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Our ref: SGC02:0519828

26 April 2012

Dr Richard Chadwick
General Manager, Adjudication Branch
Australian Competition & Consumer Commission
23 Marcus Clarke Street
CANBERRA ACT 2601
By hand

FILE No:
DOC:
MARS/PRISM:

Dear Dr Chadwick

APPLICATIONS FOR INTERIM AND FULL AUTHORISATION - ETIHAD AIRWAYS AND AIR BERLIN

We act for Etihad Airways PJSC (ABN 40 123 078 688) (**Etihad**) and Air Berlin PLC & Co. Luftverkehrs KG, whose registered office is located in the Saatwinkler Damm, 42-43, 13627 Berlin, Germany (**Air Berlin**).

Etihad and Air Berlin (**Applicants**) apply for authorisation pursuant to sections 88(1A) and 88(1) of the *Competition and Consumer Act 2010* (Cth) (**CCA**) regarding their proposed Alliance in relation to the provision of international passenger transport services. The Alliance comprises the following:

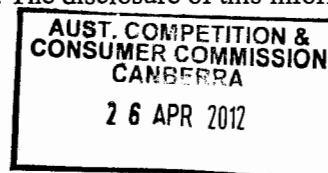
- Commercial Co-operation Agreement; and
- Codeshare Agreement.

We **enclose** the following:

- Application Forms A and B;
- a Submission in support of the Application; and
- a cheque for \$9,000, being the filing fee.

Etihad and Air Berlin also apply for interim authorisation for the Alliance pursuant to section 91(2) of the CCA. The Submission sets out the grounds upon which interim authorisation is sought.

The supporting Submission and annexures to the supporting Submission contain certain information that is confidential to the Applicants. The disclosure of this information



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would unreasonably and adversely affect the Applicants in respect of their lawful business, commercial and financial affairs.

We **enclose** confidential and public versions of the supporting Submission.

We request that the confidential version of the supporting Submission be excluded from the ACCC's Public Register. The public version (with the confidential information redacted) may be placed on the Public Register.

We also **enclose** an authority signed by Etihad which confirms its consent for authorisation being sought on its behalf by DLA Piper Australia and for DLA Piper Australia to lodge this Application and to accept service of process on its behalf. We will shortly provide a similar authority signed by Air Berlin.

Should you have any questions in relation to this letter or the enclosed submission, please do not hesitate to contact us. We would be happy to meet with the Commission and to provide further information to assist in its consideration of these Applications for Interim Authorisation and Full Authorisation.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Stephen Corones'.

Stephen Corones

Consultant

Direct +61 7 3246 4228

stephen.corones@dlapiper.com

Encl

_____ 2012

Dr Richard Chadwick
General Manager, Adjudication Branch
Australia Competition and Consumer Commission
23 Marcus Clarke Street
CANBERRA ACT 2601

Dear Dr Chadwick

AUTHORITY TO LODGE APPLICATION FOR AUTHORISATION

We confirm that we consent to authorisation being sought on our behalf by
DLA Piper Australia.


We authorise DLA Piper Australia to lodge this Application and to accept
service of process on behalf of each of the Applicants.

Yours sincerely

On behalf of:

ETIHAD AIRWAYS PJSC

ABN: 40 123 078 688


.....
Signature

..... Jim Callaghan
Name (print)

..... General Counsel
Title (print)

Form A

Commonwealth of Australia

Competition and Consumer Act 2010 — subsections 88 (1A) and (1)

EXCLUSIONARY PROVISIONS AND ASSOCIATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

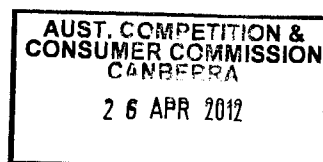
To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Competition and Consumer Act 2010* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act.
- to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of section 45 of that Act.

(Strike out whichever is not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM



1. Applicant

(a) Name of Applicant:

A91307

ETIHAD AIRWAYS, Public Joint Stock Company established by law no 1 of 2003 in the Emirate of Abu Dhabi (ABN 40 123 078 688), whose place of business is located at PO Box 35566, Head Office, Khalifa City A, Abu Dhabi, United Arab Emirates (**Etihad**)

AIR BERLIN PLC & CO. LUFTVERKEHRS KG, a partnership organised under the laws of Germany whose registered office is located in the Saatwinkler Damm 42-43, 13627 Berlin, Germany (**Air Berlin**).

This Application is to be read and determined together with the application in Form B (together **the Application**) and the submission supporting the Application (**the Submission**), which are lodged with this Form.

Pursuant to section 88(10) of the *Competition Consumer Act 2010* (Cth) (**CCA**), authorisation is also being sought on behalf NIKI Luftfahrt GmbH and Belair Airlines AG who may become a party to the Co-operation Agreement (see Schedule 2 therein).

(b) Description of business carried on by applicant:
(Refer to direction 3)

The provision of international air transportation services.

For more detail please refer to the Submission.

(c) Address in Australia for service of documents on the applicant:

DLA Piper Australia

Level 29 Waterfront Place

1 Eagle Street

BRISBANE QLD 4000

Attention: Stephen Corones

Consultant

Tel: 07 3246 4228

Fax: 07 3229 4077

Email: stephen.corones@dlapiper.com

2. Contract, arrangement or understanding

(a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:
(Refer to direction 4)

Etihad and Air Berlin seek authorisation to make and give effect to the **Commercial Co-operation Agreement and Codeshare Agreement** (together **the Alliance**).

Copies of the Commercial Co-operation Agreement and Codeshare Agreement are set out in confidential annexure A to the Submission.

- (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, exclusionary provisions and (if applicable) are, or would or might be, cartel provisions:
(Refer to direction 4)

Alliance Activities as defined in section 1 of the Submission and Confidential annexure A to the Submission.

- (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

Commercial passenger airline services.

- (d) The term for which authorisation of the provision of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

Authorisation of the Alliance is being sought for the term of the Alliance, and, in any event, for a period ending no earlier than ten years after the Commencement Date as defined in the Commercial Co-operation Agreement.

The grounds supporting this period of authorisation are set out in section 1 of the Submission.

3. Parties to the proposed arrangement

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

Not applicable.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:

(Refer to direction 5)

Not applicable.

4. Public benefit claims

- (a) Arguments in support of application for authorisation:

(Refer to direction 6)

See the Submission.

- (b) Facts and evidence relied upon in support of these claims:

See the Submission.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

(Refer to direction 7)

See the Submission.

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the contract arrangement or understanding for which authorisation is sought, in particular the likely effect of the contract arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:
(Refer to direction 8)

No detriment to the public will result, or is likely to result from the Alliance. In particular, the Applicants do not currently compete with each other in the relevant markets.

- (b) Facts and evidence relevant to these detriments:

See the Submission.

7. Contracts, arrangements or understandings in similar terms

- (a) This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding:

- (b) Is this application to be so expressed?

No.

- (c) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:

(Refer to direction 9)

Not applicable.

- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

(Refer to direction 10)

Not applicable.

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

Not applicable.

8. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

Yes.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Yes - the attached Form B.

- (c) If so, by whom or on whose behalf are those other applications being made?

Etihad and Air Berlin.

9. Further information

- (a) Name, postal address and telephone contact details of the person authorised by the applicant seeking authorisation to provide additional information in relation to this application:

DLA Piper Australia

Level 29 Waterfront Place

1 Eagle Street

BRISBANE QLD 4000

Attention: Stephen Corones

Consultant

Tel: 07 3246 4228

Fax: 07 3229 4077

Email: stephen.corones@dlapiper.com

Dated..... 26 APRIL 2012

Signed by/on behalf of the Applicants

Stephen Corones
.....
(Signature)

STEPHEN GEORGE CORONES
.....
(Full Name)

DLA PIPER AUSTRALIA
.....
(Organisation)

CONSULTANT
.....
(Position in organisation)



DIRECTIONS

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

In lodging this form, applicants must include all information, including supporting evidence, that they wish the Commission to take into account in assessing their application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which authorisation is sought.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, exclusionary provisions. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and
 - (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
 6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
 7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for authorisation.
 8. Provide details of the detriments to the public, including those resulting from any lessening of competition, which may result from the proposed contract, arrangement or understanding. Provide quantification of those detriments where possible.

9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.
10. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, and descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.

Form B

Commonwealth of Australia

Competition and Consumer Act 2010 — subsections 88 (1A) and (1)

AGREEMENTS AFFECTING COMPETITION OR INCORPORATING RELATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Competition and Consumer Act 2010* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act).
- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

(Strike out whichever is not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

AUST. COMPETITION &
CONSUMER COMMISSION
CANBERRA

26 APR 2012

1. Applicant

- (a) Name of Applicant:
(Refer to direction 2)

A91308

ETIHAD AIRWAYS, Public Joint Stock Company established by law no 1 of 2003 in the Emirate of Abu Dhabi (ABN 40 123 078 688), whose place of business is located at PO Box 35566, Head Office, Khalifa City A, Abu Dhabi, United Arab Emirates (**Etihad**)

AIR BERLIN PLC & CO. LUFTVERKEHRS KG, a partnership organised under the laws of Germany whose registered office is located in the Saatwinkler Damm 42-43, 13627 Berlin, Germany (**Air Berlin**).

This Application is to be read and determined together with the application in Form A (together **the Application**) and the submission supporting the Application (**the Submission**), which are lodged with this Form.

Pursuant to section 88(10) of the *Competition Consumer Act 2010* (Cth) (**CCA**), authorisation is also being sought on behalf NIKI Luftfahrt GmbH and Belair Airlines AG who may become a party to the Co-operation Agreement (see Schedule 2 therein).

- (b) Short description of business carried on by applicant:
(Refer to direction 3)

The provision of international air transportation services.

For more detail please refer to the Submission.

- (c) Address in Australia for service of documents on the applicant:

DLA Piper Australia

Level 29 Waterfront Place

1 Eagle Street

BRISBANE QLD 4000

Attention: Stephen Corones

Consultant

Tel: 07 3246 4228

Fax: 07 3229 4077

Email: stephen.corones@dlapiper.com

2. Contract, arrangement or understanding

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:
(Refer to direction 4)

Etihad and Air Berlin seek authorisation to make and give effect to the **Commercial Co-operation Agreement and Codeshare Agreement** (together **the Alliance**).

Copies of the Commercial Co-operation Agreement and Codeshare Agreement are set out in confidential annexure A to the Submission.

- (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, cartel provisions, or that do, or would or might, have the effect of substantially lessening competition:
(Refer to direction 4)

Alliance Activities as defined in section 1 of the Submission and Confidential annexure A to the Submission.

- (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

Commercial passenger airline services.

- (d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

Authorisation of the Alliance is being sought for the term of the Alliance, and, in any event, for a period ending no earlier than ten years after the Commencement Date as defined in the Commercial Co-operation Agreement.

The grounds supporting this period of authorisation are set out in section 1 of the Submission.

3. Parties to the proposed arrangement

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

Not applicable.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:

(Refer to direction 5)

Not applicable.

4. Public benefit claims

- (a) Arguments in support of authorisation:

(Refer to direction 6)

See the Submission.

- (b) Facts and evidence relied upon in support of these claims:

See the Submission.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

(Refer to direction 7)

See the Submission.

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:
(Refer to direction 8)

No detriment to the public will result, or is likely to result from the Alliance. In particular, the Applicants do not currently compete with each other in the relevant markets.

- (b) Facts and evidence relevant to these detriments:
See the Submission.

7. Contract, arrangements or understandings in similar terms

This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.

- (a) Is this application to be so expressed?

No.

- (b) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:
(Refer to direction 9)

Not applicable.

- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

Not applicable.

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

Not applicable.

8. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

Yes.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Yes - the attached Form A.

- (c) If so, by whom or on whose behalf are those other applications being made?
Etihad and Air Berlin.

