



**Malaysian
Aviation Commission**
Suruhanjaya Penerbangan Malaysia

Case number: MAVCOM/ED/CC/DIV2/2018(6)

**SECTION 51 OF THE MALAYSIAN AVIATION COMMISSION ACT 2015 [ACT 771]
INDIVIDUAL EXEMPTION**

**Proposed Decision by the Malaysian Aviation Commission on an Application for
Individual Exemption under Section 51 of the Malaysian Aviation Commission Act 2015
by Singapore Airlines Limited and Deutsche Lufthansa AG**

19 July 2019

Summary of the Proposed Decision:

1. The joint venture (“**JV**”) entered into by Singapore Airlines Limited and Deutsche Lufthansa AG via a Framework Agreement falls within the scope of section 49 of the Malaysian Aviation Commission Act 2015 [Act 771]. The JV involves commercial cooperation between Singapore Airlines Limited and Deutsche Lufthansa AG and their subsidiaries where they will cooperate in schedule coordination and capacity management, pricing and inventory management, sales, marketing, and revenue sharing, among others. The JV covers scheduled air passenger services between Singapore, Indonesia, Malaysia, and Australia (“**SQ Markets**”), and Austria, Belgium, Germany, and Switzerland (“**LH Markets**”).
2. Upon assessing the JV, the Commission, by virtue of sections 50 and 51 of Act 771, proposes to grant an individual exemption from the section 49 prohibition of Act 771 for a period of three (3) years from the Final Decision (2019 – 2022).

CONTENTS

1. BACKGROUND.....	4
2. OVERVIEW OF THE PARTIES TO THE JOINT VENTURE	4
3. THE JOINT VENTURE AGREEMENT.....	5
4. DEFINING THE RELEVANT AVIATION SERVICE MARKET	7
5. PROHIBITION ON ANTI-COMPETITIVE AGREEMENT	10
6. RELIEF OF LIABILITY.....	11

BACKGROUND

1. On 19 October 2018, the Malaysian Aviation Commission (“**MAVCOM**” or “**Commission**”) received an application for an individual exemption under section 51 of the Malaysian Aviation Commission Act 2015 (“**Act 771**”) for a joint venture (“**JV**”) between Singapore Airlines Limited (“**SQ**”) and Deutsche Lufthansa AG (“**LH**”) (“**Application**”). The JV between SQ and LH (collectively referred to as “**Applicants**”) concerns the scheduled air passenger services between Singapore, Indonesia, Malaysia, and Australia (“**SQ Markets**”), and Austria, Belgium, Germany, and Switzerland (“**LH Markets**”).
2. On 3 November 2018, MAVCOM published a summary of the Application on its website. The Commission also invited relevant industry players and the public at large to provide any written feedback on the Application within the period of 3 November – 3 December 2018. No feedback was received by MAVCOM during this period.
3. This Proposed Decision refers to airports according to the airport codes as defined by the International Air Transport Association (“**IATA**”). The IATA airport codes used are provided in **Appendix I**.

OVERVIEW OF THE PARTIES TO THE JOINT VENTURE

4. The JV is governed by a Framework Agreement signed by SQ and LH:
 - (a) SQ is a company incorporated in Singapore. It is majority-owned by the Government of Singapore and listed on the Singapore Stock Exchange. SQ’s principal activities consist of passenger and cargo air transportation, engineering services, training of pilots, air charters and tour wholesaling, and related activities.

SQ is a full-service airline and the flag carrier of Singapore, operating air passenger services across an international network of more than 62 destinations in over 32 countries, with a fleet of over 108 aircraft.¹
 - (b) LH is the parent company and the largest single operating company in the Lufthansa Group. LH’s shares are listed on the Frankfurt Stock Exchange.

The Lufthansa Group is a global aviation group with a total of around 550 subsidiaries and equity investments, which are organised into five (5) operating segments: passenger airline group; logistics; maintenance repair overhaul; catering; and others.² Other than Lufthansa Passenger Airlines (LH, Lufthansa CityLine (“**CL**”), and Air Dolomiti (“**EN**”), the Lufthansa Group’s passenger airline services are carried out by Austrian Airlines AG (“**OS**”), Swiss International Air Lines AG (“**LX**”), Brussels Airlines, and Eurowings.

LH is the largest airline in Germany with hubs in Frankfurt and Munich, the two biggest German hubs. Overall, LH, CL, and EN operate a schedule fleet of 317 aircraft and serve a route network comprising 188 destinations in 75 countries.³

¹ As of 1 December 2017.

² Comprising the service and financial companies, as well as, the group functions of the Lufthansa Group.

³ Northern Winter 2017/18.

5. While SQ and LH are the only signatories to the JV, clause 1.1(1) of the Framework Agreement provides that the following subsidiaries of the Applicants are also included in the implementation of the Framework Agreement:

- (a) SilkAir (Singapore) Private Limited (“MI”): MI is a subsidiary wholly owned by SQ. MI positions itself as a premium, short- to medium-haul regional carrier. The operating fleet of MI comprised 32 aircraft. MI serves flights to 53 destinations in 16 countries, with Singapore as its hub.
- (b) Swiss International Air Lines Ltd (“LX”): LX is a subsidiary of LH. LX is the national airline of Switzerland and the biggest airline in Switzerland. Together with its sister company, Edelweiss Air, LX serves a global route network of 142 destinations in 54 countries with a schedule fleet of 91 aircraft. LX operates from the airports in Zurich and Geneva.
- (c) Austrian Airlines AG (“OS”): OS is a subsidiary of LH. OS is Austria’s largest carrier and operates a global route network of 116 destinations in 46 countries with its own schedule fleet of 83 aircraft.

SQ, LH, and Scoot Tigerair Pte. Ltd (“TR”) had also entered into a [X]. TR is a low-cost commercial airline based in Singapore and an indirect wholly owned subsidiary of SQ. TR operates flights to 62 destinations in 16 countries and has a fleet of 40 aircraft.⁴

6. Unless otherwise stated, reference to the “Parties” of the Framework Agreement under this Proposed Decision refers to SQ, LH, MI, LX, OS, and, upon its inclusion into the JV, TR.

THE JOINT VENTURE AGREEMENT

- 7. The objective of the Framework Agreement is to enhance the scheduled air passenger services between the SQ Markets and the LH Markets. The JV is specific to the services which have an origin in the LH Markets and a destination in the SQ Markets, or vice versa.
- 8. The Framework Agreement has come into force on [X] and will continue for a period of [X].
- 9. The Framework Agreement is already implemented for the LH Markets, as well as, the SQ Markets of Singapore and Australia (where the necessary approvals have been attained)⁵. The Framework Agreement has not been implemented in relation to routes involving Malaysia.
- 10. In particular, the Applicants identified direct SIN-LH Markets routes (referred to as “**Revenue Share Routes**”) which form a part of a sector of an indirect route from the LH Markets to Malaysian cities, and vice versa:
 - (a) SIN-ZRH, on which SQ and LH operate direct services;
 - (b) SIN-MUC, on which SQ and LH operate direct services;

⁴ As of 1 December 2017.

⁵ Competition and Consumer Commission of Singapore CCS/400/001/16; Australian Competition and Consumer Commission Authorisation AA60295-3.

- (c) SIN-DUS, on which SQ operates direct services; and
 - (d) SIN-FRA, on which SQ and LH operate direct services.
11. Additionally, SQ, TR, and LH intend to include TR's services on SIN-TXL vice versa in the scope of the JV. SQ and LH do not offer direct services on this route.
12. The Applicants identified eight (8) Malaysian cities of which the Revenue Share Routes and SIN-TXL service comprise a sector: BKI; IPH; KBR; KCH; KUL; KUA; LGK; and PEN. These routes are referred to as the Focal Routes.
13. Under the Framework Agreement, the Parties will cooperate in the following matters:
- (a) Schedule coordination: [REDACTED]
 - (b) Capacity management:
 - (i) [REDACTED]
 - (ii) [REDACTED]⁶ [REDACTED]
 - (c) Pricing and inventory management:
 - (i) [REDACTED]
 - (ii) [REDACTED]⁷
 - (iii) [REDACTED]
 - (d) Sales: [REDACTED]
 - (e) Marketing: [REDACTED]
 - (f) Revenue sharing: [REDACTED]

Additionally, the Framework Agreement also covers service and product harmonisation areas, special prorate agreement, codeshare agreement, and frequent flyer agreement.

