



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

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

Application for Decision by Cebu Air, Inc. and Tiger Airways Singapore Pte. Ltd.

21 September 2015

Case number: CCS 400/009/14

Confidential information in the original version of this Decision has been redacted prior to publication on the public register. Redacted confidential information is denoted by [X].

EXECUTIVE SUMMARY

1. On 12 September 2014, the Competition Commission of Singapore (“CCS”) received an application for decision made under section 44 of the Competition Act (Cap. 50B) (“the Act”) by Cebu Air, Inc. and Tiger Airways Singapore Pte. Ltd. (collectively referred to as “the Parties”) in relation to them entering into a Strategic Alliance Agreement (“SAA”). A decision was sought as to whether the SAA will infringe the prohibition under section 34 of the Act.
2. CCS’s assessment, following its review of the submissions and information provided by the Parties, and the feedback and inputs received from third-parties, is that the SAA will by its nature have the object of preventing, restricting or distorting competition within Singapore.
3. CCS found that the SAA will not benefit from the net economic benefit exclusion set out in section 35, read with paragraph 9 of the Third Schedule to the Act (the “NEB Exclusion”) and will therefore prevent, restrict or distort competition in the Relevant Markets (as defined in paragraph 69). Specifically, CCS assessed that the strategic alliance will raise competition concerns with respect to the Singapore – Clark and the Singapore – Cebu routes.
4. The Parties have, in response to CCS’s concerns, amended the SAA to reduce the level of coordination on the Singapore – Cebu and Singapore – Clark routes to an interline basis. Based on the Amended SAA (as defined in paragraph 143), CCS is of the view that the level of cooperation in relation to the Singapore – Cebu and Singapore – Clark routes will not infringe section 34 of the Act. Accordingly, the NEB assessment is no longer necessary for these routes. Consequently, CCS finds that the Amended SAA, based on the routes currently operated by the Parties, will qualify for the NEB Exclusion.
5. CCS’s foregoing decision is subject to conditions, such as there being no material change in circumstances, which includes the Parties not increasing the level of coordination on the Singapore – Cebu and Singapore – Clark routes.
6. This notice sets out the Grounds of Decision.

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INTRODUCTION

1. This Decision sets out CCS's assessment of the application ("Application") made under section 44 of the Competition Act (Cap. 50B) ("the Act"), as to whether the strategic alliance ("Strategic Alliance") between Cebu Air, Inc. ("Cebu Pacific") and Tiger Airways Singapore Pte. Ltd. ("Tigerair Singapore") (collectively the "Parties") will infringe the prohibition under section 34 of the Act.
2. As part of CCS's assessment of the notification for decision, Requests for Information ("RFIs") were sent to aviation regulatory bodies and industry players, including [REDACTED] travel agents and [REDACTED] competitors of the Parties, for their views on the Strategic Alliance. RFIs were also made to the Parties to seek further clarifications and information for the assessment.
3. CCS's assessment and decision is based on the submissions and information provided by the Parties as well as information obtained from relevant third-parties.

THE FACTS AND PARTIES' SUBMISSIONS

The Application

4. The Application concerns the Strategic Alliance Agreement ("SAA") between Cebu Pacific and Tigerair Singapore entered into on 7 January 2014.¹ On 12 September 2014, the Parties notified the Strategic Alliance to CCS under section 44 of the Act for a decision as to whether the Strategic Alliance will infringe the prohibition under section 34 of the Act ("Section 34 Prohibition").
5. The Parties submitted that the Strategic Alliance does not have the object or effect of appreciably preventing, restricting or distorting competition in any markets in Singapore, and that, even if CCS finds that elements of the Strategic Alliance may have the object of preventing, restricting or distorting competition within the relevant air passenger services market, the Strategic Alliance has, on balance, a resulting net economic benefit ("NEB") which will satisfy the test for exclusion under paragraph 9 of the Third Schedule to the Act (the "NEB Exclusion").²

¹ SAA at Annex 6 of Form 1 dated 12 September 2014.

² Paragraph 2.5.3 of the Form 1 dated 12 September 2014.

The Parties to the Application

6. The Parties to the Application are Cebu Pacific and Tigerair Singapore. A brief description of Cebu Pacific and Tigerair Singapore is as follows:

Cebu Pacific

7. Cebu Pacific is a low-cost carrier (“LCC”) commercial airline based in the Philippines. It operates flights to 33 domestic destinations within the Philippines and 28 international destinations.³
8. Specifically, Cebu Pacific currently operates flights on the following routes between Singapore and the Philippines:
- (a) between Singapore and Cebu;
 - (b) between Singapore and Clark;
 - (c) between Singapore and Iloilo; and
 - (d) between Singapore and Manila.⁴
9. Cebu Pacific is listed on the Philippines Stock Exchange, Inc. Cebu Pacific controls the airline company, SEAir, which currently operates as “Tigerair Philippines”, and has 10 special purpose entities, that it controls, which collectively make up the Cebu Pacific Group.⁵ Cebu Pacific is also involved in three joint ventures relating to aviation industry-specific training and aircraft maintenance.⁶
10. Cebu Pacific is a subsidiary of JG Summit Holdings, Inc., (“JGSHI”). As at 4 August 2014, JGSHI (together with its wholly-owned subsidiary, CP Air Holdings, Inc.) effectively holds 67.24% of Cebu Pacific. The remaining 32.76% of the interest in Cebu Pacific is publicly held.⁷

³ Paragraph 1.1.4 of the Form 1 dated 12 September 2014.

⁴ Paragraph 1.5.2 of the Form 1 dated 12 September 2014.

⁵ Paragraph 1.8.1 of the Form 1 dated 12 September 2014.

⁶ Paragraph 1.8.2 of the Form 1 dated 12 September 2014.

⁷ Paragraph 1.8.3 of the Form 1 dated 12 September 2014. CP Air Holdings, Inc. owns 66.15% of Cebu Pacific. JGSHI owns an additional 1.09% of Cebu Pacific.

Tigerair Singapore

11. Tigerair Singapore is a short-haul LCC incorporated and based in Singapore, flying to destinations within a four to six-hour range from Singapore within Asia. Tigerair Singapore was established in 2004 and commenced operations in September 2004. As of 20 June 2014, Tigerair Singapore operates short-haul no-frills flights to 38 destinations⁸ including the following routes between Singapore and the Philippines:⁹

- (a) between Singapore and Cebu;
- (b) between Singapore and Clark;¹⁰
- (c) between Singapore and Kalibo;¹¹ and
- (d) between Singapore and Manila.

12. Tigerair Singapore is a wholly-owned subsidiary of Tiger Airways Holdings Limited (“Tigerair Holdings”), which is listed on the Main Board of the Singapore Exchange Securities Trading Limited (“SGX-ST”). As at 31 March 2014, Tigerair Holdings has four subsidiaries (Tigerair Holdings and its subsidiaries collectively referred to as the “Tigerair Group”) and two¹² associate companies.¹³

SIA as a single economic unit with Tigerair Holdings

13. As at 18 June 2014, the largest shareholder in Tigerair Holdings was Singapore Airlines Limited (“SIA”), which held 40% of shares in Tigerair Holdings. The Parties have submitted that as at the date of the Application, only one out of the eight directors on the board of directors of Tigerair Holdings was nominated by SIA, and SIA did not have the ability to control¹⁴, or exert decisive influence over, the activities of Tigerair Holdings or the Tigerair Group.¹⁵

⁸ Paragraph 1.1.5 of the Form 1 dated 12 September 2014.

⁹ Paragraph 1.5.3 of the Form 1 dated 12 September 2014.

¹⁰ Tigerair Singapore recommenced its operations on the route between Singapore and Clark from 9 March 2014.

¹¹ Tigerair Singapore commenced its operations on the route between Singapore and Kalibo from 9 March 2014.

¹² Subsequently, on 1 April 2014, Tigerair Holdings, through its wholly-owned subsidiary, Roar Aviation III Pte. Ltd., subscribed to a non-controlling 10% of the issued share capital of Tigerair Taiwan. See paragraph 1.8.6 of the Form 1 dated 12 September 2014.

¹³ Paragraph 1.8.5 of the Form 1 dated 12 September 2014. Associate companies refer to entities, not being a subsidiary or a joint venture, in which the Tigerair Group has significant influence (see also page 53 of Tigerair Holdings’ annual report for the financial year ended 31 March 2014).

¹⁴ Within the meaning of “control” under the Competition Act (Cap.50).

¹⁵ Paragraph 1.8.8 of the Form 1 dated 12 September 2014.

14. On 17 October 2014, CCS was notified by SIA and Tigerair Holdings that SIA was acquiring additional shares in Tigerair Holdings which would increase SIA's shareholding from 40% to approximately 56% ("SIA/Tigerair Acquisition"). Post-acquisition, Tigerair Holdings would become a subsidiary of SIA and SIA would obtain the ability to exercise decisive influence¹⁶ over the activities of Tigerair Holdings. On 28 November 2014, CCS cleared the SIA/Tigerair Acquisition.
15. In this regard, the Parties have submitted that the SIA/Tigerair Acquisition will not affect the competition assessment of the Strategic Alliance as submitted on 12 September 2014. Specifically, the Parties have submitted that the Strategic Alliance does not involve any other passenger airlines in the SIA group of companies ("the SIA Group") and that there will be no sharing of confidential information [REDACTED].¹⁷
16. The Parties have further submitted that notwithstanding the SIA/Tigerair Acquisition, there is currently no intention by the Parties to expand the Strategic Alliance to include any other passenger airlines from the SIA Group [i.e. airlines operated by SIA, SilkAir Private Limited ("SilkAir") and Scoot Pte. Ltd. ("Scoot")], [REDACTED].¹⁸ The Parties have also submitted that Scoot currently does not operate flights between Singapore and the Philippines, and they are not aware of any intention by Scoot to do so.¹⁹
17. The Parties have also submitted that [REDACTED].²⁰ In this regard, Tigerair Singapore submitted that from its perspective, [REDACTED]²¹, [REDACTED]. Appropriate safeguards to firewall and restrict the flow or sharing of competitively-sensitive information relating to the Strategic Alliance, [REDACTED] are currently in place or will be put in place.²² [REDACTED]²³[REDACTED].²⁴
18. For completeness, the Parties have informed CCS that SIA and SilkAir currently operate flights on the following routes between Singapore and the Philippines:
- (a) SIA: Singapore – Manila; and
 - (b) SilkAir: Singapore – Cebu, Singapore – Davao; and Singapore – Kalibo.²⁵

¹⁶See https://www.ccs.gov.sg/public-register-and-consultation/public-consultation-items/proposed-acquisition-by-singapore-airlines-limited-of-tiger-airways-holdings-limited?type=public_register

¹⁷ Paragraph 1.2 of the Parties' Supplemental Submissions dated 9 January 2015.

¹⁸ Paragraph 1.5 of the Parties' Supplemental Submissions dated 9 January 2015.

¹⁹ Paragraph 1.12 of the Parties' Supplemental Submissions dated 9 January 2015.

