

# Liberalization without Privatization: A Perspective from Aviation Industry

Hamza Hameed\*

Even in an increasingly liberalized and deregulated international aviation industry, there is a significant number of entities in many states which are still owned and controlled by governments. These are mostly publicly owned airlines and airports which often do not allow new entrants into their respective national markets and they also often partake in predatory practices which they are not held accountable for due to their relationship with government. Their affiliation with government also leads to high levels of inefficiency due to issues such as overstaffing and substandard maintenance. This article looks at how privatization of service providers in the aviation industry is essential to enhance competition between players within national markets. As part of this analysis, this article considers the importance of the privatization of airlines and airports and how the lack of privatization leads to abuse of dominant position type practices and predatory behaviour to keep out new entrants. To enhance the link between privatization and competition, examples are given from across the world with a special case study from Pakistan. This analysis shows that deregulation and liberalization of the aviation industry without privatization often leads to anti-competitive behaviour in market. Therefore, if a country decides to liberalize its aviation policy, it must back this up with privatization practices to encourage a free, fair, and competitive national market.

## 1. Introduction

The Chicago Convention in 1944 sets out the dynamics for operations of the international civil aviation.<sup>1</sup> It built up a system dependent upon exchanges of traffic rights between states bilaterally. There were attempts to secure a multilateral arrangement for the exchange of traffic rights,<sup>2</sup> but such attempts were unsuccessful. Upon failure to reach a multilateral arrangement, matters regarding traffic rights, pricing, and capacity were all left to bilateral agreements between individual governments and airlines.<sup>3</sup> Traffic rights, consequently, could only be attained through exchanges of bilateral air service agreements ('BASAs') between states. Pricing and capacity were also often the subject of these bilateral agreements. However, pricing was more often governed through the International Air Transport Association ('IATA')<sup>4</sup> and capacities and frequencies were often governed by means of inter-airline agreements which could form part of the BASAs.<sup>5</sup>

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\* International Institute of Air and Space Law, Leiden University.

<sup>1</sup> Article 6 Convention on Civil Aviation (Entered into force 4 Apr. 1947) 15 U.N.T.S. 295: 'No scheduled international air service may be operated over or into the territory of a contracting State, except with the special permission or other authorization of that State, in accordance with the terms of such permission or authorization.'

<sup>2</sup> An example can be that of the 1944 International Air Services Transit Agreement 84 UNTS 389.

<sup>3</sup> Rigas Doganis, *Flying Off Course* (Routledge 2002).

<sup>4</sup> IATA convened to set prices for specific routes that all airlines on that route must set. For more see: Youdi Schipper and Piet Rietveld, 'Economic and Environmental Effects of Airline Deregulation' (1997). Free University Amsterdam <<http://dare.ubvu.vu.nl/bitstream/handle/1871/9260/97031?sequence=1>> accessed 14 December 2016.

<sup>5</sup> Ibid.

An important consequence of such a system was the emergence of the concept of ‘ownership and control’. This means that an air service provider would only be eligible to fly under a BASA if it was deemed to be under the ownership and control of one of the contracting parties.<sup>6</sup> Such an approach was adopted primarily because of the importance given to airlines as representatives of the pride of a particular state.<sup>7</sup> In 1944, almost all airlines were State Owned Entities (‘SOE’), and existed to serve the essential public purpose of providing transportation and catering to the needs of a country’s populace.<sup>8</sup> These airlines were mostly public bodies and extensions of the government of a country. The survival of an airline that had been designated in the BASA for international air transport was considered essential for the trade and economy of a country, which meant that airlines were strictly regulated and completely in the hands of government.<sup>9</sup>

Such an atmosphere meant that the air service providers had little incentive to compete. They had no control over the air fares they would set and hence the international civil aviation became plagued with airlines cooperating with each other and partaking in pooling and revenue sharing agreements which led to little or no competition.<sup>10</sup> Moreover, the price fixing and tariff setting practices of IATA were completely contradictory to the concept of a free market to the extent that the International Civil Aviation Organization (‘ICAO’) secretariat issued the following statement upon the tension between the traditional aviation and competition:

[T]he traditional approach in many bilateral agreements favouring airline cooperation on issues like capacity and pricing is squarely at odds with competition laws that strictly prohibit price fixing, market division and other collusive practices by market competitors.<sup>11</sup>

The lack of competition and incentive, coupled with airline cooperation, led to high degrees of inefficiency and poor performance on the part of the industry as there was no desire to maximize customer experience or reduce prices as much as possible.<sup>12</sup>

This did not last for long, as later a general trend started towards liberalization and deregulation,<sup>13</sup> the need to increase competition and facilitate new entrants. This was the start

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<sup>6</sup> ‘CAP 769 Ownership and Control Liberalisation: A Discussion Paper’ Civil Aviation Authority UK. (2006) – Ownership essentially relates to ownership of the shares of the company and Control essentially refers to the individuals or the place where all the important decisions of the company are taken.

<sup>7</sup> Every nation State had an airline which was established to cater to the needs of its populous. Air travel was the most privileged and advanced form of travel back then and hence was deemed to be extremely important for the image of a Nation.

<sup>8</sup> Alessandro Cento, *The Airline Industry* (Springer 2009).

<sup>9</sup> Pablo Mendes de Leon, ‘Competition in International Markets: A Comparative Analysis’ [2013] Organisation for Economic Co-operation and Development [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/WD\(2014\)77&docLang=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/WD(2014)77&docLang=En) accessed 25 May 2017.

<sup>10</sup> Rigas Doganis, *Flying Off Course IV* (Taylor & Francis 2009).

<sup>11</sup> International Civil Aviation Organization Working Paper, Worldwide Air Transport Conference Sixth Meeting Montréal, (22 March 2013).

<sup>12</sup> (n 10).

