4TH NALSAR-NFCG MOOT COURT COMPETITION, 2015

NALSAR UNIVERSITY OF LAW, HYDERABAD

- JULY 10-12, 2015 -

MOOT PROBLEM

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Background

1. The Republic of Mancunia ("**Mancunia**") is a developing country in South Asia. All laws, legal procedures and judicial pronouncements of Mancunia are, unless otherwise stated, in *pari materia* with those of the Union of India. Pursuant to the Mancunian Air Corporation Act, 1953, the assets of the then existing handful of airlines operational in Mancunia were pooled into two new state-owned enterprises: Air Mancunia International and the Mancunian Airlines Corporation; and no other person was permitted to operate scheduled air transport services to, from or within Mancunia, effectively monopolizing air travel in the country for the most of the second half of the 20th Century.

2. Beginning with the Air Taxi Scheme of 1986, the Mancunian civil aviation industry, today among the largest ten globally, was finally liberalized in 1994, in the wake of the New Economic Policy of 1991, when the Government of Mancunia (the "**Government**") repealed the Air Corporation Act, 1953 and opened the sector to private players, subject to the fulfillment of certain statutory requirements. Norms were further relaxed in 1997, by which time four private full-service scheduled carriers were plying their trade in the country.

3. One of the earliest entrants in the field, Venusian Airlines (Mancunia) Limited ("**Venusian**") was started by two Mancunian nationals, university-time classmates and lifelong friends, Siralex Buxy ("**Siralex**") and Vangaal Singh ("**Vangaal**"), incorporated as a private limited company on October 13, 1993, and commenced operations from November 19, 1995.

4. With time, it began servicing various international destinations and cemented its position as one of the premier brands in the global civil aviation industry; repeatedly being declared as "Mancunia's Best Domestic Airline" and garnering several national and international accolades. To fund the scaling of operations, Siralex and Vangaal brought in two independent domestic PE funds – Labaan, Daw & GG Capital ("**LD**") in 1996 and Anjidas & Kabdaal Partners ("**AK**") in 1998. Post the second round of dilution, they held 14.69% and 11.55% of the outstanding shares of Venusian, respectively, pursuant to two different preferential issues.

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[*] All characters appearing in this moot problem and annexures hereto are fictitious. Any resemblance to real persons, legal, living, or dead, is purely coincidental. This moot problem has been drafted by Varun Agarwal (Nalsar alumnus), an associate at S&R Associates, Mumbai. Any attempt to contact him on matters relating to this problem or the 4th Nalsar-NFCG Moot Court Competition, 2015 shall result in immediate disqualification.

5. On February 6, 2001 Venusian became a public limited company. Venusian was listed on both the National Stock Exchange of Mancunia Limited ("**NSE**") and the Busby Stock Exchange Limited ("**BSE**"), the two largest recognized stock exchanges of Mancunia, pursuant to a 100% book-built IPO of 18.66 million equity shares at an issue price of Rs. 372 per share (of which, 1,026,300 equity shares were reserved for the non-promoter/promoter group employees of Venusian; and an allocation of at least 60% of the entire offer to qualified institutional buyers) amounting to a post-issue shareholding of 20% in Venusian. The trading of these equity shares commenced on October 5, 2001. Both PE funds chose to retain their entire pre-IPO shareholding – a mark of high confidence in the future of Venusian. Another PE fund, Mrimeena FT World Ventures ("**MF**"), also chose to participate in the IPO – emerging as the single largest subscriber of the public offer. Post listing, Siralex and Vangaal each held 29.375% equity in Venusian with the remaining 41.25% being held by public including 11.7%, 9.2%, 7.1% by LD, AK and MF, respectively, and 13.25% by others such as employees, mutual funds, FIIs and NRMs).

6. In the year 2005, Siralex and Vangaal had a fallout over the vision for the business and the direction in which Venusian was headed – Siralex believed the time was ripe to adopt a low cost carrier ("**LCC**") model as a diversification strategy whereas Vangaal wanted to concentrate on expanding the global footprint of the airline and entrenching it as the full service carrier ("**FSC**") of choice for the business travelers in South Asia and the Middle-East.

7. With their relationship deteriorating, their differences in opinion becoming a matter of common knowledge and public gossip, and a situation of deadlock on the horizon, Siralex and Vangaal reached an understanding pursuant to which Vangaal agreed to resign as a director of, terminate his contract of employment with, and transfer to Siralex his entire shareholding in, Venusian thereby completely exiting it. Vangaal's exit was done in accordance with the erstwhile Securities and Exchange Board of Mancunia ("**SEBM**") (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ("**1997 Takeover Code**") – Siralex made a public offer for a minimum of 20% shareholding in Venusian which resulted in the acquisition of a further 1.75% of the shareholding in Venusian. Post-exit, Siralex held 60.5% of the equity in Venusian with the public holding the remaining 39.5%.

8. At the time of leaving, Vangaal wrote an email to all shareholders of Venusian and its employees claiming that while his "*love for Venusian had not diminished*", he felt that it was in the best interest of everyone that he parted ways from the airline. He wished his former partner, Siralex "*the very best in taking care of her*". On his part, Siralex publicly thanked Vangaal for "*his impeccable work ethic and ceaseless labor devoted to building Venusian from the ground up*".

9. Vangaal, determined to see his philosophy turn into reality, left Mancunia for the Middle-East and was soon involved in the nationalization of the airlines of United Ayax Emirates ("**UAE**"). Air Ayax PJSC ("**Ayax**") was set-up as the national carrier of UAE in January 2006 under the leadership of Vangaal as its CEO, pursuant to a royal decree, and commenced its commercial operations in March 2006. Ayax is primarily engaged in the business of international air transport of passengers. Additionally, Ayax also provides maintenance and repair services, ground handling services, cargo transportation and travel management services, with Ayax Cargo and Ayax Holidays being its two main divisions.

10. Siralex ran Venusian in accordance with his vision for the company, developed its LCC offerings through a wholly owned subsidiary, Venusian Lite (Mancunia) Limited and also grew Venusian's frequent flier program – "*Venusian Privilege*", into a profitable division of Venusian. To fund these expansion plans, Siralex had, by February 2009, taken a number of loans at steep interest rates, tight repayment schedules and strict cross-default provisions.

11. With the global economy in a downturn and profit margins plunging, Venusian was looking like it would begin defaulting on its debt servicing and go under. Unable to gather the needed injection of fresh funds and disillusioned with how things had unfolded, Siralex decided that handing over Venusian to a new investor with better access to funds and fresh ideas was in the best interest of the airline. Siralex was fortunate to find, almost immediately, a consortium of Mancunian steel magnates, led by a mutual university-time classmate of Siralex and Vangaal's, the charismatic Sirmatt Suraneni ("**Sirmatt**").

12. In November 2009, Sirmatt (along with persons in concert) acquired the entirety of Siralex's 60.5% stake in Venusian. Siralex gave an emotional farewell speech at Venusian's headquarters in which he stated that, he "*felt the time was right to bestow a fresh pair of wings to the dream that took off over 16 years ago*" and that he would like to "*fondly watch from the side, like a proud parent, the new directions in which Venusian chose to soar*". Sirmatt also made a public offer, pursuant to the 1997 Takeover Code, for another 20% stake which resulted in an acquisition of a further 2.125% equity. Post-public offer, the shareholding pattern of Venusian looked like this:

	Shareholder – Promoter and Promoter Group	Shareholding (fully-diluted basis)
1.	Sirmatt (along with persons acting in concert)	62.625%
	Shareholder – Public	**Shareholding (fully-diluted basis)**
1.	Labaan Daw & GG Capital	11.7%
2.	Anjidas & Kabdaal Partners	9.2%
3.	Mrimeena FT World Ventures	7.1%
4.	Venusian Employees Welfare Trust	1.1%
5.	Others	8.275%

13. After exiting Venusian, Siralex, armed with a substantial war-chest, went on an entrepreneurial run – setting up a number of technology companies across Mancunia, and investing in a dozen or so early-stage companies, and real estate.

14. Almost immediately after the completion of the open offer, Sirmatt set about restructuring Venusian; he brought in a new CEO, Coleen Thapar ("**Coleen**"), a finance industry veteran of 20 years and another university-time classmate of Sirmatt. The PE funds, LD, AK and MF, were all apprehensive over the appointment of Coleen as Venusian's CEO. Sirmatt managed to assuage their fears by assuring them that Coleen would do a fine job.

15. Sirmatt also pushed through the acquisition of 20 small-bodied Bombardier Q400 to service smaller cities. The aircraft flew higher and faster than the French ATRs of its rivals. Venusian's fleet shot up from 28 planes to 59 in one year. The number of flights grew by 111 percent in that period and the market share improved. By late 2010, Venusian controlled about 19.5 percent of the domestic skies, primarily through the LCC model of services.

16. Venusian however, was being run on a cash-basis, accrued expenses were not being accounted for, and provisions were not made. Negotiation of contracts, especially for the maintenance of aircraft and engines was being handled by persons with no prior experience in the sector – airlines globally insisted on ironclad maintenance, power-by-the-hour parts and engine support contracts, even if they are a little more expensive, as these contracts put the onus of maintenance on the manufacturers to make certain that the engine is serviceable. Venusian, on the other hand, got hit with massive maintenance costs – the Q400s were, for example, being sent to the Netherlands, for major checks.