²⁰ Paragraph 1.13 of the Parties' Supplemental Submissions dated 9 January 2015. Parties specifically cited clause 14.4 as follows:

"Cebu must put in place appropriate procedures to ensure Tigerair's Confidential Information is not shared with other airlines. Tigerair must put in place appropriate procedures to ensure that Cebu's Confidential Information is not shared with other airlines."

²¹ Paragraph 1.16 of the Parties' Supplemental Submissions dated 9 January 2015.

²² Paragraph 1.17 of the Parties' Supplemental Submissions dated 9 January 2015.

²³ Paragraph 1.18 of the Parties' Supplemental Submissions dated 9 January 2015.

²⁴ Paragraph 1.20 of the Parties' Supplemental Submissions dated 9 January 2015.

²⁵ Paragraph 1.6 of the Parties' Supplemental Submissions dated 9 January 2015.

The Acquisition by Cebu Pacific of Southeast Asian Airlines (SEAir) Inc.

19. Southeast Asian Airlines (SEAir), Inc. (“SEAir”) was a Philippines-based airlines partly-owned by Roar Aviation II Pte. Ltd., a wholly-owned subsidiary of Tigerair Holdings. The acquisition of SEAir by Cebu Pacific (“Acquisition”) was completed on 20 March 2014. On 23 May 2014, Tigerair Holdings and Cebu Pacific filed a joint notification of the Acquisition pursuant to section 58 of the Act (“Merger Notification”) as to whether the Acquisition infringed the section 54 prohibition of the Act. A clearance decision in relation to the Acquisition was issued by CCS on 20 August 2014.
20. As part of the Merger Notification, the Parties argued that the Strategic Alliance and the Acquisition are inter-dependent, and that the Strategic Alliance constitutes an ancillary restriction to the Acquisition. CCS found that the Strategic Alliance does not constitute an ancillary restriction and is therefore not excluded from the section 34 and 47 prohibitions of the Act.

Agreements between Tigerair Singapore and other airlines

21. The other agreements that Tigerair Singapore has entered into are as follows:²⁶
- (a) An Alliance Framework Agreement with Scoot, a Singapore-based LCC, pursuant to which Scoot and Tigerair Singapore agree to cooperate in relation to, among others, scheduling, pricing, sales and marketing, service policies, and other matters to improve the overall quality of service offered to passengers on Scoot’s and Tigerair Singapore’s respective operations for all services operated by Scoot and Tigerair Singapore, with the exception of routes between Singapore and Australia; and
 - (b) A three-year interline agreement with SpiceJet²⁷, an Indian LCC, which [§<]. The interline agreement with SpiceJet has also since been terminated as of [§<] January 2015.
22. Tigerair Singapore submitted to CCS that, as neither Scoot nor SpiceJet currently operate flights between Singapore and the Philippines, the above agreements entered into by Tigerair Singapore with Scoot and SpiceJet respectively are not likely to have any impact on the Strategic Alliance between Cebu Pacific and Tigerair Singapore. The Parties also submitted that the terms and conditions of the Strategic Alliance will

²⁶ Paragraph 1.8.11 of the Form 1 dated 12 September 2014.

²⁷ SpiceJet is an Indian LCC owned by the Sun Group of India.

not extend to Tigerair Singapore's respective cooperation arrangements with Scoot and SpiceJet.²⁸

The Strategic Alliance

23. Cebu Pacific and Tigerair Singapore have entered into the SAA to:

- (a) jointly operate Common Routes²⁹ between Singapore and the Philippines, and other routes that may emerge as both Tigerair Singapore and Cebu Pacific expand their networks, on a metal-neutral basis³⁰;
- (b) jointly sell and market Common Routes and Non-Common Routes³¹ using codeshare or interline arrangements;
- (c) cooperate in relation to sales and marketing, distribution, airport operations and ground handling, scheduling, pricing, service policies, innovation, procurement and other matters; and
- (d) [REDACTED]³² [REDACTED]³³[REDACTED]³⁴.

24. The Strategic Alliance relates to the provision of air passenger transport services. The scope of the Strategic Alliance will comprise all services operated by the respective Parties, including the existing and future networks of both Parties.³⁵

²⁸ Paragraph 1.8.13 of the Form 1 dated 12 September 2014.

²⁹ "Common Routes", as defined in the SAA, refers to all routes operated by Cebu Pacific, Tigerair Singapore and SEAir between Singapore and the Philippines or such future routes as may become common routes and shall include common routes of each party's Associates and Affiliates in accordance with the Cooperation Principles provided herein (see "Definitions" section of the Form 1 dated 12 September 2014 read with clause 1 and 2.3 of SAA at Annex 6 of the Form 1 dated 12 September 2014).

³⁰ "Metal Neutral", as defined in the SAA, means "a state of events where each Party will implement programs and policies that ensure the Parties are motivated to sell and consumers are willing to buy tickets without preference as to which Party is the Operating Carrier".

³¹ "Non-Common Routes" are defined as routes that only one party in the SAA is operating (see "Definitions" section of the Form 1 dated 12 September 2014 read with clause 1 of SAA at Annex 6 of the Form 1 dated 12 September 2014).

³² "Associate", as defined in the SAA, refers to, in respect of either party to the SAA, an airline company that carries or will carry the branding of that party (see clause 1 of SAA at Annex 6 of the Form 1 dated 12 September 2014).

³³ "Affiliate", as defined in the SAA, refers to, in respect of either party to the SAA, an airline company (i) that is directly or indirectly controlled by the first named party; or (ii) in respect of which more than half the issued share capital (or equivalent right of ownership) is beneficially owned, directly or indirectly, by the first named party (see clause 1 of SAA at Annex 6 of the Form 1 dated 12 September 2014).

³⁴ Using the definition of Associate and Affiliates as set out in the SAA, the only Associate/Affiliate affected is SEAir.

³⁵ Paragraphs 1.5.1 and 2.3.2 of the Form 1 dated 12 September 2014.

25. Among others, SAA also provides that the Parties agree to cooperative procedures in relation to the following:³⁶

- (a) cooperation with regard to distribution, including reciprocal access to each party's direct and indirect distribution channels to offer flights of both parties' networks to both parties' customers;
- (b) connecting the Parties' networks through codeshare or interline arrangements;
- (c) [REDACTED]
- (d) [REDACTED]
- (e) coordination of flight schedules on Common Routes and Connecting Routes³⁷;
- (f) coordination of published rates, [REDACTED]
- (g) jointly promoting Common Routes;
- (h) aligning key customer Service Policies³⁸ [REDACTED]
- (i) providing baggage connectivity;
- (j) exploring joint procurement and product innovation; and
- (k) [REDACTED].

26. Specifically, the Parties will coordinate as follows on Common Routes and Connecting Routes:³⁹

- (a) Common Routes: The Parties will coordinate published fares, [REDACTED] and
- (b) Connecting Routes: The Parties will cooperate on an interline basis, with coordination of flight schedules subject to a minimum and maximum

³⁶ Paragraph 2.3.4 of the Form 1 dated 12 September 2014.

³⁷ "Connecting Route" as defined in the SAA mean routes in either Party's network that can be connected to each other within a pre-defined minimum and maximum connecting time (see "Definitions" section of the Form 1 dated 12 September 2014 read with clause 1 of SAA at Annex 6 of the Form 1 dated 12 September 2014).

³⁸ "Service Policies" means the specific policies of each airline party regarding the rules and procedures with regard to passengers before, during and after they purchase a ticket (see clause 1 of the SAA at Annex 6 of Form 1 dated 12 September 2014).

³⁹ Paragraph 2.3.7 of the Form 1 dated 12 September 2014.

connection time to be determined by the Parties. Any coordination between the Parties in respect of [X] will be subject to the interline agreement between the Parties.⁴⁰

27. With respect to the pricing, [X]. Generally, a pricing curve will allocate fares according to each booking class for a carrier's flights. Each booking class will, in turn, contain a fixed number of seats that can be sold in that booking class, at the corresponding fare. For LCCs, the pricing curve may generally be structured such that [X]. The pricing curve may also take into account other factors [X].
28. Accordingly, for LCCs, [X].
29. The Parties also intend to cooperate in relation to, among others, the following:⁴¹
 - (a) coordination of flight schedules on Common Routes and Connecting Routes [X]
 - (b) coordination of published rates, [X].

Overlapping Common Routes

30. As at the time of the filing of the Application, the Parties overlap on the following direct non-stop Common Routes between Singapore and the Philippines:⁴²
 - (a) between Singapore and Cebu;
 - (b) between Singapore and Clark; and
 - (c) between Singapore and Manila.

(collectively, the "Overlapping Common Routes").

The Parties subsequently reduced the level of coordination on both the Singapore – Cebu and Singapore – Clark routes to an interline basis, in response to CCS's competition concerns following its assessment of the SAA. Please see paragraph 142 onwards for further details.

31. The Parties also submitted for completeness that in respect of the route between Singapore and Kalibo:⁴³

⁴⁰ Paragraphs 5.1.83 to 5.1.93 of the Form 1 dated 12 September 2014.

⁴¹ Paragraph 2.3.13 of the Form 1 dated 12 September 2014.

⁴² Paragraph 1.5.4 of the Form 1 dated 12 September 2014.

(a) Tigerair Singapore operates a direct service, which commenced operations on 9 March 2014; and

(b) Cebu Pacific operates a non-direct service, via Cebu or Manila.

32. The Parties also submitted that in respect of the Singapore-Davao route operated by SilkAir, neither Tigerair Singapore nor Cebu Pacific currently operates flights on this route and so the Singapore-Davao route, accordingly, does not constitute a Common Route under the SAA.

The Parties' Commercial Rationale for Entering into the Strategic Alliance

33. The Acquisition and Strategic Alliance [X].
34. The Acquisition and Strategic Alliance is also consistent with Tigerair Holdings' recently-adopted long-term airline strategy to look at partnership-focused growth opportunities outside Singapore for the Tigerair Group. Tigerair Holdings views the Philippines as an important market to the Tigerair Group, and the Acquisition and Strategic Alliance as a more effective way for the Tigerair Group to penetrate the Philippines market.
35. Tigerair Singapore further submitted that, in the absence of the SAA, in order for Tigerair Singapore to fully replicate Cebu Pacific's domestic Philippines-based network, [X].
36. From Cebu Pacific's perspective, Cebu Pacific would likely need to obtain a Singapore Airline Operating Certificate in order to replicate Tigerair Singapore's Singapore-based network to other international destinations. Instead, through the SAA, Cebu Pacific would be able to ride on the Tigerair Group's Asia network and provide services to countries that it does not presently serve.
37. Through the SAA, the Parties envisaged that it would enable the Tigerair Group and its associate companies and Cebu Pacific to leverage their respective strengths and harness synergies to jointly market their routes.

LEGISLATIVE FRAMEWORK

Section 34 Prohibition

⁴³ Paragraph 1.5.5 of the Form 1 dated 12 September 2014.

38. 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;
....”