<sup>13</sup> Throughout this article, the authors uses the term ‘liberalization’ to describe the process that took place in Europe and most other states to eliminate barriers to entry and strict rules on pricing, capacity, routes and other matters. The term ‘deregulation’ is used to describe the same process as it took place in the USA. These words have at times been used interchangeably.

of the deregulatory revolution of the aviation industry and it was supported by a general shift towards privatization of national carriers. This privatization served as an important policy instrument through which states promoted and sustained economic development.<sup>14</sup> As deregulation and liberalization spread throughout the world, privatization became an important tool to encourage private sector participation in the provision of what can still be described as a public service, and also private sector investment in the setting up of public infrastructure.<sup>15</sup>

## 2. Liberalization and its Effect on Competition

The process of deregulation (which is the American equivalent of liberalization) started in the United States ('US') with the promulgation of the Airline Deregulation Act 1978,<sup>16</sup> which lifted many of the barriers and controls imposed on airlines and actors wishing to enter into the aviation sector.<sup>17</sup> Before 1978, due to the regulations in place, carriers could not partake in actively setting their own prices and hence there was little competition to obtain market shares. So while there was competition on frequencies, amenities and advertising, all prices were set by government. The carriers also needed to obtain permission from government to enter new routes.<sup>18</sup> The deregulation gave way to unfettered free competition which ushered passenger air travel in the US into a new era.<sup>19</sup>

The European Union ('EU') soon followed with its liberalization process; however, this was done gradually when compared to the passing of the Airline Deregulation Act in the US which brought a lot of changes at once. The first step that brought in the application of competition law, and hence the shift towards liberalization, was the *Nouvelles Frontières* case.<sup>20</sup> This case determined that the air transport sector was not exempt from the general rules and principles, including those of competition law of the then European Economic Community ('EEC').<sup>21</sup> This decision was followed by the Single European Act ('SEA'),<sup>22</sup> which brought matters of air transport into the qualified majority system in the European Council. Next came the most important part of the liberalization process, the three 'packages' from 1987 to 1992, which gradually completely liberalized the intra-EU access and fares, and applied common rules on airline licensing as long as a carrier met the EU ownership and control requirements.<sup>23</sup>

<sup>14</sup> P Forsyth and others (eds), *Liberalization in Aviation* (Ashgate 2012).

<sup>15</sup> International Labour Organization, 'The Impact of the Restructuring of Civil Aviation on Employment and Social Practices' (2003) available at [https://www.icao.int/sustainability/CaseStudies/StatesReplies/IloRestructre\\_En.pdf](https://www.icao.int/sustainability/CaseStudies/StatesReplies/IloRestructre_En.pdf) accessed 25 May 2017.

<sup>16</sup> 92 STAT. 1705, Public Law 95-504 – Oct. 24, 1978.

<sup>17</sup> For more information, see Severen Borenstein 'Airline Deregulation and the Evolution of Airline Market Power in the United States', OECD Competition Committee 2014.

<sup>18</sup> Ibid.

<sup>19</sup> Asif Siddiqi, 'Deregulation and Its Consequences' US Centennial of Flight Commission [http://www.centennialofflight.net/essay/Commercial\\_Aviation/Dereg/Tran8.htm](http://www.centennialofflight.net/essay/Commercial_Aviation/Dereg/Tran8.htm) accessed 25 May 2017.

<sup>20</sup> Cases 209-213(84) Ministère Public v Lucas Asjes [1986] 3 CMLR 173.

<sup>21</sup> The EEC which was established by Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11.

<sup>22</sup> The Single European Act, 1987 O.J. L 169/1.

<sup>23</sup> The three packages for the liberalization of the aviation industry in Europe were designed to make the regulatory environment for operation of airlines and other aviation service providers much more relaxed such that restrictions on matters like routes, frequencies and pricing were lifted. The concept of the community carrier was also introduced, and the rules on licensing of air carriers and market access were also reformed. For a full discussion on what the three packages entailed see: Louise Butcher, 'Aviation: European liberalisation,

Liberalization in the EU and deregulation in the US led to significant increases in traffic and competition within the aviation industry.<sup>24</sup> Traffic growth due to liberalization can be explained as being a result of two factors. First, due to liberalization, the constraints on capacity, prices, routes and cooperative arrangements between alliance members are lifted and this allows airlines to operate more efficiently and compete more effectively. Greater efficiency also leads to a reduction in price and an increase in quality of the services provided because the airlines are now freely competing for traffic and the only way they can attract more traffic is by either offering better services or lower prices.<sup>25</sup>

Second, because of liberalization and greater route options, airlines are able to optimize their networks to connect smaller markets with their hub airports.<sup>26</sup> The widespread development of the ‘hub and spoke’ system, which features traffic being channelled from multiple sources through one hub to numerous destinations, has often been linked to the advent of liberalization and consequently privatization, particularly in Europe.<sup>27</sup> A study analysing the growth in air traffic demand between the US and five European countries<sup>28</sup> estimated that there was a 56 percent growth in traffic with an average benefit of \$585 per passenger due to liberalization.<sup>29</sup> Another study noted that following the deregulation in the US during 1978 and 1988, passenger traffic increased by 55 percent and scheduled revenue passenger miles grew by more than 60 percent.<sup>30</sup> At the same time, the cost of travel on all major routes decreased by almost 17 percent,<sup>31</sup> and due to deregulation, both passengers and carriers gained innumerable benefits.<sup>32</sup>

### **3. The Link between Privatization and Liberalization**

SOEs are often formed with the expectation to behave differently than a privately owned entity. In the transportation sector, for example, and particularly in cases of airlines, a SOE will be formed to serve universal service obligations by operating socio-economic routes and even uneconomic routes for the sole purpose of providing a commodity to the masses.<sup>33</sup> The

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1986-2002’ SN/BT/182, (13 May 2010); John Balfour, ‘Airline Liberalisation and Competition The EU Experience’ (2014) OECD Discussion on Airline Competition.

<sup>24</sup> James Peoples, *The Economics of International Airline Transport* (Emerald 2014).

<sup>25</sup> Ibid.

<sup>26</sup> Tae Hoon Oum, Anming Zhang and Xiaowen Fu, ‘Air Transport Liberalization and its Impacts on Airline Competition and Air Passenger Traffic’ (2010) 49 (4) *Transportation Journal* 24.

<sup>27</sup> Alan P Dobson, *Globalization and Regional Integration* (Routledge 2007).

<sup>28</sup> The European countries were the United Kingdom, France, West Germany, Netherlands and Italy.

<sup>29</sup> E Maillebiau and M Hansen, ‘Demand and Consumer Welfare Impacts of International Airline Liberalization: The Case of the North Atlantic’ (1995) 29 *Journal of Transport Economics and Policy* 115.

<sup>30</sup> Kenneth J. Button, ‘Opening U.S. Skies to Global Airline Competition’ (1998) 5 *Centre for Trade Policy Studies* 1.

<sup>31</sup> Borenstein and Rose in their study concluded that between 1976 and 1986, the U.S. average domestic passenger yield declined in real terms at a rate of 3.4 percent per year, while revenue passenger miles increased at a rate of 8.2 percent per year. However, they pointed out that the price effects of the U.S. deregulation may have been overestimated. Instead, a major change was an increase in price dispersion. Price dispersion within carrier – routes more than doubled between 1979 and 2001. For more information, see S. Borenstein and N. Rose, ‘How Airline Markets Work ... or Do They? Regulatory Reform in the Airline Industry’ (2007) National Bureau of Economic Research, Working Papers 13452.

<sup>32</sup> S.A Morrison and C Winston, ‘Empirical Implications and Tests of the Contestability Hypotheses’ (1986) 30 *Journal of Law and Economics*, 53.

