COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2013/05/122)

12.11.2013

Notice u/s 6 (2) of the Competition Act, 2002 given by:

(i) Etihad Airways PJSC; and

(ii) Jet Airways (India) Limited

Order under Section 31(1) of the Competition Act, 2002

A. INTRODUCTION

1. On 1st May 2013, the Competition Commission of India (hereinafter referred to as the **"Commission"**) received a notice under sub-section (2) of Section 6 of the Competition Act, 2002 ("**Act**") given by Etihad Airways PJSC (hereinafter referred to as "**Etihad**") and Jet Airways (India) Limited (hereinafter referred to as "**Jet**") (hereinafter Jet and Etihad are collectively referred to as the "**Parties**"). The notice was given to the Commission pursuant to an Investment Agreement ("**IA**"), a Shareholder's Agreement ("**SHA**") and a Commercial Co-operation Agreement ("**CCA**"), all executed on 24th April 2013.

2. In terms of Regulation 14 of The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (hereinafter referred to as the "**Combination Regulations**"), vide letter dated 9th May 2013, the Parties were required to remove certain defects and provide information/document(s) by 28th May 2013. After seeking extension of time, the Parties filed their response on 3rd June, 2013.

3. In terms of Regulation 16 (1) of the Combination Regulations, the Parties, vide their letter dated 3rd June 2013, informed the Commission that, on 27th May 2013, they have made certain amendments to the SHA, CCA and the Corporate Governance Code ("**CGC**"), a code agreed to be adopted pursuant to the SHA. The Parties submitted that the changes to the SHA, CCA and the CGC were clarificatory in nature and the core nature of the transaction remains unchanged. The Commission considered the changes and noted the same on 6th June 2013.

4. In terms of sub-regulation (4) of Regulation 5 and sub-regulation (2) of Regulation 19 of the Combination Regulations, vide letter dated 6th June 2013, the Parties were required to provide certain additional information by 20th June 2013. After seeking extension of time, the Parties filed their reply on 21st June 2013. Since the information provided by the parties was not complete, another letter dated 24th June 2013 was sent to the Parties requiring them to provide complete information by 9th July 2013. After seeking extension of time, the Parties filed their reply on 30th August 2013.

5. In response to most of the queries raised by the Commission in its letter dated 24th June 2013, the Parties, in their reply dated 30th August 2013, had stated that they would be in a better position to conclusively provide the response to the queries of the Commission, once the SHA, CCA and the CGC are amended, after approval of the proposed combination by the Foreign Investment Promotion Board (FIPB). Since the Parties did not provide conclusive and complete reply to the queries raised in the Commission's letter dated 24th June 2013, in terms of Regulation 14 of the Combination Regulations, vide letter dated 30th August 2013, the Parties were informed that their reply was incomplete and therefore, they were required to remove the defects and provide final and complete information by 5th September 2013. After seeking extension of time, the Parties filed their response on 9th September 2013.

6. On 9th September 2013, the Parties also made an application under Regulation 16 of the Combination Regulations intimating further changes to the SHA, CCA and the CGC pursuant to the conditions imposed by the FIPB. The Commission heard the Parties on 23rd September 2013 and noted the changes. In pursuance of their submission during the hearing, the Parties filed an undertaking, *inter alia*, to the effect that "the Hon'ble Commission should treat the existing notice as valid and the Parties would not raise an issue of elapsing of 210 days, as provided under Section 31 (11) of the Act counting from 1st May 2013". In their undertaking, the Parties also confirmed that the "information filed pursuant to the notice will be treated as 'continuing defect' and the time period taken by the Parties to submit the final transaction documents to the Hon'ble Commission shall be deducted from the review period provided under sub-section (11) of Section 31 of the Act and sub-regulation (1) of Regulation 19 of the Combination Regulations.

7. On 14th October 2013, the Parties again filed an application under Regulation 16 of the Combination Regulations intimating that they have executed the amended and restated SHA and CCA on 19th September 2013 and also entered into an amendment agreement to the IA on the same day. The Commission considered these changes and noted the same on 23rd October 2013.

8. In terms of sub-regulation (3) of Regulation 19 of the Combination Regulations, Air India was required to furnish its views/comments on the proposed combination by 29th October 2013. After seeking extension of time twice, Air India furnished its response on 8th November 2013, broadly raising two main concerns viz. impact of the alliance on the competitive landscape of the India-Abu Dhabi route and impact of the alliance on Indian aviation and Air India. These concerns have been considered and addressed in the assessment of the combination.

