

MODULE –V

AIRLINE MANAGEMENT IN INDIA

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AIRCRAFT FINANCING AND LEASING IN INDIA

INTRODUCTION:

- ▶ INCREASING POPULARITY AND POSSIBILITY OF LEASING DICTATED BY RAPID GROWTH OF TECHNICAL DEVELOPMENTS AND NEED FOR BIGGER AND FASTER AIRCRAFTS. AIRLINE COMPANIES FACE STEEPLY RISING COSTS AND OFTEN COULD NOT AFFORD TO BUY NEW AIRCRAFTS
- ▶ AT THE SAME TIME THESE LARGER AIRCRAFTS CONTRIBUTED TO TEMPORARY OVERCAPACITY, THEREBY REDUCING THE PROFIT OF THE AIRLINE COMPANIES
- ▶ THUS PRIVATIZATION OF AIRCRAFT LED TO DEVELOPMENT OF AIRCRAFT LEASING AND FINANCING
- ▶ AIRCRAFT AN EXPENSIVE COMMODITY AND AVIATION IS A SECTOR WITH GREAT PROSPECTS SO MANY PRIVATE ENTITIES HAVE STARTED RUNNING AIRLINES BY ACQUIRING AIRCRAFTS EITHER THROUGH LEASING OR BY GETTING IT FINANCED
- ▶ AS AVIATION INDUSTRY GROWS BY INTRODUCTION OF MORE AND MORE AIRLINES SO IS BUSINESS OF LEASING AND FINANCING OF AIRCRAFTS
- ▶ URGENT NEED TO REGULATE AIRCRAFT LEASING AND FINANCING INDUSTRY

AIRCRAFT LEASING IN INDIA

- ▶ DGCA PROVISIONS:
 - ▶ BY LOOKING AT THE DGCA PROVISIONS RELATING TO AIRCRAFT LEASING A GENERAL IDEA CAN BE OBTAINED AS TO HOW AIRCRAFTS ARE LEASED IN INDIA
 - ▶ APPROVAL FROM THE DGCA: MANDATORY REQUIREMENT TO BE FULFILLED BEFORE LEASING AN AIRCRAFT.
 - ▶ LESSOR CAN BE OR A FOREIGN OPERATOR

AIRCRAFT FINANCING AND LEASING IN INDIA

INDIAN OPERATOR TAKE A FOREIGN REGISTERED AIRCRAFT ON LEASE, CHARTER OR ANY SIMILAR ARRANGEMENT FROM A PERSON HOLDING AIR OPERATOR CERTIFICATE (AOC) ISSUED BY ANOTHER STATE, FOLLOWING INFORMATION TO DGCA AT LEAST 45 DAYS PRIOR TO PROPOSED DATE OF OPERATION :-

- ▶ A. NAME AND ADDRESS OF THE INDIA OPERATOR AND THE LESSOR
- ▶ B. AIRCRAFT DETAILS
- ▶ C. AOC DETAILS ALONG WITH OPERATIONS SPECIFICATIONS, IF ANY, OF THE LESSOR
- ▶ D. NAME AND CONTACT INFORMATION OF THE STATE OF REGISTRY
- ▶ E. COPY OF THE LETTER OF INTENT
- ▶ F. PLANNED ARRANGEMENTS FOR OPERATION AND MAINTENANCE OF AIRCRAFT DURING THE LEASE PERIOD
- ▶ G. PROPOSED DATE OF IMPORT INTO INDIA.

AIRCRAFT FINANCING AND LEASING IN INDIA

INDIAN OPERATOR BORROW AN AIRCRAFT ON LEASE FROM AN INDIAN OPERATOR (FOR DOMESTIC OR INTERNATIONAL OPERATIONS), FOLLOWING INFORMATION TO DGCA AT LEAST FORTY-FIVE (45) DAYS PRIOR TO THE PROPOSED DATE OF OPERATION WITH THE LEASED AIRCRAFT:-

- ▶ A. NAME AND ADDRESS OF THE OPERATOR FROM WHOM THE AIRCRAFT IS INTENDED TO BE LEASED
- ▶ B. AOC DETAILS ALONG WITH OPERATIONS SPECIFICATIONS OF THE LESSEE AND THE LESSOR
- ▶ C. AIRCRAFT TYPE, REGISTRATION NUMBER AND ITS MAIN BASE
- ▶ D. MAINTENANCE AGENCY WITH SCOPE OF APPROVAL
- ▶ E. A COPY OF THE DRAFT LEASE AGREEMENT AND MAINTENANCE AGREEMENT
- ▶ F. ANY AMENDMENT PROPOSED TO BE MADE IN THE OPERATIONS MANUAL OR OTHER RELEVANT DOCUMENTS
- ▶ G. DOCUMENT DETAILING RESPECTIVE RESPONSIBILITIES OF COMPLIANCE WITH REGULATORY REQTS SUCH AS FDTL, ARRANGEMENTS FOR FLT OPS QA, FLT DISPATCH AND RESPONSIBILITIES OF LESSOR AND LESSEE WITH REGARD TO OPS, MAINT AND QLTY SYSTEM OF AIRCRAFT

AIRCRAFT FINANCING AND LEASING IN INDIA

- ▶ DGCA FINALIZES MODALITIES FOR OPS OF LEASED AIRCRAFT WITH INDIAN OPERATOR
- ▶ WHERE AIRCRAFT IS TAKEN ON LEASE FROM A FOREIGN OPERATOR, THE REPRESENTATIVES OF THE FOREIGN OPERATOR AND THE REGULATORY AUTHORITY ARE ALSO ALLOWED TO PARTICIPATE IN THE MEETING
- ▶ DGCA CAN CONCLUDE AN AGREEMENT UNDER ARTICLE 83 WITH THE STATE OF REGISTRY AND STATE OPERATOR FOR TRANSFER OF CERTAIN REGULATORY FUNCTIONS
- ▶ ALSO DISCRETION TO IMPOSE CONDITIONS WHILE GRANTING PERMISSION TO INDIAN OPERATOR FOR OPERATIONS WITH LEASED AIRCRAFT
- ▶ STAMP DUTY AND THE LEASE AGREEMENT: INDIAN OPERATOR CAN CONCLUDE FORMAL LEASE AGREEMENT WITH LESSOR. AGREEMENT INCLUDE - CONDITIONS DECIDED BY STATE OF REGISTRY AND STATE OF OPERATOR AND ONES IMPOSED BY DGCA
- ▶ COPY OF LEASE AGREEMENT FILED WITH DGCA (NOTARIZED COPY FROM AIRLINES)
- ▶ DOES NOT ATTRACT STAMP DUTY IN THE STATE OF DELHI BUT NECESSARY TO STAMP LEASE AGREEMENT IN RELEVANT STATE, (STATE IN WHICH AIRLINE IS INCORPORATED OR ITS OPERATIONAL BASE), PRIOR TO FILING WITH DGCA
- ▶ STAMPING NECESSARY TO ENSURE LEASE AGREEMENT IS ENFORCEABLE BY LAW. IN INDIA, THE STAMP DUTY RATES VARY FROM STATE TO STATE

TYPES OF LEASE AGREEMENT

DRY LEASE: FOLLOWING CONDITIONS TO BE FULFILLED:

- ▶ **REGISTRATION OF THE AIRCRAFT: OPERATION OF FOREIGN AIRCRAFTS ON DRY LEASE REQUIRE REGISTRATION OF AIRCRAFT IN INDIA.**
- ▶ **LEASED AIRCRAFT TO HAVE A VALID CERTIFICATE OF REGISTRATION (CoR) AND CERTIFICATE OF AIRWORTHINESS (CoA) AND MUST BE ENTERED IN THE OPERATING PERMIT OF THE OPERATOR**
- ▶ **CIVIL AVIATION REQUIREMENTS (CAR) REGULATIONS, REGN OF ACFT DONE EITHER CAT A OR B**

FOR LEASED AIRCRAFTS, THE REGISTRATION FALLS UNDER CATEGORY A. THE REGISTRATION OF THE AIRCRAFT IS VALID AS LONG AS THE LEASE IS IN FORCE AND THE AIRCRAFT IS MAINTAINED AND OPERATED IN ACCORDANCE WITH

- ▶ **A. THE DGCA REGULATIONS**
- ▶ **B. THE TERMS AND CONDITIONS SPECIFIED IN THE OPERATOR'S PERMIT AND**
- ▶ **C. THE OPERATOR'S MAINTENANCE CONTROL AND OPERATIONS MANUALS**
- ▶ **OPERATOR CAN APPLY TO DGCA FOR EXTENSION OF VALIDITY OF THE CoR**
- ▶ **AIRWORTHINESS OF THE AIRCRAFT:**
 - ▶ **ONCE AIRCRAFT REGISTERED, OWNER OR AUTHORIZED REP HAS TO APPLY TO AS PER RULE 62 OF AIRCRAFT RULES 1937 FOR CoA.**
 - ▶ **APPLICATION FOR ISSUE OF ACFT NOISE CERTIFICATE TO BE MADE ALONG WITH CoA APPLICATION. CoA VALID FOR 12 MONTHS**
 - ▶ **IN CASE OF IMPORTED ACFT, VALIDITY BEGINS FROM DATE OF ISSUE OF EXPORT CoA AND RESTRICTED TO VALIDITY SPECIFIED IN STANDARD CoA ISSUED BY COUNTRY OF EXPORT**

TYPES OF LEASE AGREEMENT

OTHER CONDITIONS TO BE SATISFIED FOR DRY LEASE OF AIRCRAFT ARE AS FOLLOWS:

▶ THE INDIAN AIRCRAFT OPERATOR:

- ▶ RESPONSIBLE FOR AIRWORTHINESS AND CONTROL OF AIRCRAFT;
- ▶ PROVIDE COMPLETE ACFT MAINT PROGRAM TO REGIONAL AIRWORTHINESS OFFICE FOR APPROVAL INCLUDING ISSUE OF FLIGHT RELEASE, MAINTENANCE POLICY, STORAGE LIVES OF COMPONENTS;
- ▶ TRAIN ENGINEERS AND FLIGHT CREW TO SATISFACTION OF DGCA AND OBTAIN NECESSARY APPROVALS BEFORE MAINTENANCE OR OPERATION OF AIRCRAFT COMMENCES;
- ▶ ESTABLISH OWN ANCILLARY SHOPS FOR INVESTIGATION OF FAILED COMPONENTS, REPAIR AND OVERHAUL OF ROTABLES INSTALLED ON ACFT OR COLLABORATE WITH OTHER OPERATORS;
- ▶ OPERATIONS MANUAL FOR TYPE OF LEASED AIRCRAFT, WHICH SHOULD BE UPDATED REGULARLY. ALL FLIGHT CREW MADE THOROUGHLY FAMILIAR WITH CONTENTS OF MANUAL BEFORE THEY START FLYING;
- ▶ COMPLY WITH ALL SAFETY REGULATIONS AND FIT REQUISITE INSTRUMENTS AND EQUIPMENT IN ACCORDANCE WITH DGCA REGS;
- ▶ IMPORTED AIRCRAFT ON LEASE HAS TO ENSURE THAT ALL THE AIRWORTHINESS DIRECTIVES, MODIFICATIONS AND INSPECTIONS DECLARED MANDATORY BY DGCA ARE COMPLIED WITH EVEN IF THEIR COMPLIANCE IS NOT MANDATORY IN THE COUNTRY FROM WHERE THE AIRCRAFT IS IMPORTED

WET LEASE: PRE-CONDITIONS FOR A WET LEASE

OPERATION OF FOREIGN ACFT LEASED BY INDIAN OPERATORS NORMALLY PERMITTED ON DRY LEASE BASIS. IMPORT OF AIRCRAFT FOR DOMESTIC AIR TRANSPORT OPERATIONS ON WET LEASE BASIS NOT PERMITTED EXCEPT IN EMERGENCY SITUATIONS AND IN FOLLOWING CIRCUMSTANCES

- ▶ EXISTING ACFT OF OPERATOR IS GROUNDED FOR MAINTENANCE/INSPECTION CHECKS OR DUE TO ANY OTHER UNFORESEEN REASONS. (IN SUCH CASES, WET LEASING IS PERMITTED ONLY FOR THE DURATION OF GROUNDING OF ACFT);
- ▶ EXISTING AIRCRAFT INVOLVED IN SOME ACCIDENT/INCIDENT OR DUE TO EXPIRY OF EXISTING LEASE AND DELAY IN FINALIZATION OF NEW LEASE AGREEMENT, THERE IS A REDUCTION IN CAPACITY OF THE OPERATOR;
- ▶ REVIVAL OF SICK OPERATORS WHO SHOULD HAVE AN AGREEMENT WITH THE LESSOR INITIALLY FOR WET LEASE FOR A PERIOD NOT EXCEEDING SIX (6) MONTHS AND, THEREAFTER, AUTOMATIC CONVERSION TO DRY LEASE FOR REMAINING PERIOD OF LEASE;
- ▶ SHORT TERM INDUCTION OF CAPACITY REQUIRED TO MEET EMERGENCY SITUATION SUCH AS NATURAL CALAMITY, INDUSTRIAL UNREST OR ANY OTHER SIMILAR SITUATION.

