



**Malaysian  
Aviation Commission**  
*Suruhanjaya Penerbangan Malaysia*

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Case number: MAVCOM/ED/CC/DIV2/2022(4)

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

**Decision by the Malaysian Aviation Commission on an Application for Individual  
Exemption under Section 51 of the Malaysian Aviation Commission Act 2015 by  
Malaysia Airlines Berhad and Japan Airlines Co. Ltd.**

**2 May 2023**

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## **Summary of the Decision:**

1. Malaysia Airlines Berhad and Japan Airlines Co. Ltd. have applied to renew the individual exemption for their joint business. The joint business between the two airlines falls within the scope of section 49 of the Malaysian Aviation Commission Act 2015 [Act 771]. The joint business is a metal neutral partnership which involves, amongst others, revenue sharing, schedule coordination, capacity management, performance monitoring, revenue planning, product development and alignment, quality control, cost synergies, joint sales and organisation, pricing, inventory management, and frequent flyer arrangement, with respect to scheduled air passenger services between Malaysia and Japan.
2. Upon assessing the joint business, and by virtue of sections 50 and 51 of Act 771, the Commission proposes to grant an individual exemption to the joint business from the prohibition under section 49 of Act 771 for a period of five (5) years from 2 May 2023 to 1 May 2028.

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## 1.0 BACKGROUND

1. Malaysia Airlines Berhad (“**MH**”) (also referred to as the “**Applicant**”) had submitted an application (“**Application**”) to the Malaysian Aviation Commission (“**Commission**”) to renew the individual exemption granted to the joint business (“**JB**”) between MH and Japan Airlines Co. Ltd. (“**JL**”) (collectively referred to as the “**Parties**”) pursuant to section 51 of the Malaysian Aviation Commission Act 2015 [Act 771]. The JB entered into by the Parties via an Alliance Agreement, a Joint Business Agreement (“**JBA**”), and a Revenue Sharing Agreement (collectively referred to as the “**Definitive Agreements**”), which were collectively entered into on 1 April 2020, falls within the scope of section 49 of Act 771. The Application was submitted by MH, with the consent of JL, for the benefit of both Parties. The Commission received the complete Application on 18 May 2022.
2. On 2 June 2022, the Commission published a summary of the Application on its website for public consultation for a period of one (1) month. The Commission did not receive any feedback during the consultation period.
3. The Commission had previously granted an individual exemption to the Parties’ Definitive Agreements on 9 December 2019, for a period of three (3) years, which had expired on 8 December 2022.<sup>1</sup> Pursuant to the individual exemption granted by the Commission, the Parties implemented the JB during the COVID-19 pandemic in July 2020 through the operation of services between Kuala Lumpur and Tokyo. It is, however, noted that some components of the JB have not been able to be implemented due to the COVID-19 pandemic, which will be further elaborated in paragraph 16 below.
4. The Commission had issued its Proposed Decision on the Application on 9 March 2023, which proposed to renew the individual exemption for a five (5) year period. The Commission thereafter published the Proposed Decision on its website on 27 March 2023 for public consultation for a period of two (2) weeks. The Commission did not receive any feedback on the Proposed Decision.
5. This Decision is made upon taking full consideration of the Application and the Commission’s findings and analysis.
6. This Decision refers to airports and airlines according to the airport and airline codes as defined by the International Air Transport Association (“**IATA**”). The IATA airport and airline codes used are provided in **Appendix I**.

## 2.0 OVERVIEW OF THE PARTIES TO THE JB

7. The JB is governed by the Definitive Agreements entered by the Parties. While MH and JL are the only signatories to the Definitive Agreements, the Definitive Agreements also cover the services operated by JL’s affiliate, namely J-Air Co. Ltd. (“**J-Air**”), which carries the same IATA code as JL. For the purposes of this Decision, reference to “Parties” shall be taken to include J-Air, unless otherwise stated. The Definitive Agreements do not

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<sup>1</sup> The Commission’s Decision on an Application for Individual Exemption under Section 51 of Act 771 by MH dated 9 December 2019, available at <https://www.mavcom.my/wp-content/uploads/2020/10/MH-JL-Final-Decision-09122019-redacted.pdf>.

apply to MH's affiliates or sister companies. The Commission does note that while the Application had provided [REDACTED], the individual exemption shall cover only the Parties of the Definitive Agreements, i.e., MH, JL, and J-Air, as per the Application. [REDACTED].

## **2.1 Background on MH**

8. MH is a Malaysian-registered airline, which is principally engaged in the business of air transportation and the provision of related services. MH is a wholly-owned subsidiary of Malaysia Aviation Group Berhad, which in turn is a wholly-owned subsidiary of Khazanah Nasional Berhad.

9. MH's annual turnover was [REDACTED] for the Financial Year ending 31 December 2021.<sup>2</sup>

## **2.2 Background on JL**

10. JL is an enterprise engaged in the provision of scheduled and non-scheduled air transport services, aerial work services, and other related businesses. JL is listed on the First Section of the Tokyo Stock Exchange. JL's affiliate, J-Air, operates some of JL's domestic services using the same IATA code as JL.

11. JL's annual group-wide turnover was RM11.8 billion for the Financial Year ending 31 March 2021.<sup>3</sup>

## **3.0 THE DEFINITIVE AGREEMENTS**

### **3.1 Purpose and Scope of the Definitive Agreements**

12. The JB, via the Definitive Agreements, is a horizontal agreement involving deep cooperation between the Parties, with the objective to achieve incentives that would arise out of metal neutrality. Under the JB, the Parties seek to enhance their scheduled air passenger services on routes between Malaysia and Japan.

13. During the current recovery period of the COVID-19 pandemic, the JB aims to increase the likelihood of an expedited and more sustainable reinstatement of capacity. The JB plans to retrieve and improve the connectivity between Malaysia and Japan, through the Parties' complementary networks.

### **3.2 Status of the Definitive Agreements**

14. The Parties had entered into the JB via the Definitive Agreements on 1 April 2020. The JB had been signed by the Parties for a minimum term of [REDACTED] years and [REDACTED].

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<sup>2</sup> The reported amount in MH's 2021 Financial Statement Report at [REDACTED].

<sup>3</sup> Using the JPY:MYR exchange rate of 1:3.0870 on Bank Negara Malaysia's website (<https://www.bnm.gov.my/exchange-rates>) as of 31 March 2021. The reported amount in JL's 2021 Annual Report was in Japanese Yen at JP¥682.7 billion.

15. Since the start of the implementation of the JB in July 2020, the Parties were only able to operate the route between Kuala Lumpur and Tokyo due to the worldwide border closures during the COVID-19 pandemic. In March 2022, the Parties had resumed operations on the route between Kuala Lumpur and Osaka.
16. The Commission notes that since the start of implementation of the JB, [REDACTED]. Other components of the JB, such as joint pricing and schedule coordination had been implemented since the start of the JB.
17. The Commission notes that the Parties had obtained an antitrust immunity from the Civil Aviation Bureau of the Ministry of Land, Infrastructure, Transport and Tourism of Japan (“MLIT”). The MLIT issued a certificate of approval on 6 September 2019, granting authorisation of the Parties’ Definitive Agreements. The Commission notes that the Parties are required to re-submit the Definitive Agreements to the MLIT within five (5) years after the approval date.

### 3.3 Salient Provisions of the Definitive Agreements

18. Under the JBA, the Parties cooperate in the following matters:
  - (a) **Revenue sharing.** [REDACTED].
  - (b) **Schedule coordination.** [REDACTED].
  - (c) **Capacity management.** [REDACTED].
  - (d) **Performance monitoring.** [REDACTED].
  - (e) **Revenue planning.** [REDACTED].
  - (f) **Product development and alignment.** [REDACTED].
  - (g) **Quality control.** [REDACTED].
  - (h) **Cost synergies.** [REDACTED].
  - (i) **Sales.** [REDACTED].
  - (j) **Sales organisation.** [REDACTED].
  - (k) **Pricing.** [REDACTED].
  - (l) **Inventory management.** [REDACTED].
  - (m) **Frequent Flyer Programmes (“FFP”).** [REDACTED].

19. The Definitive Agreements also contain certain exclusivity terms which [✂]. It is noted that the Parties do not have existing codeshares with other airlines that fall under the scope of the JB.

#### **4.0 PROHIBITION ON ANTI-COMPETITIVE AGREEMENT**

##### **4.1 Legal Framework**

20. 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.

21. Subsection 49(2) of Act 771 further provides as follows:

*“(2) 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.”*

22. An agreement may be exempted from the prohibition in section 49 of Act 771 subject to the conditions under section 50 of Act 771 being satisfied. Section 50 of Act 771 provides that an enterprise applying under subsection 51(1) of Act 771 must show the following:

- (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.

#### **4.2 The Applicant's Submission**

23. The Applicant submitted that the JB is not likely to have the effect of significantly preventing, restricting, or distorting competition within the relevant markets in Malaysia and that the requirements for relief of liability in section 50 of Act 771 are satisfied.

#### **4.3 The Commission's Analysis**

24. The Commission is of the view that the JB via the Definitive Agreements falls within the definition of an agreement prohibited under section 49 of Act 771 as it is an agreement which aims to share revenues, costs, and profits and to coordinate the Parties' marketing and network plans, all while the Parties remain as separate entities. Given that the Definitive Agreements constitute a horizontal agreement involving cooperation in the areas mentioned in paragraph 18, the JB is concluded to have the object of significantly preventing, restricting, or distorting competition in the relevant aviation service market by virtue of subsection 49(2) of Act 771.

### **5.0 DEFINING THE RELEVANT MARKET**

#### **5.1 Legal Framework**

25. Section 47 of Act 771 defines an "aviation service market" as "a market for aviation services in Malaysia or in any part of Malaysia". The Commission's Guidelines on Aviation Service Market Definition ("**Market Definition Guidelines**") provide that a service market could include a group of services which are substitutable or competitive with one another.<sup>4</sup>
26. The Market Definition Guidelines further state that the identification of the relevant market should generally consider two dimensions of the market—the service market and the geographical market.<sup>5</sup> Defining the relevant market depends on the facts of each case.

#### **5.2 The Applicant's Submission**

##### **Focal aviation services**

27. The Applicant submitted that the JB scope will remain unchanged from the initial Individual Exemption granted by the Commission on 9 December 2019. The Applicant

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<sup>4</sup> Paragraph 2.1 of the Market Definition Guidelines, GL/Competition/ASMD/2018 (19 January 2018).

<sup>5</sup> Paragraph 3.1 of the Market Definition Guidelines.

submitted that the focal aviation services are the provision of scheduled air passenger services.<sup>6</sup>

### O&D city-pairs

28. The Applicant submitted that demand-side substitution should be considered, rather than supply-side substitution, in accordance with the approach taken by the Commission in its previous individual exemption decisions. As such, the Applicant submitted that the market is defined as the origin and destination (“O&D”) city-pair. Thus, the focal aviation services of the JB are scheduled air passenger services between Malaysia and Japan.
29. In relation to airport substitutability, the Applicant submitted that Narita International Airport (“NRT”) and Haneda Airport (“HND”) are in the same market as they are within the same catchment area and should be considered as substitutable for passengers going to Tokyo. In response to the Commission’s request for further information, the Parties also submitted that Kansai International Airport (“KIX”) and Osaka (Itami) International Airport (“ITM”) should be within the same market as they serve the same city, Osaka. Additionally, the Applicant submitted that travel operators consider NRT and HND as substitutable airports for Tokyo, and KIX and ITM as substitutable airports for Osaka due to the way the airports are displayed as options when searching for flights to either city.
30. As such, the Applicant submitted that the KUL–NRT and KUL–HND routes should be seen collectively as the Kuala Lumpur – Tokyo city pair, while the KUL–KIX and KUL–ITM routes should be seen collectively as the Kuala Lumpur – Osaka city-pair, in relation to the JB.
31. The Applicant submitted that the scope of the JB includes:
  - (a) non-stop services, for both current and possible future services, operated by at least one of the Parties between Malaysia and Japan (“**Direct Routes**”); and
  - (b) routes within Malaysia or Japan connecting to or from the Direct Routes.
32. The Applicant further submitted that the focus of the analysis should be on the Direct Routes as these routes are where the Parties have the greatest overlap. Direct Routes are O&D city-pairs where at least one of the Parties operates a direct service between Malaysia and Japan, namely:
  - (a) Kuala Lumpur – Tokyo, where the KUL–NRT and KUL–HND routes are operated directly by the Parties;
  - (b) Kuala Lumpur – Osaka, where the KUL–KIX route is operated directly by MH; and
  - (c) Kota Kinabalu – Tokyo, where the BKI–NRT route is operated directly by MH.

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<sup>6</sup> The Alliance Agreement provides that [redacted].

## Direct and indirect services

33. The Applicant submitted that the market definition should take into consideration the direct and indirect services provided by other airlines, given the distance between Malaysia and Japan.
34. The Applicant noted that, prior to the pandemic, other than the Parties, AirAsia X Berhad (“D7”), All Nippon Airways Co., Ltd. (“NH”), and Malindo Airways Sdn Bhd (“OD”) also provided direct services between Malaysia and Japan. The Applicant submitted that it is likely that these direct carriers will resume their operations and serve as substitutable services to one another after the travel restrictions between Malaysia and Japan are lifted. **Table 1** below shows the flight frequencies of the five (5) airlines serving direct flights between Malaysia and Japan as submitted by the Applicant.

**Table 1: Airlines Serving Direct Flights between Malaysia and Japan**

Route	Airline	Flight Frequency per Week	
		March 2019	Expected Frequency in October 2022 as submitted by the Parties on 18 May 2022
KUL–NRT	MH	12	12
	JL	7	7
	NH	7	3
KUL–HND	D7	7	
	NH	7	7
KUL–KIX	MH	7	7
	D7	7	
BKI–NRT	MH	2	2
KUL–CTS	OD	3	3
	D7	4	4
KUL–FUK	D7	4	

Source: Applicant’s submission

Note: The October 2022 frequency refers to the expected frequency on the direct routes between Malaysia and Japan as submitted by the Applicant on 18 May 2022. The Parties’ planned frequency on the KUL–NRT route did not take into consideration MH’s approval to operate on the KUL–HND route, which MH had subsequently started operating in August 2022.

35. With regard to indirect services, the Applicant submitted that the level of substitutability of indirect flights depends on several key factors including:
- fare attractiveness between indirect and direct carriers;
  - day and time of departure suiting customers’ schedule;
  - number of frequencies of direct carriers versus indirect carriers;
  - comparable products and services offered;
  - loyalty/FFP; and
  - duration of the journey.

36. The Applicant submitted that customers would view indirect flights, such as those operated by Singapore Airlines Limited (“**SQ**”), Thai Airways International Public Co. Ltd. (“**TG**”), and Cathay Pacific Airways Limited (“**CX**”) as substitutes to direct flights offered by the Parties. These airlines offer indirect flights between Malaysia and Japan through other Asian hubs, such as SQ via Changi Airport, Singapore (“**SIN**”), TG via Suvarnabhumi Airport, Bangkok (“**BKK**”), and CX via Hong Kong International Airport (“**HKG**”). The Applicant submitted that the increase in elapsed time of these indirect flights was within a reasonable time, which was by less than 150 minutes compared to the Parties’ direct services. The Applicant expects that the future elapsed time of the indirect services between Malaysia and Japan will return to the pre-pandemic elapsed time once the traffic has returned, as airlines will progressively revert to their pre-pandemic frequencies.
37. With regard to O&D services within the Malaysia – Japan market that are not operated directly by the Parties—such as PEN–Tokyo and KUL–NGO (Nagoya)—the Applicant submitted that most airlines offer at least one-stop services and, thus, the competitive pressure of other direct or indirect airlines is higher for the Parties. The Applicant had provided its submission on the Parties’ elapsed time, as well as the elapsed time of its competitors, to show the substitutability of services by other airlines between Malaysia and Japan. The Parties’ submission will be further discussed in paragraphs 51 and 52 below.