9. In terms of sub-regulation (4) of Regulation 5 and sub-regulation (2) of Regulation 19 of the Combination Regulations, vide letters dated 15th October 2013 and 25th October 2013, the Parties were required to furnish certain additional information. The Parties furnished their response to these letters on 18th October 2013 and 30th October 2013 respectively.

B. COMBINATION

10. It has been stated in the notice that the proposed combination relates to acquisition of 24% equity stake and certain other rights in Jet by Etihad. On a specific query of the Commission, the Parties have submitted that they seek the Commission's approval for the acquisition of 24 percent equity interest in Jet by Etihad and in relation to all the rights and benefits which the parties have commercially agreed upon in the amended SHA, CCA and CGC.

C. PARTIES TO THE COMBINATION

11. Etihad, a company incorporated in the United Arab Emirates (UAE), is stated to be the national airline of UAE and is based in the emirate of Abu Dhabi. Etihad is wholly-owned by the Government of Abu Dhabi and is primarily engaged in the business of international air passenger transportation services. Etihad also operates Etihad Holidays (a division of Etihad Airways offering holiday packages to the airline's passenger destinations, including its home base, Abu Dhabi), Etihad Cargo (a division of Etihad Airways offering cargo services linked to its international route network and aircraft fleet) and a global contact centre organization as part of its commercial group. The Abu Dhabi International Airport located at Abu Dhabi, the capital of the UAE, operates as Etihad's hub airport. Etihad is also stated to hold 29.21 percent equity stake in Air Berlin; 40 percent equity stake in Air Seychelles; 10 percent equity stake in Virgin Australia and 2.9 percent equity stake in Aer Lingus.

12. Jet, a listed company incorporated in 1992 under the provisions of the Companies Act, 1956, is primarily engaged in the business of providing low cost and full service scheduled air passenger transport services to/from India. Jet also provides air transportation services for cargo, maintenance, repair & overhaul services and ground handling services. Jet Airways Cargo is the cargo division of Jet which operates through the passenger flights with belly space cargo capacity and does not operate any dedicated cargo flight. Jet Lite (India) Limited is a wholly-owned subsidiary of Jet and operates low cost air transportation service under the brand name 'JetKonnect'.

D. JURISDICTION

13. As per the details provided in the notice, the combined value of assets and turnover of the Parties meet the threshold requirements for the purpose of Section 5 of the Act.

14. In the instant case, both the Parties are engaged in the business of providing international air transportation services. The background of the IA pursuant to which 24 percent equity interest in Jet is proposed to be acquired categorically states that the Parties wish to enhance their airline business through a number of joint initiatives. In such a case, Etihad's acquisition of twenty-four (24) percent equity stake and the right to nominate two (2) directors, out of the six (6) shareholder directors, including the Vice-Chairman, in the Board of Directors of Jet, is considered as significant in terms of Etihad's ability to participate in the managerial affairs of Jet.

15. With a view to achieve the purported objective of enhancing their airline business through joint initiatives, the Parties have also entered into the CCA. Under the CCA, the Parties have *inter alia* agreed that: (A) they would frame co-operative procedure in relation to (i) joint route and schedule coordination; (ii) joint pricing; (iii) joint marketing, distribution, sales representation and cooperation; (iv) joint/reciprocal airport representation

and handling; (v) joint/reciprocal technical handling and belly-hold cargo and dedicated freight capacity on services (into and out of Abu Dhabi and India and beyond); (B) the Parties intend to establish centres of excellence either in India or Abu Dhabi; (C) Etihad would recommend candidates for the senior management of Jet; (D) Jet would use Abu Dhabi as its exclusive hub for scheduled services to and from Africa, North and South America and UAE; and (E) Jet would refrain from entering into any code sharing agreement with any other airline that has the effect of: (i) bypassing Abu Dhabi as the hub for traffic to and from the above said locations, or (ii) is detrimental to the co-operation contemplated by the CCA.

16. It is observed that the Parties have entered into a composite combination comprising *inter alia* the IA, SHA and the CCA, with the common/ultimate objective of enhancing their airline business through joint initiatives. The effect of these agreements including the governance structure envisaged in the CCA establishes Etihad's joint control over Jet, more particularly over the assets and operations of Jet.