14. The Framework Agreement also contains an exclusivity clause, which includes the following:
- (a) [REDACTED]
 - (b) [REDACTED]
 - (c) [REDACTED]
 - (d) [REDACTED]
 - (e) [REDACTED]

⁶ [REDACTED]

⁷ [REDACTED]

DEFINING THE RELEVANT AVIATION SERVICE MARKET

Applicants' Submission

15. The Applicants submitted that the relevant aviation service market is defined on the basis of airport-pairs or city-pairs for scheduled air passenger services.
16. In particular, the Applicants submitted that the Commission should focus its analysis on the following Focal Routes that connect eight (8) Malaysian cities to the LH Markets through Singapore (see Table 1).

Table 1: Focal Routes

Focal Routes							
BKI-FRA	IPH-FRA	KBR-FRA	KCH-FRA	KUL-FRA	KUA-FRA	LGK-FRA	PEN-FRA
BKI-ZRH	IPH-ZRH	KBR-ZRH	KCH-ZRH	KUL-ZRH	KUA-ZRH	LGK-ZRH	PEN-ZRH
BKI-DUS	IPH-DUS	KBR-DUS	KCH-DUS	KUL-DUS	KUA-DUS	LGK-DUS	PEN-DUS
BKI-MUC	IPH-MUC	KBR-MUC	KCH-MUC	KUL-MUC	KUA-MUC	LGK-MUC	PEN-MUC
BKI-TXL	IPH-TXL	KBR-TXL	KCH-TXL	KUL-TXL	KUA-TXL	LGK-TXL	PEN-TXL

Source: Application Document

17. The Applicants also submitted that the JV will cover services between the eight (8) Malaysian cities mentioned above and 23 destinations within the LH Markets via the Focal Routes⁸: Berlin, Hamburg, Vienna, Geneva, Brussels, Hannover, Stuttgart, Nuremberg, Dresden, Graz, Leipzig, Bremen, Cologne-Bonn, Muenster, Linz, Lugano, Salzburg, Innsbruck, Paderborn, Friedrichshafen, Westerland, Klagenfurt, and Heringsdorf (referred to as "**Relevant Indirect Routes**"). The Relevant Indirect Routes are listed in **Appendix II**.
18. The Applicants stated that the Relevant Indirect Routes are relevant for the purposes of assessing the impact of the JV insofar as they form part of a sector of an indirect route from LH Markets to Malaysia through Singapore (e.g. KUL-SIN-FRA-GRZ). The Applicants further submitted that as the Relevant Indirect Routes would necessarily involve a sector which is a Revenue Share Route, the Focal Routes are the only routes that are relevant for the purpose of assessing the impact of the JV on Malaysia.

Substitutability of other forms of transport

19. The Applicants submitted that where the Focal Routes involve a long-haul international flight sector operated by the Applicants, other modes are not considered as substitutable.
20. The Applicants noted that there are other transport options⁹ between Singapore and Malaysia which may be considered substitutes for the short-haul sector, to the extent that they are comparable in terms of availability, frequency, journey time and/or frequencies.
21. Notwithstanding, the Applicants submitted that there are no substitutes to air travel given that the Focal Routes necessarily involve a long-haul international flight sector.

⁸ Through SIN and subsequently, FRA, MUC, ZRH, and DUS.

⁹ Such as car, train, and scheduled ferry services.

Direct and indirect services

22. With the exception of KUL-FRA, the Applicants noted that all passenger services between the LH Markets and Malaysia are indirect services at the time of the application.
23. The Applicants further submitted that the European Commission has found that with respect to long-haul flights, indirect flights constitute a competitive alternative to a direct service under certain conditions, in particular, when they are: marketed as connecting flights on the relevant origin-and-destination (“O&D”) pair in the computer reservation systems; and operated on a daily basis and cause only a limited extension of the trip (up to 150 minutes connecting time). The Applicants also noted that the Competition Commission of Singapore¹⁰ recognised some degree of substitution between direct and indirect flights and defined the relevant market to include one-stop services.
24. In addition, the Applicants stated that the extent of substitutability between one-stop and two-stop services is dependent on the total elapsed time and fare levels. One-stop and two-stop services are more likely to be substitutable where direct services are unavailable or limited. The Applicants submitted that one-stop services and two-stop services compete on the Focal Routes and the Relevant Indirect Routes.

Business versus leisure travel

25. The Applicants submitted that the distinction between business and leisure passengers for the purpose of this assessment is unnecessary, given the long-haul nature of the flights. The Applicants also asserted that passenger choices (including business passengers) are now driven by many factors other than travel time.

Commission’s Analysis

26. Section 47 of Act 771 provides that “aviation service market” is “a market for aviation services in Malaysia or in any part of Malaysia”. MAVCOM’s Guidelines on Aviation Service Market Definition provides that in defining and identifying the relevant aviation service market, the two dimensions of the market—the service market and the geographic market—should be considered.¹¹
27. In this regard, the Commission notes that generally, passengers for air transport services travel to a specific destination for a reason and will not switch to another destination when faced with a small but significant, non-transitory increase in price. For the purpose of this assessment, the Commission is of the view that the relevant aviation service market is the scheduled air passenger service for each O&D combination between the eight (8) identified Malaysian cities and the LH Markets. Therefore, the relevant aviation service markets are the Focal Routes (40 routes) and the Relevant Indirect Routes (95 routes¹²), as listed in **Appendix II**.
28. The Applicants submitted that only the Focal Routes are relevant in assessing the impact of the JV on Malaysia because the Relevant Indirect Routes would necessarily involve a sector which is a Revenue Share Route, and by extension, a Focal Route. The Commission disagrees with this assertion given that each market can and should be

¹⁰ Currently known as the Competition and Consumer Commission of Singapore since 1 April 2018.

¹¹ Paragraph 3.1 of MAVCOM’s Guidelines on Aviation Service Market Definition.

¹² The 95 Relevant Indirect Routes were identified based on AirportIS’ O&D passenger data for the year ending August 2018.

assessed separately based on the respective O&D passenger data to determine the effect of the JV on the respective markets.

Substitutability of other forms of transport

29. The Commission is of the view that other forms of transport are not substitutable to the scheduled air passenger services on the Focal Routes and the Relevant Indirect Routes, given the long-haul nature of the services.
30. The Commission further notes that the Focal Routes and the Relevant Indirect Routes also involve a short-haul sector between Malaysia and Singapore. In this regard, the Commission is of the view that other forms of transport are also not substitutable services on the said short-haul sector as they are not comparable in terms of journey time and convenience.
31. For the Relevant Indirect Routes, the Commission finds it unnecessary to assess the substitutability of other forms of transport for the short-haul sector within the LH Markets, in light of its findings on the competition concerns for these routes in paragraphs 72 – 74 of this Proposed Decision.

Direct and indirect services

32. The Commission notes that there are no direct flight services operating on the Focal Routes and the Relevant Indirect Routes, except for KUL-FRA.
33. With regard to the Focal Routes and the Relevant Indirect Routes with no direct services, the one-stop and two-stop services are likely to be substitutable, especially given the long-haul nature of the services. The Commission notes that the degree of demand-side substitutability between one-stop services and two-stop services may differ between the routes based on factors such as airfare, total flight time, flight frequency, purpose of flying, airline/transit airport preference, and loyalty programme. For the purpose of this assessment, one-stop and two-stop services are considered as a single market.
34. With regard to the KUL-FRA route, the Commission notes that Condor Airlines (“**DE**”) offers direct services from 1 November 2018. Initially, DE operated three (3) services weekly between November 2018 – April 2019.¹³ It subsequently reduced its frequency to two (2) services per week from May 2019 onwards. As the direct services are not provided on a daily basis, the Commission is of the view that it is unnecessary to consider the direct services as a separate market from indirect services for the purpose of this assessment. In any case, even if the direct services are considered as a distinct market, it will not materially affect the findings.