<sup>33</sup> This is due to the fact that an SOE is established to serve the public and serving the public involves taking decisions and partaking in activities for the facilitation of the public as opposed to only making decisions to make a profit.

problem however arises when a SOE, in a liberal and deregulated environment in pursuing the state's objectives, is encouraged or forced to act in a manner that impairs the competitive landscape.<sup>34</sup>

About thirty years ago, almost every member state of the EU had its own state-owned national airline and now this concept has nearly disappeared with virtually all major European airlines such as Lufthansa, Air France KLM, Iberia and British Airways now being privately owned. Such a change can be directly attributed to liberalization in the EU aviation industry, as liberalization made it possible for there to be competition between the EU and its Member States as well as encouraged private sector investment in the aviation industry.<sup>35</sup>

Moreover, on a global level, more airlines and airports are being privatized as the aviation industry becomes a more liberal and easy-going market.<sup>36</sup> This general trend towards privatization is leading to greater competition and efficiency.

#### **4. The Link between Privatization and Increased Competition**

Privatization can be indirectly linked to an increase in competition.<sup>37</sup> A SOE is forced to operate with multiple goals in mind including serving the public and providing an essential utility. On the other hand, a privatized company can operate with the sole intention of making profit, which makes it more efficient and increases the probability for it to compete with other entities in the relevant market.<sup>38</sup>

##### **Airlines**

In case of airlines, the sole motive of working for profit encourages competition and drives airlines to work as efficiently as possible to gain most traffic. The EU internal market is a landmark achievement for aviation competition, and privatization can be regarded as a condition precedent for, and a necessary result of, this.<sup>39</sup> If the flag carriers were to remain under the ownership of the Member States, then the latter would not have been willing to allow for full competition as the differences in the sizes of the different European economies

<sup>34</sup> Dr Joseph Wilson, 'Pakistan's Experience Fostering Competition in Air Transportation' (2013) Pre-ICN Forum on Competition and Development.

<sup>35</sup> John Balfour, 'Airline Liberalisation and Competition: The EU Experience' OECD (2014) available at [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP\(2014\)22&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP(2014)22&docLanguage=En) accessed 25 May 2017.

<sup>36</sup> The term easy-going market refers to a market where ownership and control requirements continue to get relaxed and bilateral agreements continue to become more 'open skies' type agreements as opposed to the more restrictive 'Bermuda style' agreements. For more information see: Luis M. Camargo, 'Airport Privatization Movement in the 21st Century' (2013) Southern Illinois University Carbondale Working Papers available at [http://opensiuc.lib.siu.edu/cgi/viewcontent.cgi?article=1010&context=ps\\_wp](http://opensiuc.lib.siu.edu/cgi/viewcontent.cgi?article=1010&context=ps_wp) accessed 25 May 2017; Civil Aviation Authority UK 'Ownership and Control Liberalisation: A Discussion Paper' (2006) available at <https://publicapps.caa.co.uk/docs/33/CAP769.pdf> accessed 25 May 2017.

<sup>37</sup> Privatization might change the objectives of airlines, forcing the management to choose products that are profit maximizing. This might reduce the generally too broad product line of public firms, force the firm to choose profit maximizing products and thereby change the intensity of competition. For more information, see T Oum, D Gillen, and M Trtheway, 'Privatization of Air Canada: Why it is Necessary in a Deregulated Environment' (1989) 15 (3) Canadian Public Policy 285.

<sup>38</sup> M Backx, M Carney and E Gedajlovic, 'Public, Private and Mixed Ownership and the Performance of International Airlines' (2002) 8 (4) Journal of Air Transport Management 213.

<sup>39</sup> Steven Truxal, *Competition and Regulation in the Airline Industry* (Routledge 2012).

would have made the playing field very uneven and this would have resulted in many carriers not being able to survive.<sup>40</sup> The market<sup>41</sup> would not be truly competitive if there were still carriers who were being given fiscal and non-fiscal benefits, as there would be inequality and discrimination against private carriers.<sup>42</sup>

### **Airports and Other Service Providers**

The importance of privatization in a liberal and deregulated aviation industry must not be seen as being limited to airlines. In the US, airlines have historically been privately owned. The situation is very different when it comes to airports and other aviation-related services such as security screening, which are under the control of the Transportation Security Administration and air traffic control operated by the Federal Aviation Administration.<sup>43</sup> This has led to a great deal of inefficiency within these bureaucratically operated organizations to the extent that they have at times been regarded as threats to the civil liberties of the Americans.<sup>44</sup> Moreover, it has been noted that privatized airports are more competitive and operate with a greater degree of freedom as compared to those which are operated by states.<sup>45</sup>

### **Anti-Competitive Behavior on the Part of Non-Privatized Aviation Actors**

The *Airfreight cartel* cases<sup>46</sup> are an excellent example of a situation where non-privatized aviation actors in a liberalized market abused their dominant position and then defended their position on the pretext of government policies. A number of EU and non-EU airlines argued in their appeal that the allegedly illegal conduct ‘was supervised and effectively required by government agencies.’<sup>47</sup> This case involved the fixing of a surcharge on cargo transportation and many states along with their flag carriers were involved. The EU conducted an inquiry and found them to be guilty of price fixing. However, as already stated, the agreements between the carriers were at such a state level that the carriers described them as being a part of their government policy and not an attempt at collusion of any sort.

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<sup>40</sup> Hilde Meersman and Eddy Van de Voorde, ‘The Privatization of Air Transport in Europe: Interaction Between Policy, Economic Power And Market Performance’ (1996) 22 (3) *Built Environment* 177.

<sup>41</sup> For information regarding what is deemed to be the market in terms of the EU, see Jakub Kociubiński, ‘Relevant Market in Commercial Aviation of the European Union’ (2011) 1(1) *Wroclaw Review of Law, Administration and Economics* 12.

<sup>42</sup> Matthew Driven, ‘Liberalization and Privatization in European Community Air Transport Law’ (1994) *International Legal Perspective* 97.

<sup>43</sup> For a full list of the activities performed by the FAA see <https://www.faa.gov/about/mission/activities/> accessed 25 May 2017.

<sup>44</sup> Chris Edwards, Privatize Aviation, *Downsizing the Federal Government* (29 May 2014) available at <http://www.downsizinggovernment.org/privatize-aviation> accessed 25 May 2017.

<sup>45</sup> Robert Poole, ‘Another Reason for Airport Privatization, Government Ownership of U.S. Airports Thwarts Airline Competition’ (1 June 2000) Foundation for Economic Education available at <https://fee.org/articles/another-reason-for-airport-privatization/> accessed 25 May 2017.