E. ASSESSMENT OF THE PROPOSED COMBINATION

Indian aviation sector

17. According to a recent report of the Ministry of Civil Aviation, Government of India, over the past decade, the domestic passenger segment of the Indian civil aviation sector grew by a Compound Annual Growth Rate (CAGR) of 14.2% and the air cargo segment grew by 7.8%. An IATA report further points out that the market already has some 150 million travellers passing through its airports, and by 2020 traffic at Indian airports is expected to reach 450 million, making it the third largest aviation market in the world. In 2012, the number of international passengers was approximately 41 million. Of those, 28.5 million travelled to the west of India, mainly to Europe and North America. Based on the latest IATA growth forecast this market is expected to grow to approximately 42.6 million passengers by 2018.

18. However, the sector has multiple challenges and issues to address in order to realize an effective passenger growth in future. To address the concerns surrounding the operational viability of Indian carriers, the Government of India has initiated a series of measures including allowing Foreign Direct Investment by foreign airlines (up to 49% stake) in Indian carriers.

19. The CCA between Jet airways (India) limited and Etihad Airways PSJC, as a part of the acquisition of 24% equity stake, is so drafted such that the parties through their proposed strategic alliance[1] can extract the potential of a wider airline network. It is in this background that the competition assessment of this deal has been undertaken.

International Aviation Regulatory Framework

20. The regulatory framework for the international aviation industry has developed on the basis of principles laid in the 1944 Convention on International Civil Aviation. The Convention recognises exclusive sovereignty of countries over their airspace and different freedoms that could be granted by a country to a foreign nation/airline.

21. Air transport services between two nations primarily depend on the bilateral air service agreement (BASA) between them, which establishes the framework for scheduled air services between them. The BASAs generally specify the entitlements of the designated airline(s) of both countries in terms of frequency of operations, number of seats, points of call etc. BASAs envisaging minimal or no restriction on the ability of designated airlines of

[1]Alliances are cooperation agreements entered into by airlines with the objective of integration of services. The alliance partners operate as a single entity. However, their individual corporate identity is still maintained. Airline passengers demand seamless service on international markets 'from anywhere to anywhere'. However, no airline is able to efficiently provide such a service on its own metal as traffic density on many city pairs does not make it viable for a single airline to provide non-stop services on all conceivable routes. In order to meet such diverse travel demands at an efficient cost, airlines have had to seek commercial partners to help them provide the network and service coverage required.

the party nations are referred to as open-skies agreement. For instance, the BASA between India and United States provides for an open skies arrangement, allowing the designated carriers to operate scheduled air services without limitation on the number of flights that could be operated and the number of passengers who could be carried.

Relevant Market

22. In order to assess the impact of the proposed transaction on competition, the first step is to define the relevant market. Relevant Market for passenger air transport services is normally defined on the basis of point of origin or point of destination ("O&D") pair approach on a non-directional basis. According to this approach, every combination of a point of origin and a point of destination is considered to be a separate market from the consumers' viewpoint. Furthermore, two or more adjacent airports may be categorized in the same relevant O&D market. Consumers may consider multiple airports, within a reasonable distance or time for a given O&D pair, substitutable. If airports are considered substitutable, then these too can be included as origin and destination.[2]

23. The O&D approach to market definition is an appropriate starting point for the competition analysis in air transport cases. The O&D approach is essentially a demand-based approach to market definition. It has the advantage of being capable of taking into account several relevant competition aspects in the airline sector, if not all. The O&D approach is applied by the European Commission as well as by many other competition authorities.[3] This approach of defining the relevant market is also in consonance with the definition of the relevant market as given in Section 2(t) of the Act, where a group of products or services lie in the same relevant market if they are regarded as interchangeable or substitutable by the

[2] Report of the ECA Air Traffic Working Group- Mergers and alliances in Civil Aviation
[3] *Ibid.*,p.6.

consumer, by reason of characteristics of the products or services, their prices or intended use.

