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16 August 2018

BY EMAIL

Gavin Jones
Director
Australian Competition and Consumer
Commission
23 Marcus Clarke Street
Canberra ACT 2601

ashurst

Dear Mr Jones

Application for minor variation - Singapore Airlines Limited & Deutsche Lufthansa AG - A91542 & A91543

We act for Singapore Airlines Limited and Deutsche Lufthansa AG (collectively, the **Applicants**).

The Applicants wish to make an application for a minor variation to the above authorisation and provide the information required by the ACCC to make such a determination at **Annexure A** to this letter.

Please contact Alyssa Phillips on (07) 3259 7352 if you wish to discuss any aspect of this application.

Yours faithfully



Ashurst

ANNEXURE A

APPLICATION FOR MINOR VARIATION

Applicants

1. Details of the applicants for a variation of authorisation

1.1. Name, address (registered office), telephone number, and ACN

Singapore Airlines Limited

Airline House, 25 Airline Road
Singapore 819829
Ph: +65 6223 8888

Deutsche Lufthansa AG

Lufthansa Aviation Center
Aeroporto, 60546 Frankfurt / Main
Ph: +49 69 696 0

As the Applicants are not Australian registered companies, they do not hold ACNs.

1.2. Contact person's name, position, telephone number, and email address

Alyssa Phillips
Partner, Ashurst
+61 7 3259 7352
alyssa.phillips@ashurst.com

1.3. Description of business activities

Singapore Airlines Limited

The principal activities of Singapore Airlines Limited (**Singapore Airlines**) consist (through itself or its subsidiaries) of passenger and cargo air transportation, engineering services, training of pilots, air charters and tour wholesaling and related activities. Singapore Airlines is majority government-owned and is listed on the Singapore Stock Exchange.

Singapore Airlines (**SQ**) is the flag carrier of Singapore, operating air passenger services across an extensive international network of 62 destinations in 32 countries and territories, with a fleet of 111 aircraft including 21 A330-300s, 21 A350-900s, 18 A380-800s and 46 777s and five 787-10s. SQ is a full service airline with a strong reputation for excellence in customer service in both its leisure and business offerings.

SilkAir (Singapore) Private Limited is a wholly owned subsidiary of Singapore Airlines, and operates SilkAir (**MI**), the regional wing of the Singapore Airlines Group. MI positions itself as a premium, short-to-medium haul regional carrier. With its hub in Singapore, the full service carrier (**FSC**) operates across 49 destinations in 16 countries. As at 1 July 2018, MI has a fleet of 33 aircraft, including three A319s, eight A320s, 17 737-800s and five 737 MAX 8s.

Scout Tigerair Pte Ltd. is an indirect wholly owned subsidiary of Singapore Airlines, and operates Scout (**TR**). TR positions itself as a "low cost carrier" (**LCC**). As of 1 July 2018, TR operates across 67 destinations in 18 countries and territories, with a fleet of 40 aircraft, including two A319s, 21 A320s, 10 787-8s and seven 787-9s.

SQ is also a member of the Star Alliance, which coordinates customer service initiatives and harmonisation of passenger and baggage policies to provide customers with a seamless travel experience on participating member airlines. The Star Alliance has over 25 member airlines.

Deutsche Lufthansa AG

The Lufthansa Group is a global aviation group which is organised into five operating segments: Network Airlines, Point-to-Point Airlines, Logistics, Maintenance Repair Overhaul and Catering. Apart from Lufthansa Passenger Airlines (**LH**) (which is the passenger airline business of Lufthansa), the Lufthansa Group's passenger airline service includes SWISS International Air Lines AG (**LX**), Austrian Airlines AG (**OS**) and low-cost airline Eurowings GmbH, amongst others.

Shares in Lufthansa are listed on the Frankfurt Stock Exchange and Lufthansa forms a component of the DAX (Deutscher Aktienindex), a blue chip stock market index consisting of major German companies trading on the Frankfurt Stock Exchange.