<sup>46</sup> T-9/11 Air Canada, T-28/11 Koninklijke Luchtvaart Maatschappij, T-36/11 Japan Airlines, T-38/11 Cathay Pacific Airways, T-39/11 Cargolux Airlines International, T-40/11 Latam Airlines Group and Others, T-43/11 Singapore Airlines and Others, T-46/11 Deutsche Lufthansa and Others, T-48/11 British Airways, T-56/11 SAS Cargo Group and Others, T-62/11 Air France-KLM, T-63/11 Société Air France and T-67/11 *Martinair Holland v Commission* (not yet published).

<sup>47</sup> *Ibid.*

## 5. Case Study: Pakistan International Airways

To further support the argument that privatization is essential for healthy competition in a liberalized market, I will now analyse the example of the Islamic Republic of Pakistan, which is a country with immense potential to have a strong aviation industry. It is seen to be struggling though while trying to gauge active and healthy competition in the aviation sector.

### **A Short History of Aviation in Pakistan**

With a population of over 199 million, Pakistan ranks as the 7<sup>th</sup> largest country in the world in terms of populace.<sup>48</sup> Situated in South Asia, Pakistan is at an ideal geographic location to serve as a hub for international aviation. However, Pakistan has not been able to tap into this market effectively. Currently in Pakistan, there are three airlines that operate internationally and one that operates only domestically.<sup>49</sup> Air transport is at a transitional phase in Pakistan as the country is trying to balance efficiency and consumer benefits that can be gained from market liberalization with the need to ensure that the service offered is safe and reliable.

Aviation falls under the Civil Aviation Authority ('CAA') in Pakistan which was established in 1982. The CAA has three organizational pillars: (1) it serves as the regulatory body responsible for certification and oversight of all air carriers in Pakistan, (2) it is in-charge of airports within Pakistan, and (3) it is responsible for the provision of air navigation services.<sup>50</sup> In the past, these three functions were intertwined, but since the beginning of the restructuring of the CAA in 2006, the separation of these functions has been given top priority to ensure that the CAA can carry out its main role of being the regulatory and supervisory body for Pakistani air carriers with the proper degree of emphasis.<sup>51</sup>

### **The Pakistani System of Bilateral Air Service Agreements**

Pakistan has a total of 53 BASAs registered with ICAO.<sup>52</sup> Pakistan has exchanged the right to designate multiple airlines on international routes in only 11 of these agreements, while all others encompass single designation.<sup>53</sup> The World Trade Organization ('WTO') in 2006, pursuant to its mandate under the General Agreement on Trade in Services (GATS)<sup>54</sup>, developed an Air Liberalization Index ('ALI'), which serves the purpose of assessing BASAs comparatively for how many liberal elements they have incorporated. In light of this assessment, the WTO allots a score (ALI) to a country and its BASAs. Pakistan has exchanged 5<sup>th</sup> freedom rights<sup>55</sup> in 46 out of its 53 BASAs. However, there has been a

<sup>48</sup> The CIA World Factbook. For more information, see <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2119rank.html> accessed 25 May 2017.

<sup>49</sup> Those that operate internationally are Pakistan International Airways (PIA), Shaheen Air International and Air Blue. The fourth airline is Air Indus which now only operates domestic routes.

<sup>50</sup> The Pakistan Civil Aviation Authority Ordinance, 1982. For a full list of the functions of the CAA, see the functions sections of the CAA website: <http://www.caapakistan.com.pk/> accessed 25 May 2017.

<sup>51</sup> Ernesto Sánchez Triana and others, *Greening Growth in Pakistan through Transport Sector Reforms* (2013) available at <https://openknowledge.worldbank.org/handle/10986/15798> accessed 25 May 2017.

<sup>52</sup> See ICAO Doc 9511 World Air Service Agreements (WASA) Database.

<sup>53</sup> Ibid.

<sup>54</sup> The General Agreement on Trade in Services: Annex on Air Transportation Services, S. 5. Available at [https://www.wto.org/english/tratop\\_e/serv\\_e/transport\\_e/transport\\_air\\_e.htm](https://www.wto.org/english/tratop_e/serv_e/transport_e/transport_air_e.htm) accessed 25 May 2017.

<sup>55</sup> These are the rights to fly between two foreign countries on a flight originating or ending in one's own country.

reluctance to include liberal terms on pricing, capacity, and ownership.<sup>56</sup> This has resulted in Pakistan having an ALI score of 7.2, which is not very liberal. This is due to the fact that Pakistan has rarely gone beyond allocating 5<sup>th</sup> freedom rights. The only extremely liberal BASAs that Pakistan has are its almost open skies type agreement with the USA, and its relatively liberal agreements with the UK and the UAE.<sup>57</sup>

### Competition Regime in Pakistan

The Competition Commission of Pakistan ('CCP') was established under the Competition Ordinance in November 2007. The main function of the CCP is to detect and condemn anti-competitive practices taking place within Pakistan and to bring the state of competition law in Pakistan in line with international standards. In October 2010, the aforementioned Ordinance was enacted as the Competition Act 2010, which is '[a]n Act to provide for free competition in all spheres of commercial and economic activity to enhance economic efficiency and protect consumers from anti-competitive behaviour.'<sup>58</sup>

The Competition Ordinance 2007 succeeded the Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance 1970, which in Section 25 exempted state-owned enterprises from its provisions.<sup>59</sup> This was changed by Section 1(3) of the Competition Act 2010, which states that the Act 'shall apply to all undertakings and all actions or matters that take place in Pakistan and distort competition within Pakistan.'<sup>60</sup>

### Current Situation

Pakistan International Airlines ('PIA') is the flag carrier of Pakistan. Established in 1955 as a result of the merger with private airline company Orient Airways,<sup>61</sup> PIA has been the dominant carrier in Pakistan's market since its inception. The airline is owned majorly (87 percent) by the Pakistani government, and in minority (13 percent) by the private shareholders through the Pakistan Stock Exchange.<sup>62</sup>

PIA currently has a fleet of 43 aircrafts<sup>63</sup> and employs between 15,000<sup>64</sup> and 19,000<sup>65</sup> employees. It has an aircraft to employee ratio of 1:418,<sup>66</sup> which is the highest in the world.<sup>67</sup>

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<sup>56</sup> (n 34) CCP Report.

<sup>57</sup> Ibid.

<sup>58</sup> Preamble to the Competition Act 2010. Available at <http://www.wipo.int/edocs/lexdocs/laws/en/pk/pk025en.pdf> accessed 25 May 2017.

<sup>59</sup> Section 25 of the Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970. Available at <http://www.ptfp.com.pk/?/Trade/Content/monopolies-and-restrictive-trade-practices-control-and-prevention-ordinance/Corporate-And-Regulatory> accessed 25 May 2017.

<sup>60</sup> Section 1(3) of the Competition Act 2010.

<sup>61</sup> The Pakistan International Airlines Corporation Act 1956.