24. Further, consumers may consider direct flights (i.e. non-stop services) and indirect flights (i.e. one-stop services) as substitutable. The main factors that determine whether indirect flights provide a competitive constraint to direct flights are the type of passengers (whether they are time-sensitive or non time-sensitive), the duration of the flight and the connecting time, flight schedules and prices.[4] Either one or all of the factors can be of consideration, by a consumer based on her trade-offs and preferences, in determining substitutability. Furthermore, for the purpose of concluding substitutability, indirect flights offered by independent competitors of the parties can be considered as a competitive alternative for passengers.

25. Thus, when taking a demand-based approach to market definition it is essential to make a distinction between different groups of passengers, given that different services may be substitutable for different kinds of customers. It is particularly worth considering a distinction between time-sensitive and non time-sensitive passengers as well as between point-to-point passengers and connecting passengers.[5]

26. For a time sensitive passenger, price considerations may not be that important and she may not find indirect flights substitutable for direct flights. For a very price sensitive passenger, price consideration may dominate all decisions and she may thus find substituting indirect flights with direct flights even if it means sacrificing on time.

27. This distinction can be of great importance in competition assessment. Generally, time-sensitive travelers expect faster connections and timeliness in the flight schedules. Non time-sensitive travelers are interested in

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[4] *Ibid.*, p.9.
[5] *Ibid.*,p.4.

obtaining the lowest fares, and are willing to accept longer travel time and less flexibility as long as their price considerations are met.

28. The assessment of the proposed combination primarily focuses on the effect of the proposed combination on those services that are offered by both the Parties.

29. The Acquirer (*i.e.* Etihad) is the national airline of Abu Dhabi, primarily offering international airline services to and from Abu Dhabi, and between other international destinations using Abu Dhabi airport as the transit hub. Whereas, Jet is a listed Indian company offering both domestic and international air transportation services. Jet is stated to offer services between different call points in India to 20 destinations abroad.

30. At the outset, it is observed that Etihad is not operating in Indian domestic air transportation services i.e. air transportation between two airports located within India. Therefore, the proposed combination is not likely to raise any competition concern in the said sector.

31. Considering that India has adopted an open skies policy in respect of international air cargo transportation and relatively more number of players including dedicated freight carriers are present in the said sector, the proposed combination is considered not likely to give rise to any competition concern in the business of international air cargo transportation services to and from India.

32. In the light of the foregoing discussion, the Commission is of the view that the relevant market for the purpose of this transaction is the market for international air passengers: [6]

[6] As mentioned in para 39 of this Order, the Commission has gone beyond the O&D approach for competition assessment of the proposed combination and has also given due consideration to the potential of network effects not covered in the O&D pair approach.

(a) on the O&D pairs originating from or ending in 9 cities in India (Kochi (COK), Bombay (BOM), Hyderabad (HYD), Thiruvananthapuram (TRV), Bangalore (BLR), Kozhikhode (CCJ), Ahmedabad (AMD), Delhi (DEL) and Chennai (MAA)) to/from United Arab Emirates (UAE) from;

(b) on the O&D pairs originating from or ending in India to/from international destinations on the overlapping[7] routes of the parties to the combination.[8]

33. In arriving at the relevant market definition the Commission made a distinction between different groups of passengers and observed that Indian passengers on the 9 direct overlapping O&D pairs are generally more price sensitive and less time sensitive. Moreover, passengers living in the catchment areas of two or more airports may consider those airports as possible substitutes when choosing which airport they fly from and which airport they fly to. For instance, it must be stressed that in the case of passengers travelling to Abu Dhabi, there are 3 international airports in UAE that passengers might consider as substitutable with each other i.e. Abu Dhabi (AUH), Dubai (DXB) and Sharjah (SHJ). Depending on the O&D pair, either DXB or SHJ airport can be considered in the same O&D pair. Abu Dhabi, Dubai and Sharjah airports are within 2 hours distance from each other. Several carriers serve Delhi and Mumbai with direct flights to/from DXB. Etihad and Emirates offer free shuttle bases between Abu Dhabi and Dubai, and there are other modes of public transport between them as well. The direct horizontal overlap between Jet and Etihad occurs between the UAE and India as origin and destinations points.