WET LEASE: PRE-CONDITIONS FOR A WET LEASE

OTHER IMPORTANT PROVISIONS PERTAINING TO OPERATION OF AIRCRAFTS ON WET LEASE ARE:-

- ▶ **STATE OF REGISTRY CONFIRM THAT THEIR LEGISLATION ENABLES THEM TO DIVEST THEMSELVES OF THE FUNCTIONS AND DUTIES WHICH ARE THE OBJECT OF THE TRANSFER AGREEMENT, AGREE FOR SURVEILLANCE OF AIRCRAFT OPERATIONS AND MAINTENANCE BY DGCA, AND FURNISH A LETTER FROM CONCERNED REGULATORY AUTHORITY TO THIS EFFECT**
- ▶ **WELL DEFINED AGREEMENT BETWEEN LESSEE AND LESSOR STIPULATING INDIAN OPERATOR AND DGCA WILL HAVE AUTHORITY TO EXERCISE AIRWORTHINESS AND OP CONTROL ON WET LEASE ACFT OPS**
 - ▶ **LESSEE AND LESSOR HOLD A VALID AND CURRENT OPERATING PERMIT OR AOC FOR TYPE OF OPS**
 - ▶ **ACFT NOT OLDER THAN 15 YRS SINCE MANUFACTURE**
 - ▶ **ACFT FREE FROM ANY ACCIDENT; IN CASE OF ONE, DETAILS SHOULD BE FURNISHED TO DGCA**
 - ▶ **FLIGHT CREW AND MAINTENANCE PERSONNEL HAVE TO COMPLY WITH THE INDIAN OPERATOR'S AND THE DGCA'S INSTRUCTIONS AND MAINTAIN ACFT IN ACCORDANCE WITH LATTER'S REGULATIONS**
 - ▶ **FOREIGN CREW AND MAINTENANCE ENGINEERS CAN BE DEPLOYED ONLY IF CLEARED BY SECURITY AGENCIES AND ISSUE OF VALIDATION/APPROVAL BY DGCA**
 - ▶ **ACFT BE ENDORSED ON PERMIT AND OPERATIONS SPECIFICATIONS OF OPERATOR**

MANDATORY PROVISIONS FOR BOTH WET AND DRY LEASE

- ▶ FOR LEASED ACFT OPS, ACFT BE TYPE-CERTIFICATED BY FAA OF USA OR JOINT AIRWORTHINESS AUTHORITY OF EUROPE OR CAA OF UK OR ANY AUTHORITY ACCEPTABLE TO DGCA.
- ▶ OPERATOR'S RESPONSIBILITY TO CONFIRM LEASE AGREEMENT DOES NOT CONTAIN ANY PROVISION WHICH WILL BE BINDING DGCA.
- ▶ THE LESSOR TO GIVE AN UNDERTAKING IN AGREEMENT TO COMPLY WITH ALL APPLICABLE CAR RULES.
- ▶ DGCA CAN WITHDRAW PERMISSION FOR OP OF A PARTICULAR ACFT IN INDIA IF SAFETY OF ACFT OPS IN DOUBT OR CAR REQTS OR ANY OTHER SAFETY RULES NOT COMPLIED WITH
- ▶ ISSUES AND CONCERNS CHALLENGE FOR LESSORS AND FINANCIERS OF ACFT – BOTH AT STATE AND NATIONAL LEVEL. ISSUES LIKELY TO ARISE IN THE CONTEXT OF:
 - ▶ LEASING OF AIRCRAFT
 - ▶ MAKING OF LEASE AND GUARANTEE PAYMENTS
 - ▶ SECURITY PACKAGE AND OFTEN MAGNIFIED BY THE LACK OF CLEAR AUTHORITY AND PRECEDENT IN INDIA. A “TYPICAL” RANGE OF CONSIDERATIONS FOR ANY INWARD LESSOR OR FINANCIER LIKELY TO INCLUDE:
 - ▶ WITHHOLDING TAX EXEMPTION MUST BE OBTAINED FROM MINISTRY OF FINANCE IN RELATION TO LEASE RENTAL PAYMENTS
 - ▶ EXCHANGE CONTROL APPROVAL FROM RBI REQUIRED IN RELATION TO CERTAIN LEASE / LEASE-RELATED AND GUARANTEE PAYMENTS
 - ▶ INDIAN STATUTORY LAW DOES NOT MAKE PROVISION FOR MORTGAGES OVER AIRCRAFT
 - ▶ TRADITIONALLY WRITTEN ASSIGNMENTS OF INSURANCES LIKELY TO ATTRACT SIGNIFICANT STAMP DUTY COSTS
 - ▶ INDIAN STAMP DUTY WILL APPLY IN RELATION TO A VARIETY TRANSACTION DOCUMENTS. AMOUNT OF STAMP DUTY VARY FROM STATE TO STATE AND CAN BE CHARGED ON COPY DOCUMENTS THAT ARE BROUGHT INTO CERTAIN STATES

LIBERALIZATION IN INDIA

CONCEPT OF LANDING RIGHTS

- ▶ WHAT IS LANDING RIGHT?
 - ▶ QUITE COMPLEX AND INVOLVES SEVERAL ISSUES, SUCH AS,
 - ▶ WHO GRANTS THE RIGHT,
 - ▶ RIGHT FOR WHAT PURPOSES,
 - ▶ CHOICE OF AIRPORTS AND SLOTS,
 - ▶ RIGHTS FOR DOMESTIC OPERATIONS AND INTERNATIONAL OPERATIONS,
 - ▶ SALE OF SUCH RIGHTS,
 - ▶ CONDITIONS FOR THE USE OF RIGHTS, INCLUDING PAYMENT OF LANDING CHARGES, ETC.
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LIBERALIZATION IN INDIA

LANDING RIGHTS FOR DOMESTIC OPERATIONS

- ▶ LANDING RIGHTS FOR DOMESTIC OPS RELATIVELY SIMPLE.
- ▶ ONCE AIRLINE REGISTERED ABLE TO OPERATE ON ANY ROUTE AND LAND AT ANY AIRPORT WITHIN THE COUNTRY
- ▶ LICENSING AUTHORITY CAN IMPOSE CERTAIN CONDITIONS ON THE OPERATORS.
- ▶ FOR E.g, IN INDIA, UNDER THE FLIGHT DISPERSAL PLAN, CERTAIN OBLIGATIONS PLACED ON AIRLINES OPERATING ROUTES CONNECTING METROPOLITAN CITIES. ROUTES BEEN DIVIDED INTO 3 CATEGORIES.
 - ▶ CATEGORY I INCLUDES ROUTES CONNECTING (1) MUMBAI WITH DELHI, KOLKATA, CHENNAI, BANGALORE, HYDERABAD AND TRIVANDRUM, (2) DELHI WITH KOLKATA, CHENNAI, BANGALORE AND HYDERABAD AND (C) KOLKATA WITH BANGALORE AND CHENNAI.
 - ▶ CATEGORY II INCLUDES ROUTES CONNECTING STATIONS IN NE REGION, J&K, ANDAMAN & NICOBAR AND LAKSHADWEEP
 - ▶ CATEGORY III INCLUDES ALL OTHER ROUTES
- ▶ UNDER FLIGHT DISPERSAL PLAN ANY ONE WHO OPERATES SCHEDULED SERVICES ON ONE OR MORE OF THE ROUTES IN CATEGORY I, REQUIRED TO PROVIDE AT LEAST 10% OF CAPACITY ON ROUTES IN CATEGORY I FOR CATEGORY II ROUTES
- ▶ FURTHER, OF THE CAPACITY REQUIRED TO BE DEPLOYED ON ROUTES IN CATEGORY II, AT LEAST 10% BE DEPLOYED ON SERVICES OR SEGMENTS THEREOF OPERATED EXCLUSIVELY WITHIN THE NE REGION, J&K, ANDAMAN & NICOBAR AND LAKSHADWEEP
- ▶ AND WILL DEPLOY ON ROUTES IN CATEGORY-III, AT LEAST 50 PERCENT OF THE CAPACITY IN CATEGORY-I ROUTES

LIBERALIZATION IN INDIA

- ▶ RESTRICTIONS ON LANDING RIGHTS CAN ALSO BE IMPOSED BY MANAGING THE AIRPORT BASED ON CAPACITY OF AIRPORT AND FACILITIES AND SERVICES AVAILABLE
 - ▶ MUMBAI AND DELHI AIRPORTS HAVE CAPACITY PROBLEMS IN EARLY MORNING HOURS AND ALSO IN THE EVENING AS MOST OF THE AIRLINES WISH TO LEAVE FOR DESTINATIONS EARLY IN THE MORNING OR IN THE EVENING
 - ▶ CAPACITY PROBLEMS SORTED OUT BY SCHEDULING COMMITTEE, DISPERSING FLIGHTS AFTER DISCUSSION WITH AIRLINES.
 - ▶ DEPENDING UPON LENGTH, WIDTH AND STRENGTH OF RUNWAY MAXIMUM LOAD RESTRICTIONS CAN BE PLACED ON CERTAIN TYPES OF AIRCRAFT
 - ▶ RESTRICTIONS ON NIGHT LANDINGS AT AIRPORTS WITH NO LIGHTING FACILITIES
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LANDING RIGHTS FOR INTL OPERATIONS - ICAO'S ROLE

- ▶ LANDING RIGHTS FOR INTL AIRLINES POSE ADDITIONAL PROBLEMS, AND COMPLEX
- ▶ BASIC NATURE OF EVERY INTL FLIGHT, INVOLVES AGREEMENT BETWEEN AT LEAST TWO SOVEREIGN STATES.
- ▶ ICAO PLAYS VERY IMPORTANT ROLE IN DEVELOPING INTERNATIONAL AIR TRAFFIC AND GRANT OF LANDING RIGHTS FOR INTL AIR TRANSPORT
- ▶ CHICAGO CONVENTION, THE MOST IMPORTANT INTL CONVENTION ON CIVIL AVIATION, 188 STATES, INCLUDING INDIA, ARE SIGNATORIES
- ▶ PROVISIONS BINDING ON ALL STATES AND NO STATE CAN EXEMPT ITSELF FROM ANY OF THE PROVISIONS
- ▶ ARTICLE 1 - EXCLUSIVE SOVEREIGNTY OF THE STATE ABOVE ITS TERRITORY. DEBARS AN AIRLINE BELONGING TO ONE STATE FROM LANDING IN TERRITORY OF ANOTHER STATE WITHOUT SPECIFIC AGREEMENT
- ▶ GIVEN RISE TO REGULATION OF LANDING RIGHTS THROUGH BILATERAL AND MULTILATERAL AGREEMENTS
- ▶ PROVIDES SAFEGUARDS AGAINST POSSIBLE ARBITRARY ACTION BY STATES, NOT IN BEST INTEREST OF INTL CIVIL AVIATION
- ▶ E.G. ARTICLE 15 REGULATES USE OF FACILITIES AND SERVICES AT INTL AIRPORT OPEN TO PUBLIC USE, SETS OUT 3 BASIC ECONOMIC PRINCIPLES RELATING TO USE OF AIRPORTS AND AIR NAVIGATION FACILITIES AND SERVICES AT INTL AIRPORTS AND CHARGES
 - ▶ (A) APPLICATION OF UNIFORM CONDITIONS FOR ALL AIRLINE OPERATORS IN USAGE OF FACILITIES AND SERVICES;
 - ▶ (B) NON-DISCRIMINATION IN CHARGING AIRCRAFT OPERATORS FOR FACILITIES AND SERVICES AT AIRPORTS AND FOR AIR NAVIGATION SERVICES;
 - ▶ (C) NO CHARGES TO BE LEVIED SOLELY FOR TRANSIT OVER, ENTRY INTO OR EXIT FROM THE TERRITORY OF CONTRACTING STATE. REFLECT CONCERN OF THE CONTRACTING STATES TO AVOID POSSIBLE ABUSE OF MONOPOLY POWER BY PROVIDERS OF AIRPORTS AND AIR NAVIGATION SERVICES