39. An agreement will fall within the scope of the section 34 prohibition if it has as its object or effect the prevention, restriction or distortion of competition, unless it falls within an exclusion in the Third Schedule to the Act or meets all of the requirements specified in a block exemption order.
40. Any agreement between undertakings might be said to restrict the freedom of action of the undertakings. This does not, however, necessarily mean that the agreement will be prohibited. CCS 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-sharing or output limitations will always be deemed to have an appreciable adverse effect on competition.⁴⁴

Application of Section 34 to Undertakings

41. 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.
42. Each of the Parties is a separate corporate entity carrying on commercial and economic activities relating to the provision of air transport services, thereby falling within the definition of “undertaking” under the Act. The section 34 prohibition does not apply to agreements where there is only one undertaking, i.e. agreements between entities which

⁴⁴ Paragraph 3.2 of the *CCS Guidelines on the Section 34 Prohibition*.

form a single economic unit.⁴⁵ Based on the corporate information provided by the Parties⁴⁶, CCS is of the view that for the purpose of the Application, Cebu Pacific and Tigerair Singapore do not form a single economic unit.

43. Accordingly, the SAA constitutes an agreement between undertakings, bringing it within the scope of section 34 of the Act.

COMPETITION ASSESSMENT

Whether the SIA Group forms a Single Economic Entity with Tigerair Holdings

44. When assessing whether Tigerair Holdings and SIA Group constitute a single economic unit (“SEU”), CCS had regard to the legal test as affirmed by the Competition Appeal Board’s decision in *Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand: Transtar Travel Pte Ltd and Regent Star Travel Pte Ltd*:

“It is generally accepted that a single economic entity is a single undertaking between entities which form a single economic unit. In particular, an agreement between a parent and its subsidiary company, or between two companies which are under the control of a third company, will not be agreements between undertakings if the subsidiary has no real freedom to determine its course of action in the market and although having a separate legal personality, enjoys no economic independence. Ultimately, whether or not entities form a single economic unit will depend on the facts and circumstances of the case ([2.7]-[2.8] of the CCS Guidelines on the section 34 prohibition; see also Akzo Nobel v Commission of the European Communities, 11 December 2003, at [54]-[66]).”⁴⁷

45. To consider the relationship between the SIA Group and Tigerair Holdings (i.e., the parent company of Tigerair Singapore), CCS referred to SIA and Tiger Holdings’ submissions for the merger notification with respect to the SIA/Tigerair Acquisition.
46. SIA consistently submitted that it is seeking to, further and subsequent to the acquisition of additional shares in Tigerair Holdings, obtain [§<] CCS notes that SIA, with a shareholding of more than 50% in Tigerair Holdings, will effectively be the majority shareholder with [§<].⁴⁸

⁴⁵ Paragraph 2.7 of *CCS Guidelines on the Section 34 Prohibition*.

⁴⁶ Paragraphs 1.8.1 to 1.8.10 of the Form 1 dated 12 September 2014.

⁴⁷ [2011] SGCAB 2 at [67].

⁴⁸ Paragraph 8.6, Form M1, Merger Notification for Acquisition by SIA of Tigerair Holdings.

47. SIA had further submitted that [X].⁴⁹ Further, CCS also notes that [X].⁵⁰ This indicates the existence of strong economic and organisational links between the companies.
48. While the Parties have argued that the existence of measures to ensure that confidential information belonging to the Parties does not leak to parties outside of the Strategic Alliance, it does not appear adequate to ensure that airlines within the SIA Group and Tigerair Singapore would operate independently with respect to the routes under the SAA. Notwithstanding the existence of measures to ensure that confidential information belonging to the Parties does not leak to parties outside of the Strategic Alliance, the legal assessment that airlines within the SIA Group and Tigerair Singapore constitute an SEU still stands. Even without an exchange of confidential information, coordination between Tigerair Holdings and the SIA Group is likely to take into account any coordination between the Parties, leading to indirect coordination between the airlines within the SIA Group and Cebu Pacific.
49. In any case, CCS does not consider it necessary to come to a firm view on this issue as the competition assessment in paragraphs 81 to 85 and CCS's decision would not turn on whether the SIA Group is an SEU with Tigerair Singapore. Specifically, CCS considered that the elements of coordination present in the SAA are akin to a price fixing and/or production control agreement between competitors. Such agreements have the object of preventing, restricting or distorting competition within Singapore⁵¹, and will have an appreciable adverse effect on competition regardless of whether the market shares of the Parties cross CCS's indicative threshold levels.⁵²

Relevant Market

Parties' Submissions – geographical markets

50. The Parties submitted that the relevant geographical markets affected by the Strategic Alliance can be defined by O&D city pairs, with a specific focus on the Singapore O&D pairs.⁵³
51. In this regard, the Parties had referred to CCS's past decisions on airline alliance agreements that the relevant market should be defined as the O&D city pairs (CCS 400/002/12 *Qantas/Jetstar*) involving Singapore (CCS 400/006/12 *Emirates/Qantas*).⁵⁴

⁴⁹ Paragraph 12.4, Form M1, Merger Notification for Acquisition by SIA of Tigerair Holdings.

⁵⁰ Paragraphs 12.6 to 12.9, Form M1, Merger Notification for Acquisition by SIA of Tigerair Holdings.

⁵¹ *Notice of Infringement Decision: Infringement of the Section 34 Prohibition in relation to the Supply of Ball and Roller Bearings*: CCS 700/002/11 (27 May 2014) at [69]; *European Night Services v Commission* ECR II-3141

⁵² Paragraph 2.20 of the *CCS Guidelines on the Section 34 Prohibition*

⁵³ Paragraph 4.2.12 of Form 1 dated 12 September 2014.

52. The Parties also referred to past decisions of the European Commission (“EC”), namely in *Ryanair/Aer Lingus* (COMP/M.4439) and *Lufthansa/Austrian Airlines* (COMP/M.5440), that passengers may not regard indirect one-stop flights as a close substitute for direct non-stop flights for flights of short durations, and in particular where the duration of the layover is likely to significantly increase the overall travelling duration relative to the duration of a direct non-stop flight. Therefore, the Parties submitted that indirect flights do not generally constitute a competitive alternative to direct flights as customers indeed prefer direct flights.⁵⁵ The Parties have submitted that in light of this, the relevant OD routes for assessment in the present case should be the Singapore – Manila, Singapore – Clark and the Singapore – Cebu routes.

Possible overlap between Manila and Clark

53. With regard to Singapore – Clark and Singapore – Manila routes, the Parties submitted that there may be some potential overlap between the catchment areas of Clark International Airport (i.e. Diosdado Macapagal International Airport) and Manila International Airport (i.e. Ninoy Aquino International Airport) for the following reasons.⁵⁶
54. First, with reference to the EC’s decision in *Ryanair/Aer Lingus* (COMP/M.4439), the EC considers that 100 kilometres or one hour driving time is a conservative estimate of an airport’s typical minimum catchment area. This is because most passengers would not consider such travelling time or distance between two airports as manifestly inconvenient and would be willing to fly from either airport.⁵⁷ Clark International Airport is approximately 100 kilometres away from Manila city centre, and travelling time from Clark International Airport to Manila city centre may vary between 1.5 and 2.5 hours, depending on mode of transportation and traffic conditions.⁵⁸ In this regard, the Parties also submitted third-party analyses, surveys and commentary. In particular, the Clark International Airport Corporation Passenger Survey found approximately 16 per cent of Manila International Airport passenger traffic to be from Clark’s catchment area⁵⁹, and approximately six per cent of Clark International Airport passenger traffic to be from Metro Manila.

55. Second, Tigerair Singapore submitted that [3<].⁶⁰

⁵⁴ Paragraphs 4.2.1 and 4.2.2 of Form 1 dated 12 September 2014.

⁵⁵ Paragraphs 4.2.4 and 4.2.5 of Form 1 dated 12 September 2014.

⁵⁶ Paragraph 4.2.25 of Form 1 dated 12 September 2014.

⁵⁷ Paragraph 4.2.24 of Form 1 dated 12 September 2014.

⁵⁸ Paragraph 4.2.25 of Form 1 dated 12 September 2014.

⁵⁹ The survey defines Clark International Airport’s catchment as including Cordillera Administrative Region, Region I – Ilocos, Region II – Cagayan Valley and Region III – Central Luzon.

⁶⁰ Paragraph 17.4 of the Parties’ responses to CCS’s questions dated 30 October 2014.

56. Third, though the Parties maintained that, on a conservative basis, Clark may form a city on its own for the purposes of considering an origin or destination point⁶¹, [X].⁶² This was based on Cebu Pacific's observation that [X].
57. With regard to the Singapore – Cebu route, the Parties submitted that alternative leisure destinations would pose a competitive constraint on the Singapore – Cebu [X]. Examples of such alternative beach destinations include Bali and Lombok in Indonesia, Langkawi in Malaysia, Koh Samui, Krabi, Pattaya and Phuket in Thailand etc.⁶³
58. In addition, the Parties submitted that based on their commercial experience, travellers on the Singapore – Cebu route are likely to switch from Cebu as a leisure travel destination to any one of a number of other substitutable leisure travel destinations in the event of any increase in the price of airfares on the Singapore – Cebu route. The Parties have submitted survey results of an independent third-party survey – “Factors in choosing a beach holiday destination worldwide and in the U.S. 2012” – to highlight that “estimated price of total vacation” and “price of flight” are the top and third-ranked considerations of beach holiday travellers based on respondents worldwide. The Parties were not able to provide any quantitative supporting evidence specific to the Singapore – Cebu route.⁶⁴

Parties' Submissions – product markets

59. The Parties have submitted that the relevant product markets should be defined to be economy-class passengers for FSAs and all classes of seats for LCCs on the Overlapping Common Routes.⁶⁵
60. First, the Parties referred to CCS's conclusion in the *Qantas/Jetstar* Decision⁶⁶ that economy-class services provided by a FSA would be in the same relevant product market as the air passenger services provided by an LCC. In the same decision, CCS agreed that the relevant market should not include first- or business-class passengers of FSAs in view of the substantial differences in air fares.⁶⁷ The Parties also referred to several decisions by the EC and the Competition and Markets Authority where it found air passenger services offered by FSAs to be in the same relevant product market as the

⁶¹ Paragraph 4.2.30 of Form 1 dated 12 September 2014.

⁶² Paragraph 8.6 of the Parties' responses to CCS's questions dated 30 October 2014.

⁶³ Paragraph 1.1 of the Parties' responses to CCS's questions dated 6 January 2015.

⁶⁴ Paragraphs 1.1 to 1.8 of Parties' responses to CCS's information request dated 17 December 2014.

⁶⁵ Paragraph 4.2.12 of Form 1 dated 12 September 2014.

⁶⁶ CCS 400/002/12 *Qantas/Jetstar*.