#### **Substitutability of other forms of transport**

38. The Applicant submitted that other modes of transportation are not appropriate substitutes to air passenger services as they are not comparable in terms of speed and convenience for air travel. The Applicant, therefore, submitted that travel by sea, land, or rail would not impose any significant constraints on the focal aviation services under the JB.

#### **Business and leisure travellers**

39. The Applicant submitted that due to the nature of the market, the demand for air travel between Malaysia and Japan is constituted by a mix of business and leisure travellers, and all carriers try to attract both segments of customers. As such, the Applicant submitted that it is not necessary to consider separate markets for business and leisure travel.

### **5.3 The Commission’s Analysis**

#### **Focal aviation services**

40. For the purpose of this assessment, the Commission accepts that the focal aviation service is the scheduled air passenger services.

## O&D city-pairs

41. With regard to Section 47 of Act 771, the Commission notes that passengers for air transport services generally travel to a specific destination for a reason and are not likely to switch to another destination when faced with a small but significant, non-transitory increase in price. In line with the Commission's previous decisions, including the Commission's decision granting an individual exemption to the Parties' JB dated 9 December 2019 ("**2019 MH-JL Decision**"), the geographical market is defined by O&D city-pairs between Malaysia and Japan.
42. With regard to the assessment of airport substitutability, the Commission considered the following factors:
  - (a) the catchment area of each airport;
  - (b) the connectivity between potentially substitutable airports;
  - (c) the scheduling and frequency of flights; and
  - (d) the convenience and quality of airport services.
43. Based on the factors in paragraph 42, the Commission considers Kuala Lumpur International Airport ("**KUL**") and Sultan Abdul Aziz Shah Airport ("**SZB**") (collectively referred to as "**Kuala Lumpur**") to be substitutable and belonging in the same market given that they are within the same catchment area. This was also based on the Commission's past analysis<sup>7</sup>, which had found that KUL and SZB are, to a large extent, substitutable airports serving Kuala Lumpur.
44. In relation to the substitutability of airports in Tokyo and in line with the Commission's previous findings in the 2019 MH-JL Decision, the Commission regards NRT and HND to be within the same market for the purpose of this assessment.
45. With regard to Osaka, the Commission also agrees with the Applicant that KIX and ITM are regarded as substitutable airports. The Commission notes that KIX and ITM are within the same catchment area, where the distance between the two airports is approximately 44km. However, the Commission also noted that the passenger contribution to and from ITM constitutes 2% of the market between Malaysia and Osaka and 0.5% of the entire Malaysia – Japan market. This is due to the absence of direct flights between Malaysia and ITM, as compared to KIX, which has a few airlines providing direct services. The Commission, however, notes that while KIX is a better-connected airport, ITM is also an international airport and is in fact, closer to the city of Osaka. Hence, the Commission considers KIX and ITM as substitutable airports within the same market.

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<sup>7</sup> Individual Exemption Application by MH and SQ which was closed on 20 July 2020.

## **Business and leisure travellers**

46. The Commission agrees with the Applicant that it is not necessary to distinguish between business and leisure travellers for the purpose of this assessment due to the following reasons:
- (a) There is a possibility that passengers whose purpose of the journey is business do not travel in business class. Despite their time-sensitivity, corporate travellers may seek lower prices—given the current economic condition post-COVID and the possibility of a global recession—and fly in restricted economy class; and
  - (b) From a supply-side perspective, the Parties and their competitors—which include both full-service carriers (“**FSC**”) and low-cost carriers (“**LCC**”)—carry both business and leisure passengers between Malaysia and Japan. Airlines rarely segregate their operations and do not offer a flight only for business or leisure passengers.

## **Time-sensitive and non-time-sensitive passengers**

47. For the purpose of the Application, the Commission also considered a distinction between time-sensitive (“**TS**”) and non-time-sensitive (“**NTS**”) passengers. TS passengers normally buy unrestricted tickets and fly with airlines offering a high number of frequencies as compared to the NTS passengers who are more price-sensitive and willing to accept longer travelling time. The Commission adopted the European Commission’s approach, in which passengers in the First, Business, and Premium Economy classes were considered as TS passengers, while passengers in Discount Economy (or Restricted Economy) were considered as NTS passengers.
48. The Commission found that the question of whether TS passengers and NTS passengers belong to the same market can be left open as the outcome of the Commission’s competition assessment would not change under either market definition. Further details of the Commission’s findings in relation to the TS and NTS passengers in the different markets are further detailed in the Commission’s analysis on relief of liability below.

## **Direct and indirect services**

49. The Commission also adopted its findings in its previous decisions in relation to the substitutability of direct and indirect services, in which the Commission had found that indirect services are substitutable to the direct services where the services are long-haul flights (generally above 6 hours), as in the present case. Further explanation of this aspect of the service market can be viewed in the Commission’s 2019 MH-JL Decision, the Decision for the Individual Exemption Application by All Nippon Airways Co., Ltd. and United Airlines, Inc.<sup>8</sup>, and the Decision for the Individual Exemption Application by Singapore Airlines Limited and Deutsche Lufthansa AG.<sup>9</sup>

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<sup>8</sup> Decision dated 11 May 2017.

<sup>9</sup> Decision dated 3 September 2019.

50. The Commission considers that for long-haul routes, indirect flights provide a competitive constraint to direct flights, especially in conditions where the price of indirect flights is comparable, the share of indirect flights in the overall market is significant, the indirect flights only result in a limited increase of travelling time, and the indirect flights that are marketed as connecting or interlining flights are offered on a daily basis.
51. In relation to the elapsed time, the Commission had analysed the Applicant's submission on the substitutability of services by other airlines between Malaysia and Japan as shown in **Table 2** below. The Commission noted that the elapsed time of indirect flights in October 2022 was during the recovery period and would not provide a reliable comparison, as the number of flight frequencies has yet to reach pre-pandemic levels. As such, the Commission referred to the elapsed time in February 2019, which may better reflect the market conditions post-pandemic.

**Table 2: Elapsed Time and Substitutability of Direct and Indirect flights for Selected Routes between Malaysia and Japan**

Route	Airline	Service	Elapsed Time Feb 2019	Difference in Elapsed Time*	Elapsed Time Oct 2022
KUL-NRT	MH/JL	Direct	6h 40m		7h 05m
	SQ	Indirect	8h 30m	+ 1h 50m	10h 20m
	TG	Indirect	9h 25m	+ 2h 45m	13h 25m
	CX	Indirect	9h 25m	+ 2h 45m	9h 25m
KUL-HND	D7	Direct	6h 50m		6h 50m
	SQ	Indirect	8h 45m	+ 1h 55m	9h 40m
	TG	Indirect	8h 50m	+ 2h 00m	11h 05m
	CX	Indirect	9h 25m	+ 1h 35m	10h 25m
KUL-KIX	MH	Direct	6h 00m		6h 00m
	D7	Direct	6h 25m	+ 25m	6h 25m
	SQ	Indirect	8h 25m	+ 2h 25m	9h 25m
	TG	Indirect	8h 20m	+ 2h 20m	12h 45m
	CX	Indirect	9h 30m	+ 3h 30m	11h 15m
PEN-Tokyo	MH	Indirect via KUL	9h 50m		9h 25m
	JL	Indirect via KUL	9h 10m		9h 25m
	SQ	Indirect	9h 15m	+ 5m	9h 15m
	TG	Indirect	8h 55m	- 15m	13h 25m
	CX	Indirect	11h 40m	+ 2h 30m	11h 40m
KUL-NGO	MH/JL	Indirect via NRT	11h 05m		11h 05m
	SQ	Indirect	9h 55m	- 1h 10m	9h 45m
	TG	Indirect	9h 05m	- 1h 35m	12h 25m
	CX	Indirect	10h 00m	- 1h 40m	9h 55m

Source: Commission's analysis, Applicant's submission

Note: \*Difference in elapsed time is derived from the comparison of the elapsed time of other airlines with the Parties' elapsed time, except for the KUL-HND route, which is compared to D7's elapsed time due to the absence of the Parties.

52. The Commission found that the difference in the elapsed time between the Parties and their competitors on selected routes with direct services ranged between 25 minutes to 3 hours and 30 minutes. Nonetheless, the Commission views that despite the differences in elapsed time, indirect services are likely to be considered substitutable to direct

services offered by the Parties especially if the fares are more attractive. Further, the Commission finds that for this assessment, such differentiation in terms of elapsed time is irrelevant to its findings.

### **Substitutability of other forms of transport**

53. For the purpose of the Application, the Commission did not find any other mode of transport to be substitutable with air passenger services between Malaysia and Japan. Due to the distance between Malaysia and Japan and given the long-haul nature of the services under the JB, the Commission found that there are no other comparable forms of transport to the scheduled air passenger services in terms of price, quality, and elapsed time.

### **5.4 Conclusion**

54. Based on the above considerations, the Commission concludes that the relevant markets are therefore the scheduled air passenger services on O&D city-pairs between Malaysia and Japan, including both the direct and indirect services (“**Relevant Markets**”).
55. While the Applicant submitted that this assessment should only focus on the Direct Routes, the Commission views that each market—including routes where the Parties offer only indirect services—can and should be assessed separately.
56. While the Commission finds that each of the above O&D routes could form separate Relevant Markets, it is not necessary to carry out an in-depth assessment of each O&D route that falls under the scope of the JB, as some of these O&D routes have very little traffic, or the Parties have very small market shares in them. The Commission, therefore, had refined the scope of its analysis to focus only on Relevant Markets that would be more materially impacted by the JB. O&D routes that are only minimally impacted by the JB have not been included in the Commission’s full analysis. The Commission’s findings on the number of O&D routes falling under the scope of the JB and how the Commission carried out the exercise of refining the scope of analysis will be further explained in paragraph 82 below.
57. With regard to the other aspects of defining the relevant market, the Commission considers that the scheduled air passenger services provided by both FSCs and LCCs are substitutable considering that the nature of the Malaysia – Japan market is a mix of business and leisure travellers. The conclusion on whether TS passengers and NTS passengers belong to the same market is left open as the outcome of the Commission’s competition assessment would not change under either market definition. Similarly, the Commission finds that it is not necessary to distinguish between direct and indirect services as it would not change the outcome of the Commission’s decision.



## 6.0 RELIEF OF LIABILITY

### 6.1 Legal Framework

58. An agreement prohibited under section 49 of Act 771 may be granted an individual exemption by the Commission if such an agreement fulfills all of the requirements under section 50 of Act 771, as follows:

- (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.

59. The Commission's Guidelines on Anti-Competitive Agreements further provide that, in claiming any benefits under subparagraph 50(a) of Act 771, the applicant shall identify and provide evidence on the nature of the benefits and that claims of benefits that are unsubstantiated would be rejected.<sup>10</sup>

### 6.2 The Applicant's Submission

#### ***Subparagraph 50(a) – Significant identifiable technological, efficiency, or social benefits directly arising from the agreement***

60. The Applicant submitted that the JB via the Definitive Agreements has and will continue to give rise to significant benefits to the travelling public and that contemporaneous benefits will accrue to the Malaysian economy. The Applicant submitted that these benefits are only achievable through the Parties' integrated cooperation under the JB. In particular, the Applicant submitted that the following benefits have arisen as a result of the JB:

- (a) Increased capacity;
  - (i) The Applicant submitted that prior to the pandemic, MH used to operate 12 flights a week on the KUL–NRT route. Since the beginning of the pandemic in March 2020, border restrictions and the absence of demand had drastically reduced the Parties' operations, where MH and JL only operated three (3) weekly flights on the KUL–NRT route. However, as a

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<sup>10</sup> Paragraph 3.4 of the Commission's Guidelines on Anti-Competitive Agreements, GL/Competition/ACA/2018 (19 January 2018).

result of the JB, the Parties expect a faster resumption of their flight frequencies up to the pre-pandemic level.

- (ii) The Applicant submitted that the Parties launched the JB during the COVID-19 pandemic in July 2020, where they were able to operate direct flights on the KUL–NRT route. The Parties resumed operations on the KUL–KIX route in March 2022, with a minimal frequency of one (1) to two (2) flights per week. Since then, the Parties increased their capacity in line with the gradual relaxation of the Japanese border restrictions. The Parties’ frequency on the KUL–NRT route increased to seven (7) weekly flights each in November 2022, while their frequency on the KUL–KIX route increased to seven (7) weekly flights since January 2023.
- (iii) The Applicant submitted that due to the implementation of the JB, MH was able to launch the KUL–HND route in August 2022 with two (2) weekly flights. The Applicant plans to [REDACTED]. The Applicant submitted that the JB will play a major role in re-instating its frequency in the Kuala Lumpur – Tokyo market [REDACTED].
- (iv) For the KUL–KIX and BKI–NRT routes, the Applicant submitted that [REDACTED]. As at the date of the Applicant’s submission, the Parties submit that with the support of the JB, the Parties plan to [REDACTED].
- (v) **Table 3** below shows the Parties’ planned weekly seat capacities from October 2022 until 2027 for selected routes between Malaysia and Japan.

**Table 3: Parties’ Planned Weekly Seat Capacities, 2022 – 2027**

Routes	Parties	Oct-22	Nov-22	Dec-22	2023	2024	2025	2026	2027
KUL–NRT	MH	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	JL	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
KUL–HND	MH	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
KUL–KIX	MH	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
BKI–NRT	MH	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: Applicant’s submission

Note: The cells shaded in green indicate an increase in the Parties’ weekly seat capacities.

- (vi) The Applicant submitted that in the long term, and depending on the competitive market environment, passenger demand, and fleet availability, expansion to routes like [REDACTED], operated by either MH or JL is potentially feasible. The Parties may also consider [REDACTED]. The Applicant submitted that the JB will allow the Parties to operate these routes with minimal risks as both Parties will be incentivised to sell the flights. Without the JB, such expansion would not be considered due to financial risks. The Applicant further submitted that the increase in additional destinations will be of benefit to customers who will have more options to fly.

- (vii) The Applicant noted that the inbound demand to Japan has spiked since the Japanese Government removed some of the major COVID-19 entry restrictions on 11 October 2022 and the Parties intend to attract this existing demand for travel to Japan. The Applicant noted that the depreciation of the Japanese Yen has made travelling to Japan more attractive for overseas visitors. The Applicant further submitted that this spike in travel is driven by the Malaysian market, which used to represent less than [redacted] of the passengers between January and September 2022, while it represents [redacted] for the last quarter of 2022. It is also driven by other international markets connecting in KUL from South Asian, Southeast Asian, or Australian markets.
- (viii) The Applicant submitted that it has fleet agility, where it changed its aircraft on the Malaysia – Japan routes to operate the most premium aircraft, which is the A350. The Applicant aims to offer attractive products to secure as much revenue as possible. The Applicant also ensured an [redacted]. As a result, the Applicant submitted that it has been able to grow its frequencies to Japan as soon as the borders re-opened in October 2022. Similarly, in order to adjust to the demand, [redacted].
- (b) Improved scheduling;
- (i) The Applicant submitted that the Parties will continue to spread out their flights to offer days of operation and timings, which match customer demand, both for point-to-point passengers and connecting ones. The Applicant submitted that the timing for its recently launched services on the KUL–HND route complements the Parties’ timing on the KUL–NRT route. **Table 4** below shows the Parties’ flight schedule from September to December 2022 for the KUL–NRT and KUL–HND routes as submitted by the Applicant.