34. India-UAE passenger traffic consists of approximately 3.5 million origin and destination passengers per year. Out of this, Jet has only 20 percent share and

[7] Direct or indirect overlap

[8] Since the relevant market should be definedon a non-directional basis, a Delhi (DEL) Chicago (ORD), Chicago-Delhi will be one relevant market O&D pair DEL-ORD

Etihad carries only 5 percent of the market. Jet and Etihad provide overlapping services in 9 nonstop markets between India and UAE. On all these nine routes Jet and Etihad services can be considered as substitutable. When the two airlines cooperate on such routes, they no longer compete against each other and there is an apprehension that competition may be reduced. However, the market share of Jet and Etihad combined in all nine nonstop O&D city pairs is below 36% and face intense competition from other airlines serving the same routes. The elasticity of demand is expected to be sufficiently high on all O& D pairs, as the Commission observed that Indian passengers flying to these destinations are fare sensitive and in many cases time insensitive. So, any tendency to raise fares on such routes will not be profitable for the airlines.

35. Having accepted the fare sensitivity of the Indian passengers, the Commission also undertook a competition assessment of the O&D city pairs between India and Abu Dhabi alone, since Jet and Etihad both fly to AUH and currently provide competition constraint to each other. Moreover, Etihad has its hub in AUH. Air India in its response of November 8, 2013 had expressed concern about the competitive landscape of the India-Abu-Dhabi route. The competition assessment of the Commission for these 9 O&D pairs between India and Abu Dhabi is as follows:

(a). AUH-BLR: Etihad (EY) Airways is already dominant and the deal does not alter the picture. For the given small market size on this route there are still many indirect flights such as Qatar, Air India, Oman and Sri Lankan that can restraint market power, if exercised.

(b). AUH-HYD: For the given small market size on this route there are still many indirect flights such as Emirates, Air India and Oman that can restraint market power, if exercised. The airport substitutability with DXB (with Emirates as the carrier to DXB), in any case increases the catchment area for this O&D city pair and hence there are no competition concerns.

(c). AUH-BOM: The combined market share of Jet and Etihad increases to 55% but competition concerns are addressed by the presence of AI as a credible competitor with a market share of 32%. The airport substitutability with DXB in any case increases the catchment area for this O&D city pair that will substantially reduce the possibility of exercise of market power. Moreover, indirect flights can also restraint market power, if exercised.

(d). AUH-DEL: The combined market share of Jet and Etihad increases to 50% but competition concerns are addressed by the presence of AI as a credible competitor with a market share of 24%. The airport substitutability with DXB (with Emirates as the carrier to DXB), in any case increases the catchment area for this O&D city pair that will substantially reduce the possibility of exercise of market power. Moreover, indirect flights can also restraint market power, if exercised.

(e). AUH-MAA: Similar arguments of airport substitutability (DXB and AUH in the same catchment area) and other cheaper indirect flights apply.

(f). AMD-AUH: A very small market size (10 passengers a day) that cannot support multiple direct flights, many one stop flight options available

(g). AUH-TRV: AI Express cheaper and has a direct flight, airport substitutability with DXB and other indirect flight options provide sufficient competition constraints.

(h). AUH-COK: Similar arguments as for AUH-TRV, hence sufficient competition constraints exist.

(i). AUH-CCJ: Similar arguments as for AUH-TRV, hence sufficient competition constraints exist.

36. While it may be relevant to understand whether the other airports in UAE are substitutable to Abu Dhabi, considering the fact that the Parties and Air India are likely to increase their services, in a phased manner, on Mumbai-Abu Dhabi and Delhi-Abu Dhabi routes, the potential apprehension regarding reduced competition, if any, is mitigated. It is also likely that other airline show interest in these routes as and when the Government proposes to allocate the remaining seats under the MoU.

37. There are 38 routes to/from India to other destinations where Etihad and Jet fly and there is at least one competitor on the route. Of these, on only 7 routes Jet Etihad have a combined market share of greater than 50 percent. Of these 7 routes, on 3 routes either Jet or Etihad has a market share of less than 5 per cent. For instance, on the Bombay (BOM)-Brussels (BRU) route, Jet has a market share of 72.90% and Etihad has a market share of 3.30%. On the AMD-BRU route Jet has a market share of 83.10% while Etihad has a market share of 2.61%. Thus, post transaction change in market share is marginal for the combined entity and the deal does not alter the competition dynamics.