<sup>62</sup> Hasnain Iqbal, 'Public Versus Private Ownership — Case of PIA' *The Express Tribune* (15 February 2016).

<sup>63</sup> As per the record found on <https://www.planespotters.net/airline/PIA-Pakistan-International-Airlines> accessed 22 July 2016.

<sup>64</sup> Kamran Haider, Khurram Anis and Faseeh Mangi, 'World's Most Overstaffed Airline Can't Find Stranded Passengers' *Bloomberg Business* (4 February 2016) available at <https://www.bloomberg.com/news/articles/2016-02-04/world-s-most-overstaffed-airline-can-t-find-stranded-passengers> accessed 25 May 2017.

<sup>65</sup> As found at <http://www.privatisation.gov.pk/Transport/PIA.htm> accessed 25 May 2017.

<sup>66</sup> Some commentators have suggested a number as high as 1:700. See Ahmed Yusuf and Ammar Shahbazi, 'The Big Debate: To Sell or Not to Sell PIA?' *Dawn News* (2 February 2016).

It was also dubbed as the world's least productive airline<sup>68</sup> and has accumulated a debt of 300 billion Pakistani rupees, posing yearly losses of around 20-30 billion Pakistani rupees every year.<sup>69</sup> Nevertheless, it still has a little below 40 percent of the market share for international flights originating in or ending in Pakistan<sup>70</sup> along with a domestic market share of almost 75 percent.<sup>71</sup>

The Government of Pakistan has repeatedly tried to privatize PIA, but has failed to do so. The failure has been due to a mix of political and socioeconomic factors that have made privatization quite difficult.<sup>72</sup> The latest efforts came in the form of the Pakistan International Airlines Corporation (Conversion) Ordinance 2015, which was met with fierce opposition and riots<sup>73</sup> from the employees of PIA and consequently the ordinance was retreated into a bill and the Government had to issue a statement promising not to privatize the failing SOE.<sup>74</sup>

Many of the problems faced by PIA are those that many publicly owned airlines face. The overstaffing problem comes from the fact that a job in the flag carrier of the country is often seen as a position of prestige<sup>75</sup> and hence jobs are often given as political favours and handouts.<sup>76</sup> The use of national funds to update fleets and cover the highly capital intensive needs of an airline is another issue that governments, particularly those of developing countries, often face.<sup>77</sup>

### Abuse of Dominant Position

There have been a few occasions where PIA has abused its dominant position in the market. There have also been occasions where such abuse has been forwarded through government policy, which suggests that the argument for lack of privatization leading to anti-competitive behaviour in the market does hold some weight. For example, in the past, private airlines in Pakistan were obligated by the National Aviation Policy ('NAP') to pay a penalty for non-provision of domestic socio-economic or tertiary routes to PIA.<sup>78</sup> Moreover, PIA was given

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<sup>67</sup> Dr Joseph Wilson, 'To Privatize or Not to Privatize, that is the Question: State of Aviation Industry in Pakistan', International Conference on Air Transport, Law and Regulation: Challenges for the Middle East (2009) available at [https://www.mcgill.ca/iasl/files/iasl/Session\\_6\\_Wilson.pdf](https://www.mcgill.ca/iasl/files/iasl/Session_6_Wilson.pdf) accessed 25 May 2017.

<sup>68</sup> (n 45).

<sup>69</sup> (n 47).

<sup>70</sup> Dr Joseph Wilson, 'Increasing Consumer Welfare Through Competition In Pakistan', Competition Commission of Pakistan (2014) Pre-ICN Forum on Competition and Development.

<sup>71</sup> See the decision of the Competition Commission of Pakistan (CCP), available at: [http://cc.gov.pk/images/Downloads/PIA%20Rescheduling-Cancellation%20Order%20\[8%20Dec%202009\].pdf](http://cc.gov.pk/images/Downloads/PIA%20Rescheduling-Cancellation%20Order%20[8%20Dec%202009].pdf) accessed 25 May 2017.

<sup>72</sup> Farhad Kayani, 'Struggle Starts against Privatization of Pakistan International AirLines', *In Defence of Marxism* (24 September 2013) available at <http://www.marxist.com/pia-anti-privatisation-struggle-2013.htm> accessed 25 May 2015.

<sup>73</sup> Shaukat Masood Zafar, 'Privatization of PIA' *Pakistan Tribune* (12 December 2015).

<sup>74</sup> A.B Shahid, 'PIA: Privatization Ultimate Solution', *Business Recorder* (2 February 2016).

<sup>75</sup> James Morley and Brian Samuel, 'Dare To Fail & Other Lessons Learned the Hard Way' (2015) 6 Air and Sea World Bank Handshake available at <https://handshake.pppknowledgelab.org/columns/dare-to-fail/> accessed 25 May 2017.

<sup>76</sup> With estimates suggesting that close to 60% of the recruits are of a political nature. For more information see <http://www.pkhope.com/5-reasons-pia-must-privatized/> accessed 25 May 2017.

<sup>77</sup> David Lawrence, 'Some Lessons From Privatizing National Airlines' *The World Bank Blogs* (26 July 2012) available at <http://blogs.worldbank.org/psd/some-lessons-from-privatizing-national-airlines> accessed 25 May 2017.

<sup>78</sup> This was remedied by the National Aviation Policy of 2007.

preference for designation as the applicable carrier on international routes, although private airlines could have operated any unused or additional capacity available under Pakistan's bilateral international air service agreements.<sup>79</sup>

In the past, PIA has also been given 50 percent rebate in turnover tax as compared to private airlines.<sup>80</sup> The extent to such preferential treatment can be ascertained by the fact that PIA has been allowed to fly even when its license fee was long overdue. Its employees also often get preferential treatment at airports which are mostly public entities.<sup>81</sup>

The NAP of 2007 and now the more recent NAP of 2015<sup>82</sup> have sought to correct many of these anomalies. The latter also tries to foster competition in the airline industry in Pakistan and encourages the entry of new entrants into the market.<sup>83</sup> Moreover, ever since its inception, the CCP has worked to keep track of such activities and this can be exemplified by two cases brought forward against PIA in 2009; namely the cancellation and rescheduling case and the hajj fares case.

### **Case Study: Cancellation and Rescheduling Case**

The CCP investigated whether PIA's policy of charging consumers for rescheduling and cancellation as a proportion of the ticket price violated Section 3 of the then Competition Ordinance,<sup>84</sup> which deals with abuse of dominant position.<sup>85</sup> Upon conclusion of this investigation, it was determined that such a policy was in contravention of the global norms and practices for such charges and did serve as an anti-competitive practice covered by Section 3 of the Ordinance.<sup>86</sup> The CCP did not impose any fines on PIA on this matter upon

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<sup>79</sup> (n 34).

