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

**Notice of Decision issued by the Commission**

**Notification for Decision by Qantas Airways and British Airways of their Restated Joint Services Agreement**

**13 February 2007**

**Case number: CCS 400/002/06**

## I. INTRODUCTION

1. This notice sets out the Commission's analysis and decision regarding the Restated Joint Services Agreement between British Airways Plc Registration No. 1777777 ("British Airways") and Qantas Airways Limited ABN 16 009 661 901 ("Qantas"). The Commission's analysis and decision is based on submissions and information provided by the Parties to the notification for decision, and other relevant third parties.

## II. THE FACTS AND PARTIES' SUBMISSIONS

### The Notification

2. Qantas and British Airways (collectively referred to as the "Parties") entered into the Restated Joint Services Agreement (the "Agreement") on 3 April 2000.

3. On 24 April 2006, the Parties notified the Agreement to the Commission under section 44 of the Competition Act (Cap. 50B) (the "Act"). On 24 July 2006, the Parties also submitted to the Commission their Variation Agreement dated 27 September 2001. The purpose of the notification was to seek a decision by the Commission on whether the Agreement infringes section 34 of the Act. The notification was also supported by a report

prepared by NERA Economic Consulting (the "NERA Report"), which amongst other issues, addressed the economic benefits of the Agreement.

4. A summary of the notification was placed on the Commission's public register on 8 May 2006.

**Singapore's Aviation Policy**

5. Singapore's aviation policy is based on the fundamental belief in free and open competition to provide an extensive and liberal framework for more air services and city links to Singapore. A liberal air policy helps to facilitate the growth in trade, investment and tourism flow between Singapore and other countries by encouraging airlines to provide the necessary air linkages. Currently, Singapore has air services agreements with more than 90 countries around the world. Singapore adopts a liberal regime on airfares, allowing carriers operating in Singapore to set their own fares, which are dictated by market forces.[1]

**The Parties**

**i) British Airways**

6. British Airways is incorporated in the United Kingdom. It was privatised in 1987 and is listed on the London Stock Exchange. The main activities of British Airways are the operation of international and domestic scheduled and chartered air services for the carriage of passengers, freight and mail, and the provision of ancillary services.

**ii) Qantas**

7. Qantas is Australia's largest domestic and international airline. It is listed on the Australian Stock Exchange. Qantas' main business is the transportation of passengers. In addition, the Qantas Group operates a diverse portfolio of airline-related businesses, such as engineering and maintenance, ground-handling, catering, freight and sale of worldwide and domestic holiday tours.

**iii) oneworld**

8. Further to the integrated co-operation provided for by the Agreement, the Parties are also co-operating with each other and other carriers, namely,

[1] Source: Ministry of Transport, Air Transport Aviation Policy website at www.mot.gov.sg.

American Airlines, Cathay Pacific Airways, Iberia, LAN, Finnair and Aer Lingus, in the **one**world air alliance. The alliance allows partner carriers to offer their customers more services and benefits than any carrier can provide on its own. These include interline e-ticketing between partner carriers on a broader route network of more than 600 destinations, as well as other benefits such as frequent flyer benefits and airport lounge access.

**Overview of the Agreement**

9. Under the original agreement entered into in 1995, the Parties agreed to co-ordinate their business activities in relation to their routings, fares, frequencies, aircraft types, product specifications, aircraft configurations, connection requirements and other aspects of their operation and marketing of routes covered by it. The Agreement expanded these arrangements to provide for co-ordination and benefit sharing on any part of their respective networks.

10. According to the Parties, the Agreement is, for all intents and purposes, a co-operative joint venture between Qantas and British Airways, which is intended to maximise consumer benefits and to operate cost-effective and efficient networks. The Agreement states that the Parties have agreed, *inter alia*, to operate certain designated routes (which may be amended from time to time), where they would co-operate to establish a network of airline services. The Parties submit that under the Agreement, they co-operate in relation to their operation of services between:

    a. Australia and Europe;
    b. Australia and Southeast Asia; and
    c. Europe and Southeast Asia.

11. The Agreement provides for enhanced co-operation in areas such as scheduling, marketing, sales, cargo, pricing, holiday products, distribution and agency arrangements, frequent flyer programmes, in-flight products, information technology, purchasing and associated service activities. The co-ordination of their marketing, sales and pricing and associated activities including agreeing fares and new fare products; operating co-branded joint offices, joint retail sales outlets and joint call centres in agreed locations; co-locating certain facilities and staff in agreed locations; appointing common general sales agents in agreed locations; conducting agreed joint promotions; and co-ordinating frequent flyer activities and offerings, and agency commissions, rebates, incentives and discounts. The Agreement also provides for revenue sharing. It is for an indefinite duration, although

both Parties could terminate it by giving 12 months' notice, or in the event of a breach or other terminating event.

12. In summary, the Parties submit that the Agreement involves co-operation between them in the provision of services in relation to:

    a. scheduled air passenger transport;
    b. air freight services; and
    c. sale of air travel services.

**The Parties' Submissions on Market Conditions Leading to the Agreement**

13. In highlighting the need for the Agreement, the Parties have stated in their notification that the hub-and-spoke model is the pre-eminent model for international aviation, particularly for long-haul operations. Hub carriers focus traffic around a central hub, to which traffic from multiple destinations is brought and then distributed to other destinations. Each flight in a hub carrier's network is able to draw on feeder traffic from a wide range of destinations, rather than having to rely on local traffic. Hub-and-spoke systems therefore create economies of density and make services to a wider range of destinations viable.

14. The Parties have used the term "Kangaroo Route" to refer to the bundle of routes between Australia and Europe (and vice versa) via Asia or the Middle East. The Parties claim that these are the longest high-density commercial aviation routes in the world.

15. Given the long-haul nature of the Kangaroo Route, the Parties have stated that it is impossible to operate services non-stop, i.e. an aircraft must stop at a mid-point to refuel and change crew. As such, the Kangaroo Route must always be operated as a combination of at least two separate flight sectors.[2]

16. According to the notification, how this combination of sectors on a journey between Australia and Europe is created will depend on where the carrier is based. A carrier based at either end of the Kangaroo Route (an 'end-point carrier') such as Qantas or British Airways must operate the Kangaroo Route by flying first to a mid-point, refuelling, and then continuing the same service to the ultimate destination. This mid-point will be in either Asia or the Middle East.