LANDING RIGHTS FOR INTL OPERATIONS - ICAO'S ROLE

- ▶ ARTICLES HAVING A BEARING ON REGULATION OF AIR TRANSPORT.
- ▶ ARTICLE 5 - NON-SCHEDULED FLIGHTS ARTICLE 6 - SCHEDULED SERVICES
- ▶ ARTICLE 7 - CABOTAGE (THE PRIVILEGE OF A STATE TO OPERATE DOMESTIC AIR SERVICES IN ANOTHER STATE)
- ▶ ARTICLES 17 TO 21 - NATIONALITY OF AIRCRAFT ARTICLE 22 ON FACILITATION
- ▶ ARTICLES 23 & 24 - CUSTOMS AND IMMIGRATION ARTICLES 37 & 38 SARPS REGARDING FACILITATION, ETC.
- ▶ SECOND MAJOR INTL AGREEMENT CHICAGO CONVENTION - INTERNATIONAL AIR SERVICES TRANSIT AGREEMENT, SIGNED AT CHICAGO CONVENTION.
- ▶ PROVIDES FOR MULTILATERAL EXCHANGE OF RIGHTS OF OVERFLIGHT (THE PRIVILEGE TO FLY ACROSS THE TERRITORY OF OTHER CONTRACTING STATES WITHOUT LANDING, GENERALLY KNOWN AS THE "FIRST FREEDOM OF AIR") AND NON-TRAFFIC STOP FOR 'SCHEDULED' AIR SERVICES AMONG ITS CONTRACTING STATES (THE PRIVILEGE TO LAND FOR NON-TRAFFIC PURPOSES, IS GENERALLY KNOWN AS THE "SECOND FREEDOM OF THE AIR")
- ▶ VARIOUS INTERNATIONALLY KNOWN "FREEDOMS OF THE AIR" ARE DESCRIBED IN APPENDIX 4
- ▶ AS MANY AS 115 STATES, INCLUDING INDIA, RATIFIED THIS AGREEMENT
- ▶ WORLDWIDE AIR TRANSPORT CONFERENCE IN 1993 RECOMMENDED STATES PURSUE AND ICAO PROMOTE UNIVERSAL ADHERENCE TO AND IMPLEMENTATION OF INTERNATIONAL AIR SERVICES TRANSIT AGREEMENT

LANDING RIGHTS FOR INTL OPERATIONS - ICAO'S ROLE

- ▶ **THIRD MAJOR AGREEMENT - INTERNATIONAL AIR TRANSPORT AGREEMENT - FAR REACHING CONSEQUENCE IN LIBERALISING INTERNATIONAL AIR TRANSPORT OPERATION AND GRANTING CONTRACTING STATES THE RIGHT TO "FIVE FREEDOMS OF THE AIR",**
- ▶ **(1) THE PRIVILEGE TO FLY ACROSS ITS TERRITORY WITHOUT LANDING**
- ▶ **(2) THE PRIVILEGE TO LAND FOR NON-TRAFFIC PURPOSES**
- ▶ **(3) THE PRIVILEGE TO PUT DOWN TRAFFIC COMING FROM HOME STATE OF THE CARRIER IN TO THE TERRITORY OF OTHER CONTRACTING STATE**
- ▶ **(4) THE PRIVILEGE TO TAKE ON TRAFFIC DESTINED FOR THE TERRITORY OF THE STATE OF THE CARRIER**
- ▶ **(5) THE PRIVILEGE TO TAKE ON PASSENGERS, MAIL AND CARGO DESTINED FOR THE TERRITORY OF ANY OTHER CONTRACTING STATE AND THE PRIVILEGE TO PUT DOWN PASSENGERS, MAIL AND CARGO COMING FROM ANY SUCH TERRITORY**
- ▶ **ONLY 19 STATES COULD RATIFY THIS AGREEMENT, OUT OF WHICH EIGHT STATES, INCLUDING THE UNITED STATES, LATER WITHDREW**
- ▶ **THIS AGREEMENT IS OF LIMITED INTL VALUE**
- ▶ **INDIA IS NOT A SIGNATORY TO THIS AGREEMENT**
- ▶ **IF THIS AGREEMENT HAD BEEN RATIFIED BY ALL THE STATES, SHAPE OF INTL AIR TRANSPORT WOULD HAVE BEEN COMPLETELY DIFFERENT FROM THAT IT IS TODAY AND NO NEED FOR BILATERAL OR REGIONAL AGREEMENTS**

LANDING RIGHTS FOR INTL OPERATIONS-BILATERAL AGREEMENTS

- ▶ LACK OF SUCCESS OF EFFORTS TO ESTABLISH A MULTILATERAL REGULATORY REGIME FOR COMMERCIAL ASPECTS OF INTERNATIONAL AIR TRANSPORT LED TO FALLING BACK ON BILATERAL AIR SERVICES AGREEMENT
- ▶ BILATERAL AGREEMENTS ARE UNDERTAKEN JOINTLY BY TWO STATES, ALTHOUGH ONE OR BOTH PARTIES MIGHT ALSO BE A GROUP OF STATES, A SUPRA STATE (I.E. A COMMUNITY OR OTHER UNION OF STATES ACTING AS A SINGLE BODY UNDER AUTHORITY GRANTED TO IT BY ITS MEMBER STATES), A REGIONAL GOVERNMENT BODY OR EVEN TWO AIRLINES
- ▶ GOAL OF BILATERAL REGULATION IN THE INTERNATIONAL AIR TRANSPORT FIELD IS TYPICALLY CONCLUSION, IMPLEMENTATION OR CONTINUANCE OF SOME KIND OF INTER-GOVERNMENTAL AGREEMENT OR UNDERSTANDING CONCERNING AIR SERVICES BETWEEN TERRITORIES OF TWO PARTIES
- ▶ BILATERAL REGULATION OF INTL AIR SERVICES HAS EVOLVED OVER A PERIOD OF MANY DECADES. SUCH AGREEMENTS CONSTITUTE THE LARGEST VOLUME OF INTL AIR TRANSPORT REGULATORY DOCUMENTS, WHICH DATE FROM CHICAGO CONVENTION SIGNED IN 1944
- ▶ EXTENSIVE USE OF BILATERAL AGREEMENTS TO REGULATE INTL AIR TRANSPORT IS A CONSEQUENCE OF PROVISION IN THE CHICAGO CONVENTION REGARDING PRINCIPLE OF NATIONAL SOVEREIGNTY OVER TERRITORIAL AIRSPACE
- ▶ EACH BILATERAL AGREEMENT IS UNIQUE IN NATURE; BUT TYPICALLY HAVE COMMON NUMEROUS ESSENTIAL PROVISIONS MOST OF WHICH, WHILE NOT IDENTICAL, HAVE A SIMILAR THRUST.

LANDING RIGHTS FOR INTL OPERATIONS-BILATERAL AGREEMENTS

- ▶ COMMONLY FOUND SUBSTANTIVE PROVISIONS INCLUDE:
 - ▶ GRANT OF TRAFFIC RIGHTS,
 - ▶ FAIR AND EQUAL OPPORTUNITY,
 - ▶ AIRLINE OWNERSHIP,
 - ▶ DESIGNATION OF AIR CARRIER AND AUTHORIZATION
 - ▶ PRINCIPLES FOR REGULATION OF CAPACITY
 - ▶ FIXATION OF TARIFFS
 - ▶ EXCHANGE OF TRAFFIC STATISTICS
 - ▶ RIGHT TO CARRY OUT COMMERCIAL ACTIVITIES IN THE TERRITORY OF THE OTHER PARTY
 - ▶ MUTUAL RECOGNITION BY THE PARTIES OF EACH OTHER'S CERTIFICATE OF AIRWORTHINESS
 - ▶ COMPETENCY AND LICENCES
 - ▶ PROCEDURE FOR COOPERATION REGARDING SECURITY
 - ▶ USE OF COMPUTER RESERVATION SYSTEM
 - ▶ PROVISIONS REGARDING EXEMPTION FROM PAYMENT OF CUSTOMS DUTY AND TAXATION OF EARNINGS OF THE AIR CARRIER, USER CHARGES, AND APPLICATION OF NATIONAL LAWS, ETC.

LANDING RIGHTS FOR INTL OPERATIONS-BILATERAL AGREEMENTS

- ▶ GOVERNMENTS PROGRESSIVELY LIBERALISE BILATERAL AGREEMENT
- ▶ OVER THE LAST YEAR, SIGNIFICANT INCREASES IN CAPACITY GRANTED BY CHINA TO AUSTRALIA, SINGAPORE AND MALAYSIA, HONG KONG IS EXPECTED TO BE ADDED
- ▶ HONG KONG HAS ABANDONED ITS 'ONE ROUTE ONE AIRLINE POLICY'
- ▶ AUSTRALIAN AND SINGAPORE GOVTS HAVE SIGNALLED INTENT TO SIGN OPEN-AIR-SKIES AGREEMENT
- ▶ US REMAINS A SERIOUS STUMBLING BLOCK TO INDUSTRY DEREGULATION
- ▶ CANNOT EXPECT TO SEE MUCH QUICK PROGRESS – CERTAINLY NOT UNTIL ALL THEIR CARRIERS HAVE CHECKED OUT OF BANKRUPTCY AND RECOVERED THEIR FINANCIAL HEALTH
- ▶ IMPORTANT MARKETS, LIKE JAPAN, REMAIN HEAVILY RESTRICTED, ALTHOUGH EXPECTED TO ADOPT DEREGULATION WHEN THE US DOES
- ▶ CHINA ALSO LIBERALIZING GRANT OF LANDING RIGHTS TO FOREIGN AIRLINES - LONG MAINTAINED RESTRICTIVE AIR SERVICES POLICIES TO PROTECT STATE-OWNED AIRLINES, BUT CHANGING
- ▶ CAAC, WHICH NEGOTIATES BILATERAL AIR SERVICES AGREEMENTS GIVING FOREIGN CARRIERS PROGRESSIVELY MORE RIGHTS TO OPERATE TO THE COUNTRY'S GATEWAY AIRPORTS AT BEIJING, GUANGZHOU AND SHANGHAI
- ▶ ADDITIONALLY SIGNALLING WILLINGNESS TO OPEN UP FURTHER AND ALLOW MORE COMPETITION BETWEEN FOREIGN AIRLINES AND THE COUNTRY'S MAJOR CARRIERS
- ▶ EARLIER THIS YEAR, SINGAPORE AIRLINES BECAME THE FIRST CARRIER TO WIN RIGHTS TO OPERATE SERVICES BEYOND CHINA TO A THIRD COUNTRY

LANDING RIGHTS FOR INTL OPERATIONS-BILATERAL AGREEMENTS

- ▶ INDIA NOT INSULATED FROM GLOBAL TREND - LIBERALIZATION PROCESS IN DOMESTIC AIR SERVICES COMMENCED IN 1986 BUT INTERNATIONAL SCHEDULED SERVICES RECENTLY
- ▶ PROCESS EVOLUTIONARY RATHER THAN WELL THOUGHT OUT AND PLANNED
- ▶ GOVT REACTING TO FIELD SITUATION IN COUNTRY, INTL DEVELOPMENTS AND PRESSURE FROM AVIATION INDUSTRY, ESPECIALLY THE PRIVATE OPERATORS
- ▶ SEVERAL FAR-REACHING CHANGES IN STRUCTURE OF THE AVIATION INDUSTRY
- ▶ MOST IMPORTANT - UNSHACKLING OF INDUSTRY FROM THE MONOPOLY OF STATE
- ▶ STATE-MANAGED AIRLINES HAVE BEEN THROWN OPEN TO COMPETITIVE IMPULSES OF THE PRIVATE AIRLINES. WITHIN AMBIT OF BILATERAL AGREEMENTS, LIBERALIZING GRANT OF TRAFFIC RIGHTS TO FOREIGN AIRLINES, INCLUDING FIFTH FREEDOM RIGHTS.
- ▶ AIR INDIA PERMITS FOREIGN CARRIERS TO USE ITS RIGHT TO OPERATE CERTAIN SERVICES SUBJECT TO COMMERCIAL ARRANGEMENT
- ▶ ADDITIONAL FREQUENCIES ARE PERMITTED TO FOREIGN AIRLINES DURING PEAK SEASON
- ▶ BY THIS AIR INDIA COLLECTS COMMERCIAL RENTS OR FEES FROM THOSE AIRLINES USING ITS TRAFFIC RIGHTS OR OPERATING EXTRA FLIGHTS
- ▶ CAPACITY LIMITATIONS ON INTERNATIONAL ROUTES CONSIDERABLY RELAXED
- ▶ DOMESTIC PRIVATE CARRIERS OPERATING ON SOME INTERNATIONAL ROUTES
- ▶ CONTROL ON FARES AND FREIGHT RATES HAVE BEEN ABOLISHED