Business versus leisure travel

35. The Commission agrees with the Applicants that it is not necessary to distinguish between business and leisure passengers for the purpose of this assessment.

¹³ As per its Northern Winter 2018/19 schedule.

PROHIBITION ON ANTI-COMPETITIVE AGREEMENT

Legal Framework

36. Subsection 49(1) of Act 771 prohibits an agreement between enterprises that “has the object or effect of significantly preventing, restricting or distorting competition in any aviation service market”. The reference to “object or effect” in subsection 49(1) of Act 771 should be read disjunctively.¹⁴
37. Subsection 49(2) of Act 771 contains a deeming provision that further provides as follows:

“Without prejudice to the generality of subsection (1), a horizontal agreement between enterprises which has the object to—

- (a) fix, directly or indirectly, a purchase or selling price or any other trading conditions;*
- (b) share the aviation service market or sources of supply;*
- (c) limit or control—*
 - (i) production;*
 - (ii) market outlets or market access;*
 - (iii) technical or technological development; or*
 - (iv) investment; or*
- (d) perform an act of bid rigging,*

in connection with aviation services, is deemed to have the object of significantly preventing, restricting, or distorting competition in any aviation service market.”

Applicants’ Submissions

38. The Applicants submitted that the Framework Agreement would not likely have the effect of appreciably preventing, restricting or distorting competition within Malaysia. However, the Applicants stated that the following aspects of the cooperation under the Framework Agreement may be incompatible with section 49 of Act 771:
- (a) schedule coordination;
 - (b) capacity management;
 - (c) pricing and inventory management;
 - (d) sales;
 - (e) marketing; and
 - (f) revenue sharing.

¹⁴ Paragraph 2.7 of the MAVCOM’s Guidelines on Anti-Competitive Agreements.

MAVCOM's Analysis

39. The Commission is of the view that the Framework Agreement falls within an agreement prohibited under section 49 of Act 771. In particular, given that the Framework Agreement is a horizontal agreement involving cooperation in the areas mentioned in paragraph 13 of this Proposed Decision, the Framework Agreement is concluded to have an object of significantly preventing, restricting, or distorting competition in any aviation service market by virtue of subsection 49(2) of the Act.

RELIEF OF LIABILITY

Legal Framework

40. An agreement prohibited under section 49 of Act 771 may be granted an individual exemption by MAVCOM if such agreement fulfils all of the requirements under section 50:
- (a) There are significant identifiable technological, efficiency or social benefits directly arising from the agreement;
 - (b) The benefits could not reasonably have been provided by the parties to the agreement without the agreement having the effect of preventing, restricting or distorting competition;
 - (c) The detrimental effect of the agreement on competition is proportionate to the benefits provided; and
 - (d) The agreement does not allow the enterprise concerned to eliminate competition completely in respect of a substantial part of the aviation services.
41. MAVCOM's Guidelines on Anti-Competitive Agreements further provide that, in claiming any benefits under paragraph 50(a) of Act 771, the applicant shall identify and provide evidence on the nature of the benefits.¹⁵ The Guidelines also state that unsubstantiated claims of benefits would be rejected.

Applicants' Submission

Section 50(a) – Significant identifiable technological, economic or social benefits directly arising from the agreement

42. The Applicants submitted that the JV will give rise to the following significant economic and social benefits to the Malaysian economy and Malaysian travellers:
- (a) Increased number of passengers to Malaysia
 - (i) The Applicants submitted that the JV will improve connectivity between Malaysia and LH Markets through the alignment of behind and beyond services through schedule coordination, more competitive fares,¹⁶ seat inventory coordination, and better corporate offerings. Subsequently, the

¹⁵ Paragraph 3.4 of MAVCOM's Guidelines on Anti-Competitive Agreements.

¹⁶ Arising from the elimination of double marginalisation through the enhancement of a special prorate agreement and []

JV will result in the increase of passenger numbers and tourists to Malaysia, leading in benefits to a wide range of industries in Malaysia.

- (ii) The Applicants submitted that since the signing of the Framework Agreement, the Applicants have realised a 66% growth in passenger carriage on the JV services to and from Malaysia between 2015 and 2018, in contrast to total growth of 14% across all carriers and routes between Malaysia and the LH Markets. The Applicants further stated that prior to the JV (2013 – 2015), the Applicants' combined passenger traffic growth and the total growth of all carriers on the routes were 3%. The Applicants submitted that the inclusion of Malaysia into the JV is expected to increase their combined passenger volume for Malaysia-LH Markets by a further [x]%, equivalent to more than [x] passengers.

(b) Potential increases in frequency of services and capacity

- (i) The Applicants highlighted that under the JV, they have already deployed new services and upgauged existing services between Singapore and LH Markets.
- (ii) With regard to Malaysia, the Applicants submitted that the JV will result in an increased seat capacity on the Focal Routes through the ability to access more seat inventory on the Applicants' respective services. In addition, the Applicants will be incentivised to steer traffic to and from Malaysia as a JV market (in comparison to non-JV markets such as the Philippines). The Applicants estimated that the inventory allocation and steering efforts will result in a growth of effective seat capacity of [x]% between Malaysia and the LH Markets.
- (iii) Additionally, TR will launch four-weekly SIN-KBR services in July 2019. The planned inclusion of TR into the JV may also lead to [x].

(c) Better scheduling resulting in benefits to travellers

- (i) The Applicants submitted that the JV incentivises the Parties to better schedule services to connect to the Revenue Share Routes, which will ultimately result in benefits in terms of increased passenger convenience and decreased waiting times.
- (ii) The JV will also allow Malaysian passengers booking through SQ to connect to LH aircraft on the second sector of the Malaysia-LH Markets service. This will result in significant potential reduction in total travel time and increased travelling options. The Applicants illustrated the potential reduction in travelling and connecting time for nine (9) Malaysia-LH Markets routes that collectively account for [x]% of the Applicants' passenger traffic between Malaysia and the LH Markets (as provided in Table 2).

Table 2: Estimated reduction of travelling time for selected Malaysia-LH Market routes

Routes	Travelling time (minutes)		Reduction of time (minutes)
	Pre-JV	Post-JV	
KUL-ZRH	[✂]	[✂]	[✂]
KUL-FRA	[✂]	[✂]	[✂]
PEN-MUC	[✂]	[✂]	[✂]
PEN-FRA	[✂]	[✂]	[✂]
ZRH-PEN	[✂]	[✂]	[✂]
BKI-ZRH	[✂]	[✂]	[✂]
PEN-ZRH	[✂]	[✂]	[✂]
BKI-FRA	[✂]	[✂]	[✂]

Source: Applicants' Submission

(d) Expanded virtual networks for the Applicants through the alignment of networks that are largely complementary which benefit travellers

- (i) The Applicants submitted that the networks of the Applicants are largely complementary and the JV will increase the virtual networks of both airlines, as well as, enable more travelling options and decrease search time for travellers.
- (ii) As part of the JV and in anticipation of the inclusion of Malaysia into the JV, the Applicants have implemented expanded codeshare arrangements between the Parties. The codeshare arrangements between the Parties pre- and post-JV are summarised in Table 3. The detailed comparison of virtual networks pre- and post-JV is provided in **Appendix III**.

Table 3: Number of codeshare routes pre- and post-JV

Codeshare	Pre-JV (1998 – 2015)	Post-JV (2015 onwards)
SQ/MI on LH/LX	19	44
LH/LX on SQ/MI	2	7 (including SIN-KUL, SIN-PEN, SIN-BKI)

Source: Applicants' Submission

- (iii) In addition, [✂].
- (iv) At present, TR does not have any interline links with Lufthansa Group carriers. As part of the JV, [✂].