⁶⁷ Paragraph 4.2.7 of Form 1.

air passenger services offered by LCCs, without further segmentation according to the fare classes offered by FSAs (i.e. economy-class, and first- or business-class).⁶⁸

61. Second, the Parties submitted a comparison of fares data of LCCs and FSAs operating on the routes between Singapore and Manila, and between Singapore and Cebu that illustrates the similarity in price trends among LCCs and FSAs, which demonstrates that FSAs can and do compete with the Parties' and other LCCs' offerings on price.⁶⁹
62. Third, the Parties submitted that based on their commercial experience and observations in the relevant markets, FSAs can and do, and will continue to, act as an effective competitive constraint on the Parties and other LCCs, and the economy-class services provided by an FSA should be considered in the same relevant product market as the air passenger services provided by an LCC. In the event of a potential small, non-transitory increase in price of an LCC's product offerings, passengers are likely to consider an FSA's economy-class services as a possible substitute to LCCs, in particular where:
 - (a) FSAs may offer lower price points (e.g. through large promotional campaigns as well as non-advertised lower price points that may be offered at any one time due to availability, peak travel periods, holidays, new services, etc); and/or
 - (b) where passengers may be willing to consider paying a slight incremental fare in switching to an FSA's economy-class services in exchange for improved perceived value-for-money (e.g. with the improved physical and service attributes of an FSA's economy-class services, such as seat comfort, and services such as drinks and food, seat reservation, check-in luggage allowances etc, included within the FSA's fare, as opposed to paying additional (often insignificant) add-on fees for such services on an LCC's flight).
63. Fourth, the Parties provided some independent third-party analysis and commentary on the airline industry which considered the increased convergence in the service offerings of FSAs and LCCs.

CCS's Assessment

64. As submitted by the Parties and with reference to the approach taken in previous CCS decisions, CCS notes that typically the starting point for market definition relating to the provision of scheduled air passenger transport services is the origin and destination

⁶⁸ Paragraph 4.2.18 of Form 1.

⁶⁹ Paragraph 4.2.13 of Form 1.

(“O&D”) pair routes of air services, usually a city-pair. Passengers generally want to travel to a specific destination and will not substitute another destination when faced with a small but significant and non-transitory increase in price. Therefore, each combination of a point of origin and a point of destination can form a separate market. This is also consistent with the approach taken by the EC.

65. With regard to the product market, CCS notes that the Overlapping Routes are generally short-haul in nature. The average flight time is 3 hours 31 minutes on the Singapore – Cebu route⁷⁰, 3 hours 25 minutes on the Singapore – Clark route⁷¹ and 3 hours 28 minutes on the Singapore – Manila route⁷². Therefore, CCS agrees that the relevant market is unlikely to include indirect one-stop flights as passengers may not regard indirect one-stop flights as a close substitute for direct non-stop flights due to the short flight duration. This is also the approach taken by the EC in *Ryanair/Aer Lingus* (COMP/M.4439).
66. With regard to the relevant product market, CCS considered whether scheduled air passenger transport services provided by LCCs would be substitutable with the economy class services provided by FSAs, particularly for short-haul flights. CCS is of the view that the Parties’ submission on similarity of fares between LCCs and FSAs, in and of itself, is insufficient to demonstrate that scheduled air passenger transport services provided by LCCs would be substitutable with the economy class services provided by FSAs, as similar prices per se are not definitive of markets. This is consistent with the approach taken in CCS’s *Qantas/Jetstar* Decision. Notwithstanding the above, CCS recognises that the distinction between LCCs and the economy class of FSAs is becoming increasingly blurred, as products offered by LCCs have become more comparable to that offered by FSAs. Therefore, CCS is of the view that passenger transport services provided by LCCs would be substitutable with the economy class services provided by FSAs, and hence should be included in the relevant market.
67. With regard to the Parties’ submission that Clark and Manila may be regarded to be in the same market, CCS is of the view that there is insufficient evidence in this regard. The analysis has to consider the context and whether flights between Singapore and Clark International Airport or Manila International Airport are truly substitutable. First, CCS considered the distance and travelling time. Based on EC’s rule of thumb of 100 kilometres or one hour driving time, though Clark International Airport is approximately 100 kilometres away from Manila city centre, travelling time currently takes longer than one hour and may vary between 1.5 and 2.5 hours depending on mode of transportation and traffic conditions. It is not certain whether travelling time would reduce significantly with the completion of the connector road between North and

⁷⁰ See <http://www.travelmath.com/flying-time/from/Singapore/to/Cebu,+Philippines>

⁷¹ See <http://www.skyscanner.com.sg/routes/crk/sin/clark-international-to-singapore-changi.html>

⁷² See <http://www.travelmath.com/flying-time/from/Singapore/to/Manila,+Philippines>

South Manila⁷³. Second, CCS considered third-party analyses, surveys and commentaries. For instance, CCS notes that from the CIAC Passenger Survey, it is not clear whether passengers found to be from the catchment area of the other airport would consider the other airport substitutable. Third, CCS notes Cebu Pacific's observation that [X] and that this is not, in and of itself, conclusive that both airports are viable substitutes to each other.

68. With regard to the Parties' submission that alternative leisure destinations would pose a competitive restraint on the Singapore - Cebu route, CCS is of the view that there is also insufficient evidence in this regard. The Parties were not able to provide any evidence supporting their assertions specific to the Singapore – Cebu route and other routes involving alternative leisure destinations, such as historical price and/or demand trends of such routes. Hence, based on information available to CCS, it is not clear that the travellers on the Singapore – Cebu route are predominantly tourists who will be willing to substitute Cebu with other beach destinations.
69. As such, for the purposes of assessing the Strategic Alliance, CCS defines three relevant markets, namely the scheduled air passenger transport services on three respective direct O&D pair routes currently operated by the Parties involving Singapore, for all seats on LCCs and economy class seats on FSAs (the “Relevant Markets”), namely:
- (a) Singapore – Cebu;
 - (b) Singapore – Clark; and
 - (c) Singapore – Manila.

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

70. The Parties have submitted that the Strategic Alliance does not have the object or effect of appreciably preventing, restricting or distorting competition in any markets in Singapore, and in any event the SAA is expected to give rise to NEB and would therefore benefit from the NEB Exclusion.⁷⁴
71. In particular, the Parties submitted that the Strategic Alliance will not have an appreciable adverse effect on competition in Singapore for the following reasons⁷⁵:

⁷³ See Philippines Public-Private Partnership Center, NLEx-SLEx Connector Road, <http://ppp.gov.ph/?p=9155>. The completion time is not certain as of this point in time.

⁷⁴ Paragraph 2.3.6 of Form 1 dated 12 September 2014.

⁷⁵ Paragraph 5.1.1 of Form 1 dated 12 September 2014.

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- (a) As Tigerair Singapore and Cebu Pacific are based in Singapore and the Philippines respectively, the Parties do not operate overlapping services, with the exception of the three Overlapping Common Routes;
- (b) On these three Overlapping Common Routes, in the first instance, [X]. Further, the Parties will continue to be constrained by other existing or potential competitors on these routes, in particular other LCCs and economy-class fares on FSAs, in addition to the nature of passenger demand for LCCs, which is generally characterised by high price elasticity; and
- (c) On the Singapore – Kalibo route, only Tigerair Singapore currently operates a direct service on this route, and Cebu Pacific operates a non-direct service, via Cebu or Manila. There is no clear competitive overlap between the Parties on this route, in particular as passengers may not regard indirect one-stop flights as a close substitute for direct non-stop services due to the short flight duration.

The reasons are elaborated on further below.

Non-Common Routes

72. With regard to the Non-Common Routes, pricing on these routes will still be independently determined by each Party, and [X].⁷⁶

Connecting Routes

73. With regard to Connecting Routes, the scope of cooperation within the interline agreement between the Parties would not allow either Party to have influence over pricing or capacity on the Connecting Routes of the other Party. [X].⁷⁷

Common Routes

74. The Parties have submitted that even though they will be coordinating on published fares, [X].⁷⁸

75. [X].⁷⁹

76. In addition, [X]. However, the Parties submitted that [X].⁸⁰ In this regard, the Parties would be operating the flights on a metal-neutral basis, [X] to align the Parties'

⁷⁶ Paragraph 5.1.2 of Form 1 dated 12 September 2014.

⁷⁷ Paragraph 5.1.62 of Form 1 dated 12 September 2014.

⁷⁸ Paragraph 2.3.7 of Form 1 dated 12 September 2014.

⁷⁹ Paragraph 2.3.10 of Form 1 dated 12 September 2014.

⁸⁰ Paragraphs 15.1 of the Parties' response dated 30 October 2014.

commercial incentives with respect to the scheduling of their flights, such that each Party will be indifferent as to which Party operates the underlying metal, or aircraft, on each route or flight timing. [X].⁸¹

77. In implementing the coordination of flight schedules, published rates, [X] the Parties anticipate that information may potentially be shared between the Parties in relation to each Party's :

(a) fare structures [X];

(b) [X]

(c) schedules for flights operated by each Party.

Overlapping Common Routes

78. Specifically for the Overlapping Common Routes, the Parties have submitted that the barriers to entry for these routes are low. [X].⁸² The Parties have explained that airports which are not slot-coordinated are generally operating below their capacity.⁸³ Clark International Airport and Mactan–Cebu International Airport are at present not Level–3 slot-coordinated airports, although slots at Mactan–Cebu International Airport are monitored by Airport Coordination Australia given that there may be difficulties obtaining slots at certain specific timings during periods of congestion at the airport⁸⁴.
79. The Parties have submitted the following estimated passenger and capacity shares⁸⁵ on a bidirectional, marketing carrier basis for the Overlapping Common Routes.

⁸¹ Paragraph 5.1.36 of Form 1 dated 12 September 2014.

⁸² Paragraph 10.2 of the Parties' response dated 30 October 2014.

⁸³ Paragraph 10.1 of the Parties' response dated 30 October 2014.

⁸⁴ Paragraph 10.3 of the Parties' response dated 30 October 2014.

⁸⁵ The market share figures for December 2010 to November 2013 were calculated based on economy classes of seats for FSAs and all classes of seats for LCCs. For December 2013 to June 2015, the market share figures reflect that for all classes of seats for FSAs and LCCs. The Parties submitted that the non-economy class seats for FSAs generally accounted for a small proportion of the total passenger and capacity numbers, and hence should not materially affect the market share figures provided.

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Singapore – Manila (Market Shares by number of passengers)

Market Share	December 2010 to November 2011	December 2011 to November 2012	December 2012 to November 2013	December 2013 to November 2014	December 2014 to June 2015
Cebu Pacific	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%
Philippine Airlines	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%
Singapore Airlines	[20-30]%	[10-20]%	[20-30]%	[20-30]%	[20-30]%
Jetstar Asia	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Tigerair Singapore	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
PAL Express ⁸⁶	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%
Others	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%
Total market size	[<]	[<]	[<]	[<]	[<]
Combined shares of the Parties	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[40-50]%

⁸⁶ PAL Express ceased operations on the route between Singapore and Manila in January 2014.