9. Further information

- (a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

DLA Piper Australia

Level 29 Waterfront Place

1 Eagle Street

BRISBANE QLD 4000

Attention: Stephen Corones

Consultant

Tel: 07 3246 4228

Fax: 07 3229 4077

Email: stephen.corones@dlapiper.com

Dated..... 26 APRIL 2012

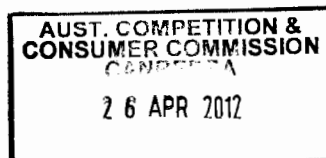
Signed by/on behalf of the Applicants

.....
(Signature)

.....
(Full Name)

.....
(Position in Organisation)

CONSULTANT



DIRECTIONS

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

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3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions. Provide details of those provisions of the contract, arrangement or understanding that do, or would or might, substantially lessen competition.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and
 - (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
 6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
 7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.
 8. Provide details of the detriments to the public which may result from the proposed contract, arrangement or understanding including quantification of those detriments where possible.
 9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.



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**Public Register Version - Restriction of Publication Claimed in
Part**



**PROPOSED COMMERCIAL ALLIANCE BETWEEN
ETIHAD AIRWAYS PJSC AND AIR BERLIN PLC & CO.
LUFTVERKEHRS KG**

Submission in support of the Application for Authorisation

26 April 2012

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separate and distinct
legal entities.

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information can be found at
www.dlapiper.com

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 ANNEXURE A – EXECUTED ALLIANCE AGREEMENTS [CONFIDENTIAL - RESTRICTION OF PUBLICATION CLAIMED]		

**ANNEXURE B – SEABURY APG AIRLINE PLANNING REPORT [CONFIDENTIAL
- RESTRICTION OF PUBLICATION CLAIMED]**

ANNEXURE C – INDUSTRY BACKGROUND

**ANNEXURE D – SCHEDULED INTERNATIONAL PASSENGER AIR SERVICES –
YEAR ENDED JUNE 2011**

ANNEXURE E – ETIHAD'S INTERNATIONAL NETWORK

PUBLIC REGISTER VERSION -
RESTRICTION OF PUBLICATION CLAIMED IN PART

- consolidation of sales offices;
- a global sales agreement to support sales in the United Arab Emirates;
- joint travel agent and corporate account dealing;
- joint airport representation and handling;
- joint reciprocal technical handling; and
- belly hold capacity services

(together the **Co-operative Activities**).

- Explore the possibility of forming and implementing collaborative arrangements in the following areas of co-operation including:-
 - seamless transfers;
 - seamless product innovation;
 - sharing use of airport facilities;
 - obtaining and providing support services such as ground handling and catering;
 - cargo;
 - provision of technical and maintenance services (**MRO**);
 - procurement of goods and services;
 - alignment of service levels;
 - information technology; and
 - training

(together the **Future Initiatives**).

The Alliance foresees the generation of significant public benefits through Air Berlin's use of Etihad's Abu Dhabi hub for travel from points in Germany to and from points in Australia and Asia. As a result Air Berlin will be able to offer for the first time services to Australia, through connections from Abu Dhabi (on flights operated by Etihad).

It is not intended that the commercial co-operation between the Applicants will involve the sharing of revenues or profits.

No adverse effect on competition

Currently, Air Berlin does not operate air passenger transport services between Germany and Australia.

Operation of its own services from points in Germany to points in Australia is not economically viable for Air Berlin on a standalone basis. It is only with the Alliance, that Air Berlin will be able to market/offer services from points in Germany to and from points in Australia connecting via Abu Dhabi.

The Alliance will promote competition in the market for air services between Germany and Australia

The Seabury APG Analysis in Annexure B clearly demonstrates that the Germany to Australia market is highly competitive. The Alliance will allow Etihad and Air Berlin to better compete in this market by offering new itinerary options, more choice and enhanced products and services for consumers in both Germany and Australia.

Public benefits

The Alliance will deliver significant public benefits immediately, including in the form of:

- **Enhancing existing products and services:**
 - reciprocal access to Etihad and Air Berlin airport lounges, frequent flyer and premium guest programmes; and
 - improved and increased quality of services and price (fare) competition.
- **Stimulation of tourism to Australia:**
 - the creation of new online itineraries from Air Berlin's home market in Germany to Etihad's Australian destinations will promote tourism flows from Germany to Australia; and
 - enhance promotion and distribution of services to Australian destinations through Etihad's and Air Berlin's respective global networks.

Interim authorisation requested

Although Etihad and Air Berlin commenced selling codeshare tickets in competition with each other on 29 March 2012, it is imperative that they are able to engage in joint pricing, scheduling and marketing of air passenger services between Australia and Germany as soon as possible. The Applicants are seeking an interim authorisation for the following reasons:

- the Alliance is clearly pro-competitive and has no adverse effect on competition;
- in order for the Applicants and the travelling public to realize the full benefits of the Alliance, the Applicants

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require the ability to more closely co-operate in the
pricing, scheduling and marketing of the codeshare
services; and

- engaging in the close co-operation described above will
over a relatively short time period increase consumer
demand for travel from points in Germany to and from
points in Australia.

Given this urgency, and the fact that the Alliance will not result in
any detriment but will immediately create public benefits, the
Applicants seek interim authorisation as soon as possible pending a
final authorisation determination to undertake refinement to the
freesale codeshare carriage to and from points in Germany and
points in Australia by implementing the:-

- Pricing, Scheduling and Marketing Activities;
- Co-operative Activities; and
- Future Initiatives

(together the **Alliance Activities**).

**Term of final
Authorisation**

The Applicants submit that the ACCC should authorise the Alliance
and Alliance Activities for a period ending no earlier than 10 years
from the date of the interim authorisation, given that the Co-
operation Agreement provides for a term of five years, with an
automatic renewal for a further five years, unless either party
submits a notice of termination.

This Submission is lodged in support of the Application by Etihad
and Air Berlin.

2 THE FIRST APPLICANT – ETIHAD



Overview of operations

- 2.1 Etihad Airways, the national airline of the UAE, has in just over eight years, established itself as one of the world's leading airlines. Set up by Royal (Emiri) Decree in July 2003, Etihad commenced commercial operations in November 2003 from its base in Abu Dhabi (the capital of the UAE). In 2011, Etihad carried 8.3 million passengers. As at 15 April 2012 Etihad has a fleet of 67 aircraft, and operated just over 1,200 flights per week to 72 passenger destinations in 48 countries. Etihad also has close to 100 aircraft on order, including 10 Airbus A380's, the world's largest passenger aircraft. Please refer to Annexure E for Etihad's international passenger network as at 15 April 2012.
- 2.2 Australia is a key market for Etihad. The airline is committed to growing its presence in Australia, and becoming an airline of choice for Australian corporate and retail customers.
- 2.3 Etihad commenced services to Australia with flights to Sydney in March 2007, Brisbane in September 2007 and Melbourne in March 2009. Today, Etihad operates 21 services per week from Abu Dhabi to these three destinations in Australia.

Destination	Services per week	Aircraft type	Commenced services
Sydney	11	A340-600	Mar, 2007
Brisbane (via Singapore)	3	A330-200	Sep, 2007
Melbourne	Daily	A340-600	Mar, 2009

- 2.4 Through an airline alliance with Virgin Australia (as approved by the ACCC on 3 February 2011),¹ Etihad and Virgin Australia offer a joint global network of more than 100 destinations. This includes 43 Virgin Australia destinations in Australia, New Zealand - co-operating on approximately 3,000 flights per week. Etihad also codeshares on Virgin Australia's three weekly flights on the Abu Dhabi - Sydney route.

¹ Authorisation Determination No. A91247 & 91248, Virgin Blue Airlines Pty Ltd and Others (3 February 2011).

2.5 Etihad also signed a codeshare agreement with Air New Zealand in February 2011. Etihad codeshares on all of Air New Zealand's trans-Tasman and a majority of the domestic services, and Air New Zealand codeshares on Etihad's services between Sydney, Brisbane, Melbourne and Abu Dhabi as well as between:

2.5.1 Abu Dhabi and London Heathrow;

2.5.2 Abu Dhabi and Manchester; and

2.5.3 Abu Dhabi and Dublin.

The codeshare integrates Air New Zealand Airpoints and Etihad's Etihad Guest loyalty programmes, enabling customers to earn and burn miles on each other's flights.

2.6 Etihad's Australian head office is in Sydney. It also has offices in Melbourne and Brisbane. The airline employs more than 80 staff and maintains seven premises, including a dedicated aircraft maintenance facility at Sydney International Airport and a call-centre in Sydney.

Etihad's business model and strategy for growth

2.7 Etihad is a full service network carrier operating a hub in Abu Dhabi, the capital of the United Arab Emirates.

2.8 Although not a member of any global alliance, Etihad has a strong portfolio of bilateral and affiliate relationships with other carriers. Two types of relationships exist:

2.8.1 codeshare arrangements; and

2.8.2 interline agreements.

Etihad has a range of relationships with other carriers including 34 codeshare arrangements and 178 interline agreements. Both types of partnerships exist to support Etihad's existing route structure, and to extend the reach and breadth of Etihad's network. With the announcement of Etihad's purchase of a 29% stake in Air Berlin, the number of destinations Etihad serves, either directly or with partner airlines, increased to 290.

2.9 Through strong relationships with both its codeshare and interline partners, Etihad is able to offer an enhanced and expanded network to its own customers. In return, partners can access the depth of Etihad's network.

2.10 Etihad's current codeshare agreements are with bmi, Brussels Airlines, Royal Air Maroc, Philippine Airlines, Middle East Airlines, Srilankan Airlines, Saudi Arabian Airlines, Jet Airways, Yemenia, Malaysia Airlines, Bangkok Airways, Kuwait Airways, American Airlines, Turkish Airlines, Ukraine International, Cyprus Airways, flybe, ANA, Alitalia, S7 Airlines, Olympic, Air Malta, Virgin Australia, Asiana Airlines, Air Astana, Air New Zealand, French Railways (SNCF), Czech Airlines, Vietnam Airlines, TAP Portugal, Air Berlin, Air Seychelles, Niki Luftfahrt GmbH (Niki) and Hainan Airlines.

3 THE SECOND APPLICANT - AIR BERLIN



Overview of operations

3.1 Air Berlin, a member of the International Air Transport Association (IATA), is Germany's second largest airline and Europe's sixth largest airline. Originally set-up as a charter airline in 1992, Air Berlin rapidly expanded its network across Europe. In 2006, Air Berlin successfully launched an initial public offering which enabled the company to acquire the German scheduled airline dba and the leisure airline LTU. Air Berlin also has an interest in the Swiss based airline, Belair and the Austrian based Niki. In 2011, the Air Berlin Group carried over 35.3 million passengers to 162 destinations in 40 countries. As at 31 December 2011, the fleet comprises of 170 modern and fuel-efficient aircraft with an average age of only five years.

Traffic Area	Flights per week	ASK [m] per week ²	Share of ASK
German domestic	1,618	112.271	8.0%
Europe	4,454	1.056.373	75.2%
Longhaul	104	231.466	16.5%

Air Berlin's business model and strategy for growth

3.2 Air Berlin is a full-service network carrier operating four distinctive hubs at Düsseldorf, Berlin, Vienna and Palma de Mallorca. The airline offers a superior onboard service including free drinks, snacks and meals on every single flight. Air Berlin's focus is on the frequent international travellers and high yield leisure travellers. The airline offers a comprehensive loyalty programme 'topbonus' and offers lounge access, premier check-in and boarding service to its high-value customers. Air Berlin has managed to keep a significant cost advantage compared to its main competitors.

