



COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2013/12/144)

05.02. 2014

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

- (i) Etihad Airways PJSC;
- (ii) Jet Privilege Private Limited; and
- (iii) Jet Airways (India) Limited.

Order under Section 29 (1) of the Competition Act, 2002

1. On 18th December 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**”); Jet Privilege Private Limited (hereinafter referred to as “**JPPL**”) and Jet Airways (India) Limited (hereinafter referred to as “**Jet**”) (hereinafter Jet, JPPL and Etihad are collectively referred to as the “**Parties**”).
2. In terms of Regulation 14 of the Combination Regulations, vide letter dated 24th December 2013, the Parties were required to remove certain defects and provide information/document(s) by 2nd January 2014. After seeking extension of time, Etihad filed its response on 13th January 2014.
3. The proposed combination relates to acquisition of 50.1 percent stake in JPPL by Etihad, subsequent to the hiving off of Jet’s loyalty business into JPPL on a going concern basis. In furtherance of the proposed combination, the parties have *inter alia* entered into the following agreements on 19th November 2013:
 - (a) Slump Sale Agreement executed between Jet and JPPL (“**SSA**”) – entered for the purpose of JPPL acquiring Jet’s business of operating a frequent flyer, loyalty and points based reward scheme



COMPETITION COMMISSION OF INDIA



as carried on by Jet under the name '*JetPrivilege Frequent Flyer Program*', on a going concern basis;

- (b) Investment Agreement executed between Jet, Etihad and JPPL ('**IA**') – entered for the purpose of JPPL issuing equity shares to Etihad and Jet. Upon issuance and allotment of the shares, Etihad and Jet will hold 50.1 percent and 49.9 percent of the shareholding of JPPL, respectively.
 - (c) Shareholder's Agreement executed between Jet, Etihad and JPPL ('**SHA**') – entered for Etihad and Jet to participate as shareholders in JPPL for the purpose and the terms set out therein; and
 - (d) Commercial Agreement executed between Jet and JPPL ('**CA**') – entered for the purpose of *inter alia* maximising the growth of the business of both the companies and the value for their respective shareholders.
4. The proposed combination is covered under Section 5 (a) of the Act.
5. Etihad, a company incorporated in United Arab Emirates (UAE), is stated to be the national airline of UAE and is based in the emirate of Abu Dhabi. Etihad is primarily engaged in the business of international air transportation of passengers. The flights offered by Etihad include short-haul and medium-haul flights within the Middle East as well as long-haul flights to destinations in North America, Europe, Africa, Australia and Asia. Etihad currently offers flights from/to nine destinations in India namely Ahmedabad, Chennai, Bangalore, Hyderabad, Kochi, Kozhikode, Mumbai, New Delhi and Thiruvananthapuram.
6. 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 customers 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 and one of seven emirates that constitute



COMPETITION COMMISSION OF INDIA



the UAE, operates as Etihad's hub airport. Etihad is also stated to hold equity stake in other airlines including in Air Berlin; Air Seychelles; Virgin Australia; Aer Lingus; and Air Serbia.

7. Jet is primarily engaged in the business of providing scheduled air transport services to and from 51 destinations within India and 20 destinations internationally. The primary hubs and maintenance base for Jet are Mumbai and Delhi and it also operates a cross-connecting gateway at Brussels, Belgium which operates as a hub for Jet's flights into destinations in Europe and Africa on account of Jet's alliance with Brussels Airlines. Jet Lite (India) Limited is a wholly-owned subsidiary of Jet operating low cost air transportation service under the brand name 'JetKonnnect'. Jet is also engaged in the following services: (a) air transport services for cargo; (b) maintenance, repair and overhaul services; (c) ground handling services; and (d) travel operations. Jet's fleet is stated to consist of 100 aircrafts.
8. JPPL is a wholly-owned subsidiary of Jet. JPPL has entered into the SSA with Jet to acquire the latter's business of operating a frequent flyer, loyalty and points based reward scheme as carried on by Jet under the name '*JetPrivilege Frequent Flyer Program*', on a going concern basis.
9. In the instant case, parties envisage acquisition of 50.01% equity stake in JPPL by Etihad. The parties also envisage that before the said acquisition, JPPL would acquire the frequent flyer programme ('**FFP**') of Jet, on a going concern basis, pursuant to the SSA.
10. Earlier, Jet and Etihad filed a notice under Section 6 (2) of the Act in respect of Etihad's acquisition of 24 % equity stake and certain other rights in Jet pursuant to an Investment Agreement, a Shareholder's Agreement and a Commercial Co-operation Agreement ("**CCA**"), all executed on 24th April 2013. Vide my earlier (minority) order dated 14th October 2013 in respect of the said transaction, I had expressed the prima facie opinion that the proposed combination is likely to cause an appreciable adverse effect on competition within the market of international air passenger transportation from and to India, and that a



COMPETITION COMMISSION OF INDIA



notice should, therefore, be issued to show cause to the parties to the combination calling upon them to respond within thirty days of the receipt of the notice, as to why investigation in respect of the proposed combination should not be conducted. However, the Commission passed the majority order on 12th November 2013 approving the combination under sub-section (1) of Section 31 of the Act.