[2] A 'sector' is any portion of a journey from when an aircraft takes off to when it next lands. Sectors are also commonly referred to as 'legs' of a journey.

17. The Parties submit that a carrier that has its hub operations at a mid-point between Australia and Europe (a 'mid-point carrier') is not limited to the two sectors in operating the route. Instead, it can carry passengers on the Kangaroo Route by combining any of the independent single-sector flights that it operates between its hub and ports in Australia with any of the flights that it can also operate from its hub to ports in Europe.

18. The Parties claim that it is intrinsically difficult for end-point carriers to operate profitably the second sector, or 'end sector' of a two-sector Kangaroo Route service. Typically, a two-sector service will leave the carrier's hub with a full load of passengers. At the mid-point, many passengers will disembark, leaving the end-point carrier with only a partly full plane for the end-sector to the flight's ultimate destination. In contrast, mid-point carriers can operate each sector of the Kangaroo Route flights separately, drawing feed for each destination from the whole of the carrier's home hub network. These carriers, with the advantage of well-located hubs and often supported by their government, have continued to strengthen and grow.

19. To this end, the Parties argue that end-point carriers suffer a fundamental disadvantage in seeking to sustain services over the Kangaroo Route, as they can never refill their planes at the mid-point as easily or profitably as mid-point carriers. As a result, end-point carriers have found it increasingly difficult to remain viable on the Kangaroo Route.

20. By co-operating, the Parties claim that they have been able to remain competitive on the Kangaroo Route and have overcome some of the difficulties inherent in operating two long sector services from end-points on the Kangaroo Route – which either Party on its own could not have achieved. The Parties claim that the Agreement will allow them to continue their co-operation, as it gives each Party the ability and financial incentive to:

    a. support the Kangaroo Route services from both ends of the route to alleviate the 'end sector' problem for each Party;

    b. combine and co-ordinate traffic to create a 'mini-hub' in Singapore, where Qantas and British Airways can provide feed to each other's flights. Neither Qantas nor British Airways has sufficient traffic on the Kangaroo Route to support such an operation on its own; and

    c. combine resources to create joint sales and support operations in Singapore, Bangkok and elsewhere in Asia, which allows Qantas

and British Airways to support their Kangaroo Route services at their mid-points (including by generating local traffic) more effectively than would be viable for either Party on its own.

**The Parties' Submissions on Alternative Commercial Arrangements**

21. The Parties submit that the incentives highlighted in paragraph 20 above which are brought about by the Agreement require Qantas and British Airways to co-ordinate their activities, rather than compete on the routes operated under the Agreement. To this end, although the Parties note that there are other alternative commercial arrangements in the airline industry, which may be less restrictive of competition, e.g. simple codeshare agreements, they do not consider that such lesser forms of co-operation would permit the Parties to support as many services as are currently offered under the Agreement. The Parties are of the view that this is mainly because the Parties' interests will not be aligned.

**i) Codeshare agreements**

22. The Parties submit that, in general, a codeshare is a practice by which one carrier (the marketing carrier) is allowed to sell seats on flights operated by another carrier (the operating carrier) under the marketing carrier's own designator code (e.g. QF for Qantas). This allows the marketing carrier to increase its flight frequencies or extend its virtual network of destinations, without having to operate additional flights.

23. In order to codeshare on another airline's services, the marketing carrier must first have the right to operate to that destination in its own right under the relevant bilateral air services agreements. A codeshare arrangement may be a stand-alone arrangement, or part of a wider agreement between airlines. However, the Parties have stated that, without the approval of the competition regulators, agreements involving codeshare arrangements cannot involve any form of co-ordination or co-operation in terms of pricing or market sharing (i.e. agreeing scheduling or capacity) because such co-ordination will, in all likelihood, have the object or effect of preventing, restricting or distorting competition in a market, which is prohibited under section 34 of the Act.

24. The Parties further explain that an airline will attempt to enter into a codeshare agreement with another airline in response to the following demand and supply conditions on a specific route:

a. demand to a particular destination is not sufficient to warrant that airline operating its own services, but the airline wants to be able to extend the virtual network of destinations that it can sell to customers;

b. demand to a particular destination is not sufficient to warrant that airline operating its own direct services, but the airline wants to be able to offer "add on" services that allow passengers to connect onto flights to a wider range of destinations; and

c. restrictions imposed under bilateral air services agreements between countries or slot constraints at relevant airports restrict the number of flights that an airline may operate on particular routes.

25. Taking into account the above specific demand and supply conditions, the Parties have highlighted that the various codeshare agreements that they have entered into with other airlines differ substantially from the Agreement. This is because the market conditions on the Kangaroo Route are significantly different from those that exist on any other route on which the Parties have entered into a codeshare agreement. According to the Parties, the main differences are as follow:

a. Routes between Australia and Europe are two-sector routes (i.e. carriers must stop at a mid-point to provide a service between these two points), whereas most other routes on which the Parties have codeshare agreements are one-sector routes;

b. Given the two-sector nature of Australia/Europe services, competition on these routes is considerably stronger than on most other routes. This is because a number of carriers are able to operate on these routes from their home hub (i.e. mid-point carriers). On most other one-sector routes, the majority of traffic is carried by the two carriers based at each end of the route;

c. Qantas and British Airways have strengths at either end of the routes covered by the Agreement (i.e. Australia and Europe), but both face problems in refilling planes at the mid-point for second-leg services. The Parties do not face this problem on other routes on which they codeshare;

d. The Agreement applies to routes where the services of the Parties overlap, whereas most other services on which the Parties have codeshare agreements do not overlap; and

e. Qantas and British Airways want to continue operating on the route. However, in the absence of the Agreement, they would need to reduce the scope of their services because some services would no longer be viable (particularly the second-leg services).

26. The Parties argue that under the abovementioned conditions, a simple freesale codeshare[3] or blockspace codeshare[4] alone would not deliver the same benefits that they do on other routes. The Parties state that this is because:

a. a codeshare agreement would not provide the Parties with an incentive to sell each other's marginal services equally with its own. In order to compete with other mid-point carriers, Qantas and British Airways need to be able to offer a range of different schedule options to a number of Australian and European cities. If the Parties are unable to provide a broad range of schedule options to their respective home bases, they would not be able to compete as effectively with other mid-point carriers. Under the Agreement, the Parties each have an incentive to support services that would otherwise not be viable for one carrier to operate on its own. This is because the Parties are jointly responsible for the cost of each flight. By entering into an arrangement whereby the Parties share both revenues and costs, each has an incentive to actively support all the services covered by the Agreement to ensure that they are profitable, regardless of which carrier actually operates the service. This incentive would not exist under a simple codeshare agreement, where the operating carrier would be solely responsible for the cost of its own services.