Deutsche Lufthansa AG (**Lufthansa**) is the parent company and largest single operating company in the Lufthansa Group. The individual operating segments of the Lufthansa Group are run as separate Group companies, with the exception of LH.

LH is the largest airline in Germany. It operates from the two biggest German hubs in Frankfurt and Munich and also operates longhaul flights from Dusseldorf. LH operates a global route network of 205 destinations in 74 countries with a fleet of 357 aircraft. LH serviced approximately 66 million passengers in 2017.

LX is the national airline of Switzerland. It serves 142 destinations in 54 countries from Zurich and Geneva. With a fleet of 91 aircraft, LX transported almost 19 million passengers in 2017. LX offers a three class product on all intercontinental routes (ie First, Business and Economy Class) and also operates an airport-to-airport air freight service to some 130 destinations in more than 80 countries. LX is wholly owned by Lufthansa.

OS is Austria's largest carrier and operates a global route network of around 116 destinations in 46 countries. OS's hub is at Vienna International Airport. The OS fleet currently comprises 83 aircraft, and the airline serviced almost 13 million passengers in 2017. OS is wholly owned by Lufthansa.

The Lufthansa Group is also a part of the Star Alliance.

1.4. Email address for service of documents in Australia

Documents can be sent care of Alyssa Philips at alyssa.phillips@ashurst.com.

Authorisation to be varied

2. Provide details of the authorisation to be varied including:

2.1. Registration number and date of the authorisation which is to be varied

Registration numbers: A91542 and A91543

Date of the authorisation which is to be varied: 18 November 2016

2.2. Other persons and/or classes of persons who are a party to the authorisation which is to be varied.

Not applicable.

Proposed variation

3. Provide details of the proposed variation

3.1. a description of the proposed variation

On 18 November 2016, the ACCC issued a determination granting authorisation to Singapore Airlines and Lufthansa to coordinate their operations between Germany, Austria, Belgium and Switzerland (**Lufthansa Home Markets**) and Singapore, Australia, Indonesia and Malaysia (**Singapore Home Markets**), pursuant to a Joint Venture Framework Agreement (**JV Agreement**) and related agreements contemplated by the JV Agreement until 10 December 2021 (the **Authorisation**).

The JV Agreement provides for the following activities:

- coordinating pricing, sales, marketing and inventory management for all routes between one of the Lufthansa Home Markets and one of the Singapore Home Markets; and
- coordinating scheduling and capacity management, and sharing revenue on direct non-stop routes between the Lufthansa Home Markets and Singapore Home Markets (the "Revenue Share Routes").

The JV Agreement currently applies to SQ, LH and certain of their passenger airline subsidiaries, being MI, LX, and OS, and the Authorisation extends to conduct involving those subsidiaries.

TR was not originally part of the JV Agreement and was therefore not named as a relevant SQ subsidiary in the application that resulted in the Authorisation.

SQ and LH now wish to include TR in the JV Agreement. On 7 March 2018, Lufthansa, Singapore Airlines and TR entered into a Memorandum of Understanding in relation to preliminary discussions to determine a cooperative framework governing the inclusion of TR in the JV Agreement. At **Attachment 1** is a copy of the Memorandum of Understanding between Singapore Airlines, TR and Lufthansa.

The applicants therefore wish to vary the existing Authorisation to include TR.

3.2. the reasons for the proposed variation

Since TR's new flights from Singapore to Berlin (commenced in June 2018) fall within the geographic scope of the JV Agreement, the Applicants wish to have the benefit of the Authorisation so that in the future they can explore the potential for coordination of pricing, sales, marketing and inventory management, and revenue sharing between them in a way that includes TR as well.