38. The six of the seven above mentioned routes, where Jet and Etihad have an indirect overlap and the market share is greater than 50 percent consist of Brussels (BRU) and six Indian cities (BRU-AMD, BLR-BRU, BOM-BRU, BRU-COK, BRU-HYD and BRU-TRV) as O&D pairs. As discussed for the UAE market, the Commission did consider airport substitutability in the same catchment area of these O&D pairs and the possibility of their being in the same relevant market. When these airports are considered as substitutable, the combined market share of Jet and Etihad decrease significantly (it comes down to around 30%). For the one remaining route Chennai-Toronto (i.e MAA-YYZ), where market share is greater than 50%, Jet and Etihad are not the closest competitor and there is at least one credible competitor in the market from which the customers can choose from an alternative (Emirates, Lufthansa, and British Airways). In summary, on all

routes, passengers have a major carrier to choose from other than Jet and Etihad which can constraint the pricing behavior of Jet and Etihad and ensure that the passengers can select between more than one airline even after the combination.

39. The Commission has gone beyond the O&D approach for competition assessment and has also given due consideration to the potential of network effects of the proposed combination.[9] Some aspects of network competition can be dealt within the framework of the O&D approach (e.g. the role of connecting traffic, the substitutability of indirect services) but many aspects can get overlooked in a pure O&D approach of competition assessment. The network effects can be described as the macro competition issues, which have been discussed in addition to individual O&D markets, such as competition between airline hubs and between alliances.[10] A more comprehensive competition assessment is not just restricted to the market share analysis of the hub airline (EY in this instance) - i.e. not just restricted to the market shares between cities in India to the hub (AUH in this instance) but the competition in the onward bound traffic and competition between systems.

40. The parties have submitted data on 21st June 2013 and 30th August 2013 in respect of market share on various O&D route pairs from India to points in United States viz. New York, Chicago, Washington, San Francisco and Los Angeles. According to the data, the MIDT combined market size from points in India to the above stated destinations in US is 10.49 lakh passengers and the combined market share of Jet and Etihad work out to 1.09 lakh

[9]The Commission recognizes that competition between airlines is shaped by some peculiar features of the airline industry, in particular its network character. Airlines have technologies in which the costs are affected not only by the number of passengers, but also by the network structure (the linkages/ routes that the airlines fly). The network choice is a key strategic decision of airlines, as it is the main driver for generating revenue and costs as well as a source of competitive strength or weakness. Cost economics for airlines show that costs can go down due to higher traffic densities in Hub and Spoke (H&S) network operations than in fully connected (Point to Point) operations.

[10]*Supra.* 2, p.14

passengers i.e. 10.42 %.[11] The low current combined market share and the open skies policy between India and US does not raise any potential competition concern.

41. When considering network effects, the competition assessment is carried out beyond gateway traffic and is not just restricted to O&D pairs. In evaluating the proposed combination the Commission accordingly considered competition between airline systems. Airline systems are either formed through alliances (that are multilateral) or strategic equity partnership between two airlines of the kind in this proposed combination. Linked hub-and-spoke airline network form integrated system of complementary markets, and this is what is proposed in this combination. The complementarity of routes of Jet and Etihad makes the network effects stronger. Hubs, increased access to gates, slots, and other infrastructure - interfaces that link markets- competition is increasingly among systems and not merely on point to point (PTP) O&D City pairs. In this context, merely high market shares of the hub airline on point to point, O&D pairs do not imply lack of competition. In fact there are many instances where the hub airline may have high market shares in PTP O&D pairs. Oman Air has a 56 percent market share in the Kozhikode (CCJ)-Muscat (MCT) route and Sri Lankan Airlines has a 59 percent market share in the Colombo (CMB)-Delhi (DEL) PTP O&D. Many such instances can be cited. So, Jet-Etihad combined market share on AUH-DEL and AUH-BOM route would not mean that competition is absent on west bound traffic from India and in fact, competition would be present from alternative networks and alliances/systems for the west bound traffic.

[11] The use of this MIDT dataset provides us with (a) the parties' combined US market size and (b) the total US market size for arriving at a combined US market share of the parties from one source and makes the two data values compatible.

Abu Dhabi as the exclusive hub

42. One of the clauses of the CCA requires Jet to use Abu Dhabi as its exclusive hub for scheduled services to and from Africa, North and South America and the UAE (the Exclusive Territories), and there will be certain O&D pairs where Jet cannot code share with other airlines. For eg : Mumbai-Chicago, Delhi-Chicago, New Delhi- New York, Mumbai – New York Mumbai-Johannesburg etc. are O&D city pairs on which Jet has to cancel its code share with other airlines and flow its traffic through Abu Dhabi.