3.3 Air Berlin follows a clear strategy:

- 3.3.1 scheduled services and hubs to target the frequent travellers in Germany and Europe;
- 3.3.2 leisure services to European vacation destinations to target the high-yield leisure market;
- 3.3.3 alliances and airline partnerships to expand the network reach beyond own capabilities; and
- 3.3.4 superior service on ground and in the air.

² Note: Air Berlin Data Warehouse - standard week - week 38 in 2011.

- 3.4 As a full-service network carrier, Air Berlin joined the oneworld alliance on 20 March 2012. Air Berlin also entered into a strategic partnership with Etihad on 19 December, 2011. Air Berlin's current codeshare agreements are with American Airlines, Finnair, S7 Airlines, Royal Jordanian, Iberia, British Airways, Japan Airlines, Etihad Airways, Hainan Airlines, Meridiana Fly, Pegasus Airlines and Bangkok Airways.

4 THE ALLIANCE

Proposed Alliance

- 4.1 The Applicants are seeking authorisation to establish an integrated network alliance pursuant to which the Applicants will be granted the authority to:
- 4.1.1 under take the Pricing, Scheduling and Marketing Activities to market codeshare services between points in Germany to and from points in Australia via Abu Dhabi;
 - 4.1.2 undertake the Co-operative Activities to give effect to the Alliance; and
 - 4.1.3 cooperate in relation to the Future Initiatives in order to enhance efficiency and improve the overall quality of services offered to passengers.

- 4.2 The Alliance will lead to substantial public benefits and no material detriment.

Agreements

- 4.3 Subject to applicable laws and regulatory approvals in Australia, on 19 December 2011, Etihad and Air Berlin entered into a Commercial Co-operation Agreement (**Co-operation Agreement**) and an associated Codeshare Agreement (together, the **Alliance Agreements**).
- 4.4 Copies of the executed Alliance agreements are included in Confidential Annexure A.

Scope of the Alliance

- 4.5 Pursuant to the Co-operation Agreement, the Applicants propose to negotiate and conclude one or more agreements and co-operative procedures to implement the:-
- 4.5.1 Pricing, Scheduling and Marketing Activities;
 - 4.5.2 Co-operative Activities; and
 - 4.5.3 the Future Initiatives.

- 4.6 As part of the Alliance, Air Berlin has (among other things) moved its Berlin - Dubai service to Abu Dhabi, and committed to using Abu Dhabi as its hub for scheduled services to parts of Africa, Asia and Australasia. The Alliance will not involve revenue sharing between Air Berlin and Etihad.

New Air Berlin services to Abu Dhabi

- 4.7 As part of the Alliance, the Applicants have agreed in the Co-operation Agreement to increase services between Germany and Abu Dhabi by introducing new flying between their respective hubs. This includes Air Berlin operating a daily service between Berlin

and Abu Dhabi, and between Düsseldorf and Abu Dhabi. Air Berlin will also codeshare on existing Etihad flights from Düsseldorf, Frankfurt and Munich to Abu Dhabi. This will support the development of traffic to and from Australia, feeding into Etihad's Abu Dhabi hub, and providing consumers with the benefits outlined below.

Co-operation on services to Australia

- 4.8 In order to access the Germany to Australia market without a partner, Air Berlin would have to operate its own aircraft via an intermediate point in competition with carriers operating from Europe to Australia. This would require a substantial investment in new aircraft. For example, a daily service from Berlin to Sydney would require three dedicated aircraft via a non-circuitous routing, such as Berlin – Abu Dhabi – Sydney.
- 4.9 Because of the aircraft investment required and the relatively small size of the Berlin and Düsseldorf to Australia markets (compared with the markets that currently support 1 stop flights between Europe and Australia), an Air Berlin service to Australia in the absence of an alliance partnership would not be financially viable.
- 4.10 Another way for Air Berlin to access the Germany to Australia market would be to initiate a service to Abu Dhabi or to another intermediate point that has direct flights to Australia in the absence of a codeshare or alliance agreement. However, the Seabury APG analysis in Annexure B demonstrates that this is also not a financially viable option for Air Berlin.
- 4.11 For these reasons, it is not financially viable for Air Berlin to commence its own services to Australia, or to initiate services to an intermediate point in the absence of a codeshare and alliance agreement, and it makes sound commercial sense for Air Berlin to use Etihad's Abu Dhabi hub in order to serve the Australian market.

Commercial Parameters

- 4.12 All of the reported traffic in calendar year 2011 from Berlin to Sydney was two stop traffic, generally connecting in Europe to a routing with an intermediate point between Europe and Australia.
- 4.13 The new agreement between Etihad and Air Berlin provides the first online, one stop connection from Berlin to Sydney.
- 4.14 This improved service level will generate additional traffic as well as provide the most time efficient service in the market. Reducing the number of intermediate stops as well as providing a well timed, efficient, coordinated schedule with minimal layover times has historically resulted in increased traffic in the vast majority of markets.
- 4.15 Currently, only Melbourne has an online service with a single stop in the Berlin – Australia market. Qatar Airways offers a Berlin – Doha – Melbourne connection. The proposed Etihad / Air Berlin combination will offer a competitive product in that market and introduce significant time savings and service improvements in other Berlin – Australia markets by eliminating the second stop.
- 4.16 Because Etihad already has flights from Abu Dhabi to Sydney and other Australian destinations, the Air Berlin flights from Berlin to Abu Dhabi provide new access to Australia from Berlin without requiring three new aircraft on the part of Air Berlin. In addition, the partnership with Etihad provides connections from Berlin to many new points in Asia and the Middle East via the Abu Dhabi hub.

- 4.17 Furthermore, other carriers, such as Qatar Airways can introduce and / or increase their service from points in Germany to and from points in Australia in competition to the services offered by Air Berlin and Etihad.

Etihad's commercial rationale

- 4.18 Etihad's strategy is to continue to build strong bilateral partnerships with other airlines whilst making targeted acquisitions/investments, in order to counter the risks of marginalisation and increased competition from larger airlines.
- 4.19 Etihad has adopted a network strategy to expand its reach and provide customers with access to more services and destinations through codeshare partnerships.
- 4.20 For Etihad the Alliance will enhance its position and brand in Australia, particularly the Australian corporate sector.
- 4.21 Etihad's core rationale for entering the Alliance is:
- 4.21.1 to expand its successful network of services globally and to improve its presence and brand recognition;
 - 4.21.2 to improve its offering to corporate travellers by increasing connection possibilities and frequencies on international destinations;
 - 4.21.3 offering reciprocal lounge and frequent flyer benefits to Air Berlin passengers;
 - 4.21.4 to increase traffic volumes on Etihad's global network as a result of feed from and to Air Berlin's network;
 - 4.21.5 to leverage Air Berlin's sales strength in Europe, particularly in Germany, Austria and Switzerland; and
 - 4.21.6 to offer a more competitive product in order to compete more effectively with competitors, including with respect to Australia, Emirates and Qatar Airways.

- 4.22 The Alliance will significantly enhance both Applicants' revenues and reduce costs by integrating networks and improving synergies.

Air Berlin's commercial rationale

- 4.23 Australia is a market in which Air Berlin is not able to offer competitive services without a partner airline.
- 4.24 The Alliance will enable Air Berlin to enter the Australian market on a codeshare basis with Etihad. Through Air Berlin's network touch point in Abu Dhabi, it is able to offer competitive flight connections from Europe to Australia.
- 4.25 Air Berlin flights from Germany to Abu Dhabi will provide new access to Australia from Berlin without requiring additional investment in aircraft as capacity will be increased through the use of the additional services from Germany to points in Asia and the Middle East.
- 4.26 Air Berlin's commercial rationale for entering the Alliance is:

- 4.26.1 to expand its successful network of services globally and to improve its presence and brand recognition in Asia and the Australian market;
 - 4.26.2 to offer reciprocal lounge and frequent flyer benefits to Etihad passengers;
 - 4.26.3 to increase traffic volumes on Air Berlin's global network as a result of feed from and to Etihad's network;
 - 4.26.4 to leverage Etihad's sales and distribution strength in the UAE, Asia and Australia; and
 - 4.26.5 to offer a more competitive product in order to compete more effectively with other global network carriers.
- 4.27 The Alliance will significantly enhance both Applicants' revenues and reduce costs by integrating networks and improving synergies.

Applicants are a good strategic fit

- 4.28 Importantly both airlines are a good strategic fit for each other and the Alliance facilitates competition for the following reasons:
- 4.28.1 prior to the Alliance there was minimal competitive overlap between Etihad's and Air Berlin's operations;
 - 4.28.2 each airline intends to challenge the dominance of its main competitor through quality service, product and innovation which will benefit the travelling public; and
 - 4.28.3 each airline fills an important strategic need of the other and consequently each is committed to a deep and lasting alliance.

Why an Alliance is necessary to achieve the commercial objectives

- 4.29 Only by entering into the Alliance can Etihad and Air Berlin achieve their pro-competitive commercial objectives.
- 4.30 Most relevantly, Air Berlin's entry into the Australian market and the increased competition is furthered through the support of Etihad under the Alliance.
- 4.31 An alliance relationship is essential to enable both carriers to align their schedules and frequencies to attract the required customer segments in the right markets. The Alliance enables both carriers to benefit from each other's strong brands in their home markets - providing confidence for their customers to utilise these services.

Authorisation sought

- 4.32 Etihad and Air Berlin seek authorisation to further give effect to the Commercial Co-operation Agreement and Codeshare Agreement.
- 4.33 The Applicants submit that the ACCC should authorise the Alliance for the duration of the Alliance or, alternatively, for a period ending no earlier than 10 years from the date of the interim authorisation.

Interim authorisation is necessary and procompetitive

- 4.34 The Applicants are seeking interim authorisation to further give effect to the Alliance pending the outcome of the ACCC's final decision on authorisation.
- 4.35 The Alliance will result in no detriment, as the Applicants do not currently compete and without such authorisation, Air Berlin would not offer services between points in Germany to and from points in Australia. As the Alliance will immediately generate significant public benefits, interim authorisation should be granted.
- 4.36 The ACCC's Guide to Authorisation states that it will grant interim authorisation only in special circumstances where there is some sort of urgency.
- 4.37 In assessing an application for interim authorisation, the ACCC considers:
- 4.37.1 the degree to which the arrangements appear to be anti-competitive;
 - 4.37.2 the level of urgency of the request;
 - 4.37.3 the impact (if any) on the relevant markets;
 - 4.37.4 the possible harm to the applicant if the request for interim authorisation is denied;
 - 4.37.5 the possible harm to other Applicants (such as customers or competitors) if the request for interim authorisation is granted or denied; and
 - 4.37.6 any other possible benefits or detriments to the public.
- 4.38 Given the lack of or potential for competitive overlap between Etihad and Air Berlin, there would be no lessening of competition as a result of implementation of the Alliance without a full assessment by the ACCC.
- 4.39 In contrast, the Applicants would suffer detriment if interim authorisation was not granted.
- 4.40 Although Etihad and Air Berlin commenced selling codeshare tickets in competition with each other on 29 March 2012, it is imperative that they are able to engage in joint pricing, scheduling and marketing of air passenger services between Germany and Australia as soon as possible.
- 4.41 The ACCC is familiar with this industry and has granted final authorisation for similar alliances in the past, including the Joint Services Agreement between Qantas and British Airways³ and the Virgin Australia/Delta Alliance.⁴ In these cases, there was significantly more overlap between the operations of the alliance applicants. Given this, the ACCC ought to readily be able to assess whether it considers there are likely to be any detriments arising from the proposed Alliance.

³ Authorisation Determination No A30226 and A30227 Qantas Airways Ltd and British Airways Plc (6 May 2003).

⁴ Authorisation Determination No. A91151, A91152, A91172 & A91173, Virgin Blue Airlines Pty Ltd & Ors (10 December 2009).