3.3. reasons why the proposed variation is minor

The proposed variation is minor because it relates to conduct that will not involve a material change in the effect of the Authorisation, including because:

- **There will not be a change to the corporate groups involved in the authorised conduct.** The proposed change to the JV Agreement does not add any new third party. As described above, TR is a wholly-owned subsidiary and related body corporate of Singapore Airlines.
- **There will not be a change to the nature of the authorised conduct.** Similarly, the proposed change to the JV Agreement does not add any new conduct that could potentially give rise to competition law concerns not previously considered by the ACCC. To the contrary, the inclusion of TR in the coordination activities will involve exactly the same conduct that the ACCC has already determined results in some public benefits and very limited public detriments.

- **There will not be a change to the geographic regions subject to revenue sharing.** As per the Authorisation, the "Revenue Share Routes" were defined as routes involving non-stop or direct services operated under the LH/LX/OS and/or SQ designator code between the Singapore Home Markets and the Lufthansa Home Markets. There were three Revenue Share Routes at the time of the Authorisation – two into Germany and one into Switzerland - being the routes between:
 - (i) Singapore and Munich (SIN-MUC), on which SQ but not Lufthansa operates services;
 - (ii) Singapore and Frankfurt (SIN-FRA), on which SQ and LH operate services; and
 - (iii) Singapore and Zurich (SIN-ZRH), on which SQ and LX operate services.

Further, the ACCC may wish to know that since the Authorisation, the JV Agreement has been successful in assisting both SQ and LH to expand their service offerings between the Lufthansa Home Markets and the Singapore Home Markets.

In paragraph 35 of the Authorisation, the ACCC noted that it considered that the JV Agreement would provide a greater likelihood of new services (as well as other benefits). This has in fact happened, and in particular:

- As the ACCC is aware from the Authorisation process, SQ launched a new thrice-weekly service on the Singapore-Dusseldorf (SIN-DUS) route in July 2016. SQ has since increased frequency of the service to four times per week in April 2018; and
- Both SQ and LH are operating direct, non-stop services between Singapore and Munich – SQ now operates a daily service (delinked from the Singapore-Munich-Manchester route, thereby offering more seats to Munich), while LH launched a new service in May 2018, operating five times per week.

As noted above, TR has recently commenced a direct, non-stop service between Singapore and Berlin. This service would be considered for inclusion in the revenue sharing arrangements (subject to ACCC authorisation), but this would not involve any material change to the effect of the Authorisation because:

- (a) Lufthansa does not currently operate a direct, non-stop service between Singapore and Berlin, so there is no relevant overlap between the Applicants that could change the competitive analysis;
- (b) This does not add any new geographic regions to the conduct assessed by the ACCC because the Authorisation process already analysed flights between Singapore and Germany; and
- (c) Each of the routes examined by the ACCC between Singapore and Germany were found to be highly competitive.

For completeness, TR also currently operates a direct, non-stop service between Singapore and Athens. This would not form part of coordination activities and the revenue sharing arrangements under the JV Agreement.

- **There will only be a minor addition regarding Australian destinations.** TR currently operates services to and from only a small number of destinations in Australia (being Coolangatta (Gold Coast), Melbourne, Perth and Sydney). Except for Coolangatta, each of these destinations is already included in SQ's service offering in Australia. Further, TR's services represent a relatively small proportion of the total return services per week to Australia operated by SQ and its other subsidiaries. This means that the quantitative effect on the conduct already reviewed by the ACCC is very limited.

In summary, there will be no change to the nature or scope of the conduct that was subject to the Authorisation (both in terms of the type of conduct caught, and the geographical reach of that conduct). Further, the practical effect of potentially including TR's minimal Australian operations in the JV Agreement will be a "peripheral" or "ancillary" improvement to the associated public benefits, and there will be no change to the risk of any competitive detriment (which was originally assessed by the ACCC as being very low).

