



COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2013/05/122)

26.11.2013

Order under Section 38 of the Competition Act, 2002

1. On 1st May 2013, the Competition Commission of India (hereinafter referred to as the “**Commission**”) received a notice under sub-section (2) of Section 6 of the Competition Act, 2002 (“**Act**”) given by Etihad Airways PJSC (hereinafter referred to as “**Etihad**”) and Jet Airways (India) Limited (hereinafter referred to as “**Jet**”) (hereinafter Jet and Etihad are collectively referred to as the “**Parties**”).
2. On 12th November 2013, the Commission passed an order under sub-section (1) of Section 31 of the Act, approving the combination (hereinafter referred to as “**Order**”). Vide letter dated 13th November 2013, the Parties made a request to rectify paragraph 14 and paragraph 16 of the Commission’s Order to a limited extent to reflect the factual position of board size, power of Chairman and that Etihad is not acquiring control over the operations and assets of Jet and is therefore not in joint control. It has also been stated that the 24 percent equity stake being acquired by Etihad in Jet is purely a non-controlling equity investment.
3. The relevant paragraphs that are requested to be rectified are as follows:

“14 In the instant case, both the Parties are engaged in the business of providing international air transportation services. The background of the IA pursuant to which 24 percent equity interest in Jet is proposed to be acquired categorically states that the Parties wish to enhance their airline business through a number of joint initiatives. In such a case, Etihad’s acquisition of twenty-four (24) percent equity stake and the right to nominate two (2) directors, out of the six (6) shareholder directors, including the Vice-Chairman, in the Board of Directors of Jet,



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is considered as significant in terms of Etihad's ability to participate in the managerial affairs of Jet."

16 It is observed that the Parties have entered into a composite combination comprising inter alia the IA, SHA and the CCA, with the common/ultimate objective of enhancing their airline business through joint initiatives. The effect of these agreements including the governance structure envisaged in the CCA establishes Etihad's joint control over Jet, more particularly over the assets and operations of Jet."

4. With reference to paragraph 14 of the Order, the Parties submitted that the total board size of Jet, post consummation of the combination, will be 12 directors and not six shareholder directors as incorrectly stated in the Order. While Jet has the right to appoint 4 directors, Etihad only retains the right to appoint 2 directors on the board, with the remaining 6 directors being independent directors. It has also been stated that the Chairman will be a Jet nominee (appointed by the promoter) and will have a casting vote. Therefore, Jet would continue to retain control over the board, including the right to nominate the individuals as independent directors.
5. With reference to paragraph 16 of the Order, the Parties have submitted that the proposed investment by Etihad into Jet is purely a strategic investment and Etihad will not acquire any degree of control over Jet.
6. The Commission considered the request of the Parties in its meeting held on 18th November 2013 and directed that the Parties be required to appear before the Commission on 26th November 2013.
7. After hearing the Parties, it is considered that there is no mistake or factual error in the statements/observations made in paragraph 14 of the Order as it neither speaks about the total board size of Jet nor the number of independent directors' therein. Therefore, it is not possible to accept the Parties' contention that there is an incorrect statement regarding the total board size of Jet in the Order.



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8. As regards Paragraph 16 of the Order, it is observed that the said paragraph presents the views/observations of the Commission regarding Etihad's joint control over Jet which are based on certain facts discussed in the Order. While mistakes apparent on the record could be rectified under Section 38 of the Act, observation(s)/decision(s) of the Commission cannot be a subject matter of rectification.
9. In view of the foregoing, the Parties request for rectification is declined.
10. The Secretary is directed to communicate to the Parties accordingly.

(Ashok Chawla)
Chairperson

(Geeta Gouri)
Member

(M.L. Tayal)
Member

(S.N. Dhingra)
Member

(S.L. Bunker)
Member