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Singapore – Manila (Market Shares by number of seats)

Market Share	December 2010 to November 2011	December 2011 to November 2012	December 2012 to November 2013	December 2013 to November 2014	December 2014 to June 2015
Cebu Pacific	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%
Philippine Airlines	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Singapore Airlines	[30-40]%	[30-40]%	[20-30]%	[30-40]%	[30-40]%
Jetstar Asia	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Tigerair Singapore	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[10-20]%
PAL Express	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%
Others	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%
Total market size	[<]	[<]	[<]	[<]	[<]
Combined shares of the Parties	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%

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Singapore – Cebu (Market Shares by number of passengers)

Market Share	December 2010 to November 2011	December 2011 to November 2012	December 2012 to November 2013	December 2013 to November 2014	December 2014 to June 2015
Cebu Pacific	[50-60]%	[50-60]%	[50-60]%	[50-60]%	[50-60]%
Tigerair Singapore	[0-10]%	[30-40]%	[20-30]%	[20-30]%	[20-30]%
SilkAir ⁸⁷	[10-20]%	[10-20]%	[10-20]%	[0-10]%	[0-10]%
PAL Express	[20-30]%	[0-10]%	[0-10]%	n.a. ⁸⁸	n.a.
Others	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]% ⁸⁹
Total market size	[><]	[><]	[><]	[><]	[><]
Combined shares of the Parties	[50-60] %	[80-90] %	[80-90] %	[80-90] %	[80-90] %

⁸⁷ The Parties submitted that SilkAir operates its flights on the Singapore – Cebu route as a bidirectional circular-routing service which also incorporates Davao (i.e. operating flights in the directions of Singapore-Cebu – Davao – Singapore, and Singapore – Davao – Cebu-Singapore) or Kalibo as of 27 May 2014 (i.e. operating flights in the directions of Singapore-Cebu-Kalibo-Singapore, and Singapore-Kalibo-Cebu-Singapore). As passenger shares are captured by IATA PaxIS Plus on the basis of O&D city pair routes, SilkAir’s passenger share on the Singapore – Cebu route accordingly generally appears lower than the corresponding capacity share on the Singapore – Cebu route, which is captured by IATA SRS and OAG Schedules Data on the basis of actual seats operated by the operating carrier on this sector.

⁸⁸ See “Others”; the breakdown in respect of PAL Express’ passenger share is not available to the Parties.

⁸⁹ The Parties have submitted that [0-10]% of market share between December 2014 and June 2015 can be attributed to Singapore Airlines through its codeshare or interline itineraries with SilkAir such that Singapore Airlines is the marketing carrier but the codeshare or interline flights are operated by Silkair. However, they have not provided market share figures for previous periods.

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Singapore – Cebu (Market Shares by number of seats)

Market Share	December 2010 to November 2011	December 2011 to November 2012	December 2012 to November 2013	December 2013 to December 2014	December 2014 to June 2015
Cebu Pacific	[40-50]%	[40-50]%	[40-50]%	[40-50]%	[40-50]%
Tigerair Singapore	[0-10]%	[30-40]%	[20-30]%	[20-30]%	[20-30]%
SilkAir ⁹⁰	[20-30]%	[20-30]%	[20-30]%	[30-40]%	[30-40]%
Singapore Airlines	n.a.	n.a.	n.a.	n.a.	[0-10]%
PAL Express	[20-30]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%
Others	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%
Total market size	[8<]	[8<]	[8<]	[8<]	[8<]
Combined shares of the Parties	[50-60]%	[70-80]%	[70-80]%	[60-70]%	[60-70]%

⁹⁰ The Parties submitted that SilkAir operates its flights on the Singapore – Cebu route as a bidirectional circular-routing service which also incorporates Davao (i.e. operating flights in the directions of Singapore-Cebu – Davao – Singapore, and Singapore – Davao – Cebu – Singapore) or Kalibo as of 27 May 2014 (i.e. operating flights in the directions of Singapore-Cebu-Kalibo-Singapore, and Singapore-Kalibo-Cebu-Singapore). As passenger shares are captured by IATA PaxIS Plus on the basis of O&D city pair routes, SilkAir’s passenger share on the Singapore – Cebu route accordingly generally appears lower than the corresponding capacity share on the Singapore – Cebu route, which is captured by IATA SRS and OAG Schedules Data on the basis of actual seats operated by the operating carrier on this sector.

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Singapore – Clark (Market shares by number of passengers)

Market Share	December 2010 to November 2011	December 2011 to November 2012	December 2012 to November 2013	9 March 2014 to December 2014	January 2015 to June 2015
Cebu Pacific	[40-50]%	[40-50]%	[30-40]%	[50-60]%	[40-50]%
SEAir ⁹¹	[40-50]%	[50-60]%	[30-40]%	[0-10]%	[0-10]%
Philippines' AirAsia ⁹²	[0-10]%	[0-10]%	[20-30]%	[0-10]%	[0-10]%
Tigerair Singapore ⁹³	[0-10]%	[0-10]%	[0-10]%	[40-50]%	[50-60]%
PAL Express ⁹⁴	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%
Others ⁹⁵	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%
Total market size	[>]	[>]	[>]	[>]	[>]
Combined shares of the Parties	[90-100]%	[90-100]%	[60-70]%	[90-100]%	[90-100]%

⁹¹ SEAir ceased operations on the route between Singapore and Clark on 9 March 2014, prior to the completion of Cebu Pacific's Acquisition of SEAir on 20 March 2014. See also paragraph 5.1.18 in Form 1.

⁹² Philippines AirAsia ceased operations on the route between Singapore and Clark in August 2013.

⁹³ Tigerair Singapore ceased its operations on the route between Singapore and Clark on 6 December 2010 and recommenced its operations on this route from 9 March 2014.

⁹⁴ PAL Express ceased operations on the route between Singapore and Clark in February 2013.

⁹⁵ "Others" in this table and subsequent tables includes airlines that may be allocated passenger shares as the marketing carriers for codeshare flights, or that may operate non-direct flights on this O&D city pair route.

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Singapore – Clark (Market shares by number of seats)

Market Share	December 2010 to November 2011	December 2011 to November 2012	December 2012 to November 2013	9 March 2014 to December 2014	January 2015 to June 2015
Cebu Pacific	[40-50]%	[40-50]%	[30-40]%	[40-50]%	[30-40]%
SEAir	[50-60]%	[50-60]%	[30-40]%	[0-10]%	[0-10]%
Philippines' AirAsia	[0-10]%	[0-10]%	[20-30]%	[0-10]%	[0-10]%
Tigerair Singapore	[0-10]%	[0-10]%	[0-10]%	[50-60]%	[60-70]%
PAL Express	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%
Others	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%
Total market size	[<]	[<]	[<]	[<]	[<]
Combined shares of the Parties	[90-100]%	[90-100]%	[60-70]%	[90-100]%	[90-100]%

80. The Parties submitted that even though the combined market shares of the Parties exceed 20% on each of the Overlapping Common Routes, the Strategic Alliance is unlikely to result in an appreciable restriction of competition on such routes, in light of the [<] (as mentioned in paragraph 72(b), as well as the following market conditions:

- (a) With regard to the route between Singapore and Manila, customers are able to switch easily between airlines and are generally price-sensitive, resulting in intense competition between the airlines;
- (b) There are no significant barriers to entry for the Singapore – Clark route and the Singapore – Cebu route. Air traffic rights and airport slots are not constrained, and existing airlines do not have to incur additional significant costs or capital expenditure to enter these routes. Specifically, the Parties have submitted, based on the Parties' understanding from public information, that Philippines' Air Asia or Air Asia Zest may potentially commence flights on the Singapore – Clark

route⁹⁶ and Air Asia Zest intends to launch flights on the Singapore – Cebu route⁹⁷; and

- (c) Singapore or Philippines carriers would be able to potentially enter these routes, and would have the commercial incentive to do so in response to any increase in prices or reduction in the quality of services or flight offerings on the Overlapping Common Routes as a result of the Strategic Alliance.

CCS's Assessment

Connecting Routes and Non-Common Routes

81. CCS notes that the Parties will not have any influence over pricing on each other's routes on the Connecting Routes, and will also be pricing independently on the Non-Common Routes. In this regard, CCS accepts the Parties' submissions that there is no object or effect of preventing, restricting or distorting competition in any markets in Singapore through the Parties' coordination on the Connecting Routes and the Non-Common Routes.

Common Routes (including Overlapping Common Routes)

82. CCS notes that the Parties will be exchanging sensitive information in relation to pricing, promotional activities and flight schedules, and will be coordinating their flight timings and operating on a metal neutral basis such that each Party will be indifferent as to which Party operates the underlying flight. Practically, this means that the Parties will completely, or at least to a significant extent, eliminate the business uncertainty that would normally exist between competitors in a competitive environment.
83. In particular, CCS notes that [§<].
84. Further, with the coordination in terms of flight schedules, the Parties are effectively removing competition for passengers within specific time windows. Another way to view the coordination of flight schedules is that Parties are effectively restricting output at specific time windows such that passengers that need to travel within certain time windows would have no alternative to that particular flight.

⁹⁶ Paragraph 5.1.10(b) of Form 1 dated 12 September 2014, and *EnterAksyon.com* article, "AirAsia eyes return to Clark by 2016", dated 26 May 2014, www.interaksyon.com/87615/airasia-eyes-return-to-clark-by-2016; and *Rappler.com* article, "AirAsia Philippines gears up for 2016 re-fleeting program", dated 25 May 2014, <http://www.rappler.com/business/industries/171-aviation-tourism/58886-airasia-refleeting-program-paying-forward>.

⁹⁷ Paragraph 1.23.3 of the Parties' Supplemental Submissions dated 9 January 2015, and *The Philippines Star* article, "AirAsia Zest to fly to S'pore from Cebu, Kalibo", dated 24 November 2014, <http://www.philstar.com/business/2014/11/24/1395097/airasia-zest-fly-spore-cebu-kalibo>.

85. In light of the above, CCS is of the view that the coordination on Overlapping Common Routes under the Strategic Alliance will have as its object the prevention, restriction or distortion of competition in the Relevant Markets, even though air traffic rights and airport slots may not pose as significant barriers to entry.⁹⁸

The Net Economic Benefit Exclusion

86. An agreement will not be prohibited if it falls within the NEB Exclusion in paragraph 9 of the Third Schedule to the Act.⁹⁹ The NEB Exclusion 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.”
87. The burden of proof in establishing the NEB Exclusion for individual agreements lies with the party which claims it.¹⁰⁰

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

88. Paragraph 10.4 of Annex C to the *CCS Guidelines on the Section 34 Prohibition* sets out the criteria to be taken into account in 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.
89. 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, the more significant the benefits will have to be.

⁹⁸ Please see paragraph 142 for subsequent amendments to the Strategic Alliance by the Parties in response to CCS's concerns.

⁹⁹ Refer to section 35 of the Act.

¹⁰⁰ Regulation 13(a) of the Competition (Notification) Regulations 2007.

Imposing restrictions which are indispensable to the attainment of the objectives

90. Paragraph 10.9 of Annex C to the *CCS Guidelines on the Section 34 Prohibition* states that an agreement will not be regarded as indispensable if there are other economically practical and less restrictive means of achieving the efficiencies. 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.
91. In this context, the Strategic Alliance or the Individual Restrictions would be considered as indispensable if their absence eliminate or significantly reduce the efficiencies or make the efficiencies much less likely to materialise. The 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.¹⁰¹

Parties’ submissions

92. The Parties submitted that the Strategic Alliance is expected to give rise to NEB, and would therefore benefit from the NEB Exclusion.¹⁰² The Parties further submitted that the areas of cooperation under the SAA, for example, sharing of information on flight schedules, prices and promotions are required to successfully attain the benefits.¹⁰³
93. The Parties are of the view that the Strategic Alliance will likely result in NEB, including the following:

Improved scheduling on Overlapping Common Routes

94. With the implementation of the Strategic Alliance, the Parties will be able to offer passengers better scheduling of flights, in particular a better spread of scheduled flight timings on the Overlapping Common Routes [X] and thus improve both the service offering and passenger choice. This would arise, in particular, where the Parties currently operate parallel or close-to-parallel flight timings on an Overlapping Common Route.¹⁰⁴
95. For example, the Parties’ flight times on the [X] route, based on a snapshot of the Parties’ schedules as of June 2014, are as follows¹⁰⁵: [X]

¹⁰¹ Paragraph 10.9 of Annex C to the *CCS Guidelines on the Section 34 Prohibition*.