- (e) Potential introduction of new routes and services which benefits travellers
- (i) The Applicants submitted that the JV has led to the introduction of new routes between Singapore and the LH Markets which form the long-haul sector for the Focal Routes (e.g. SIN-DUS by SQ and SIN-MUC by LH). SQ, LH, and TR also intend to include TR's new SIN-TXL service within the scope of the JV. The Applicants also stated that the JV reduces the risks involved in the expansion of network, which would otherwise be borne by a single airline.
 - (ii) SQ will be introducing [REDACTED].
 - (iii) SQ's plans for future expansion will largely depend on [REDACTED]. The Applicants stated that any detailed exchange of plans and concrete joint plans for the introduction of new routes for Malaysia will be only possible after the granting of an individual exemption for Malaysia.
- (f) Wider range of fare products which benefits travellers
- (i) The ability of the Applicants to harmonise fares and coordinate inventory under the JV will allow them to offer a wider range of fare types and seat availability for the customers. Each airline will be able to coordinate inventory in each reservation-booking-designator category ("RBD") (i.e. fare level category) to enable bookings on both airlines' flights at the same RBD category for a through-fare. This coordination allows more seats to be made available in any given RBD across both airlines, which will likely lead to fare reductions.
 - (ii) The JV will also allow for the combination of discounted fares and the reduction in double marginalisation that connecting passengers are typically exposed to when the individual carriers add their own mark-up on their respective services. The elimination of double marginalisation will likely provide customers with a wider selection of fares, including low-end fares.
 - (iii) The Applicants estimated the possible fare reduction due to the elimination of double marginalisation, by comparing the through-fares available in the market and the sum-of-sector fares, i.e. the sum of publicly available fares on services between KUL, PEN, BKI, and destinations within the LH Markets. The Applicants provided a simulation of the estimated fares for the selected routes (see Table 4 and Table 5). The Applicants noted that fare levels will be subject to exogenous factors such as market prices, fuel prices, and demand movements.

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Table 4: Estimated fares for selected routes from Malaysia to LH Markets

Route	Economy Lite			
	Pre-JV (RM)	Post-JV (RM)	Reduction (RM)	Reduction (%)
KUL-GVA	[✂]	[✂]	[✂]	[✂]
PEN-STR	[✂]	[✂]	[✂]	[✂]
KUL-BER	[✂]	[✂]	[✂]	[✂]
KUL-HAM	[✂]	[✂]	[✂]	[✂]
KUL-HAJ	[✂]	[✂]	[✂]	[✂]
PEN-DRS	[✂]	[✂]	[✂]	[✂]
KUL-BRU	[✂]	[✂]	[✂]	[✂]
Route	Economy Standard			
	Pre-JV (RM)	Post-JV (RM)	Reduction (RM)	Reduction (%)
KUL-GVA	[✂]	[✂]	[✂]	[✂]
PEN-STR	[✂]	[✂]	[✂]	[✂]
KUL-BER	[✂]	[✂]	[✂]	[✂]
KUL-HAM	[✂]	[✂]	[✂]	[✂]
KUL-HAJ	[✂]	[✂]	[✂]	[✂]
PEN-DRS	[✂]	[✂]	[✂]	[✂]
KUL-BRU	[✂]	[✂]	[✂]	[✂]

Source: Applicants' Submission

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Table 5: Estimated fares for selected routes from LH Markets to Malaysia

Route	Economy Lite			
	Pre-JV (RM)	Post-JV (RM)	Reduction (RM)	Reduction (%)
GVA-KUL	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
STR-PEN	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
BER-KUL	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
HAM-KUL	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
HAJ-KUL	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
DRS-PEN	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
BRU-KUL	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Routes	Economy Standard			
	Pre-JV (RM)	Post-JV (RM)	Reduction (RM)	Reduction (%)
GVA-KUL	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
STR-PEN	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
BER-KUL	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
HAM-KUL	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
HAJ-KUL	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
DRS-PEN	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
BRU-KUL	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: Applicants' Submission

- (iv) In relation to fare harmonisation, the Applicants also submitted that [REDACTED].
- (g) Improvement of existing services which benefits travellers
- (i) The Applicants submitted that while [REDACTED], the JV did not directly result in the Applicants' decision to invest and improve their existing services. The Applicants are already incentivised to do so as part of their usual course of business. The Applicants further noted that the Malaysian market will only benefit from the investments through the extension of the JV to Malaysia.
- (ii) Amongst the investments or improvement of services carried out by the Applicants are: SQ's deployment of the new A350-900 aircraft on the SIN-MUC route; LX's deployment of B777 aircraft on the SIN-ZRH route, SQ's cabin product upgrades on A380s serving the SIN-ZRH and SIN-FRA routes; and LH's commencement of a new MUC-SIN service with the new A359 aircraft.

- (h) Increased competition on the routes which benefits travellers
- (i) The Applicants submitted that the enhanced product and service offerings under the JV, such as new services, increased frequencies, improved lounge access, and greater loyalty program benefits, are likely to trigger a competitive response from competing airlines.
- (ii) The Applicants submitted that competition on routes between the LH Markets and SQ Markets has increased by the growth of competitors on the Focal Routes, such as by the expansion of services by Emirates Airlines (“EK”) and Qatar Airways (“QR”). As competing airlines such as EK and Turkish Airlines (“TK”) offer huge levels of capacity on Malaysia – Europe routes (including LH Markets), the Applicants submitted that the JV will better position them to compete in the aviation market.
- (i) Better offerings for corporate accounts
- (i) The Applicants noted that, typically, an airline’s corporate programme is only available for travel on that airline’s own operated services or its subsidiary airlines.
- (ii) The Applicants submitted that the JV will allow joint corporate contracting which will bring the following results:
- Convenience of dealing with only one account manager;
 - Greater travel options due to expansion of virtual networks;
 - Enjoy discounts accrued from the total revenue spent on either SQ/LH’s services;
 - SQ/LH’s existing corporate clients ([&] common clients and [&] unique clients) will immediately benefit from the joint corporate contracting arrangement; and
 - Better corporate fares arising from the elimination of double marginalisation (corporate fares are usually offered as a discount of market fares, depending on the travel profile).
- (j) Other cost-savings efficiencies which may translate to more competitive fares for travellers
- (i) The Applicants submitted that the JV will drive higher traffic on the Focal Routes, which may improve load factors and scale effects in operations (as fixed costs are allocated to more flights and spread over more passengers) and reduce cost-per-passenger. In turn, this may allow the Applicants to offer more competitive fares to consumers.
- (ii) While the Applicants noted that the JV’s primary objective is not to reduce costs, the Applicants submitted that there may be cost savings and synergies that may be realized by the JV, such as the potential to eliminate cost duplication (through an increased ability to deploy appropriately sized aircraft on the Focal Routes) and potential joint

promotional campaigns (that may reduce duplicated marketing costs and increase the range of attractive promotional fares available to customers).

(iii) The Applicants submitted that cost and efficiency benefits are difficult to estimate with precision given the lack of ability to conduct in-depth discussions prior to obtaining regulatory clearance for the JV.

(k) Improved connectivity between the LH Markets and Malaysia

(i) The Applicants submitted that the economic benefits arising from the JV will lead to connectivity-related social benefits such as improved frequency, better scheduling, expanded virtual networks, the introduction of new routes and services, and better offerings for corporate accounts.

(l) Employment-related benefits

(i) The Applicants submitted that the economic benefits arising from the JV will lead to employment-related social benefits via an increase in passenger numbers to Malaysia, which will result in benefits to a wide range of industries.

Section 50(b) – The benefits could not reasonably have been provided without the agreement having the effect of preventing, restricting or distorting competition

43. The Applicants submitted that the JV is necessary and indispensable to achieve the benefits above. The current forms of cooperation between the Applicants (codeshare agreements, special prorated agreements, and frequent flyer agreements) in relation to the LH Markets and Malaysian cities do not allow for joint pricing, joint selling, harmonisation of schedules or the sharing of route results, which are elements that are critical for the generation of the benefits claimed.

Section 50(c) – The detrimental effect of the agreement on competition is proportionate to the benefits provided

44. In respect of the Focal Routes, the Applicants submitted that the JV has no adverse effect on actual or potential competition on any relevant market given that there is limited competition between the Applicants in relation to services to and from Malaysia (particularly, given that LH does not operate flights into or out of Malaysia). The Applicants also claimed that they will remain subject to a large degree of competitive constraints from competing airlines.