[3] This refers to a type of codeshare arrangement, where no inventory is held or blocked for the marketing carrier, and the marketing carrier sells into the operating carrier's inventory.
[4] This is another type of codeshare arrangement, where a marketing carrier buys a fixed number of seats from the operating carrier and may or may not be able to return the unsold seats

In contrast, under most codeshare arrangements, the Parties do not need to establish a 'mini-hub' (in this case, Singapore) with a range of broad schedule options in order to attract passengers to the services operated from the hub.

b. the scope for codesharing between Qantas and British Airways on routes between Australia and Europe would be limited in the absence of the Agreement. For example, if Qantas maintains some of its flights between Singapore and London without the Agreement, the Parties would have little incentive to codeshare on their other services. There are two main reasons for this:

i. British Airways would have the opportunity to 'steal' passengers from Qantas' lower-performing second-leg services between Singapore and London. For example, if Qantas grants codesharing rights to British Airways on its Singapore/Perth services, it is possible that British Airways may 'steal' passengers from Qantas' Singapore/London service. Under this arrangement, Qantas would ultimately forgo revenues by not being able to carry the passengers on its own services for the entire journey.

ii. the Parties would generate greater revenues by selling seats to one-sector passengers rather than two-sector passengers travelling on both Qantas and British Airways flights. The revenue that the Parties would generate by selling tickets to one-sector passengers is generally greater than that which they would receive by making a seat available to a codeshare partner under the **one**world alliance. Accordingly, they would have little incentive to make seats available on their own services to a codeshare partner.

**(ii) Interlining agreements**

27. Interlining is a transaction between carriers, by which passengers, baggage and freight are transferred from one carrier to another using only one ticket or one check-in procedure from departure point to destination.

28. While such arrangements need not require fully integrated co-operation between the Parties (and hence may be less restrictive of competition), the Parties explain that fares that allow interlining (in particular International Air Transport Association (IATA) interlining) are normally more expensive than the fares offered by the Agreement. According to the Australian Competition and Consumer Commission (ACCC) Discussion Paper on IATA Passenger Tariff Co-ordination (30 June 2005), the ACCC noted the

following comparison of IATA interline fares and Qantas fully-flexible fares for return travel between Sydney and London in February 2005:

**Comparison of Fully Flexible Fares for Return Travel from Sydney to London (AU$)**

| Fare Category | IATA Fares | Qantas Fare[(1)] | Difference | Percentage Difference |
|---|---|---|---|---|
| First Class | $16,345 | $14,140[(2)] | $2,205 | 13.5% |
| Business Class | $12,687 | $9,339 - $9,374[(3)] | $3,313 - $3,348 | 26% |
| Economy Class | $9,454 | $2,469 - $2,504[(4)] | $6,950 - $6,985 | 73.5% |

Notes: (1) From Qantas website on 14 December 2004 for travel on 28 February 2005. (2) Changes permitted and full refund for prior cancellation. (3) Changes permitted and refund available for prior cancellation less $200 fee. (4) Changes permitted with possibly higher fares for $30 fee, and refund available for prior cancellation less $220 fee.

29. According to the above table, Qantas' market fares were lower than IATA interline fares on the Sydney/London route across all cabin classes. The difference in fares was most significant for economy class, where the Qantas market fare was approximately 74% cheaper than the IATA fare. In view of the higher IATA fares, interlining arrangements may not be an appropriate alternative to the Agreement.

## Why the Agreement may restrict competition

30. Specifically, the Parties are concerned with whether the activities highlighted in paragraph 11 above have an appreciable adverse effect on competition, as the Agreement involves:

    a. fixing prices on all routes between Australia and Europe, Australia and Southeast Asia, and Europe and Southeast Asia;

    b. jointly managing capacity and yields on selected routes between Australia and Europe, Australia and Southeast Asia, and Europe and Southeast Asia;

    c. co-ordinating the scheduling of flights and relevant sales and marketing operations on selected routes between Australia and Europe, Australia and Southeast Asia, and Europe and Southeast Asia; and

    d. amending the routes which will be subject to all aspects of the Agreement at any time in the future.

## III. LEGISLATIVE FRAMEWORK

### *Section 34 Prohibition*

31. Section 34 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.

32. 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 … "

33. An assessment on whether an agreement infringes the section 34 prohibition requires an analysis of the degree to which the parties to the agreement are actual or potential competitors, and the effect of the agreement on third parties. An agreement will fall outside the prohibition in the section 34 prohibition if it does not have an *appreciable* adverse impact on competition.

### *Section 35 Exclusion*

34. Section 35 of the Act read with paragraph 9 of the Third 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."

***Application of section 34 prohibition to undertakings***

35. The section 34 prohibition 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 Parties are corporate entities carrying on commercial and economic activities relating to air services and would fall within the definition of "undertakings" under the Act. The Commission is of the view that the Agreement is an agreement between undertakings, which means that it would be subject to the section 34 prohibition.

## IV. THE COMMISSION'S ASSESSMENT

36. In assessing the impact of the Agreement on competition, the Commission will first consider the relevant markets that are affected by the Agreement for each of the three services mentioned in paragraph 12. Market definition is the first step in a full competition analysis. It is also a key step in providing the framework for analysis by identifying the competitive constraints acting on a seller of a given product.

37. Thereafter, the Commission will examine the Agreement to consider if it prevents, restricts or distorts competition in the relevant market(s) in Singapore. Should the Agreement fall within the scope of the section 34 prohibition, the Commission will proceed to make a finding of infringement unless the Parties are able to demonstrate that the Agreement yields net economic benefit, and hence can be excluded under section 35 of the Act.

38. The respective market definition and economic analysis for each of these services is considered below.[5]

### Part A - Scheduled[6] Air Passenger Transport

### i) Parties' Submission

[5] The figures provided by the Parties are comparable to the data provided by the Civil Aviation Authority of Singapore ("CAAS").