¹⁰² Paragraph 2.3.6 of Form 1 dated 12 September 2014.

¹⁰³ Paragraph 2.3.17 of Form 1 dated 12 September 2014.

¹⁰⁴ Paragraph 5.1.28 of Form 1 dated 12 September 2014.

¹⁰⁵ Paragraph 5.1.29 of Form 1 dated 12 September 2014.

96. Based on the above flight times and based on Tigerair Singapore's own preliminary internal review of relevant flight schedules, Tigerair Singapore has identified one possible opportunity for the Parties to coordinate their flight schedules to offer passengers improved choice by both removing parallel flight times and offering the following possible new flight times to fill gaps in the flight schedules:
- (a) [REDACTED]
 - (b) [REDACTED]¹⁰⁶
97. Cebu Pacific similarly observed, based on publicly available information, that:
- (a) [REDACTED] there are closely-timed departures of Cebu Pacific and Tigerair Singapore, namely, [REDACTED] while [REDACTED] which is a mere differential of [REDACTED] minutes; and
 - (b) [REDACTED] the same observation can be made, where [REDACTED] while [REDACTED] which is an even smaller differential of [REDACTED] minutes.¹⁰⁷
98. The Parties highlighted that the above examples are provided to CCS as a possible illustration only of how the Parties may potentially be able to coordinate their flight schedules. The ultimate coordination of schedule would still be subject to detailed commercial route studies by both Parties on the commercial feasibility of operating such services, and subject to discussion and commercial agreement between the Parties.¹⁰⁸
99. The Parties further submitted that the areas of cooperation under the SAA are required to successfully attain the above potential improvements in scheduling on the Overlapping Common Routes. For example, in the first instance, the Parties would need to share information on, and discuss [REDACTED], in order for the Parties to offer such possible [REDACTED].¹⁰⁹
100. Further, [REDACTED] is required to align the Parties' commercial incentives with respect to the scheduling of their respective flights, such that each Party will become indifferent as to which Party operates the underlying metal, or aircraft, on each route or the flight timing (i.e. metal neutrality). Without [REDACTED] between the Parties to achieve such metal neutrality, a Party will be unwilling to cede a particular timing or route to the other Party, where that Party considers it will be [REDACTED].¹¹⁰

¹⁰⁶ Paragraph 5.1.30 of Form 1 dated 12 September 2014.

¹⁰⁷ Paragraph 5.1.32 of Form 1 dated 12 September 2014.

¹⁰⁸ Paragraph 5.1.33 of Form 1 dated 12 September 2014.

¹⁰⁹ Paragraph 5.1.35 of Form 1 dated 12 September 2014.

¹¹⁰ Paragraph 5.1.36 of Form 1 dated 12 September 2014.

Improved connectivity and more integrated product offerings across the Parties' existing networks, including via Singapore

101. According to the Parties, the Strategic Alliance would allow each Party to expand services on its existing network to include O&D city pair routes with connecting sectors on the other Party's existing network. The Strategic Alliance would allow for such connections across the Parties' existing networks to be made, and further allow for improved connectivity through more convenient scheduling of connecting flights across the Parties' networks (for example, allowing for shorter layover durations), including via Singapore.¹¹¹
102. In this regard, the Strategic Alliance will have the effect of extending the network of each of the Parties. Specifically, it will provide Tigerair Singapore with increased presence in the Philippines through its access to the larger Philippine network of Cebu Pacific. Likewise, Cebu Pacific will gain access to onward flights from Singapore to a number of international destinations currently served by Tigerair Singapore. Specifically, through the Strategic Alliance, Tigerair Singapore will be able to offer passengers services to 30 additional Philippine destinations and Cebu Pacific will be able to offer passengers services to 23 additional international destinations. The Parties provided specific possible examples as illustration of how such connections could be achieved in their submissions, subject to detailed commercial route studies by the Parties on the commercial feasibility of operating such services, and subject to discussion and commercial agreement between the Parties.¹¹²
103. Of the Parties, Tigerair Singapore has, relatively, the stronger brand in Singapore and certain international destinations, while Cebu Pacific has the stronger brand in the Philippines. Cebu Pacific submitted that each of the Parties will benefit from the opportunity to associate with the brand of the other Party, thus creating an overall stronger brand and established network.¹¹³
104. The Parties also submitted that the additional choices and improved products that may be offered to passengers as a result of flight schedules coordination will stimulate demand on the routes between Singapore and the Philippines, and thus also strengthen Singapore's status as an air hub.
105. Such benefits would accrue both to passengers originating in Singapore (for O&D city pair routes that the Parties are able to offer from Singapore to other destinations in Cebu Pacific's network through the Strategic Alliance) and passengers originating

¹¹¹ Paragraph 5.1.39 of Form 1 dated 12 September 2014.

¹¹² Paragraph 5.1.40 of Form 1 dated 12 September 2014.

¹¹³ Paragraph 5.1.41 of Form 1 dated 12 September 2014.

outside of Singapore (for O&D city pair routes that the Parties are able to offer via Singapore, as a result of the Strategic Alliance).¹¹⁴

Expansion of the Parties' existing networks and services through commencing operations on new routes

106. According to the Parties, the Strategic Alliance may also provide the Parties with the opportunity to expand their services on routes that they presently do not serve, thus potentially increasing choice to consumers through the creation of new connections. Specifically, the Strategic Alliance may provide each Party with the commercial justification to consider commencing operations to new destinations, to the extent that the Strategic Alliance and resultant access to the other Party's network allows the first Party to gain access to sufficient traffic feed and level of demand to commercially justify commencing operations to such new destinations. In the absence of the Strategic Alliance, the level of demand may otherwise not be sufficient to support the economic viability of operations to such new destinations.¹¹⁵
107. Cebu Pacific submitted that currently only [X] per cent of its passengers are connecting passengers through Singapore. However, with the ability to offer services to new international destinations (including Australia, [X]) resulting from the Strategic Alliance, Cebu Pacific submitted that it expects its overall volume of passengers to increase.¹¹⁶
108. Further, Cebu Pacific submitted that it anticipates a projected [X] per cent of Tigerair Singapore passengers (from the SIN-MNL and SIN-CEB routes) to connect onto Cebu Pacific services. This projected percentage of connecting passengers is derived from [X]. Accordingly, Cebu Pacific expects that, once the Strategic Alliance is implemented, it may be possible to achieve a similar percentage increase in connecting passengers.¹¹⁷
109. The Parties submitted information from the Philippines Civil Aeronautics Board indicating passenger numbers on the Singapore (SIN) – Manila (MNL)/Cebu (CEB) routes for the first three quarters of 2013 to be [X]. On this basis, Cebu Pacific projected that, during the same period, the Strategic Alliance would have resulted in an increase of [X] in passengers connecting onto its flights from Tigerair Singapore. Cebu Pacific submitted that [X]¹¹⁸: [X]

¹¹⁴ Paragraph 5.1.63 of Form 1 dated 12 September 2014.

¹¹⁵ Paragraph 5.1.65 of Form 1 dated 12 September 2014.

¹¹⁶ Paragraph 5.1.66 of Form 1 dated 12 September 2014.

¹¹⁷ Paragraph 5.1.67 of Form 1 dated 12 September 2014.

¹¹⁸ Paragraph 5.1.68 of Form 1 dated 12 September 2014.

110. In the absence of the Strategic Alliance, the level of demand for such routes from Cebu Pacific's existing network alone may be insufficient to justify such new routes.¹¹⁹
111. According to the Parties, the above examples of possible additional international sectors that Cebu Pacific may implement in the short to medium term may also give rise to the following benefits to both Tigerair Singapore and passengers travelling on Tigerair Singapore:
- (a) the new connections to these destinations may, in turn, increase the level of demand, and potentially improve load factors, on Tigerair Singapore's existing services, thus improving long-term viability of such existing services. Further, the improved connectivity arising from these new Cebu Pacific routes would also reinforce Singapore's status and competitiveness as an air hub; and
 - (b) the launching of new Cebu Pacific routes would also allow the Parties to offer passengers of Tigerair Singapore (including those originating in Singapore) an improved choice of connecting flight options and/or new O&D city pair routes.¹²⁰
112. From Cebu Pacific's perspective, the improved connectivity across the Parties' networks, including from coordinating flight schedules to reduce connection times and to increase the frequency of connections, would also allow Cebu Pacific to assess if, in the longer run, there may exist sufficient connecting traffic across the Parties' networks on certain connecting O&D city pair routes for Cebu Pacific to potentially consider commencing new direct services on such O&D city pair routes. [X].¹²¹

Strengthening of Singapore's position and competitiveness as an air hub

113. The Parties are of the view that the Strategic Alliance will also reinforce Singapore's status and competitiveness as an air hub with improved connectivity across the Parties' networks, [X].¹²²
114. The Parties expect that through the Strategic Alliance, there would be an increased number of passengers from countries outside of Singapore (e.g. the Philippines) using Singapore as a stopover, and accordingly, an expected increase in number of tourists from countries outside of Singapore (including the Philippines) who would visit Singapore. [X].¹²³

¹¹⁹ Paragraph 5.1.69 of Form 1 dated 12 September 2014.

¹²⁰ Paragraph 5.1.70 of Form 1 dated 12 September 2014.

¹²¹ Paragraph 5.1.71 of Form 1 dated 12 September 2014.

¹²² Paragraph 5.1.73 of Form 1 dated 12 September 2014.

¹²³ Paragraph 5.1.74 of Form 1 dated 12 September 2014.

CCS's Assessment on the Net Economic Benefit

115. As mentioned in paragraph 85, CCS is of the view that the Strategic Alliance on the Overlapping Common Routes will have as its object the prevention, restriction or distortion of competition in the Relevant Markets and in this respect, CCS will proceed to assess if the Strategic Alliance will satisfy the NEB Exclusion from the section 34 prohibition.