17. Being answerable to their respective limited partners, the discomfort levels of LD, AK and MF, with respect to some of the management decisions made by Coleen, was on the rise. They voiced similar concerns at shareholder meetings but Sirmatt waved most of these away by reminding

everyone, time and again, that Coleen was "*an old hand at this game and has delivered multiple corporate turnarounds in the course of a stellar career*".

18. As if in response to Sirmatt's faith in her abilities, Coleen focused her efforts towards the development of the already profitable frequent flyer program and hived it off to Venusian Privilege Private Limited ("**Venusian Privilege**"), a wholly owned subsidiary of Venusian, by way of a slump sale. In March 2010, Venusian Privilege, driven by Coleen's business savvy, entered into an alliance with Ayax by which travelers flying by either Venusian or Ayax could claim benefits of the privilege program of the other airline.

19. By this time, Ayax, under its CEO Vangaal, had become a major global player in the airline industry:

    (i) it had announced what was the largest aircraft order in commercial aviation history at the Farnborough Air Show in 2008, for up to 205 aircrafts – 100 firm orders, 55 options and 50 purchase rights;

    (ii) by March 2009, Ayax operated passenger and cargo services to 82 destinations around the world from its home base in Shankarz, the capital of UAE;

    (iii) it reported its first full-year net profit in 2009, of US$10 million, in line with the strategic plan announced by CEO Vangaal in 2006;

    (iv) in December 2009, Ayax announced it had taken a 27.61% stake in Air Bayern, Europe's third largest airline. It followed this up with minority stakes in other airlines—Air Swansea (38%) Aer Lyon (6.987%), Virgin Mercyside (12%); and

    (v) by January 2010, Ayax was carrying 10.9 million passengers each year, globally.

20. Code sharing arrangements have been a key strategic tool used by airlines globally, and Ayax's business strategy has also been focused on such arrangements. As of March 2010, Ayax had 21 code-share partners, such as Air Bayern, Air PSG, South Hampton Airlines and Ji Sung Air, with a global coverage of approximately 190 destinations.

21. Simultaneously with the linking of their frequent flyer programs, Venusian and Ayax also entered into a code-share agreement for connecting various Mancunian cities to destinations in Europe. Under this agreement, Venusian had rights to code-share flights between Mancunia and Shankarz and between Shankarz and Paris.

22. FY 2012 and FY 2013 were forgettable years for the Mancunian airline industry, with combined losses exceeding US$4 billion. With increasing operations costs and flat-lining profits, Sirmatt, in consultation with Coleen, undertook a number of debt restructurings over FYs 2012 and 2013; further leveraging the balance sheet of Venusian by availing new facilities and enhancing existing ones, and refinancing older debt at even higher yields. This resulted in a severe liquidity crunch leading to a number of cost-cutting measures – fleet size was reduced, 12% of the employees were laid off, and non-core assets were shed to improve the airline's liquidity situation.

23. During a panel interview titled "*Investments in the Airline Sector*", aired on August 20, 2010, by a leading Mancunian news channel, LD, AK and MF, represented by their respective GPs, spoke at length about the various issues that ail the Mancunian civil aviation sector. At one point, Yoostice Gopalakrishnan, a general partner at LD, said, "*I believe that Venusian will grow into a full-fledged international carrier over the next few years. Some of the business practices adopted by the airline are indeed… umm…quite unusual in the airline sector…nonetheless, Labaan Daw & GG Capital places tremendous faith in Sirmatt's abilities*." GPs of AK and MF were shown nodding vigorously in agreement with this assessment.

24. Until September 2012, foreign direct investment ("**FDI**") by non-residents was permitted up to 49% and investment by non-resident Mancunians ("**NRMs**") was permitted up to 100% under the automatic route as prescribed under the consolidated FDI policy of Mancunia. However, there was a specific prohibition on FDI in domestic airlines by foreign airlines.

25. On September 20, 2012, the Government altered its position and allowed foreign airlines to invest, in the capital of Mancunian companies operating scheduled and non-scheduled air transport passenger services, up to the limit of 49% of their paid-up capital. The conditions for such investment were as follows:

    (i) it would be made under the automatic route and hence, FIPB approval would not be required for any such investment;

    (ii) the 49% limit would be cumulative of all FDI and FII investments;

    (iii) the investments so made would need to comply with the relevant and applicable regulations of SEBM, such as the SEBM Issue of Capital and Disclosure Requirements ("**ICDR**") Regulations, SEBM (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("**2011 Takeover Code**") as well as other applicable rules and regulations;

(iv) the investments so made would need to comply with the Completion Act, 2002 (the "**Competition Act**"), the rules and regulations thereunder, and seek relevant approvals from the Competition Commission of India (the "**CCI**");

(v) all foreign nationals likely to be associated with Mancunian scheduled and non-scheduled air transport services, as a result of such investment will require security clearance from Ministry of Home Affairs ("**MHA**") before deployment; and

(vi) all technical equipment that might be imported into Mancunia as a result of such investment shall require clearance from the relevant authority in the Ministry of Civil Aviation ("**MCA**").

26. In order to further ease foreign investments, the Government, on October 5, 2012, amended the laws of Mancunia including by way of relaxing the conditions for the grant of permit to operate a scheduled air transport services/domestic scheduled passenger airline in Mancunia and did away with the requirement of substantial ownership and effective control of the investee company being vested in Mancunian nationals.

Ayax's Investment in Venusian

27. With the liberalization of the civil aviation sector, and the strength of their existing relationship, rumors of Ayax acquiring a stake in the ailing Venusian immediately began circulating in the market – the declaration, during the last week of April 2014, of Venusian's less than impressive financial results for FY 2014 – losses of over Rs. 36 billion – did not help matters. It had also recently come to light that in mid-July 2012, Sirmatt had phoned his friend Vangaal, the CEO of Ayax, and sounded him out about the possibility of a policy change that would allow overseas airlines to invest in Mancunian carriers.

28. In response, Venusian, on May 3, 2014 communicated the following clarification to the BSE and the NSE:

> "*With reference to the news item appearing in a leading financial daily titled "Ayax may buy substantial stake in Venusian in 10 days", Venusian Airlines (Mancunia) Limited hereby clarifies that while Venusian and Ayax are in a discussion regarding a potential investment by the latter in the former, these discussions have commenced recently pursuant to the liberalized FDI Policy which permitted investment by foreign airlines in the shares of a Mancunian airline. The discussions are in progress but no terms have been firmed up at*

> *present. Various structures are being explored by the legal and commercial teams and care being taken to ensure that all the Mancunian regulatory requirements are fully complied with.*
>
> *By its very nature, there cannot, at this stage, be a firm time line as to the progress of these negotiations, considering the complexity of trans-national transactions such as this, and the complexity of the legal requirements of the regulatory structure.*
>
> *Since no agreement has been reached with Ayax as yet, no regulatory approvals have been sought at present. An appropriate announcement shall be made upon finalization of the terms of the investment with Ayax as per legal and regulatory requirements.*"

29. Some media outlets reported that there had been discussion among some of the institutional investors in Venusian about a possible exit pursuant to a probable tender offer by Ayax. Tweets by Mustafa Cargil, an airline sector journalist, also speculated on the possibility of "*the three PE buddies wanting to beef up against the new kid on the block*".

30. During the first week of June 2014, Ayax CEO Vangaal and Venusian's chairman Sirmatt led a joint delegation of both the airlines and separately met the Mancunian Finance Minister Suresh Dhobeerum, Civil Aviation Minister Ravi Bhaykree and Commerce Minister Needz Verma to apprise them about a possible deal. "*I am happy and satisfied. I will speak to you at the right time*," Sirmatt told reporters after he and Ayax CEO Vangaal met Dhobeerum at the North Block headquarters of the Mancunian Finance Ministry. Vangaal said, "*All meetings have been great.*" Both of them refused to elaborate any further.

31. On June 15, 2014, Ayax announced the acquisition of three landing and departure slots owned by Venusian at Heathrow Airport in a public release, stating that "*the purchase is part of a sale and leaseback agreement signed on June 14, 2014*". The release also stated that "*Air Ayax PJSC continues to progress discussions about further investment in Venusian Airways.*" News of purchase was seen as Ayax getting a step closer to picking stake in Venusian and sent Venusian shares soaring 14% on the BSE.

32. On June 16, 2014, it was reported that LD had completed a massive bulk deal, on the floor of the BSE, for an additional 1.875% stake in Venusian. A number of block deals on the floors of BSE

and NSE were reported, over the next two weeks, such that by June 30, 2014, MF and AK had acquired an additional cumulative stake of 0.9% and 0.65% in Venusian, respectively.