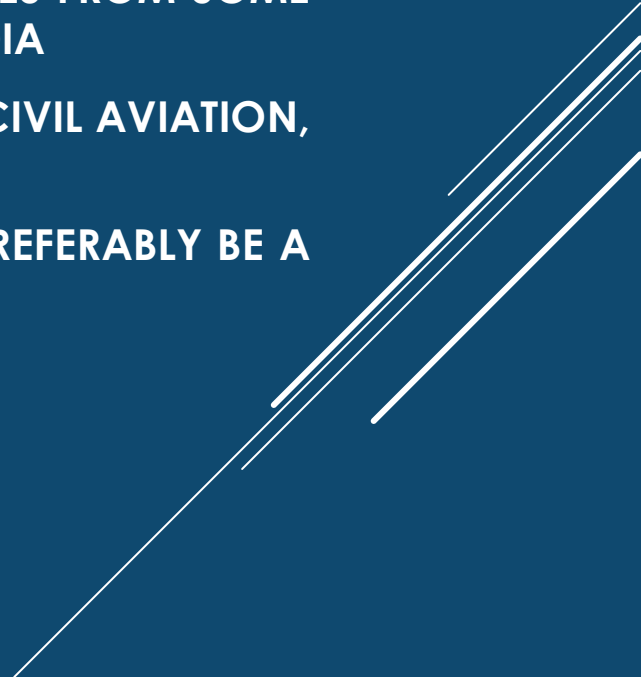
LANDING RIGHTS FOR INTL OPERATIONS-BILATERAL AGREEMENTS

- ▶ INTERNATIONAL SCHEDULED PASSENGER SERVICES FROM AND TO INDIA ESSENTIALLY GOVERNED BY THE PROVISIONS OF BILATERAL AGREEMENTS BETWEEN INDIA AND THE CONCERNED FOREIGN COUNTRIES
- ▶ OPERATIONALLY BILATERAL AGREEMENTS CAN BE PLACED IN FOUR CATEGORIES
 - ▶ (I) AGREEMENTS WHERE INDIAN AND FOREIGN OPERATORS ARE FULLY UTILIZING THEIR TRAFFIC RIGHTS
 - ▶ (II) AGREEMENTS WHERE INDIAN OPERATORS ARE UTILIZING ONLY A PART OF THEIR TRAFFIC RIGHTS
 - ▶ (III) AGREEMENTS WHERE INDIAN OPERATORS ARE NOT AT ALL UTILIZING THEIR TRAFFIC RIGHTS
 - ▶ (IV) AGREEMENTS WHERE NONE OF THE PARTIES ARE PRESENTLY OPERATING ANY SERVICES
- ▶ BILATERAL AGREEMENTS CONTAIN ENABLING PROVISIONS AND ARE NOT MANDATORY IN THE SENSE THAT AGREED SERVICES MUST BE OPERATED
- ▶ ACTUAL OPERATION OF SERVICES DEPENDS UPON A NUMBER OF FACTORS, INCLUDING COMMERCIAL VIABILITY OF THE SERVICE, AVAILABILITY OF CAPACITY AND AVAILABILITY OF SUITABLE AIRCRAFT WITH THE AIRLINE, AVAILABILITY OF SUITABLE SLOTS, ETC.
- ▶ NOT NECESSARY THAT EACH AND EVERY TRAFFIC RIGHT MUST BE UTILIZED
- ▶ IDEAL SITUATION, AIRLINES OF EVERY COUNTRY CAN EXPECT TO SHARE 50 PERCENT OF THE TOTAL TRAFFIC BETWEEN TWO COUNTRIES, IF SO IN ACTUAL PRACTICE, COUNTRY IS ALMOST FULLY UTILIZING ITS TRAFFIC RIGHTS
- ▶ PRESENTLY, INDIAN CARRIERS' OVERALL SHARE IN INTL PASSENGER TRAFFIC IS ABOUT 30%

MAJOR CHALLENGES FACED BY CIVIL AVIATION IN INDIA

- ▶ DESPITE SIGNIFICANT POSITIVE DEVELOPMENTS, PRESENTLY CIVIL AVIATION IN INDIA IS FACING A NUMBER OF CHALLENGES
- ▶ FOR AIRLINES, MAJOR CHALLENGE IS UTILIZATION OF INTL TRAFFIC RIGHTS UNDER BILATERAL AGREEMENTS WITH A VIEW TO FULLY MEETING THE DEMAND FOR AIR TRAVEL
- ▶ OTHER CHALLENGES INCLUDE ENHANCING CAPACITY OF AIR INDIA TO MEET THE DEMANDS PLACED ON THEM AND DEVELOPING A LEVEL PLAYING FIELD FOR THEM VIS-À-VIS PVT DOMESTIC AIRLINES FOR EFFECTIVE COMPETITION
- ▶ PRIVATIZATION OF AIR INDIA, HIGHER FUEL PRICES AND TAXES, OPERATION ON UNECONOMIC ROUTES, MAKING AIR TRANSPORT AFFORDABLE BY COMMON MAN, ETC. ARE OTHER CHALLENGES.
- ▶ AIRPORTS NOT SUITABLY DEVELOPED AND THE STANDARD OF SERVICE PROVIDED BY THEM IS GENERALLY POOR
- ▶ PRESENTLY, THERE ARE 34 DESIGNATED INTERNATIONAL AIRPORTS IN THE COUNTRY BUT ALL OF THEM LACK WORLD CLASS FACILITIES
- ▶ TWO MAJOR AIRPORTS AT DELHI AND MUMBAI ARE EXPANDING CAPACITY, APART FROM MAJOR IMPROVEMENTS FOR PROVIDING QUALITY SERVICES.
- ▶ CONCERNS REGARDING SAFETY AND SECURITY
- ▶ INCREASING NOISE LEVELS AND OTHER ENVIRONMENTAL IMPACTS AND THEIR ASSOCIATED COSTS ARE OTHER AREAS OF CONCERN
- ▶ MUMBAI AND DELHI AIRPORTS ARE DEVELOPED AS MAJOR HUBS

MAJOR CHALLENGES FACED BY CIVIL AVIATION IN INDIA

- ▶ A NEW INTERNATIONAL AIRPORT AT NAVI MUMBAI UNDER CONSTRUCTION (NEARLY 30 YEARS) EXPECTED BY 2024
 - ▶ CARGO FACILITIES ARE INADEQUATE
 - ▶ PRIVATIZATION OF AIRPORTS
 - ▶ AIR NAVIGATION SERVICES, THE CHALLENGE IS HOW TO INCREASE CAPACITY AND ENHANCE SAFETY ON ROUTES BY INSTALLING MODERN EQUIPMENT
 - ▶ RESERVATION OF A LARGE SEGMENT OF AIR SPACE FOR DEFENCE AND CHALLENGES FROM SOME NEIGHBOURING COUNTRIES IN DEVELOPING ALTERNATE AIR ROUTES BYPASSING INDIA
 - ▶ S REGARDS REGULATION, THERE IS NO INDEPENDENT REGULATORY AUTHORITY FOR CIVIL AVIATION, ESPECIALLY FOR ECONOMIC ISSUES
 - ▶ MOREOVER, THERE IS NO WELL DEFINED CIVIL AVIATION POLICY WHICH SHOULD PREFERABLY BE A PART OF INTEGRATED TRANSPORT POLICY.
- 
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LIBERALIZATION IN BILATERAL AGREEMENTS

- ▶ PERMITTING FOREIGN AIRLINES SERVING INDIAN AIRPORTS TO PROVIDE ADDITIONAL CAPACITY TO MEET DEMANDS DURING PEAK WINTER MONTHS HAS WORKED WELL
- ▶ PROVIDED CONSIDERABLE RESPITE TO THE TOURISTS AND OTHER TRAVELLERS TO AND FROM INDIA. AS A SHORT-TERM POLICY APPROACH CAN BE CONSIDERED SATISFACTORY. LONG-TERM POINT OF VIEW SUCH A POLICY NOT CONSIDERED APPROPRIATE, ADVERSELY AFFECTS INDIAN CARRIERS.
- ▶ FOR A LONG TIME NO PERMISSION HAD BEEN GIVEN TO PRIVATE INDIAN OPERATORS TO PROVIDE SERVICES ON INTERNATIONAL ROUTES
- ▶ IN THE PAST GOVT POLICIES OBSESSED WITH PROTECTING THE INTEREST OF AIR INDIA AND INDIAN AIRLINES
- ▶ DOMESTIC OPERATIONS THROWN OPEN TO PRIVATE SECTOR IN 1986, INTL OPS REMAINED DOMAIN OF AIR INDIA AND INDIAN AIRLINES WITH SOME RELAXATION ONLY IN 2005 WHEN JET AIRWAYS AND AIR SAHARA ALLOWED TO OPERATE REGULAR AIR SERVICES TO AND FROM INDIA TO COUNTRIES OTHER THAN GULF COUNTRIES.
- ▶ THEN GOVERNMENT ENTERED INTO AN OPEN SKIES AGREEMENT WITH USA. UNDER THIS AGREEMENT BOTH COUNTRIES WILL BE FREE TO SELECT ROUTES AND DESTINATIONS BASED ON CONSUMER DEMAND WITHOUT ANY RESTRICTIONS ON CAPACITY, FREQUENCIES AND DESIGNATIONS OF AIRLINES AND PRICING

PART 2



OPEN SKIES

- ▶ OPEN SKIES POLICY IN REGARD TO TOURIST CHARTERS AND CARGO TRAFFIC.
- ▶ LIBERALIZATION OF INTERNATIONAL TOURIST CHARTERS IS UNILATERAL AND NOT PART OF ANY BILATERAL OR MULTILATERAL AGREEMENT.
- ▶ PRIMARILY TO ENCOURAGE TOURISM COVERS BOTH INBOUND AND OUTBOUND TRAFFIC.
- ▶ INBOUND CHARTERS PERMITTED TO ALL AIRPORTS IN INDIA CUSTOMS AND IMMIGRATION FACILITIES WITH SHORT NOTICE ARE TO BE PROVIDED AT AIRPORTS. A TOURIST CHARTER FLIGHT CAN TRANSPORT THE TOURISTS ON DOMESTIC SECTORS ALSO WITHIN INDIA. THERE ARE NO RESTRICTIONS WITH RESPECT TO SIZE OF AIRCRAFT, FREQUENCY, AND TOTAL NUMBER OF CHARTERS, TARIFFS AND MARKETING.
- ▶ POLICY OF THE GOVERNMENT TO INTERNATIONAL TOURIST CHARTERS QUITE LIBERAL
- ▶ AS REGARDS CARGO, IN 1990,“OPEN SKIES” FOR INTERNATIONAL AIR CARGO.
- ▶ ANY AIRLINE, BOTH INDIAN AND FOREIGN, WHICH MEETS SPECIFIED OPS AND SAFETY REQUIREMENTS, IS ALLOWED TO FREELY OPERATE SCHEDULED AND NON-SCHEDULED CARGO SERVICES TO/FROM ANY AIRPORT IN INDIA WHERE CUSTOM/IMMIGRATION FACILITIES ARE AVAILABLE
- ▶ REGULATORY CONTROL OVER CARGO RATES ABOLISHED AND THUS THE CARRIERS ARE FREE TO SET THEIR OWN RATES.
- ▶ “OPEN SKIES” POLICY FOR INTERNATIONAL CARGO SERVICES UNILATERAL WITHOUT COMPARABLE RIGHTS FOR INDIAN CARRIERS FROM BILATERAL PARTNERS IN RETURN
- ▶ INITIALLY, POLICY WAS THREE YEARS BUT NOW NO TIME LIMIT.
- ▶ STRONG GROWTH IN INTERNATIONAL CARGO TRAFFIC AND REMOVED THE SHORTAGE OF CAPACITY FOR EXPORTS

FURTHER LIBERALIZATION

- ▶ LIBERALISATION ALL OVER WORLD
 - ▶ ICAO AND GATS ARE ALREADY WORKING IN THIS DIRECTION.
 - ▶ INDIA HAS MOVED FORWARD
 - ▶ LONG WAY TO GO
 - ▶ NO FRILLS AIRLINE REPLACE FIRST CLASS TRAIN ETC
- 
- A series of four parallel white lines of varying lengths, slanted diagonally upwards from left to right, located in the bottom right corner of the slide.

IMPACT OF LIBERALIZATION

- ▶ BENEFITED ALL THE STOCKHOLDERS
 - ▶ TOURISM - MAIN BENEFICIARY OF
 - ▶ NO-FRILL LOW FARE AIRLINES FURTHER BOOST
 - ▶ CONCESSIONAIRES AT THE AIRPORT
 - ▶ FOREIGN EXCHANGE EARNINGS
 - ▶ GROWTH OF FOREIGN TRADE
 - ▶ AIRPORTS TO GEAR UP
- 
- A series of four parallel white lines of varying lengths, slanted upwards from left to right, located in the bottom right corner of the slide.

