

MERGERS & ACQUISITIONS IN CIVIL AVIATION SECTOR: IMPACT ANALYSIS ON COMPETITION LAW

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ABSTRACT

“The wretched spirit of monopoly, means rapacity, the monopolizing spirit in which the oppression of the poor must establish the monopoly of the rich”

--Adam Smith

The *mergers* and *acquisitions* in the execution perspective checks under Competition Law is that, an equal competition might be “better” than in cases of anti-competitive accusations of potential bias in the market. A similar contentious claim is that each Company is better to the other as because the latter have benefited from the differentiation of products in different *sectors*. These claims are susceptible to content analysis where an enactment was made in order to integrate the world economy irrespective of such political boundaries; we find that the planned economy should have adequate object to utilize resources and to check *combinations*. The intent was however to protect both the consumer as well as the concentration of wealth in the hands of the few. Roughly the report of our findings runs around the rim of the Competition Commission of India’s analysis which examines the effects of mergers and acquisitions in the open market. This article argues that “*competition*” in Indian economy, should be there with a rider that the unfair practices should be prevented in order to stop the adverse effect on competition and to promote sustainable competition with special relevance to the *civil aviation* sector.

KEYWORDS: *mergers, acquisitions, combinations, sectors, competition, civil aviation.*

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INTRODUCTION

“Corporate restructuring is one of the means that can be employed to meet the challenges and problems which confront business. The law should be slow to retard or impede the discretion of corporate enterprise to adapt itself to the needs of changing times and to meet the demands of increasing competition.”¹

----Justice D. Y. Chandrachud.

The competition law itself being one of the derivatives of the Anti-trust laws has been successful to place itself at the first page head line of the newspaper. Big companies have grabbed the attention of the society even though anti-trust laws are a new member to the Indian legal system as compared to western countries which has this regulatory framework since 19th century. The fundamental idea of the economic structure of the world is that monopoly imposes heavy costs in every society with its negative implication on price rise resulting in unfair and competitive environment. Monopoly dejects innovation and vitiates efficiency. The Hazari Committee held that the conclusion of licensing system resulted in disproportionate growth of some of the big business houses in India. This study was accompanied with Mahalanobis Committee which concluded that governments should concentrate in ‘planned Economy’, it paved the way for Monopolies Inquiry Commission, 1964 and it drafted the MRTP ACT, 1969 so as to control monopolies and restrict unfair trade practices. After globalization, the MRTP Act has become obsolete in certain areas in the light of international economic developments relating to competition laws. Upon the Raghavan Committee, duty fell about the scrutiny of the absence of domestic competition, along with the unconditional protection from imports provided to domestic industry together with the other aspects of the licensing regime discussed above, fostered a high cost industrial structure which was domestically inefficient in the utilization of resources and not competitive abroad. The subject of Mergers and Amalgamations not only interests, owners of business but also corporate consultants and tax experts alike these are the most popular means of corporate restructuring or business combinations.²

CIVIL AVIATION ANATOMY: A BACKGROUND

The scope of the research project is to analyze the civil aviation industry in terms of the mode of operation followed by airlines across the world, liberalization scenario and regulatory framework followed internationally and in India and to assess the formation of strategic alliances in India. The objective of the research project is to make a competitive assessment of the different models of cooperation followed by airlines across the world with special reference to

¹ Ion Exchange (India) Ltd., In re, (2001) 105 Comp Cases (Bombay High Court).

² Broadly Combination includes acquisition of control, shares, voting rights or assets, acquisition of control by a person over an enterprise where such person has control over another enterprise engaged in competing businesses, and mergers and amalgamations between or amongst enterprises where these exceed the thresholds specified in the Act in terms of assets or turnover.

strategic alliances. The main issue in this paper is to highlight what is the legal scenario and regulatory framework followed in India at par with across international jurisdictions with respect to the civil aviation industry? However, mergers are the highest level of cooperation among the airlines which leads to the combination of two or more airlines into one new airline. The two airlines may decide to initiate merger negotiations which in turn out to be favourable, lead to the merger of the two airlines to form a new larger entity.³ In the aviation industry cross-border mergers are generally not allowed due to regulatory and ownership restrictions so, in place of mergers airlines form strategic alliances.