33. On July 9, 2014, Venusian made the following announcement to the BSE and the NSE:

> "*Venusian Airlines (Mancunia) Limited hereby announces that the Board of Directors of the Company at its meeting held on July 8, 2014, has approved, subject to compliance with applicable laws and regulations, shareholders and other necessary approvals, the issuance, by way of a preferential allotment pursuant to the provisions of Section 62 of the Companies Act, 2013 and other applicable legal provisions, including Chapter VII of the Securities and Exchange Board of Mancunia (Issue of Capital and Disclosure Requirements) Regulations, 2009, as amended ("SEBM ICDR Regulations") of 23,325,000 equity shares of the face value of Rs. 10 to Air Ayax PJSC at a price of not less than Rs. 480.72 (including premium of Rs. 470.72 per share) per equity share, representing 20% of the total outstanding shareholding in Venusian. The approval of the shareholders for such issuance and allotment will be sought at an Extraordinary General Meeting to be held in this regard. The Board of Directors has granted approval for the Company and Air Ayax PJSC to enter into inter alia, the Investment Agreement in relation to such issuance and allotment and other documents incidental thereto. The said preferential allotment is subject to various conditions precedent including regulatory approvals.*"

34. The investment was at a premium of 34.8% to the prevailing price of the shares of Venusian on the BSE. Venusian and Ayax along with the Sirmatt executed various agreements among themselves including the following:

(i) an investment agreement dated July 1, 2014 executed between Venusian and Ayax governing the terms of the preferential allotment made to Ayax ("**IA**");

(ii) a shareholders' agreement dated July 1, 2014 executed among Venusian, Sirmatt and Ayax relating to various matters agreed among them including with respect to Venusian and its management after the completion of the preferential allotment ("**SHA**");

(iii) a commercial co-operation agreement dated July 1, 2014 to set up an integrated alliance between Venusian and Ayax ("**CCA**"), aimed at lowering administrative costs, sharing of joint resources, improving customer service and administration of their respective businesses; and

(iv) a corporate governance code ("**CGC**" and together with IA, SHA and CCA, the "**Transaction Documents**") adopted in accordance with to the terms of the SHA.

35. Operative terms under the Transaction Documents are provided as **<u>Annexure I</u>** hereto.

36. On July 1, 2014, Mancunia and UAE (Shankarz) signed a bilateral air service agreement ("**BASA**") to expand the air transport services between them. Under the erstwhile BASA between Mancunia and UAE (Shankarz), both sides had a capacity of 13,330 seats per week, increased by 2% of flexibility. In the recent negotiations, UAE had requested for 40,000 additional seats per week, and also requested for additional points of call at various Mancunian cities. Mancunia had sought change of gauge facility at Shankarz for Mancunian carriers. Pursuant to the revised BASA, both parties agreed to provide for 36,670 additional seats per week. The 2% flexibility has been done away with, and no additional points of call have been granted to UAE. Mancunia has been granted the change of gauge facility as sought. In addition, both parties have also agreed to extend third country and domestic code sharing of airlines in both countries.

37. The revision of BASA raised several eyebrows in the corporate world in Mancunia as it was signed only a few hours before the decision by Ayax to invest in Venusian. Media speculated that the Shankarz officials made it clear, that unless their carrier, Ayax got a major share of the seats, they would not allow the deal between Venusian and Ayax to proceed. Mustafa Cargil claimed that the revision was made for the purpose of enabling one airline to strike a deal with a foreign airline at a huge premium.

38. On August 7, 2014, the preferential allotment to Ayax was approved by way of a special resolution of the shareholders of Venusian.

39. On October 10, 2014, the CCI cleared the deal under the Competition Act, holding that "*the proposed combination was not likely to have appreciable adverse effect on competition in Mancunia*". The full text of this order can be found as **<u>Annexure II</u>** hereto.

40. On October 15, 2014, Venusian issued and allotted equity shares amounting to 20% of the total outstanding shareholding in Venusian to Ayax. On the same day, Vangaal and Harry Booshawn, the CFO of Ayax, were appointed as additional directors on the board of directors of Venusian (the "**Board**"). The Board also approved the sale of 50.1% shareholding in Venusian Privilege to Ayax for US$150 million. As part of Ayax's investment in Venusian, Coleen announced that

"*Ayax through their bankers is helping us get ECB to the extent of US$150 million which would help us retire some of the high interest debt on our books. We are on course to complete the transaction during the current quarter.*"

41. While access to a global partnership and fresh capital looked like it would steady the ship, the still considerably large fleet of Venusian was continuing to drag it down. The idea behind adding so much capacity, and so fast, was to be able to fly the Q400s for at least 11 hours a day and improve cash inflows. But ground realities – turnaround times at airports were higher than expected, permissions took time – were different.

42. The need to prop up utilization had already led Venusian down a path of heavy discounting of fares. "*When revenues are not in line with costs, the only thing to do is to slow down and take stock*," commented Isrow Reddy, academic and the celebrated author of the bestseller "*Your Thing and My Thing: The Thing About Piloting Airlines*". "*Running an airline based on forward cash flows is not the smartest thing to do*," he tweeted, referring to the bargain fare sales that the airline was becoming famous for. Acknowledging the downward pressures on the airline during an earning call in November, 2014, Coleen said "*previous losses and delays in planned funding have eaten into our future projections, some contracts need to be re-negotiated, and while we are working on a way forward, these things take time. We would like to reassure our investors that we are working double time with our partners to resolve these issues and are exploring all avenues.*"

43. While creditors were happy about Ayax's investment into Venusian, Sirmatt's role in the deal was seen as limited in ultimately driving the deal forward. There were rumors about a mismatch of vision between Sirmatt on one side and the top brass of Ayax, especially Vangaal. While Sirmatt wished to retain and rebuild fleet size, weak market conditions had made other more circumspect. To add to this, Sirmatt was perceived by some of the creditors as a person who, although allowed professionals to run the airline independently, was reluctant to dilute his holding to below 50%. Sirmatt's pedigree as an airline-industry outsider and his lack of any interest to pump in more cash despite owning about 75 percent of Gunners' Steel, which had revenues of Rs 3,097 crore and a profit of Rs. 917 crore in FY20-14 further distanced him from the partners of the airline.

Siralex Acquisition of Sirmatt's Stake in Venusian

44. Through some shrewd investments and a lot of sheer luck, Siralex had, since his exit from Venusian, multiplied his net-worth a hundredfold and had risen to be counted among the five

richest people in Mancunia. During an interview in January 2015, when a national news channel asked him about his views on Venusian, he said, "*Venusian is my first-born and would always stay closest to my heart.*" When probed further, he revealed that his team was in conversation with Sirmatt and the Venusian management about the future of Venusian.

45. On February 12, 2015 it was reported that Siralex, acting in concert with a consortium of PE funds and other institutional investors, had, together with Venusian management, met top Ministry of Civil Aviation officials to discuss a revival plan for the airline.

46. On March 1, 2015 Venusian informed BSE that the Board at its meeting held on that day had, *inter alia*, taken on record the proposal of the principal shareholder and promoter, Sirmatt and persons acting in concert with him, to transfer the ownership, management and control of the Venusian to Siralex pursuant to a "*Scheme of Reconstruction and Revival for the takeover of ownership, management and control of Venusian Airlines (Mancunia) Limited to be filed before the competent authority, the Ministry of Civil Aviation, Government of Mancunia*". The Board also directed Venusian to take further steps to implement and undertake all necessary steps including, among others, to make the appropriate application before the Ministry of Civil Aviation for seeking necessary approval.

47. On March 6, 2015 Venusian informed BSE that it had, on March 5, 2015 received the approval of "*the Competent Authority, the Ministry of Civil Aviation, Government of Mancunia for the 'Scheme of Reconstruction and Revival for the takeover of ownership, management and control of Venusian Airlines (Mancunia) Limited' by Mr. Siralex Buxy in accordance with the application made by the company*."

48. On March 15, 2015, Venusian circulated the following update to the BSE and the NSE:

> *This is to inform you that the Board of Directors of the Company at its meeting held today has taken on record the Share Sale and Purchase Agreement dated March 15, 2015 between the Company, Mr. Sirmatt Suraneni (and persons acting in concert) and Mr. Siralex Buxy pursuant to which the existing Promoter (i.e. Mr. Sirmatt Suraneni) has agreed to sell and transfer their entire shareholding aggregating to 58,429,125 equity shares, representing 50.1% of the total outstanding shareholding in Venusian, to Mr. Siralex Buxy. The Board has further, inter-alia, to create, offer, issue and allot upto 4,750,000 (Four Million Seven Hundred and Fifty Thousand) non-convertible Cumulative Redeemable Preference Shares of Rs. 1,000 (Rupees*

One Thousand) each to Mr. Sirmatt Suraneni (and persons acting in concert) on a preferential basis. 3. To create, issue, offer and allot equity shares/ warrants and/ or any instrument convertible into equity shares whether optionally or otherwise/ Global Depository Receipts (GDRs)/ American Depository Receipts (ADRs)/ Foreign Currency Convertible Bonds (FCCBs) ("Securities") for an aggregate amount not exceeding Rs. 25,000,000,000 (Rupees Twenty Five Billion only) or equivalent currency(ies) to any person or persons, whether or not shareholder of the Company. 4. Alteration to the Articles of Association of the Company. 5. To conduct postal ballot exercise in order to obtain shareholders approval, wherever required, for above purposes in accordance with provisions of the Companies Act, 2013 and other applicable rules and regulations. Further, it is to be noted that Mr. Sirmatt Suraneni and his nominees have resigned from the Board of the Company with immediate effect and the Board has accepted the same.

This is for your information and further dissemination.

Thanking you,

Yours truly,

For Venusian Airlines (Mancunia) Limited

Korp Sharma

VP (Legal) & Company Secretary

49. On April 8, 2015, the CCI cleared the deal under the Competition Act, holding that "*the proposed combination was not likely to have appreciable adverse effect on competition in Mancunia*". The full text of this order can be found as **Annexure III** hereto.