The Strategic Alliance will Improve Production or Distribution or Promote Technical or Economic Progress

116. While CCS notes the Parties' submissions that the Strategic Alliance could lead to an expansion of the Parties' existing networks and services through commencing operations on new routes due to an increase in the feed of passengers, CCS also notes that the supporting information provided by the Parties is speculative and is insufficient to demonstrate the likelihood of this expansion. As such, CCS is unable to accept this claimed benefit.
117. Notwithstanding this, based on the remaining information submitted by the Parties and the submissions received from third-parties during the public consultation process, CCS is of the view that the Strategic Alliance will improve production or distribution or promote technical or economic progress for the following reasons.
118. CCS accepts the Parties' submissions that the Strategic Alliance will improve scheduling on Overlapping Common Routes. CCS notes that in the absence of the Strategic Alliance, it would be unlikely that [X] so that passengers have access to an even spread of flights on these routes throughout the day.
119. Similarly, CCS notes that in the absence of the Strategic Alliance, neither Party would [X] across their networks in order to better coordinate with the flight timings of the other Party. CCS therefore accepts the Parties' submission that the Strategic Alliance leads to improved connectivity for passengers across both Parties' networks and creates more integrated product offerings across the Parties' existing networks, including via Singapore.
120. CCS also accepts the claimed benefit that the Strategic Alliance will lead to a strengthening of Singapore's position and competitiveness as an air hub. In this regard, the Strategic Alliance will bring in air traffic from Philippines, particularly passengers who are travelling from Philippines through Singapore to other Tigerair Singapore's destinations, and vice versa. The Parties' claims are corroborated by views submitted by third-parties. For example, Vital.org opined that the Strategic Alliance will drive an increase in traveller traffic through Singapore in two directions – either to travel to Philippines to connect onto Cebu Pacific's extensive network in Philippines and North

Asia or to connect at Singapore onto onward destinations via Tigerair Singapore's network. Vital.org submitted that this travel volume may currently be travelling through other hubs in the region. Vital.org also submitted that the Strategic Alliance may also promote tourism in Singapore as more travellers stopover in Singapore, hence increasing tourist expenditure and creating more jobs in the travel and aviation industry.¹²⁴ In addition, CCS notes feedback from the Ministry of Transport ("MOT") and the Civil Aviation Authority of Singapore ("CAAS") that [REDACTED].¹²⁵

The Strategic Alliance will not impose restrictions which are not indispensable to the attainment of these objectives

121. CCS accepts that the Strategic Alliance is indispensable to the attainment of the NEBs. Specifically, CCS accepts the Parties' arguments [REDACTED] to maintain metal-neutrality and the sharing of scheduling, price and other commercially sensitive information for coordination purposes are required to attain the abovementioned NEB. The NEB as described above are unlikely to be achieved with a lower level of cooperation (i.e. through a code-sharing agreement between the Parties) given the lack of alignment of commercial interest between the Parties and the inability to coordinate their commercial activities, for example, flight schedules. CCS also notes that [REDACTED]. CCS therefore concludes that the Strategic Alliance will not impose restrictions which are not indispensable to the attainment of the submitted NEB.

The Strategic Alliance will not afford the possibility of eliminating competition in the Relevant Markets.

122. To assess the last limb of the NEB test, CCS considered the level of competition along each of the Overlapping Common Route and the extent to which the Strategic Alliance will impact competition on each route.

Singapore – Manila Route

123. Currently, there are five airlines operating along the Singapore – Manila route, namely Cebu Pacific, Philippines Airlines, Singapore Airlines, Jetstar Asia and Tigerair Singapore. In terms of market share based on number of passengers, Cebu Pacific is the largest player ([20-30]%), followed by Singapore Airlines ([20-30]%), Philippines Airlines ([20-30]%), Jetstar Asia ([10-20]%) and Tigerair Singapore ([10-20]%).¹²⁶ The Parties would have a combined market share of [40-50]%, or [60-70]% should Singapore Airlines be considered as an SEU with Tigerair Singapore.

¹²⁴ Part D., Comments for CCS_Cebu Air and Tiger Air, Vital.org, dated 13 June 2014.

¹²⁵ Paragraph 12, MOT/CAAS' Inputs to CCS on the Acquisition by Cebu Pacific on Southeast Asian Airlines, and an Inter-Conditional Strategic Alliance Agreement between Cebu Pacific and Tigerair Holdings.

¹²⁶ Market share figures are based on period between December 2014 to June 2015. Please refer to tables at paragraph 79 for full details.

124. In this regard, CCS notes that there are still two competitor airlines operating along the route, including Philippines' national carrier. Based on the information provided by the Parties, it is noted that the two competitor airlines have spare capacity along this route.¹²⁷ Given that customers are generally able to switch without significant costs between the airlines, the competitor airlines would be able to exert a competitive constraint on the Parties should they increase prices, or decrease quality of service or output after the implementation of the Strategic Alliance.
125. CCS also notes that the MOT and the CAAS also provided feedback that [X]. MOT and CAAS indicated that although the Singapore – Manila route is a traffic rights restricted sector with slots constraint, there are still ample traffic rights available for carriers to mount more services. Moreover, the Philippines have committed to ratify the ASEAN Multilateral Agreement on Air Services to allow for unlimited 3rd/4th/intra-ASEAN 5th freedom traffic rights by end-2015. When that happens, traffic rights will no longer pose a barrier to entry for the Singapore – Manila route. The Philippines authorities are also working to raise the runway capacity of Manila, and to divert non-scheduled/private flights to other airfields to accommodate the needs of scheduled carriers at Manila.¹²⁸
126. The Changi Airport Group has also provided feedback that given [X].¹²⁹ CCS did not receive any negative feedback on the Strategic Alliance with regard to the Singapore – Manila sector.

Singapore – Cebu route

127. CCS notes that currently, only three airlines operate on the Singapore – Cebu route, namely SilkAir, Cebu Pacific and Tigerair Singapore. The combined market share of the Parties would be [80-90]%, with SilkAir with a market share of [0-10]%.¹³⁰ Should SilkAir be considered as a SEU with Tigerair Singapore, this would mean that the market share of the Parties, together with Silkair, would be close to [90-100]% after the implementation of the Strategic Alliance.

¹²⁷ The passenger load factor was estimated as [X]% for Philippines Airlines and [X]% for Jetstar Asia. These figures were computed based on the number of passengers carried by the respective airlines for the period between December 2013 to May 2014 divided by the number of seats flown by the airlines for the period between December 2013 to June 2014. There was no comparable seat figures provided by the Parties for the period between December 2013 to May 2014 but it is not expected to significantly impact the passenger load factor given the difference of one month.

¹²⁸ Paragraph 9, MOT/CAAS' Inputs to CCS on the Acquisition by Cebu Pacific on Southeast Asian Airlines, and an Inter-Conditional Strategic Alliance Agreement between Cebu Pacific and Tigerair Holdings.

¹²⁹ Assessment of the Acquisition of SEAir and Strategic Alliance between Tigerair Singapore and Cebu Pacific, Changi Airport Group, 11 Jun 2014.

¹³⁰ Market share figures are based on period between December 2014 to June 2015. Please refer to tables at paragraph 79 for full details.

128. The Parties have submitted that the barriers to entry for the Singapore – Cebu route are low, i.e., there are no constraints in terms of air rights or airport slots and existing airlines do not have to incur significant additional costs to enter this route. As such, if there is an increase in prices or reduction in service, other airlines will enter this market. In this regard, the Parties have not provided any further information to support these assertions.¹³¹ From the feedback received from the regulatory bodies, the regulatory barriers on the Singapore – Cebu routes are low.¹³² There are also no air traffic rights and airport slot constraints. As such, these would not hinder new entrants from obtaining the necessary regulatory approvals should they wish to operate on this route.
129. As part of its assessment, CCS has gone on further to consider whether any potential entry on the Singapore – Cebu route could pose a competitive constraint on the Parties. In considering whether an entry would exert competitive constraint on the existing operators, CCS would consider whether the entry is likely, timely and sufficient.¹³³ Generally, CCS considers two years as timely¹³⁴, and would consider factors such as the cost of entry and the willingness of customers to switch when assessing the likelihood of the entry.¹³⁵ CCS will also look at the scale of the entry to assess whether the entry is sufficient.¹³⁶
130. Looking at the growth of capacity and passenger numbers on this route, CCS notes that the capacity for all airlines along this route has increased from [X] in 2009 to [X] in 2013 (i.e. [X] increase). During the same period, the total number of passengers increased from [X] to [X] ([X] increase). This is consistent with [X].

¹³¹ Paragraph 5.1.11 of Form 1.

¹³² See paragraph 10.2 of the Parties' response dated 30 October 2014; Paragraph 9 of MOT/CAAS' Inputs to CCS on the Acquisition by Cebu Pacific on Southeast Asian Airlines, and an Inter-Conditional Strategic Alliance Agreement between Cebu Pacific and Tigerair Holdings; and Assessment of the Acquisition of SEAir and Strategic Alliance between Tigerair Singapore and Cebu Pacific, Changi Airport Group, 11 Jun 2014.

¹³³ Paragraphs 7.4 to 7.11 of *CCS Guidelines on the Substantive Assessment of Mergers*. CCS considers that it is appropriate to adopt the principles and approach in assessing market entry set out within this set of guidelines given that CCS is similarly assessing whether entry would occur along the Singapore – Cebu route such that it would serve as a competitive constraint on the Parties. See also paragraph 140 below, where CCS notes that the New Zealand Commerce Commission applied the “LET” principles, where the test of whether the entry and/or expansion is likely, sufficient in extent and timely (termed as the “LET test”) was applied when assessing whether the threat of market entry and/or expansion would be a sufficient constraint on the exercise of market power by the proposed alliance (see *Re Air New Zealand Limited and Qantas Airways Limited* [2003] NZCC 511 paragraph 619).

¹³⁴ Paragraph 7.8 of *CCS Guidelines on the Substantive Assessment of Mergers*

¹³⁵ Paragraph 7.6 of *CCS Guidelines on the Substantive Assessment of Mergers*

¹³⁶ Paragraph 7.7 of *CCS Guidelines on the Substantive Assessment of Mergers*

131. However, while the route appears to be commercially viable, there has been no new entrant in the past five years.¹³⁷ Based on information available to CCS, there is no indication of any likely new entrant in the next 12 months.
132. With the implementation of the Strategic Alliance, the Parties (together with Silkair) will essentially be operating as a monopoly provider on this route. Even excluding Silkair, the Parties account for about [80-90]% market share (by passengers). Given the Parties' combined market position post implementation of the Strategic Alliance, third-party feedback has indicated that entry into this route will be made even more difficult.¹³⁸
133. On the basis of the above assessment, there is insufficient evidence to suggest that entry will be likely, timely and sufficient to exert a competitive constraint on the Parties' operations on the Singapore – Cebu route. Even if the Parties were to increase price or decrease quality of service subsequently, it is not certain that entry could potentially occur to restore competition on this route.

Singapore – Clark route

134. Subsequent to the Strategic Alliance, the Parties will be the only airlines operating on the Singapore – Clark route, thereby eliminating any competition on this route.
135. Similarly, the Parties have submitted that the barriers to entry for the Singapore – Clark route are low, i.e., there are no constraints in terms of air rights or airport slots and existing airlines do not have to incur significant additional costs to enter this route. As such, if there is an increase in prices or reduction in service, other airlines will enter this market. In this regard, the Parties have not provided any further information to support these assertions.
136. The Parties have further submitted that Philippines' AirAsia or AirAsia Zest are likely to commence flights by 2016 based on a news article; however, the same report also indicated that AirAsia's entry is dependent on the completion of the connector road between North and South Manila. Further, in the same report the Chief Executive of the AirAsia Group was also quoted to say that "Clark did not work" in the context of Philippines' AirAsia's suspension of its operations in Clark in September 2013.¹³⁹ The Parties did not provide any evidence that AirAsia will commence operations on the Singapore – Clark route in a timely or likely manner, nor has CCS received any evidence of any intention on the part of AirAsia to do so.

