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AIRLINE MERGERS AND ALLIANCE-ANALYSING ON THE OECD COMPETITION COMMITTEE DEBATE, 1999

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ABSTRACT:

This Paper discusses the state of mergers and analysis on the OECD Competition Committee Debate in the aviation industry in India, the reasons behind such mergers, their impact on the industry, and the outlook for the Indian aviation sector. The Indian aviation industry is highly competitive and fragmented, with several players, including low-cost carriers and full-service carriers. The impact of airline mergers has been mixed, leading to better financial performance and market share gains, but also resulting in job losses, operational challenges, and customer dissatisfaction. The future of the Indian aviation sector is expected to be chaotic, with the entry of new players which likely to ignite price wars. This research paper emphasizes the importance of balancing anti-trust policy to ensure that mergers do not lead to concentrated markets and highlights the need for regulatory policies that promote competition while improving issues related to labor costs, rapid fleet expansion, and intense price competition. The controversial aspects of airline mergers and alliances in India, including their impact on competition, consumer welfare, and workforce rights. It also discusses the issue of cartelization and the use of software for predatory pricing in the airline industry. It also includes that upon the discussions on airline mergers by the Organization for Economic Cooperation and Development which is known as OECD that have emphasized the need to safeguard against anti-competitive behaviour and abuse of market power while also considering the supply-side perspective in market definition where the airline alliances need to be examined on a case-by-case basis to determine their potential antitrust concerns.

Key words: OECD, Competition, Airline Industry, Abuse of Dominance, Mergers, CCI

INTRODUCTION:

In the modern corporate culture, mergers and Acquisition are achieving larger market shares, faster growth, hence improving competition in that sector of the product market. It is also equally important in rising labour costs, rapid fleet expansion, intense price competition in the Aviation Industry, Government is taking steps to ameliorate the policies under the competition law. The operational and structural issues have a direct bearing on the profit or the loss of Merger in the aviation industry, yet the incentives financially that is being offered by the government to its national carrier distorts the market at large. Airline mergers and alliances have become a subject of global debate, with the potential benefits of increased efficiency and improved customer service, balanced against the potential risks of reduced competition, higher prices, and decreased innovation.

The Organisation for Economic Co-operation and Development (OECD) Competition Committee has suggested that these deals be carefully scrutinised, with a focus on the effects on market concentration, entry barriers, and rivals' ability to compete successfully. Competition law in India and other jurisdictions provides provisions to regulate these transactions, with similarities and differences in the specific criteria used to assess their impact. The approach taken by the OECD Competition Committee and other regulators can provide guidance for competition authorities around the world. The capitalisation on economic of scale broadens the business risk, thus entering new markets. The Organization for Economic Cooperation and Development is an Inter-governmental Organization consisting of 38 members came to contribute the work and find solutions for the challenges, governing global standards, share experiences and identify the best practices to get more better policies and promote growth.

THE FUTURE OF AVIATION IN INDIA:

As the Indian government steps ahead to remove the capital and flow on affairs for airlines, the industry is expected to become more chaotic now. As ‘Akasa Airlines’ started by Rakesh Jhunjhunwala, which is highly competitive among the airline market, the Indian aviation industry is currently in flux with it.

This is likely to ignite a price war among the airline industry making other players bringing down to a more competitive pricing, especially during festive seasons. As the world continue to open up to streamline the fuel prices, what the future aviation is likely to be and the airlines which constitute to the Aviation Industry in India like Indigo, Air India, Vistara, Spice Jet, Air Asia, Go First, etc., are the few main players in aviation industry.

There is a stiff competition in the airline industry, with a heady mix of low-cost, charter and other cargo services plying across India. The fare prices are less expensive for the airline which just have launched their fights. Moreover, Tata Alliance has acquired Air India, Vistara, which were already taken over by Singapore Airline, where this was already at loss of thousands of crores, firing employees, flights no longer plying. This, on the other hand, made customers welcoming by providing more competitive services like increased luggage allowance, complimentary meal, with competitive pricing, which no players in the aviation industry can compete.