**Table 4: Parties’ Flight Schedules for the Kuala Lumpur – Tokyo Market, September – December 2022**

Route		KUL–NRT		KUL–HND
Month	Day	JL	MH	MH
September	1	●		
	2	●	●	●
	3	●		●
	4	●	●	
	5	●	●	
	6	●	●	
	7	●		●
October	1	●	●	
	2	●	●	
	3	●		●
	4	●	●	
	5	●	●	
	6	●	●	
	7	●		●

Route		KUL–NRT		KUL–HND
Month	Day	JL	MH	MH
November	1	●	●	
	2	●	●	
	3	●	●	●
	4	●	●	
	5	●	●	●
	6	●	●	
	7	●	●	●
December	1	●	●	
	2	●	●	
	3	●	●	●
	4	●	●	●
	5	●	●	●
	6	●	●	●
	7	●	●	●

Source: Applicant's submission

- (ii) The schedule above shows that for the months of September and October 2022, MH scheduled its KUL–HND flights on days where it did not operate on the KUL–NRT route.
- (iii) Additionally, the Applicant submitted that the Parties' schedule enables connections to many Malaysian cities with connecting times that are within three (3) hours. Without the JB, MH would encourage its passengers to fly on MH operating flights for the full itinerary, despite the longer connecting times. With the JB, passengers have the flexibility to choose either Party, which increases the number of possible connections with the Malaysian domestic routes. **Table 5** below shows the connection time between Japan and Malaysian cities during the summer season of 2022, via the KUL–NRT and KUL–KIX routes, as submitted by the Applicant.

**Table 5: Connection time with Malaysian cities, 2022**

Route	Airline	Connection time in KUL (min)	Airport
<b>Malaysia to Japan</b>			
KUL–NRT	MH	60	KCH, BTU
		70	PEN
		85	AOR
		110	BKI
		130	SDK
		150–155	LGK, TWU, SBW
		160	KUA
KUL–NRT	JL	70	BKI
		90	SDK
		110–115	LGK, TWU, SBW
		120	KUA
		135	BKI
		145	JHB, LBU
		165	BKI, PEN

Route	Airline	Connection time in KUL (min)	Airport		
KUL-KIX	MH	70	SBW, TWU		
		80	KUA		
		95	BKI		
		105	JHB, LBU		
		115	BKI		
		130	PEN		
		150-155	MYY, KBR		
<b>Japan to Malaysia</b>					
NRT-KUL	MH	85	BKI, LGK		
		100	KUA		
		145	AOR		
		155	KCH, PEN		
		165	BKI		
	JL	60	KUA		
		105	AOR		
		115	KCH, PEN		
		125	BKI		
		140	KCH		
		190	LGK		
		KIX-KUL	MH	60	KBR
				90-95	MYY, PEN, BTU
110-115	KCH, JHB				
145	BKI, LGK				
160	KUA				

Source: Applicant's submission

- (iv) The Applicant submitted that the Parties will continuously optimise connections, especially to and from PEN and BKI, which are the biggest airports in terms of passenger demand. The Applicant submitted that the Parties sell more attractive connections as compared to their main competitors. The Applicant provided its submissions on the Parties' connectivity with Malaysian cities, as well as Japanese cities, in terms of total elapsed time, compared against their competitors which is shown further below in **Table 10**.
- (v) Although not part of the coordination scope, the Applicant submitted that travellers may benefit from shorter and more connections on each of the Parties' network, as a secondary benefit to the JB.
- (c) Better accessibility through expanded codesharing;
- (i) The Applicant submitted that MH's codeshares on JL flights had increased from [x] routes pre-JB to [x] post-JB. Similarly, JL's codeshares on MH flights expanded from [x] routes pre-JB to [x] post-JB. JL's codeshare in Malaysia expanded from [x] to [x].

- (ii) As a result of the coordination between the commercial teams of the Parties, routes to other Malaysian and Japanese cities would be better promoted. The JB would actively promote inbound tourism and as such will be beneficial for any future tourism programme. **Table 6** below shows the accessibility to and from Malaysian cities via codesharing, before and after the JB was in place.

**Table 6: Accessibility to and from Malaysian cities, before and after the implementation of the JB**

	Number of Routes	Frequencies per Week	Seat Capacity per Week
Before JB (March 2019)	[REDACTED]	[REDACTED]	[REDACTED]
After JB (October 2022)	[REDACTED]	[REDACTED]	[REDACTED]

Source: Applicant's submission

- (iii) The Applicant submitted that if MH is granted a permanent slot in HND, it could potentially expand its connections from [REDACTED] Japanese destinations. This is because JL has a significant operation out of HND with [REDACTED] weekly flights compared to [REDACTED] weekly flights out of NRT as planned in October 2022.<sup>11</sup>
- (iv) The Applicant submitted that a permanent slot at HND would increase the number of accessible destinations in Japan for Malaysian travellers, i.e., options to travel to 37 destinations through HND, KIX, and NRT. Due to schedule coordination, Japanese cities would be easier to reach as connectivity will be improved. The Applicant submitted that the Japan National Tourism Organization considers Malaysia as a priority inbound market.
- (v) The Applicant submitted that in October 2022, MH should be able to sell flight tickets to [REDACTED] Japanese cities on connecting JL operating flights via NRT, namely, [REDACTED]. It corresponds to [REDACTED] flights a week and [REDACTED] seats offered for sale. MH can also sell flight tickets to [REDACTED] via Osaka. The Applicant submitted that the number of seats and frequencies is expected to increase even higher when the market stabilises. **Table 7** below shows the accessibility to and from Japanese cities, before and after JB was in place.

**Table 7: Accessibility to and from Japanese cities, before and after the implementation of the JB**

	Number of Routes	Frequencies per Week	Seat Capacity per Week
<b>Before JB</b>			
via NRT	[REDACTED]	[REDACTED]	[REDACTED]
via KIX	[REDACTED]	[REDACTED]	[REDACTED]

<sup>11</sup> As submitted by the Applicant on 18 May 2022.

	Number of Routes	Frequencies per Week	Seat Capacity per Week
<b>After JB, October 2022</b>			
via NRT	[REDACTED]	[REDACTED]	[REDACTED]
via KIX	[REDACTED]	[REDACTED]	[REDACTED]
<b>October 2022 if MH operates HND</b>			
via HND	[REDACTED]	[REDACTED]	[REDACTED]

Source: Applicant's submission

- (d) More attractive fare options;
- (i) The Applicant submitted that through pricing, inventory, sales, and marketing coordination via the JB, the Parties will be able to offer more attractive fares. In particular, the Parties will continue to:
- (A) offer customers a greater variety of joint fare products, including more competitive fare products, joint tour products, and group travel products;
  - (B) offer access to more competitive fares for customers due to seat inventory coordination, with access to the full range of Reservation Booking Designator (“RBD”) of both Parties;
  - (C) increase the number of customers to whom these joint fare products are made available due to marketing coordination. At present, MH’s database has [REDACTED] customers—consisting of Enrich customers and non-Enrich customers who subscribe to MH’s newsletter—who receive information on MH’s fares; and
  - (D) offer customers more competitive fares over a broader network of services.
- (ii) The Applicant submitted that as a result of the JB, all public fares, [REDACTED] are aligned between the Parties on the JB scope since July 2020. Since then, the Parties also fully opened their inventory to each other, where they provide the same inventory access to each other’s passengers. With the inventory coordination, the Parties’ customers have access to the full RBD of both airlines, giving more opportunities to access attractive prices. The Applicant submitted that with the aligned fare, the Applicant is also offering higher baggage allowance for routes to Japan compared to the rest of its network.
- (iii) Without the JB, the Applicant submitted that it would encourage customers to buy its own operating flights instead of the JL operating flights by implementing fare restrictions or surcharges. Additionally, MH provided limited access to its inventory to JL’s customers to protect its market shares. With the JB, all these restrictions are lifted.

- (iv) On top of public fares, the Parties also coordinate their promotional fares and their private fares, including fares for [REDACTED].
  - (v) The Applicant highlighted that the increased alignment of fares as a result of the JB creates incentives for the Parties to offer customers more competitive pricing, as they are likely to pass on savings, for instance, savings arising from the elimination of double-marginalisation.
  - (vi) Between the launch of the JB in July 2020 and October 2022, the Parties had limited discounted fares as only essential travel was allowed. With the reopening of international borders, the Parties should be able to proceed with promotional fares on an ad-hoc basis to steer passengers to underperforming flights.
  - (vii) The Applicant also submitted that the Parties may decide to offer special fares for specific types of customers. For example, the Parties are currently in the midst of coordinating their fare offers for [REDACTED]. The Parties may also plan to offer special fares to [REDACTED].
  - (viii) The Applicant highlighted that fares offered for sale need to be benchmarked against market prices in order to remain competitive against the offerings of other airlines and are sensitive to fuel prices, demand movements, and other exogenous factors. During the COVID-19 period, [REDACTED].
- (e) Better corporate account offerings and benefits;
- (i) The Applicant submitted that corporate customers would continue to have access to both Parties' flights. Customers would continue to enjoy the same benefits, access a broader range of inventory and fares under the same contract, have more flexible travel options, and accumulate benefits earned from separate contracts under one scheme.
  - (ii) Since the start of the JB, [REDACTED] corporate customers were able to benefit from the Parties' joint corporate offerings in Malaysia. The Applicant submitted that the corporate customers benefited from more flight options and harmonised discounts.
  - (iii) Other benefits to corporate customers include:
    - (A) harmonised discounts that are easy to implement and communicate to staff. [REDACTED];
    - (B) simplified management;
    - (C) increased ability to qualify for volume discounts,



- (D) specialised reports that will enable the customer to manage corporate travel more efficiently. [REDACTED]; and
  - (E) discounted travel [REDACTED].
- (f) Improved FFPs;
  - (i) Under the JB, the Applicant submitted that the Parties will continue to offer separate FFPs and coordinate such programmes so that customers will have the opportunity to choose the loyalty programme which best meets their needs while enjoying enhanced benefits across the Parties' network worldwide. The Parties will coordinate their respective FFPs to deliver enhanced in-journey service benefits to the FFP members of each Party and elite tier members across their respective networks. The Parties also agreed to negotiate in good faith [REDACTED].
  - (ii) The Applicant also submitted that the Parties will discuss and negotiate additional benefits under the JB, including:
    - (A) [REDACTED]; and
    - (B) [REDACTED].
  - (iii) The Applicant submitted that the JB had allowed the Parties to launch an FFP campaign to encourage members of both Enrich (MH's loyalty programme) and JAL Mileage Bank ("**JMB**") (JL's mileage programme) to fly on the new KUL–HND route and create awareness on the new service. The FFP campaign offered an additional 50% bonus miles to the customers in addition to the regular flight miles for each eligible one-way segment. The Applicant submitted that with the opening of the borders, the Parties are considering stimulating traffic by launching [REDACTED].
  - (iv) The Applicant further submitted that the Parties will [REDACTED]. However, the Parties had postponed the implementation of the FFP projects to after 2022 due to the COVID-19 pandemic. Nevertheless, the Applicant submitted that the groundwork for the projects had started to ensure the intended benefits can be materialised. Other joint incentives, such as [REDACTED].
- (g) Improved airport lounges;
  - (i) The Applicant submitted that prior to the JB, MH previously used lounges by other airlines in Japan, such as the Qantas' lounge—despite having access to the JL's lounge under the oneworld collaboration—[REDACTED]. The Applicant submitted that [REDACTED]. After the implementation of the JB, MH uses JL's lounge in Japan while JL uses MH's lounge in Malaysia.

- (ii) The Applicant submitted that with the JB, [REDACTED]. The Applicant submitted that using JL's lounge is in itself a benefit for the customers as its offerings are better than other lounges. For instance, JL's lounges in Japan typically offer a better and wider selection of food and beverages, better facilities, as well as higher passenger capacity compared to other lounges.
  - (iii) The Applicant submitted that using the JL's lounges enabled further coordination between the Parties, which allowed them to discuss ways to improve their lounge offerings. For example, the JL's lounge in NRT had previously served halal meals prior to the JB since 2019 but the certificate expired in 2020. With the JB in place, JL has agreed to [REDACTED]. In addition, JL has agreed to [REDACTED].
  - (iv) For the MH's lounge in KUL, it has added the Japanese cuisine 'Miso Cod Fish' to the menu selection. The Parties are also in discussion to [REDACTED].
- (h) Improved disruption management;
- (i) The Applicant submitted that the Parties have been able to provide improvements in their disruption management than that offered under the oneworld alliance, including:
    - (A) coordination of procedures in the event of disruptions. For example, [REDACTED]. The Applicant also submitted that the Parties have also aligned the compensation amount given to passengers in the event of disruptions. For example, [REDACTED];
    - (B) rebooking on the MH and JL flights at lower costs and offering more options for re-accommodation. There will be less cost for each Party to rebook its customers on the other Party's flights under the JB as opposed to if the Parties were codeshare partners, [REDACTED]. Without the JB, the Parties used to favour rebooking on their own operating flights before rebooking on the other Party's flights. Under the JB, the Parties will be incentivized to rebook customers equally on either Party's flights [REDACTED];
    - (C) availability of additional manpower to manage disruptions by utilising both MH and JL teams instead of each airline managing its respective teams. The Applicant submitted that the Parties' disruption management teams are coordinating the handling of passengers on disrupted flights. This ensures that there is adequate manpower to manage disruptions as the Parties would be able to leverage on and deploy each other's disruptions management team at their home airports; and
    - (D) possible cost savings in terms of accommodation being offered by leveraging on the options available to both Parties. The Applicant

submitted that MH is able to [REDACTED] to assist MH with passengers affected by flight disruptions. The Applicant submitted that this would result in additional rebooking options at lower costs and minimizing the impact on the disruption for customers. However, the Applicant notes that [REDACTED].

- (i) Streamline of operational processes;
  - (i) The Applicant submitted that operational processes that include customer check-in services, crew management and training, and flight booking systems became more efficient due to the exchange of best practices between the Parties, with the view of facilitating a seamless customer experience.
  - (ii) The Applicant also submitted that the Parties had streamlined their operational processes in the following areas:
    - (A) ground handling. Pre-JB, [REDACTED]. After the implementation of the JB, JL is MH's ground handler in Japan while MH is JL's ground handler in KUL [REDACTED]. The move to JL as MH's ground handler in Japan since January 2021 enabled coordination between the Parties on matters regarding ground handling, as well as airport operations. The Applicant also submitted that [REDACTED].
    - (B) airport check-in counters and boarding gates. The Applicant submitted that to better manage customers, the Parties have joined efforts to have closer check-in counters in KUL and NRT. Moreover, in NRT, JL is supporting MH to have boarding gates relatively closer to immigration counters to minimise the walking distance for passengers;
    - (C) disruption management. The Applicant submitted that pre-JB, MH only made announcements for any flight disruptions in KUL as and when there is an update on the flight status. Post-JB, for the Japanese routes, MH has revised its procedure to follow JL's practice where announcements are made at a standard interval of every 30 minutes regardless of the availability of a new flight status. This is to provide comfort and confidence to passengers on when they can expect to receive new status updates. Additionally, MH has agreed to add announcements in Japanese; and
    - (D) call centres. Prior to the JB, when passengers on a codeshare flight called MH's call centre for issues related to JL flights, they were advised to call JL directly for assistance. Post-JB, the Parties have introduced a 'call-pass through' system which enables the customer to be connected to the call centre of the other Party

through the same call. The Applicant submitted that this improves the customer experience when dealing with the call centres.