Legal Challenges and Present Appeal before the Supreme Court of Mancunia

50. On April 13, 2015, a lawyer named Adeshwar Singh ('"**Adeshwar**"), who owns 6,500 shares of Venusian, wrote a letter to the SEBM alleging that Siralex Buxy should have made an open offer under the 2011 Takeover Code. The full text of the letter can be found as **Annexure IV** hereto.

51. Taking note of Adeshwar's letter, the SEBM looked closely at the recent securities market dealings relating to Venusian and issued separate showcause notices to each of (i) Siralex, (ii)

Ayax, and (iii) LD, AK and MF (together with Siralex and Ayax, the "**Noticees**"). Unsatisfied with their respective responses, the SEBM issued orders, each dated June 15, 2015, to the Noticees, holding that their respective actions with respect to securities of Venusian had triggered the requirement of an open offer for shares of Venusian in accordance with the 2011 Takeover Code and issued directions. Summaries of these orders can be found as **Annexure V** hereto.

52. Aggrieved by the actions of SEBM, each of the Noticees filed appeals before the Securities Appellate Tribunal ("**SAT**"). The SAT, by its orders, each dated July 1, 2015 (together, the "**SAT Orders**"), rejected each of the appeals filed by the Noticees.

53. Challenging the SAT Orders, the Noticees filed appeals before the Supreme Court of Mancunia (the "**Supreme Court**"). The Supreme Court has admitted these appeals and has decided to club them together, since they relate to the same target company, and listed the matter for final hearing and disposal on July 12, 2015.

54. The indicative list of issues that the Supreme Court shall be hearing upon are:

    (i) Whether the acquisition of shares of Venusian by Ayax pursuant to the Transaction Documents resulted in a change of control necessitating an open offer for further shares of Venusian, by Ayax, in accordance with the 2011 Takeover Code?

    (ii) Whether LD, AK and MF were '*persons acting in concert*' and were obliged to make, at any point so far, an open offer for further shares of Venusian in accordance with the 2011 Takeover Code?

    (iii) Whether the acquisition of shares of Venusian by Siralex pursuant to a transfer by Sirmatt required an open offer for further shares of Venusian, by Siralex, in accordance with the 2011 Takeover Code?

55. Participants are free to agitate any other issues as they deem fit.

ANNEXURE I – KEY TERMS OF TRANSACTION DOCUMENTS

I. Shareholders' Agreement dated July 1, 2014 (the "SHA") among Air Ayax PJSC, Sirmatt Suraneni (along with persons acting in concert) and Venusian Airlines (Mancunia) Limited (together, the "Parties")

1. Composition of the Board of Directors:

The Parties agree that –

(i) the board of directors of the Company (the "**Board**") shall consist of a maximum of twelve (12) directors;

(ii) so long as Ayax PJSC continues to hold at least 15% of the total outstanding equity shares of the Company (on a fully diluted basis), it shall be entitled to nominate two (2) directors on the Board; and so long as Sirmatt Suraneni continues to hold at least 50.0001% of the total outstanding equity shares of the Company (on a fully diluted basis), he shall be entitled to nominate four (4) directors on the Board;

(iii) so long as Ayax PJSC continues to hold at least 15% of the total outstanding equity shares of the Company (on a fully diluted basis), it shall be entitled to nominate one (1) director on every committee constituted under the Board. So long as Sirmatt Suraneni continues to hold at least 50.0001% of the total outstanding equity shares of the Company (on a fully diluted basis), he shall be entitled to nominate one (1) director on every committee constituted under the Board; and

(iv) the quorum of the meetings of Board or the committees constituted thereunder shall not be complete without the presence of at least one nominee director representing each of Ayax PJSC and Sirmatt Suraneni.

2. Reserved Matters:

The Parties agree that as long as Ayax PJSC continues to hold at least 15% of the total outstanding equity shares of the Company (on a fully diluted basis), the affirmative voting rights of at least one of the directors nominated by Ayax PJSC shall be required in respect of any of the following matters:

(i) Amendments to the memorandum and articles of association of the Company on any manner that would adversely affect any of the rights, preferences, privileges or restrictions of Ayax PJSC;

(ii) Altering the composition of the Board or to delegate the authority or any powers of the Board to any individual or committee;

(iii) Approval of the annual business plan and any deviation, revisions therefrom;

(iv) The appointment of a non-Big 4 auditor;

(v) Altering the composition of the Board or to delegate the authority or any powers of the Board to any individual or committee;

(vi) Creation of any lien, lease, mortgage, charge, pledge, license of any assets, rights, titles, intellectual property etc. of the Company or its subsidiaries valued in excess of 6% of the networth of the Company;

(vii) The appointment of key managerial personnel of the Company and the determination of their remuneration;

(viii) Making of any loan or advance by the Company to any shareholder or any third party, or the entry by the Company into any guaranty, indemnity or surety contract or any contract of similar nature in favor of or for the benefit of any shareholder or any third party of business in excess of Rs. 500 million;

(ix) Issuances or buy back of any equity or equity linked securities;

(x) Exceeding debt-equity ratio of 1:1;

(xi) Any amalgamation, splitting, reorganization or consolidation of the Company; and

(xii) Any other matters which would substantially affect the right, preferences, and privileges of Ayax PJSC under the SHA.

II. Commercial Cooperation Agreement dated July 1, 2014 (the "CCA") between Air Ayax PJSC ("Ayax") and Venusian Airlines (Mancunia) Limited ("Venusian" and together with Ayax, the "Parties")

The CCA has been entered into among the Parties for the purpose of setting up an integrated alliance and provides, inter alia, that:

1. The Parties shall establish adequate procedures for the following:

   (i) Code of ethics for management officials and employees;

   (ii) Coordination of air service routes and schedules to be achieved jointly;

   (iii) Harmonization of information technology systems;

   (iv) Provision for and technical handling of belly-hold cargo and dedicated freight capacity on services into and out of Shankarz, Mancunia and beyond to be undertaken jointly/reciprocally;

   (v) Marketing, distribution, sales representation and cooperation to be undertaken jointly;

   (vi) Determination of tariffs and pricing for the purpose of optimizing fares to be achieved jointly;

   (vii) Joint/reciprocal provision for consistent, superior ground services and lounge access to customers; and

   (viii) Airport representation and handling of services to be conducted on a joint/reciprocal basis.

2. The Parties intend to establish centers of excellence either in Mancunia or UAE.

3. The Parties intend to establish advanced pilot and ground staff training institutes in Mancunia and UAE.

4. The Parties intend to jointly establish offices for providing dedicated customer care services.

5. Venusian shall utilize Shankarz as its exclusive hub for scheduled services to and from Africa, South America and UAE.

6. Venusian shall refrain from entering into any code sharing agreement with any third party that can detrimentally affect the co-operation contemplated by this agreement.

7. For any further addition to their aircraft fleet or purchase of engines, Venusian shall consult with Ayax for their opinion and the recommendations made therein by Ayax shall be given due consideration and not be rejected unless unviable.

8. The Parties shall establish a global frequent flyer program without prejudice to their right to enter into any other similar frequent flyer programs with third parties.

9. The Parties agree to provide seamless connecting services through providing down-line connecting flight seat assignments for each connecting passengers.

III. Corporate Governance Code pursuant to the terms of the SHA

1. *Code of Business Conduct and Ethics:*

(i) All employees and directors of the Company have the duty to report any suspected violation of the code of conduct. They shall either inform their respective supervisor, the Company's general counsel or use the 24x7 hotline notified for the purpose.

(ii) All employees or directors who discover or are presented with a business opportunity shall present them to the company before pursuing it in their individual capacities.

(iii) The employees and directors of the Company shall have access to information that is confidential and not available to public. All employees and directors have the duty to maintain confidentiality and safeguard all such information and shall not disclose any such information unless legally mandated to do so.

(iv) All employees of the Company should endeavor to deal fairly with other employees and with the Company's customers, suppliers and competitors. Employees should not take unfair advantage of any person through manipulation, concealment, abuse of privileged information, misrepresentation of material facts or any other unfair practice.

2. *Composition and Powers of the Nomination committee*

(i) The purpose of the Nomination and Remuneration Committee includes *inter alia* assisting the Board in discharging its functions regarding:

a) the identification of qualified candidates to become directors of the Company;

b) the selection of nominees for election as directors at the next annual general meeting of the Company;

c) the selection of candidates to fill any vacancies on the Board;

d) the planning for succession with respect to the Chief Executive Officer and other named executive officers;

e) oversight of the evaluation of the Board.

(ii) The nomination committee shall consist of five (5) directors, out of which three shall be independent. Of the remaining two directors, one shall be nominated by Ayax and the other shall be nominated by Sirmatt Suraneni. The three independent directors shall be nominated by the nominees of Sirmatt Suraneni and Ayax.

ANNEXURE II – CCI ORDER RE AYAX INVESTMENT

COMPETITION COMMISSION OF MANCUNIA

(Combination Registration No. C-2014/07/127)

10.10.2014

Notice u/s 6 (2) of the Competition Act, 2002 given by:

(i) Air Ayax PJSC; and

(ii) Venusian Airlines (Mancunia) Limited

Order under Section 31(1) of the Competition Act, 2002

A. INTRODUCTION

1. On July 6, 2014, the Competition Commission of Mancunia (hereinafter referred to as the **"Commission"**) received a notice under sub-section (2) of Section 6 of the Competition Act, 2002 ("**Act**") given by Air Ayax PJSC (hereinafter referred to as "**Ayax**") and Venusian Airlines (Mancunia) Limited (hereinafter referred to as "**Venusian**") (hereinafter Venusian and Ayax are collectively referred to as the "**Parties**"). The notice was given to the Commission pursuant to an Investment Agreement ("**IA**"), a Shareholder's Agreement ("**SHA**") and a Commercial Co-operation Agreement ("**CCA**"), all executed on July 1, 2014.