<sup>80</sup> Dr Joseph Wilson, 'Pakistan's Experience Fostering Competition in Air Transportation', 2013 Pre-ICN Forum on Competition and Development.

<sup>81</sup> Ibid.

<sup>82</sup> National Aviation Policy 2015 available at < <http://www.caapakistan.com.pk/upload/AT/NAP-2015.pdf> > accessed 25 May 2017.

<sup>83</sup> Wali Mughni, 'Pakistan's National Aviation Policy (2015): An Unprecedented Opportunity for Global & Regional Aviation Business Entrepreneurs' available at [https://www.academia.edu/14732942/Pakistans\\_National\\_Aviation\\_Policy\\_2015\\_An\\_Unprecedented\\_Opportunity\\_for\\_Global\\_and\\_Regional\\_Aviation\\_Business\\_Entrepreneurs\\_Pakistans\\_National\\_Aviation\\_Policy\\_2015\\_An\\_Unprecedented\\_Opportunity\\_for\\_Global\\_and\\_Regional\\_Aviation\\_Business\\_Entrepreneurs](https://www.academia.edu/14732942/Pakistans_National_Aviation_Policy_2015_An_Unprecedented_Opportunity_for_Global_and_Regional_Aviation_Business_Entrepreneurs_Pakistans_National_Aviation_Policy_2015_An_Unprecedented_Opportunity_for_Global_and_Regional_Aviation_Business_Entrepreneurs) accessed 25 May 2017.

<sup>84</sup> Section 3 reads: 'Abuse of dominant position.- (1) No Person shall abuse dominant position; (2) An abuse of dominant position shall be deemed to have been brought about, maintained or continued if it consists of practices which prevent, restrict, reduce or distort competition in the relevant market; (3) The expression 'practices' referred to in sub-section (2) shall include, but are not limited to; (a) limiting production, sales and unreasonable increases in price or other unfair trading conditions; (b) price discrimination by charging different prices for the same goods or services from different customers in the absence of objective justifications that may justify different prices.'

<sup>85</sup> Ahmed Qadir and Syed Umair Javed, 'Pakistan International Airlines Excessive & Discriminatory Pricing in the Matter of Flight Rescheduling and Cancellation Charges' (24 August 2009) A Report submitted to the Competition Commission of Pakistan [http://cc.gov.pk/images/Downloads/enquiry\\_reports/PIA%20Tickets%20Enquiry%20Report.pdf](http://cc.gov.pk/images/Downloads/enquiry_reports/PIA%20Tickets%20Enquiry%20Report.pdf) accessed 22 March 2016.

<sup>86</sup> Article 3 of the Competition Act 2010.

the agreement that PIA will abandon this policy, which it did shortly after the order was issued.<sup>87</sup>

### **Case Study: Hajj Fares Case**

The second case in which the CCP held that PIA was guilty of abusing its dominant position in the market was when the carrier raised its fares from 80 to 100 percent on its route from Pakistan to Saudi Arabia during the annual Hajj pilgrimage season. The CCP conducted an investigation<sup>88</sup> and concluded that PIA was at fault for illegal and unjustified price discrimination and it levied penalties and fines on the carrier for these violations.<sup>89</sup>

### **Future Outlook**

Pakistan has adopted a cautious approach to the liberalization of its BASAs. A bold move was taken in 1992 when Karachi airport was unilaterally opened up to 7<sup>th</sup> freedom<sup>90</sup> traffic and a very liberal standard of market entry. This seriously hurt PIA such that numerous carriers, particularly from African countries, started operating between Karachi and Dubai and henceforth PIA started to lose its traffic. Consequently, the decision was withdrawn the next year and ever since, Pakistan has not experimented with high levels of liberalization to keep its internal aviation industry secure.<sup>91</sup>

The new NAP of 2015 does seem to point Pakistan into the right direction in terms of promoting a healthy environment for growth in the airline industry. Moreover, the CCP is also doing a good job to ensure that new entrants are facilitated and not discriminated against. This has been evidenced by the fact that the CCP was awarded by the World Bank for ‘successfully promoting pro-competition market reforms, opening of markets and infusion of competition principles in other sectoral policies.’<sup>92</sup>

In terms of what will happen to PIA and the current state of the aviation industry, the government has detailed plans to privatize the failing airline later this year.<sup>93</sup> However, a high degree of uncertainty still looms over this matter, so much so that there is also the proposition of the government setting up a new airline to serve as the future flag carrier of the country.<sup>94</sup>

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<sup>87</sup> Case before the Competition Commission of Pakistan In The Matter of Pakistan International Airlines (12 October 2009) File No. 14/DIR (M&TA)/PIA/CCP/09.

<sup>88</sup> Shaista Bano ‘Inquiry Report Hajj Air Fares Case’ available at [http://cc.gov.pk/images/Downloads/enquiry\\_reports/Haj%20Fares%20Inquiry%20Report.pdf](http://cc.gov.pk/images/Downloads/enquiry_reports/Haj%20Fares%20Inquiry%20Report.pdf) accessed 25 May 2017.

<sup>89</sup> Case Before The Competition Commission of Pakistan In The Matter of Pakistan International Airlines (10 June 2009) File No. 05/Dir (M & TA)/Hajj/CCP/09.

<sup>90</sup> This is the right of an airline to carry revenue traffic between two points totally unconnected to its home country.

<sup>91</sup> (n 34.).

<sup>92</sup> This award was a result of the CCP advocacy which led to two new entrants into the market for travel between Pakistan and Saudi Arabia for the Hajj season. The CCP recommended that the bilateral agreement between the two states be amended to allow for more competition and this was implemented which resultantly opened up the market to more airlines. ‘Dr Wilson Presented Award for Winning WB’s Contest’ *Daily Times* (10 November 2014).

<sup>93</sup> Mohammad Asghar, ‘PIA Privatisation Postponed for Six Months’ *Dawn* (30 January 2016).

<sup>94</sup> Shahbaz Rana, ‘Pakistan Airways’ Registration Clouded in Confusion.’ *The Express Tribune* (23 February 2016).

## Recommendations for PIA

It is not a given that privatization will lead to a revival of PIA. It is also not a given that privatization is the only solution to its woes. However, it is fairly certain that privatization will increase competition between the carriers in Pakistan such that all carriers will be on the same playing field and all carriers will be solely pursuing the goal of trying to make profit. The central thesis of this article is that privatization increases competition and is an essential feature of a liberalized aviation market. More competition does not necessarily mean that an airline will thrive because there are many factors that go into the making of a successful airline. This section will consider both private and public airlines and will look at the factors that allow an airline to be successful and profitable. It will also look at some of the problems that privatization, especially if not done properly, can bring to an airline like PIA.