Competition effects or net public benefit

4. The ACCC will assess whether to grant a minor variation to an authorisation depending upon the basis on which the ACCC originally decided to grant the authorisation. As applicable, describe the effect of the proposed variation on:

4.1. competition in the relevant markets or

4.2. the extent to which the benefit to the public outweighs any detriment to the public.

The ACCC granted the existing Authorisation on the basis that it was satisfied that the JV Agreement was likely to result in a public benefit, and that the public benefit would outweigh any likely public detriment, including any lessening of competition. Specifically, the ACCC considered that the JV Agreement would, or would be likely to, result in public benefits, primarily in the form of:

- (a) enhanced products and services;
- (b) operational and other efficiencies;
- (c) increased competition in international air passenger transport markets; and
- (d) stimulation of tourism.

The ACCC considered that the JV Agreement was likely to result in little, if any, public detriment,¹ including because:

- (a) LH did not directly operate flights on any routes into or out of Australia, and was unlikely to commence doing so during the period of the Authorisation;
- (b) in terms of indirect flights to Australia, SQ and LH only operated overlapping services on two routes (Singapore – Frankfurt and Singapore – Zurich) which in some cases will form a segment of a service to or from Australia. There are many other options available to travellers between Australia and Frankfurt and Australia and Zurich; and
- (c) given that LH did not have a significant presence on routes to and from Australia - and the competitive discipline imposed by other international airlines on those routes - the ACCC considered that any reduction in competition resulting from the JV Agreement was likely to be very limited.

Each of the above conclusions will continue to apply if TR is included in the JV Agreement, which will result in an increase in the benefits available to the public by expanding the Applicants' cooperation to include TR's services, and will not result in any material reduction in competition. In particular, it is still the case that LH does not directly operate flights, or have any significant presence, on routes into or out of Australia.

¹ See paragraphs 53-56 of the Authorisation.

Further, the ACCC may wish to know that since the Authorisation, the JV Agreement has been successful in assisting both SQ and LH to expand their service offerings between the Lufthansa Home Markets and the Singapore Home Markets.

In paragraph 35 of the Authorisation, the ACCC noted that it considered that the JV Agreement would provide a greater likelihood of new services (as well as other benefits). This has in fact happened, and in particular:

- As the ACCC is aware, SQ launched a new thrice-weekly service on the Singapore-Dusseldorf (SIN-DUS) route in July 2016. SQ has since increased frequency of the service to four times per week in April 2018; and
- Both SQ and LH are operating direct, non-stop services between Singapore and Munich – SQ now operates a daily service (delinked from its Singapore-Munich-Manchester route, thereby offering more seats to Munich), while LH has launched a new service in May 2018, operating five times per week.

The Applicants are confident that the inclusion of TR in the JV Agreement will have similar benefits for customers in terms of expanded flight optionality and connectivity.

Provide information, data, documents or other evidence relevant to the ACCC's assessment of the competition effects or net public benefit.

Not applicable.

Contact details of relevant market participants

5. Identify and/or provide contact details (phone number and email address) for likely interested parties such as actual or potential competitors, customers and suppliers, trade or industry associations and regulators.

Not applicable. The Applicants note that no submissions were made in relation to the existing Authorisation, and they have not otherwise identified any parties who are likely to be interested in the minor expansion of the JV Agreement to include a wholly-owned subsidiary of Singapore Airlines.

Additional information

6. Provide any other information or documents you consider relevant to the ACCC's assessment of the application

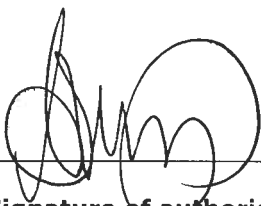
Please contact Alyssa Phillips on (07) 3259 7352 if you wish to discuss any of the above.

Declaration signed on behalf of the Applicants – Singapore Airlines and Lufthansa

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).



Signature of authorised person

Partner, Ashurst

Office held

Authorised to act on behalf the Applicants in this matter

Alyssa Phillips

Name of authorised person

This 16th day of August 2018