[6] Scheduled air transport services have generally been considered to be a distinct market from chartered air transport services: see *KLM/Alitalia* Case No COMP/JV.19 (Decision of 11 August 1999) paragraph 52; Case No COMP/M.157 *Air France/Sabena* [1994] 5 CMLR M1 paragraph 25. In *Lufthansa/SAS* (OJ 1996 54/28, [1996] 4 CMLR 845, paragraph 31) this was because of the differences in convenience.

*Market Definition*

39. The Parties submit that the relevant markets are the markets for the provision of passenger air services between:

    a. Singapore and Australia (and vice versa), including markets for travel between each of Sydney, Melbourne, Perth, Brisbane, Adelaide and Darwin/Cairns[7], and Singapore; and
    b. Singapore and Europe (and vice versa), including markets for travel between each of London and Frankfurt, and Singapore.

40. While the Parties note that there are other possible relevant product definitions[8], they have proposed that there is no need to state definitively which product market definition should be used. This is in view of the range of product definitions that may be adopted for passenger air services market, and the view that it is clear the Agreement has resulted in considerable benefits to Singapore regardless of the specific definition used to analyze the relevant markets.

*Appreciable Prevention, Restriction or Distortion of Competition*

41. The Parties submit that the Agreement is intended to maximise consumer benefits and to operate cost-effective and efficient networks, as stated in paragraph 10 above.

42. The Parties claim that they do not enjoy market power, whether through the Agreement or otherwise, in the relevant air passenger transport markets. The data provided by the Parties show that Qantas and British Airways' combined market share for passengers travelling between Singapore and major Australian cities has remained steady at 34% in the last two years ending 31 January 2005 and 31 January 2006. The Parties have submitted that Singapore Airlines is their main competitor on each of these routes, with a market share of about 58% in 2005 and 2006 (Tables 1 and 2 below provide more details of the various carriers along these routes in 2005 and 2006). Hence, they claim that the high market shares of Singapore Airlines on these routes (except for the Singapore/Darwin route) suggest that Qantas

[7] Qantas commenced its direct Singapore-Adelaide service in July 2006. Prior to the direct service, it was the Singapore-Adelaide (via Darwin) service. To this end, the Singapore-Darwin route is now part of the Singapore-Cairns service, via Darwin.

[8] Other possible product market definitions could be obtained by differentiating the market based on whether they are business passengers (who are generally less sensitive to price, but are more sensitive to other factors such as flexibility in schedules, connectivity, convenience and comfort) and leisure passengers (who are generally more price sensitive); or according to cabin type (e.g. economy, business and first class).

and British Airways have not been able to achieve a dominant position in these markets as a result of the Agreement, i.e. the Parties do not have significant market power.

**Table 1: Market Share for Passengers Travelling between major Australian cities and Singapore (and vice versa), Year Ended 31 January 2006**

| Carrier | Australian City | | | | | | |
|---|---|---|---|---|---|---|---|
| | **Sydney** | **Melbourne** | **Perth** | **Brisbane** | **Adelaide** | **Darwin** | **All Cities** |
| Qantas | 30% | 24% | 39% | 24% | 23% | 93% | 30% |
| British Airways | 6% | 6% | 1% | 1% | 1% | 1% | 4% |
| **Combined QF-BA** | **36%** | **30%** | **40%** | **26%** | **24%** | **94%** | **34%** |
| Singapore Airlines | 57% | 56% | 56% | 62% | 73% | 1% | 57% |
| Emirates | 0% | 9% | 0% | 9% | 0% | 0% | 4% |
| Gulf Air | 4% | 0% | 0% | 0% | 0% | 0% | 1% |
| Malaysia Airlines | 1% | 1% | 0% | 1% | 2% | 0% | 1% |
| Austrian Airlines | 0% | 3% | 0% | 0% | 0% | 0% | 1% |
| Lufthansa | 1% | 1% | 0% | 0% | 1% | 0% | 1% |
| Valuair | 0% | 0% | 2% | 0% | 0% | 0% | 0% |
| Other | 1% | 1% | 0% | 1% | 1% | 5% | 1% |
| **Total** | 100% | 100% | 100% | 100% | 100% | 100% | 100% |

**Table 2: Market Share for Passengers Travelling between major Australian cities and Singapore (and vice versa), Year Ended 31 January 2005**

| Carrier | Australian City | | | | | | |
|---|---|---|---|---|---|---|---|
| | **Sydney** | **Melbourne** | **Perth** | **Brisbane** | **Adelaide** | **Darwin** | **All Cities** |
| Qantas | 28% | 25% | 42% | 28% | 19% | 90% | 30% |
| British Airways | 6% | 6% | 1% | 1% | 1% | 1% | 4% |
| **Combined QF-BA** | **34%** | **30%** | **42%** | **28%** | **20%** | **91%** | **34%** |
| Singapore Airlines | 59% | 56% | 54% | 60% | 75% | 1% | 58% |
| Emirates | 0% | 7% | 0% | 8% | 0% | 0% | 3% |
| Gulf Air | 4% | 0% | 0% | 0% | 0% | 0% | 1% |
| Malaysia Airlines | 2% | 3% | 1% | 1% | 3% | 0% | 2% |
| Austrian Airlines | 0% | 2% | 0% | 0% | 0% | 0% | 1% |
| Lufthansa | 1% | 1% | 0% | 1% | 1% | 0% | 1% |
| Valuair | 0% | 0% | 1% | 0% | 0% | 0% | 0% |
| Other | 1% | 0% | 1% | 1% | 0% | 8% | 1% |
| **Total** | 100% | 100% | 100% | 100% | 100% | 100% | 100% |

Notes for Tables 1 and 2: (1) Marketing Information Data Transfer ("MiDT") data derived from the marketing carrier, as distinct from the operating carrier. (2) The carriers listed are those with the highest total market share for the year ended 31 January 2006. (3) Qantas Airways data includes passengers that travel on services operated by Qantas and Australian Airlines. (4) Valuair merged with Jetstar Asia in mid- to late- 2005. Valuair terminated its services between Singapore and Perth on 9 October 2005. (5) Total market shares may not add up to 100% due to rounding errors.
Source: MiDT data provided by Qantas

43. The Parties currently provide services under the Agreement to two European cities, namely, London and Frankfurt. Similarly, the Parties view their combined market share to be significantly lower than Singapore Airlines (for the London/Singapore route) and Lufthansa (for the Frankfurt/Singapore route). For the London/Singapore market, the Parties' combined market share was about 35% for the year ended 31 January 2005 and 38% for the year ended 31 January 2006. In comparison, Singapore Airlines' market share was 51% and 50% respectively. For the Frankfurt/Singapore market, the Parties' combined market share was 17% for the year ended 31 January 2005 and 16% for the year ended 31 Jan 2006. Singapore Airlines' and Lufthansa's market shares were constant at 52% and 23% respectively in both years (Table 3 below provides more details of the various carriers on those two routes in both years). To this end, the Parties claim that the market shares suggested that the Agreement has not facilitated the elimination of competition in any relevant market for travel between Singapore and major cities in Europe, namely, London and Frankfurt.

