COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2021/11/883)

20th December 2021

Notice under Section 6(2) of the Competition Act, 2002 given by Talace Private Limited

CORAM:

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

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

A. INTRODUCTION

1. On 30th November 2021, the Competition Commission of India (**Commission**) received a notice (**Notice**) under Section 6(2) of the Competition Act, 2002 (**Act**), given by Talace Private Limited (**Talace/Acquirer**). The Notice was given pursuant to the Share Purchase Agreement executed, *inter alia*, between the President of India, Air India Limited (**Air India**) and the Acquirer on 25th October 2021 and the Deed of Guarantee executed, *inter alia*, between Tata Sons and the President of India on 25th October 2021.

2. The Commission *vide* its letter dated 11th December 2021 (**Defect Letter**), issued under Regulation 14(3) of the Competition Commission of India (Procedure in regard to transaction of business relating to combinations) Regulations, 2011, required the notifying party to remove defects in the Notice and furnish certain information relevant to the purpose of assessment of the Proposed Combination. The notifying party submitted its response *vide* submission dated 16th December 2021.

B. PROPOSED COMBINATION

3. The proposed combination envisages the acquisition of 100% equity share capital and

sole control over the management and operations of Air India and Air India Express Ltd**. (AIXL)**, and 50% equity share capital and joint control over the management and operations of Air India SATS Airport Services Pvt. Ltd. (**AISATS**) by Talace (Hereinafter, Air India, AIXL, and AISATS are collectively referred to as the **Target** and the Acquirer and Target together are collectively referred to as the **Parties**).

4. The other subsidiaries of Air India (namely, Air India Engineering Services Ltd., AI Airport Services Ltd., Alliance Air Aviation Services Ltd., and Hotel Corporation of India Ltd.) are in the process of being transferred to a separate company, Air India Assets Holding Limited, and are not included in the scope of the Proposed Combination.

C. PARTIES TO THE COMBINATION

5. Talace is a newly established wholly – owned subsidiary of Tata Sons. At present, it is not engaged in any business activity. Tata Sons is an investment holding company, which is registered as a core investment company with the Reserve Bank of India (RBI) and classified as a Systemically Important Non-Deposit Taking Core Investment Company. The relevant Tata companies that have presence in, or share a commercial relationship with the aviation sector are mentioned below.

    i. **Tata SIA Airlines Ltd. (Vistara):** It is a joint venture between Tata Sons and Singapore Airlines Limited (**SIA**), with Tata Sons and SIA holding 51% and 49% of the total equity shareholding respectively. Tata SIA Airlines Ltd. operates under the brand name “Vistara”. Vistara is primarily engaged in the business of providing the following services: (a) domestic scheduled air passenger transport service, (b) international scheduled air passenger transport service, and (c) air cargo transport services.

    ii. **Air Asia India Ltd.:** It is a joint venture between Tata Sons and Air Asia Investments Ltd., holding approximately 84% and 16% of the total equity shareholding, respectively. Air Asia India Ltd. operates under the brand name “Air Asia” (hereinafter referred to as **Air Asia India**). It is primarily engaged in the business of providing the following services: (a) domestic scheduled air passenger transport service and (b) air cargo transport services.

    iii. **Taj SATS Air Catering Limited:** Tata Sons has an indirect shareholding in Taj SATS Air Catering Limited (**Taj SATS**) which, together with its wholly owned subsidiary Taj Madras Flight Kitchen Private Limited (**Taj Madras**), provides in-flight catering services to airlines in India.

6. Air India presently operates under the administrative control of the Ministry of Civil Aviation and is entirely owned by the Government of India (**GoI**). Air India is primarily engaged in the business of providing (a) domestic scheduled air passenger transport services, (b) international scheduled air passenger transport services, and (c) air cargo transport services. AIXL is also primarily engaged in the business of providing (a) domestic scheduled air passenger transport services, (b) international scheduled air passenger transport services, and (c) air cargo transport services. AISATS is engaged in the business of providing ground handling services at the following domestic airports: Delhi, Bengaluru, Hyderabad, Mangalore and Trivandrum, as well as cargo handling services at Bengaluru airport.

D. ASSESSMENT OF THE PROPOSED COMBINATION

Context

7. The Acquirer submitted that the Proposed Combination involves the acquisition of a debt-laden firm held by the GoI, by a private entity. The Acquirer was found by GoI after an open and transparent bidding process. The Proposed Combination is a culmination of GoI's two-decade-long endeavour to privatise Air India — which has required constant government support to remain afloat after two unsuccessful attempts. The first attempt was made in 2000–2001 to sell a minority stake for a 40% stake in Air India. Despite interest from a number of foreign airlines, including Lufthansa and British Airways, they withdrew when the government made it mandatory for them to partner with an Indian company to make a bid. A second attempt was made in 2018, when GoI invited expressions of interest from investors for a 76% stake in Air India, while the remaining was to be retained by the government. This time, no bidders came forward as potential buyers found the terms unattractive. Accordingly, this time around, given the strategic importance of successful privatisation of Air India Limited for the GoI, it offered a 100% stake to the successful bidder. The Minister of State (IC) in the Ministry of Civil Aviation stated that "*the Government has decided to disinvest Air India due to its fragile finances and its continued and accumulated losses. Further financial support to revive the airline in a mature and competitive aviation market would not be the best use of scarce financial resources of the Government*."[1] Air India Group's annual loss

