**COMPETITION IMPACT OF AIRLINE CODE SHARING AGREEMENTS**

**By-**

**Arjun Masters (4th Year) & Toshit Shandilya (4th Year),**

**National Law University, Delhi**

**ABSTRACT**

With the liberalization of air space in the last decade in India there has been a sharp increase in the competitive environment of the aviation industry. The ‘Code sharing’ agreements, which allow different operating airlines to form an alliance allowing the access to each others flights while the tickets are sold by one of them are on a rise. The recent agreements between the British Airways and the Kingfisher Airlines and the one between Indian domestic operators Jet and Kingfisher have raised serious competition issues. The relatively new competition watch- dog has to carve out the strategy to deal with issues such as Anti-competitive agreements and the resultant abuse of dominance. The possible cartelization may affect the market and consequently the consumers to a great extent. Similar situations have been dealt by western counterparts of the CCI in EU and the US, the Indian Competition Act has the provisions dealing with the issues that may attract antitrust liability. In such cases, the strategies adopted in various jurisdictions of the EU, U.S. and the South Africa may be a huge guide in dealing with the issue, though not in entirety but certainly as guidelines. The aim of this paper is to highlight the strategies to deal with the possible anticompetitive outcome of the code sharing agreements to serve as a model for the evolving competition law jurisprudence in India.

1. **BACKGROUND**

The past few decades have seen a mark shift in the regulation of the air traffic industry, from a highly regulated framework towards more liberal open skies.[[1]](#footnote-1) Nevertheless, it still remains one of the most regulated and restricted industry in the international trade. Airlines operate in a multi tier (National, regional and International) regulatory framework, as a consequence for which they have restricted access to the air space of the other states. Such a scenario acts as an impediment to establish a global reach for the airlines.[[2]](#footnote-2) Therefore, consumer preferences and competition between rival airlines have increasingly prompt carriers to form strategic alliances.

Code-sharing amongst air carriers became popular within the United States following the deregulation of the domestic air travel market at the end of the 1970s, from there spreading into international markets. In Europe, code-sharing similarly became more popular following EU deregulation in 1993. [[3]](#footnote-3)

The current literature generally agrees that complementarity in route networks among alliance partners ought to benefit consumers both through reduced fares and expanded networks. However, suppose prior to the code-share alliance both airlines concerned offered competing online service in the market, then this portion of the airlines’ route networks are overlapping, and the alliance could facilitate price collusion.[[4]](#footnote-4) To the extent that collusion occurs on overlapping routes, fares on these routes may increase, causing consumers’ welfare to fall. This paper’s main focus is on the potential collusive effect on products that traditionally competed prior to the alliance, rather than code-sharing per se.

While the existing literature has largely employed reduced-form econometric estimation to quantify the price effects of existing airline code-share agreements,8 such an approach may not be sufficient for policy makers who must make decisions on whether to approve proposed code-share alliances.[[5]](#footnote-5) Before approving a code-share alliance, policy makers would like to have a reasonable answer to the following question: Given the existing level of competition between the potential alliance partners in a particular market, what is the maximum amount by which prices will increase if they collude on prices? Note that the question is posed in the context of a worst case scenario, since a code-share alliance does not automatically imply that partners will collude on prices for overlapping routes. An answer to this question effectively provides an estimate of the potential cost to consumers of the alliance. To the extent that policy makers can estimate the potential cost, then they can compare them to the potential benefits that the alliance partners will no doubt emphasize. As such, we need a structural econometric model designed to quantify the potential competitive effects of a proposed alliance on potential partners’ overlapping routes.[[6]](#footnote-6)

1. **DEFINITION AND BASIC TYPES OF CODE-SHARING**

In its most basic form, a code-share agreement simply allows for a flight operated by one carrier (which will offer the flight for sale under its own code or designator and associated flight number, such as ‘XY1234’), also to be marketed by another carrier, under that other carrier’s code and flight number (e.g. ‘PQ5678’). The carrier operating the flight (in this case, carrier with code ‘XY’) is known as the “operating carrier”, while the carrier marketing the flight under its own code (in this case ‘PQ’) is known as the “marketing carrier”.