**Table 3: Market Share for Passengers Travelling between Europe and Singapore (and vice versa)**

| Carrier | All Passengers (Singapore/London) | |
|---|---|---|
| | **2005** | **2006** |
| Qantas | 17% | 20% |
| British Airways | 18% | 18% |
| **Combined QF-BA** | **35%** | **38%** |
| SQ | 51% | 50% |
| Thai Airways | 3% | 2% |
| Malaysia Airlines | 3% | 2% |
| Emirates | 2% | 2% |
| KLM | 1% | 1% |
| Lufthansa | 1% | 1% |
| Gulf Air | 1% | 11% |
| Air France | 1% | 1% |
| Other | 2% | 3% |
| **Total** | 100% | 100% |

| Carrier | All Passengers (Singapore/Frankfurt) | |
|---|---|---|
| | **2005** | **2006** |
| Qantas | 17% | 16% |
| British Airways | 0% | 0% |
| **Combined QF-BA** | **17%** | **16%** |
| SQ | 52% | 52% |
| Lufthansa | 23% | 23% |
| Thai Airways | 3% | 3% |
| Emirates | 1% | 2% |
| Malaysia Airlines | 2% | 1% |
| Gulf Air | 0% | 1% |
| Qatar Airways | 0% | 1% |
| Air New Zealand | 0% | 0% |
| Cathay Pacific | 0% | 0% |
| Other | 1% | 2% |
| **Total** | 100% | 100% |

Notes for Table 3: (1) MiDT data derived from the marketing carrier, as distinct from the operating carrier. (2) The carriers listed are those with the highest total market share for the year ended 31 January 2006. (3) Total market shares may not add up to 100% due to rounding errors.
Source: MiDT data provided by Qantas

*Net Economic Benefit*

44. The Parties take the view that the Agreement falls within the category of agreements with net economic benefits, and hence should be excluded from the ambit of the Act. To demonstrate that the Agreement yields net economic benefit, the Parties have adopted the approach proposed in the NERA Report, where the counterfactual is one where the Parties relocate their "hub".

45. The NERA Report submits that, in order to assess an agreement against the exclusion criteria, the Parties must identify and, to some degree, quantify the efficiencies that result from the agreement. However, in this case, given that the Agreement had been in place for a long period of time (the original agreement started back in 1995), it is more difficult to quantify these efficiency gains. For the purpose of this notification, the Parties have requested their relevant senior commercial managers to consider the contingency that would most likely be implemented if the Agreement did not continue. Qantas has also discussed this counterfactual contingency with its Executive General Manager. These managers have advised that they believed it is in the best interest of the Parties to continue to operate the Agreement – even if it is via a different mid-point mini-hub. The NERA Report therefore considers that it would be appropriate to consider the relocation of the Parties' "hub" outside Singapore as the reference point because it takes into account what the Parties would most likely do, rather than what the Parties could potentially do, if the Agreement is not excluded from the section 34 prohibition.

46. It follows that, while it is difficult to determine what exactly the Parties would be able to do in the absence of exclusion of the Agreement from the section 34 prohibition, Qantas has indicated that it would be feasible to reallocate a number of Australia/Europe through-services currently operated via Singapore to either Bangkok (most likely option), Kuala Lumpur or potentially Hong Kong.

47. Further, the NERA Report also states that Qantas has advised that it is likely to reduce capacity for travel to and from Singapore if all the passengers (who are only travelling via the "hub") are to be relocated to other services via an alternate mid-point. The Singapore services that would remain under this counterfactual are those that would be required to meet demand for:

    a. one-leg services between Australia and Singapore, and Europe and Singapore;

b. two-leg services between Australia, Singapore and another destination (other than Europe); and Europe, Singapore and another destination (other than Australia); and

c. two-leg services between Australia and Europe via Singapore, i.e. for those passengers that still wish to stop in Singapore for a period of time on their journey between Australia and Europe.

48. As such, under the counterfactual involving the greatest withdrawal of services from Singapore, Qantas is likely to:

a. reduce the number of weekly flights operated between Australia and Singapore from 90 to 54, or about 44% reduction in total capacity on these routes; and

b. reduce the number of weekly flights operated between Europe and Singapore from 42 to 14, or about 68% reduction in total capacity on these routes.

49. Similarly, British Airways is likely to:

a. cease operating all of its 14 weekly sectors between Australia and Singapore; and

b. reduce the number of weekly sectors operated between Europe and Singapore from 28 to 14, or about 47% reduction in total capacity on these routes.

*(a) Contribution to improving the production or distribution of goods, or to promoting technical or economic progress*

50. The Parties argue that the Agreement allows them to achieve significant productive efficiencies by allowing for the co-ordination of services through Singapore. These efficiencies include cost reductions and service improvements brought about as a result of the co-ordination of the flights pursuant to the Agreement, as well as those achieved through the development of joint facilities in Singapore, such as sales teams, retail shops, customer service facilities and airport lounges.

Cost savings

51. Under the Agreement, the Parties achieve cost savings operating as a joint venture and thereby optimize the provision of their joint services between Australia and Europe. By looking at the total projected demand for these services (given the price at which the services are offered), they are able to determine how much capacity should be allocated to each relevant route and at what times of the day such capacity should be added (or removed).