11. As a part of the CCA, the parties agreed that they would cooperate for full reciprocal frequent flyer participation so as to create loyalty scheme neutrality within the carriers' networks and that Jet agrees to join the Etihad's Global FFP which Etihad is currently establishing. Since the parties had submitted that they would separately file a notice with the Commission in respect of the FFP Acquisition, it was observed in my earlier order that the Commission may consider the impact of the same at that stage.
12. The proposed combination relates to FFP operated by airlines. It has been submitted by the parties that, from a customer's perspective, various loyalty programmes that offer the same or a similar bundle of services in relation to air travel are substitutable. Further, from the perspective of suppliers, it is relatively easy for any entity to start its loyalty programme. There is no major entry barrier in terms of setting-up a loyalty programme and the customers will be able and willing to switch from one programme to another if the latter provides a better set of earn and burn options or a better reward structure. From the perspective of both demand and supply side substitutability, travel linked loyalty programmes operated by airlines, other proprietary loyalty programs and coalition loyalty programmes constitute the relevant product market.
13. With respect to parties' submission on relevant market, it is observed as follows:

Frequent Flyer Programmes:

- (a) FFPs are loyalty programmes operated by airlines to reward their loyal customers. FFPs generally follow a point based reward system

wherein members accrue/earn points primarily for the travel they undertake with the concerned airline or its partner. The number of points awarded in respect of a travel depends on different parameters such as distance, air-fare, destination and class in which the traveller flies. Usually, travellers accumulate more points for travel in long-haul flights and premium class than on short-haul flights and economy class.

- (b) Members could redeem/burn the accumulated points for free or discounted air ticket in the airline operating the FFP or its partner airline. Member of FFP also enjoy *recognition* benefits such as fast-track check-in, access to special lounges at airports, higher priority in the ticket reservation system, higher baggage allowance and seating and meal preferences on board etc. FFPs generally require the members to have certain pre-defined minimum points in their account to be eligible for redemption. FFPs generally envisage a time duration for which the accumulated miles/points are valid. For instance, JetPrivilege provides that miles earned are valid for redemption up to the end of the thirteenth quarter from the quarter in which they were earned (around three years).
- (c) Though FFPs primarily enabled members to earn and burn points for free or discounted air ticket(s), in modern days FFPs have diversified in a way that the airline operating FFP ties-up with other airlines and non-airline companies ('partners') for the purpose of allowing its members to primarily earn points by buying the product or services of such partners and also to burn/redeem points for services of the partners in certain circumstances.

Relevant market:

- (d) It is observed that the Parties tend to differentiate points accrued as a result of air travel from those earned as a result of engagement with non-airline partners of an FFP. The parties sought to argue that the aforesaid accruals are pursuant to different loyalty programmes i.e. the FFP operated by the respective airline and the loyalty

programme operated by the non-airline partner. However, earning or burning of points with non-airline partners are essentially a component of the FFP and the same cannot be viewed as an independent loyalty programme. Neither one can consider the FFP points accrued pursuant to air travel (in the airline operating FFP) and earning of FFP points from engagement with non-airline partners as different loyalty programmes; nor the primary services of the airline and non-airline partner be considered as substitutable with each other. If one agrees otherwise, the same may result in arriving at an unrealistic market.

- (e) It is apparent that members of FFPs could earn as well as burn points by availing the services of partner airlines. However, for buying products or services of a non-airline partner, members generally earn, but cannot, burn points. Though FFPs permit burning/redemption of points for the purpose of non-airline products/services in certain circumstances, such facilities are limited to particular store(s) and are relatively insignificant. For instance, Etihad Guest comprises 23 airline partners and 85 non-airline partners. While the members of Etihad Guest can earn as well as burn points by travelling in any of the airline partner, they can only earn points for their commercial engagement with 84 non-airline partners. The only non-airline partner with whom a member of Etihad Guest could earn as well as burn points is 'Loylogic', an aggregator for merchants around the world stated to offer Etihad's non-airline redemptions products and services via Etihad's Guest's online "RewardShop". In case of JetPrivilege, its members can only earn but cannot burn points with any of its 108 non-airlines partners.
- (f) Moreover, FFPs are loyalty programme primarily related to air travel services and the same cannot be considered in isolation. It is also relevant to appreciate that whenever a member of FFP purchases air ticket or products/services of non-airline partner, it may not be appropriate to say that the objective of the member is to earn points in the FFP, rather the end use of such exercise would be travel and utility of the product/service respectively.



COMPETITION COMMISSION OF INDIA



- (g) In view of the foregoing, FFPs cannot be considered as substitutable with other proprietary loyalty programs and coalition loyalty programmes.
14. It is observed that integration of FFPs of different airlines may have the potential of reducing competition in those origin and destination pairs (O & D pairs) where the combined market share of the airlines is high. Therefore, it is more appropriate to consider the market for air travel services between O&D pair(s) as relevant market(s) for the purpose of assessment of integration of FFPs of different airlines.
15. As expressed in my earlier order dated 14th October 2014, FFPs are loyalty inducing programs intended to keep passengers closed within the relevant network and integration of FFP of different airlines is likely to create entry/expansion barriers in those O & D pairs where the airlines compete with each other. Considering the reasons expressed in my aforesaid earlier order, I am of the prima facie opinion that the proposed combination is likely to raise appreciable adverse effect on competition in the international air passenger transportation market, more particularly in those routes between India and Abu Dhabi. A notice may, therefore, be issued to show cause to the parties to the combination calling upon them to respond within thirty days of the receipt of the notice, as to why investigation in respect of the proposed combination should not be conducted.
16. Secretary is directed to take further action accordingly.

(Anurag Goel)
Member