- (j) Cost savings leading to better services for the customers;
  - (i) The Applicant submitted that when the traffic recovers and the frequencies are similar to the 2019 level, the multiple coordination within the JB (i.e., sales, marketing, capacity, disruption management) should help the Parties reduce their operational costs. The Applicant submitted that cost reductions will occur in the following areas:
    - (A) Coordination of schedules has enabled the Applicant to look at optimizing its crewing patterns and ground-handling services to reduce costs. Since MH appointed JL as its ground handler in Japan in January 2021, MH does not need to send any trainers from Malaysia to Japan to train its ground handling staff, as JL has IOSA-certified trainers, which complies with MH's regulatory requirements. The airport teams have coordinated the required training modules and all the training were done in Japan by JL's certified trainer. With this arrangement, MH is able to reduce the logistic and training cost of approximately [REDACTED] per training. The estimation includes [REDACTED].
    - (B) The Applicant submitted that the Parties have aligned their corporate and sales teams to reduce distribution costs. For example, there is a possibility for MH to [REDACTED]. The coordination of the Parties' distribution approach enables them to have extended coverage of the travel agencies and corporate customers with less use of personnel. When visiting the travel agencies, both Parties may represent the other on the JB scope. Additionally, the Applicant submitted that the Parties are currently discussing on the [REDACTED]. The Applicant further submitted that [REDACTED].
    - (C) The Parties had coordinated and provided options for customers to check in at either a JL or MH counter for convenience. NRT and HND usually allow check-in counters to open 3 hours prior departure and airlines will have to bear the costs if they intend to open the counter earlier, subject to counter availability. The Applicant submitted that due to the JB, MH passengers are now allowed to check-in early 5 hours in advance, by utilising JL's manpower and JL's counter, [REDACTED]. In the absence of the JB, in order to offer similar services, MH would have to spend approximately [REDACTED].
  - (ii) The Applicant also submitted that by being able to reduce costs, the Parties can continue to re-invest in air services to more destinations and improve its sustainability. Furthermore, the Applicant submitted that cost

savings and efficiencies can be diverted towards improved customer services.

- (k) Benefits for MH network;
  - (i) The Applicant submitted that in addition to the connectivity in Malaysia, JL sells connecting flights via KUL to and from the rest of the MH network. When the market recovers from the COVID-19 pandemic, the coordination and sales push from Japanese markets may lead to an increase in the volume of passengers beyond Kuala Lumpur to international destinations. The Applicant submitted that it would [✂].
- (l) Increased passenger numbers transiting via KUL, and benefits to the Malaysian economy;
  - (i) The Applicant submitted that [✂]. It would also allow passengers from Japan to transit via KUL to reach the Southeast Asian and South Asian destinations served by MH. The Applicant submitted that the JB would also develop the awareness of MH in Japan for travel beyond Malaysia.

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

- 61. The Applicant submitted that the JB is indispensable to the attainment of enhanced economic efficiencies and an expanded network for Malaysia and Japan. The cost savings, expanded networks, as well as improved product and service offerings for customers would not materialise without the implementation of the JB.
- 62. The Applicant further submitted that maintaining metal neutrality and the sharing of scheduling and price for coordination purposes are required to attain the abovementioned benefits. The benefits accruing from the JB as described above are unlikely to be achieved with a lower level of cooperation (i.e., through a codesharing agreement between the Parties) given the lack of alignment of commercial interests between the Parties and the inability to coordinate their commercial activities, for example, flight schedules.
- 63. Without the schedule coordination, capacity and operational management, inventory management, pricing, and sales cooperation, there would be no incentive and it would not be possible in practice for the Parties to align their flights on the Direct Routes. In turn, it would not be possible for the claimed benefits to be realised.

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

- 64. The Applicant submitted that there are ample competitive constraints on the Parties. Prior to the pandemic, these include D7, which had the biggest market share for Malaysia – Japan services, NH which was a strong competitor to JL, and indirect carriers connecting through other cities such as SQ, TG, and CX.

65. The Applicant submitted its analysis on specific routes between Malaysia and Japan:

(a) Kuala Lumpur – Tokyo:

- (i) The Applicant submitted that D7 had the highest market share compared to the other direct carriers with at least [REDACTED] of the market share from 2014 to 2016. Between 2014 and 2020, D7 and NH controlled about half of the traffic, which is comparable with the Parties' combined market share. The Applicant submitted that despite the Parties being FSCs, the average fares of D7 and indirect carriers, being significantly lower than the Parties' fares, exert a clear competitive constraint.
- (ii) Since the launch of the JB in July 2020, the Parties' main competitor in this market was NH, as D7 had suspended its operations due to the absence of demand. The Applicant submitted that the Parties continued to face competition even during the period with extremely low passenger volume. As such, the Applicant presumes the competition will be intensified once the traffic recovers.

(b) Kuala Lumpur – Osaka:

- (i) The Applicant submitted that D7 had the highest market share in the Kuala Lumpur – Osaka market, with an average market share above [REDACTED] between 2014 and 2020. In 2021, SQ had been very strong in the market, with a market share of [REDACTED]. The Applicant submitted that D7, as well as other carriers, would pose as a competitive constraint to the Parties once demand increases.

(c) Kota Kinabalu – Tokyo:

- (i) For the Kota Kinabalu – Tokyo market, MH had an average market share of above [REDACTED] between 2014 and 2020. MH was the only carrier providing direct services on this route, with a frequency of two (2) flights weekly. Meanwhile, OD, D7, CX, Jin Air Co., Ltd. (“LJ”), and Sriwijaya Air (“SJ”) are MH's competitors in the market.
- (ii) The Applicant further submitted that [REDACTED]. The Applicant provided that the load factor and average fare for the Kota Kinabalu – Tokyo market was [REDACTED]. The Applicant further stated that [REDACTED].

(d) All other routes between Malaysia and Japan:

- (i) The Applicant submitted that on other routes apart from the Direct Routes, the JB will face strong competition from D7 and other indirect carriers. D7 had the biggest market share for indirect routes between Malaysia and Japan, with market shares between 30% and 50% from 2014 to 2020. The

Applicant submitted that it will also face competition from carriers operating indirect services, such as SQ.

66. The Applicant submitted that any concerns regarding price increases arising from the combined market power of the Parties on overlapping routes will be adequately constrained by the following factors:
- (a) intense competition from current and future competitors;
  - (b) price sensitivity of customers and their ability to switch easily between different airlines; and
  - (c) ease of entry into the Malaysia – Japan market due to the absence of significant barriers to entry;
    - (i) The Applicant stated that the Air Services Agreement (“**ASA**”) between Malaysia and Japan is liberal and does not place any restriction on capacity, frequency, or type of aircraft for carriers. The only exception is HND, where the frequency entitlement is limited to 14 times weekly.
    - (ii) The Applicant submitted that in general, there are no significant barriers to entry or expansion in terms of acquiring slots and accessing ground services at airports in Malaysia and Japan. However, the Applicant noted that there is slot congestion in HND.
67. The Applicant submitted that the JB does not result in an appreciable adverse effect on competition on the Direct Routes due to the presence of strong competitors in the market, the ease of entry, and the transparency of pricing and other flight information. The ease of entry in the air passenger service market for the Malaysia – Japan market would allow other carriers to operate new direct flights where there is sufficient demand.
68. The Applicant submitted that the JB remains necessary for the Parties to compete with their direct and indirect competitors, on top of playing a major role in their recovery. Moreover, the ease with which customers are able to compare fares online and switch between direct carriers and substitute direct flights for indirect carriers at no additional costs further puts competitive restraint on the Parties in the Direct Routes.
69. The Applicant also stated that the JB enabled the Parties to offer many benefits such as more travel options in terms of improved connectivity, capacity, reduced connecting times, attractive fare options, improved passenger experience, and streamlined operations, amongst others, as described in paragraph 60. Thus, the Applicant submitted that the benefits and efficiencies which can be achieved with the JB will continue to outweigh any potential detriments to competition.

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

70. The Applicant submitted that the JB does not eliminate competition as there are strong competitors in the Kuala Lumpur – Tokyo market, providing direct and indirect services. Strong competitive pressure also exists for the other O&D pairs between Malaysia and Japan by competitors providing both direct and indirect services, which are expected to continue to exert competitive pressure on the Parties.

**6.3 The Commission’s Analysis**

**Subparagraph 50(a) – Significant identifiable technological, efficiency or social benefits directly arising from the agreement**

71. The Commission has considered all of the benefits claimed by the Applicants, and its assessment in relation to subparagraph 50(a) of Act 771 are as follows:

- (a) Increased capacity;
  - (i) With regard to the Kuala Lumpur – Tokyo services, the JB had allowed MH to introduce a new route, i.e., the KUL–HND route, with a flight frequency of two (2) times a week in August 2022, which then increased to five (5) times a week in November 2022. Hence, the Commission accepts the introduction of a new direct route which has not been operated by either Party before as a significant benefit.
  - (ii) The Commission takes note of the Parties’ effort to gradually reinstate frequency up to the pre-COVID level in the near term. The Commission notes that the Parties were able to achieve their pre-pandemic weekly frequency of seven (7) and two (2) flights on the KUL–KIX and BKI–NRT routes, respectively by January 2023. By April 2023, the Parties plan to [redacted]. **Table 8** below shows the Parties’ weekly flight frequencies.

**Table 8: Parties’ weekly flight frequencies**

Route	Parties	December 2019	December 2022	April 2023
KUL–NRT	JL	7x	7x	[redacted]
	MH	12x	7x	[redacted]
KUL–HND	MH	[redacted]	5x	[redacted]
KUL–KIX	MH	7x	5x	[redacted]
BKI–NRT	MH	2x	[redacted]	[redacted]

Source: Commission’s analysis

- (iii) The Commission accepts that MH’s plans to [redacted] as reasonable. The Commission also accepts MH’s plans in [redacted], as MH was able to secure the additional air traffic rights (“ATR”) and slots to operate to and from HND on a permanent basis.



- (iv) The Commission also accepts that the Parties are planning to [redacted]. The Commission views that these increases in capacity are beneficial to consumers, especially since the capacity will be able to meet future demand for travel between Malaysia and Japan.
- (v) As for the Applicant's claims of potential new services, such as flights between [redacted], the Commission is of the view that such claims had not been sufficiently substantiated.
- (b) Improved scheduling;
- (i) The Commission agrees with the Applicant that the JB had allowed for an improvement in scheduling compared to the pre-JB schedule, especially for passengers in the Kuala Lumpur – Tokyo market. **Table 9** below shows the Parties' weekly schedules and flight frequency.

**Table 9: Parties' weekly schedules and flight frequency**

December 2019							
Departure Time	0050	0940	1100	2240	2250	2335	Total
BKI–NRT	2						2
KUL–KIX				7			7
KUL–NRT		4	1		7	7	19

December 2022					
Departure Time	1500	2240	2250	2335	Total
KUL–HND	5				5
KUL–KIX		5			5
KUL–NRT			7	7	14

April 2023							
Departure Time	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Total
BKI–NRT	[redacted]						[redacted]
KUL–HND			[redacted]				[redacted]
KUL–KIX				[redacted]			[redacted]
KUL–NRT		[redacted]			[redacted]	[redacted]	[redacted]

JL  MH

Source: Commission's analysis, AirportIS

- (ii) Based on **Table 9** above, the Commission found that the Parties were able to improve their flight schedule for operations in the Kuala Lumpur – Tokyo market, by spreading out the departure times on the KUL–NRT and KUL–HND routes. For example, flights on the KUL–HND route were available at 3 p.m. in December 2022, while flights on the KUL–NRT route were available at 10.50 p.m. and 11.35 p.m. Moving forward, the Parties plan to operate the KUL–HND route at [redacted], while the flight schedule for

the KUL–NRT route [✂]. The Commission expects that the Parties would be able to provide further improvements in scheduling once the market returns to pre-pandemic levels, providing significant benefits to consumers with more spread-out flight times.

- (iii) The Commission accepts that the current schedule enables connections to many Malaysian cities within three (3) hours using either MH or JL operating flights, as shown in **Table 5**. With the JB, the passengers have the flexibility to choose either MH or JL which increases the number of possible connections with the Malaysian domestic routes.
- (iv) The Commission had also analysed the Parties’ connectivity with Malaysian cities, as well as Japanese cities, in terms of total elapsed time, compared against their competitors, as shown in **Table 10** below.

**Table 10: Connectivity with cities in Malaysia and Japan**

Route	Airline	Elapsed Time Jan 2023	Difference in Elapsed Time*
<b>Connectivity with Malaysian Domestic Cities</b>			
<b>PEN – Tokyo</b>	Parties	9h 00m	
	SQ	10h 30m	+ 1h 30m
	CX	16h 00m	+ 7h
<b>Tokyo – PEN</b>	Parties	10h 35m	
	SQ	10h 50m	+ 15m
	CX	18h 25m	+ 7h 50m
<b>LGK – Tokyo</b>	Parties	9h 45m	
	SQ	9h 55m	+ 10m
	CX	10h 40m	+ 55m
<b>Tokyo – LGK</b>	Parties	9h 25m	
	SQ	9h 15m	- 10m
	CX	11h 40m	+ 2h 15m
<b>Connectivity with Japanese Domestic Cities</b>			
<b>KUL – FUK</b>	Parties	11h 20m	
	SQ	10h 40m	- 40m
	TG	10h 05m	- 1h 15m
<b>FUK – KUL</b>	Parties	11h 10m	
	SQ	12h 10m	+ 1h
	TG	10h 20m	- 50m
<b>KUL – CTS</b>	Parties	10h 55m	
	SQ	12h 00m	+ 1h 05m
	TG	13h 15m	+ 2h 20m
<b>CTS – KUL</b>	Parties	10h 55m	
	SQ	13h 40m	+ 2h 45m
	TG	25h 35m	+ 14h 40m

Source: Applicant’s submission

Note: \*Difference in elapsed time is derived from the comparison of the elapsed time of other airlines with the Parties’ elapsed time.

- (v) Based on **Table 10**, the Parties' total elapsed time was much shorter compared to their competitors for flights connecting to Malaysian and Japanese cities. The smallest difference in elapsed time compared to their competitors in each market ranged from 10 minutes to 2 hours and 45 minutes.
- (vi) The Commission takes note that the JB was implemented during the pandemic. Hence, the pre-JB elapsed time cannot be compared with the elapsed time post-JB, as it compares the pre-COVID-19 environment with the recovery stage. However, the Applicant provided the Parties' estimated elapsed time in January 2023 to reflect the improved time for a sample of routes as shown in **Table 11** below.