52. An assessment of the types of passengers travelling on the routes under the Agreement will also help to inform the Parties as to what time of the day services should be offered to best match demand. According to the Parties, cost savings are achieved as a result of this co-ordination in two main ways:

a. the guarantee of passenger feed and the ability to jointly determine sales targets allow both Parties to better match capacity with demand on all routes covered by the Agreement. In doing so, they are able to achieve higher load factors on all flights; and

b. by co-ordinating their services, the Parties can decide between them which carrier is better-placed to operate services on each route. For example, because Qantas has a lower cost base than British Airways, Qantas does more of the flying under the Agreement. Qantas also has a greater variety of aircraft that it can use to service the Australia-Singapore leg, as this is the shorter of the two legs, and can therefore adjust the size of the aircraft to meet the expected demand. This flexibility helps to keep costs down for both Parties.

53. As part of the Agreement, Qantas and British Airways also achieve cost savings through the development of joint facilities and the procurement of joint services.

Lower fares

54. The Parties are of the view that the cost savings achieved under the Agreement allow Qantas and British Airways to compete more effectively with other carriers which have a natural advantage in providing Australia/Europe services from a mid-point hub.

55. To this end, the Parties submit that fares for travel on routes between Australia and Europe have decreased over the course of the Agreement. In particular, the representative economy benchmark fares that were monitored by the Australian Competition and Consumer Commission until

2003 fell by 25% between 1995 (the commencement of the original Agreement in 1995) and 2003. The NERA Report also notes that "fares for travel ex-Singapore have also fallen in line with this trend".

Improved Schedule Options and Better Connection Times

56. By being able to co-ordinate capacity and schedules under the Agreement, the Parties submit that they can better organize their services to ensure that they are offered at convenient times for passengers. In particular, the carriers can ensure that flights from Europe (or Australia) to a mid-point connect with a number of alternative flights to Australia (or Europe) with minimal connection time.

Increased Frequencies

57. The ability to co-ordinate connection times at the mid-point increases the attractiveness of Qantas and British Airways joint services relative to that of other carriers. By attracting more passengers, the Parties can justify the addition of more flights on high-demand routes and, more importantly, the addition of flights on routes which might otherwise not have sufficient demand to support the operation of any services.

Improved tourism industry and employment

58. The Parties also claim that the Agreement contributes to, *inter alia*, increased tourism and employment and, given the large number of passengers who fly on the Kangaroo Route through Singapore, helps to boost the retail markets in Singapore. The Parties have estimated that Singapore will lose about $85.3 million in annual tourist income (including transit passengers) if the Parties relocate their "hub" out of Singapore.

*(b) Not imposing restrictions which are not indispensable to the attainment of these objectives*

59. The Parties submit that the above benefits can only be fully achieved if the full level and degree of co-operation provided for in the Agreement is realized. As discussed in paragraphs 22-29 above, they submit that any other form of co-operation (such as codeshare, interlining, etc.) would not permit the Parties to offer seamless travel throughout each other's network, as the Parties' interests will not be fully aligned. A lesser form of co-operation would result in the Parties not being able to support as many services as are currently offered under the Agreement, as the Parties would

no longer be responsible for the profitability of the services operated by the other carrier.

60. To this end, the Parties highlight that under a simple codeshare agreement:

a. they are unable to achieve similar cost efficiencies, as it does not allow for the co-ordination of prices or capacity. It therefore does not allow Parties to jointly optimize their services by examining the total projected demand for their services (given the price at which the services are offered) to determine how much capacity should be allocated to each relevant route and at what times of the day such capacity should be added (or removed);

b. given that they would not be able to achieve the level of cost savings achieved under the Agreement, they may not be able to sustain services on the routes currently covered by the Agreement in the long-term;

c. they would not have an incentive to schedule their services to ensure that they are offered at convenient times for passengers. This is because they would schedule their services to suit their wider network requirement, with little or no regard for the impact on the connection time for the codeshare partner; and

d. the increased frequency of services that is supported by the Agreement would likely be discontinued, as they are unable to co-ordinate capacity and connection times.

61. In addition, the Parties also submit that interlining agreements may not be an appropriate alternative to the Agreement, given the higher IATA fares (highlighted in paragraph 29 above).

*(c) Not affording the possibility of eliminating competition in respect of a substantial part of the products in question*

62. The NERA Report highlights that although a large number of end-point carriers have withdrawn from operating the second leg component[9], and the Parties have maintained a substantial market share (of about 40-45% over 1995-2005) on routes between Australia and Europe over the course of the Agreement, the Parties continue to face substantial competition from other

[9] Air France withdrew in April 1995, Lufthansa in October 1995, Aeroflot in March 1996, Alitalia in October 2000, AOM in December 2000, KLM in March 2001 and Olympic Airways in November 2002. Austrian Airlines has also announced that it will stop serving the Kangaroo Route by March 2007.

mid-point carriers. These include Singapore Airlines (via Singapore), Emirates (via Dubai), Malaysia Airlines (via Kuala Lumpur), Cathay Pacific (via Hong Kong), Virgin Atlantic (via Hong Kong) and Thai Airways (via Bangkok).

**ii) Commission's Assessment**

*Market Definition*

63. Typically, a starting point for market definition relating to the provision of air passenger transport services is the origin and destination (O&D) pair, usually a city-pair. Passengers generally want to travel to a specific destination and will not be prepared to substitute another destination when faced with a small increase in price. Therefore, each combination of a point of origin and point of destination can form a separate market. Given that the notification specifically concerns the effects of the Agreement in Singapore, the Commission will restrict its consideration and analysis of the Agreement to the following routes that are currently in operation:

a. Singapore-London (Heathrow);
b. Singapore-Frankfurt;
c. Singapore-Sydney;
d. Singapore-Melbourne;
e. Singapore-Brisbane;
f. Singapore-Perth;
g. Singapore-Adelaide;
h. Singapore-Darwin; and
i. Singapore-Cairns.[10]

The Commission notes that, as the Singapore-Cairns service only commenced in July 2006, the Commission will not consider this route pursuant to this notification, given the current lack of data.

64. In addition to defining the relevant market as a city-pair, the Commission also notes that there are other appropriate market definitions if certain distinctions are made. Such distinctions include the types of passengers (such as business passengers who tend to be more time-sensitive but less price-sensitive, and leisure passengers who are price-sensitive, but may be less time-sensitive), and types of flights (such as non-stop (direct) and one-stop (indirect) flights).

[10] The amended routes were notified by the Parties to the Commission on 14 September 2006.

65. In this regard, the Commission considers that there may be more than one appropriate market definition in this case. Further, the Commission notes the Parties' claim that they will reduce the total number of flights in the absence of the Agreement, such that there will be impact on competition regardless of the market definition.