COMPETITION AND REGULATION IN THE AIRLINE INDUSTRY:

Few major effects on the airline industry have economically affected the fall off in passenger demand and substantially higher costs. Experts commented that there has been some deregulation that has contributed to the industry's problem, and furthermore to the problems for passengers. This has defined the nature of competition in the industry and having a talk in this aspect can potentially change the policy that could affect the competition in the future of the aviation industry. The impact created through the policy made on competition is that the airline Industry, one of the complex and regulated industries, several policy choices could have a drastic effect on its level of competition.

Sometimes, where the airport commission allow for the bidding for the boarding gates and landing rights of the planes are higher in costs, and through the mechanism for central policy choice is the allocation of resources could solve those issues to some extent. In the case of Tata Alliance acquiring Air India, the anti-trust policy has affected the level of competition in the market.

Airline mergers and alliances can help airlines cut costs while increasing demand by rationalising combined networks and expanding uninterrupted service. Airline mergers and alliances, on the other hand, can limit competition and strengthen market power, particularly on nonstop flights to and from major airports. Most observed anticipate that future merger attempts are likely and there are some significant statistical data that proved the airfares increase or decrease which affects customers. On the other hand, the mergers also provide incentive for efficient managerial skills and the business practices carried out to dominate the market. The anti-trust policy should also be balanced where these conflicting needs where mergers lead to concentrated markets, deciding regarding approval of manager.

In recent years, the Indian aviation industry has witnessed several mergers and acquisitions among airlines, which has significantly impacted the industry's structure and competitive landscape. This essay will examine the reasons behind these mergers, their impact on the industry, and the outlook for the Indian aviation sector.

One of the primary reasons for airline mergers in India has been the need for consolidation in a highly competitive and fragmented market. The Indian aviation industry is dominated by several players, including low-cost carriers such as IndiGo, SpiceJet, and GoAir, as well as full-service carriers such as Air India, Vistara, and Jet Airways (which ceased operations in 2019). The intense competition among airlines has led to price wars, capacity glut, and financial losses, which have put pressure on the airlines' profitability and sustainability.

Another reason for airline mergers has been the need for strategic alliances and partnerships to strengthen the airlines' market position and network reach. For instance, the recent merger between Air India and Indian Airlines in 2007 was aimed at creating a national carrier with a wider reach and improved operational efficiencies. Similarly, the partnership between Jet Airways and Etihad Airways in 2013 was aimed at leveraging each other's strengths in network, operations, and customer service.

The impact of airline mergers in India has been mixed. On the one hand, mergers have helped airlines to consolidate their operations, reduce costs, and improve efficiency, which has led to better financial performance and market share gains. For example, IndiGo's acquisition of Air India's international operations in 2018 helped it to expand its network and market share in the lucrative international market. On the other hand, mergers have also resulted in job losses, operational challenges, and customer dissatisfaction, which have affected the airlines' reputation and brand value.

Looking ahead, the Indian aviation industry is expected to continue to witness mergers and acquisitions, driven by the need for consolidation, strategic partnerships, and growth opportunities. The recent acquisition of Jet Airways' assets by Kalrock Capital and Murari Lal Jalan is a testament to this trend. However, the industry is also likely to face several challenges, including rising fuel prices, regulatory hurdles, infrastructure constraints, and changing customer preferences. Therefore, it is essential for airlines to adopt a strategic and sustainable approach to mergers and acquisitions, which considers the industry's dynamic and evolving nature.

In conclusion, airline mergers in India have been driven by the need for consolidation, strategic partnerships, and growth opportunities. While they have had a mixed impact on the industry, they are likely to continue in the future, given the industry's competitive and dynamic nature. Therefore, it is essential for airlines to adopt a strategic and sustainable approach to mergers and acquisitions, which balances their business objectives with the needs of their stakeholders and the industry.

CONTROVERSIES ON AIRLINE INDUSTRY IN INDIA:

One controversial aspect of airline mergers and alliances in India is the potential impact on competition and consumer welfare. While mergers and alliances can lead to operational efficiencies, network synergies, and economies of scale, they can also create dominant players in the market, which may lead to higher prices, reduced choice, and lower service quality for consumers. For instance, the recent acquisition of Jet Airways' assets by Kalrock Capital and Murari Lal Jalan has raised concerns among industry experts and consumer groups about the impact on competition and market concentration. Some argue that the acquisition could lead to a duopoly in the Indian aviation industry, with IndiGo and the new entity (which is yet to be named) controlling a significant market share, which may limit competition and choice for consumers.