45. The Applicants also stated that they are not aware of any barriers to entry (including any legal barriers, or barriers arising from air rights, gate access, slot availability or otherwise) in relation to direct air passenger services between LH Markets and Malaysia, given that DE is the only airline currently offering such services. As such, the Applicants submitted that they will remain subject to strong competitive constraints by way of existing and potential competition, as there are no or negligible barriers to entry or expansion on the Focal Routes.

Section 50(d) – The agreement does not allow the enterprise to eliminate competition completely in respect of a substantial part of the aviation services

46. With regard to the Focal Routes, the Applicants submitted that the JV has no adverse effect on actual or potential competition on any relevant market. There is limited competition between the Applicants in relation to services to and from Malaysia¹⁷ and the codeshare arrangement between LH/OS and Thai Airways (“**TG**”) will not be affected by the JV.
47. The Applicants further submitted that they will remain subject to strong competitive constraints by way of existing or potential competition, as there are no or negligible barriers to entry or expansion on the Focal Routes. The Applicants provided the following examples of recent entries by airlines which offer scheduled air passenger services from Malaysian cities to the LH Markets (through their respective home base):
- (a) Etihad Airways (“**EY**”) which added an additional daily service for KUL-AUH (vice versa) to offer a double daily service from 15 July 2016 onwards;
 - (b) TK which increased KUL-IST services (vice versa) from 10 times weekly to 14 times weekly on 31 May 2016. However, this was reduced back to daily service on 8 January 2017;
 - (c) QR which launched three (3) times weekly flights on PEN-DOH (vice versa) in February 2018; and
 - (d) DE which launched a three (3) times weekly flights between KUL-FRA on 1 November 2018, which was reduced to two (2) weekly flights from May 2019 onwards.
48. Therefore, the Applicants submitted that there will not be any significant reduction of competition arising from the JV.

MAVCOM’s Analysis

Section 50(a) – Significant identifiable technological, economic or social benefits directly arising from the agreement

49. The Commission has considered all of the benefits claimed by the Applicants and found that there are cumulative significant identifiable economic benefits directly arising from the JV, particularly the following:
- (a) Better scheduling resulting in reduction of travelling time
 - (i) The Applicants submitted that through the JV, the Parties will be able to coordinate their schedules to better connect to the Revenue Share Routes, which will result in benefits in terms of increased passenger travel options and decreased waiting times. The Commission finds that the Applicants had objectively demonstrated the potential reductions in travelling and connecting time for nine (9) major routes between Malaysia and the LH Markets in terms of the Applicants’ passenger traffic.

¹⁷ Especially since LH does not operate flights into or out of Malaysia.

- (ii) The Commission is of the view that the claimed benefit is significant given that the estimated reductions in total travelling time range from 15 to 145 minutes (averaging more than 56 minutes). The benefit would be available to a substantial number of passengers that travel on those nine (9) routes. In 2018, the Applicants estimated that SQ carried [REDACTED] passengers on those routes. The Commission also notes that the simulation was not exhaustive.
- (b) Expansion of virtual networks resulting in more travelling options to travellers
- (i) The Commission agrees that the JV has expanded the virtual networks of the Applicants from 21 services pre-JV to 51 services post-JV (as of April 2019), which enables the provision of more travelling options to the consumers.
 - (ii) The Commission notes that the Applicants had implemented the expanded codeshare arrangements to the Malaysian markets such as SIN-KUL, SIN-PEN, and SIN-BKI even prior to the inclusion of Malaysia into the JV. The Commission is satisfied that such expanded codeshare arrangements were carried out in anticipation of the inclusion of Malaysia into the JV, as evidenced by the internal documents provided by the Applicants. The Commission further notes that [REDACTED].
 - (iii) Therefore, the Commission agrees that the expansion of virtual networks arising from the JV is a significant benefit to travellers.
- (c) Wider range of fare products which benefits travellers
- (i) The Commission acknowledges that the JV will enable the Applicants to harmonise fares and coordinate inventory, allowing them to offer a wider range of fare types and seat availability for the customers. The Commission also notes that the JV will also allow for the combination of discounted fares and the reduction in double marginalisation.
 - (ii) The Commission finds that the Applicants had objectively demonstrated potential fare reductions on selected routes between Malaysia and the LH Markets under the JV. The difference between through-fares and sum-of-sectors fares on the selected routes ranges from [REDACTED]% to more than [REDACTED]%. It is noted that the fare levels are subject to other factors such as market prices, fuel prices, and demand levels. The Commission further notes that the [REDACTED].
 - (iii) Based on all of the above, including the simulation of estimated fare reductions, the Commission is of the view that the benefits claimed are significant.
- (d) Better offerings for corporate accounts
- (i) The Commission agrees with the Applicants that the joint corporate contracting under the JV will provide significant benefits to the corporate clients, including greater travel options, combined tier incentives accruing from the total revenue of travels on the Applicants' carriers, the convenience of dealing with only one account manager, and better

corporate fares. The magnitude of the benefits can be implied from the number of SQ and LH's current corporate clients, totalling [x] clients, who will automatically benefit from the joint corporate contracting arrangements under the JV.

(e) Increased passenger, seat capacity, routes, and services

- (i) The Commission is of the view that the Applicants' claims on increased number of passengers to Malaysia (paragraph 42(a) of this Proposed Decision), increased frequency and capacity (paragraph 42(b) of this Proposed Decision), as well as potential introduction of new routes and services (paragraph 42(e) of this Proposed Decision) are interrelated and should be considered together.
- (ii) The Commission notes the pre-JV (2013 – 2015) and post JV (2015 – 2018) passenger growths recorded by the Applicants between Malaysia and the LH Markets, which were 3% and 66%, respectively. It is further noted that the total growth across all carriers and routes between Malaysia and the LH Markets for the same periods were 3% and 14%, respectively. This shows that the JV had resulted in an increase in passenger traffic between Malaysia and the LH Markets carried by the Applicants, which had consequently contributed to the overall increase in passenger numbers¹⁸.
- (iii) The Commission further notes the Applicants' estimation of a further [x]% increase in passengers carried by the Applicants (more than [x] passengers) within 12 months from the inclusion of Malaysia into the JV. The Applicants did not provide any clear basis for this estimation.
- (iv) The Commission acknowledges that the JV will enable the Applicants to coordinate seat inventory management, which may lead to an increase in seat capacity for passengers between Malaysia and the LH Markets. The Commission also notes that the Applicants will be incentivised to steer traffic to/from Malaysia. In addition, the Commission recognises the potential new services due to the inclusion of TR into the JV.
- (v) Based on the above, the Commission is of the view that while there are merits in the benefits claimed, it has some reservations particularly on the magnitude of the benefits. The Commission further views that the benefits of increased seat capacity to passengers between Malaysia and the LH Markets are limited by the commitments made by the Applicants to the Competition Commission of Singapore regarding the JV between SQ and LH. In particular, the Applicants committed to carry a minimum number of Singapore point-of-sale ("POS") passengers on the SIN-FRA and SIN-ZRH routes, which is 95% of the aggregate number of all SIN POS passengers on the respective services in 2016¹⁹.

¹⁸ The total passenger traffic by all carriers between Malaysia and the LH Markets in 2015 was 261,534 passengers, compared to 298,529 passengers in 2018.

¹⁹ Grounds of Decision issued by the CCS on the Application for Decision by LH and SQ, Case number CCS 400/001/16 dated 12 December 2016.

50. The Commission notes that the Applicants had made other claims of benefits, i.e. improvement of existing services, increased competition, cost-saving efficiencies, improved connectivity, and employment-related benefits. However, these claims were not quantified or sufficiently substantiated. Thus, these claims need not be further assessed as unsubstantiated claims of benefits would be rejected²⁰. The Commission also finds that the Applicants failed to show that their claims on improvement of existing services and increased competition are benefits arising directly from the JV.