COMPETITION ISSUES: TRANSPORTATION SECTOR

The Competition Act of 2002 aims at nurturing competition and protection of markets against anti-competitive practices. The practices of anti-competitive agreements, abuse of dominant position and regulation on combinations, i.e., mergers and acquisitions with a view to ensure that there is no adverse effect of competition in India. A combination is not void per se but if Competition Commission of India is of a prima facie opinion that the outcome of such transaction may result in appreciable adverse effect on competition then the Commission may issue a show cause notice to the necessary parties under Section 29(1) of the Act to take the case for detailed investigation. In reality as per the statistics, the transport sector in India has grown up to 10 percent a year while during the last decade it was only 8% for airports to hold back great possibility to hold back India's GDP growth. The Government of India has made efforts to make amendments and also repealed laws such as Air Corporation Act of 1953 and brought a new law in 1994 whereby allowing competition and private participation in scheduled domestic air transport services, leading to dramatic surge in traffic.⁴

While the airport charges in India are, on average, 80% higher than the international average, air travel in India costs a lot more. In the focus to civil aviation industry, most airports in India are owned by Government managed by Airport Authority of India (AAI). In India, though the number of airports is more than that of some neighbouring countries like China but most are underutilized and underdeveloped.

In 1953, the Air Corporations Act came down and the Government of India nationalised the airline industry. The two air corporations like Indian Airlines Corporation and Air India International were established out of the assets of the existing air companies (nine) were transferred to the two corporate entities. The functioning of air transport services being scheduled in nature was made a monopoly of these two corporate entities.⁵

In 1994, the wheel turned a full circle as the Act of 1953 was repealed and the monopoly in air transport ended. The repeal has enabled private operators to provide scheduled air transport services. The Government owned Indian Airlines, and the private operators such as Jet Airways and Air Sahara provided domestic services by providing special packages and dynamic fares. Air Deccan a low cost no frills carriers started its operations. Air India carried travellers from metros

³ Pearce Brian and Smyth Mark, "Airline Liberalisation" (2007) IATA Economics Briefing N 7.

⁴ Vinod Dhall, *Competition Law Today: Concepts, Issues & the Law in Practise* (First Published, 2007) 93.

⁵ T. Ramappa, *Competition Law in India: Policy, Issues and Developments* (Second Impression, Oxford University Press 2011) 183.

and international flights too. Indian Airlines also flew to few international destinations in South Asia and Gulf countries. The Naresh Chandra Committee on Civil Aviation has recommended the unbundling of the AAI along with corporatization of airport management. The committee shall also have suggested that each of large airports should be managed by independent corporate entity and smaller ones with regional basis companies.

Being an independent regulator, the AAI has to keep a watch on pricing, because the airport services are usually a monopoly. For such reasons, the Cabinet Committee on Infrastructure has decided to establish an independent regulator for civil aviation sector for economic activities, landing, tariff, freight and user charges which shall be different from Director General of Civil Aviation. Despite several initiatives taken by the Government with various plans it undertakes, one of them relates to level playing field concerning the state owned carriers. Civil aviation is a sector where Government intervention has affected the competitiveness of state owned carriers and their ability to compete effectively with private operators. The civil aviation policy concerns on scheduled carriers to fly at least 10% of their capacity on trunk routes in north eastern sector, Jammu & Kashmir, Andaman, and Lakshadweep as these regions are poor, a loss making proposition. Indian Airlines had to incur extra annual losses of 62 crores due to such policy. With the opening up of the skies, full autonomy needs to be given to the public sector airlines so that they can take on the competition. A top manager of the public sector airlines states that there is no dearth of ideas to chart out a course of action but it involves a Government clearance at every stage. Airports like in Delhi and Mumbai, the state owned airlines have a full terminal to it while the private sector is all cramped together despite the fact that Jet Airways alone have a higher share in market. The two airlines like the Jet Airways and Air Sahara wanted to compete in international field which was in exclusive domain of the state owned airlines.⁶

AIRLINE MERGERS: OPEN SKIES POLICY?

Deregulation of commercial airline service was the first major step in the process of limiting or eliminating conventional rate and service regulation in commercial transportation in America.⁷ The very important factor in the actual operation of air travel market is that the airlines do have wide discretion to set prices for a specified distance. They would do anything in order to capture the market. The policy makers shall check about the theory if contestable market which are significant to the costs of entry and exit. Mergers took place in order to expand the markets of operation. However, the restoration of some greater standardization to airline pricing and services is likely, on balance, to facilitate both network competition and lower the barriers to new entrants as well as making easier for smaller airlines to develop their own networks.⁸

⁶ Pradeep S. Mehta, *Towards a Functional Competition Policy for India: An Overview* (New Delhi, Academic Foundation) 199.

