTED] passengers on the Singapore-Auckland route and [REDACTED] passengers on the Singapore-Christchurch route.

<sup>58</sup> Paragraph 5.1.17 of Form 1.



offerings under the Proposed Strategic Alliance to travel through Singapore to New Zealand and connect onto Air NZ's domestic and Pacific Island network.

**Figure 3: Passenger Movements between Singapore and Auckland**



Source: CAG

Notes: Passenger Movements include O&D and transfer/transit passengers carried by direct flights between Singapore and Auckland

112. Although the Parties have not given a similar submission on an increase in capacity of services that will be provided on the Singapore-Christchurch route, [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED] As

such, when taken together with the potential increase in capacity on the Singapore-Auckland route, CCS is of the view that the Proposed Strategic Alliance will result in an overall increase in capacity in the Relevant Market.

113. CCS notes that the Proposed Strategic Alliance creates metal-neutrality on the Alliance Sectors, which aligns the commercial incentives of both SIA and Air NZ to provide feed to each other on the Singapore-New Zealand O&D City Pairs to maximize each airline's revenue. The Parties are thus both incentivised to ensure demand is stimulated on the Singapore-New Zealand O&D City Pairs. CCS accepts the submission that without the expected increase in passenger traffic resulting from the Proposed Strategic Alliance, it is unlikely that the Parties will increase its capacity in the Relevant Market in absence of the same.

Premium customer handling, lounge and FFP benefits do not satisfy NEB criteria

114. While CCS notes the Parties' submission that under the Proposed Strategic Alliance, customers belonging to each of the Parties will, to the extent practical, enjoy additional premium services, such as additional guests in lounges, lounge access to Elite or PPS members' partners; extension of the reciprocal FFP arrangements in relation to SilkAir; additional frequent flyer points to be earned on Alliance Sectors; and extension of



benefits such as lounge access in Auckland, Christchurch and Singapore, CCS is of the view that these benefits will be marginal as the Parties are already members of the Star Alliance.

115. The Star Alliance also allows frequent flyers of any member airline to earn and use frequent flyer points across the range of Star Alliance partners. Accordingly, while we agree that there will be passenger benefits in the form of premium customer handling, lounge and FFP benefits, such benefits will be modest. CCS does not accept the Parties' submission that such benefits would be of significant value, enough to outweigh the anti-competitive effects of the agreement.<sup>59</sup>

More choice of flights, better connections and lower fares

116. CCS notes the Parties' submission that absent metal-neutrality, [REDACTED]  
[REDACTED]  
[REDACTED] This, the Parties believe, will reduce the effects of double marginalisation that connecting passengers are typically exposed to due to individual carriers adding its own mark-up to the existing price.

117. However, in the absence of available figures, it is not possible to quantify the benefits arising from lower fares, or even the possibility of lower fares. In this regard, CCS notes that in its latest Market Study on the Airline Industry,<sup>60</sup> integrated alliances have not been found to result in a general decrease in individual fares (i.e. fares in each ticket class).

118. In addition, without actual data, CCS is unable to quantify the efficiencies for Singapore passengers that could result from more integrated cooperation between the Parties. In this regard, we note that the Parties have not submitted concrete plans on integration of flight services that can or will result in reductions in connection time and the spreading out of schedules of services on the Singapore-New Zealand O&D City Pairs and onto the behind and beyond routes. Given the Parties' submission that code-sharing and interlining arrangements do not provide similar incentives to that under a revenue-sharing arrangement, CCS does not rule out the possibility that there may be little scope for the Parties to improve their flight schedules under the Proposed Strategic Alliance, especially on envisaged routes outside of the Alliance Sectors. As such, the extent of benefits arising from greater choice of flights and better connections is unclear.

Strengthening of Singapore's position as an air hub

119. CCS notes that the strengthening of Singapore's position as an air hub would be derived from the other underlying benefits claimed by the Parties. It was pointed out by Civil

<sup>59</sup> Paragraph 10.4 to Annex C of the *CCS Guidelines*.

<sup>60</sup> 11 February 2014 Summary Report on Net Economic Benefit of Joint Ventures. Accessible at: <http://www.ccs.gov.sg/content/dam/ccs/PDFs/MarketStudies/2014-02-11%20ICF%20SHE%20CCS%20Airline%20Study%20Summary%20Report.pdf>.



Aviation Authority of Singapore (“CAAS”) and Ministry Of Transport (“MOT”) that

[REDACTED]

does accept that the strengthening of Singapore’s position as an air hub can be viewed as a direct result of the Proposed Strategic Alliance.