Section 50(b) – The benefits could not reasonably have been provided without the agreement having the effect of preventing, restricting or distorting competition

51. The Commission agrees with the Applicants' view that the benefits discussed in paragraph 49 above could not be fully realised without the JV. In particular, the benefits of reducing travelling time/airfares, increased seat capacity/virtual networks, and improved corporate offerings could not have been provided through an alternative arrangement such as a codeshare agreement, a special prorated agreement, or a frequent flyer agreement alone.
52. The Commission also notes the [redacted] as evidenced by its discontinued direct KUL-FRA services in 2016. The Commission further notes that Malaysia Airlines ("MH") had also discontinued its direct services for KUL-ZRH and KUL-FRA in 2008 and 2015, respectively.
53. However, there has been a recent introduction of DE's direct KUL-FRA services in November 2018 with a frequency of thrice-weekly, which was subsequently reduced to twice-weekly from May 2019 onwards. In any case, the introduction of the direct services by DE has the effect of increasing the competitiveness of the market and reducing any potential detrimental effect on competition arising from the JV, as discussed in paragraphs 57 – 66 below.
54. The Commission also notes that the Framework Agreement contains exclusivity clauses as stated in paragraph 14 of this Proposed Decision. Clause 7.3 of the Framework Agreement further provides [redacted]. In this regard, the Commission notes that the Parties have commercial arrangements with other airlines, such as the following:
- (a) SQ and MH [redacted].
 - (b) LH and MH [redacted].
 - (c) LH/LX and CX [redacted].
 - (d) LH/LX and TG [redacted].
55. In relation to the services between Malaysia – LH Markets, the codeshare arrangement between LH/LX with TG is the most relevant as it provides for services between Malaysia and the LH Markets via BKK. The Applicants submitted that this codeshare arrangement with TG will not be impacted by the proposed JV and will continue in the future.
56. Based on the above considerations, the Management concludes that the requirement under section 50(b) of Act 771 is fulfilled.

²⁰ Paragraph 3.4 of MAVCOM's Guidelines on Anti-Competitive Agreements.

Section 50(c) – The detrimental effect of the agreement on competition is proportionate to the benefits provided

57. As stated in paragraph 27 of this Proposed Decision, the relevant markets comprise the O&D pairs of the Focal Routes (40 routes) and the Relevant Indirect Routes (95 routes). The Commission’s assessment on the JV’s detrimental effect on competition for the Focal Routes and the Relevant Indirect Routes is provided in paragraphs 59 – 63 and 64 – 66 of this Proposed Decision, respectively.
58. As a starting point, the detrimental effect of the JV on competition was analysed based on the following considerations:
- (a) Annual passenger volume; and
 - (b) Market concentration based on the Herfindahl-Hirschman Index (“**HHI**”). In particular, the Commission looked at the post-JV HHI²¹ and the change in the HHI resulting from the JV (“**delta HHI**”).²²

Focal Routes

59. Based on the factors mentioned in paragraph 58, the Commission finds that 36 out of 40 Focal Routes have either low passenger volumes, low or moderate post-JV HHI, and/or low delta HHI²³. The details of the passenger volumes, post-JV HHI, and the delta HHI resulting from the JV for the Focal Routes are provided in **Appendix IV**. In particular, the Commission notes the following:
- (a) 31 Focal Routes recorded less than 2,500 passengers per annum.
 - (b) Routes with higher post-JV HHI generally have lower passenger volumes.
 - (c) Routes with the largest passenger volumes, especially the routes between KUL and the LH Markets, will not face significant increases in concentration as a result of the JV. Conversely, routes recording higher delta HHI generally have low passenger volumes.

Therefore, the Commission is of the view that the JV will not result in any substantial detrimental effect on competition for 36 of the Focal Routes. The remaining four (4) Focal Routes were identified for further analysis—PEN-FRA, PEN-MUC, PEN-ZRH and LGK-FRA—which are discussed in paragraphs 60 – 63 of this Proposed Decision.

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²¹ The market shares of the Parties are combined for the calculation of the post-JV HHI for the Focal Routes and Relevant Indirect Routes.

²² In calculating the delta HHI, we compared the pre- and post-JV HHIs.

²³ Based on the data provided by the Applicants.

60. Table 6 shows the passenger volume, post-JV HHI, and the delta HHI for the selected four (4) Focal Routes: PEN-FRA, PEN-MUC, PEN-ZRH, and LGK-FRA.

Table 6: Passenger volume, post-JV HHI, and delta HHI for selected Focal Routes

Focal Route	Passenger Volume	Post-JV HHI	Delta HHI
PEN-FRA	9,195	0.3988	0.1527
PEN-MUC	7,623	0.3823	0.1110
PEN-ZRH	6,009	0.5148	0.2171
LGK-FRA	7,773	0.6580	0.2828

Source: Application Document

61. With regard to the PEN-FRA, PEN-MUC, and PEN-ZRH markets, the Parties' combined market shares are high, recording 66%, 59%, and 70% in 2018²⁴, respectively. Despite this, the Commission finds that the Parties face competitive constraints from existing and potential competitors. This can be seen by QR's entry into the PEN-FRA/MUC/ZRH markets (via DOH) and its subsequent increase in passenger market share:
- (a) QR increased its market share in the PEN-FRA market from 3% (2015) to 11% (2018), while the Parties' combined market shares declined from 70% (2015) to 66% (2018).
 - (b) QR increased its market share in the PEN-MUC market from 10% (2015) to 17% (2018), while the Parties' combined market shares declined from 69% (2015) to 59% (2018).
 - (c) QR increased its market share in the PEN-ZRH market from 3% (2015) to 17% (2018), while the Parties' combined market shares declined from 89% (2015) to 79% (2018).
62. Similarly, there is evidence of competitive constraints from existing and potential competitors in the LGK-FRA market. In 2015 – 2018, the Parties faced competitive pressure from airlines such as EK, EY, and Oman Air (SAOG) ("WY"). For example, the Parties' combined market shares for LGK-FRA fell from 41% (2016) to 36% (2018), while EK, EY and WY's respective market shares increased between 7 – 12%.²⁵ QR will also provide co-terminal services connecting DOH and LGK through PEN from 15 October 2019 with an initial frequency of four (4) services weekly.²⁶ Additionally, by virtue of DE's KUL-FRA direct services and DE's interlining arrangement with MH, passengers now have an additional option of travelling between LGK and FRA via KUL.²⁷
63. Furthermore, there are low barriers to entry and expansion for scheduled air passenger services between Malaysia and the LH Markets in general. There are no constraints in term of air traffic rights and slot availability, especially for LGK and PEN. For example, the current aircraft movements per hour at LGK and PEN are three (3) and eight (8), respectively. This is well below their respective current capacities of 10 and 20 movements per hour. In addition, there are no barriers to entry in relation to direct

²⁴ AirportIS O&D Passenger Data.

²⁵ EK's market shares in 2016 and 2018 were 7% and 19%, respectively. EY's market shares in 2016 and 2018 were 1% and 11%, respectively. WY's market shares in 2016 and 2018 were 0% and 7%, respectively.

²⁶ For Northern Winter 2019/20, QR plans to operate five (5) services weekly.

²⁷ DE commenced direct KUL-FRA services in November 2018 with an average load factor of 87% for the period November 2018 – March 2019.

services between the LH Markets and Malaysia, particularly since DE's KUL-FRA services are the only direct services at present.

Relevant Indirect Routes

64. With respect to the Relevant Indirect Routes, it is observed that 89 out of 95 routes recorded low passenger volumes (see details in **Appendix V**). The remaining six (6) Relevant Indirect Routes recorded either low or moderate market concentration, and low delta HHI, as shown in Table 7.