43. It is conceivable that cancellation of code share agreements can lead to market foreclosure and abuse of dominance on such routes in the absence of other strong competitors. However, all such routes face competition from other credible players such as American Airlines, Air India, Emirates, South African Airways, Qatar Airways etc. which would constrain the market power of Etihad-Jet combined. On the majority of such O&D pairs, the combined market share of Jet and Etihad is less than 30% and there are other strong players present on such routes. Further, Etihad already has strong presence on routes to Chicago and Johannesburg from few cities in India. However, Jet's share is negligible on such routes and post transaction change in market share is negligible. Thus, on all these O&D pairs, the competitive concern from concentration of market shares does not arise.

44. At the moment, as part of the deal the parties have decided to extend their relationship to 23 cities. Thus, Jet flights from multiple points in India would operate to Abu Dhabi and then continue onwards to points in Middle East and North America. This allows a Jet customer to *'cross-connect'* at Abu Dhabi further on to any number of Jet and Etihad flights beyond Abu Dhabi, creating a whole host of city pairs. For instance, Jet could leverage Etihad's strong presence in Europe by bringing Indian passengers through Abu Dhabi. Etihad directly flies to 17 destinations and, through its elaborate code-sharing agreements with 13 airlines, offers seamless connectivity to more than 80 cities.

45. The code share relationship also allows customers in multiple Indian cities, the ability to seamlessly connect to other destinations including smaller markets abroad using the Etihad network. Abu Dhabi's proximity to India enables the option of deployment of smaller, narrow body aircraft from these secondary markets in which larger wide body aircraft would have been unviable. In addition, by utilizing the hub in Abu Dhabi and the transfer flows that it creates, Jet will be able to sustain larger aircraft on the routes from Delhi and Mumbai to North America which will increase the capacity and therefore choice available to the Indian consumer.

Potential efficiencies

46. Airline alliances create substantial opportunities for generating economic benefits, many of which are dependent at least in part on the closer integration achievable. These benefits can be viewed as demand-side – relating to the creation of new or improved services through expanded networks or seamless service, or supply-side – essentially the ability to produce the same services at lower cost taking advantage of traffic densities, improved utilization of capacity and lower transaction costs.

47. In the aviation industry two carriers and passengers might benefit by integrating complementary networks. One of the benefits of the proposed transaction would be lower fares for passengers travelling to smaller cities in India through one of 9 major destinations served by Etihad. Jet and Etihad already have a code share agreement on such one stop routes. Post transaction, Jet and Etihad will cooperate on pricing decision on such routes through the proposed CCA. The possibilities to coordinate pricing, fares and inventory/yield management will eliminate inherent inefficiencies to pricing and enable the members to offer more attractive fares to customers. Passengers from smaller cities can seamlessly travel to international destinations without interlining to Delhi or Mumbai and thus saving on interline fares.

48. Perhaps one of the most fundamental potential benefits from closer cooperation and integration arises from economies of traffic density. This type of economy of scale is a key feature of airline network models. Airline alliances extend the Hub and Spoke (H&S) network with a large presence at both ends of the market. Feeder routes and services delivering connecting traffic can increase the traffic density on a city-pair, allowing airlines to operate larger, more efficient aircraft and to spread end point fixed costs over a larger number of passengers.

49. On the issue of likely impact on fares on routes from India to destinations in exclusive territories, the proposed transaction will generate significant synergies for both airlines in terms of network efficiencies and cost savings. Additionally, the parties to the transaction plan to introduce substantial capacity into the Indian market. Both of these factors could and generally do create downwards pressure on fares.

50. Airline alliance has an increased incentive to harmonize and improve customer service standards. They have an incentive to integrate their operations to provide a true 'online' quality experience throughout the processes of ticketing, seat selection, airport lounges, gate location for connecting services, on board amenities and service quality, baggage policies and problem resolution, frequent flyer plans and refunds and exchanges. As these aspects are integrated and jointly managed, the customer receives a correspondingly simplified and consistent service. This aspect of cooperation is likely to provide consumer benefit without anti-competitive results, due to the intense, global competition between alliances for customer loyalty.