⁷ Rosa Greaves, *Competition Law* (Dartmouth Publishing Co. 2003) 219.

⁸ P.C. Carstensen & S.B. Farmer, *Competition Policy & Merger Analysis in Deregulated and Newly Competitive Industries* (Edward Elgar Publishing Limited 2008) 100.

The object for corporate restructuring and sought for several sorts of combinations within the aviation companies is to attain certain goals. The objective of the Competition law is to ensure that the persons or enterprises obtaining this autonomy through mergers and acquisitions do not impair the structure of competition. The Act uses a composite expression, for combination to cover mergers, acquisitions of shares, assets, acquiring control of an enterprise. Section 23 of MRTP Act, 1969 under Chapter II deals with concentration of economic power for regulating mergers, to be examined by Central Government.⁹ Acquisition of the shares in Companies Act, 1956 under Sections 108 A to H deals with restriction on acquisitions, transfer of shares, and Central Government's approval for percentage of transfer of shares. The SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 1997 amended up to 3rd January, 2005 states that no acquisition for proposal of acquisition or takeover covered by those regulations for the effect of proposal on the competition in business of enterprises involved in transaction to prevail transparency and safeguard to shareholders. The scope of regulation of 10, 11, 12 has been detailed in the case of *Swedish Match v. SEBI*.¹⁰

In cases of mergers Section 390 to 396 A of the old Companies Act and Section 230 to 234 of the Companies Act, 2013 the Section 23 & 24 of MRTP Act, 1969, Section 5 (c) states the modes of combination which may be brought. The Companies Act 1956 states the arrangement between companies or members. It is an expensive way of entering into new activity, new market, opportunity to use assets of other company, rationalization of operation, tax saving in losses of the transferor company, may be set off as against profits of the remaining company, the saving of stamp duty, where as the tax avoidance is permitted but not tax evasion.¹¹ The Competition Commission of India can make orders for combination under Section 31 of the Competition Act. To a comparative attribute of USA, the Clayton Act under Section 7 states a very wide subject by naming it as any line of commerce. The EC Merger Council Regulation EC No. 139/2004 of 20th January 2004 states the control of concentrations between under taking. The Enterprises Act, 2002 in U.K. under Section 40 to 45 states the same topic.¹² The Section 6 of the Competition Act states the regulations of combinations on terms of adverse effect on competition market in India is void.¹³ The provisions related to combination are also provided as per Section 5, 6, 20, 29, 30, 31, 43A & 44 of the said Act, 2002 read with the Competition Commission of India (Procedure in Regard to the Transaction of Business Relating to Combinations) Regulations, 2011. Section 5 of the Competition Act, 2002 provides the definition of "combination." Therefore the Acquisition has been defined under Section 2 (a) of the Companies Act, 1956. The merger control test like evaluation of barriers to entry, market share, removal of effective competitor, potential to increase profits, countervailing power, and joint control for shareholding and restructuring agreement are the causes of mergers and corporate restructuring as was held in cases of *Deutsche Telekom, Cargill Inc. v. Monfort of Colorado, Inc.*¹⁴ The interim relief under Section 33

⁹ *Kingfisher Airlines Ltd. & Ors. v. Competition Commission of India & Others* [2011] 100 CLA 190 (Bom.)

¹⁰ 2004 (122) Comp. Cas. 83 (SC).

¹¹ *Hindustan Lever Employees Union v. Hindustan Lever Ltd.* (1995) 83 Comp. Cas. 30 (SC).

¹² Dorothy Livingston, Craig Pommey & Charles Latham, *Competition Law Sources* (FT Law & Tax 1995) 393.

¹³ *Northern Securities Co. v. U.S.A.* 193 US 197 (1904).

¹⁴ 1:11-cv-01600 ESH.

and 34 of Competition Act, the tribunal can grant relief for injunction, compensation of loss or damage.¹⁵

JET-ETIHAD DEAL: THE RULE

The year of 1993 marks the deal of Kuwait Airways and Gulf Air, came to buy 20% stake each in Tail Winds Ltd., a corporate body having its recognition as an overseas entity owned by the non-resident Indian named Mr. Naresh Goyal, which held all of its stocks in Jet Airways. The Ministry of Civil Aviation in the year 1997, had ordered Jet to follow the accepted rule that being an overseas company should not hold stock in the Indian carriers. Mr. Goyal then acquired 40% holding and Jet Airways was established in 1992. Being a private company, it did commence its business operations an year later with leased fleets of Boeing 737 aircrafts. Etihad on the other side began its operations in 2003 which did served in West Africa, Australia, Asia, Europe and North America with a fleet of 70 Airbus and Boeing aircrafts. It had 90 aircrafts on order with an inclusion of 20 Airbus A380s which is supposedly the world's largest aircraft.¹⁶