Imposing restrictions which are indispensable to the attainment of the objectives

120. A restriction is indispensable if its absence would eliminate or significantly reduce the efficiencies that flow from the agreement, or make them much less likely to materialise.<sup>63</sup>

121. CCS acknowledges that the submitted increase in capacity in the Relevant Market would not be achieved in the absence of metal-neutral arrangements under the Proposed Strategic Alliance. In this regard, CCS notes Air NZ’s submissions that [REDACTED]

[REDACTED]

- a. [REDACTED]
- b. [REDACTED]
- c. [REDACTED]
- d. [REDACTED]

122. Based on Air NZ’s past experience, and in line with its network and alliance principles, Air NZ has no intention of operating from New Zealand to Singapore in the absence of

<sup>61</sup> Paragraph 13 of the Civil Aviation Authority of Singapore and Ministry of Transport joint submission on the Proposed Strategic Alliance between SIA and Air NZ dated 21 March 2014.

<sup>62</sup> Paragraphs 14 and 15 of the Civil Aviation Authority of Singapore and Ministry of Transport joint submission on the Proposed Strategic Alliance between SIA and Air NZ dated 21 March 2014.

<sup>63</sup> Paragraph 10.10 to Annex C of the *CCS Guidelines*.

<sup>64</sup> Including Malaysia, Singapore, Thailand, Philippines, Vietnam, Brunei, Laos, Cambodia, Myanmar and Indonesia.



a metal-neutral arrangement with SIA that incentivises both airlines to make the routes commercially successful.

123. As such, CCS agrees that metal-neutral coordination including joint-pricing and revenue-sharing, as well as lower levels of coordination (such as codesharing, joint pricing and joint sales and marketing), on the Alliance Sectors, are indispensable to the attainment of the objectives and efficiencies envisaged by the Parties under the Proposed Strategic Alliance.

Coordination under the Proposed Strategic Alliance will not Eliminate Competition in respect of a Substantial Part of the Goods or Services in Question

124. CCS looked at the market share figures of the Parties as one of the factors in assessing if coordination under the Proposed Strategic Alliance affords the possibility of eliminating competition in respect of a substantial part of the services offered within the Relevant Market.
125. The data in Figures 1 and 2 above show that direct services operated in the Relevant Market face competition from one-stop services operated by other carriers, including Qantas, Emirates, Jetstar Airways and Virgin Australia on the Singapore-New Zealand O&D City Pairs.
126. With the approval of (i) the Qantas/Emirates alliance that allows cooperation on the Singapore-Australia and Australia-New Zealand sectors;<sup>65</sup> and (ii) the Qantas-Jetstar Group partnership<sup>66</sup> that allows coordination between Qantas, Jetstar Airways and Jetstar Asia Airways Pte. Ltd. on the Singapore-Australia sector, Qantas/Emirates and Qantas-Jetstar Group partnership is expected to keep competition in the Relevant Market in check. It was pointed out by CAAS and MOT that the combined market share of [REDACTED]  
[REDACTED]  
[REDACTED] This is comparable to the likely combined SIA and Air NZ market share of [REDACTED] and hence likely to present a sufficient competitive constraint on the Parties.<sup>67</sup>

<sup>65</sup> Refer to CCS/400/006/12 at [http://www.ccs.gov.sg/content/ccs/en/Public-Register-and-Consultation/Public-Register-and-Consultation-items/proposed\\_conductbetweenqantasairwayslimitedandemiratesinrelation.html](http://www.ccs.gov.sg/content/ccs/en/Public-Register-and-Consultation/Public-Register-and-Consultation-items/proposed_conductbetweenqantasairwayslimitedandemiratesinrelation.html).

The Qantas/Emirates alliance covers all network, scheduling, pricing, marketing, purchasing, customer service, resourcing decisions, and frequent flyer programs between the parties across their worldwide network, and may include enhancing cooperation between Emirates and Jetstar branded franchises where appropriate.

<sup>66</sup> Refer to CCS/400/002/12 at [http://www.ccs.gov.sg/content/ccs/en/Public-Register-and-Consultation/Public-Register/Anti-competitive-Agreements.detail.proposed\\_conductbetweenqantasairwayslimitedandjetstarairwaysptyl.html](http://www.ccs.gov.sg/content/ccs/en/Public-Register-and-Consultation/Public-Register/Anti-competitive-Agreements.detail.proposed_conductbetweenqantasairwayslimitedandjetstarairwaysptyl.html). The Qantas-Jetstar Group's Proposed Conduct includes coordination on all network, scheduling, pricing, marketing, purchasing, customer service and resourcing decisions.

<sup>67</sup> Paragraph 10 of the Civil Aviation Authority of Singapore and Ministry of Transport joint submission on the Proposed Strategic Alliance between SIA and Air NZ dated 21 March 2014.