Table 7: Passenger volume, post-JV HHI, and delta HHI for selected Relevant Indirect Routes

Route	Passenger Volume	Post-JV HHI	Delta HHI
KUL-BRU	22,868	0.1720	0.0002
KUL-GVA	17,078	0.1667	0.0019
KUL-VIE	17,043	0.1940	0.0041
KUL-HAM	8,634	0.2839	0.0036
KUL-HAJ	3,401	0.2512	0.0135
KUL-STR	3,201	0.2732	0.0217

Source: AirportIS

65. In any case, the Commission's observations on low barriers to entry and expansion in paragraph 63 also apply to the Relevant Indirect Routes.
66. In conclusion, based on the considerations mentioned above, the Commission finds no substantial detrimental effect on competition arising from the JV in relation to the Focal Routes and the Relevant Indirect Routes. Thus, the Commission is of the view that the significant benefits directly arising from the JV outweigh the detrimental effect of the JV on competition, fulfilling the requirements under paragraph 50(c) of Act 771.

Section 50(d) - The agreement does not allow the enterprise to eliminate competition completely in respect of a substantial part of the aviation services

67. The Commission agrees that the JV does not allow the enterprises to eliminate competition completely in respect of a substantial part of the scheduled air passenger services on the Focal Routes and the Relevant Indirect Routes.
68. As observed in paragraphs 58 – 66 above, the relevant markets have been competitive and are expected to continue to be competitive even after the JV, especially in light of the low barriers to entry and expansion.
69. In addition, the Commission notes that the overlapping services between the Applicants for services to and from Malaysia are limited as LH does not operate flights into or out of Malaysia. LH and OS also offer services to and from Malaysia via BKK under existing arrangements with TG, which will not be affected by the JV.

CONCLUSION

70. In conclusion, the Commission is satisfied that the JV as per the Application fulfils the requirements under section 50 of Act 771 to qualify for an individual exemption.
71. However, the Commission further notes LH's recent announcement in May 2019 on its bid to acquire DE through the submission of a non-binding offer, with the option of extending the bid to Thomas Cook's other airlines.²⁸ At the time of this Proposed Decision, the likelihood of the acquisition, as well as, its effect on the JV and DE's KUL-FRA direct services could not be determined by the Commission. In addition, the Commission also notes the possibility of [§]. The market conditions in relation to the relevant markets may change substantially in the event that any such development transpires in the near future.

THE COMMISSION'S PROPOSED DECISION

72. Based on the considerations stipulated above, the Commission concludes that the JV fulfils the requirements under section 50 of Act 771 and qualifies for an individual exemption.
73. The Commission hereby proposes to grant an individual exemption with respect to the JV from the prohibition under section 49 of Act 771. The individual exemption is effective for a period of three (3) years from the date of the Final Decision (2019 – 2022).
74. The Commission proposes that the individual exemption be made subject to the following conditions and obligations:
- (a) The Parties shall not operate under a common name.
 - (b) Where any material change is made to the JV or a Party to the JV, either Party shall file for variation or amendment of the individual exemption to MAVCOM within two weeks. A material change includes: a change in the scope of the JV; an addition of any new route or airline; and a cooperation arrangement or a merger with any airline that would affect the services in the relevant markets.
 - (c) The Parties shall provide any document or information as requested by the Commission in relation to the JV for monitoring purposes.

²⁸ Lufthansa Bids for Thomas Cook's German Airline Arm Condor, 7 May 2019, <https://www.bloomberg.com/news/articles/2019-05-07/lufthansa-bids-for-thomas-cook-s-german-airline-arm-condor>.

APPENDIX I
IATA AIRPORT CODES

APPENDIX I: AIRPORT CODES

Airport Code	Airport Name
Airports in the SQ Markets	
BKI	Kota Kinabalu International Airport
BKK	Suvarnabhumi Airport, Thailand
HKG	Hong Kong International Airport
IPH	Sultan Azlan Shah Airport (Ipoh)
KBR	Sultan Ismail Petra Airport (Kota Bharu)
KCH	Kuching International Airport
KUA	Sultan Ahmad Shah (Kuantan)
KUL	Kuala Lumpur International Airport
LGK	Langkawi International Airport
PEN	Penang International Airport
SIN	Changi Airport, Singapore
Airports in the LH Markets	
BRE	Bremen Airport, Germany
BRU	Brussels Airport, Belgium
CGN	Cologne Bonn Airport, Germany
DRS	Dresden International Airport, Germany
DUS	Dusseldorf Airport, Germany
FDH	Friedrichshafen Airport, Germany
FMO	Munster Osnabruck Airport, Germany
FRA	Frankfurt am Main Airport, Germany
GRZ	Graz Airport, Austria
GVA	Geneva Airport, Switzerland
HAJ	Hannover Airport, Germany
HAM	Hamburg Airport, Germany
INN	Innsbruck Airport, Austria
KLU	Klagenfurt Airport, Austria
LEJ	Leipzig/Halle Airport, Germany
LNZ	Linz Airport, Austria
LUG	Lugano Airport, Switzerland
MUC	Munich Airport, Germany
NUE	Nuremberg Airport, Germany
PAD	Paderborn Lippstadt Airport, Germany
STR	Stuttgart Airport, Germany
SXF	Berlin Schonefeld Airport, Germany
SZG	Salzburg Airport, Austria
TXL	Berlin Tegel Airport, Germany
VIE	Vienna International Airport, Austria
ZRH	Zurich Airport, Switzerland

APPENDIX II

**RELEVANT MARKETS: FOCAL ROUTES AND
RELEVANT INDIRECT ROUTES**

APPENDIX II: FOCAL ROUTES AND RELEVANT INDIRECT ROUTES

Focal Routes							
BKI-FRA	IPH-FRA	KBR-FRA	KCH-FRA	KUL-FRA	KUA-FRA	LGK-FRA	PEN-FRA
BKI-ZRH	IPH-ZRH	KBR-ZRH	KCH-ZRH	KUL-ZRH	KUA-ZRH	LGK-ZRH	PEN-ZRH
BKI-DUS	IPH-DUS	KBR-DUS	KCH-DUS	KUL-DUS	KUA-DUS	LGK-DUS	PEN-DUS
BKI-MUC	IPH-MUC	KBR-MUC	KCH-MUC	KUL-MUC	KUA-MUC	LGK-MUC	PEN-MUC
BKI-TXL	IPH-TXL	KBR-TXL	KCH-TXL	KUL-TXL	KUA-TXL	LGK-TXL	PEN-TXL

Source: Applicants' Submission

Relevant Indirect Routes						
BKI-BRE	KBR-BRU	KCH-BRE	KUA-BRE	KUL-BRE	LGK-BRE	PEN-BRE
BKI-BRU	KBR-CGN	KCH-BRU	KUA-BRU	KUL-BRU	LGK-BRU	PEN-BRU
BKI-CGN	KBR-GVA	KCH-CGN	KUA-FMO	KUL-CGN	LGK-CGN	PEN-CGN
BKI-DRS	KBR-HAJ	KCH-DRS	KUA-GRZ	KUL-DRS	LGK-DRS	PEN-DRS
BKI-GRZ	KBR-HAM	KCH-GVA	KUA-GVA	KUL-FDH	LGK-GRZ	PEN-FDH
BKI-GVA	KBR-VIE	KCH-HAJ	KUA-HAJ	KUL-FMO	LGK-GVA	PEN-FMO
BKI-HAJ		KCH-HAM	KUA-HAM	KUL-GRZ	LGK-HAJ	PEN-GRZ
BKI-HAM		KCH-LEJ	KUA-NUE	KUL-GVA	LGK-HAM	PEN-GVA
BKI-LEJ		KCH-NUE	KUA-STR	KUL-HAJ	LGK-INN	PEN-HAJ
BKI-LNZ		KCH-STR	KUA-VIE	KUL-HAM	LGK-LEJ	PEN-HAM
BKI-NUE		KCH-VIE		KUL-INN	LGK-NUE	PEN-INN
BKI-PAD				KUL-KLU	LGK-STR	PEN-KLU
BKI-STR				KUL-LEJ	LGK-SZG	PEN-LEJ
BKI-VIE				KUL-LNZ	LGK-VIE	PEN-LNZ
				KUL-LUG		PEN-NUE
				KUL-NUE		PEN-PAD
				KUL-PAD		PEN-STR
				KUL-STR		PEN-SZG
				KUL-SXF		PEN-VIE
				KUL-SZG		
				KUL-VIE		