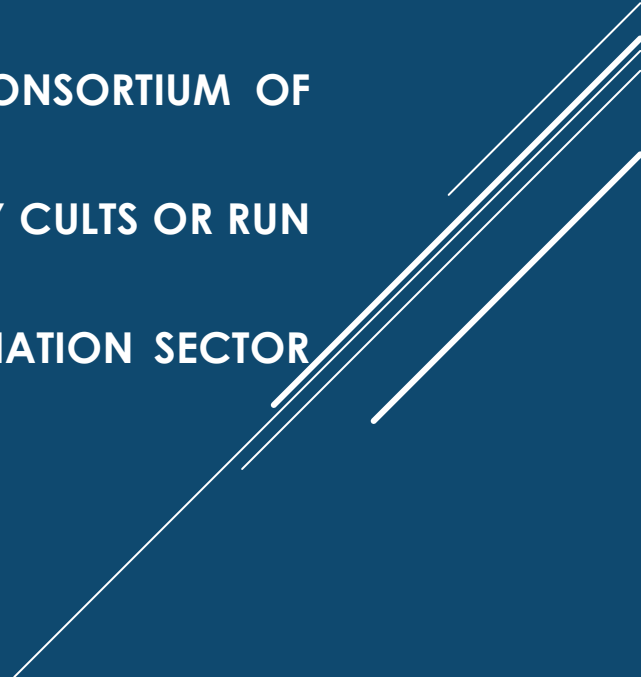
CASE STUDY OF THE INDIAN AVIATION SECTOR: SOARING HIGH OR TURBULENCE AHEAD

- ▶ TAKEOFF FROM MODEST BEGINNINGS: THE EVOLUTION OF THE INDIAN AVIATION SECTOR
 - ▶ JRD TATA TO NOW
 - ▶ WORLD-CLASS AIRPORTS
 - ▶ BEST IN THE BREED AIRLINES
 - ▶ ENVIABLE SAFETY RECORD
 - ▶ RICH ONLY TO AAM AADMI
 - ▶ POISED FOR GREATER HEIGHTS
- 
- A series of four parallel white lines of varying lengths, slanted upwards from left to right, located in the bottom right corner of the slide.

FACTORS DRAGGING THE SECTOR DOWN

- ▶ A FEW BOTTLENECKS OR CHOKEPOINTS THAT HAVE STYMIED THE DEVELOPMENT AND THE GROWTH OF THE INDIAN AVIATION SECTOR. PROMINENT AMONG THESE IS THE CAPACITY ADDITION IN THE AIRPORTS ACROSS INDIA WHERE THE PRESENT INFRASTRUCTURE IS UNABLE TO SUPPORT THE AMBITIOUS EXPANSION PLANS OF THE VARIOUS AIRLINES.
- ▶ INDEED, EVEN AFTER BUILDING GLEAMING AND GLITTERING AIRPORTS IN ALL THE METROS UNDER THE PPP OR THE PUBLIC PRIVATE PARTNERSHIP MODEL, AIRLINES ARE ROUTINELY DENIED LANDING RIGHTS AND PARKING BAYS FOR WANT OF CAPACITY.
- ▶ BLISTERING PACE OF GROWTH IN THE SECTOR MEANS THAT DESPITE ADDING CAPACITY IN A QUICK MANNER, AIRPORTS ARE UNABLE TO HANDLE THE EVER-INCREASING LOAD OF FOOTFALLS IN TERMS OF ARRIVALS AND DEPARTURES.
- ▶ GOVERNMENT PUT IN PLACE POLICIES SUCH AS THE UDAAN SCHEME, THE REGIONAL CONNECTIVITY SCHEME, AND VARIOUS OTHERS AIMED AT PERSUADING AND INCENTIVIZING AIRLINES TO CONNECT TO REMOTE LOCATIONS, THE PATHETIC STATE OF THE INFRASTRUCTURE IN SUCH AREAS MEANS THAT SUCH SCHEMES WOULD TAKE TIME TO FRUCTIFY.
- ▶ MASSIVE PUSH TO DEVELOP TIER 2 AND TIER 3 AIRPORTS IS CLEARLY A RIGHT STEP IN THE DIRECTION OF BROADENING THE BASE OF THE INFRASTRUCTURE PYRAMID SO THAT FLYERS FROM RURAL AREAS CAN BENEFIT AS WELL.
- ▶ PUSH IS SUCCEEDING IN STATES WHERE THE STATE GOVERNMENTS ARE ACTIVELY ENCOURAGING SUCH DEVELOPMENTS WHEREAS IN OTHER REGIONS, THE INITIATIVE IS LAGGING THE FORMER

HOW THE INDIAN AVIATION SECTOR BECAME WORLD CLASS

- ▶ DIRT CHEAP PRICES OFFERED TO PASSENGERS -AMONG THE LOWEST IN THE WORLD AS FAR AS LCC OR LOW COST CARRIERS
 - ▶ FIRST IN THE DEVELOPING WORLD TO TAKE LCC ROUTE WITH CAPT GOPINATH LAUNCHING DECCAN AVIATION OR AIR DECCAN WHICH HAD THE LOGO OF THE FAMOUS CARTOONIST, RK LAKSHMAN'S COMMON MAN FLYING.
 - ▶ ACQUIRED BY KINGFISHER AIRLINES, WENT BANKRUPT A FEW YEARS AGO, THE FACT REMAINS THAT THE LCC CONCEPT CAUGHT ON AMONG OTHER AIRLINES S WELL.
 - ▶ JET, SPICEJET, INDIGO
 - ▶ MODERN AIRPORTS IN BENGALURU, MUMBAI, DELHI, AND HYDERABAD BY A CONSORTIUM OF INDIAN AND FOREIGN PLAYERS
 - ▶ AIRLINES SUCH AS INDIGO ARE PROFESSIONALLY MANAGED WITHOUT PERSONALITY CULTS OR RUN BY THE WHIMS AND FANCIES OF A SINGLE INDIVIDUAL.
 - ▶ REENTRY OF TATA GROUP THROUGH TIE-UPS AND PARTNERSHIPS, THE INDIAN AVIATION SECTOR LOOKS TO BE ON ITS WAY TO FIRST WORLD STATUS.
- 

CAUTIOUS OPTIMISM INSTEAD OF HYPED HOPE

- ▶ THE GROWTH IN THE PASSENGER TRAFFIC HAS BEEN DIZZYING OVER THE LAST FEW YEARS.
 - ▶ THE INCREASE IN THE NUMBER OF AIRLINES, CAPACITY ADDITION IN TERMS OF INFRASTRUCTURE AND AIRPORTS BUILT HAS ALSO BEEN HIGH. THUS, THERE IS SCOPE FOR AMBITION, THOUGH IT HAS TO BE TEMPERED WITH REALISM.
 - ▶ OVERCROWDING BOTH IN TERMS OF HANDLING ARRIVALS AND DEPARTURES IN THE AIRPORTS AS WELL AS THE VERY REAL PROBLEM OF FLIGHTS HAVING TO WAIT INORDINATELY FOR LANDINGS AND TAKEOFFS. INDEED, DESPITE THE CAPACITY ADDITION, EXCEPT FOR NEW DELHI AND MUMBAI INTERNATIONAL AIRPORTS, NO OTHER AIRPORT IN INDIA HAS TWO RUNWAYS, NOW BANGALORE.
 - ▶ CONGESTION AT AIRPORTS
- 
- A series of three parallel white diagonal lines extending from the bottom right corner towards the center of the slide.

FROM AMBANI TO AAM ADMI: HOW THE INDIAN AVIATION SECTOR BECAME EGALITARIAN

- ▶ AIRPORT INFRASTRUCTURE OR HOMES FOR POOR
 - ▶ EARLIER SOCIALISM NOW OPENED UP
 - ▶ RULES AND REGULATIONS THAT STYMIED THE GROWTH OF THE SECTOR AS WELL AS STUNTED THE DEVELOPMENT OF THE SAME.
- 
- A series of four parallel white lines of varying lengths, slanted upwards from left to right, located in the bottom right corner of the slide.

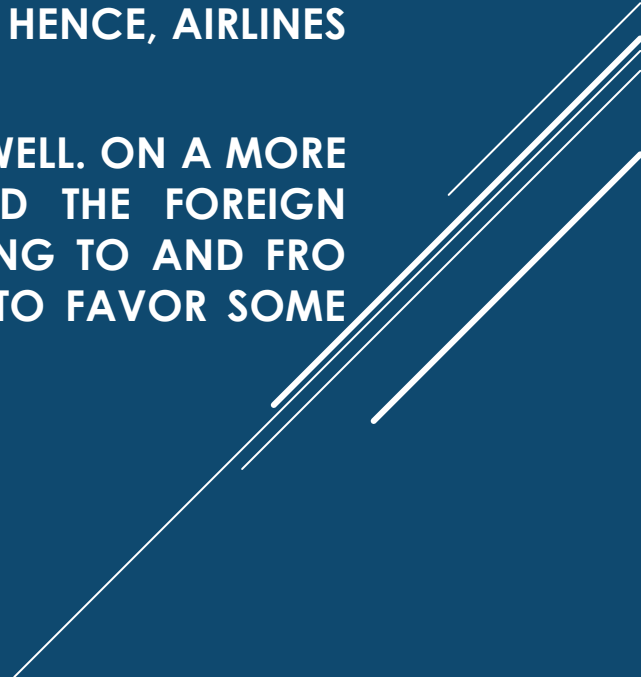
TURBULENCE AHEAD

- ▶ SAFETY STANDARDS - PASSENGER SAFETY
 - ▶ CASUAL ATTITUDE TOWARDS PASSENGERS
 - ▶ TIME AT AIRPORT BEFORE CHECKIN
- 
- A series of four parallel white diagonal lines in the bottom right corner of the slide, slanting upwards from left to right.

PREMIER TO POOR: THE AIR INDIA SAGA

- ▶ NO CASE STUDY ON THE INDIAN AVIATION SECTOR IS COMPLETE WITHOUT A DISCUSSION ON THE NATIONAL CARRIER, AIR INDIA, THE MERGED ENTITY REPRESENTING THE ERSTWHILE AIR INDIA AND INDIAN AIRLINES, THE DOMESTIC CARRIER.
- ▶ WHILE IT IS NOW ROUTINE FOR COMMENTATORS TO LAMPOON AIR INDIA, IT NEEDS TO BE REMEMBERED THAT IT WAS THE PREMIER INDIAN CARRIER IN THE POST INDEPENDENCE ERA UNTIL THE LIBERALIZATION OF THE INDIAN ECONOMY.
- ▶ HAVING SAID THAT, THE WHEEL HAS COME FULL CIRCLE AND HENCE, ITS PRESENT STATUS AS A LOSS-MAKING ENTITY THAT IS DEPENDING ON GOVERNMENTAL BAILOUTS TO STAY AFLOAT MEANS THAT PERHAPS IT IS TIME TO PRIVATIZE IT.
- ▶ INDEED, ITS PORTFOLIO OF LANDING RIGHTS AND CODE SHARE AGREEMENTS AS WELL AS ITS FLEET, THOUGH AGEING, MAKES IT ATTRACTIVE TO FOREIGN AND DOMESTIC PLAYERS ALIKE WHO CAN CONVERT THESE ADVANTAGES INTO THEIR OWN AND AT THE SAME TIME, RESTRUCTURE IT IN SUCH A MANNER THAT IT BECOMES POSSIBLE FOR IT TO BECOME PROFITABLE AGAIN.
- ▶ THUS, IT NEEDS TO BE WATCHED AS TO WHAT DECISION THE POLITICAL MASTERS TAKE IN THIS REGARD. IT CAN BE SAID THAT POLITICS PLAYS A MAJOR ROLE IN DETERMINING THE FATE OF AIR INDIA SINCE THERE IS THE ASPECT OF EMOTIONAL AND SENTIMENTAL REASONS AS WELL.