¹³⁷ Based on information available to CCS.

¹³⁸ Email from [X], 7 May 2015.

¹³⁹ See <http://www.interaksyon.com/business/87615/airasia-eyes-return-to-clark-by-2016>

137. In assessing the prospect of entry on the Singapore – Clark route, based on information available to CCS, CCS does not consider entry to be timely, likely and sufficient to exert a competitive constraint on the Parties’ operations on this route.
138. Based on various submissions, CCS understands that Singapore – Clark is an [X] route which has suffered from frequent entries and exits of airlines.¹⁴⁰ [X]¹⁴¹ MOT and CAAS have also informed CCS that [X].[X].¹⁴²
139. [X] Singapore – Clark route [X] is not a profitable route. [X].¹⁴³
140. CCS notes the case of Air New Zealand Limited and Qantas Airways Limited¹⁴⁴, in which the Commerce Commission of New Zealand (“NZCC”) considered the NZ – US route as one of the relevant markets, and found that, despite low barriers to entry, the route was not sufficiently profitable which led to multiple entries and exits. There were no new entries despite increases in fares, and NZCC considered, on the balance of probabilities, that there was not likely to be any potential entry which may constrain the proposed alliance. On the balance, NZCC found that the proposed strategic alliance will result in a lessening of competition in a number of relevant markets, and would not be likely to result in such benefit to the public that would outweigh the lessening or deemed lessening of competition, NZCC declined to authorise the alliance between the two airlines.
141. On the basis of the above assessment, there is insufficient evidence to suggest that entry is likely, timely and sufficient. Even if the Parties were to increase price or decrease quality of service subsequently, it is not certain that entry could potentially occur to restore competition on this route. As a result of the above, CCS considers that it is not likely that there will be a potential entry on the Singapore – Clark route which might constrain any potential anti-competitive effects arising from the Strategic Alliance.

¹⁴⁰ PAL Express commenced operations on this route in May 2012, and ceased operations on this route in February 2013; Philippines’ AirAsia commenced operations on this route in December 2012, and ceased operations on this route in August 2013 and Tigerair Singapore ceased operations on the route between Singapore and Clark on 6 December 2010 and recommenced its operations on this route from 9 March 2014.

¹⁴¹ [X]

¹⁴² Paragraph 6, MOT/CAAS’ Inputs to CCS on the Acquisition by Cebu Pacific on Southeast Asian Airlines, and an Inter-Conditional Strategic Alliance Agreement between Cebu Pacific and Tigerair Holdings.

¹⁴³ [X]

¹⁴⁴ Re Air New Zealand Limited and Qantas Airways Limited [2003] NZCC 511; in this case, The New Zealand Commerce Commission received two interdependent applications for authorisation from Air New Zealand (“Air NZ”) and Qantas Airway Ltd (“Qantas”), with the first application relating to a proposed share purchase agreement whereby Qantas would acquire 22.5% of the voting equity in Air NZ, and the second application relating to the implementation of a strategic alliance arrangement between Air NZ and Qantas, requiring the two airlines to coordinate on all flights operated by either or both airlines to, from and within New Zealand.

PARTIES' RESPONSE TO CCS

142. In response to CCS's above-mentioned concerns, the Parties have notified CCS that they would reduce the level of coordination on both the Singapore – Cebu and Singapore – Clark routes to an interline basis as per the TR/5J Interline Traffic Agreement (the “Interline Agreement”)¹⁴⁵ which has been entered into pursuant to Clause 5.2¹⁴⁶ of the SAA (the “Amended SAA”)¹⁴⁷. The Parties have commenced the implementation of the Interline Agreement but they do not consider that the agreement would in and of itself, prevent, restrict or distort competition given that it is in line with standard interline agreements in the aviation industry.
143. In this regard, the Parties have submitted that they intend to coordinate on scheduling on the Singapore – Cebu and Singapore – Clark routes only on the minimum and maximum connecting times, which is a general part of the interline business.¹⁴⁸ Specifically, this coordination would be with respect to possibly reducing, lengthening or keeping the *status quo* on permissible minimum and maximum connecting times in each Party's respective booking systems, for Connecting Routes involving the Singapore – Cebu and Singapore – Clark routes. Such coordination would not involve any scheduling changes to each Party's respective flights in a Connecting Route involving the Singapore – Cebu and Singapore – Clark routes, but would merely involve adjusting the default settings for permissible minimum and/or maximum connecting times in each Party's respective booking systems (including at the other Party's request). The adjustment of such default settings would accordingly allow for additional (or fewer, as the case may be) potential Connecting Routes to be picked up by the booking system as a joint interline itinerary that is available for a passenger to book.¹⁴⁹
144. For example, in implementing the Interline Agreement, [REDACTED].
145. In summary, the Parties have submitted that on the Singapore – Cebu and Singapore – Clark routes:

¹⁴⁵ [REDACTED]

¹⁴⁶ Clause 5.2 of the SAA states that “As soon as practicable after Completion (and in any event within 2 months from Completion), the Parties shall use their best endeavours to enter into the following agreements (in each case, on negotiated terms reasonably satisfactory to the Parties): 5.2.1 Bilateral Codeshare/Interline Traffic Agreement; and 5.2.2 Flight Interruption Manifest (FIM) Agreement. The Parties shall also use their best endeavours to enter into a Reciprocal Staff Travel agreement as soon as practicable after Completion.

¹⁴⁷ Please see Amendment No.1 to the Strategic Alliance Agreement entered into on 10 April 2015, and Amendment No. 2 to the Strategic Alliance Agreement entered into on 8 September 2015.

¹⁴⁸ Tigerair Singapore submitted that [REDACTED]. Cebu Pacific submitted that [REDACTED]. The Parties further submitted that [REDACTED].

¹⁴⁹ Email from A&G to CCS dated 13 March 2015.

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- (a) pricing would be decided by each Party, independently of the other, in line with pricing under interline agreements;
 - (b) there would not be any revenue pooling and coordination of published rates, fees and surcharges;
 - (c) capacity would be independently decided by each Party; and
 - (d) coordination on scheduling would only be limited to that of coordinating minimum and maximum connecting times, as described above. Scheduling of each Party's respective flights on the Singapore – Cebu and Singapore – Clark routes would be independently determined.
146. With respect to any potential for commercially confidential information¹⁵⁰ to be exchanged between the Parties regarding pertaining to the Singapore – Cebu and Singapore – Clark routes, the Parties have submitted that they do not intend to coordinate or share such information with the exception of information on flight schedules which is publicly available or has been publicly announced (including information observable from monitoring the other Party's website, or other information in the public domain, for the other Party's schedule changes), and discussions on coordinating minimum and maximum connecting times, as described above in paragraphs 143 to 145. The Parties submitted that with respect to flight schedules, under interline arrangements generally, an operating carrier would update its own booking system with its flight schedule data first (at which point the flight schedules would be publicly available), before exchanging Standard Schedules Information Manual files, with schedule data updates, with their interline partner carriers for the partner carriers to update their respective systems. The exchange of information between the Parties on flight schedules on the Singapore – Cebu and Singapore – Clark routes would, accordingly, be in line with such exchanges under interline arrangements generally.
147. The Parties therefore consider that there would continue to be incentives for them to compete on the Singapore – Cebu and Singapore – Clark routes. In particular, [X] each Party would independently evaluate their respective route results on these routes (e.g. with respect to revenue, load factors, yields, etc), and would make commercial decisions independently (including in relation to pricing, capacity and scheduling), on the basis of their respective commercial incentives.

CCS's Assessment

¹⁵⁰ Commercially confidential information that would be exchanged under the SAA include: [X] and (iii) flight schedules for flights operated by each Party, including coordinating and aligning the Parties' schedules on Common Routes and Connecting Routes.

148. CCS notes that the Parties would no longer be coordinating on pricing or exchanging commercially confidential information on the Singapore – Cebu and Singapore – Clark routes. In terms of coordination on scheduling, it will be carried out on a limited basis under the Interline Agreement, i.e., not on flight timings but on connecting time. As for capacity on the Singapore – Cebu and Singapore – Clark routes, the Parties have also submitted that decisions would be taken individually by the Parties. While this does not preclude the possibility that capacity might be reduced in the near future¹⁵¹, CCS considers that an independent reduction of capacity by either Party based on their own commercial considerations should not be prevented.
149. CCS has further reviewed the Interline Agreement entered into by the Parties. Based on CCS's review, the interline arrangement between the Parties on the Singapore – Cebu and Singapore – Clarke routes is consistent with the Parties' representation on the scope of cooperation. In this regard, CCS considers that the Interline Agreement would benefit passengers in terms of connectivity and convenience. For example, the Interline Agreement would allow passengers to travel across the Parties' networks with the convenience of a single reservation. It also enables passengers to enjoy automatic baggage transfers at connecting airports. Further, passengers may benefit from a lower fare as a combined interline fare would typically be lower than that of separate tickets on the individual legs of the journey.
150. CCS is therefore of the view that the level of cooperation provided for under the Interline Agreement in relation to the Singapore – Cebu and Singapore – Clark routes will not infringe section 34 of the Act. Accordingly, the NEB assessment is no longer necessary for these routes.

Conclusion

151. CCS finds that with the amendments made by the Parties to the SAA, CCS's competition concerns have been sufficiently addressed and the Amended SAA, based on the routes currently operated by the Parties, will qualify for the exclusion as set out in section 35 read with paragraph 9 of the Third Schedule to the Act.

¹⁵¹ [REDACTED]

CCS DECISION ON THE PARTIES' APPLICATION

152. Given that the Parties have reduced the level of coordination on the Singapore – Cebu and Singapore – Clark routes to an interline basis, and have amended the SAA accordingly, CCS concludes that the reduced level of cooperation on the Singapore – Cebu and Singapore – Clark routes will not infringe section 34 of the Act. For the remaining overlapping route, i.e., Singapore – Manila, CCS's assessment in paragraphs 116 to 126 in relation to the NEB exclusion remains valid. As such, the Amended SAA will benefit from the NEB Exclusion set out in section 35, read with paragraph 9 of the Third Schedule to the Act.
153. Pursuant to regulation 9(5) of the Competition Regulations 2007¹⁵², CCS exercises its discretion not to give a decision at this stage on any future routes to be operated by the Parties and their respective Associates and Affiliates as part of an expansion of their operations and/or as part of an expansion of the SAA as there is insufficient information/evidence available at this point in time to enable CCS to come to an informed decision on the competitive effects of such future cooperation.



Toh Han Li
Chief Executive
Competition Commission of Singapore

¹⁵² Regulation 9(5) of the Competition Regulations 2007 states that “The Commission may determine an application for a decision under section 44, 52, 7 or 58 of the Act by exercising its discretion not to give a decision, whereupon the Commission shall give notice to the applicant of that fact”.