In the corporate restructuring, mergers and acquisitions are the seldom used mechanism but in practise it is somewhat no easy as there is always probability that a group of stakeholders might leave dissatisfied. The issues of regulatory clearances with the anti-trust issues and guidelines do come up. The UAE's national airline Etihad Airways started its talk with Jet Airways (India) Ltd. In 2012 for the possibility of merger initiated and India did changed its policy for which overseas carriers can hold as much as 49% of domestic airlines.

The "Jet-Etihad Deal" initiated in 2013 where the Board of Directors in Jet Airways (India) Ltd. Approved a proposed to allot 24% stake to Etihad Airways PJSC of Abu Dhabi for Rs. 2,058 crores or \$379 million. The decision was informed to the relevant applicable laws and regulations and also for the shareholders' approval. Till date, it is the only major foreign direct investment in the civil aviation sector and the number of Jet shares allotted to Etihad was about 32 percent of Jet Airways share capital. With the approval of the Board, they are to exercise a win-win situation for the stakeholders. This is the deal where the first Indian carrier has taken such advantage after the Government of India Policy of 2012 allowing the foreign airline to involve in this industry. The shares will go to Etihad by way of new stock and the dilution of promoter in Jet Airways' 80% holding. The merger hinted towards more of FDI in form of such corporate restructuring in the future times. The secrecy behind this deal came ahead for the formation of shareholding pattern as the promoter of the Company held his stake through the Tail Winds overseas corporate body for which the permission granted by the Competition Commission of India and SEBI clearances was tuff.¹⁷ There a debate arose about the bilateral air service agreement was signed by India and Abu Dhabi (UAE) and the second is the issue of control that this deal may yield to a foreign airline on an Indian carrier.

¹⁵ Peter Verloop & Valerie Landes, *Merger Control in Europe: EU, Member States & Accession States* (Fourth ed., Kluwer Law International 2003) 397.

¹⁶P.R. Sanjai, "Etihad to buy 24% in Jet for \$300 mn" (Live Mint, 27 January 2013) <<http://www.livemint.com/Companies/LaJLXCDswGKMLEP5TNnUdN/Etihad-set-to-buy-24-in-Jet-Airways-for-300-mn.html?ref=dd>> accessed on 29 November 2014.

¹⁷ D.P. Mittal, *Competition Law & Practise* (Third Edition, Taxmann Publications Pvt. Ltd. 2011) 280.

The DGCA Guidelines for FDI in Civil Aviation stated that the foreign direct investment regime in civil aviation sector has been made effective under the Department of Industrial Policy and Promotion, Government of India, 2012 whereby foreign airlines can invest in Indian civil aviation sector upto limit of 49% under the Government approval route. The Director General of Civil Aviation (DGCA) issued the Guidelines for Foreign Direct Investment in the Civil Aviation Sector in 2013 which plays the role of operationalizing the revised FDI regime. It deals with rules pertaining to various aspects of civil aviation sector separately: it takes care of scheduled air transport service¹⁸/domestic scheduled passenger airline, about the non-scheduled air transport service/non-scheduled airlines/chartered airlines, about the cargo airlines (scheduled or non-scheduled), the helicopter services/sea plane services and the maintenance and repair organization, flying training institutes and technical training institutes. The March 2013 Guidelines stated that the Civil aviation sector which does include the airports, scheduled and non-scheduled domestic passenger airlines sector, etc. do present a policy of FDI covering all services. The present policy as reviewed by the Government had decided to permit such FDI is however not applicable to Air India.¹⁹

FOREIGN DIRECT INVESTMENT: COMPETITION CHECKS

The foreign airlines are allowed to invest in the capital of Indian corporate bodies, entities operating into several scheduled and non-scheduled transport in air sector for passenger services up to 49% of paid up share capital. Such investment shall be subject to be scanned under the Government approval route, 49% will subsume FDI and FII investment, investment made in compliance with regulations of SEBI (ICDR) Regulations as well as other applicable rules and regulation, must have security view point before deployment and clearance from the Ministry of Civil Aviation. Whereby companies operating in scheduled passenger and non-scheduled passenger operator can avail FDI by the foreign airlines. Even in cases of cargo airlines, FDI of up to 74% with Government approval is allowed. Investment by non-resident Indians is allowed up to 100% through automatic route. The helicopter services and also the seaplane services do require DGCA approval whereby a FDI up to 100% is allowed on automatic route.²⁰ However there are guidelines which have to be met with for indirect investment by foreign investing institution/ entity/ airlines as per the Aircraft Act, 1934 the Aircraft Rules, 1937 along with the existing Air Transport Policy and the approval of the Government.