- 4.42 The Alliance will result in considerable public benefits in terms of new connecting services between points in Germany and points in Australia. These benefits will begin to accrue immediately upon interim authorisation.
- 4.43 A decision by the ACCC to grant interim authorisation will not prejudice the final authorisation. In order to grant interim authorisation, it is not necessary for the ACCC to decide whether the Alliance satisfies the authorisation test.
- 4.44 The Applicants consider that there are clear benefits and no detriments associated with this Alliance. Interim authorisation would not have a significant impact on or permanently alter the market structure or dynamics. There would, therefore, be no long-term adverse implications of such a decision.

5 FRAMEWORK FOR ANALYSIS OF COMPETITIVE EFFECTS AND PUBLIC BENEFITS ARISING FROM THE ALLIANCE

Relevant markets

- 5.1 The practical starting point for considering market definition in an authorisation context is to examine the services that will be provided by the Applicants.
- 5.2 As noted above, the Alliance provides a platform for Air Berlin to enter the market for the supply of passenger airline services from points in Germany to and from points in Australia through Abu Dhabi. The Alliance also enhances Etihad's presence in the Middle East/Asia - Germany/Europe market and facilitates its entry into markets between points in those countries and beyond (both domestically and internationally).
- 5.3 To assist the ACCC with its consideration of this Application, a background industry information brief on these markets is provided in Annexure C.
- 5.4 The Australia-Germany market is characterised by strong competition between a large number of competitors based in Australia, the Middle East, Asia and Germany.
- 5.5 The Applicants therefore submit that the public benefits and competitive effects arising from the Alliance be considered within the supply of international air transport services for passengers travelling between Australia and Germany.

International air passenger transport services

- 5.6 For the purposes of the analysis of the Alliance, whether the product markets are defined narrowly (business passengers separate from leisure passengers) or more broadly (both types of passengers considered together) does not alter the competitive assessment as the Air Berlin group of airlines does not currently supply international air passenger transport services in the relevant markets.

Counterfactual

- 5.7 In weighing the public benefits and detriments, the ACCC must apply the 'future with and without' test. The ACCC must compare the likely future if authorisation were granted (the factual) with the likely future if the authorisation were not granted (the counterfactual).
- 5.8 The most likely counterfactual is that, without authorisation, the Applicants would not proceed with the Alliance.

- 5.9 Absent the Alliance, Air Berlin would not be in a position to enter the Germany - Australia market. Therefore, it would not be able to compete in the broader market for international services between Australia and Europe or the market for international services from points in Germany to and from points in Australia.
- 5.10 For the reasons set out in section 4, absent the Alliance, Air Berlin would not become an independent operator on these services. Without access to behind and beyond codeshare connections on the Alliance's favourable terms and to feeder traffic, these routes would not be viable.

6 COMPETITIVE EFFECTS

No competitive detriment

- 6.1 The Alliance will not give rise to any lessening of competition in the Middle East-Australia, Australia-Germany or the Australian domestic markets, or in any other relevant market.
- 6.2 Air Berlin did not operate air services on routes between Germany and Australia and had no plans to start such operations prior to entering into the Co-operation Agreement with Etihad Airways. Since signing the Co-operation Agreement and in order for Air Berlin to codeshare with Etihad once that arrangement has been approved by the ACCC, Air Berlin has been granted:
- 6.2.1 all necessary air traffic rights on 1 February 2012 under the Germany-Australia Air Services Agreement; and
- 6.2.2 an Australian International Airline Licence on 23 February 2012 by the Commonwealth Department of Infrastructure and Transport.

Etihad and Air Berlin are not potential competitors

- 6.3 Etihad currently competes in the Germany to Australia market. However, Etihad and Air Berlin are not potential competitors in this market because absent the alliance, Air Berlin would not commence its own operations to Australia (see paragraphs 4.8 to 4.11). The Seabury APG analysis in Annexure B⁵ strongly supports the finding that Air Berlin would not enter the Australia-Germany market absent the Alliance. The analysis concludes that:

It is the opinion of Seabury APG that for Air Berlin to effectively compete in the Germany – Australia market, they require a cooperative relationship with a carrier who operates nonstop flights to Australia from a destination that is within range of Air Berlin's fleet from Germany and that is also large enough to support flights from Berlin and Düsseldorf.

By allying with Etihad, Air Berlin is able to provide substantially improved service from these cities which are underserved relative to Frankfurt and Munich. They are also able to provide additional competition in the Frankfurt and Munich markets, although their effect on those cities is much smaller due to the higher level of existing service.

- 6.4 For these reasons, absent the Alliance, Air Berlin would not enter the Australian market and would not be an independent competitor to Etihad in these markets.

⁵ See Section 2 - Viability of Air Berlin entering Australia – Germany market without a partner at 7-8.

The Alliance will enhance competition in the Australia-Germany market

6.5 The Alliance will enhance competition in the Australia-Germany market and provide a platform for Air Berlin to grow its international network, enabling a virtual international network.

6.6 This will allow Air Berlin to solidify its position as an international network carrier.

6.7 **[Confidential - Restriction of Publication Claimed]**

7 PUBLIC BENEFITS

What are public benefits and how should they be assessed?

7.1 The CCA does not define 'public benefit' but the Tribunal has defined it as 'anything of value to the community generally, any contribution to the aims pursued by the society including as one of its principal elements (in the context of trade practices legislation) the achievement of the economic goals of efficiency and progress'.⁶

7.2 The direct beneficiaries of the Alliance will include existing and potential passengers on international services to and from Australia, and the Australian tourism industry, as well as the Applicants themselves. More broadly, the competition and efficiency enhancing effects of the Alliance are of value to the community generally.

Overview of public benefits under the Alliance

7.3 The Alliance will result in significant public benefits, namely:

7.3.1 enhanced products and services with the creation of new online itinerary options that provide convenient options for passengers travelling between Germany and Australia, and which significantly improve service levels to and from the relatively underserved markets of Berlin and Düsseldorf;

7.3.2 the establishment of an Air Berlin Australia network; and

7.3.3 stimulation of tourism to Australia.

Enhanced products and services

7.4 The Alliance will immediately increase the choice of journey options for passengers. Passengers will have access to better connections and a broader schedule on either the Air Berlin or Etihad code.

7.5 For Australian consumers, this will create additional choices for online travel from Australia to Germany, especially to the relatively underserved cities of Berlin and Düsseldorf (as compared to Frankfurt and Munich).

7.6 The opportunities for online connection are a significant public benefit that is valued by consumers. Both business and leisure customers value online services for the following reasons:

⁶ *Victorian Newsagency* (1994) ATPR 41–357 at 42,677.

- 7.6.1 increased convenience;
- 7.6.2 the increased likelihood of making the connecting flight in the event of a delay on a journey sector;
- 7.6.3 the increased ability to purchase flexible fares;
- 7.6.4 reduced likelihood of luggage being lost;
- 7.6.5 the ability to fly on one's preferred air service brand and to accrue points and status credits; and
- 7.6.6 in relation to codeshare services, frequently price.

Unlike separate 'mix and match' fares, online flights that are part of a favourable codeshare service, such as will be available under the Alliance, are not subject to double marginalisation.

- 7.7 Under the Alliance, passengers will also benefit from reciprocal frequent flyer and status credits programmes and reciprocal lounge access across the networks.
- 7.8 Consumer surveys consistently show that airline satisfaction for consumers is highly tied to the additional services offered by airlines. These other value-added factors have been shown to have a significant impact on consumer satisfaction and preferences when choosing which airline to fly with. Improvements in overall service quality are therefore a clear public benefit that will be valued by consumers.

The establishment of an Air Berlin Australia network

- 7.9 The Alliance enables Air Berlin to build an international network for travel to and from Australia in competition with Star Alliance carriers and Emirates.
- 7.10 The ability for Air Berlin to grow its international network will enable it to more fully compete against such carriers and improve competition. As discussed, currently Air Berlin has limited availability to compete with other airlines in terms of international travel and business/corporate travel for Australian consumers. This Alliance will greatly improve Air Berlin's ability to compete in both of these market segments.
- 7.11 This will have clear commercial benefit for Air Berlin. However, there is also a clear public benefit. Australian consumers will benefit from improved competition between, and among, carriers and Air Berlin across their networks. The ability for Air Berlin to offer a comprehensive and viable network in stronger competition with, inter alia, Star Alliance carriers and Emirates will increase consumer choice and stimulate further competition in the international passenger air services markets.

Stimulation of tourism to Australia

- 7.12 All of the benefits described above will result in market stimulation. As the Seabury APG QSI analysis in Annexure B demonstrates, improvements in airline service quality like those described above lead to increases in passenger numbers.
- 7.13 Further, the Alliance will enable both Air Berlin and Etihad to leverage the distribution and marketing strength of each carrier, and their brand strengths, to promote these new and improved services.

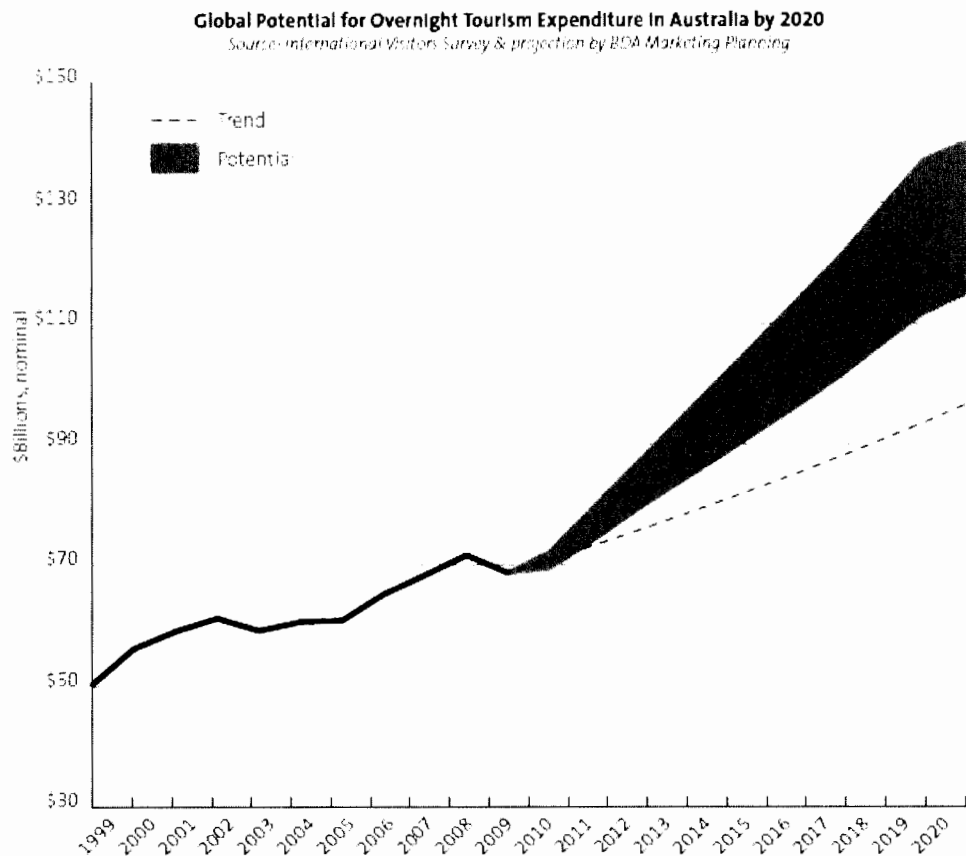
- 7.14 Increased passenger numbers on these services will have a direct benefit for tourism to Australia. Increases in tourism are clear public benefits. The ACCC has previously acknowledged that 'there is a public benefit in increased tourism resulting from increased capacity and lower fares'⁷ within aviation markets. Similarly, the Tribunal has previously found that 'increased tourism has a benefit for the general community as a result of the funds that will be injected into the community from increased travel'.⁸
- 7.15 The Alliance will provide international passengers throughout Air Berlin's and Etihad's extensive international network with access to online flights from their home markets to Australia while earning frequent flyer points and status points on Air Berlin's or Etihad's frequent flyer programme.
- 7.16 This will enable itinerary options to destinations within Australia previously unavailable without the inconvenience and costs associated with switching airlines. Under the Alliance, Etihad will use its global marketing and distribution strength to promote these services and the Australian destinations that can be accessed through them. This will improve the ease and attractiveness of travel to destinations in Australia beyond the major international gateways. This will have a direct and beneficial impact on regional tourism in Australia.
- 7.17 The combination of the creation of a new service and intensive marketing of the destination can actually generate tourism from a source population to a particular destination. This would particularly benefit regional economies around destinations served under the Alliance, such as the Gold Coast in relation to flights from Germany to Brisbane.
- 7.18 The strong link between the development and growth of tourism destinations and aviation services has been shown in a number of case studies. In fact, it has been noted that the addition of a single international flight can have a discernable impact on tourism numbers and employment.
- 7.19 The role that strong alliances play in drawing more tourism traffic feed from around the world has been noted in the academic literature.
- 7.20 Tourism Australia estimates that by 2020, the income from tourists from all destinations globally will be between \$115 billion and \$140 billion in overnight expenditure. There was \$0.190 billion in total expenditure in 2010. Tourism Australia estimates that Germany has the potential to grow to between \$1.902 billion and \$2.316 billion in total expenditure by 2020.⁹ The following graph indicates the global potential for overnight tourism expenditure by 2020.