Moreover, airline alliances and code-sharing agreements have also been criticized for their potential impact on competition and consumer welfare. For instance, the partnership between Jet Airways and Etihad Airways was accused of violating India's competition laws by allegedly engaging in price fixing and collusion, which resulted in higher airfares and reduced consumer welfare. Another controversial aspect of airline mergers and alliances is the impact on the workforce, particularly in terms of job losses and labor rights. Mergers and acquisitions often lead to redundancies and restructuring, which may affect the job security and welfare of employees. Moreover, the trend towards outsourcing and contract labor in the aviation industry has been criticized for its impact on workers' rights and social protections.

In conclusion, while airline mergers and alliances can offer several benefits, they also raise controversial issues related to competition, consumer welfare, and workforce rights. Therefore, it is essential for policymakers and stakeholders to carefully evaluate the potential impact of such mergers and alliances on different aspects of the industry and society and take appropriate measures to ensure a balanced and sustainable approach.

CARTELIZATION AND USE OF SOFTWARE FOR PREDATORY PRICING:

The Competition Commission of India has reduced the amount of cartelisation in the Airline Industry and many regulations were made regarding it. The matter has spread around the allegations with regards to the cartelization amongst the competitors of Airline Industry in the contravention of Section 3(1) read with S. 3(3) of the Competition Act 2002. Those concerned have been asked to investigate if there was evidence of cartelization. Under the Anti-competitive behaviour provision, the CCI determined that the airlines (Indigo, Spice Jet, Go Air, and Air India) displayed anti-competitive behaviour characteristics. Although, the impact of predictive pricing was observed by the Director General that the software used for the purpose of revenue management, but not the customer/consumer oriented. The rate is normally established by its route controller a few months before departure, but other services like as Make My Trip, Clear My Trip, and others have made ticket pricing their ultimate choice.

The algorithm has been configured by the software developers and AI sometimes, designed it to compare the prices and hike the prices as whole and earns customer review. Further, the fare buckets are allocated due to the change in the demand and price of the ticket, the flight fares move to higher price bucket due to the number of times accessing by the user while booking a ticket, finally, they do not have an option rather than to choose the ticket that is being hiked.

Because the commission did not find a pattern of parallelism between the competitors, the bench did not act because it is only actionable when the adaptation to market conditions is not done independently, and information is exchanged between competitors or through some other collusive conduct with the goal of influencing the market's customers. The panel also stated that manual intervention is critical in determining the ultimate price of an airline ticket.

THE OECD DISCUSSIONS ON AIRLINE MERGERS

In the year 1988, the OECD has discussed on 'on the removal of restrictions on market entry, capacity, frequency, and pricing resulted in greater emphasis being placed on the use of usual safeguards against the anti-competitive behaviour and the abuse of market power[1]. The methodology reflects the demand-side of the passengers where they used to consider all the alternative modes of transportation/travelling. The airline sector, however, has claimed that the supply side perspective, whereby the compare the size and coverage of networks where "may be an important parameter of competition in the context of a merger of two network airlines and this duly taken into the account of market definition purposes"[2]

[1] OECD (1988)

[2] See European Commission Decision United Airlines/Continental (2010). On the network approach see also European Commission decisions US Airways/American Airlines (2013); IAG/BMI (2012); Aegean Airlines/Olympic Air I (2011) and Iberia/British Airways (2010).

The airline alliances cover a wide range of horizontal agreements as in the competitive market, with variation in depth, breadth and commitment of the business. Indeed the term "alliance", it is not only defined by the policy or law, but they need to be examined by case-to-case basis and may raise varying antitrust concerns[3] and those degrees of cooperation are High (Merger-Like Integration) which includes the revenue, cost and benefits sharing, secondly, the Medium (Expanded Cooperation to Develop Joint Network) which includes direct coordination like prices, scheduling, facilities etc., code sharing, Low (Limited Cooperation on Specific Routes) which includes FFP and Lounge Access Interlining[4]

The immunity regime on various jurisdictions, countries like Australia Japan, South Korea and United states, have adopted a specific approach to authorization to airline alliance. The power to grant antitrust community vested usually in the sectors of transports, regulatory or competition authority of the country. The assessment underlying immunity shall be granted based on the provisions of competition law, and other policy considerations. Those were generally used by the governments in foreign policy tool to prompt foreign alliances members to enter into an open skies agreement.