The permission to operate scheduled air transport services or domestic scheduled passenger airline is given to any citizen of India or to any company where it has registered its business in India, two thirds of the directors are citizens of India and the ownership is under effective control of Indian citizens. Even if the foreign nationals being the Chief Executive Officer or the Chief Financial Officer, a security vetting is to be done by Ministry of Home

¹⁸Air transport operations undertaken between two or more places according to a published time table or with flights so regular that they constitute a recognizably systematic series are known as scheduled air transport services.

¹⁹DGCA, "Guidelines for FDI in the Civil Aviation Sector" AIC 7/2008 <http://www.dgca.nic.in/aic/AIC06_2013.pdf> accessed on 30 November 2014.

²⁰ Giorgio Monti, EC Competition Law (First Published, Cambridge University Press 2007) 245.

Affairs. The detailed information of shareholding ratio of any foreign airline is to be furnished. Such foreign company representing itself in Scheduled Air Transport Service or in Domestic Scheduled Airline may have representation of 1/3rd of the total Board of Directors. This entity may enter into financial arrangements with a Bank including the foreign airlines in cases of loans.

The Foreign Investment Promotion Board checked the Jet-Etihad deal as 36,670 extra seats were assigned between two sectors. The two carriers named Emirates and Fly Dubai are operating 54,200 seats a week to and from India. But from the Indian aviation sector, only Air India, Air India Express, Jet Airways and Indigo are into operation to the Middle East. Emirates itself operates 185 weekly flights linking 10 Indian cities. The merger came in issue as soon as the 37,000 seats in three years were spread under the deal. Such bilateral pinch has paid a good premium in case of Jet. The outcome of the deal and the issue were related to shift of control where both parties submitted a revised proposal for the Board approval. The India-UAE Air Services Agreement and \$900 million deal was sought to comply with local laws and FDI policy after which it was approved. The shareholding agreement was also to be governed by British Law as was confirmed by the Board.²¹

Shift of control of the Indian Company to the hands of the foreign company was only after the approval of Government under FDI. The deal then had to come before the Competition Commission of India and the Capital Markets Regulator SEBI. Such acquisition of shares might have a detrimental effect upon customers and the mandatory open offer obligations under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 arises when the acquisition entitles the acquirer has voting rights beyond threshold.²² Fulfilment of the mandates are a must as SEBI shall scrutinize stake purchases that gives buyer effective control of seller to determine if an open offer should be made to minority shareholders of target company on the move of impact upon the Etihad Airways' purchase of 24% stake in Jet as they appeared to confer substantial management rights to Etihad. The role should be played in accessing the shareholders agreement as entered in this deal for about three directors may be nominated on Jet board to decide senior management position. The extent of control was to be determined by SEBI Takeover Code to check the acquiring of the control. The bound of such questions of law is the control issue which is left open by Supreme Court by accepting the out of court settlement between the two parties.²³

The out of control issue as The Takeover Code under regulation 2(e) defines "control" as to include the right to appoint majority of directors or to control the management by pressing upon the policy decisions exercisable by persons, directly or indirectly including virtue of shareholding or voting agreements or in any other manner. Provided that a director or officer of target company shall not be considered to be in control over such target company merely by virtue of holding such position. Therefore whether the right to no vote or veto also constitutes control or not is the issue. While this deals as checked by SEBI was to measure the acquiring control over the target company by Etihad and the 51% stake of Jet raises questions for veto

²¹ Maher M. Dabbah, *EC & UK Competition Law: Commentary, Cases & Materials* (First Published, Cambridge University Press 2004) 509.

²² S.M. Dugar, *Guide to Competition Law: Containing Commentary on Competition Act, MRTP Act and Consumer Protection Act* (Fifth ed., Taxmann Publications Pvt. Ltd. 2010) 393.