2. In terms of sub-regulation (4) of Regulation 5 and sub-regulation (2) of Regulation 19 of the Competition Commission of Mancunia (Procedure in Regard to the Transaction of Business Relating to Combinations) Regulations, 2011 (hereinafter referred to as the "**Combination Regulations**"), vide letter dated August 6, 2014, the Parties were required to provide certain additional information by August 20, 2014. After seeking extension of time, the Parties filed their reply on August 21, 2014.

3. In terms of sub-regulation (3) of Regulation 19 of the Combination Regulations, Air Mancunia was required to furnish its views/comments on the proposed combination by September 9, 2014. After seeking extension of time twice, Air Mancunia furnished its response on October 4, 2014, broadly raising two main concerns viz. impact of the alliance on the competitive landscape of the Mancunia-Shankarz route

and impact of the alliance on Mancunian aviation and Air Mancunia. These concerns have been considered and addressed in the assessment of the combination.

B. COMBINATION

4. It has been stated in the notice that the proposed combination relates to acquisition of 20% equity stake and certain other rights in Venusian by Ayax. On a specific query of the Commission, the Parties have submitted that they seek the Commission's approval for the acquisition of 20% equity interest in Venusian by Ayax and in relation to all the rights and benefits which the parties have commercially agreed upon in the SHA, CCA and CGC.

C. PARTIES TO THE COMBINATION

5. Ayax, a company incorporated in the United Ayax Emirates (UAE), is stated to be the national airline of UAE and is based in the emirate of Shankarz. Ayax is primarily engaged in the business of international air passenger transportation services. Ayax also provides maintenance and repair services, ground handling services, cargo transportation and travel management services with Ayax Cargo (a division of Ayax Airways offering cargo services linked to its international route network and aircraft fleet) and Ayax Holidays (a division of Ayax Airways offering holiday packages to the airline's passenger destinations, including its home base, Shankarz), being its two main divisions. The international airport located at Shankarz, the capital of the UAE, operates as Ayax's hub airport. Ayax is also stated to hold 27.61 percent equity stake in Air Bayern; 38 percent equity stake in Air Swansea; 6.987 percent equity stake in Virgin Australia and 12 percent equity stake in Virgin Mercyside.

6. Venusian, a listed company incorporated in 1993 under the provisions of the Companies Act, 1956, is primarily engaged in the business of providing low cost and full service scheduled air passenger transport services to/from Mancunia. Venusian also provides air transportation services for cargo, maintenance, repair and overhaul services and ground handling services. Venusian Airways Cargo is the cargo division of Venusian which operates through the passenger flights with belly space cargo capacity and does not operate any dedicated cargo flight. Venusian Lite (Mancunia) Limited is a wholly-owned subsidiary of Venusian and operates low cost air transportation service under the brand name '*Venusian Konnect*'.

D. JURISDICTION

7. As per the details provided in the notice, the combined value of assets and turnover of the Parties meet the threshold requirements for the purpose of Section 5 of the Act.

8. 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 20 percent equity interest in Venusian 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, Ayax's acquisition of twenty (20) percent equity stake and the right to nominate two (2) directors, out of the twelve (12) shareholder directors, in the Board of Directors of Venusian, is considered as significant in terms of Ayax's ability to participate in the managerial affairs of Venusian.

9. With a view to achieve the purported objective of enhancing their airline business through joint initiatives, the Parties have also entered into the CCA. Under the CCA, the Parties have *inter alia* agreed that: (A) they would frame co-operative procedure in relation to (i) joint route and schedule coordination; (ii) harmonization of IT Systems (iii) joint marketing, distribution, sales representation and cooperation; (iv) determination of tariffs and pricing for the purpose of optimizing fares; (v) joint/reciprocal technical handling of the belly-hold cargo and dedicated freight capacity on services; (B) Venusian would use Shankarz as its exclusive hub for scheduled services to and from Africa, South America and UAE; (C) the Parties intend to establish advanced pilot and ground staff training institutes in Mancunia and UAE (D) Venusian would refrain from entering into any code sharing agreement with any other airline that is detrimental to the co-operation contemplated by the CCA.

10. 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 Ayax's joint control over Venusian, more particularly over the assets and operations of Venusian.

E. ASSESSMENT OF THE PROPOSED COMBINATION

Mancunian aviation sector

11. According to a recent report of the Ministry of Civil Aviation, Government of Mancunia, over the past decade, the domestic passenger segment of the Mancunian civil aviation sector grew by a Compound Annual Growth Rate (CAGR) of 15.2% and the air cargo segment grew by 6.8%. An IATA report further points out that the market already has some 150 million travelers passing through its airports, and by 2020 traffic at Mancunian airports is expected to reach 450 million, making it the third largest aviation market in the world. In 2012, the number of international passengers was approximately 41 million. Of those, 28.5 million traveled to the west of Mancunia, mainly to Europe and North America. Based on the latest IATA growth forecast this market is expected to grow to approximately 42.6 million passengers by 2018.

12. However, the sector has multiple challenges and issues to address in order to realize an effective passenger growth in future. To address the concerns surrounding the operational viability of Mancunian carriers, the Government of Mancunia has initiated a series of measures including allowing Foreign Direct Investment by foreign airlines (up to 49% stake) in Mancunian carriers.

13. The CCA between Venusian airways (Mancunia) limited and Ayax Airways PSJC, as a part of the acquisition of 20% equity stake, is so drafted such that the parties through their proposed strategic alliance[1] can extract the potential of a wider airline network. It is in this background that the competition assessment of this deal has been undertaken.

International Aviation Regulatory Framework

14. The regulatory framework for the international aviation industry has developed on the basis of principles laid in the 1944 Convention on International Civil Aviation.

[1] Alliances are cooperation agreements entered into by airlines with the objective of integration of services. The alliance partners operate as a single entity. However, their individual corporate identity is still maintained. Airline passengers demand seamless service on international markets ‘from anywhere to anywhere’. However, no airline is able to efficiently provide such a service on its own mettle as traffic density on many city pairs does not make it viable for a single airline to provide non-stop services on all conceivable routes. In order to meet such diverse travel demands at an efficient cost, airlines have had to seek commercial partners to help them provide the network and service coverage required.

The Convention recognizes exclusive sovereignty of countries over their airspace and different freedoms that could be granted by a country to a foreign nation/airline.

15. Air transport services between two nations primarily depend on the bilateral air service agreement (BASA) between them, which establishes the framework for scheduled air services between them. The BASAs generally specify the entitlements of the designated airline(s) of both countries in terms of frequency of operations, number of seats, points of call etc. BASAs envisaging minimal or no restriction on the ability of designated airlines of the party nations are referred to as open-skies agreement. For instance, the BASA between Mancunia and United States provides for an open skies arrangement, allowing the designated carriers to operate scheduled air services without limitation on the number of flights that could be operated and the number of passengers who could be carried.

Relevant Market

16. In order to assess the impact of the proposed transaction on competition, the first step is to define the relevant market. Relevant Market for passenger air transport services is normally defined on the basis of point of origin or point of destination ("O&D") pair approach on a non-directional basis. According to this approach, every combination of a point of origin and a point of destination is considered to be a separate market from the consumers' viewpoint. Furthermore, two or more adjacent airports may be categorized in the same relevant O&D market. Consumers may consider multiple airports, within a reasonable distance or time for a given O&D pair, substitutable. If airports are considered substitutable, then these too can be included as origin and destination.[2]

17. The O&D approach to market definition is an appropriate starting point for the competition analysis in air transport cases. The O&D approach is essentially a demand-based approach to market definition. It has the advantage of being capable of taking into account several relevant competition aspects in the airline sector, if not all. The O&D approach is applied by the European Commission as well as by many other competition authorities.[3] This approach of defining the relevant market is also in consonance with the definition of the relevant market as given in Section 2(t) of

[2] Report of the ECA Air Traffic Working Group- Mergers and alliances in Civil Aviation.

[3] *Ibid*., p.6.

the Act, where a group of products or services lie in the same relevant market if they are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices or intended use.

18. Further, consumers may consider direct flights (i.e. non-stop services) and indirect flights (i.e. one-stop services) as substitutable. The main factors that determine whether indirect flights provide a competitive constraint to direct flights are the type of passengers (whether they are time-sensitive or non time-sensitive), the duration of the flight and the connecting time, flight schedules and prices.[4] Either one or all of the factors can be of consideration, by a consumer based on her trade-offs and preferences, in determining substitutability. Furthermore, for the purpose of concluding substitutability, indirect flights offered by independent competitors of the parties can be considered as a competitive alternative for passengers.

19. Thus, when taking a demand-based approach to market definition it is essential to make a distinction between different groups of passengers, given that different services may be substitutable for different kinds of customers. It is particularly worth considering a distinction between time-sensitive and non time-sensitive passengers as well as between point-to-point passengers and connecting passengers.[5]

20. For a time sensitive passenger, price considerations may not be that important and she may not find indirect flights substitutable for direct flights. For a very price sensitive passenger, price consideration may dominate all decisions and she may thus find substituting indirect flights with direct flights even if it means sacrificing on time.