*Appreciable Prevention, Restriction, Restriction of Competition*

66. The Commission notes that under the Agreement, the Parties have agreed to co-ordinate business activities extensively (please see paragraph 11 for the business activities in which the Parties co-ordinate), covering many significant areas in their operation of services between Australia and Europe; Singapore and Australia; and Singapore and Europe. The far-reaching co-ordination of business activities would alter the manner in which the Parties would have provided air services on the routes in the absence of the Agreement, as alluded to in their counterfactuals stated in the NERA Report.

67. Based on the information provided by the Parties in the NERA Report, the Commission also notes that the Parties' combined market share for air passengers travelling between Australia and Singapore, and Europe and Singapore have generally exceeded the indicative 20% threshold for assessing whether an agreement has an appreciable adverse effect on competition, as set out in paragraph 2.19 of the *CCS Guideline on the Section 34 Prohibition 2005*.

68. In view of the foregoing discussion on the Parties' market share and the effects of the Agreement, the Commission finds that the Agreement may have the appreciable effect of preventing, restricting or distorting competition for the provision of scheduled air passenger transport on the specified routes notified to the Commission for decision in paragraph 64 above.

*Net Economic Benefit*

69. Despite requests by the Commission for relevant Board paper(s) and accompanying minute(s), and/or consultancy study to substantiate their counterfactual claim, the Parties have not been able to provide any evidence to the Commission. To this end, they have explained that in view of their resource limitations, they will only prepare such documents when required for operational decision-making. The counterfactual claim also did not appear to have taken into consideration other issues such as the capacity

available for Australian carriers, which are provided for under the respective Air Services Agreements entered into between Australia and the other jurisdictions and suitable timeslots to land in the other mid-points, passenger travel patterns and other existing commercial arrangements. Since the arguments put forward by the Parties on how the Agreement will satisfy the net economic benefit criteria hinge critically on the counterfactual, the Commission will tend to view the arguments with some reservations in the absence of such supporting documentation.

*(a) Contribution to improving the production or distribution of goods, or to promoting technical or economic progress*

70. For this criterion of the net economic benefit test to be met, it is necessary for any objective benefits resulting from the Agreement to outweigh and compensate for any detriments to competition.

71. Following the arguments put forth by the Parties, while the Commission agrees that the Agreement has improved Singapore's connectivity as an air hub, it is possible that most of the benefits accrued are mainly to end-point passengers (i.e. passengers from either Australia or Europe), rather than mid-point passengers (i.e. passengers from Singapore).

72. The Parties further submit that the mid-point carriers operating a hub at the mid-point on the Kangaroo Route have an advantage over them. However, the Parties have not provided any data to support their claims.

73. In relation to the improved tourism brought about by the Agreement which was claimed by the Parties, the Commission is of the view that the Agreement is probably only one of the many factors contributing to Singapore's tourism industry. This is because there is a wide range of factors which influence tourism demand to Singapore, such as the relative costs of other destinations and the perceived attractiveness of Singapore as a tourist destination and business hub. It may also be possible for other carriers to make up for any capacity reductions by one or more airlines, given that Singapore is a major aviation hub.

74. Nevertheless, the Commission agrees that the Agreement has, in general, improved the air passenger transport markets in Singapore, through better scheduling, more flight connections and efficiencies through joint activities such as purchasing and marketing. As such, the Commission is of the view that this condition is met.

*(b) Not imposing restrictions which are not indispensable to the attainment of these objectives*

75. On 13 July 2006, the Commission wrote to the local offices of major airlines identified by the Parties as their major competitors along the routes covered by the Agreement, and other relevant non-airline third parties to invite them to comment on the Agreement.

76. The Commission did not receive any adverse comments from these third parties. One airline commented that the arrangements under the Agreement are likely to be found in varying degrees amongst members of all airline alliances. The airline expressed the view that "absent an entirely free market, with no limits on airline ownership or market access, facilitation of co-operation on product offerings amongst alliance partners, which does not result in the complete elimination of competition on the relevant routes, is a net economic benefit." However, another third party suggested that the Agreement could be replaced by airlines individually entering into separate codesharing agreements with other carriers servicing similar routes.

77. The Commission also notes that revenues from **one**world alliance fares and sales activities in 2005 rose by 20% year-on-year, to almost US$650 million. Interlining between **one**world airlines generated total revenues of more than US$1.8 billion for the eight member airlines, including benefits from alliance fares and sales products. Some 7.5 million passengers transferred between **one**world member airlines' flights in 2005. The number of passengers transferring between **one**world carriers rose by around 5% in 2005.[11] Despite the concerns raised by the Parties on the suitability of alternative commercial arrangements, these figures suggest that it may also be viable for the Parties to use interlining arrangements available under the **one**world alliance.

78. However, to the extent that the benefits of the Agreement will extend beyond those already achieved through the Parties' membership in the **one**world alliance, further co-operation between the Parties would be required. To this end, the Commission is of the view that the benefits outlined in paragraph 74 are dependent on the full integration of the two Parties' networks and services, including joint revenue sharing, scheduling and fare setting, and that the restrictions in the Agreement are necessary to attain those benefits. As such, the Commission is of the view that this condition is met.

[11] Source: **one**world website: www.oneworld.com

*(c) Not affording the possibility of eliminating competition in respect of a substantial part of the products in question*

79. The Commission notes that there are currently 3 carriers flying directly on the Singapore-London (Heathrow) route, 3 carriers flying directly on the Singapore-Frankfurt route, and many other carriers operating non-direct flights on these routes. There are also numerous carriers flying between Singapore and major Australian cities, with the exception of Darwin. Based on figures available to the Commission, Singapore Airlines enjoys substantial market shares on all these routes, except for the Singapore-Darwin route which it does not ply. Tiger Airways, which has started to fly the Singapore-Darwin route in late-2005, has since captured a significant market share and is likely to continue to be a strong competitor to the Parties.

80. The existence of other significant market players on all the routes flown by Qantas and British Airways under the Agreement to and from Singapore is likely to continue to impose competitive pressure on the Parties. In view of the above, the Commission is of the view that the Agreement will not result in the substantial elimination of competition on the routes between Singapore-Europe (i.e. Singapore to London and Frankfurt) and Singapore-Australia.

81. In summary, the Commission is of the view that there are net economic benefits based on the Parties' submissions and the absence of any evidence to the contrary. As such, the Agreement is excluded from the Act in respect of the air passenger transport market.