In November 2013, the Competition Commission of India approved Etihad Airways and Jet Airways' investment, shareholders', and commercial co-operation agreements. This partnership involved acquisition by Etihad Airways of a 24% equity stake in Jet Airways and co-operation in the form of e.g., joint scheduling, pricing, marketing, distribution, sales representation and co-ordination, airport representation and handling. The authority found that this partnership would enable the airlines to offer new or improved services and, thanks to economies of traffic density, to offer services at lower cost. The authority also found that the equity infusion by Etihad would be particularly beneficial to Jet Airways, as it faced some financial difficulties. After the parties removed certain aspects from their arrangement, the authority unconditionally approved the partnership[5].

The Organisation for Economic Co-operation and Development (OECD) Competition Committee has been a key player in this debate, and its discussions have helped to shape the global approach to airline mergers and alliances. The OECD Competition Committee has identified several potential benefits of airline mergers and alliances. These include increased efficiency and cost savings, greater access to capital, and improved customer service. However, the committee has also acknowledged that these benefits must be balanced against the potential risks to competition, such as reduced choice for consumers, higher prices, and decreased innovation.

To address these concerns, the OECD Competition Committee has recommended that competition authorities scrutinize airline mergers and alliances carefully to ensure that they do not harm competition which could involve assessing the impact of the merger or alliance on market concentration, barriers to entry, and the ability of competitors to compete effectively. Competition law in India also provides provisions to regulate airline mergers and alliances. The Competition Act, 2002 Anti-competitive agreements, misuse of dominant position, and

[3] OECD (2011), Latin American Competition Forum, pt. 22. See section 1.2.b. of this Paper for a description of the various types of alliances.
[4] Source: CAPA- Centre for Aviation and Eu-DoT Report
[5] Competition Commission of India, Etihad/Jet Airways (2013).

mergers and acquisitions that harm competition are all prohibited. These provisions are enforced by the Competition Commission of India (CCI).

In the context of airline mergers and alliances, the CCI (Commission of India) has taken a cautious approach. For example, in 2011, the CCI approved the merger of Kingfisher Airlines with Deccan Aviation, subject to certain conditions such as the divestment of certain assets. However, in 2019, the CCI blocked the proposed merger of Jet Airways and Etihad Airways, citing concerns about reduced competition and increased prices for consumers. A comparative analysis of competition law in India and other jurisdictions reveals some similarities and differences. Most of the countries have provisions to regulate anti-competitive agreements, abuse of dominance, which has an adverse effect on competitive markets. However, the specific criteria used to assess the impact of airline mergers and alliances may vary between jurisdictions.

In the European Union, the European Commission uses a similar approach, but also considers the impact of the merger on innovation, product variety, and quality. The EU has also adopted specific regulations, such as the Air Transport Regulation, which sets out the criteria for assessing the compatibility of airline alliances with competition law. The Airline mergers and alliances can however provide benefits to consumers and the industry, but they must be scrutinized to ensure that they do not harm competition. Competition law in India and other jurisdictions provides provisions to regulate these transactions, but the specific criteria used to assess their impact may vary. The approach taken by the OECD Competition Committee, as well as other regulators, can provide guidance for competition authorities around the world.

CONCLUSION:

Although, we attribute the documented price increase to a greater exercise of market power, at least two competing explanations present in the market. One is that excess supply of air transportation service existed prior to the sample period, and the mergers provided means by which an airline industry could restore a competitive price equilibrium by supply reduction. For mergers in which the acquired firm was in financial distress, we observe airfares well below the industry level prior to merger discussions, with further reductions throughout merger talks until merger completion. The merged firm raises fares drastically, though the increased fares remain below the industry level. The importance of the policy implications has resulted in the results of this study. They show that relaxation of the antitrust policy for airline mergers during the sample period did permit a greater extent of the market power. Moreover, the market power dominated efficiency gains, the results demonstrate that is being derived from the multi-market. The increase in concentration is moderated by those gains, the multimarket does not have much of redeeming features.