51. In addition to the potential efficiencies of the proposed combination on account of the synergies expected to be generated, the Commission also considered the importance of the proposed equity infusion and its implication for the Indian aviation sector. Jet, which has been beleaguered with debt, in

addition to infusion of cash, hopes to access a large global network. Jet's debt of INR 89,994 million on March 31, 2013 is nearly 50% of its 2013 revenues and the business reported substantial negative equity at the end of March 2013 of minus INR 18,272 million. This equity infusion will be beneficial to Jet as it will strengthen its operational viability. The Commission is of the view that this partnership will allow Jet to continue to compete effectively in the relevant markets in India and internationally.

Contestability

52. On the issue of contestability, one of the major impediments to domestic airlines launching international services is the 5 year/20 aircraft rule. This regulation requires that Indian carriers must complete five years of domestic operations before being permitted to launch international services, a restriction which does not apply to foreign airlines. Once this rule is relaxed, the contestability of the Indian aviation sector is likely to increase and make the Indian aviation sector more competitive.

Impact of BASA

53. As per the Bilateral Air Services Agreement (BASA) entered into between India and the UAE in 2008 (as amended), Abu Dhabi was entitled to operate 13,330 seats per week in each direction through points specified viz. Mumbai, Delhi, Thiruvananthpuram, Kochi, Chennai, Kozikhode, Jaipur and Kolkata. Three additional points were further granted (Hyderabad, Bangalore and Ahmedabad) in 2009. Now, with the latest bilateral agreement signed, the seat entitlement is agreed to be increased to 24,330 seats per week with immediate effect, 37,130 seats from IATA winter 2014 and 50,000 seats from IATA 2015 schedule. The bilateral agreement and consequent increase in seats is of relevance to the competition assessment of this deal, given the fact that Abu Dhabi is to be used as an exclusive hub by Jet.

54. With very realistic assumptions regarding the distribution of increased seats to Jet in addition to the increased seats to Etihad (totalling 50,000 total seats per week/each way up from current 13,300, to Etihad), the market shares forecasted as a consequence of the revised bilateral of the combined entity increases from 17.06 to 22 percent.[12] This does not portend any possibility of market power that is likely to be exploited.

55. Moreover, the Commission also recognizes that ASAs for other airlines are not likely to be static and some of the other airlines[13] including European airlines have the flexibility of increasing fleet capacity as they are governed by almost open skies or similar ASAs. Secondly, the increase in BASA for Jet and Etihad has to be implemented in phases.

56. Last but not the least, the Commission is of the view that the dynamic responses of other airlines as a consequence of this proposed deal which, cannot be completely evaluated *ex-ante*, will change the competitive landscape that is most likely to benefit the Indian aviation passenger.

F. CONCLUSION:

57. Considering the facts on record and the details provided in the notice given under sub-section (2) of Section 6 of the Act and the relevant factors mentioned in sub-section (4) of Section 20 of the Act, the Commission is of the opinion that the proposed combination is not likely to have appreciable adverse effect on competition in India and therefore, the Commission hereby approves the same under sub-section (1) of Section 31 of the Act. This approval however, shall have no bearing on proceedings under section 43A of the Act.

[12]These calculations were done based on overall international market shares for different airlines as reported by DGCA for 2011-2012.

[13] According to a Centre for Asia Pacific Aviation India Private Limited (CAPA) submission, UAE (Dubai), has 54,200 entitlement seats per week each way; for Dubai there is an additional +2% extra seats that both countries can operate over and above of the current entitlement, and similarly for Sharjah over and above designated airlines of India may also operate weekly 2500 seats.

58. It is however to be noted, that the Commission is granting the present approval, under section 31(1) of the Act, and that such approval is being granted, pursuant to the underlying competition assessment, based upon the information/details provided by the Parties, in the notice given under sub-section (2) of Section 6 of the Act, as modified and supplemented from time to time. This approval should not be construed as immunity in any manner from subsequent proceedings before the Commission for violations of other provisions of the Act. It is incumbent upon the Parties to ensure that this *ex-ante* approval does not lead to *ex-post* violation of the provisions of the Act.

59. This order shall stand revoked if, at any time, the information provided by the Parties is found to be incorrect.

60. The Secretary is directed to communicate to the Parties accordingly.

(Ashok Chawla)
Chairman

(Geeta Gouri)
Member

(M.L. Tayal)
Member

(S.N. Dhingra)
Member

(S.L. Bunker)
Member