**Table 11: Parties' estimated total elapsed time with and without the JB, January 2023**

Route	Elapsed time (min)		
	With JB	Without JB	Difference
<b>Malaysia to Japan</b>			
KUL – Tokyo	[X]	[X]	[X]
PEN – Tokyo	[X]	[X]	[X]
LGK – Tokyo	[X]	[X]	[X]
JHB – Tokyo	[X]	[X]	[X]
<b>Japan to Malaysia</b>			
Tokyo – KUL	[X]	[X]	[X]
Tokyo – PEN	[X]	[X]	[X]
Tokyo – LGK	[X]	[X]	[X]
Tokyo – JHB	[X]	[X]	[X]

Source: Applicant's submission, Commission's analysis

- (vii) The reductions in potential elapsed time as shown in **Table 11** above ranged between [X].
  - (viii) Based on all of the above, the Commission accepts that the improvement in scheduling is a benefit arising from the JB as the Parties were able to provide a reasonable reduction in their elapsed time and have enabled shorter connections to Malaysian cities compared to their competitors. The Commission expects that there will be further improvements to the Parties' elapsed time once the Parties are able to add more frequencies between Malaysia and Japan.
- (c) Better accessibility through expanded codesharing;
- (i) The Commission had calibrated the Applicant's submission on the Parties' connections to Malaysian cities and found that the number of online connections had increased from [X] cities. Additionally, the Commission found that the JB has expanded the number of frequencies and seats per

week by [REDACTED]. **Table 12** below shows the Parties' connection to Malaysian and Japanese domestic routes, as well as their frequency and seat capacity per week.

**Table 12: Parties' connection to Malaysian and Japanese domestic routes, frequencies per week, and seat capacity per week, pre- and post-JB**

	Number of Routes	Frequencies per Week	Seat Capacity per Week
<b>Malaysian domestic routes</b>			
Pre-JB (March 2019)	[REDACTED]	[REDACTED]	[REDACTED]
Post-JB (October 2022)	[REDACTED]	[REDACTED]	[REDACTED]
<b>Japanese domestic routes</b>			
Pre-JB (March 2019)	[REDACTED]	[REDACTED]	[REDACTED]
Post-JB (October 2022)	[REDACTED]	[REDACTED]	[REDACTED]

Source: AirportIS

- (ii) The Commission had also verified the Parties' claim that the JB was able to increase the number of accessible destinations in Japan for Malaysian travellers from [REDACTED] to [REDACTED] destinations through HND, KIX, and NRT. The number of frequencies and seats per week also increased by [REDACTED], respectively. The large increase is due to the inclusion of MH's operations in HND. Passengers flying on MH's operated flight from KUL are able to connect to JL's gamut of flights at HND which reaches a larger number of destinations. The Commission also accepts that the number of seats and frequency would increase even higher once the market stabilises.
  - (iii) The Commission accepts that an expansion of the Parties' network through codesharing is beneficial to passengers as they will have better accessibility to more destinations in both Malaysia and Japan. Therefore, the Commission accepts this as a significant benefit arising from the JB.
- (d) More attractive fare options;
- (i) The Commission accepts that under the JB, customers would continue to benefit from better accessibility to attractive fares and a multiplicity of options via the full range of the Parties' RBD inventory coordination. The JB also incentivises the Parties to [REDACTED].
  - (ii) Additionally, the Parties can reach out to a broader scope of customers via their joint marketing actions, as they are able to leverage on each other's large FFP database, where JL has a database of [REDACTED] customers, while MH has approximately [REDACTED] FFP members.

- (iii) The JB also incentivises the Parties to sell the cheapest combination of tickets to the benefit of both of the Parties' customers. Due to the metal neutral environment provided by the JB, this would eliminate the need to introduce surcharges and fare restrictions to cover the additional fixed fee when selling seats on the other Party's flights.
- (iv) The Commission had analysed the Parties' average fares between January – September 2019 and January – September 2022 for selected routes between Malaysia and Japan, as shown in **Table 13** below.

**Table 13: Comparison between the Parties' average fares for selected routes pre- and post-JB**

Route	Pre-JB (RM)	Post-JB (RM)	Difference (RM)	Difference (%)
Kuala Lumpur – Tokyo	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
BKI – Tokyo	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
LGK – Tokyo	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
KCH – Tokyo	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: Commission's analysis, AirportIS

Note: Pre-JB figures are the average fares from January – September 2019, while post-JB figures are the average fares from January – September 2022.

- (v) The Commission had found that there had been increases in the Parties' post-JB fares, which ranged between [REDACTED]. The Commission notes that the post-JB data uses fares from the first 10 months of 2022, which is a period during the transition to the COVID-19 endemic phase. Additionally, the international border restrictions in Japan had yet to be lifted during this period. Thus, the fares may not be reflective of actual post-JB data when the market returns to the pre-pandemic levels.
- (vi) The Commission had also analysed the fares of the Parties and their competitors on several routes. **Table 14** below shows the lowest available fare of the Parties and other competitors in February 2023.

**Table 14: Comparison between the lowest available one-way economy fares on the Parties' flights and their competitors for selected routes between Malaysia and Japan, February 2023**

Route		KUL–NRT	KUL–HND	KUL–KIX	BKI–NRT
Non-stop (unless stated otherwise)	Parties	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	NH	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
One-stop	SQ	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	TG	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	CX	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: Google Flights

- (vii) The Commission found that although the Parties' fares were shown to increase post-JB, the Commission notes that the Parties' fares are

comparable with the fares of other FSC carriers as shown in **Table 14** above. This indicates that despite increases in the Parties' post-JB fares, such fares match the post-pandemic market fares.

- (e) Better corporate account offerings and benefits;
  - (i) The Commission takes note that with the JB, the Parties were able to implement harmonised discounts. The Commission accepts that the Parties have been able to coordinate and align their discount offerings to corporate customers up to a [X]. Additionally, the discounts are offered on [X]. Thus, the Commission accepts that the Parties were able to offer harmonised discounts which would be made available to corporate customers on a wider range of flights.
  - (ii) The Commission is satisfied that corporate customers are offered a wider reach and support through a simplified management, where joint meetings may be organised between either Party's sales team.
  - (iii) The Commission notes that due to the lack of travel during the pandemic, corporate customers have not been able to fully benefit from the joint corporate offerings. However, the Commission accepts that once there has been an increase in travel, it is more likely that customers will be able to benefit and qualify for volume discounts. The Commission accepts that the JB would allow customers to more quickly qualify for such discounts as there would be a wider selection of flights between the Parties, for customers to travel on.
  - (iv) With regard to the specialised reports, the Commission accepts that the reports would assist customers to better manage their corporate accounts as it would provide better visibility of the customers' purchases. The Commission, however, is of the view that the reports would not directly result in additional discounts for the customers as the incentive of corporate customers to encourage their employees to travel on the Parties' flights is still subject to other factors that are more important for business travel, such as being able to travel on specific timings.
  - (v) As for the Applicant's claims of discounted travel [X], the Commission is of the view that such claim is a benefit arising from the JB, where corporate customers are able to obtain discounted travel for [X].
- (f) Improved FFPs;
  - (i) The Commission accepts the Applicant's claims that through the JB, members of both Enrich and JMB can enjoy a better earning eligibility and accrual structure. The Commission also agrees that FFPs are important drivers to attract customers on the JB flights, especially for frequent and business travellers.

- (ii) The Commission positively views the Parties' efforts to launch bonus miles campaigns, such as the offering of an additional 50% bonus miles to customers on the KUL–HND route, to create awareness of the route and encourage travel.
  - (iii) The Commission also expects that through the JB, as the Parties seek to encourage travel, the Parties would be able to carry out more campaigns for the benefit their customers. Improved and aligned FFPs would also encourage MH's customers to fly on JL-operated flights, and vice versa, providing customers with options they may not have considered before, due to brand loyalty.
- (g) Improved airport lounges;
  - (i) The Commission agrees with the Applicant's claim that using JL's lounges in Japan is a benefit for customers as JL's lounges typically offer a better and wider selection of food and beverages, better facilities, and higher passenger capacity compared to other lounges.
  - (ii) The Commission also noted the Parties' efforts to improve their products and services offerings in their airport lounges, such as the availability of halal meals in JL's lounges, which is of particular benefit to Malaysian passengers, as well as the introduction of Japanese cuisine in MH's lounge, for the benefit of Japanese passengers.
  - (iii) As such, the Commission is satisfied that the JB gives rise to improved airport lounges for the benefit of travellers.
- (h) Improved disruption management;
  - (i) The Commission has reviewed the Applicant's claims regarding the improvement in their disruption management processes under the JB. In particular, the Commission accepts the Parties' claims regarding flight rebooking, the availability of additional manpower to manage disruptions, as well as the possible cost savings in terms of accommodation being offered by leveraging on options available to both Parties.
  - (ii) In relation to the Applicant's claim on the coordination of procedures in the event of disruptions, the Commission has found that the Parties have streamlined their disruption management process, to the benefit of passengers.
- (i) Streamline of operational processes;
  - (i) The Commission agrees that the streamlining of operational processes between the Parties is a benefit arising out of the JB. The Commission positively views the Parties' efforts to streamline their operational processes through their ground handling coordination and procedures in

the event of disruptions. The Commission agrees that the move to JL as MH's ground handler in Japanese airports had enabled coordination between the Parties on matters regarding ground handling, as well as airport operations. As for the Parties' coordination of procedures in the event of disruptions, the Commission agrees that this benefits passengers by minimising the impact of such disruptions on the passengers.

- (ii) The Commission also notes the Parties' joint efforts to have closer check-in counters, as well as efforts to minimise the walking distance between boarding gates and immigration counters. The Commission agrees that these efforts have benefitted passengers as they are able to check-in up to 5 hours earlier, providing passengers with a more comfortable experience.
  - (iii) Given the above, the Commission is satisfied that the JB gives rise to the streamlining of operational processes which would provide passengers a more seamless customer experience and would avoid discrepancies in the Parties' quality of service.
- (j) Cost savings leading to better services for customers;
- (i) The Commission has reviewed the Applicant's claims regarding the Parties' cost-saving initiatives that arose from the coordination through the JB. The Commission accepts that the Parties were able to achieve cost savings through the coordination of their ground-handling services. While the Commission considers the logistic and training costs that MH had been able to save as being minimal as compared to MH's total operational costs, the Commission nevertheless accepts such cost savings as a benefit arising out of the JB.
  - (ii) The Commission had also reviewed the Applicant's claim of cost savings which have arisen through the Parties' utilisation of each other's resources to provide early check-in services. The Commission accepts that through the Parties' cooperation, MH was able to provide early check-in services to its passengers in Japanese airports without the need to incur extra costs due to JL's assistance in terms of manpower and counters. Thus, the Commission views that there had been cost savings as a result of the JB.
  - (iii) With regards to cost savings arising from distribution costs, the Commission will [redacted].
  - (iv) While the Commission accepts some of the Applicant's claims, the Commission noted that the Applicant's claims on cost savings as being more of a direct benefit to the Parties instead of consumers. The Parties were not able to provide evidence of direct reinvestment of these cost savings into consumer products. Hence, the Commission views the



Parties' claims of reinvestment to provide better customer services as unsubstantiated, albeit possible.

- (k) Benefits for MH network;
  - (i) The Commission is of the view that the potential expansion of MH's network beyond Malaysia could lead to an increase in the volume of passengers travelling via KUL. Additionally, passengers may benefit from being able to travel to destinations beyond the scope of the JB, increasing the number of accessible destinations.
  - (ii) The Commission accepts that this benefit is plausible albeit speculative at this stage.

72. The Commission found that the Parties were still able to provide benefits to consumers through the JB even during the pandemic period. As such, the Commission expects that as the aviation industry recovers post-pandemic, the Parties would be able to further realise the benefits claimed through additional flight frequencies and seat capacities.

***Conclusion on subparagraph 50(a) of Act 771***

73. Further to the Commission's analysis above, the Commission has found that there are significant, identifiable efficiency and social benefits directly arising from the JB, such as the improvement in scheduling, accessibility, more attractive fare options, and improved corporate offerings between Malaysia and Japan. Therefore, the Commission finds that the subparagraph 50(a) requirement of Act 771 is satisfied.

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

74. The Commission found that some of the more discernible benefits for consumers, such as the expansion of codeshare routes, could have been provided without a metal neutral alliance in place, as it could be provided through a codeshare agreement.

75. However, the Commission agrees that revenue sharing is an essential aspect of the JB to incentivise the Parties to further optimise capacity and frequency across both airlines. Such optimisation of capacity and frequency will bring knock-on benefits to consumers through the Parties being able to better allocate resources, such as the up-gauging of aircraft and crew optimisation to cater to the combined demand of the airlines, as well as the redeployment of aircraft on other routes or at other timings.

76. The Commission agrees that some of the benefits discussed in paragraph 71 such as improved scheduling, attractive fare options, and improved corporate offerings could not have been provided through an alternative arrangement such as a codeshare agreement, a special prorate agreement, or a frequent flyer agreement alone.

77. A more transparent coordination of flights between the Parties through the JB would also benefit consumers through the availability of expanded route options.

78. The Commission, therefore, finds that the subparagraph 50(b) requirement of Act 771 is satisfied and some of the benefits arising out of the JB could not have been provided without the JB being a metal neutral alliance.

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

79. In assessing whether the Parties fulfill the requirement under subparagraph 50(c) of Act 771, the Commission first identified the Relevant Markets that may raise competition concerns.

80. The Commission thereafter analysed any detrimental effects of the JB in the identified Relevant Markets and assessed whether the benefits accepted by the Commission in paragraph 71 above outweighed the detrimental effects of the JB.

81. As stated in paragraph 54 of this Decision, the relevant markets comprise all the O&D city-pairs between Malaysia and Japan.

82. The Commission had carried out an exercise to refine the scope of the Commission's assessment to determine the O&D routes that are more likely to raise competition concerns and likely to require full competition assessment. The Commission carried out the following steps to identify the O&D routes that would require full competition assessment.

- (a) **Stage 1(a):** the Commission set two thresholds as an initial filter for determining O&D routes that are deemed significant to the Malaysian market and to the Parties. The thresholds applied to each route are:
  - (i) The Parties' combined market share in the route in either 2018 or 2019 is more than 20%; and
  - (ii) The traffic contribution of the route constitutes at least 0.5%<sup>12</sup> of the total traffic between Malaysia and Japan in either 2018 or 2019.
- (b) **Stage 1(b):** the Commission further identified any other route that does not meet the above thresholds but may be considered significant enough for further assessment. Upon identifying the list of routes in accordance with Stage 1(a) and (b), the Commission carried out its market definition exercise on each route, where each Relevant Market is defined as a Significant Relevant Market.
- (c) **Stage 2:** The Commission then carried out a market analysis on each Significant Relevant Market to determine the levels of competition and to further identify Significant Relevant Markets that may raise concerns. This includes identifying the levels of market concentration, the number of players in the market, the size

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<sup>12</sup> There was a total of 210 routes between Malaysia and Japan where there have been tickets sold by the Parties since 2019 onwards. The threshold for the passenger traffic contribution of a route of the total passenger traffic in the Malaysia – Japan market is used as part of an initial filter for the Commission to determine O&D routes that are deemed significant to be further analysed. A passenger contribution of 0.5% of the total passenger traffic in the Malaysia – Japan market for a specific route is equivalent to approximately 7,924 annual passengers in 2019.

of the Parties' combined market shares, and whether the Parties have the highest market share in the Significant Relevant Markets or not.