⁷ Authorisation Determination No. Authorisations A91151, A91152, A91172 and A91173, Virgin Blue Airlines and Others (10 December 2009) at [4.137].

⁸ ACCC, Determination: Virgin Blue and Delta Airlines Authorisation Application A91151, A91152 and A91153 (10 December 2009) at [4.137].

⁹ Tourism Australia, 'Germany Market Profile 2011' at 9 (accessed on 19 April 2012).

Figure 1 Global Potential for Overnight Tourism Expenditure in Australia by 2020



Source: Tourism Australia, 'Germany Market Profile', 2011

8 CONCLUSION

8.1 For the reasons set out in this Submission the Applicants submit that:

- 8.1.1 Etihad and Air Berlin are not actual competitors and there will be no loss of potential competition in the market for international air passenger services as a result of the Alliance or the Alliance Activities;
- 8.1.2 the Alliance and the Alliance Activities will promote competition in the market for international air passenger transport services;
- 8.1.3 the Alliance will result in significant and substantiated public benefits in the form of new services, enhanced products and the promotion of competition for international air travel to and from points in Germany to points in Australia and increased tourism in Australia; and
- 8.1.4 on this basis, the ACCC should grant the Application for interim and final Authorisation.

8.2 Further, for the reasons set out in paragraphs 4.34 to 4.44, the ACCC should grant the Applicants interim authorisation as soon as possible. Although Etihad and Air Berlin commenced selling codeshare tickets in competition with each other on 29 March 2012, it

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is imperative that they are able to engage in the Alliance Activities, and marketing of air passenger services between points in Germany and points in Australia as soon as possible. As the Alliance results in no detriments and will lead to immediate substantial benefits, interim authorisation should be granted to authorise the Alliance Activities.

ANNEXURE A – EXECUTED ALLIANCE AGREEMENTS
[Confidential - Restriction of Publication Claimed]

ANNEXURE B – SEABURY APG AIRLINE PLANNING REPORT
[Confidential - Restriction of Publication Claimed]

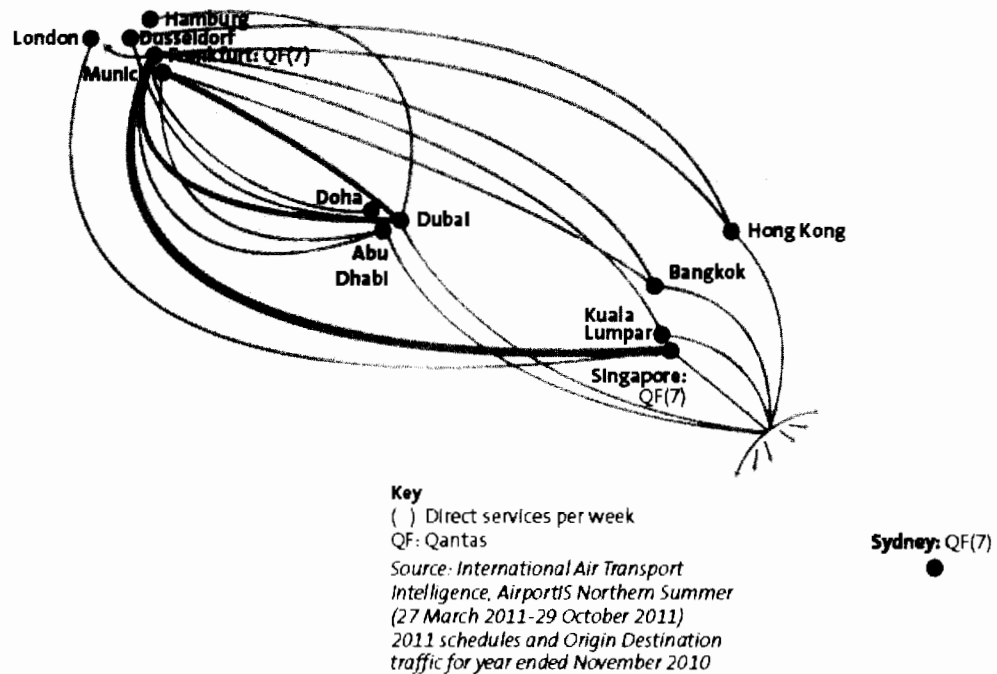


ANNEXURE C – INDUSTRY BACKGROUND

1 OVERVIEW OF AUSTRALIA–GERMANY/EUROPE MARKET

- 1.1 It is important to consider the role of the Australia–Middle East market (discussed below in Part 3 of this Annexure) in the context of the broader Australia–Germany/Europe market.
- 1.2 As the ACCC considered recently in the context of its assessment of the Joint Services Agreement between Qantas and British Airways (**JSA Authorisation**),¹ carriers based in the Middle East and South East Asia are considered to be midpoint carriers. That is, these carriers operate primarily from a mid-point between Australia and Germany/Europe.
- 1.3 Mid-point carriers based out of South East Asia compete with midpoint carriers based out of the Middle East for passengers flying between Australia and Europe.

Figure 2 Routes between Australia–Germany/Europe



Source: Tourism Australia, 'Germany Aviation Profile', 2009

Competitors in the Australia–Germany/Europe market

- 1.4 The Australia–Germany/Europe market is characterised by strong competition between a large number of competitors.
- 1.5 Competitors in the market include the carriers based in Asia that fly from Australia through their hub to Germany/Europe. These carriers include Air Asia, Air China, Asiana

¹ ACCC, Determination: Applications A91195 and A91196 for Revocation and Substitution of Substitution (12 April 2010).

Airlines, Cathay Pacific Group, China Southern Airline, Japan Airlines, Korean Airlines, Malaysian Airlines, Singapore Airlines and Thai Airways International.

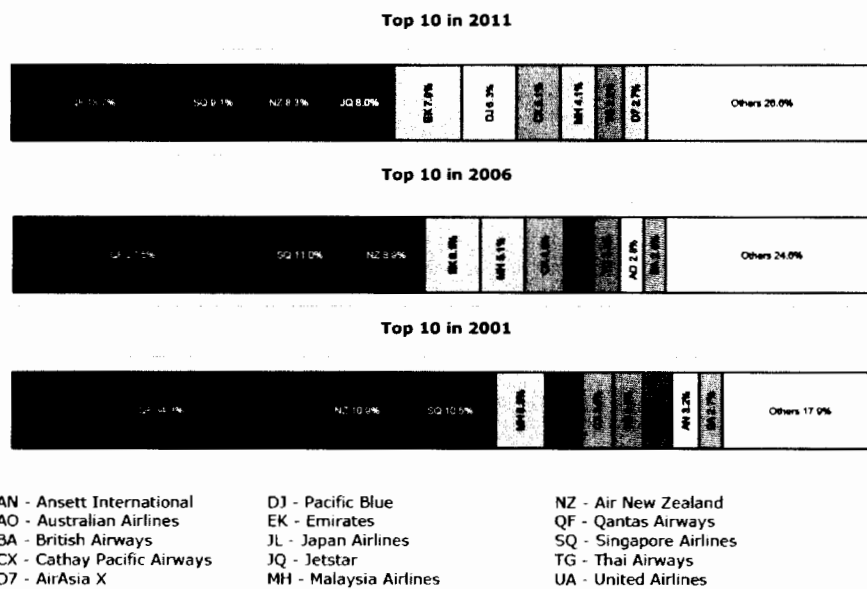
There are also competitors based at the end points in Australia and in Europe that transit through Asian airports.

Capacity and passenger traffic

1.6 There is significant passenger traffic on the Australia–Germany/Europe route. Over one third of all scheduled services out of Australia are between Australia and South East Asia.² It is estimated that a large proportion of these services involve onward travel from South East Asia to Germany/Europe.

1.7 Figure 2 illustrates that South East Asia is the most popular midpoint destination for passengers travelling between Australia and Germany/Europe. Table 1 also shows the market shares by international passengers of the top 10 airlines. In order, the top 10 in 2011 were Qantas, Singapore Airlines, Air New Zealand, Jetstar, Emirates, Virgin Blue, Cathay Pacific Airways, Malaysian Airlines, Thai Airways, Air Asia X and Others.³

Table 1 International passengers by major airlines - Years ended June



Source: Department of Infrastructure and Transport, 'Aviation, International Airline Activity 2010-2011', 2011

² Department of Infrastructure and Transport, *Aviation - International airline activity 2010-2011*, available at http://www.bitre.gov.au/publications/ongoing/files/International_airline_activity_FY11.pdf (accessed 19 April 2012).

³ Department of Infrastructure and Transport, *Aviation - International airline activity 2010-2011*, available at http://www.bitre.gov.au/publications/ongoing/files/International_airline_activity_FY11.pdf (accessed 19 April 2012).

2 OVERVIEW OF AUSTRALIA-GERMANY MARKET

2.1 The following extract from Tourism Australia's Germany Market Profile 2011 provides a snapshot of visitor arrivals for the calendar year 2010, by segment (business/youth) as well as a graph showing the history of arrivals from Australia from December 1980 to December 2010.

There were 160,380 visitor arrivals from Germany for calendar year 2010, down one per cent on the previous year. This decline was largely driven by a three per cent decrease in the holiday segment which represents 62 per cent of all German arrivals to Australia.

Significant events affected European visitor arrivals in 2010, such as weak European economies, the Icelandic volcanic ash cloud and European airport shutdowns experienced in December.

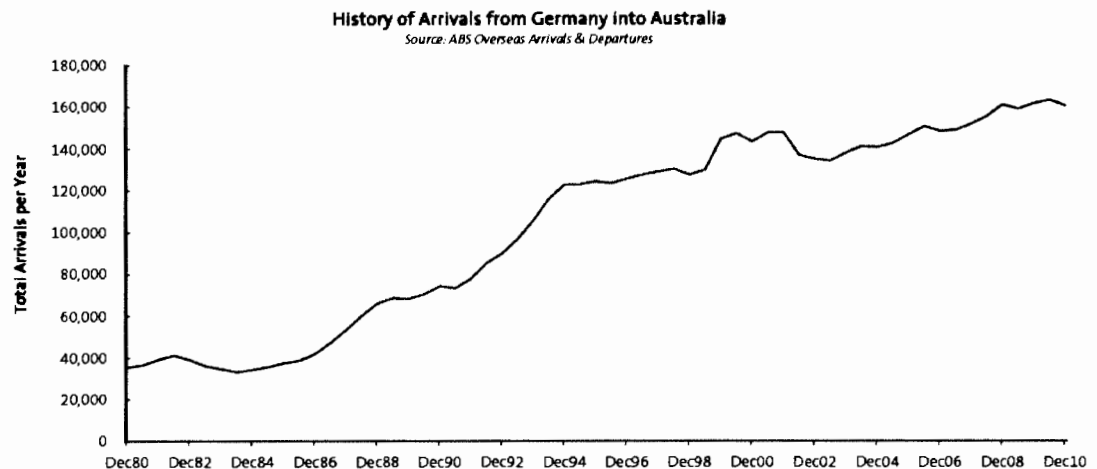
The visiting friends and relatives (VFR) segment saw a slight decrease of four per cent in 2010.