IMPACT OF POLITICS ON THE INDIAN AVIATION SECTOR

- ▶ TALKING ABOUT POLITICS AND THE FUTURE OF THE INDIAN AVIATION SECTOR, IT NEEDS TO BE MENTIONED THAT THE SECTOR HAS GROWN WITH AND WITHOUT POLITICAL INTERFERENCE. IN OTHER WORDS, WHILE IN SOME CASES, THE POLITICAL DECISIONS HELPED THE SECTOR, IN OTHER CASES, IT GREW DESPITE THE POLITICIANS MEDDLING WITH IT.
 - ▶ INDEED, IN ALL CASES, THE SECTOR HAS GROWN TO LIVE WITH BOTH THE ADVERSE AND THE BENEFICIAL POLITICAL DECISIONS. FOR INSTANCE, A LONG PENDING DEMAND OF THE SECTOR HAS BEEN TO LOWER THE HIGH PRICES FOR AVIATION AND TURBINE FUEL.
 - ▶ IN TIMES WHEN OIL PRICES ARE AT RECORD LOWS, IT MAKES SENSE FOR THE GOVERNMENT TO CUT THE PRICES OF ATF OR AVIATION TURBINE FUEL. HOWEVER, THIS HAS NOT HAPPENED AND HENCE, AIRLINES CONTINUE TO GRUMBLE AND AT THE SAME TIME, CARRY ON WITH THEIR OPERATIONS.
 - ▶ ALSO, CAPACITY ADDITION AND MORE LANDING RIGHTS ARE TO BE DEALT WITH AS WELL. ON A MORE CONTROVERSIAL NOTE, THE BILATERAL AGREEMENTS BETWEEN THE INDIAN AND THE FOREIGN GOVERNMENTS ABOUT SEAT ALLOCATIONS OR THE NUMBER OF PASSENGERS FLYING TO AND FRO BETWEEN INDIAN AND FOREIGN DESTINATIONS SEEMS TO BE TAKEN WITH A VIEW TO FAVOR SOME AIRLINES OVER OTHERS.
- 

AIRLINE MERGERS AND ACQUISITIONS IN INDIA

- ▶ ERA OF LIBERALIZATION AND GLOBALIZATION, MERGERS AND TAKEOVERS
- ▶ MERGERS ARE LIKE A MARRIAGE
- ▶ MERGERS IN AVIATION INDUSTRY VERY RELEVANT - THE DIRECT AFFECT INVOLVES THE FREQUENCY OF THE NUMBER OF FLIGHTS BEING OPERATED
- ▶ MERGERS IN AVIATION INDUSTRY WOULD DEFINITELY AFFECT BOTH THESE CONCERNS OF THE PROSPECTIVE OR FREQUENT CUSTOMER
- ▶ LOWER COST AND ENHANCE DEMAND AND EXPANDING THE SCOPE OF SEAMLESS SERVICE
- ▶ ON THE OTHER HAND, AIRLINE MERGERS AND ALLIANCES CAN REDUCE COMPETITION AND ENHANCE MARKET POWER, ESPECIALLY ON NON-STOP ROUTES TO AND FROM HUB AIRPORTS
- ▶ RELATIVE BALANCE OF EFFICIENCY BENEFITS COMPETITION EFFECTS DEPENDS ON A NUMBER OF FACTORS, INCLUDING THE DEGREE OF OVERLAP IN THE AIRLINES' NETWORKS PRIOR TO THE MERGER.
- ▶ THE PROMOTION AND PROTECTION OF COMPETITION IN THE AIRLINE INDUSTRY REQUIRES ATTENTION TO BOTH COMPETITION AND REGULATORY ISSUES. IN PARTICULAR, COMPETITION IN THE AIRLINE INDUSTRY COULD BE PRESERVED AND ENHANCED THROUGH:
- ▶ FURTHER LIBERALIZATION OF REGULATORY CONSTRAINTS ON COMPETITION, ESPECIALLY AT THE INTERNATIONAL LEVEL, INCLUDING FOR EXAMPLE, THE APPLICATION OF INTERNATIONAL TRADE PRINCIPLES OF TRANSPARENCY AND NON-DISCRIMINATION WITHIN MULTILATERAL CONTEXT;
- ▶ · ATTENTION TO THE MECHANISMS FOR INVESTMENT IN AND ALLOCATION OF SCARCE AIRPORT CAPACITY INCLUDING INVESTMENT IN NEW AIRPORTS, EXPANSION OF EXISTING AIRPORTS AND MECHANISMS FOR ENSURING THAT FACILITIES ARE AVAILABLE TO ENTRANTS AT KEY TIMES;
- ▶ · CAREFUL REVIEW OF PROPOSALS FOR MERGERS AND ALLIANCES, CAREFUL USE OF REMEDIES TO OFFSET ANTICOMPETITIVE EFFECTS AND CONSIDERATION OF DIVESTITURE OR SEPARATION IN CASES OF DOMINANCE;
- ▶ · CLOSE REVIEW TO FREQUENT- FLYER PROGRAMS AND OTHER LOYALTY SCHEMES;
- ▶ · CAREFUL CONTROL OVER PREDATORY BEHAVIOR AND OTHER ANTI-COMPETITIVE PRACTICES

JET-SAHARA MERGER: HERALDING THE CONSOLIDATION IN CIVIL AVIATION INDUSTRY -2007

- ▶ THE SIGNIFICANCE OF JET-SAHARA MERGER AGAINST THE BACKDROP OF LIBERALIZATION AND PRIVATIZATION OF CIVIL AVIATION SECTOR. HAVING WITNESSED A TUMULTUOUS JOURNEY INTERSPERSED WITH LEGAL HURDLES OWING TO WHICH IT WAS HELD IN ABEYANCE, THE RESURRECTED MERGER TRIGGERED THE MARKET DRIVEN CONSOLIDATION OF AVIATION INDUSTRY
- ▶ SECONDLY, IT UNCOVERED RAMIFICATIONS OF MERGER ON HEALTH OF LOW COST CARRIER IN THE PROPOSED PAPER. RE-ASSERT THE LEADING PRIVATE AIRLINE'S SUPREMACY IN THE INDIAN SKIES AND EMPOWER IT TO FIGHT THE LOW FARES OFFERED BY LOW COST CARRIER
- ▶ DEAL ERECTED A CONSPICUOUS ENTRY BARRIER AS EVIDENCED BY THE CHANGING DYNAMICS OF LOW COST CARRIERS WITH JET ACQUIRING DOMINANT MARKET SHARE AND ENHANCED AIRPORT INFRASTRUCTURE
- ▶ THIRDLY, ATTEMPT TO EXPLORE THE LEGAL UNDERPINNINGS OF THIS DEAL TO UNDERSTAND THE ROLE OF MERGERS AND ACQUISITIONS IN THE AVIATION SECTOR. MONOPOLISTIC TRENDS MAKING JET THE LARGEST PLAYER IN INDIAN AIRSPACE AND THE SOLE PRIVATE AIRLINE TO POSSESS INTERNATIONAL FLYING RIGHTS AT THAT TIME
- ▶ KINGFISHER HAS ATTAINED CLEARANCE FROM THE CIVIL AVIATION MINISTRY TO OPERATE INTERNATIONAL FLIGHTS COURTESY THE KINGFISHER-DECCAN DEAL). MRTP COMMISSION GAVE GREEN SIGNAL
- ▶ FOURTHLY, UNDERTAKE AN ANALYSIS OF REGULATORY OBSTACLES THAT HAVE BEEN EXPOSED THROUGH THIS DEAL. THE TRANSFER OF ASSETS SUCH AS PARKING AND LANDING SLOTS WERE BEING GOVERNED BY LAND LEASE AGREEMENTS AND COULDN'T CHANGE HANDS THROUGH MERGER. THE CIVIL AVIATION MINISTRY SETTLED THE DUST BY CHARTING GUIDELINES REGULATING TRANSFER OF AIRPORT INFRASTRUCTURE IN ALL MERGER SCHEMES.

JET-SAHARA MERGER: HERALDING THE CONSOLIDATION IN CIVIL AVIATION INDUSTRY

CONSOLIDATION IN AVIATION INDUSTRY

- ▶ **OFFSHOOT OF LIBERALIZATION (DEREGULATION). AIRLINES ARE THE WORST PERFORMING OF ANY OF THE INDIVIDUAL SECTORS IN THE AIR TRANSPORT CHAIN AND ONE STANDARD RESPONSE TO POOR FINANCIAL PERFORMANCE IS CONSOLIDATION. THE INDUSTRY PRESENTS A PARADOX IN SPITE OF HAVING ROBUST EARNING AND EXCESS CASH, IT SUFFERS FROM SYNDROME CYCLE WHICH HAS MADE IT marginally PROFITABLE IN SPITE OF RISE IN TRAFFIC IN PAST FIFTY YEAR.**
- ▶ **CONSOLIDATION STRATEGY DONE IN THREE MAIN STEPS:**
 - ▶ **(1) CARRIERS STARTS WITH DOMINATION OF THEIR OWN HOME MARKETS THROUGH ACQUISITIONS**
 - ▶ **(2) SECONDLY, ATTEMPT TO ESTABLISH A Foothold IN THE LARGER FOREIGN MARKETS OUTSIDE THEIR OWN, BY MERGER AND TAKING OVER OF FOREIGN AIRLINES**
 - ▶ **(3) LASTLY FOCUSES ON DEVELOPMENT OF GLOBAL MARKETING SPREAD THROUGH ONE OR MORE ALLIANCES. SEEN IN INDIAN SCENARIO WERE INDIAN CARRIERS HAVE BEEN MERGING WITH OTHER DOMESTIC AIRLINES, FIRST STEP OF CONSOLIDATION STRATEGY.**
- ▶ **CONSOLIDATION MEANS**
 - ▶ **MARKETING BENEFITS**
 - ▶ **COST SYNERGIES AND REDUCTIONS**
 - ▶ **REDUCING COMPETITION, WHICH AN AIRLINE WILL GET AFTER MERGING.**

JET-SAHARA MERGER: HERALDING THE CONSOLIDATION IN CIVIL AVIATION INDUSTRY

- ▶ **FACTORS CAN ALSO BE COUNTRY SPECIFIC LIKE IN INDIAN SCENARIO**
 - ▶ **HIGH FUEL COST LEADING TO HIGH COST OF OPERATION**
 - ▶ **ABSORPTION OF LOSSES IN CASE OF MERGER UNDER SECTION 72(A) OF INCOME TAX 1961 ACT**
 - ▶ **HIGH CONGESTION ON AIRPORT AND LACK OF SLOTS**
 - ▶ **GOVERNMENTAL POLICY [LIKE TO FLY FOREIGN SKIES AN AIRLINE NEED TO HAVE 5YEAR AND FLEET SIZE OF TWENTY, HENCE BY MERGER KINGFISHER NOW CAN ASSESS FOREIGN SKIES]**
 - ▶ **FURTHER THE OLIGOPOLSTIC NATURE OF AIRCRAFT MANUFACTURER HAS ALSO FUELED THE M&A BY CUTTHROAT COMPETITION IN PRICING**
 - ▶ **INITIALLY THIS LOW PRICING LED TOO RISE OF NEW CARRIERS BUT ONLY FEW SURVIVED, AND REST WERE FORCED TO FILE FOR BANKRUPTCY OR THEY MERGED WITH THE INCUMBENT PLAYERS OF THIS FIELD.**
- ▶ **FOR MERGER IN THE INDIAN SCENARIO GOVERNED BY COMPANIES ACT 1956**
- ▶ **PROCEDURE VERY CUMBERSOME AND THERE IS NEED FOR MORE EFFICIENT MERGER MECHANICS**
- ▶ **APPROVED AIRLINE MERGER REQUIRES CLEARANCE BY HOME AND CIVIL AVIATION MINISTRY**

AIRLINE ALLIANCES, MERGERS AND ACQUISITION IN INDIA IN CRISIS SITUATIONS

EXAMPLE : AIR INDIA JOINS GLOBAL GROUPING STAR ALLIANCE

- ▶ AIR INDIA FORMALLY PART OF GLOBAL AIRLINES' GROUPING, STAR ALLIANCE, ENABLES SEAMLESS TRAVEL TO OVER 1300 DESTINATIONS FOR.
- ▶ 7 YEAR LONG WAIT, STAR ALLIANCE CHIEF EXECUTIVE BOARD (CEB), GAVE AN ENDORSEMENT TO INDUCT AIR INDIA
- ▶ AIR INDIA'S REVENUES PREDICTED TO INCREASE BY 4-5 PER CENT BY JOINING
- ▶ AIR INDIA BECAME FIRST INDIAN CARRIER TO JOIN A GLOBAL ALLIANCE, LARGEST ONE HAVING 27 MEMBER AIRLINES
- ▶ HELP AIR INDIA PASSENGERS TO ACCESS GLOBAL NETWORK OF OVER 21980 DAILY FLIGHTS TO 1,328 AIRPORTS IN 195 COUNTRIES
- ▶ TOGETHER OWN TOTAL OF 4,338 AIRCRAFT AND FLY OVER 640 MILLION PASSENGERS A YEAR, MANY OF WHOM CAN ALSO EARN AND BURN FREQUENT FLYER MILES
- ▶ AIR INDIA PROVIDE SEAMLESS CONNECTIVITY TO PASSENGERS OF STAR AIRLINES THROUGHOUT ITS NETWORK.
- ▶ STAR ALLIANCE MEMBERS INCLUDE MAJOR AIRLINES LIKE US CARRIER UNITED, SINGAPORE AIRLINES, LUFTHANSA, AIR CHINA, AIR CANADA, SWISS, AUSTRIAN, ALL NIPPON AIRWAYS, THAI AND TURKISH AIRLINES.