- (d) **Stage 3:** Upon identifying the list of Significant Relevant Markets that are likely to raise concerns, the Commission carried out a full competition assessment on each of the Significant Relevant Markets identified in Stage 2 in order to fully determine and assess the detrimental effects of competition arising from the JB. This includes further assessment into any anti-competitive outcome arising from the JB through the analysis of fares and barriers to entry.
83. The Commission found that there were eight (8) routes or markets identified in Stage 1(a) above. The eight (8) routes are as follows:
- (a) Kuala Lumpur – Tokyo;
  - (b) Penang – Tokyo;
  - (c) Kota Kinabalu – Tokyo;
  - (d) Langkawi – Tokyo;
  - (e) Kota Kinabalu – Osaka;
  - (f) Kuala Lumpur – Osaka;
  - (g) Penang – Osaka; and
  - (h) Johor Bahru – Osaka.
84. The Commission also found 110 routes other than the eight (8) routes identified above where the Parties have combined market shares higher than 20% in 2019. However, most of these routes have a very small air passenger traffic contribution of less than 0.5% in the entire market between Malaysia and Japan.
85. In Stage 1(b), the Commission further identified one (1) additional market, which is the Kuching – Tokyo market, which the Commission deems as significant to be further assessed.
86. The Kuching – Tokyo route failed to meet the second threshold in Stage 1(a) as it had a 0.4% traffic contribution against the total passengers in the Malaysia – Japan market in 2019. However, the Parties have consistently been dominant on this route with very high combined market shares, where they had a combined market share of [redacted] in 2019. Combined with the market's traffic contribution in 2019 which was close to 0.5%, the Commission found that the Kuching – Tokyo market is a Significant Relevant Market that had to be further analysed and chose to move it on to Stage 2.

87. As such, there are a total of nine (9) Significant Relevant Markets that the Commission analysed in Stage 2. The nine (9) Significant Relevant Markets are as shown in **Table 15** below.

**Table 15: Significant Relevant Markets in Stage 2**

No.	Relevant Market	Affected Route
1.	Kuala Lumpur – Tokyo	KUL–NRT
		KUL–HND
2.	Kota Kinabalu – Tokyo	BKI–NRT
3.	Langkawi – Tokyo	LGK–NRT
4.	Kuching – Tokyo	KCH–NRT
5.	Kuala Lumpur – Osaka	KUL–KIX
6.	Penang – Osaka	PEN–KIX
7.	Johor Bahru – Osaka	JHB–KIX
8.	Penang – Tokyo	PEN–NRT
9.	Kota Kinabalu – Osaka	BKI–KIX

Source: Commission's analysis

The Affected Route in **Table 15** above refers to the airport pairs flown by the Parties. **Appendix II** outlines how each of the nine (9) Significant Relevant Markets were determined and the airports that were considered as part of the Significant Relevant Markets.

88. In Stage 2, the Commission carried out a market analysis on each route to determine the levels of competition in each Significant Relevant Market. The Significant Relevant Markets which were considered highly competitive were not advanced to Stage 3 for a full competition assessment. As a result of the Commission's findings in Stage 2, only four (4) Significant Relevant Markets were seen as showing lower levels of competition and warranted further assessment. The market data and the Commission's analysis for Stage 2 are shown in **Appendix III**.
89. The four (4) Significant Relevant Markets which were further assessed by the Commission in Stage 3 are:
- (a) Kuala Lumpur – Tokyo;
  - (b) Kota Kinabalu – Tokyo;
  - (c) Langkawi – Tokyo; and
  - (d) Kuching – Tokyo.

### ***Kuala Lumpur – Tokyo***

90. Information related to the Commission's market analysis for the Kuala Lumpur – Tokyo market is shown in **Table 16** below.

**Table 16: Market data for the Kuala Lumpur – Tokyo market in 2019**

Parties' Combined Market Share	HHI (2019)	Delta HHI	Total pax contribution
2019: [REDACTED] 2022*: [REDACTED]	Pre-JB: 0.2206 Post-JB**: 0.2998	0.0792	692,176 (43.7% of Malaysia – Japan market)

Source: Commission's analysis, AirportIS

Notes: \*The Parties' combined market share in 2022 is up to October 2022

\*\*Post-JB HHI refers to the theoretical post-JB HHI in 2019

(a) *Market condition*

91. In assessing the levels of competition in the market, the Commission based its findings on the pre-pandemic data, as it would more accurately represent actual post-JB market conditions. The Commission, however, notes that while data during the pandemic are less representative of the normal and future market conditions, the Commission found it necessary to make references to market changes that occurred during the pandemic as airlines have carried out restructuring of their businesses and operations as a result of the pandemic. Such changes and restructuring may remain in the long term and should therefore be considered in the assessment of future market conditions. It is also noted that in measuring market concentration, the post-JB Herfindahl Hirschman Index (“**HHI**”) used by the Commission is based on a theoretical scenario if the JB was implemented in 2019. This is due to the fact that the Parties implemented the JB in Malaysia in July 2020, during the COVID-19 pandemic. 2019 data is therefore used as an estimate for the probable HHI after the implementation of the JB in normal market conditions post-pandemic.
92. The Parties remain the dominant player in the Kuala Lumpur – Tokyo market, as their market shares from 2015 to 2022 were consistently above or close to [REDACTED]. Before the pandemic, the Parties' main competitors were NH and D7, which had a market share of [REDACTED] and [REDACTED], respectively in 2019. D7 then temporarily suspended its operations on this route since May 2020, which allowed the Parties to fill in the gap and gain a market share of [REDACTED] in 2021 and [REDACTED] in 2022. The Parties' main competitor during the pandemic was NH, which had a market share of [REDACTED] in 2022. **Appendix III** shows the Parties' combined market share in the Kuala Lumpur – Tokyo market from 2015 to October 2022.
93. For the Kuala Lumpur – Tokyo market, the Commission found that its competition assessment would not change irrespective of whether the TS passengers and NTS passengers belong to the same market. The Parties had a market share of [REDACTED] in 2019 in the market for the TS passengers. Despite the Parties' higher market share in the market for TS passengers, the Commission found that there is adequate competition constraint from other FSCs, namely, NH, which had a market share of [REDACTED] in the market for TS passengers. The Parties' average fare in the market for the TS passengers of [REDACTED] was also slightly lower than NH, their closest competitor in the TS market, which had an average fare of [REDACTED] in 2019. The Commission therefore finds that there is no significant detrimental effect on fares in the market for TS passengers despite the Parties' high market share.

94. The market concentration in the Kuala Lumpur – Tokyo market is classified as high, as indicated by the HHI which has consistently been higher than 0.25 from 2015 to 2019. In line with its previous decisions, the Commission considers an HHI above 0.25 as highly concentrated. **Appendix III** shows the market concentrations in Kuala Lumpur – Tokyo, as well as the Significant Relevant Markets, from 2015 to 2022. Further, there is some lessening of competition in the Kuala Lumpur – Tokyo market due to the JB, as indicated by the delta HHI of 0.0792 in 2019. This is due to the fact that the Parties were considered as close competitors before the implementation of the JB, with MH and JL’s market share being [x] and [x], respectively in 2019. The Commission considers a delta HHI of 0.1 as significant and indicates that the JB would have a more significant impact on the market.
95. Nonetheless, although there is a lessening of competition in the Kuala Lumpur – Tokyo market, the presence of other competitors such as NH and D7 provides adequate competitive pressure on the Parties. Competitors offering direct services, such as NH and D7, as well as those offering indirect services such as CX and SQ, are expected to continue to act as effective competitive constraints on the Parties due to the services being comparable and competitive to the Parties’ services.
96. In relation to the detrimental effects on competition, the Commission analysed potential barriers to entry and fares that had been offered by the Parties. Pre-pandemic, the barrier to entry into the market was not high, as indicated by the entries and exits of several competitors in the market.
97. In terms of the ability of airlines to obtain slots, the Commission notes that it is still currently possible for potential competitors to enter the Kuala Lumpur – Tokyo market. The Commission does, however, note the high level of slot congestion in HND, which could limit the ability of new entrants and competitors to obtain a sufficient number of attractive slots. Further, according to the ASA between Malaysia and Japan, the frequency entitlement in HND is up to 14 frequencies per week. The current 14-weekly ATRs for HND is currently utilised by MH and D7, with 7-weekly ATRs per airline as of 5 January 2023. Further, the ATRs that had been allocated to MH on the routes between Malaysia and HND may only be operated by a designated airline through a joint service (such as a JB) or through codesharing arrangements with the designated airline of the other country. Hence, the barriers to entry in relation to markets involving HND are high, being limited in both ATRs and slot availability.
98. In contrast, for NRT, there appears to be a sufficient number of slots available in both pre-and post-pandemic conditions as the congestion level in NRT is lower than that of HND. Due to the limitation in slots in HND, competitors might expand operations at Tokyo via NRT instead, depending on slot availability and profitability. Competitors may choose to enter and operate via NRT where there is enough demand, instead of competing with the Parties in HND, as there are no frequency restrictions in NRT under the ASA between Malaysia and Japan. As a whole, the barriers to entry for other airlines to compete against the Parties in the Kuala Lumpur – Tokyo market are not high.
99. Following the announcement by the Japanese government on the full relaxation of its border restrictions from 11 October 2022, D7 resumed its flights between Malaysia and

Japan from November 2022 onwards, while OD was able to enter the market in December 2022. Hence, the Commission finds that there is still room for entry into the Kuala Lumpur – Tokyo market. The Commission notes that there are low barriers to entry for other airlines to provide similar competition in the market.

(b) *Impact of the JB on fares*

100. In relation to the impact of the JB on fares offered in the Kuala Lumpur – Tokyo market, the Commission found that the Parties’ fares have been similar or slightly higher to other competitors, where the Parties’ one-way average economy fare in 2019 was [REDACTED] (Others, which include both FSCs and LCCs: [REDACTED]). It should be noted that the average fares of the Parties’ competitors include the fares of LCCs, whereas the Parties are FSCs.
101. While the Parties remain dominant in the Kuala Lumpur – Tokyo market, the Commission is of the view that the Parties do not have the power to unilaterally increase prices without constraint, as higher airfares have coincided with a significant drop in their market share. Therefore, the Commission finds that the JB does not appear to pose any detrimental effects in terms of fares for the Kuala Lumpur – Tokyo market. **Appendix IV** shows the chart illustrating the trend in the Parties and their competitors’ average one-way economy class fares for the Kuala Lumpur – Tokyo market, as well as the other Significant Relevant Markets.
102. The Commission, therefore, finds that although there has been some lessening of competition in the Kuala Lumpur – Tokyo market, such lessening of competition will not have a major impact on consumers.

**Kota Kinabalu – Tokyo**

103. Information related to the Commission’s market analysis for the Kota Kinabalu – Tokyo market is shown in **Table 17** below.

**Table 17: Market data for the Kota Kinabalu – Tokyo market in 2019**

Parties’ Combined Market Share	HHI (2019)	Delta HHI	Total pax contribution
2019: [REDACTED] 2022*: [REDACTED]	Pre-JB: 0.4189 Post-JB**: 0.4538	0.0349	41,661 (2.6% of Malaysia – Japan market)

Source: Commission’s analysis, AirportIS

Notes: \*The Parties’ combined market share in 2022 is up to October 2022

\*\*Post-JB HHI refers to the theoretical post-JB HHI in 2019

(a) *Market condition*

104. In relation to the Kota Kinabalu – Tokyo market, the Parties have been the dominant player in this route with an average market share of [REDACTED] between 2015 and 2019. MH is the only carrier providing direct services on this route, with a frequency of two (2) flights weekly. The Parties’ dominance in this market would be attributable to the lack of competitors operating direct services, other than OD, which provides seasonal direct

services. Before the pandemic, the Parties' combined market shares were highest in 2018 at [REDACTED] before reducing to [REDACTED] in 2019. The Parties' competitors in this market are airlines that provide indirect services, namely, Royal Brunei Airlines Sdn Bhd ("BI"), Capital A Berhad ("AK"), D7, Korean Air Co., Ltd., ("KE"), and its subsidiary, LJ, as well as Jeju Air Co., Ltd., ("7C") in 2019. BI had gained [REDACTED] market share in 2019 through its indirect services.

105. However, the Applicant had submitted that the route is [REDACTED]. The Parties suspended their direct operations in this market from April 2020 until November 2022 due to the impact of the COVID-19 pandemic. Currently, the Parties' competitors in 2022 include LJ, BI, 7C, as well as SQ and its subsidiary Tiger Airways Singapore Pte Ltd ("TR"), where they all provide indirect services. It is also expected that other airlines that used to operate in the market before the pandemic may resume operations once demand increases.
106. The Commission notes that the Parties have higher market shares in the market for TS passengers, where they had a market share of [REDACTED]. The Commission notes that despite the Parties' high market share, the market is predominantly a leisure market where there is a larger proportion of NTS passengers. As such, more importance is placed on the market for NTS passengers for this route. The Parties' average fare in the market for TS passengers in 2019 was [REDACTED], which is much lower than their competitors in the TS market, such as NH, which had an average fare of [REDACTED]. Therefore, the Commission finds that there is no significant detrimental effect on fares in the market for TS passengers despite the Parties' high market share.
107. Due to the large presence of the Parties, the market is considered as highly concentrated, with a post-JB HHI above the 0.25 threshold at 0.4538 in 2019. However, the delta HHI was 0.0349 which indicates that the impact of the JB in the market is quite low.
108. Slot availability is not an issue in BKI, since pre-COVID-19 estimates indicated BKI's maximum capacity would only be reached in 2037. Additionally, 55.4% of all passengers in the market chose to fly indirect in 2019, which shows that competitors offering indirect services provide a constraint on the Parties' direct services. As such, there is little barrier for other airlines to enter and compete against the Parties in the Kota Kinabalu – Tokyo market.

(b) *Impact of the JB on fares*

109. In relation to the impact of the JB on fares offered in the Kota Kinabalu – Tokyo market, the Commission found that the Parties' one-way average economy fares have been slightly higher than their competitors. For example, the Parties' one-way average economy fare in 2019 was [REDACTED] (Others: [REDACTED]). However, the Parties' average economy fares were much lower than their FSC competitors (NH, SQ, and CX: [REDACTED]). It should be noted that the Parties' average fares were slightly higher than the fares of their competitors due to the presence of LCCs and the absence of direct services by other competitors. Hence, the Commission is of the view that the Parties' higher fares may be justified by the fact that they are the only player operating direct flights. Additionally, the



Parties' fares are comparable to other FSC competitors' fares, such as KE and SQ. Therefore, the Commission is of the view that the JB does not pose any detrimental effects in terms of fares for the Kota Kinabalu – Tokyo market.

**Langkawi – Tokyo**

110. Information related to the Commission's market analysis for the Langkawi – Tokyo market is shown in **Table 18** below.

**Table 18: Market data for the Langkawi – Tokyo market in 2019**

Parties' Combined Market Share	HHI (2019)	Delta HHI	Total pax contribution
2019: [REDACTED] 2022*: [REDACTED]	Pre-JB: 0.3367 Post-JB**: 0.4148	0.0781	12,621 (0.8% of Malaysia – Japan market)

Source: Commission's analysis, AirportIS

Notes: \*The Parties' combined market share in 2022 is up to October 2022

\*\*Post-JB HHI refers to the theoretical post-JB HHI in 2019

(a) *Market condition*

111. In relation to the Langkawi – Tokyo market, the Parties have been the dominant player, with an average market share of [REDACTED] since 2015 up to October 2022. Aside from the Parties, their competitors in this market include D7 and NH, with market shares of [REDACTED] and [REDACTED], respectively in 2019. During the pandemic, the Parties' market share increased substantially due to the temporary exit of D7 from the market, leading the Parties to gain a substantial market share of [REDACTED] in 2021. Nonetheless, since the pandemic, other carriers were able to enter the market, such as Zipair Tokyo Inc. ("ZG") from 2021 onwards, and it obtained a market share of [REDACTED] in 2021 and [REDACTED] in 2022. SQ was also able to increase its market share from [REDACTED] in 2019 to [REDACTED] in 2022.