The business segment performed strongly in 2010, up 17 per cent, although this segment accounts for only 11 per cent of all German arrivals. This result is in line with the global rebound in this sector.

The youth segment, which represents 39 per cent of all German arrivals to Australia declined by two per cent in 2010. This decline correlates with the decrease in working holiday maker visa grants from July to November 2010, highlighting the growing competition from a range of destinations for the youth traveller.

...

Figure 3 History of Arrivals from Germany into Australia



Source: Tourism Australia, 'Germany Market Profile', 2011

2.2 According to Tourism Australia's Germany Market Profile 2011, there has been little change in aviation capacity on the Germany to Australia route over the last few years by endpoint carriers. No growth was expected in 2011, despite high load factors.⁴

2.3 The following table identifies the major competitors in the Australia-Germany market, their market shares and changes of market shares from 2006 to 2010.

⁴ Tourism Australia, 'Germany Market Profile' at 11 (accessed on 19 April 2012).

Table 2 Key airlines and share of passengers in 2010

Key airlines and share of passengers in 2010					
Airline	2006	2007	2008	2009	2010
■ Qantas	35%	33%	34%	32%	30%
■ Emirates	18%	19%	14%	15%	20%
■ Etihad	0%	1%	3%	5%	20%
■ Singapore Airlines	13%	12%	15%	12%	9%
■ Jetstar	2%	7%	6%	7%	7%
■ Thai Airways	4%	5%	5%	6%	5%
■ Cathay Pacific	7%	6%	7%	6%	4%
■ Air New Zealand	3%	2%	2%	3%	3%
■ Other	19%	14%	13%	16%	2%

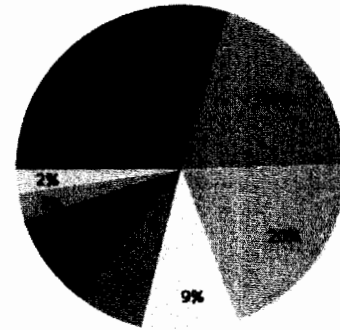


Table includes direct and indirect capacity.

Source: Department of Immigration and Citizenship

Source: Tourism Australia, 'Germany Market Profile', 2011

Competitors in the Australia - Germany market

Qantas:

- 2.4 Qantas is Australia's largest airline, with its main hub operating out of Sydney.
- 2.5 Qantas is the primary airline operating between Australia and Germany. In 2011, there were 340,000 origin and destination passengers in the market - 109,237 of which were Qantas passengers.⁵
- 2.6 The Qantas fleet consists of 143 active aircrafts, including: 19 Airbus A330s, 11 Airbus A380s, 64 Boeing 737s, 25 Boeing 747s and 24 Boeing 767s.⁶
- 2.7 Qantas offers a four tier Qantas Frequent Flyer Program, with entry level at Bronze and the opportunity to progress to Silver, Gold and Platinum levels.⁷
- 2.8 Qantas is a member of the oneworld Alliance. In Germany, Qantas offers codeshare services through British Airways from Munich and Berlin. Other codeshare services in Europe include with Air France from Australia to Paris, and Cathy Pacific from Australia to Rome.⁸
- 2.9 Currently, Qantas operates a daily Boeing 747-400 return service to Frankfurt, with a stopover in Singapore.⁹ In 2011, 26,180 passengers took advantage of the only single plane service operated by an airline, being Qantas, between Frankfurt and Sydney. This represented 32% of the share of origin and destination air passengers between Frankfurt and Sydney. Qantas also offers codeshare flights between Sydney and London via

⁵ See Seabury APG Report at Annexure B.

⁶ Plane Spotters, 'Qantas Fleet Details and History' <http://www.planespotters.net/Airline/Qantas> (accessed on 19 April 2012).

⁷ Qantas, 'Fact File: The Qantas Group at a Glance', available at www.qantas.com.au/infodetail/about/FactFiles.pdf (accessed on 19 April 2012).

⁸ Qantas, 'Fact File: The Qantas Group at a Glance', available at www.qantas.com.au/infodetail/about/FactFiles.pdf, available at (accessed on 19 April 2012).

⁹ Qantas, 'Fact File: The Qantas Group at a Glance' www.qantas.com.au/infodetail/about/FactFiles.pdf (accessed on 19 April 2012).

Frankfurt with its oneworld alliance partner British Airways. Connections from Sydney to Berlin are offered via Singapore and London.

Emirates:

- 2.10 Emirates is a carrier based in Dubai, UAE. Emirates is the largest carrier operating out of Dubai, with exclusive use of terminal 3, main airport.
- 2.11 In 2011, of the 340,000 origin and destination passengers in the Australia/Germany market, 59,725 were Emirates passengers.¹⁰
- 2.12 The Emirates active fleet consists of 26 Airbus 330s, 18 Airbus 340s, 21 Airbus 380s, 5 Boeing 747s and 102 Boeing 777s.¹¹
- 2.13 Emirates has never belonged to, nor has any plans to, join a global alliance.¹² Emirates consider that membership of an alliance would put an 'artificial brake' on its plans to grow its business.
- 2.14 Emirates offers a three-tiered Skywards membership rewards programme. Emirates currently engages in codeshare agreements with the following airlines: Air Malta, Air Mauritius, Japan Airlines, Jet Airways, Korean Air, Oman Air, Philippine Airlines, South African Airways, Thai Airways and V Australia.
- 2.15 Emirates offer the following direct flights on the Australia–Middle East route:
- 2.15.1 Dubai–Sydney – twice daily (Boeing 777–200LR and Airbus A380);
 - 2.15.2 Dubai–Brisbane – daily (Airbus A340–500);
 - 2.15.3 Dubai–Melbourne – daily (Boeing 777–300ER);
 - 2.15.4 Dubai–Perth – twice daily (Boeing 777–200ER and Airbus A340–500);
 - 2.15.5 Dubai - Sydney - daily via Bangkok (Boeing 777-300ER);
 - 2.15.6 Dubai - Brisbane - daily via Singapore (Boeing 777-300ER);
 - 2.15.7 Dubai - Melbourne - daily via Kuala Lumpur (Boeing 777-300ER); and
 - 2.15.8 Dubai - Melbourne - daily via Singapore (Boeing 777-300ER).
- 2.16 Emirates then offer daily flights between Dubai and the following German destinations:
- 2.16.1 Frankfurt (3 per day);
 - 2.16.2 Düsseldorf (2 per day);
 - 2.16.3 Munich (2 per day); and

¹⁰ See Seabury APG Report at Annexure B.

¹¹ Plane Spotters 'Emirates Fleet Details and History', available at <http://www.planespotters.net/Airline/Emirates> (accessed on 19 April 2012).

¹² Emirates, Competition, available at http://www.emirates.com/au/english/about/public_affairs/competition.aspx (accessed 19 April 2012)

2.16.4 Hamburg (2 per day).

Singapore Airlines:

- 2.17 Singapore Airlines operates out of its hub at Changi International Airport and is the flag carrier airline of Singapore.
- 2.18 It had the third largest origin and destination air passenger share of the market between Germany and Australia in 2011, with 42,490 air passengers.¹³
- 2.19 Singapore Airlines has a fleet of 102 active aircrafts, made up of 19 Airbus 330s, 5 Airbus 340s, 17 Airbus 380s and 61 Boeing 777s.¹⁴
- 2.20 Singapore Airlines is a member of the Star Alliance. It offers a three tiered KrisFlyer frequent flyer programme and the PPS club for premium flyers. Members can also earn points on flights with any of the Star Alliance airlines.¹⁵
- 2.21 Similarly to Emirates, Singapore Airlines operates regular flights between Changi International Airport and Australian capital cities.
- 2.22 Singapore Airlines operates two daily flights between Singapore and Frankfurt, and also codeshares with Lufthansa. Singapore Airlines does operate some flights between Singapore and Munich, but often codeshares with Lufthansa.

Lufthansa:

- 2.23 Lufthansa is the German National Carrier and the largest airline in Europe in terms of overall air passengers carried. Whilst Qantas, Emirates and Singapore made up just over 60% of the air passenger traffic between Germany and Australia in 2011, Lufthansa had 7% of the market.¹⁶
- 2.24 Lufthansa has an active fleet of 289 planes. This is made up of 26 Airbus A319s, 46 Airbus A320s, 60 Airbus A321s, 16 Airbus A330s, 50 Airbus A340s, 8 Airbus A380s and 55 Boeing 737s and 28 Boeing 747s.¹⁷
- 2.25 Its frequent flyer programme, Miles and More, allows passengers to earn points on every flight operated by Miles and More airlines.¹⁸
- 2.26 Lufthansa is a member of the Star Alliance. Lufthansa has a codeshare arrangement with Singapore Airlines.¹⁹ It operates a daily A380 service from Frankfurt to Singapore. This connects with Singapore Airlines A380 service linking Singapore with Sydney.²⁰

¹³ See Seabury APG Report at Annexure B.

¹⁴ Plane Spotters, 'Singapore Airlines Fleet Details and History', available at <http://www.planespotters.net/Airline/Singapore-Airlines> (accessed on 19 April 2012).

¹⁵ Singapore Airlines, 'KrisFlyer Overview', available at http://www.singaporeair.com/en_UK/ppclub-krisflyer/KrisFlyer_overview/ (accessed on 19 April 2012).

¹⁶ See Seabury APG Report at Annexure B.

¹⁷ Plane Spotters, 'Lufthansa Fleet Details and History', available at <http://www.planespotters.net/Airline/Lufthansa> (accessed on 19 April 2012)

¹⁸ Miles and More, 'The Programme' <http://www.miles-and-more.com/online/portal/mam/au/program/information?nodeid=2547702&l=en&cid=1000182>

¹⁹ Lufthansa, 'Code Share Partners', available at <http://www.lufthansa.com/online/portal/lh/us/nonav/local?nodeid=3373639&l=en>

- 2.27 Lufthansa does not operate its own aircraft to Australia. Flights from Berlin to Sydney connect through Frankfurt, Singapore and Bangkok, codesharing with Singapore Airlines and Thai Airlines. Flights from Munich are either through Bangkok, codesharing with Thai Airways, or through Singapore codesharing with Singapore Airlines. Additionally, both Brisbane and Perth are accessed with co-operation services via both Bangkok and Singapore again with Thai Airways and Singapore Airlines.
- 2.28 Details of market shares for flights between Australia and Germany for all classes of travel for the calendar year ending December 2011 are set out in Table 1 of the Seabury APG Report in Annexure B.
- 2.29 The Tourism Forecasting Committee Forecast Issue 2 (November 2010) estimated that arrivals from Germany would increase by 3.8% and 3.1% in 2012, with a compound annual growth rate of 2.9% between 2009-2014.²¹

3 OVERVIEW OF AUSTRALIA–MIDDLE EAST MARKET

- 3.1 Within the Australia–Germany/Europe market, there is a narrower Australia–Middle East market.