### 6. Running a Successful Airline

Whether private or public, an airline is a business and must be operated as such keeping in mind the current conditions of the market. There are many examples of airlines across the world that are still owned by government entities and are regarded among the world's best airlines. The argument put forth in this article emphasizes on the ability to compete in local markets for state-owned airlines. This ability to compete is independent of an airline's performance on a global level.

The success of an airline is not entirely dependent on its ownership but rather on the way an airline is run. There are many elements that go into the making of a successful and profitable airline, and these can be accomplished in both private and public entities. These range from the structure of the company to outsourcing tasks that need not be done internally. These elements will now be briefly discussed.

#### Company Structure

It is essential that an airline has a structure that allows it to partake in building a competitive advantage as opposed to being encapsulated in organizational and hierarchical complexities. Continental Airlines work with a structure that establishes a very clear chain of command<sup>95</sup> and this allows for maximum productivity and efficiency, both of which are some of the most important elements of a profitable airline.<sup>96</sup>

As already stated, one of the issues plaguing PIA at the moment is a highly inefficient aircraft to employee ratio.<sup>97</sup> Some of the world's best airlines have aircraft to employee ratios ranging from 1:29 to 1:231. However, the ratio maintained by PIA is one of the worst in the world, and thus reducing this is the key to improvement. For example, Air India reduced its ratio from 1:300 to 1:108 in a matter of two years and this has led to a significant increase in its efficiency.<sup>98</sup>

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<sup>95</sup> F David, *Strategic Management: Concepts and Cases* (Pearson 2011).

<sup>96</sup> K Harigopal, *Management of Organizational Change* (Response Books 2006).

<sup>97</sup> For a full division of labor within the Company, see Abid Hussain, 'Herald Exclusive: Plane Truths' *Dawn* (26 March 2014).

<sup>98</sup> Aditya Anand, 'AI Cuts Down Staff-Per-Aircraft Ratio From 300 To 108 in 2 Yrs' *Mumbai Mirror* (9 October 2015).

## Culture

It is important for all the employees in an airline to be focussed on providing an excellent customer experience and it is crucial that there is a common goal within the organization. Southwest Airlines' cost consciousness and employee commitment has shown to directly bolster profitability and operational excellence.<sup>99</sup> Moreover, Singapore Airlines, which has repeatedly been regarded as the 'best airline' and having the 'best cabin crew service over the years', focuses immensely on reward and recognition mechanisms for employee performance.<sup>100</sup>

PIA struggles with employee morale due to a high degree of uncertainty associated with the airline.<sup>101</sup> This is another important element for the success of an airline and hence must be changed in order to increase profitability.

## Strategic Alliances

An airline by its very nature is an international entity, and must cooperate and form alliances with other players in the international industry to offer more services and routes. The global trend is now shifting towards alliances and PIA has done well in this sector by strengthening its alliance with Etihad in an attempt to offer more routes to consumers.<sup>102</sup> However, it is imperative that further alliances are sought to make PIA a stronger regional player in the air transport sector.

## Planning and Forecasting

Research, planning and forecasting are some of the key features that should guide where an airline is headed in the long run. This has been emphasized by the case of United Airlines, which has shown greater profits after taking an approach with careful planning and research.<sup>103</sup> As already pointed out, PIA is being overshadowed even when it comes to traffic originating in Pakistan by other international carriers such as Emirates and Etihad, and this can be changed only after a careful restructuring of the approach taken towards the airline.

## Technology

Since airlines rely upon aircrafts as their primary source of income, it is imperative for them to stay up-to-date with the technology and advancements in the aircraft industry and to have a readily updated fleet. The average age of a PIA aircraft is 14 years, with many aircrafts having been out-dated.<sup>104</sup> Cathay Pacific can be seen as an example in this sector with regard

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<sup>99</sup> Eisner Daramaju, A. and G Dess, 'Jet Blue Airlines; Is the Blue Fading?' in Gregory G. Dess, Alan B. Eisner and GT Lumpkin (eds) *Strategic Management: Texts and Cases* (McGraw 2007).

<sup>100</sup> J Wirtz, L Heracleous and N Pangarkar, 'Managing Human Resources for Service Excellence and Cost Effectiveness at Singapore Airlines' (2008) 18(1) *Managing Service Quality* 1.

<sup>101</sup> Shahbaz Rana, 'New PIA Act Strips Workers of Civil Service Protection' *The Express Tribune* (22 April 2016).

<sup>102</sup> For details of codeshare, see <http://www.etihad.com/en-es/about-us/etihad-news/archive/2015/etihad-airways-and-pakistan-international-airlines-announce-new-codeshare-agreement/> accessed 25 May 2017.

<sup>103</sup> H Golightly, 'The Airlines: A Case Study in Management Innovation' (1967) *Business Horizon* 67-75.

<sup>104</sup> Online Correspondent, 'PIA Welcomes Additional Aircraft, Fleet Increases to 27' *Express Tribune* (16 November 2015).

to heavy emphasis on the technological advancements and an up-to-date fleet of aircrafts to maximize profitability.<sup>105</sup>

### **Marketing and Branding**

It is of utmost importance for an airline to have a good brand image and to market it in a way that is appealing to the right audience. The PIA brand image has been tarnished with delays and incidents on many occasions in the past. For instance, there were 1,367 delays in August 2014 alone.<sup>106</sup> It is imperative to address this issue to put the airline on a more profitable pathway.

### **Outsourcing**

Strategic outsourcing, such that the business can focus on the core activities required to build excellence, is essential for the success of any airline.<sup>107</sup> Areas such as maintenance and many internal roles can be easily outsourced to boost productivity and shift the focus towards the key activities of the airline including offering satisfying and good air transportation services.<sup>108</sup> This is another area that PIA has struggled with, and thus many of its inefficient sectors can be considered for outsourcing to achieve better results.

## **7. The Risks Associated with Privatization**

Privatization may help PIA in addressing some of its issues that are inherent or often found in airlines owned by states. However, it must be kept in mind that this is not an easy solution or one that is bound to be effective. Privatization of an airline can be a very complicated process and may also lead to a situation much worse off than before. Still, privatization will certainly increase competition and will also put PIA on the route of being a more efficient airline. Therefore, once privatized, it will be driven towards making profit.

Misjudgement and mismanagement when privatizing an airline can lead to more loss than benefit as was seen in the case of the failed privatization of Air New Zealand, where a miscalculated privatization without proper assessment of the books of the contributing party resulted in Air New Zealand falling from being one of the world's top 20 airlines to requiring rescue packages from foreign investors.<sup>109</sup> Moreover, there is also an associated risk of losing a flag carrier altogether upon privatization as was seen in the case of Nigeria Airways.<sup>110</sup>

The question of whether or not privatization is the solution to fix the problems associated with PIA is a tough one and not within the domain of this article. Some commentators have suggested that there is a need only for better management, governance

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<sup>105</sup> Adrian Schofield, 'Multi-Prong Model Key To Cathay Success, CEO Says' *Aviation Week Network* (14 April 2015)

<sup>106</sup> Staff Reporter, '1,300 PIA Flights Delayed Last Month' *Dawn* (10 September 2014).