21. This distinction can be of great importance in competition assessment. Generally, time-sensitive travelers expect faster connections and timeliness in the flight schedules. Non time-sensitive travelers are interested in obtaining the lowest fares, and are willing to accept longer travel time and less flexibility as long as their price considerations are met.

22. The assessment of the proposed combination primarily focuses on the effect of the proposed combination on those services that are offered by both the Parties.

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4 *Ibid*., p.9.

5 *Ibid.,* p.4.

23. The Acquirer (*i.e.* Ayax) is the national airline of UAE, primarily offering international airline services to and from UAE, and between other international destinations using Shankarz airport as the transit hub. Whereas, Venusian is a listed Mancunian company offering both domestic and international air transportation services. Venusian is stated to offer services between different call points in Mancunia to 20 destinations abroad.

24. At the outset, it is observed that Ayax is not operating in Mancunian domestic air transportation services i.e. air transportation between two airports located within Mancunia. Therefore, the proposed combination is not likely to raise any competition concern in the said sector.

25. Considering that Mancunia has adopted an open skies policy in respect of international air cargo transportation and relatively more number of players including dedicated freight carriers are present in the said sector, the proposed combination is considered not likely to give rise to any competition concern in the business of international air cargo transportation services to and from Mancunia.

26. In the light of the foregoing discussion, the Commission is of the view that the relevant market for the purpose of this transaction is the market for international air passengers:[6]

(a) on the O&D pairs originating from or ending in 6 cities in Mancunia (Busby (BUS), Hydra (HYD), Boor (BOR), Callcut (CCJ), Ameda (AMD), Duli (DUL) to/from United Ajax Emirates (UAE);

(b) on the O&D pairs originating from or ending in Mancunia to/from international destinations on the overlapping[7] routes of the parties to the combination.[8]

27. In arriving at the relevant market definition the Commission made a distinction between different groups of passengers and observed that Mancunian passengers on the 5 direct overlapping O&D pairs are generally more price sensitive and less time

[6] As mentioned this Order, the Commission has gone beyond the O&D approach for competition assessment of the proposed combination and has also given due consideration to the potential of network effects not covered in the O&D pair approach.

[7] Direct or indirect overlap.

[8] Since the relevant market should be defined on a non-directional basis, a Duli (DUL) Chicago (ORD), Chicago-Duli will be one relevant market O&D pair DUL-ORD.

sensitive. Moreover, passengers living in the catchment areas of two or more airports may consider those airports as possible substitutes when choosing which airport they fly from and which airport they fly to. For instance, it must be stressed that in the case of passengers traveling to UAE, there are 3 international airports in UAE that passengers might consider as substitutable with each other i.e. Shankarz (SHK), Thomaas (THM) and Nani (NAN). Depending on the O&D pair, either THM or NAN airport can be considered in the same O&D pair. Shankarz, Thomaas and Nani airports are within 2 hours distance from each other. Several carriers serve Duli and Busby with direct flights to/from THM. Ayax and Emirates offer free shuttle bases between Shankarz and Thomaas, and there are other modes of public transport between them as well. The direct horizontal overlap between Venusian and Ayax occurs between the UAE and Mancunia as origin and destinations points.

28. Mancunia-UAE passenger traffic consists of approximately 3.5 million origin and destination passengers per year. Out of this, Venusian has only 20 percent share and Ayax carries only 5 percent of the market. Venusian and Ayax provide overlapping services in 6 nonstop markets between Mancunia and UAE. On all these six routes Venusian and Ayax services can be considered as substitutable. When the two airlines cooperate on such routes, they no longer compete against each other and there is an apprehension that competition may be reduced. However, the market share of Venusian and Ayax combined in all nine nonstop O&D city pairs is below 36% and face intense competition from other airlines serving the same routes. The elasticity of demand is expected to be sufficiently high on all O&D pairs, as the Commission observed that Mancunian passengers flying to these destinations are fare sensitive and in many cases time insensitive. So, any tendency to raise fares on such routes will not be profitable for the airlines.

29. Having accepted the fare sensitivity of the Mancunian passengers, the Commission also undertook a competition assessment of the O&D city pairs between Mancunia and Shankarz alone, since Venusian and Ayax both fly to Shankarz and currently provide competition constraint to each other. Moreover, Ayax has its hub in Shankarz. Air Mancunia in its response of October 6, 2014 had expressed concern about the competitive landscape of the Mancunia-Shankarz route. The competition assessment of the Commission for these O&D pairs between Mancunia and Shankarz is as follows:

(a) SHK-BOR: Ayax (AY) Airways is already dominant and the deal does not alter the picture. For the given small market size on this route there are still many indirect flights such as Qatar, Air Mancunia, Oman and Sri Dunkan that can restraint market power, if exercised.

(b) SHK-HYD: For the given small market size on this route there are still many indirect flights such as Emirates, Air Mancunia and Oman that can restraint market power, if exercised. The airport substitutability with THM (with Emirates as the carrier to THM), in any case increases the catchment area for this O&D city pair and hence there are no competition concerns.

(c) SHK-BUS: The combined market share of Venusian and Ayax increases to 55% but competition concerns are addressed by the presence of Air Mancunia as a credible competitor with a market share of 32%. The airport substitutability with THM in any case increases the catchment area for this O&D city pair that will substantially reduce the possibility of exercise of market power. Moreover, indirect flights can also restraint market power, if exercised.

(d) SHK-DUL: The combined market share of Venusian and Ayax increases to 50% but competition concerns are addressed by the presence of Air Mancunia as a credible competitor with a market share of 20%. The airport substitutability with THM (with Emirates as the carrier to THM), in any case increases the catchment area for this O&D city pair that will substantially reduce the possibility of exercise of market power. Moreover, indirect flights can also restraint market power, if exercised.

(e) SHK-AMD: A very small market size (10 passengers a day) that cannot support multiple direct flights, many one stop flight options available

30. While it may be relevant to understand whether the other airports in UAE are substitutable to Shankarz, considering the fact that the Parties and Air Mancunia are likely to increase their services, in a phased manner, on Busby-Shankarz and Duli-Shankarz routes, the potential apprehension regarding reduced competition, if any, is mitigated. It is also likely that other airline show interest in these routes as and when the Government proposes to allocate the remaining seats under the MoU.

31. There are 38 routes to/from Mancunia to other destinations where Ayax and Venusian fly and there is at least one competitor on the route. Of these, on only 7 routes Venusian and Ayax have a combined market share of greater than 50 percent. Of these 7 routes, on 3 routes either Venusian or Ayax has a market share of less than 5 per cent. For instance, on the Busby (BUS)-Brussels (BRU) route, Venusian has a market share of 72.90% and Ayax has a market share of 3.30%. On the AMD-BRU route Venusian has a market share of 83.10% while Ayax has a market share of 2.61%. Thus, post transaction change in market share is marginal for the combined entity and the deal does not alter the competition dynamics.

32. 6 of the 7 above mentioned routes, where Venusian and Ayax have an indirect overlap and the market share is greater than 50 percent consist of Brussels (BRU) and four Mancunian cities (BRU-AMD, BOR-BRU, BUS-BRU, BRU-HYD) as O&D pairs. As discussed for the UAE market, the Commission did consider airport substitutability in the same catchment area of these O&D pairs and the possibility of their being in the same relevant market. When these airports are considered as substitutable, the combined market share of Venusian and Ayax decrease significantly (it comes down to around 30%). For the one remaining route Saddam-Toronto (i.e MAA-YYZ), where market share is greater than 50%, Venusian and Ayax are not the closest competitor and there is at least one credible competitor in the market from which the customers can choose from an alternative (Emirates, Lufthansa, and British Airways). In summary, on all routes, passengers have a major carrier to choose from other than Venusian and Ayax which can constraint the pricing behavior of Venusian and Ayax and ensure that the passengers can select between more than one airline even after the combination.

33. The Commission has gone beyond the O&D approach for competition assessment and has also given due consideration to the potential of network effects of the proposed combination.[9] Some aspects of network competition can be dealt within the framework of the O&D approach (e.g. the role of connecting traffic, the substitutability of indirect services) but many aspects can get overlooked in a pure

[9] The Commission recognizes that competition between airlines is shaped by some peculiar features of the airline industry, in particular its network character. Airlines have technologies in which the costs are affected not only by the number of passengers, but also by the network structure (the linkages/ routes that the airlines fly). The network choice is a key strategic decision of airlines, as it is the main driver for generating revenue and costs as well as a source of competitive strength or weakness. Cost economics for airlines show that costs can go down due to higher traffic densities in hub and spoke (H&S) network operations than in fully connected (point to point) operations.

O&D approach of competition assessment. The network effects can be described as the macro competition issues, which have been discussed in addition to individual O&D markets, such as competition between airline hubs and between alliances.[10] A more comprehensive competition assessment is not just restricted to the market share analysis of the hub airline (AY in this instance) - i.e. not just restricted to the market shares between cities in Mancunia to the hub (SHK in this instance) but the competition in the onward bound traffic and competition between systems.

34. The parties have submitted data on August 21, 2014 and August 29, 2014 in respect of market share on various O&D route pairs from Mancunia to points in United States, viz. New York, Chicago, Washington, San Francisco and Los Angeles. According to the data, the MIDT combined market size from points in Mancunia to the above stated destinations in US is 10.49 lakh passengers and the combined market share of Venusian and Ayax work out to 1.09 lakh passengers i.e. 10.42 %.[11] The low current combined market share and the open skies policy between Mancunia and US does not raise any potential competition concern.