127. CCS also notes the Parties' submission that the Proposed Strategic Alliance will put Air NZ and SIA in a stronger position to compete with the new Qantas/Emirates alliance by providing a similar network of seamless premium global air services that better connects New Zealand to Australia, Europe, including the United Kingdom, the Middle East and Northern Africa, as well as other potential regions in the future. Taking a holistic view of market shares and the presence of competitors that are able to provide strong competitive pressure on the Parties, the Proposed Strategic Alliance could serve to intensify competition between the Parties and existing competitors along the Singapore-New Zealand O&D City Pairs.
128. The existence of low legal barriers to entry by virtue of the liberal ASAs and negligible barriers to entry in terms of acquiring slots at the respective airports and access to ground services will also facilitate entry and competitors' ability to ramp up capacity to meet any increase in demand.
129. Considering the above, the extent of impact of the Proposed Strategic Alliance on competition in the Relevant Market might be limited, especially when [REDACTED] and the interline nature of the Air NZ flight operated in the market<sup>68</sup> are considered. In this regard, CCS notes that out of the Parties' combined [REDACTED] market share, Air NZ's one-stop service with Etihad approximates [REDACTED]<sup>69</sup>.
130. On account of the above, CCS is of the view that the Proposed Strategic Alliance does not afford the Parties the possibility of eliminating competition in respect of a substantial part of the services in the Relevant Market.

### 5.3 Conclusion

131. CCS is of the view that the Proposed Strategic Alliance and Individual Restrictions will by their nature have the object of preventing, restricting or distorting competition in the Relevant Market and have an appreciable adverse effect on competition.
132. CCS rejects that benefits such as premium customer handling, lounge and FFP benefits set out in paragraphs 90 to 92 above satisfy the NEB criteria set out in the Act and clarified in the *CCS Guidelines*.
133. However, CCS agrees that the Proposed Strategic Alliance will directly result in efficiencies, being an increase in capacity in the Relevant Market and the strengthening of Singapore's position as an aviation hub, which outweigh the anti-competitive effects of the Proposed Strategic Alliance.
134. CCS also agrees that the Proposed Strategic Alliance does not impose restrictions not indispensable to the attainment of the said efficiencies.

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<sup>68</sup> Paragraphs 4.1.4 and 5.1.4 of Form 1.

<sup>69</sup> Based on market share figures provided by the Civil Aviation Authority of Singapore and the Ministry of Transport.



135. A summary of the Application and an invitation for comments was placed on CCS's public register on 5 February 2014 to seek third-parties' views on the Proposed Strategic Alliance. CCS also wrote to third-parties including key competitors, travel associations, as well as relevant industry players such as the CAAS, MOT, Vital Shared Services ("Vital") and Changi Airport Group ("CAG") to invite them to comment on the Proposed Strategic Alliance between the Parties.

137. In particular:-

- [illegible]

- [REDACTED]

<sup>71</sup> CAAS email to CCS dated 21 March 2014.



[REDACTED]

c. Vital is of the view that the [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]<sup>72</sup>

d. CIAL has expressed that they support the Proposed Strategic Alliance between SIA and Air NZ. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]<sup>73</sup>

## 7 CCS'S DECISION ON THE PARTIES' APPLICATION

138. Based on the foregoing, the CCS concludes that the Proposed Strategic Alliance does not infringe the section 34 prohibition because of the effect of the NEB exclusion set out in section 35, read with paragraph 9 of the Third Schedule to the Act.

139. 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.

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

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<sup>72</sup> Civil Aviation Authority of Singapore and Ministry of Transport submission on the Proposed Strategic Alliance between SIA and Air NZ dated 21 March 2014.

<sup>73</sup> Vital submission on the Proposed Strategic Alliance between SIA and Air NZ dated 14 March 2014.

<sup>74</sup> Christchurch International Airport Limited submission on the Proposed Strategic Alliance between SIA and Air NZ dated 18 March 2014.



- a. Changes in parties to the Proposed Strategic Alliance;
- b. The increase in capacity on the Singapore-Auckland O&D city pair as set out in Form 1 of the Application<sup>75</sup> is unlikely to materialise;
- c. Changes in the business plans associated with the operations of the Proposed Strategic Alliance and of the Parties which have a significant impact on the Singapore market; and
- d. A reduction in the number of competing carriers in the Relevant Market.

141. The Parties are requested to notify CCS of any changes as set out in paragraph 140 above within 10 working days from the date of occurrence of such event.



Toh Han Li  
Chief Executive  
Competition Commission of Singapore

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<sup>75</sup> Paragraph 5.1.28 of Form 1.