ABUSE OF DOMINANT POSITION: COMPETITION ISSUES AND CHALLENGES IN INDIAN CIVIL AVIATION

- ▶ INDIAN CIVIL AVIATION IN THE PAST SEVENTY OR SO YEARS WITNESSED THREE DIFFERENT PHASES, STARTING FROM THE INITIAL PRIVATE REGIME FOLLOWED BY YEARS OF NATIONALIZATION AND THE RECENT ERA OF DEREGULATION
- ▶ THE CURRENT DE- REGULARIZED SYSTEM, WITH ITS INHERENT COMPETITION, HAS SUCCEEDED IN PROVIDING BETTER CONSUMER SERVICES
- ▶ ON THE OTHER HAND, THIS HAS POSED SEVERAL CHALLENGES TO THE COMPETITION POLICY FRAMEWORK, CALLING FOR A NEED TO STRIKE A BALANCE BETWEEN PROTECTING THE INTERESTS OF CONSUMERS AND HENCE ENSURING FREE AND FAIR COMPETITION
- ▶ AREAS WHICH NEED THE ATTENTION OF LEGAL FRATERNITY AND POLICY MAKERS INCLUDE MEASURES TO COMBAT ABUSE OF DOMINANT POSITION, ENCOMPASSING:
 - ▶ PREDATORY PRICING
 - ▶ DENIAL OF MARKET ACCESS
 - ▶ LOYALTY PROGRAMMES
 - ▶ FREQUENT FLYER PROGRAMMES
 - ▶ CORPORATE DISCOUNT SCHEMES
 - ▶ TRAVEL AGENTS COMMISSION

SECTOR IN A HIGH GROWTH TRAJECTORY:

- ▶ IN ORDER TO MAINTAIN THIS HIGH GROWTH TRAJECTORY, IT IS VERY IMPORTANT THAT COMPETITIVE FORCES MUST CONTINUE
- ▶ UNLIKE OTHER INDUSTRIES, CAPACITY IN AVIATION SECTOR CANNOT BE IMMEDIATELY AUGMENTED IN FACE OF RISING DEMAND
- ▶ AIRPORTS HAVE A CAPACITY CONSTRAINT BINDING ON THEM IN TERMS OF THE LANDING, TAKE OFF FACILITIES, AIR TRAFFIC CONTROLLERS, REFUELLING, MAINTENANCE, CLEARING & CATERING SERVICES ETC
- ▶ IT IS THIS CAPACITY CONSTRAINT THAT MIGHT ACT AS AN ENTRY BARRIER FOR NEW ENTRANTS
- ▶ LANDING & TAKE OFF SLOTS
- ▶ REGULATORY BARRIERS
- ▶ ARRIVAL OF LCC'S
- ▶ ANTI-COMPETITIVE FACTORS
 - ▶ FREQUENT FLIER PROGRAMS
 - ▶ BUSINESS CLASS
 - ▶ OTHER LOYALTY PROGRAMS INCLUDE TRAVEL AGENT INCENTIVE
 - ▶ PRICE TRANSPARENCY IN THE SYSTEM OF FARE DECLARATION IS BOTH A BOON AS WELL AS A BANE
 - ▶ SLOT CONSTRAINT IS ANOTHER PROBLEM CONSTRAINING NEW ENTRY.

SECTOR IN A HIGH GROWTH TRAJECTORY:

- ▶ PLAYERS SERVING THE INTERNATIONAL ROUTES
 - ▶ COMPETITION ESSENTIAL TO A HEALTHY ECONOMY AND A WELL-FUNCTIONING MARKET PLACE
 - ▶ FAIR COMPETITION WHICH REQUIRES THE PREVENTION OF UNLAWFUL ACTS AND ACTS CONTRARY TO HONEST PRACTICES CAN BE BEST EXPLAINED AS COMPETITION BASED ON THE FACTORS OF PRICE, QUALITY, AND SERVICE; NOT ON THE ABUSE OF NEAR-MONOPOLY POWERS, COMPETITOR BASHING, PREDATORY PRICING, ETC
- 
- A series of four parallel white lines of varying lengths, slanted diagonally upwards from left to right, located in the bottom right corner of the slide.

OPERATION OF CODE SHARING AGREEMENTS

- ▶ AVIATION INDUSTRY FACING IMMENSE PRESSURE FROM CUSTOMERS DUE TO INCREASED DEMANDS
- ▶ SUCH DEMANDS DIFFICULT TO MEET BY FLIGHT CARRIER DUE TO LIMIT ON LICENSES AND RESOURCES
- ▶ CIVIL AVIATION INDUSTRY IN PURSUANCE OF PRINCIPLE OF CO-OPERATION, WHICH IS PARALLEL TO THAT OF COMPETITION IN ANY INDUSTRY, HAS DEVISED THE CONCEPT OF CODE SHARING AGREEMENTS
- ▶ CODE SHARING/CODESHARE AGREEMENTS REFERS TO AN ARRANGEMENT IN FORM OF CONTRACT BETWEEN AIRLINES TO SELL SPACE ON EACH OTHER'S FLIGHTS
- ▶ SUCH FLIGHTS ARE DISPLAYED AS FLIGHTS FOR BOTH THE OPERATING CARRIER (AIRLINE THAT USES THE AIRCRAFT) AND THE MARKETING CARRIER THE PARTNER AIRLINE THAT SELLS SPACE ON THE OPERATING CARRIER'S FLIGHTS)
- ▶ SUCH AGREEMENTS INTEND TO ADDRESS PROBLEMS BY PROVIDING GREATER NUMBER OF DESTINATIONS AND FLIGHT CHOICES THAT CAN BE CONVENIENTLY BOOKED THROUGH A SINGLE SOURCE
- ▶ INDIAN CIVIL AVIATION INDUSTRY PLAYERS IN A BID TO COMPETE IN THE INTERNATIONAL ARENA HAVE ENTERED INTO SUCH AGREEMENTS. THE IMPLICATIONS OF THESE ARE SEVERAL AND MULTI-FACETED.
- ▶ THE PAPER STRUCTURES ITSELF AROUND THE ISSUES OF
 - UNIFORMITY IN RELATION TO SERVICES
 - FORM OF AGREEMENT
 - PROFIT SHARING AND CONSEQUENT ASSUMPTION OF LIABILITY
 - APPLICABLE LEGAL FRAMEWORK TO THE ISSUES MENTIONED WITH SPECIFIC REFERENCE TO THE NEED

THE EMERGENCE OF CODE-SHARING AGREEMENTS: A LEGAL PERSPECTIVE

- ▶ LIBERALIZATION IN INDIA HAS PRECIPITATED THE BOOM FOR DOMESTIC AND INTERNATIONAL AIR CARRIERS. WITH THE CONCEPT OF CODE-SHARING BECOMING POPULAR AMONG INDIAN CARRIERS ESPECIALLY NOW THAT THE DOMESTIC PRIVATE CARRIERS CAN FLY OVERSEAS ONCE THEY COMPLETE FIVE YEARS OF DOMESTIC OPERATIONS IN ADDITION TO OTHER MANDATORY REQUIREMENTS, LEGAL LIABILITIES ARE BOUND TO INCREASE AND BECOME COMPLICATED
- ▶ CODE SHARING INVOLVES ONE AIRLINE ADVERTISING AND SELLING THE SERVICES OF ANOTHER AIRLINE AS ITS OWN AND TRANSPORTATION OF PASSENGERS AND CARGO ON AN AIRLINE OTHER THAN THE ONE IDENTIFIED IN THE TRAVEL DOCUMENTS
- ▶ CARRIER PERFORMING FLIGHT IS USUALLY REFERRED TO AS OPERATING CARRIER WHILE OTHER AIRLINE IS TYPICALLY IDENTIFIED AS MARKETING OR CONTRACTING CARRIER
- ▶ CODE-SHARE AGREEMENTS ENABLE AIRLINES TO INCREASE THEIR TRAFFIC AND REVENUES THEREBY PROFITS, NETWORK SIZE, SERVICE FREQUENCY, OFFERING MORE DESTINATIONS THROUGH ITS FREQUENT FLYER PROGRAMMES AND COORDINATION OF OPERATIONS
- ▶ IN ORDER TO IDENTIFY THE PROPER DEFENDANT CLAIM ARISING FROM A CODE-SHARED FLIGHT, THE GUADALAJARA CONVENTION, WHICH WAS ADOPTED IN 1961, APPLIES TO WHICH INDIA IS A PARTY
- ▶ ENSURES THAT A CARRIER PERFORMING CARRIAGE WITHOUT HAVING ENTERED INTO A CONTRACT WITH THE PASSENGER WILL BE LIABLE ACCORDING TO WARSAW CONVENTION AS MODIFIED BY THE GUADALAJARA CONVENTION
- ▶ CONVENTION HAS FORMALLY INTRODUCED DISTINCTION BETWEEN A CONTRACTING AND AN ACTUAL CARRIER

THE EMERGENCE OF CODE-SHARING AGREEMENTS: A LEGAL PERSPECTIVE

- ▶ AS PER CONVENTION, BOTH CARRIERS WILL BE JOINTLY LIABLE AND THE PLAINTIFF IS RELEASED FROM THE DIFFICULTY IN PROVING WHICH CARRIER CAUSED THE DAMAGE WHICH COULD BE DUE TO LOST BAGGAGE, DELAY IN THE FLIGHT TAKING OFF, DIVERSION OF THE FLIGHT DUE TO UNAVOIDABLE CIRCUMSTANCES, PASSENGERS BEEN OFFLOADED DUE TO OVERBOOKING ETC
 - ▶ ESPECIALLY IN CONGESTED AIRPORTS. JET AIRWAYS ALREADY HAS A CODE-SHARE AGREEMENT WITH BRUSSELS AIRLINES IN ORDER TO GIVE ITS PASSENGERS WIDER DESTINATIONS IN EUROPE TO CHOOSE FROM.
 - ▶ THUS THE ROLE OF THE GUADALAJARA CONVENTION WILL INCREASE AND BECOME MORE IMPORTANT WITH A STEADILY GROWING NUMBER OF FLIGHTS UNDER CODE-SHARING AGREEMENTS
- 
- A series of white lines of varying lengths and slopes are positioned in the bottom right corner of the slide, creating a modern, abstract graphic element.