35. When considering network effects, the competition assessment is carried out beyond gateway traffic and is not just restricted to O&D pairs. In evaluating the proposed combination the Commission accordingly considered competition between airline systems. Airline systems are either formed through alliances (that are multilateral) or strategic equity partnership between two airlines of the kind in this proposed combination. Linked hub-and-spoke airline network form integrated system of complementary markets, and this is what is proposed in this combination. The complementarity of routes of Venusian and Ayax makes the network effects stronger. Hubs, increased access to gates, slots, and other infrastructure - interfaces that link markets- competition is increasingly among systems and not merely on point to point (PTP) O&D City pairs. In this context, merely high market shares of the hub airline on point to point, O&D pairs do not imply lack of competition. In fact there are many instances where the hub airline may have high market shares in PTP O&D pairs. So, Venusian-Ayax combined market share on SHK-DUL and SHK-BUS route would not mean that competition is absent on west bound traffic from Mancunia and in fact,

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10 *Supra.*2, p.14.

11 The use of this MIDT dataset provides us with (a) the parties' combined US market size and (b) the total US market size for arriving at a combined US market share of the parties from one source and makes the two data values compatible.

competition would be present from alternative networks and alliances/systems for the west bound traffic.

Shankarz as the exclusive hub

36. One of the clauses of the CCA requires Venusian to use Shankarz as its exclusive hub for scheduled services to and from Africa and the UAE (the Exclusive Territories), and there will be certain O&D pairs where Venusian cannot code share with other airlines. For e.g., Busby-Chicago, Duli-Chicago, Duli-New York, Busby-New York, etc., are O&D city pairs on which Venusian has to cancel its code share with other airlines and flow its traffic through Shankarz.

37. It is conceivable that cancellation of code share agreements can lead to market foreclosure and abuse of dominance on such routes in the absence of other strong competitors. However, all such routes face competition from other credible players such as American Airlines, Air Mancunia, Emirates, South African Airways, Qatar Airways, etc. which would constrain the market power of Ayax-Venusian combined. On the majority of such O&D pairs, the combined market share of Venusian and Ayax is less than 30% and there are other strong players present on such routes. Further, Ayax already has strong presence on routes to Chicago and Johannesburg from few cities in Mancunia. However, Venusian's share is negligible on such routes and post transaction change in market share is negligible. Thus, on all these O&D pairs, the competitive concern from concentration of market shares does not arise.

38. At the moment, as part of the deal the parties have decided to extend their relationship to 23 cities. Thus, Venusian flights from multiple points in Mancunia would operate to Shankarz and then continue onwards to points in Middle East and North America. This allows a Venusian customer to *'cross-connect'* at Shankarz further on to any number of Venusian and Ayax flights beyond Shankarz, creating a whole host of city pairs. For instance, Venusian could leverage Ayax's strong presence in Europe by bringing Mancunian passengers through Shankarz. Ayax directly flies to 32 destinations and, through its elaborate code-sharing agreements with 36 airlines, offers seamless connectivity to more than 290 destinations.

39. The code share relationship also allows customers in multiple Mancunian cities, the ability to seamlessly connect to other destinations including smaller markets abroad using the Ayax network. Shankarz's proximity to Mancunia enables the option of

deployment of smaller, narrow body aircraft from these secondary markets in which larger wide body aircraft would have been unviable. In addition, by utilizing the hub in Shankarz and the transfer flows that it creates, Venusian will be able to sustain larger aircraft on the routes from Duli and Busby to North America which will increase the capacity and therefore choice available to the Mancunian consumer.

Potential efficiencies

40. Airline alliances create substantial opportunities for generating economic benefits, many of which are dependent at least in part on the closer integration achievable. These benefits can be viewed as demand-side – relating to the creation of new or improved services through expanded networks or seamless service, or supply-side – essentially the ability to produce the same services at lower cost taking advantage of traffic densities, improved utilization of capacity and lower transaction costs.

41. In the aviation industry two carriers and passengers might benefit by integrating complementary networks. One of the benefits of the proposed transaction would be lower fares for passengers traveling to smaller cities in Mancunia through one of 6 major destinations served by Ayax. Venusian and Ayax already have a code share agreement on such one stop routes. Post transaction, Venusian and Ayax will cooperate on pricing decision on such routes through the proposed CCA. The possibilities to coordinate pricing, fares and inventory/yield management will eliminate inherent inefficiencies to pricing and enable the members to offer more attractive fares to customers. Passengers from smaller cities can seamlessly travel to international destinations without interlining to Duli or Busby and thus saving on interline fares.

42. Perhaps one of the most fundamental potential benefits from closer cooperation and integration arises from economies of traffic density. This type of economy of scale is a key feature of airline network models. Airline alliances extend the hub and spoke (H&S) network with a large presence at both ends of the market. Feeder routes and services delivering connecting traffic can increase the traffic density on a city-pair, allowing airlines to operate larger, more efficient aircraft and to spread end point fixed costs over a larger number of passengers.

43. On the issue of likely impact on fares on routes from Mancunia to destinations in exclusive territories, the proposed transaction will generate significant synergies for

both airlines in terms of network efficiencies and cost savings. Additionally, the parties to the transaction plan to introduce substantial capacity into the Mancunian market. Both of these factors could and generally do create downwards pressure on fares.

44. Airline alliance has an increased incentive to harmonize and improve customer service standards. They have an incentive to integrate their operations to provide a true ‘online’ quality experience throughout the processes of ticketing, seat selection, airport lounges, gate location for connecting services, on board amenities and service quality, baggage policies and problem resolution, frequent flyer plans and refunds and exchanges. As these aspects are integrated and jointly managed, the customer receives a correspondingly simplified and consistent service. This aspect of cooperation is likely to provide consumer benefit without anti-competitive results, due to the intense, global competition between alliances for customer loyalty.

45. In addition to the potential efficiencies of the proposed combination on account of the synergies expected to be generated, the Commission also considered the importance of the proposed equity infusion and its implication for the Mancunian aviation sector. Venusian, which has been beleaguered with debt, in addition to infusion of cash, hopes to access a large global network. Venusian’s debt of INR 89,994 million on March 31, 2014 is nearly 50% of its 2014 revenues and the business reported substantial negative equity at the end of March 2014 of minus INR 18,272 million. This equity infusion will be beneficial to Venusian as it will strengthen its operational viability. The Commission is of the view that this partnership will allow Venusian to continue to compete effectively in the relevant markets in Mancunia and internationally.

Contestability

46. On the issue of contestability, one of the major impediments to domestic airlines launching international services is the 5 year/20 aircraft rule. This regulation requires that Mancunian carriers must complete five years of domestic operations before being permitted to launch international services, a restriction which does not apply to foreign airlines. Once this rule is relaxed, the contestability of the Mancunian aviation sector is likely to increase and make the Mancunian aviation sector more competitive.

Impact of BASA

47. As per the Bilateral Air Services Agreement (BASA) entered into between Mancunia and the UAE in 2008 (as amended), Shankarz was entitled to operate 13,330 seats per week in each direction through points specified viz. Busby, Duli, Koch, Hydra, Callcut and Boor. Now, with the latest bilateral agreement signed, the seat entitlement is agreed to be increased to 24,330 seats per week with immediate effect, 37,130 seats from IATA winter 2014 and 50,000 seats from IATA 2015 schedule. The bilateral agreement and consequent increase in seats is of relevance to the competition assessment of this deal, given the fact that Shankarz is to be used as an exclusive hub by Venusian.

48. With very realistic assumptions regarding the distribution of increased seats to Venusian in addition to the increased seats to Ayax (totaling 50,000 total seats per week/each way up from current 13,300, to Ayax), the market shares forecasted as a consequence of the revised bilateral of the combined entity increases from 17.06 to 22 percent.[12] This does not portend any possibility of market power that is likely to be exploited.

49. Moreover, the Commission also recognizes that ASAs for other airlines are not likely to be static and some of the other airlines[13] including European airlines have the flexibility of increasing fleet capacity as they are governed by almost open skies or similar ASAs. Secondly, the increase in BASA for Venusian and Ayax has to be implemented in phases.

50. Last but not the least, the Commission is of the view that the dynamic responses of other airlines as a consequence of this proposed deal which, cannot be completely evaluated *ex-ante*, will change the competitive landscape that is most likely to benefit the Mancunian aviation passenger.

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[12] These calculations were done based on overall international market shares for different airlines as reported by DGCA for 2013-2014.

[13] According to a Centre for Asia Pacific Aviation Mancunia Private Limited (CAPA) submission, UAE (Shankarz), has 54,200 entitlement seats per week each way; for Shankarz there is an additional +2% extra seats that both countries can operate over and above of the current entitlement, and similarly for Sharjah over and above designated airlines of Mancunia may also operate weekly 2,500 seats.

F. CONCLUSION:

51. Considering the facts on record and the details provided in the notice given under sub-section (2) of Section 6 of the Act and the relevant factors mentioned in sub-section (4) of Section 20 of the Act, the Commission is of the opinion that the proposed combination is not likely to have appreciable adverse effect on competition in Mancunia and therefore, the Commission hereby approves the same under sub-section (1) of Section 31 of the Act.