[1] Questions : Lok Sabha (loksabhaph nic.in)

from continuing operations were INR 61,169.3 million, with an annual total loss of INR 74,312.4 million. Further, the Target has been debt-laden with accumulating debt for several years, with the loss in FY 2018–19 being approximately INR 8,478 crore, and is likely to discontinue operations without continued subsidy. The auditor's report for Air India Group's annual report for FY 2019–20 expresses concerns about whether the financial statements can be expressed on a "going-concern" basis, noting that there has been a "complete erosion of the net worth of the company" resulting from accumulated losses, "which may cast a significant doubt on the ability of the company to continue as a going concern".

8. The Acquirer submitted that [redacted].

9. Further, Acquirer has submitted that [redacted]

10. Outcomes of any [redacted] requiring or awaiting approvals from respective authorities and/or pending review are not considered for the assessment of the Proposed Combination.

Relevant Markets

11. There are no direct vertical or horizontal overlaps between Talace and the Target. However, certain enterprises belonging to the Tata Sons Group provide services which exhibit a horizontal or vertical relationship with the Target. The activities of the Parties, *inter alia*, exhibit horizontal overlaps in (a) provision of passenger air transport services; and (b) air cargo services. The broad markets relevant for the assessment are (a) domestic passenger air transport services in India; (b) international passenger air transport services in India; (c) domestic air cargo transportation services in India; and (d)

international air cargo transportation services in India. The passenger air transport services also warrant assessment for each Origin–Destination (**O&D**) pair on a non-directional basis where the activities of the Parties overlap.

12. Further, the following observations from the Commission's order in Combination Registration No. C-2013/05/122 are noted:

> "*... 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.*[2] *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…*
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> ….
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> *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*[3]*. 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…"*

13. The Parties have identified (a) 91 domestic Origin–Destination (**O&D**) pairs; and (b) 16 international O&D pairs[4] in which they both presently operate, and six Level-3

[2] Report of the *ECA Air Traffic Working Group- Mergers and Alliances in Civil Aviation.*

[3] *The Commission recognises 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.*

[4] Bangalore–Dubai (**BLRDXB**), Dhaka–Delhi (**DACDEL**), Delhi–Doha (**DELDOH**), Delhi–Sharjah (**DELSHJ**), Mumbai–Maldives (**BOMMLE**), Mumbai–Dubai (**BOMDXB**), Delhi–Dubai (**DELDXB**), Delhi–Kathmandu (**DELKTM**), Mumbai–Sharjah (**BOMSHJ**), Bangkok–Delhi (**BKKDEL**), Delhi–Singapore (**DELSIN**), Mumbai–Singapore (**BOMSIN**), Mumbai–Colombo (**BOMCMB**), Delhi–Colombo (**CMBDEL**), Delhi–Frankfurt (**DELFRA**), and Delhi–London Heathrow (**DELLHR**).

international airports, namely, Frankfurt (**FRA**), London Heathrow (**LHR**), Bangkok (**BKK**), Singapore (**SIN**), Dubai (**DXB**), and Colombo (**CMB**), in which both Vistara and Air India operate as horizontal overlaps. Each of these overlapping O&D pairs has been considered a separate relevant market for the purpose of assessment, though some routes may be considered substitutable with others where the airports are adjacent/located in the same catchment area.

Domestic passenger air transport services in India

14. In the overall market for domestic passenger air transportation services in India, the Parties had a combined market share of [20–30]% in FY 2018–19, FY 2019–20, and FY 2020–21, whereas the major competitor had market shares of [40–45]%, [45–50]%, and [50–55]%, respectively, in the corresponding duration. In the domestic air transportation services in O&D pairs in India, it is observed that there are certain domestic O&D pairs in which market concentration is increasing. The domestic passenger air transport has witnessed the entry of new player in the market, which now provides services in some overlapping O&D routes in India. In the four Level-3 airports — Mumbai, Delhi, Kolkata, and Chennai — and the four capacity constrained airports — Bengaluru, Hyderabad, Goa, and Pune — the combined slot share of the Parties was in the range of [15–35]% in FY 2019–20 and FY 2020–21, while the slot share of the close competitor is [30–60]% in FY 2019–20 and FY 2020–21. [redacted]

International passenger air transport services in India

15. In the overall market for international passenger air transportation services in India, the combined market share of Parties is less than 20% and the incremental market share is less than 5% in FY 2018–19 and FY 2019–20. Several established foreign carriers, such as British Airways, Lufthansa, Cathay Pacific, Emirates, Etihad, etc., offer flights between India and other international destinations and impose competitive constraints on domestic carriers in O&D pairs between cities in India and cities in other countries. Air Asia India does not operate flights on any international routes. Further, it has also been submitted that market shares of [redacted] need not be added, as they will function as [redacted] competitors.