²³ *SEBI v. Subhkam Ventures (I) Pvt. Ltd.* (2012) 106 CLA 31 (SAT).

powers under the takeover code. However no Court has adjudicated such methods but has left to SEBI for interpretation on case to case basis.²⁴ The deal has capped 24% for open offer under takeover code but for effective voting rights in excess of 25% which is limited attendance in shareholder's meeting and therefore result in an veto right on special resolution matters without requiring any special rights under the agreement. The investors might succeed to block major decisions of the company and the company may have to issue further shares, corporate re-organizations and amendments to the constitutional document of company. However, Etihad has the right to nominate three directors on board of Indian carrier to decide senior management positions.

The three main contentious clauses in shareholders agreement where the regulator was brought in were Etihad can approve crucial decisions and 3/4th majority is needed for removal of independent directors. SEBI has proposed that Etihad should not have unilateral right to terminate the commercial cooperation pact with Jet and there shall not be any situation of ambiguity with respect to special rights of veto powers and no retaining powers for negative voting. SEBI also told the parties to the deal that the right to appoint board members should be proportionate to shareholding and the foreign investor shall not enjoy powers such as right to appoint vice-chairman and automatic representation on audit committee. Therefore all the important clauses of the deal was scanned through by the regulator which was again resubmitted with the favour of Indian partner. However, Naresh Goyal being the first chairman on board, had a casting vote for management of Jet from Mumbai; the four directors were appointed by promoter of company and two directors were to be appointed by Etihad with 12 Board members and 6 independent directors. Thereafter the FIPB clearance was given on 29th July, 2013 with express mentioning of 9% stake owned by Tailwinds, a holding company of Jet Chairman Naresh Goyal.

To define the issue of control, the FIPB gave its nod after SEBI was satisfied after the shareholders agreement entered between two parties and even the approval from the CCI. This deal does involves a cross border merger between the two great international aviation sector players, eventually ended up outlining and amending the definition of "control" under the new FDI policy. The facts and circumstances of the cases definitely changes as the legal control of the FDI policies also takes care that none has to suffer unnecessary damages. Three days after the Government has approved the \$379 million deal, the Cabinet Committee on Economic Affairs (CCEA) approved the proposal of the Department of Industrial Policy and Promotion (DIPP) to change the definition of "control" in context of FDI policy. The Cabinet on 1st August, 2013 stated "control" will be the "right to appoint a majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholder agreements or voting agreements". This was done mainly to bring parity with the definitions given under the guidelines of SEBI and The Companies Act, 2013.²⁵ Accordingly to the present FDI policy, a company is said to be controlled by an Indian resident of more than 51% stake and have to appoint majority directors in the Company. It

²⁴Anindya Upadhyay, "Jet Airways-Etihad deal to threaten Air India's survival" (The Economic Times, 14 February 2013) <http://articles.economicstimes.indiatimes.com/2013-02-14/news/37100363_1_jet-etihad-gulf-carriers-capareport> accessed on 2 December 2014.

²⁵ Guide to Competition Law in India: Based on the Competition Act, 2002 (Universal Law Publication Co. Ltd., 2003) 16.

covers the management and policy decisions, shareholding, management rights, shareholders agreements and the takeover code. The FEMA Guidelines will also have to get amended to keep vigilance under the indirect foreign investment into sectoral caps.

RECOMMENDATIONS

The conclusion is that such a deal was a first of its kind after the Government increased the FDI civil aviation sector to 49% and has opened to the new gates for foreign flying companies like Etihad has come forward and enter into deals with various domestic international airlines established and functioning from India. Though the deal was under a scanner but still it was successful to get necessary approvals from FIPB, SEBI, CCI, etc. It has proved to be the benchmark as because the notification of FDI policy for change of definition of “control” to make it equal with that of RBI in alignment with FEMA guidelines pressing a huge impact in FDI transactions in India. One might also say that there would have been better a clarity on whether acquired veto rights will constitute “acquisition of control” or not and the help from transactions had the Supreme Court set precedence in the case of Sukham.²⁶ However a regulator precisely for transport sector is a need. The Competition Commission of India shall also play an active role in influence thinking and also may impose criminal sanctions upon companies for violation of fair trade practices.²⁷ There should be policy reforms at Government level are required to introduce competition in transportation sector. The level playing field between public and private sector operators shall operate simultaneously making changes in law to encourage the operation of large fleet operators in India.

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²⁶ *supra* 13.

²⁷ K.J. Cseres, M.P. Schinkel & F.O.W. Vogelaar, *Criminalization of Competition Law Enforcement: Economic & Legal Implications for the EU Member States* (Edward Elgar Publications Ltd.) 30.

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