Arrangements between Australia and the United Arab Emirates

- 3.2 The UAE and Australia have an Air Services Agreement (ASA), which was registered with the UN on 3 July 2007.²² The ASA is designed to provide for direct air services between the two countries. The ASA formalised the agreement made between the two countries in the UAE on 8 September 2002.²³
- 3.3 Delegations representing the aeronautical authorities of Australia and the UAE met in Canberra on 8 February 2010 pursuant to the ASA. During this meeting, the two parties agreed, to update the MOU signed in March 2007. Accordingly, the allocation of capacity on the Abu Dhabi – Australia route was revised as follows:
- 3.3.1 with immediate effect 21 services with a maximum of 14 services to any one point;
- 3.3.2 with effect from March 2010, 28 services with a maximum of 14 services to any one point; and
- 3.3.3 with effect from March 2011, 35 services with a maximum of 14 services to any one point.

²⁰ Business Traveller, 'Lufthansa Promotes all A380 Sydney Service', available at <http://212.100.239.146/news/lufthansa-promotes-a-all-a380-sydney-servicea>

²¹ Tourism Australia, 'Market Profiles Germany' (accessed on 19 April 2012).

²² Department of Foreign Affairs and Trade, *Agreement with the United Arab Emirates and Australia* available at <http://www.info.dfat.gov.au/Info/Treaties/treaties.nsf/AllDocIDs/72D1AFD20C695B64CA256C2F0003D1B6> (accessed 19 April 2012).

²³ The Hon. Mark Vaile, MP, *United Arab Emirates: Australia Air Services Agreement signed in Dubai on 8 September 2002*, available at http://www.trademinister.gov.au/releases/2002/mvt109a_02.html (accessed 19 April 2012).

- 3.4 With immediate effect, an addition to the capacity entitlement above, seven weekly services may be operated between Abu Dhabi and the gateway points in total provided that such services operate via or beyond to a point in Australia that is not a gateway point.

Competitors in the Australia–Middle East market

- 3.5 In addition to Etihad Airways, Emirates and Qatar Airways offer direct flights from Australia to the Middle East. Virgin Australia currently provides direct services into Abu Dhabi and codeshares with Etihad.

Emirates:

- 3.6 Emirates is a carrier based in Dubai, UAE. Emirates operates over 2,400 passenger flights per week from its Dubai hub.
- 3.7 Currently, Emirates offers 70 flights per week to Australia (42 non-stop) from its Dubai hub to Sydney, Melbourne, Brisbane and Perth. Under the ASA/MOU, Emirates has the ability to add an additional 14 frequencies per week to major gateways in Australia.
- 3.8 For further information, please refer to Part 2.12 to 2.15 of this Annexure.

Qatar Airways:

- 3.9 Qatar Airways is a carrier based in Doha, Qatar. It is one of only six airlines awarded a 5-star rating by Skytrax. Qatar Airways has a current fleet size of 101 aircraft with 3 aircraft on order.²⁴
- 3.10 Qatar Airways currently operates daily flights from Melbourne to its hub in Doha which commenced service on 6 December 2009. The Melbourne flights are operated daily using brand new Boeing 777–200 Long Range aircraft, with 42 seats in Business Class and 217 in Economy. Qatar Airways is set to launch a new service to Perth from July 2012.²⁵ This will be its second route to Australia. Currently Qatar Airways flies Doha to Melbourne.
- 3.11 Qatar Airways' Privilege Club Qmiles loyalty programme has reciprocal agreements with Asiana Airlines' Asiana Club, bmi's Diamond Club, Lufthansa's Miles and More, Middle East Airlines' Cedar Miles, All Nippon Airways' Mileage Club, United Airlines' Mileage Plus, and US Airways' Dividend Miles frequent flyer schemes. In the past, Qatar Airways has also indicated that it wishes to join the Star Alliance provided there are sufficient benefits offered.²⁶
- 3.12 Qatar Airways currently has codeshare agreements with: All Nippon Airways, Asiana Airlines, bmi (British Midland), GOL Airlines, Lufthansa, Malaysia Airlines, Middle East Airlines, Philippines Airlines, United Airlines and US Airways.

Virgin Australia:

²⁴ Qatar Airways Details and Flight History, available at <http://www.planespotters.net/Airline/Qatar-Airways> (accessed 19 April 2012).

²⁵ Qatar Airways 'Press Release', available at http://www.qatarairways.com/global/en/press-release.page?pr_id=pressrelease_pressrelease_20120125 (accessed on 19 April 2012).

²⁶ USA Today, Qatar Air CEO, *Star Alliance should invite us to join*, available at <http://travel.usatoday.com/flights/legacy/item.aspx?type=blog&ak=68495247.blog> (accessed 19 April 2012).

- 3.13 Virgin Australia is an Australian domestic and international carrier. Virgin Australia currently operates a fleet of 93 aircraft.
- 3.14 Virgin Australia codeshares on both direct and indirect services with Etihad Airways. Currently, Virgin Australia operates three of its own flights per week and codeshares with Etihad on 21 services per week to Brisbane, Melbourne and Sydney.

Capacity and passenger traffic

- 3.15 Aviation capacity between the UAE and Australia has undergone major changes in recent years. Emirates and Etihad continue to progressively add capacity to Australia following the recent changes to the ASA between the two countries.
- 3.16 Load factors have also increased in recent years suggesting strong demand for passenger services between Australia and the Middle East. However, demand for these services is largely through traffic between Australia and Europe.
- 3.17 Table 3 shows a summary of key statistics for the Australia–UAE/Saudi Arabia route. It should be noted that the UAE represents almost 80% of all travel by UAE/Saudi Arabian tourists to Australia. There have never been direct services between Saudi Arabia and Australia and the outbound market has been quite small to date.²⁷

Table 3 UAE Aviation Profile

Arrivals Growth	Direct Seats	Load Factors	Major Carriers	Seasonal Peaks	Aus. Ports Serviced	Origin Traffic
2008 +26%	2008 0.94 mil	2007 69%	Emirates 56%	June/July/August	4 / 8	5-10%
2009(F) +8%	% ch +3%	2008 73%	Etihad 17%			The gulf is a major hub for through traffic
2010(f) +15%	Rank 5 th	Nat. Av 77%				

(F) Forecast Source: Tourism Forecasting Committee, 2008 Issue 2. Forecasts aren't provided for UAE/Saudi Arabia so 'Middle East plus North Africa' is used as a proxy
*United Arab Emirates (UAE) represents almost 80% of all travel by UAE/Saudi Arabian tourists to Australia

Source: Tourism Australia, 'UAE/Saudi Arabia Aviation Profile', 2009

Australia–UAE routes:

- 3.18 Figure 4 shows the routes between Australia and the UAE, both indirect and direct. As illustrated in Figure 4, Dubai–Melbourne is the busiest route, with 21 direct services per week, closely followed by Dubai–Sydney and Dubai–Brisbane both with 14.²⁸

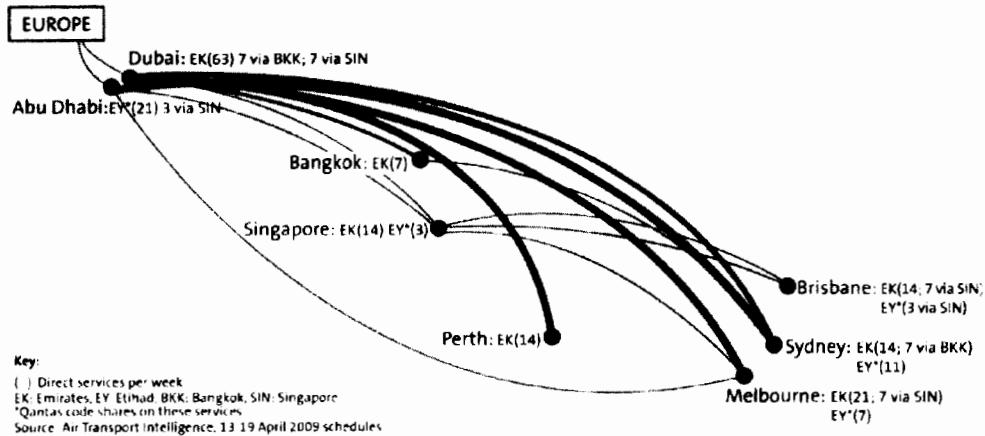
²⁷ Tourism Australia, "UAE / Saudi Arabia Aviation Profile" (May 2009), available at http://www.tourism.australia.com/en-au/documents/Corporate%20-%20Research/Aviation_UAE_2009.pdf (accessed 19 April 2012).

²⁸ Note: this map shows services as at May 2009 and therefore does not show additional services since added by Emirates.

Figure 4 Routes between Australia and the Middle East

Coming into Australia

Dubai-Melbourne is the busiest route closely followed by Dubai-Sydney and Dubai-Brisbane.



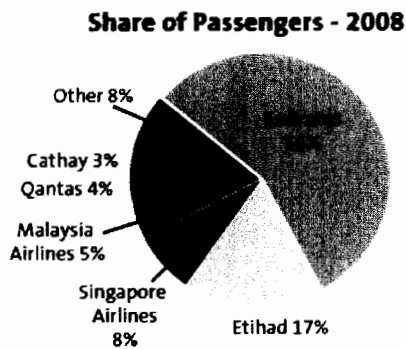
Source: Tourism Australia, 'UAE/Saudi Arabia Aviation Profile', 2009

3.19 The map at Annexure D shows the scheduled international passenger air services to and from Australia for the year ended December 2011. As shown at Annexure D, only 5.5% of scheduled services are between Australia and the Middle East in 2011.

Passenger numbers:

- 3.20 Table 4 shows that Emirates is the dominant airline in the region with over half (56% in 2008) of all UAE/Saudi Arabian tourists entering Australia on this airline.
- 3.21 In 2007 and 2008, Etihad Airways gained significant market share and is likely to gain market share in the years to come.

Table 4 Share of passengers travelling to Australia from the UAE/Saudi Arabia

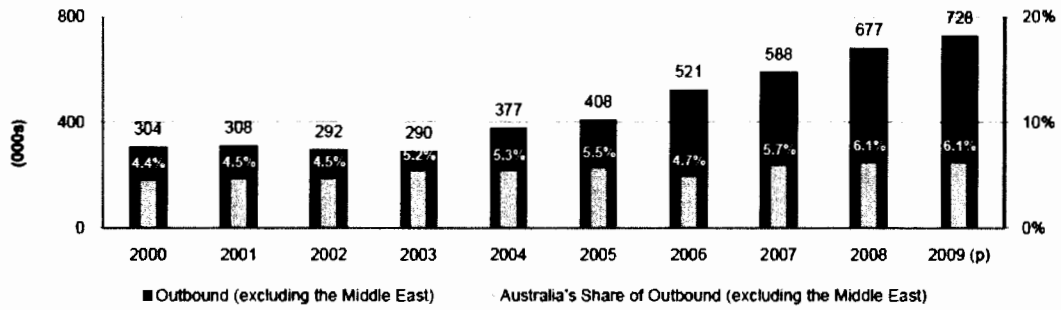


Airline	2004	2005	2006	2007	2008
Emirates	55%	61%	65%	62%	56%
Etihad	0%	0%	0%	10%	17%
Singapore Airlines	8%	7%	8%	5%	8%
Malaysia Airlines	11%	9%	8%	6%	5%
Qantas	8%	6%	4%	5%	4%
Cathay Pacific	2%	4%	3%	3%	3%
Other	17%	14%	12%	9%	8%

Source: Tourism Australia, 'UAE/Saudi Arabia Aviation Profile', 2009

3.22 A total of 728,000 passengers travelled to Australia from the UAE in 2009. However, the majority of these passengers travelled to a beyond destination and only 43,000 were Australia-UAE origin-destination passengers. As a proportion of total passengers travelling outside the UAE, this equated to 6.1% (see Table 5 below).