16. It is observed that there are certain O&D pairs in domestic and international markets where market concentration is increasing in terms of market shares. The Commission observed that there are mitigating factors in the form of market forces as well as factors specific to the Target. The market forces include supply side substitutability, existence of a strong competitor, availability of indirect flights, likelihood of expansion in capacity of airports, etc., while Target-specific factors include likelihood of improving operational efficiencies, addressing sub-optimal asset utilisation of the Target, optimising the route network, and the possibility of deriving efficiencies from synergies when the Target is operated by a private entity, which is likely to discover the benefits of operating in a competitive environment in a more efficient manner.

17. The Commission also considered these mitigating factors in the overall context discussed in paragraph 7 above. The Commission also noted the submission of the Acquirer in the Notice, that [redacted] to be operated as independent and separate entities, [redacted]. Though any of the above factors alone may not be sufficient to alleviate the likely harm to competition, considering all the factors in unison, it appears that the likely benefits outweigh the likely harm as a result of the Proposed Combination.

Air cargo transport services

18. In the broader market for air cargo transportation services, the Parties had an incremental market share of less than 5% in terms of volume in FY 2020–21. In the market for domestic air cargo transportation services in India, the incremental market share is less than 10% in FY 2020–21, and there are other players such as Indigo, SpiceJet, GoFirst, Blue Dart, etc. The combined market share of the Parties was less than 25% during the last three years. In the market for international air cargo transportation services, the Parties had an incremental market share less than 5% in FY 2020–21, and there are other players such as Qatar Airways, Aerologic, Emirates, and Cathay Pacific.

Charter flight services

19. In the market for charter flight services in India, it has been submitted that the Parties have miniscule revenue that constitutes a negligible portion of their overall revenue, that this is an ancillary business activity of the Parties, and that the Parties are not active competitors in this market.

Vertical overlaps

20. With respect to vertical/complementary relationships, AISATS provides ground handling services to airlines at the Bengaluru, Hyderabad, Delhi, Thiruvananthapuram and Mangalore airports, while Air Asia India provides passenger air transport services in all these airports and Vistara provides passenger air transport services at all these airports except Mangalore airport. In this regard, the Airports Authority of India (Ground Handling Services) Regulations, 2018 (**AAI Regulations**) mandates that Category–I airports[5] shall have three ground handling service providers, whereas Category–II airports[6] are permitted to have a maximum of three ground handling service providers. AAI Regulations also provides an automatic approval of self-handling services by all domestic scheduled airline operators and scheduled helicopter operators. All foreign airlines are allowed to undertake self-handling services (excluding security) at all airports. Competitors to AISATS include Bird Worldwide Flight Services, Celebi Airport Services, Menzies Aviation, Bhadra Ground Handling Services, Indo Thai Airport Management Services, Globe Ground India Private Limited, Turbo Aviation, Aircab Aviation etc.

21. AISATS provides cargo handling services to airlines at the Bengaluru airport, while Vistara and Air Asia India provide cargo air transport services at the Bengaluru airport. AISATS faces competition from Menzies Aviation.

22. Taj SATS and its wholly owned subsidiary Taj Madras provide in-flight catering services to airlines in India, while Air India and AIXL provide passenger air transport services in India. There are competitors such as Ambassador Sky Chef, Sky Gourmet, Oberoi Flight Kitchen, etc., in this market.

23. There exist certain complementary/potential overlaps between the Parties in terms of insurance, accommodation, communication, information technology, security, lounge, and air tickets to passengers of other airlines, but these are not such as to raise foreclosure concerns in India. The ad-hoc arrangements, such as on-the-ground and emergency support services, supplying small aircraft parts, offering repair services to flights, etc., that are due to the nature of the airlines industry in India but not in the nature of regular commercial vertical or supply arrangements, are also not likely to cause appreciable adverse effect on competition (**AAEC**) in India.

[5]Airport with more than 10 million passengers per annum
[6]Airport with less than 10 million passengers per annum

24. Considering the facts on record, including the details provided in the Notice given under Section 6(2) of the Act and assessment of the Proposed Combination based on the factors stated in Section 20(4) of the Act, the Commission is of the opinion that the Proposed Combination is not likely to have any appreciable adverse effect on competition in India in any of the relevant market(s), and therefore, the Commission hereby approves the same under Section 31(1) of the Act.

25. This order may be revoked if, at any time, the information provided by the notifying party is found to be incorrect.

26. The information provided by the notifying party is confidential at this stage in terms of and subject to the provisions of Section 57 of the Act.

27. The Secretary is directed to communicate to the notifying party accordingly.