82. CAAS has written to CCS to state that, in line with the international trend towards air services liberalization, MOT/CAAS is supportive of allowing airlines to enter into cooperative marketing arrangements and have no objection in-principle to the Agreement.

**Part B - Air Cargo Transport**

**i) Parties' Submission**

*Market Definition*

83. The Parties submit that the geographic dimension of air-freight markets is broader than that for passenger markets. This is because freight, unlike passengers, is generally indifferent to the number of stopovers or the specific routing and hence, indirect routes are an effective substitute for

direct routes. To this end, the Parties propose that the relevant markets are the provision of freight services between (i) Australia and Southeast Asia; and (ii) Europe and Southeast Asia.

*Appreciable Prevention, Restriction or Distortion of Competition*

84. The Agreement provides that the Parties will harmonise and integrate their cargo services. The Parties argue that the effect of the Agreement on the market for the provision of air cargo services is *de minimis*, as the Parties' revenues from cargo services are small, both in relation to their total revenues and the total air cargo market. The Parties estimate that they account for between 5% and 19% of all freight carried by Cargo Accounts Settlement System (CASS)[12] members from Singapore to routes travelled under the Agreement.

85. The Parties indicate that, as not all airlines operating out of Singapore are members of CASS, the above market share data is likely to significantly overstate the actual market share of Qantas and British Airways.

86. Further, the Parties highlight that their main priority is the provision of air passenger services, with freight services only being offered to utilise the excess carrier space available on passenger aircraft (after passengers' baggage has been taken into account). In addition, there are also a number of freight-only carriers that operate services on routes within these markets that offer a more specialised service on an as-needed basis.

**ii) Commission's Assessment**

*Market Definition*

87. The Commission agrees, in principle, with the Parties that for air freight (as compared to air passenger services), there is significantly greater scope for indirect services to provide effective substitutes for direct services. However, based on its understanding of the general movement of air freight between Singapore and the respective cities in Australia and Europe, the Commission does not agree with the Parties that the relevant markets are between (i) Australia and Southeast Asia; and (ii) Europe and Southeast

[12] This is an automated billing and account settlement system operated by IATA. IATA collects and publishes information on the weight of freight carried by each IATA member airline between each city pair. Each member airline is able to access its own information on both the amount of freight it carried as well as the total amount of freight carried on each relevant route. However, as this information is commercially sensitive, airlines cannot access information on the amount of freight carried by other individual airlines.

Asia. Instead, the Commission considers the relevant markets for the provision of air freight services to be between (i) Singapore and Australia (including all major cities); and (ii) Singapore and Europe (i.e. London and Frankfurt).

*Appreciable Prevention, Restriction or Distortion of Competition*

88. Taking the above into consideration, the Commission is of the view that while the Agreement provides for the Parties to harmonise and integrate their cargo services, the Agreement will not have an appreciable effect on competition in the provision of cargo services between (i) Singapore and Australia (including all major cities); and (ii) Singapore and Europe (i.e. London and Frankfurt). This is due to the relatively small market shares of the Parties, as well as competition faced by the Parties from other air-freighters (i.e. freight-only aircrafts). To this end, the Commission is of the view that no further analysis of the relevant market is needed.

**Part C - Sale of Air Travel Services**

**i) Parties' Submission**

*Market Definition*

89. According to the Parties, passenger air travel services are sold either directly by airlines, offline or online, or indirectly through intermediaries, including travel agents. Although the Parties note that the development of internet web sales sites by both airlines and travel agents may have blurred the geographic dimension of the market for the sale of air travel services beyond national boundaries, they propose the relevant market to be the sale of air travel services in Singapore.

*Appreciable Prevention, Restriction or Distortion of Competition*

90. According to the Parties, they have developed a sales presence in Singapore under the Agreement through the development of travel centres and telephone sales centres. They highlight that the main competition concern in relation to the market for the sale of air travel is whether, through the Agreement, the Parties have been able to increase their market share for the provision of travel distribution services, or alternatively, to exercise their market power over travel agents in Singapore. The Parties submit that given that they represent only a small proportion of all air services to and from Singapore, they doubt that the Agreement will afford them the ability to eliminate, or markedly to affect, competition in the market. Using the

percentage of passengers travelling through Changi Airport as a broad proxy for market shares, Qantas and British Airways claim that they accounted for less than 8% of total passengers into and out of Singapore in 2005.

**ii) Commission's Assessment**

*Market Definition*

91. The Commission considers the relevant product market to be the sale of air travel services in Singapore, which includes tickets sold directly by airlines to travellers as well as those sold through indirect channels (e.g. travel agents) for all the routes (i.e. inclusive of routes which are not related to the Agreement) travelled by Qantas and British Airways. This is taking into account that airlines are increasingly promoting sales of their own products, both through internet sales and press advertising. It appears that tickets sold by airlines are, and will continue to be, an important part of the airline travel product market.

*Appreciable Prevention, Restriction or Distortion of Competition*

92. Based on the information available to the Commission, the Commission has assessed the likely market share of the Parties in the sale of air services market in Singapore to be relatively small. In addition, the Commission has taken into account the existence of other competitive constraints such as the growing popularity of ticket sales over the internet and low barriers to entry. As such, the Commission is of the view that the Agreement is unlikely to have an appreciable impact on competition in this market.

## V. COMMISSION'S DECISION ON THE PARTIES' NOTIFICATION

93. The Commission is of the view that the Agreement between the Parties, in particular, clauses relating to the co-ordination of prices for air passengers, falls within the ambit of the section 34 prohibition of the Act. However, taking into consideration that the Agreement brings about net economic benefit to Singapore, the Commission is of the view that the Agreement is excluded from the Act.

94. Section 46 of the Act provides that, if the Commission has determined an application under section 44 by making a decision that the agreement has not infringed the section 34 prohibition, the Commission 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.

95. To this end, the Commission may, amongst others, consider the following as a material change of circumstance:

a. Reduction in the number of competing carriers in the respective point-to-point routes for the scheduled passenger air transport market;
b. Changes to the designated route services in the Agreement;
c. Relevant international treaties entered into by the respective Governments; and
d. Changes in the operations of the Parties which have a significant impact on the Singapore market.

Ong Beng Lee
Chief Executive
Competition Commission of Singapore