Source: MAVCOM Analysis, AirportIS

APPENDIX III

**COMPARISON OF VIRTUAL NETWORKS PRE-JV
AND POST-JV**

APPENDIX III: COMPARISON OF VIRTUAL NETWORKS PRE-JV AND POST-JV

Pre-JV (between 1998 - 2015)		
	SQ/MI on LH/LX	LH/LX on SQ/MI
1	FRA-BRE	SIN-FRA
2	FRA-BRU	SIN-ZRH
3	ZRH-BRU	
4	FRA-DRS	
5	FRA-DUS	
6	FRA-GVA	
7	ZRH-GVA	
8	FRA-HAJ	
9	FRA-HAM	
10	FRA-LEJ	
11	ZRH-LUG	
12	FRA-MUC	
13	ZRH-MUC	
14	FRA-NUE	
15	FRA-STR	
16	FRA-TXL	
17	FRA-VIE	
18	ZRH-VIE	
19	FRA-SIN	

Post-JV (effective from April 2016)		
	SQ/MI on LH/LX	LH/LX on SQ/MI*
1	FRA-BRE	SIN-BKI
2	MUC-BRE	SIN-DUS
3	FRA-BRU	SIN-KUL
4	MUC-BRU	SIN-PEN
5	ZRH-BRU	SIN-FRA
6	MUC-CGN	SIN-MUC
7	FRA-DRS	SIN-ZRH
8	ZRH-DRS	
9	FRA-DUS	
10	MUC-DUS	
11	ZRH-DUS	
12	MUC-GRZ	
13	ZRH-GRZ	
14	FRA-GVA	
15	MUC-GVA	
16	ZRH-GVA	
17	FRA-HAJ	
18	MUC-HAJ	
19	ZRH-HAJ	
20	FRA-HAM	
21	MUC-HAM	
22	ZRH-HAM	
23	FRA-LEJ	
24	ZRH-LEJ	
25	FRA-LNZ	
26	ZRH-LUG	
27	FRA-MUC	
28	ZRH-MUC	
29	FRA-NUE	
30	MUC-NUE	
31	ZRH-NUE	

Post-JV (effective from April 2016)		
32	FRA-STR	
33	MUC-STR	
34	ZRH-STR	
35	FRA-TXL	
36	MUC-TXL	
37	ZRH-TXL	
38	FRA-VIE	
39	MUC-VIE	
40	ZRH-VIE	
41	MUC-ZRH	
42	FRA-SIN	
43	MUC-SIN	
44	ZRH-SIN	

* Codeshare between LX and MI launched in April 2018

Future developments	
	[✂]
1	[✂]
2	[✂]
3	[✂]
4	[✂]
5	[✂]
6	[✂]
7	[✂]

Source: Applicants' Submission

APPENDIX IV

PASSENGER VOLUME, POST-JV HHI, AND DELTA HHI FOR FOCAL ROUTES (SEPTEMBER 2017 – AUGUST 2018)

APPENDIX IV: PASSENGER VOLUME, POST-JV HHI AND DELTA HHI FOR FOCAL ROUTES

Route	Passenger Volume	Post-JV HHI	Delta HHI
KUL-FRA	54,542	0.1204	0.0103
KUL-ZRH	36,529	0.1548	0.0172
KUL-MUC	35,356	0.1461	0.0023
KUL-TXL	16,089	0.3119	0.0040
KUL-DUS	15,206	0.1855	0.0041
PEN-FRA*	9,195	0.3988	0.1527
LGK-FRA*	7,773	0.6580	0.2828
PEN-MUC*	7,623	0.3823	0.1110
PEN-ZRH*	6,009	0.5148	0.2171
LGK-ZRH	2,499	0.7222	0.3500
IPH-FRA	2,444	0.2182	0.0387
KCH-FRA	1,982	0.3699	0.0655
BKI-FRA	1,939	0.1968	0.0461
PEN-TXL	1,589	0.3352	0.1937
BKI-ZRH	1,549	0.4425	0.1204
PEN-DUS	1,214	0.5475	0.1731
LGK-MUC	1,118	0.2561	0.0027
KUA-FRA	880	0.2146	0.0673
LGK-DUS	761	0.4227	0.0000
KCH-ZRH	674	0.5704	0.1045
KCH-MUC	524	0.2854	0.0256
BKI-TXL	454	0.2154	0.0084
LGK-TXL	435	0.5086	0.0000
BKI-MUC	421	0.1985	0.0219
KUA-ZRH	365	0.2891	0.0879
KCH-DUS	260	0.2646	0.0244
BKI-DUS	234	0.3375	0.0275
KCH-TXL	229	0.1854	0.0037
KUA-DUS	125	0.3166	0.0038

Route	Passenger Volume	Post-JV HHI	Delta HHI
KUA-MUC	112	0.2077	0.0062
KBR-ZRH	77	0.5999	0.0067
KBR-FRA	72	0.1790	0.0008
IPH-ZRH	22	0.6860	0.1322
IPH-MUC	12	0.4861	0.2917
IPH-DUS	-	-	-
IPH-TXL	-	-	-
KBR-DUS	-	-	-
KBR-MUC	-	-	-
KBR-TXL	-	-	-
KUA-TXL	-	-	-

Source: MAVCOM Analysis, Applicants' Submission
 *Route selected for further analysis

APPENDIX V

**PASSENGER VOLUME FOR RELEVANT INDIRECT
ROUTES (SEPTEMBER 2017 – AUGUST 2018)**

APPENDIX V: PASSENGER VOLUME FOR RELEVANT INDIRECT ROUTES

Relevant Indirect Route	Passenger Volume	Relevant Indirect Route	Passenger Volume
KUL-BRU	22,868	KUA-HAJ	54
KUL-GVA	17,078	KUA-GVA	47
KUL-VIE	17,043	KBR-GVA	46
KUL-HAM	8,634	BKI-DRS	46
KUL-HAJ	3,401	KUL-PAD	39
KUL-STR	3,201	BKI-HAJ	38
KUL-NUE	1,828	PEN-INN	38
PEN-VIE	1,796	PEN-FMO	38
PEN-BRU	1,126	KCH-DRS	35
KUL-BRE	1,094	LGK-LEJ	33
KUL-CGN	1,031	LGK-STR	33
PEN-STR	859	LGK-DRS	26
PEN-HAJ	792	KCH-NUE	26
PEN-DRS	752	LGK-HAJ	25
KUL-DRS	749	BKI-CGN	23
PEN-GVA	597	KCH-HAJ	21
KUL-LEJ	579	KUA-VIE	20
PEN-HAM	516	KCH-STR	16
KUL-SZG	462	PEN-KLU	16
KUL-GRZ	353	BKI-LEJ	15
BKI-BRU	348	KBR-BRU	14
KCH-BRU	345	KCH-LEJ	12
LGK-HAM	316	PEN-PAD	11
LGK-BRU	255	LGK-BRE	11
LGK-VIE	239	LGK-CGN	10
KUL-INN	221	PEN-LNZ	10
BKI-HAM	197	KUL-SXF	10
BKI-VIE	190	BKI-NUE	9
BKI-GVA	187	BKI-LNZ	8
PEN-GRZ	159	KUL-LUG	8
KUA-BRU	148	KCH-BRE	7
KCH-VIE	137	KUA-BRE	7

Relevant Indirect Route	Passenger Volume	Relevant Indirect Route	Passenger Volume
LGK-GVA	132	BKI-GRZ	7
KUL-FMO	116	BKI-BRE	6
PEN-NUE	107	KBR-VIE	6
KUL-LNZ	107	PEN-FDH	5
KUA-HAM	100	LGK-NUE	4
KUL-KLU	98	LGK-GRZ	4
KCH-GVA	76	KBR-CGN	3
PEN-LEJ	73	KUA-GRZ	3
KUA-STR	65	LGK-INN	3
KCH-HAM	65	KCH-CGN	3
PEN-BRE	63	KUA-NUE	3
PEN-SZG	62	BKI-PAD	2
BKI-STR	61	KUA-FMO	2
KUL-FDH	59	KBR-HAJ	1
PEN-CGN	59	LGK-SZG	1

Source: AirportIS