Table 5 Share of passengers travelling to Australia from the UAE

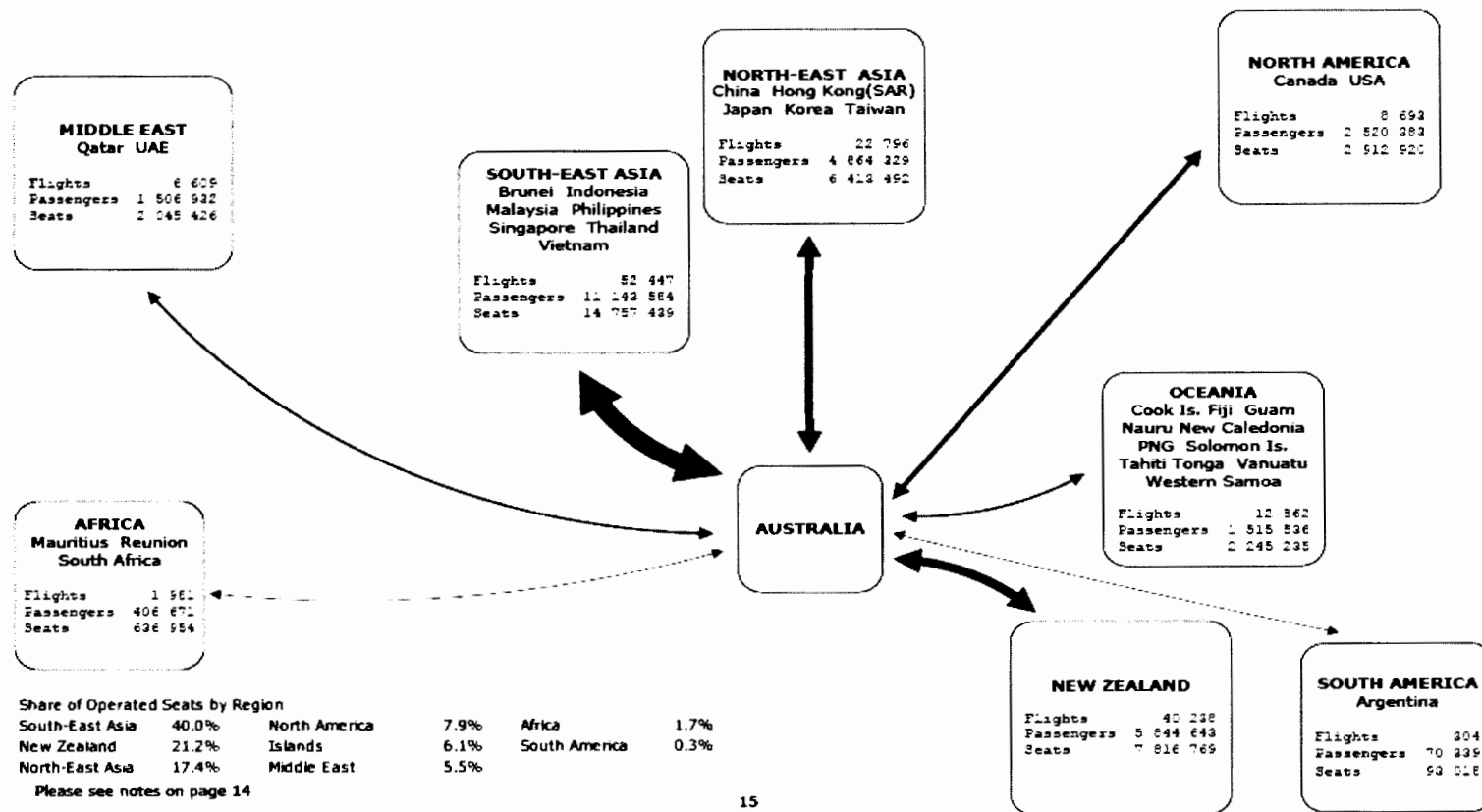


Source: Tourism Australia, 'Outbound Market Share Analysis – United Arab Emirates', 2010

3.23 In 2009, UAE passengers' top international travel destinations were the UK, Thailand, Egypt, Malaysia and India. Excluding continental Europe and North Africa, Australia was ranked sixth.²⁹

²⁹ Tourism Australia, Outbound market share analysis – United Arab Emirates, April 2010, available at http://www.tourism.australia.com/en-au/documents/Corporate%20-%20Markets/UAE_Market_Share.pdf (accessed 19 April 2012).

ANNEXURE D – SCHEDULED INTERNATIONAL PASSENGER AIR SERVICES – YEAR ENDED JUNE 2011



ANNEXURE E – ETIHAD'S INTERNATIONAL NETWORK

Commenced	Route	Country	IATA Code	Distance (km)	Flights per Week
12-Nov-03	Beirut	Lebanon	BEY	2,130	18
7-Dec-03	Damascus	Syria	DAM	2,025	7
12-Dec-03	Amman	Jordan	AMM	2,000	14
28-Mar-04	London	UK	LHR	5,525	21
2-Apr-04	Bangkok	Thailand	BKK	4,972	21
5-Jun-04	Geneva	Switzerland	GVA	4,931	7
5-Jun-04	Munich	Germany	MUC	4,584	7
22-Aug-04	Bahrain	Bahrain	BAH	453	28
26-Sep-04	Bombay (Mumbai)	India	BOM	1,973	7
2-Nov-04	Karachi	Pakistan	KHI	1,267	7
10-Nov-04	Cairo	Egypt	CAI	2,382	14
1-Dec-04	Delhi	India	DEL	2,282	7
21-Dec-04	Dammam	Saudi Arabia	DMM	538	16
22-Dec-04	Riyadh	Saudi Arabia	RUH	807	13
1-Jun-05	Frankfurt	Germany	FRA	4,867	14
31-Oct-05	Brussels	Belgium	BRU	5,173	8
31-Oct-05	Toronto	Canada	YYZ	11,143	3
1-Dec-05	Johannesburg	South Africa	JNB	6,275	7
12-Feb-06	Manila	Philippines	MNL	6,994	14
13-Feb-06	Islamabad	Pakistan	ISB	2,061	7
13-Feb-06	Peshawar	Pakistan	PEW	1,948	2
20-Feb-06	Lahore	Pakistan	LHE	2,092	7
16-Mar-06	Jakarta	Indonesia	CGK	6,572	7
26-Mar-06	Muscat	Oman	MCT	381	20
27-Mar-06	Manchester	UK	MAN	5,686	14
3-May-06	Paris	France	CDG	5,257	14
4-May-06	Dhaka	Bangladesh	DAC	3,624	7
28-May-06	Jeddah	Saudi Arabia	JED	1,616	13
2-Jun-06	Casablanca	Morocco	CMN	6,064	5
18-Jun-06	Doha	Qatar	DOH	325	26
1-Jul-06	Kuwait	Kuwait	KWI	850	25
5-Jul-06	Khartoum	Sudan	KRT	2,507	5
29-Oct-06	New York	USA	JFK	11,051	7
3-Dec-06	Tehran	Iran	IKA	1,263	3
16-Jan-07	Kuala Lumpur	Malaysia	KUL	5,589	7
26-Mar-07	Sydney	Australia	SYD	12,057	11
31-May-07	Trivandrum	India	TRV	2,953	7
2-Jun-07	Cochin (Kochi)	India	COK	2,794	7
2-Jul-07	Dublin	Ireland	DUB	5,949	10
2-Sep-07	Milan	Italy	MXP	4,721	7
28-Sep-07	Brisbane (from SIN)	Australia	BNE	6,141	3
28-Sep-07	Singapore	Singapore	SIN	5,887	3
28-Oct-07	Kathmandu	Nepal	KTM	3,086	7
30-Mar-08	Beijing	China	PEK	5,965	7
1-Aug-08	Calicut (Kozhikode)	India	CCJ	2,690	3
1-Aug-08	Chennai (Madras)	India	MAA	2,968	7
5-Aug-08	Minsk	Belarus	MSQ	3,949	3
2-Dec-08	Almaty	Kazakhstan	ALA	2,930	3
2-Dec-08	Moscow	Russia	DME	3,704	7
29-Mar-09	Melbourne	Australia	MEL	11,644	7
7-May-09	Astana	Kazakhstan	TSE	3,285	1
1-Jun-09	Istanbul	Turkey	IST	3,019	5
2-Jun-09	Athens	Greece	ATH	3,267	7
14-Jun-09	Larnaca	Cyprus	LCA	2,334	3
2-Sep-09	Chicago	USA	ORD	11,709	7
1-Nov-09	Hyderabad	India	HYD	2,595	7
1-Jan-10	Colombo	Sri Lanka	CMB	3,298	4
1-Feb-10	Nagoya (from PEK)	Japan	NGO	1,875	5
27-Mar-10	Tokyo (Narita)	Japan	NRT	8,103	5
28-Apr-10	Baghdad	Iraq	BGW	1,403	7
1-Jun-10	Erbil	Iraq	EBL	1,662	4
10-Dec-10	Seoul	South Korea	ICN	6,849	7
1-Jan-11	Bangalore	India	BLR	2,724	7
1-Nov-11	Malé	Maldives	MLE	3,018	7
2-Nov-11	Seychelles	Seychelles	SEZ	3,222	4
15-Dec-11	Chengdu	China	CTU	4,880	4
16-Dec-11	Dusseldorf	Germany	DUS	5,032	7
18-Dec-11	Libya	Libya	LPB	1,054	7
18-Dec-11	Shanghai	China	PVG	8,867	7
18-Dec-11	Nairobi	Kenya	NBO	3,432	7
18-Dec-11	Yamoussoukro	Ivory Coast	YCO	1,000	7
72	48	Weekly Return Flights	606		
71 excl. AUH	47 excl. UAE	Weekly Sectors	1,212		
New markets planned for 2012:					
73	49	Weekly Return Flights	612		
72 excl. AUH	48 excl. UAE	Weekly Sectors	1,224		
Incl. Cargo	83	54			
Cancellations in 2012					
CPT: Commenced: 30-Sep-09 and Last Service: 24-Jan-12					
ALY/HBE: Commenced: 12-Jul-10 and Last Service: 13-Apr-12					
Key					
2009 new routes 8					
2010 new routes 7					
2011 new routes 5					
2012 new routes 5					
Tag services 2					



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Our ref: SGC02:0519828

27 April 2012

Dr Richard Chadwick
General Manager, Adjudication Branch
Australian Competition & Consumer Commission
23 Marcus Clarke Street
CANBERRA ACT 2601
By hand

Dear Dr Chadwick

**APPLICATIONS FOR INTERIM AND FINAL AUTHORISATION - ETIHAD
AIRWAYS AND AIR BERLIN**

We refer to our previous letter of 26 April 2012.

Please find **enclosed** an Authority signed by Air Berlin which confirms its consent for authorisation being sought on its behalf by DLA Piper Australia and for DLA Piper Australia to lodge the Application and accept service of process on its behalf.

Yours sincerely

Stephen Corones
Consultant
Direct +61 7 3246 4228
stephen.corones@dlapiper.com
Encl

19 April 2012

Dr Richard Chadwick
General Manager, Adjudication Branch
Australia Competition and Consumer Commission
23 Marcus Clarke Street
CANBERRA ACT 2601

Dear Dr Chadwick

AUTHORITY TO LODGE APPLICATION FOR AUTHORISATION

We confirm that we consent to authorisation being sought on our behalf by DLA Piper Australia.

We authorise DLA Piper Australia to lodge this Application and to accept service of process on behalf of each of the Applicants.

Yours sincerely

On behalf of:

AIR BERLIN PLC & CO. LUFTVERKEHRS KG

.....
Signature



.....
Name (print)

Ulf Hiltmeyer

.....
Title (print)

CFO