112. While the post-JB HHI of 0.4146 in 2019 is classified as high, the delta HHI of 0.0781 indicates that there is minimal impact arising from the JB. Additionally, it is noted that there are no direct services available for this market, with most flights having stopovers either in KUL (93.2%) or SIN (5.5%).

113. The barrier to entry into the market is not high as it is possible for potential competitors to enter the Langkawi – Tokyo market. As there are no direct services on this route, it would be easier for other competitors to enter this route through an indirect service, as these competitors can leverage their existing flights and provide comparable elapsed time and service as the Parties. Hence, this shows that the barrier to entry via indirect services in the Langkawi – Tokyo market is not high.

(b) *Impact of the JB on fares*

114. In relation to the impact of the JB on fares offered in the Langkawi – Tokyo market, the Commission found that the Parties' average economy fares were higher than their competitors' fares from 2015 up to 2020, before becoming comparatively lower than their

competitors during the pandemic. For example, the Parties' one-way average economy fare in 2019 was [REDACTED] (Others: [REDACTED]). In contrast, the Parties' average economy fare in 2021 was lower than their competitors (Parties: [REDACTED], Others: [REDACTED]). Overall, the Parties' fares were comparable to other top competitors' fares, such as NH, ZG, and SQ. Only D7, being an LCC, was able to consistently provide much lower fares than the Parties in the Langkawi – Tokyo market. Therefore, the Commission finds that the JB does not appear to pose any detrimental effects in terms of fares for the Langkawi – Tokyo market.

### **Kuching – Tokyo**

115. Information related to the Commission's market analysis for the Kuching – Tokyo market is shown in **Table 19** below.

**Table 19: Market data for the Langkawi – Tokyo market in 2019**

<b>Parties' Combined Market Share</b>	<b>HHI (2019)</b>	<b>Delta HHI</b>	<b>Total pax contribution</b>
2019: [REDACTED] 2022*: [REDACTED]	Pre-JB: 0.3902 Post-JB**: 0.5073	0.1171	4,254 (0.4% of Malaysia – Japan market)

Source: Commission's analysis, AirportIS

Notes: \*The Parties' combined market share in 2022 is up to October 2022

\*\*Post-JB HHI refers to the theoretical post-JB HHI in 2019

(a) *Market condition*

116. In relation to the Kuching – Tokyo market, the Parties were the dominant player, with an average market share of [REDACTED] between 2015 and 2020. However, despite their high market share, it is noted that this market is only operated through indirect services. This would allow other airlines to be able to capture more market share by entering the market through indirect flights as well. Aside from the Parties, competitors in this market include TR and D7, with market shares of [REDACTED] and [REDACTED], respectively in 2019. However, the situation had changed drastically in 2021 due to the impact of the pandemic. In 2021, SQ was the dominant player in the market with a [REDACTED] market share, whereas the Parties' market share had substantially decreased to [REDACTED]. In 2022, the Parties were able to regain their market share of [REDACTED], while the dominant player was TR, with a market share of [REDACTED].
117. The market concentration is classified as high at 0.5073, with a delta HHI of 0.1171, which was the highest delta HHI among the Significant Relevant Markets. However, the Commission is of the view that the Parties will face continued competitive pressure from TR, due to it having a high market share, and to a more limited extent, from SQ and NH.
118. The barrier to entry into the market is not high as the market is quite competitive. D7 had obtained additional ATRs of 7 weekly flights for the Kuala Lumpur – Kuching route effective January 2023, which may lead to D7's re-entry and expansion into the Kuching – Tokyo market in the future. Similar to the Langkawi – Tokyo market, there are no direct services on this route. Hence, it would be easier for competitors to enter this market through indirect services, as they can leverage their existing flights and provide

comparable elapsed time and service as the Parties. Therefore, it is expected that other airlines may also enter the market once demand increases.

*(b) Impact of the JB on fares*

119. In relation to the impact of the JB on fares offered in the Kuching – Tokyo market, the Commission found that the Parties' average economy fares were slightly higher than their competitors'. For example, the Parties' one-way average economy fare in 2019 was [REDACTED] (Others: [REDACTED]). This would be due to the fact that their closest competitors include D7 and TR, which are LCCs. Moreover, the Parties' fares were comparable to their other FSC competitors, such as NH and SQ, which had average fares of [REDACTED] and [REDACTED], respectively in 2019. Therefore, the Commission finds that the JB does not appear to pose any detrimental effects in terms of fares for the Kuching – Tokyo market.

**Conclusion on subparagraph 50(c) of Act 771**

120. The Commission finds that the Parties' market shares are high for most of the routes analysed and ranked among the top three (3) in terms of market shares in these routes. Nevertheless, the Commission finds that the Parties have experienced continued competition in the Significant Relevant Markets through the entry of new competitors and the exertion of competitive pressure from existing competitors.
121. In relation to ASAs, the Commission noted that there are no restrictions on the frequency, capacity, or aircraft type for air passenger services based on the ASA between Malaysia and Japan, with the exception of HND. As a whole, the Commission found that the barriers to entry in the Significant Relevant Markets in terms of ASAs are not high.
122. The Commission notes that all of the four (4) Significant Relevant Markets identified for a full competition analysis in Stage 3 had routes with a destination to Tokyo, namely Kuala Lumpur – Tokyo, BKI – Tokyo, LGK – Tokyo, and KCH – Tokyo. As mentioned in paragraphs 97 and 98, while there are frequency restrictions and slot congestion in HND, there are sufficient number of available slots at NRT, with no frequency restrictions in NRT under the ASA between Malaysia and Japan. Therefore, there is little barrier for other airlines to enter and compete against the Parties in markets to and from Tokyo.
123. Additionally, other airlines in this market may offer indirect services between Malaysia and Japan, through various other transit points in the neighbouring ASEAN countries, such as Singapore, Thailand, Hong Kong, Philippines, etc. The Commission is of the view that such indirect services—as long as they do not significantly add to the total elapsed time and are lower in fares—are viable options for passengers. As such, the Commission finds that these competitors are able to exert competitive pressure on the Parties.
124. Overall, while the Commission has found that there has been some lessening of competition in four (4) of the Relevant Markets as a result of the JB, the Parties continue to be constrained by other competitors that provide comparable services to the Parties.

125. The Commission had also found under its assessment of benefits claimed by the Applicant, that the JB has provided significant benefits such as better accessibility through expanded codesharing, knock-on benefits to consumers through the streamlining of the Parties' operational processes, improved disruptions management and improved corporate offerings between the Parties. Once the market has reached pre-pandemic levels, the expected increase in flight frequencies would provide significant benefits to consumers as well.
126. The Commission finds that, on balance, the benefits arising from the JB outweigh the detrimental effects of the JB on competition, fulfilling the requirements under subparagraph 50(c) of Act 771.

***Subparagraph 50(d) of Act 771 – The agreement does not allow the enterprise to eliminate competition completely in respect of a substantial part of the aviation services***

127. As shown through the Commission's findings in relation to the Significant Relevant Markets above, the Commission found that the Parties have satisfied the requirement in subparagraph 50(d) of Act 771 as there has not been any complete elimination of competition in any of the Significant Relevant Markets following the implementation of the JB. In each of the Significant Relevant Markets, there continues to be competitors—including both direct and indirect carriers—that act as a competitive constraint on the Parties.

**7.0 CONCLUSION**

128. In conclusion, the Commission is satisfied that the Definitive Agreements fulfill the requirements under section 50 of Act 771 to qualify for a renewal of the individual exemption.

**8.0 THE COMMISSION'S DECISION**

129. Based on the considerations stipulated above, the Commission concludes that the Definitive Agreements fulfill the requirements under section 50 of Act 771 and qualify for renewal of the individual exemption.
130. The Commission grants a renewal of the individual exemption with respect to the Definitive Agreements from the prohibition under section 49 of Act 771. The individual exemption shall be effective for a period of five (5) years from 2 May 2023 to 1 May 2028.
131. The individual exemption covers only the Parties' Definitive Agreements, as per the Applicant's submission. The individual exemption shall not cover any amendments made to the Definitive Agreements.
132. The individual exemption shall continue to be subject to subsection 51(6) of Act 771. The Commission may take any action under subsection 51(6) of Act 771, should the Commission be satisfied that there has been a material change of circumstances from the time when the Commission grants the individual exemption. Material change of circumstances, amongst others, may include changes in market conditions.

133. The individual exemption is 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 Definitive Agreements or a Party to the Definitive Agreements, either Party shall file for variation or amendment of the individual exemption to the Commission within two (2) weeks of the variation or amendment. A material change includes: a change in the scope of the JB; an addition of any new route or airline; a cooperation arrangement, or a merger with any airline that would affect the services in the Relevant Markets; and
  - (c) The Parties shall provide any document or information as requested by the Commission, at any time, in relation to the Definitive Agreements for monitoring purposes.
134. The Applicants may submit an application to renew the individual exemption for their Definitive Agreements to the Commission before the expiry of the five (5) year exemption period.
135. The individual exemption granted by the Commission herewith is only in relation to the Definitive Agreements which the Applicant had submitted to the Commission and does not preclude an investigation by the Commission on any other potential infringements under Act 771 by the Parties.

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**APPENDIX I**  
**IATA AIRPORT AND AIRLINE CODES**

## APPENDIX I: IATA AIRPORT AND AIRLINE CODES

### Airport Codes

Airport Code	Airport Name
<b>Airports in Malaysia</b>	
BKI	Kota Kinabalu International Airport, Sabah
JHB	Senai International Airport, Johor
KCH	Kuching International Airport, Sarawak
KUL	Kuala Lumpur International Airport
LGK	Langkawi International Airport, Kedah
PEN	Penang International Airport
SZB	Sultan Abdul Aziz Shah Airport, Subang
<b>Airports in Japan</b>	
CTS	New Chitose Airport, Sapporo, Hokkaido
FUK	Fukuoka Airport, Kyushu
HND	Haneda Airport, Tokyo, Honshu
ITM	Osaka International Airport (Itami Airport), Osaka, Honshu
KIX	Kansai International Airport, Osaka, Honshu
NGO	Chubu Centrair International Airport, Nagoya, Honshu
NRT	Narita International Airport, Tokyo, Honshu
<b>Airports in Other Asian Markets</b>	
BKK	Suvarnabhumi Airport, Bangkok, Thailand
HKG	Hong Kong International Airport
SIN	Changi Airport, Singapore

### Airline Codes

Airline Code	Airline Name
<b>Parties to the JB</b>	
MH	Malaysia Airlines Berhad
JL	Japan Airlines Co. Ltd
JL	J-Air Co. Ltd.
<b>Other Airlines</b>	
7C	Jeju Air Co., Ltd.,
AK	Capital A Bhd.
BI	Royal Brunei Airlines Sdn Bhd
CX	Cathay Pacific Airways Limited
D7	AirAsia X Bhd.
FY	FlyFirefly Sdn. Bhd.
KE	Korean Air Co., Ltd.,
LJ	Jin Air Co., Ltd.

<b>Airline Code</b>	<b>Airline Name</b>
NH	All Nippon Airways Co., Ltd.
OD	Malindo Airways Sdn Bhd
SJ	Sriwijaya Air
SQ	Singapore Airlines Limited
TG	Thai Airways International Public Co. Limited
TR	Tiger Airways Singapore Pte Ltd
ZG	Zipair Tokyo Inc.



**APPENDIX II**  
**DETERMINATION OF EACH RELEVANT MARKET**

## APPENDIX II: DETERMINATION OF EACH RELEVANT MARKET

Relevant Market	Affected Airport	All Airports in the Relevant Market
<b>Malaysia</b>		
Kota Kinabalu	BKI	BKI
Kuala Lumpur	KUL	KUL SZB  Based on the Commission's past analysis, it had found that KUL and SZB are, to a large extent, substitutable airports serving Kuala Lumpur.
Penang	PEN	PEN
Langkawi	LGK	LGK
Kuching	KCH	KCH
Johor Bahru	JHB	JHB
<b>Japan</b>		
Tokyo	NRT HND	NRT HND  HND was included in the Tokyo market because it is within 100km (60km) of NRT, with a travelling time of 60 minutes. HND is also close to the Tokyo city centre.
Osaka	KIX	KIX ITM  ITM is included in the Osaka market although it is a domestic heavy airport because it is within 100km (42km) of KIX, with a travelling time of 60 minutes. ITM is also closer to the city centre compared to KIX.

Source: Commission's analysis

**APPENDIX III**  
**MARKET ANALYSIS OF THE SIGNIFICANT**  
**RELEVANT MARKETS**

### APPENDIX III: MARKET ANALYSIS OF THE SIGNIFICANT RELEVANT MARKETS

***The Parties' combined market shares (%) in the Significant Relevant Markets from 2015 to 2022***

No.	Relevant Market	2015	2016	2017	2018	2019	2020	2021	2022*
1.	KUL – Tokyo	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
2.	BKI – Tokyo	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
3.	LGK – Tokyo	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
4.	KCH – Tokyo	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
5.	KUL – Osaka	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
6.	PEN – Osaka	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
7.	JHB – Osaka	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
8.	PEN – Tokyo	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
9.	BKI – Osaka	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]

Source: Commission's analysis, AirportIS

Notes: The market shares in red indicate a market share higher than 20%.

\*Parties' Combined Market Share in 2022 is up to October 2022.

**Breakdown of each Party's market share (%) in the Significant Relevant Markets in 2019**

No.	Relevant Market	MH	JL	Parties' Total
1.	KUL – Tokyo	[✂]	[✂]	[✂]
2.	BKI – Tokyo	[✂]	[✂]	[✂]
3.	LGK – Tokyo	[✂]	[✂]	[✂]
4.	KCH – Tokyo	[✂]	[✂]	[✂]
5.	KUL – Osaka	[✂]	[✂]	[✂]
6.	PEN – Osaka	[✂]	[✂]	[✂]
7.	JHB – Osaka	[✂]	[✂]	[✂]
8.	PEN – Tokyo	[✂]	[✂]	[✂]
9.	BKI – Osaka	[✂]	[✂]	[✂]

Source: Commission's analysis, AirportIS

Note: The market shares in red indicate a market share higher than 20%.

**Market concentration (HHI) of each Significant Relevant Market from 2015 to 2022**

No.	Relevant Market	Pre-JB HHI		Post-JB HHI			
		2018	2019	2019*	2020	2021	2022**
1.	KUL – Tokyo	0.2263	0.2206	0.2998	0.3160	0.4684	0.4647
2.	BKI – Tokyo	0.5569	0.4189	0.4538	0.4429	0.6345	0.6367
3.	LGK – Tokyo	0.3724	0.3367	0.4148	0.4009	0.6860	0.5790
4.	KCH – Tokyo	0.5245	0.3902	0.5073	0.4192	0.8481	0.4364
5.	KUL – Osaka	0.4534	0.3959	0.4070	0.4303	0.7992	0.4408
6.	PEN – Osaka	0.2546	0.2537	0.2569	0.2559	0.9666	0.6562
7.	JHB – Osaka	0.3329	0.3336	0.3341	0.3745	1.0000	0.3478
8.	PEN – Tokyo	0.1921	0.1851	0.2327	0.2339	0.5703	0.3704
9.	BKI – Osaka	0.2269	0.2002	0.2009	0.2435	0.8032	0.5313

Source: Commission's analysis, AirportIS

Notes: The numbers in red are HHIs that are higher than 0.25, which the Commission considers as an indicator of high concentration.

\*The 2019 Post-JB HHI refers to a theoretical post-JB HHI in 2019.