52. It is however to be noted, that the Commission is granting the present approval, under section 31(1) of the Act, and that such approval is being granted, pursuant to the underlying competition assessment, based upon the information/details provided by the Parties, in the notice given under sub-section (2) of Section 6 of the Act, as modified and supplemented from time to time. This approval should not be construed as immunity in any manner from subsequent proceedings before the Commission for violations of other provisions of the Act. It is incumbent upon the Parties to ensure that this *ex-ante* approval does not lead to *ex-post* violation of the provisions of the Act.

53. This order shall stand revoked if, at any time, the information provided by the Parties is found to be incorrect.

54. The Secretary is directed to communicate to the Parties accordingly.

Sd/-	Sd/-	Sd/-
(Thakur Ilaahbaadi)	(Mirjaa Kashmeeri)	(Bhedya Manav)
Chairman	Member	Member

<u>ANNEXURE III – CCI ORDER RE ACQUISITION BY SIRALEX</u>

COMPETITION COMMISSION OF MANCUNIA

(Combination Registration No. C-2014/07/127)

10.10.2014

Notice u/s 6 (2) of the Competition Act, 2002 given by:

Mr. Siralex Buxy

<u>Order under Section 31(1) of the Competition Act, 2002</u>

A. INTRODUCTION

1. On, the Competition Commission of Mancunia (hereinafter referred to as the "**Commission**") received a notice under sub-section (2) of Section 6 of the Competition Act, 2002 ("**Act**") filed by Mr. Siralex Buxy ("**Acquirer**"). The said notice was given to the Commission pursuant to the approval by the Ministry of Civil Aviation of a scheme of reconstruction and revival for takeover of the ownership, management and control of Venusian Airlines (Mancunia) Limited ("**Venusian**") and execution of the Share Sale and Purchase Agreement between the Acquirer, Venusian and the promoters of Venusian, namely, Sirmatt Suraneni along with persons acting in concert with him (hereinafter Sirmatt Suraneni and persons acting in concert with him are collectively referred to as "**Sellers**"), dated March 15, 2015 ("**SPA**").

2. The proposed combination involves sale and transfer of equity shares aggregating to 50.1 percent of the share capital of Venusian by the Sellers to the Acquirer.

3. The Acquirer is a first generation entrepreneur. It has been stated that the Acquirer *inter-alia* has experience in the businesses of running technology companies, real estate and airline operations.

4. Venusian is a public limited company listed on the Busby Stock Exchange Limited and National Stock Exchange of Mancunia Limited. It is a scheduled passenger airline engaged in providing domestic and international airline services in Mancunia.

5. As stated in the notice, the Acquirer is not associated with the operations or ownership of any other existing airline. Accordingly, there are no horizontal overlaps or vertical

relationship between the Venusian and the Acquirer. As stated above, the proposed combination is a transfer of shares and control in Venusian from the Sellers to the Acquirer. The proposed combination is, therefore, not likely to cause any appreciable adverse effect on competition in Mancunia.

6. Considering the facts on record and the details provided in the notice given under sub-section (2) of Section 6 of the Act and the assessment of the combination after considering the relevant factors mentioned in sub-section (4) of Section 20 of the Act, the Commission is of the opinion that the proposed combination is not likely to have appreciable adverse effect on competition in Mancunia and therefore, the Commission hereby approves the proposed combination under sub-section (1) of Section 31 of the Act.

7. This approval is without prejudice to any other legal/statutory obligations as applicable.

8. This order shall stand revoked if, at any time, the information provided by the Acquirer is found to be incorrect.

9. The Secretary is directed to communicate to the Acquirer accordingly.

Sd/-	Sd/-	Sd/-
(Thakur Ilaahbaadi)	(Mirjaa Kashmeeri)	(Bhedya Manav)
Chairman	Member	Member

ANNEXURE IV – ADESHWAR'S LETTER TO SEBM

The General Manager, April 13, 2015

Corporate Finance Department,

The Securities and Exchange Board of Mancunia (SEBM)

Dear Sirs,

I, Adeshwar Singh, a practicing advocate of the Supreme Court of Mancunia, write this letter to bring to your notice certain irregularities in complying with the SEBM (Substantial Acquisitions and Takeovers) Regulations, 2011 ("**SEBM Takeover Code**") in the recent change in management of Venusian Airlines (Mancunia) Limited (the "**Company**"). The Company is listed on National Stock Exchange of Mancunia Limited and Busby Stock Exchange Limited. I am a shareholder of the Company, owning 6,500 shares as of date.

It is, hereby, brought to your notice that Mr. Sirmatt Suraneni, the then promoter of the Company, transferred his entire shareholding in the Company amounting to 11,685,825 shares (50.1% of the paid-up equity share capital) to Mr. Siralex Buxy, pursuant to a "*Scheme of Reconstruction and Revival for the takeover of ownership, management and control of Venusian Airlines (Mancunia) Limited*" and was filed before the Ministry of Civil Aviation as "*the Competent Authority*".

The transfer imposes an obligation on Mr. Siralex Buxy to make an open offer pursuant to the SEBM Takeover Code, from which he has claimed an exemption. However, the fact of the matter is that the document, so cleverly titled, "*Scheme of Reconstruction and Revival for the takeover of ownership, management and control of Venusian Airlines (Mancunia) Limited*" and filed before the Ministry of Civil Aviation which, once again was described as "*the Competent Authority*", is a very routine process under Mancunian civil aviation laws and not, a "*scheme*" approved by a "*competent authority*" as contemplated within the meaning of the general exemptions to an open offer available to an acquirer under the SEBM Takeover Code. As a minority shareholder, I have, therefore, been denied a fair exit opportunity upon a change in control of the Company.

In light of the aforesaid, I request SEBM to take notice of the issue and order Mr. Siralex Buxy to make an open offer, as per the SEBM Takeover Code. I thank you for your kind consideration.

Yours sincerely,

Adeshwar Singh

ANNEXURE V - SUMMARY OF THE SEBM ORDERS, EACH DATED JUNE 15, 2015

1. Siralex Buxy

SEBM in its order observed that by virtue of the share sale and purchase agreement dated March 15, 2015 (the "**SSPA**"), executed among Siralex, Sirmatt and Venusian, Siralex acquired more than 25% of the shareholding of Venusian. Under Regulations 3(1) and 4 read with Regulation 13 of 2011 Takeover Code, Siralex was required to make an open offer for acquisition of further 26% shares of Venusian on the date of entering into the SSPA. SEBM therefore held that Siralex had violated the 2011 Takeover Code by not making an open offer. Consequently SEBM passed the following orders:

(i) Siralex was directed to make an open offer for further shares of Venusian in accordance with the 2011 Takeover Code.

(ii) On the grounds that a delayed exit opportunity was being provided to the shareholders of the Venusian, Siralex was ordered to pay interest to the shareholders who tender their shares in the open offer and who are eligible for interest as per law at the rate of 15% p.a. from the date when they incurred the liability to make the public announcement till the date of payment of consideration.

(iii) Until such time as the requirements of the 2011 Takeover Code were satisfied, Venusian and the concerned depository were directed not to give effect to the transfer of shares by registering it.

(iv) Until such time as the requirements of the 2011 Takeover Code were satisfied, Ayax was ordered to cease and desist from exercising control over Venusian including through exercise of any right granted under the SSPA.

2. Labaan, Daw & GG Capital, Anjidas & Kabdaal Partners, Mrimeena FT World Ventures

SEBM in its order observed that LD, AK and MF ("**Noticees**") had been, based on publicly made statements, reports and voting patterns, persons acting in concert since August 20, 2010. The Noticees were held liable to make an open offer for acquisition of further shares of Venusian pursuant to the 2011 Takeover Code from August 20, 2010. The SEBM therefore held the Noticees to be in violation of the 2011 Takeover Code and passed the following orders:

(i) LD, AK and MF were directed to make an open offer for further shares of Venusian in accordance with the 2011 Takeover Code.

(ii) On the grounds that a delayed exit opportunity was being provided to the shareholders of the Venusian, LD, AK and MF were ordered to pay interest to the shareholders who tender their shares in the open offer and who are eligible for interest as per law at the rate of 15% p.a. from the date when they incurred the liability to make the public announcement until the date of payment of consideration.

(iii) Until such time as the requirements of the 2011 Takeover Code were satisfied, LD, AK and MF were ordered to cease and desist from dealing in securities of Venusian in any manner including by way of acquiring or disposing off shares of Venusian held by them, through open market transactions or by creating any encumbrances on such shares.

3. Air Ayax PJSC

SEBM observed that the Transaction Documents effected a change in control over Venusian. It further observed that under Regulation 4 read with Regulation 13 of 2011 Takeover Code, Ayax was required to make an open offer for acquisitions of shares of Venusian on the date on which the board of directors of Venusian had authorized such preferential allotment and that Ayax, by not making an open offer, was in violation of the 2011 Takeover Code. Consequently it passed the following orders:

(i) Ayax was ordered to make an open offer for further shares of Venusian in accordance with the 2011 Takeover Code.

(ii) On the grounds that a delayed exit opportunity was being provided to the shareholders of the Venusian, Ayax was ordered to pay interest to the shareholders who tender their shares in the open offer and who are eligible for interest as per law at the rate of 15% p.a. from the date when they incurred the liability to make the public announcement till the date of payment of consideration.

(iii) Until such time as the requirements of the 2011 Takeover Code were satisfied, Ayax was ordered to cease and desist from exercising control over Venusian including through exercise of any right granted under the Transaction Documents.