FREQUENT FLYER PROGRAMS AND CODE SHARING ALLIANCES: COMPETITION CONCERNS

- ▶ THERE ARE CERTAIN FACTORS INTRINSIC TO AIRLINE INDUSTRY THAT ARE ANTI-COMPETITIVE SUCH AS 'FREQUENT FLYER PROGRAMS' (FFP's) OPERATED BY VARIOUS AIRLINES THAT IS A FORM OF UNFAIR PRICING PRACTICE AND CAN HAVE ADVERSE EFFECT ON COMPETITION
- ▶ AIRLINES ALLIANCES IN INDUSTRY THAT INTER ALIA INCLUDE 'CODE SHARING AGREEMENTS' TEND TO RESTRAIN COMPETITION IN THE MARKET
- ▶ IN INDIA, MANY AIRLINES SUCH AS AI AND JET AIRWAYS OPERATE FFP'S FOR ITS CUSTOMERS AND PROVIDES VARIOUS BENEFITS IN RELATION TO SAME
- ▶ BASICALLY LOYALTY INDUCING PROGRAMS REWARDS CUSTOMERS WITH FREE TRAVEL ON THE BASIS OF BUILT UP MILES AND GAINED POINTS ON EACH TRAVEL BY THAT AIRLINE
- ▶ AIRLINE TENDS TO ENHANCE VALUE OF SUBSEQUENT FLIGHTS ON ITS AIRLINE BY INCREASING OPPORTUNITY FOR FREE TRAVEL, ONCE THE CUSTOMER FLIES ON FFP
- ▶ TENDS TO INDUCE FUTURE LOYALTY AMONG CUSTOMERS AND NOT ONLY STRENGTHENS AIRLINE'S MARKET POSITION, BUT ALSO FETTER COMPETITION BY MAKING IT DIFFICULT FOR NEW ENTRANTS TO ENTER MARKET AND EXPAND
- ▶ SUCH LOYALTY INDUCING PRICING AND REBATES PROGRAMS BECOME ABUSIVE WHEN THEY LEAD TO FORECLOSURE EFFECTS
- ▶ SECTION 4 OF THE COMPETITION ACT, 2002 ("THE ACT") PROHIBITS ABUSE OF SUCH DOMINANT POSITION BY AN ENTERPRISE BY WAY OF IMPOSITION OF UNFAIR OR DISCRIMINATORY PRICE IN PROVISION OF SERVICES OR BY LIMITING OR RESTRICTING MARKET. SUCH LOYALTY PROGRAMS ALSO PREVENT CUSTOMERS FROM ACCRUING MOST ADVANTAGEOUS OFFER AT A GIVEN TIME THEREBY DENYING MARKET ACCESS
- ▶ AIRLINES BY WAY OF FFP'S RAISE SWITCHING COSTS BETWEEN VARIOUS AIRLINES –THEY MAKE TRAVELLER KEEN TO CONTINUE ITS SERVICES SUCH THAT, IF THEY SWITCH TO ANOTHER THEY WOULD NOT BE ABLE TO GAIN POINTS AND THUS FREE TRAVEL

FREQUENT FLYER PROGRAMS AND CODE SHARING ALLIANCES: COMPETITION CONCERNS

- ▶ ACT AS BARRIER FOR ENTRANTS TO GAIN MARKET SHARE AND ARE DETRIMENTAL TO COMPETITION IN MARKET
- ▶ INDUCEMENT CAUSED BY WAY OF FFP HAS EFFECT OF STIPULATION TO PURCHASE EXCLUSIVELY FROM THAT AIRLINE AND RELATED TO LAW PROHIBITING EXCLUSIVE PURCHASING AGREEMENTS
- ▶ BASICALLY TARGETED FOR BUSINESS CLASS TRAVELLERS WHO HAVE LESS PRICE ELASTICITY DEMAND AND THEREFORE TREAT CUSTOMERS IN DISCRIMINATORY MANNER OVER OTHER LEISURE TRAVELLERS. SUCH DISCRIMINATORY PRICING IS PROHIBITED UNDER THE ACT
- ▶ ALLIANCES - COOPERATION BETWEEN AIRLINES SUCH AS CODE SHARING ALLIANCES THAT ALLOWS ONE AIRLINE TO SELL SEATS UNDER ITS OWN NAME AND CODE ON ANOTHER AIRLINE'S FLIGHT
- ▶ TWO MAIN COMPETITORS IN MARKET ENTER INTO SUCH CODE SHARE AGREEMENT ON OVERLAPPING NETWORKS, IT DAMPENS COMPETITION WHICH MAY ALSO LEAD TO PRICE COLLUSION AND RISE BY THE TWO AIRLINES. FOR EXAMPLE IN 2006, JET-SAHARA-AIR DECCAN ALLIANCE
- ▶ TO CONCLUDE, COMPETITION IN AIRLINE INDUSTRY COULD BE PRESERVED AND ENHANCED THROUGH, INTER ALIA, CLOSE AND CAREFUL REVIEW OF FFP'S AND SUCH ALLIANCES AND CAREFUL USE OF REMEDIES TO OFFSET SUCH ANTI-COMPETITIVE EFFECTS.
- ▶ REMEDIES SUCH AS, REQUIRING INCUMBENT AIRLINES TO GRANT NEW ENTRANTS ACCESS TO THEIR FFP AND CONTROL ON MERGING AIRLINES TO KEEP THEIR FFP SEPARATE AND IN CASE OF CODE SHARE ALLIANCES, TO ASSESS SUCH ALLIANCES ON THE BASIS OF INCREASE IN FARES AND ELIMINATION OF COMPETITION ON THE BASIS OF MARKET POWER OR NETWORK EFFECTS, THAT SHOULD BE DISCOURAGED AND ALSO PRO COMPETITIVE EFFECTS OF ECONOMIC EFFICIENCIES THAT CAN OUTWEIGH POTENTIAL COMPETITIVE HARM
- ▶ MAY NOT BE APPLICABLE IN PRESENT CIRCUMSTANCES

LOW COST CARRIERS (LCCS) IN INDIA

- ▶ THE 'NEW WAVE' IN THE AIRLINE INDUSTRY: PUBLIC-PRIVATE PARTNERSHIP, FOREIGN INVESTMENT AND LCC
- ▶ THE LIBERALIZATION OF AVIATION INDUSTRY IN INDIA - BOOM FOR DOMESTIC AND INTERNATIONAL PASSENGER CARRIERS, WITH DOMESTIC AND INTERNATIONAL PASSENGER AND CARGO TRAFFIC GROWING
- ▶ SUBSTANTIAL GROWTH OF AVIATION INDUSTRY IS DUE TO:
 - ▶ (I) LOW FARES OFFERED BY LCC
 - ▶ (II) SCHEDULED DOMESTIC AIR SERVICES ARE NOW AVAILABLE FROM MOST AIRPORTS
- ▶ IN 2008, VIDE PRESSNOTE NO. 4, FDI CEILING IN SCHEDULED AIR TRANSPORT SERVICES WAS SET AT 49% AND INVESTMENT THEREIN BY NON-RESIDENT INDIANS AT 100% ON THE AUTOMATIC ROUTE, AND THE CEILING FOR NON-SCHEDULED AIRLINES AT 74%, WITH NRIS BEING ALLOWED TO INVEST UPTO 100% ON THE AUTOMATIC ROUTE
- ▶ THE MODERNIZATION OF DELHI AND MUMBAI AIRPORTS, GREENFIELD AIRPORTS AT HYDERABAD AND BANGALORE. NOW ADANI GROUP
- ▶ THUS WE SEE TWO PROCESSES GOING HAND IN HAND.,INTRODUCTION OF FOREIGN PLAYERS, LEADING TO AIRPORT MODERNIZATION/EXPANSION/CONSTRUCTION, WHILE ON THE OTHER WE HAVE INDIAN PLAYERS, PARTICULARLY THE LOW COST CARRIERS BEING UNABLE TO COMPETE WITH THE HIGH COMPETITIVE EQUITY REQUIREMENTS, AND THUS BEING PUSHED OUT OF THE MARKET.

CASE : LOW-COST AIRLINES IN INDIA : TOOK OFF PRIDE, LANDED IN TROUBLES

- ▶ **ABSTRACT:** THE PRIMARY OBJECTIVE OF THE CASE STUDY IS TO ANALYSE THE SUSTAINABILITY OF LOW-COST CARRIER (LCC) MODEL IN INDIAN AVIATION INDUSTRY. THIS CASE WOULD ENABLE A DISCUSSION ON THE FACTORS THAT ARE CRITICAL FOR THE SUCCESSFUL FUNCTIONING OF LCCS; THE FACTORS THAT HAVE LED THE INDIAN ULCCS INTO TROUBLE; AND THE SUSTAINABILITY OF LCCS IN THE LONG RUN. SINCE 2003, WHEN AIR DECCAN ENTERED WITH ITS LCC MODEL, INDIAN AVIATION WAS REVOLUTIONISED. WHILE WITH THE INCREASE IN DEMAND, OPPORTUNITIES INCREASED, SO DID THE THREATS WITH THE INCREASE IN COMPETITION. IN A SPAN OF 2 YEARS, THE INDUSTRY WITNESSED 25% ANNUAL GROWTH AND THE ENTRY OF FOUR NEW PLAYERS. IT WAS ESTIMATED THAT BY 2010, AIR PASSENGERS WOULD INCREASE TO 50 MILLION. HOWEVER, INSTEAD OF DOING WELL, BY 2007 INDIAN LCCS WERE BLEEDING. IN 2007, AIR DECCAN MERGED WITH KINGFISHER AIRLINES WHILE, GOAIR MOVED OUT OF THE LCC MODEL, ADDING BUSINESS CLASS IN ITS AIRCRAFT. WITH SPICEJET AND INDIGO REMAINING AS THE ONLY LCCS IN INDIA, THE CASE DELVES INTO THE REASONS BEHIND THE FAILURE OF LCCS IN INDIA AND ENABLES AN INTERESTING DISCUSSION ON WHAT NEEDS TO BE DONE TO MAKE THE LCC MODEL SUCCESSFUL, GIVEN THE POTENTIAL DEMAND.
- ▶ **PEDAGOGICAL OBJECTIVES :**
- ▶ **1. TO UNDERSTAND THE CRITICAL SUCCESS FACTORS FOR A LCC PLAYER GLOBALLY AND IN INDIA IN PARTICULAR.**
- ▶ **2. TO ANALYSE THE PERFORMANCE OF LCCS IN INDIA AND THE REASONS BEHIND THE FAILURE OF LCCS IN THE COUNTRY.**
- ▶ **3. TO EXPLORE AND EVALUATE VARIOUS OPTIONS TO MAKE INDIAN LCCS OPERATIONS ECONOMICALLY VIABLE.**

LEGAL CONCERNS OF CARTELIZATION AMONG AIRLINE COMPANIES IN INDIA:

- ▶ 'CARTELISATION' IS A PROCESS WHERE ENTERPRISES COLLUDE TO FIX PRICES, LIMIT OR CONTROL PRODUCTION, SHARE THE MARKET OR CUSTOMERS, OR INDULGE IN COLLUSIVE BIDDING. CARTELS USUALLY OPERATE IN SECRECY DUE TO WHICH THESE ARE HARD TO DETECT, OR SUCCESSFULLY, INVESTIGATE AND PROSECUTE AND BECAUSE OF THIS COMPETITION LAWS ACROSS THE GLOBE RESERVE THEIR MOST SEVERE TREATMENT FOR CARTELS. ALMOST ALL THE SECTORS, INCLUDING THE AVIATION SECTOR ARE PRONE TO CARTELISATION.
- ▶ CHAPTER IV OF THE CONSTITUTION DIRECTS THE STATE POLICY IN MATTER OF CONCENTRATION OF WEALTH, WELFARE OF CONSUMERS' VIS-À-VIS FUNDAMENTAL RIGHTS (UNDER CHAPTER III). IT IS IN PURSUANCE OF THIS THAT THE STATE ENACTED THE MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT, 1969. THIS ACT HAS NOW BEEN REPLACED BY THE COMPETITION ACT, 2005. BUT CRITICS OPINE THAT THIS ACT IS RIDDLED WITH LOOPHOLES THAT MIGHT CONDONE HARD-CORE CARTELS AND PREDATORY PRICING. SECTION 19 OF THE COMPETITION ACT, 2002 PROVIDES THAT COMPETITION COMMISSION OF INDIA MAY INQUIRE INTO ANY ALLEGED CARTEL (ANTI-COMPETITIVE AGREEMENT) ON RECEIPT OF ANY INFORMATION FROM ANY PERSON, CONSUMER OR THEIR ASSOCIATION OR TRADE ASSOCIATE.
- ▶ IN CASE OF THE AIRLINE INDUSTRY, THOUGH THERE HASN'T YET BEEN ANY PROVED CASE OF CARTELIZATION, THERE HAVE BEEN CONCERNS REGARDING THE SAME IN THE RECENT YEARS. TO ILLUSTRATE, IN THE LAST MONTH THERE HAD BEEN A CASE OF SIMULTANEOUS HIKE IN AIR FARE BY A MAJORITY OF AIRLINES. ACCORDINGLY, THE DIRECTORATE GENERAL OF CIVIL AVIATION (DGCA) SENT LETTERS TO ALL DOMESTIC CARRIERS SEEKING INFORMATION REGARDING THE HIKE. MOST OF THE AIRLINES DENIED ANY ATTEMPT AT CARTELIZATION IN PRESS STATEMENTS. SUBSEQUENTLY, THE PRICES WERE ROLLED BACK. IN THE LIGHT OF THE FACT THAT THE COMPETITION ACT HASN'T BEEN YET ENFORCED, THAT THE POWERS OF THE COMMISSION UNDER THIS ACT ARE Milder AND MORE ADVISORY THAN THE POWERS UNDER THE PREVIOUS ACT, THAT VERY FEW CARTELS WERE PROSECUTED UNDER THE PREVIOUS ACT, THIS ATTEMPT AT CARTELIZATION WILL RAISE LEGAL ISSUES OF THE SUFFICIENCY AND ADEQUACY OF THE COMPETITION ACT, EFFECTIVENESS OF THE NEW REGIME AND THE CONDITION OF CONSUMERS' INTERESTS IN THE ABSENCE OF ENFORCEMENT OF THE ACT.

THANK YOU

Several thin, white, parallel diagonal lines are located in the bottom right corner of the image, extending from the right edge towards the center.