\*\*The HHI in 2022 is up to October 2022.

**The total passenger growth, the Parties' passenger contribution, the Parties' combined market shares, and the market concentration in the Significant Relevant Markets**

No.	Relevant Market	Pax contribution and passenger number (2019)	Parties' Combined Passenger Market Share (2019)	Theoretical Post-JB HHI (2019)	Delta HHI (2019)
1.	KUL – Tokyo	43.7% (692,176)	[X]	0.2998	0.0792
2.	BKI – Tokyo	2.6% (41,661)	[X]	0.4538	0.0349
3.	LGK – Tokyo	0.8% (12,621)	[X]	0.4148	0.0781
4.	KCH – Tokyo	0.4% (6,128)	[X]	0.5073	0.1171
5.	KUL – Osaka	23.1% (366,120)	[X]	0.4070	0.0112
6.	PEN – Osaka	1.9% (30,487)	[X]	0.2569	0.0032
7.	JHB – Osaka	0.5% (7,555)	[X]	0.3341	0.0006
8.	PEN – Tokyo	3.6% (57,492)	[X]	0.2327	0.0476
9.	BKI – Osaka	1.3% (20,164)	[X]	0.2009	0.0007

Source: Commission's analysis, AirportIS

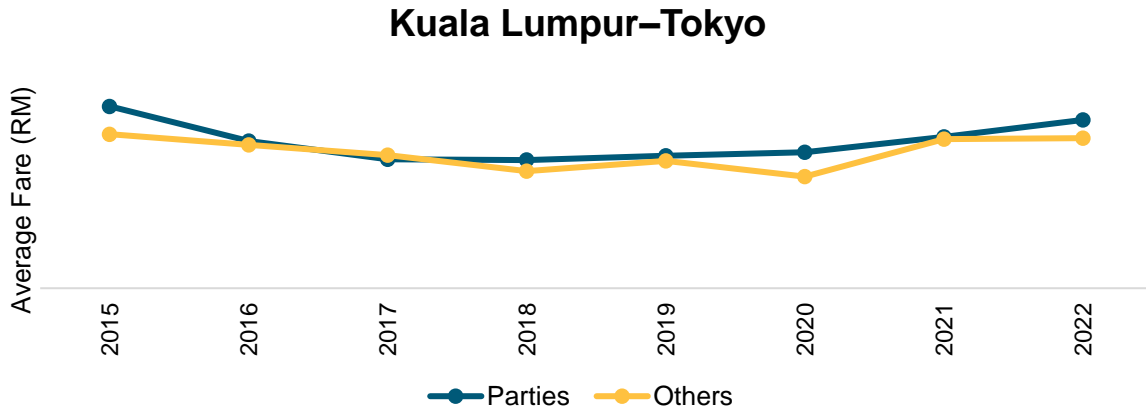
Note: The numbers in red indicate those that are higher than a certain threshold in the Commission's analysis, i.e., the numbers in red for the passenger contribution indicate a passenger contribution higher than 0.5%, the numbers in red for the Parties' combined market shares indicate a market share higher than 20%, and the numbers in red for the theoretical post-JB HHI indicate HHIs that is higher than 0.25.

**APPENDIX IV**  
**AVERAGE ECONOMY FARES IN THE SIGNIFICANT**  
**RELEVANT MARKETS**

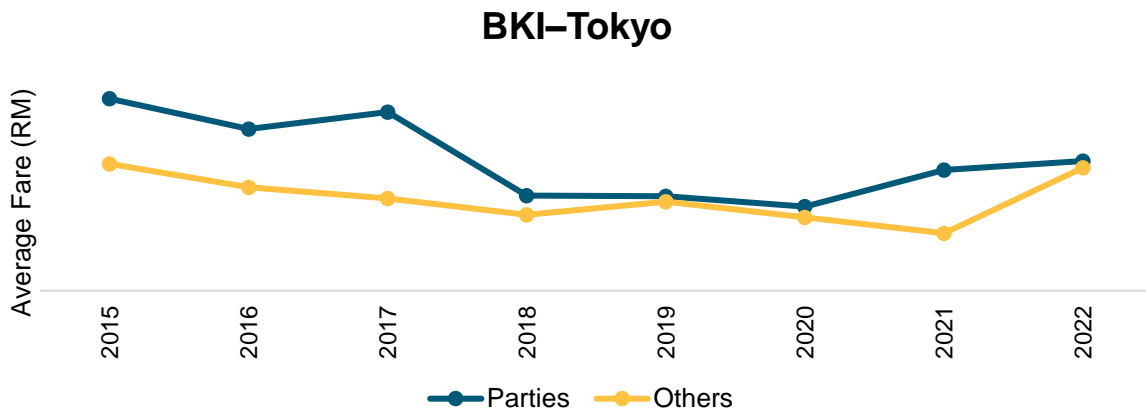


**APPENDIX IV: AVERAGE ECONOMY FARES IN THE SIGNIFICANT RELEVANT MARKETS**

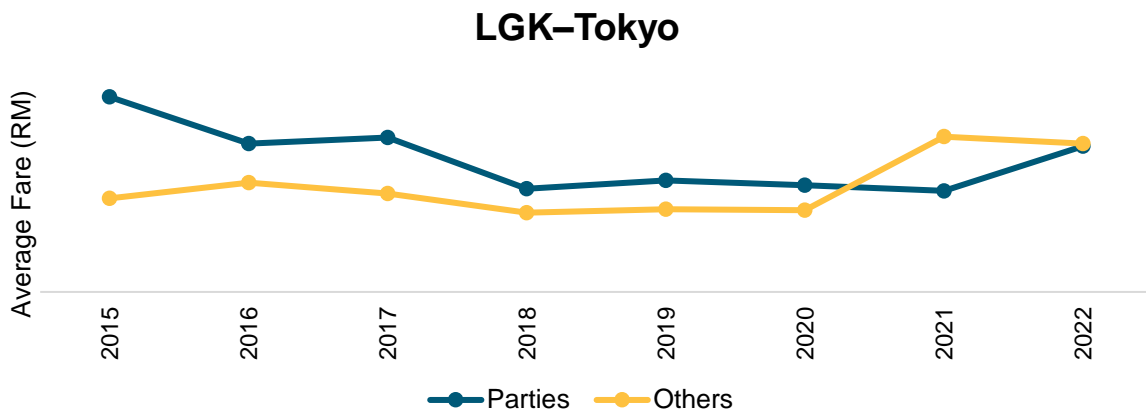
*Charts of annual one-way average economy fares offered by the Parties and their competitors in the Significant Relevant Markets from 2015 to 2022*



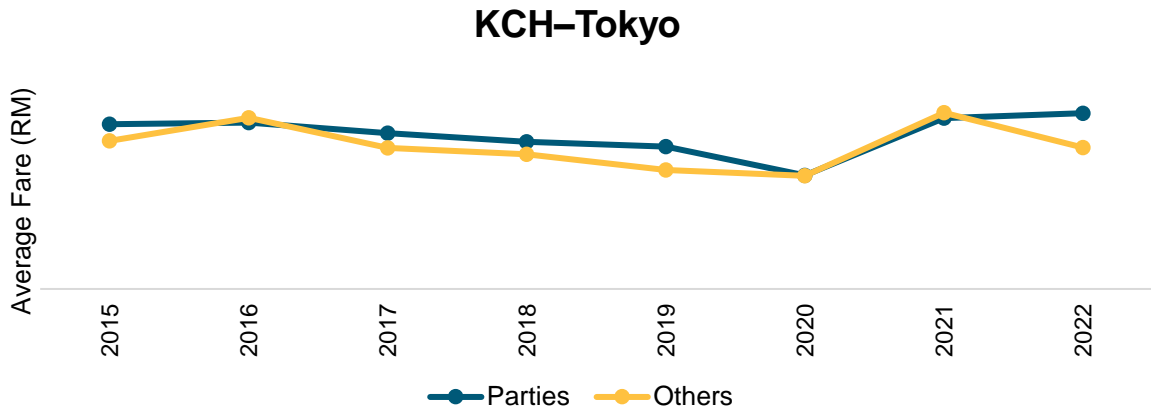
Source: Commission’s analysis, AirportIS



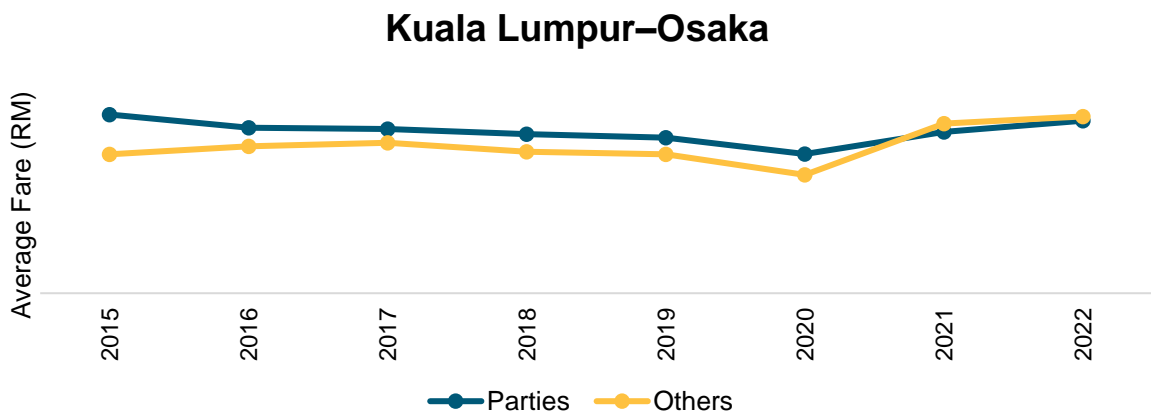
Source: Commission’s analysis, AirportIS



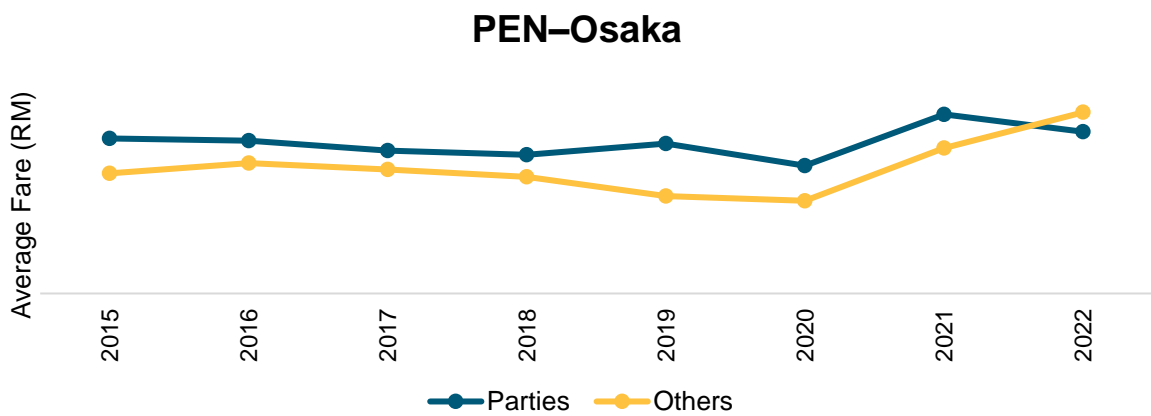
Source: Commission’s analysis, AirportIS



Source: Commission's analysis, AirportIS

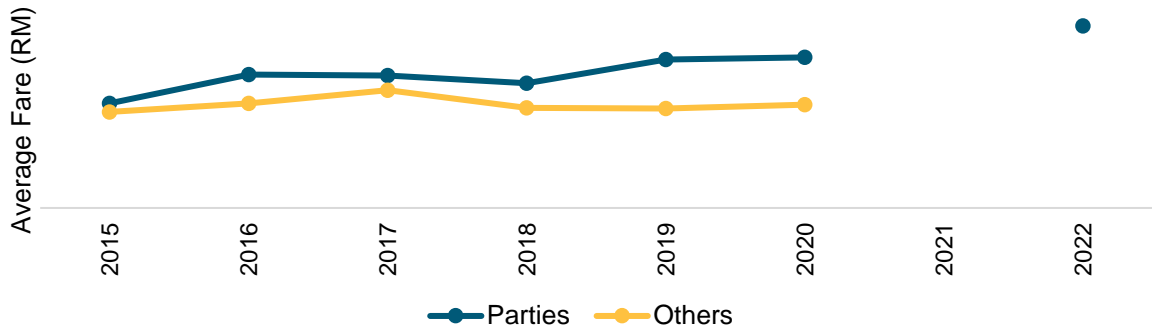


Source: Commission's analysis, AirportIS



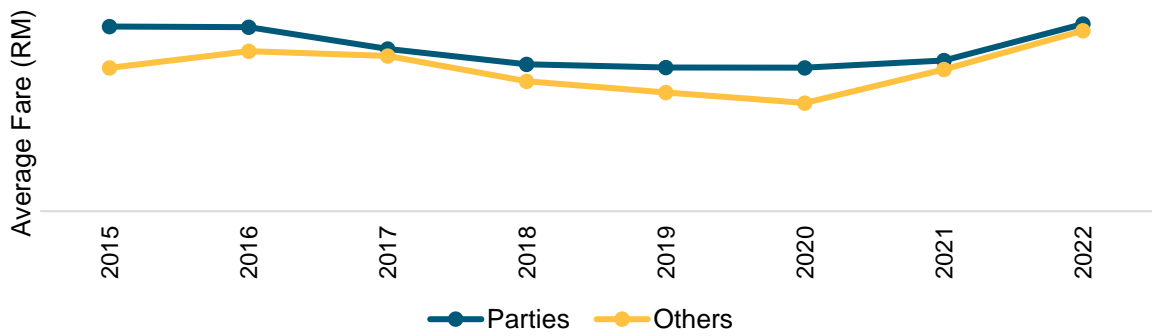
Source: Commission's analysis, AirportIS

### JHB–Osaka



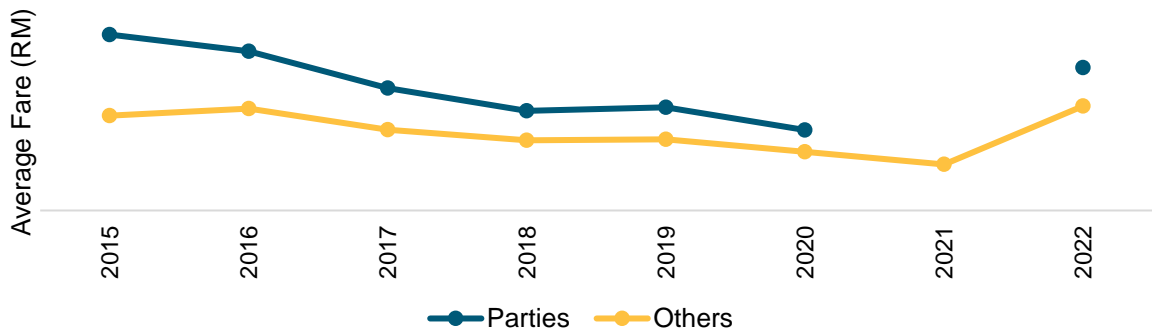
Source: Commission's analysis, AirportIS

### PEN–Tokyo



Source: Commission's analysis, AirportIS

### BKI–Osaka



Source: Commission's analysis, AirportIS

***Charts of monthly one-way average economy fares offered by the Parties and other top carriers serving the route in the Significant Relevant Markets assessed in Stage 3 from 2018 to 2022***

**[CONFIDENTIAL]**