<sup>107</sup> D Jennings, 'Strategic Sourcing: Benefits, Problems and a Contextual Model' (2002) 40 (1) *Management Decision* 26.

<sup>108</sup> Stephen M Rutner and John H Brown, 'Outsourcing As An Airline Strategy' (1999) 4(2) *Journal of Air Transportation Worldwide* 22.

<sup>109</sup> E Weizsäcker and others (eds) *Limits to Privatization: How to Avoid Too Much of a Good Thing* (Earthscan 2005).

<sup>110</sup> Chris Aligbe 'National Carrier: Our Ten Failed Attempts (1960-2014)' *Vanguard* (15 August 2015).

and fleet expansion and not complete privatization.<sup>111</sup> Moreover, the fate of the employees of PIA is also an important consideration to be taken into account before anything can be finalized. Despite there being an urgent need to cut down the employee count in PIA, such a process should not be initiated without a plan to accommodate them elsewhere.<sup>112</sup> Privatization will point the airline towards adopting an efficient and profitable strategy. However, it could also result in major losses. In either cases though, privatization will be good for competition in the aviation industry of Pakistan.

## 8. Conclusion

Historically, flag carriers have always had a dominant position in their national markets due to the existence of the regulatory and policy regimes embedded within the international civil aviation at its inception. Such dominance may be a stepping-stone to abuse in the form of monopolisation and predatory behavior against new entrants.<sup>113</sup> Such predatory behavior highly limits market access for new entrants and may be seen in a number of forms such as capacity dumping, predatory pricing, and even limiting access to Global Distribution Systems.<sup>114</sup> Moreover, predation and abuse of dominant position type practices are more likely to occur in cases where the flag carrier is working under the auspices of the national government and the competition law regime of the country is not strong.<sup>115</sup>

A new phenomenon in the aviation industry is the rise of the three Middle Eastern carriers (Etihad, Emirates and Qatar Airways). All three of them are heavily subsidized by their respective governments and pose a major threat to the competitive nature of the aviation market so much so that while in a system of open skies, carriers compete on the basis of what they can offer, the subsidization of these carriers allows them to offer much more than what other carriers can offer, and this raises many issues of unfair competition.<sup>116</sup>

The privatization of the state-owned and controlled flag carrier is an important element in liberalization and deregulation of a nation's aviation industry. This has been exemplified in both the EU and US. When a state continues to provide both administrative and financial support to its national airline, other airlines within the same market are discriminated against as they do not have access to similar resources. This leads to a distortion of competition and an abuse of the dominant position acquired by the flag carrier. Moreover, such practices also contribute towards the flag carrier becoming inefficient as was

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<sup>111</sup> Dr Asad Zaman, 'Don't Privatize PIA, Improve its Governance' *The Express Tribune* (15 February 2016); Online Correspondent 'Fleet Expansion Key to PIA's Revival Plan' *The News International* (17 December 2015).

<sup>112</sup> News Desk, 'Concerns of PIA Employees Must be Addressed: Imran Khan' *The Express Tribune* (2 February 2016).

<sup>113</sup> Pablo Mendes De Leon, 'Competition in International Markets: A Comparative Analysis' Organisation for Economic Co-operation and Development, (13 June 2014) available at [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/WD\(2014\)77&docLang=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/WD(2014)77&docLang=En) accessed 25 May 2017.

<sup>114</sup> Commission decision against British Airways case C-95/04 P.

<sup>115</sup> Ishrat Hussain, 'Why Privatization is Necessary for Economic Growth in Pakistan.' (2005) <[https://ishrathussain.iba.edu.pk/speeches/economicManagementPolicies/17\\_Aug\\_05.pdf](https://ishrathussain.iba.edu.pk/speeches/economicManagementPolicies/17_Aug_05.pdf)> accessed 2 January 2017.

<sup>116</sup> 'Restoring Open Skies: The Need to Address Subsidized Competition from State-Owned Airlines in Qatar and the UAE' (2015) available at <http://travelskills.com/wp-content/uploads/2015/03/Presentation.pdf> accessed 25 May 2017.

demonstrated by the case of PIA. ‘The very thesis of liberalization is distorted when [state owned] entities are not privatized.’<sup>117</sup>

It is the opinion of the author that to promote healthy competition in the local aviation market, it is necessary to privatize the national carrier or to provide the same amount of support to all other carriers. The author does not assert that privatization results in the creation of an efficient airline, nor does he assert that publicly owned airlines cannot fairly compete with other airlines. Rather, it is simply suggested that it is very easy to achieve a dominant position when one entity is backed by the state and others are not.

The CCP has been effectively able to ensure that the aviation industry of Pakistan retains its competitiveness and the private airlines are not discriminated against. This is to ensure a ‘level-playing field is a *sine qua non* for the new entrants to grow and to compete effectively with the local State-owned airline and other international airlines.’<sup>118</sup> Despite some suggestions that policies of privatization and increasing competition are conflicting,<sup>119</sup> the author’s view is that privatization is an essential element for the creation of a competitive airline industry. Moreover, privatization of the airports also promotes healthy competition and growth in the aviation industry and thus should be the next target for governments, including the Government of Pakistan, after the latter manages to privatize its national airline.<sup>120</sup>

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<sup>117</sup> Dr Joseph Wilson, ‘To Privatize or Not to Privatize, that is the Question: State of Aviation Industry in Pakistan’ International Conference on Air Transport, Law and Regulation: Challenges for the Middle East. <[https://www.mcgill.ca/iasl/files/iasl/Session\\_6\\_Wilson.pdf](https://www.mcgill.ca/iasl/files/iasl/Session_6_Wilson.pdf)> accessed 2 January 2017.

<sup>118</sup> Dr Joseph Wilson, ‘Pakistan’s Experience Fostering Competition in Air Transportation’ (2013) Pre-ICN Forum on Competition and Development. <http://studylib.net/doc/8740041/pakistan-s-experience-fostering-competition-in-air-transp.....> accessed 2 January 2017.

<sup>119</sup> Jacob W.F. Sundberg, ‘Airline Deregulation Legal and Administrative Problems’ (2000) 39 Scandinavian Law Review 439.

<sup>120</sup> A case for abuse of dominant position can be seen with regard to charges of entry fees at Benazir Bhutto International Airport. See Policy Note of the CCP Re: Entry Fee at the Benazir Bhutto International Airport Imposed By Civil Aviation Authority.