In principle there is no limit to the number of marketing carriers on any one flight, although Global Distribution System (GDS) system limitations restrict the number to 11. However, it should be noted that GDS rules, which govern the systems that are used to market and sell airline tickets, prevent more than one marketing carrier being displayed for any proposed journey between a given pair of origin and destination (“O&D”) airports.[[7]](#footnote-7) Thus, for example, at least seven airlines market code-share flights on BMi-operated flights between London Heathrow and Edinburgh; however, of these, only Lufthansa is able to market the London-Edinburgh O&D journey. The other carriers that put their code on the London-Edinburgh route do so as part of journeys originating from behind London.

The carrier that issues tickets to the passenger for a journey involving a code-share flight is known as the “ticketing carrier”. Where the complete journey does not involve a third carrier, the ticketing carrier will generally be the same as the marketing carrier (unless the ticket is issued by the operating carrier itself, in which case no code-sharing is involved).[[8]](#footnote-8) Where a third carrier is involved in a passenger’s journey, the carrier issuing the ticket may, in some cases, be neither the operating nor the marketing carrier, but part of the journey may, nevertheless, be booked under the marketing carrier’s code for a flight operated by the operating carrier. This can cause problems in revenue settlement if the operating carrier, which in general accepts the ticket coupon for carriage on the flights that it operates (or equivalent electronic ticketing procedure), has no interline relationship with the ticketing carrier.[[9]](#footnote-9)

1. **CODE SHARING: HISTORICAL EVOLUTION AND FEATURES**

Historically, code-sharing arose out of the increasing use of Computer Reservations Systems (CRSs, now known as Global Distribution Systems, GDSs) by travel agents in the 1980s and 1990s.[[10]](#footnote-10) Unlike airlines’ own reservations systems, CRSs were required to be “neutral”, not favouring one airline’s flights above another. A set of display rules was agreed within the industry, with the endorsement of the authorities, in both the US and the EU. One of these rules, applying to journeys involving a connection, gave higher priority to “online” connections (i.e. those between two flights of the same airline) than to interline connections (those involving fights from different airlines).[[11]](#footnote-11)

In response to this rule, airlines adopted code-sharing, which allowed connecting flights operated by two different airlines to appear, as far as the CRS was concerned, to be an “online” connection, and hence appear higher up the CRS screen than it otherwise would (and therefore have a greater chance of being sold). [[12]](#footnote-12)With the ending of the CRS display rules in the US (though not in the EU), and with the now reducing importance of CRSs as direct selling channels, especially the internet, have become more important, the original motivation for code-sharing has reduced. However, airlines clearly find the practice advantageous, and it is now widespread across the industry, and is no longer confined to connecting flights.[[13]](#footnote-13)

1. **MOTIVATION FOR CODE-SHARING**

The underlying motivation of airlines in entering into code-share agreements is to broaden the offer that airlines can make to customers in terms of the number of destinations and, in some cases, the flight timings that they can offer potential customers, without the costs and difficulties involved in additional investment in equipment or in mergers with other airlines (which may in any case be prohibited by legislation or international agreements).[[14]](#footnote-14)

Code-share agreements also enhance the “presence” of an airline in markets where it would otherwise have no profile (usually at the end of a route away from the airline’s home country), and hence facilitate the marketing of its services, allowing its seats to be sold via a marketing carrier which may be much better known in that market. [[15]](#footnote-15)(In contrast, low cost carriers believe that market presence can be achieved through advertising and direct selling channels at both ends of a route, and therefore generally do not feel the need to enter into code-sharing agreements.)[[16]](#footnote-16)

Code-share agreements enable an airline to market a flight operated by another carrier, and of course airlines are only willing to use their brand in this way if they are confident that the other carrier is safe and has a suitable product. The existence of a code-share agreement with a partner airline can therefore give confidence to both customers and distribution channels that journeys involving the partner can be sold with the expectation of a good overall level of service, in terms of suitability of the product and seamlessness of ticketing and flight connection arrangements.[[17]](#footnote-17)

Airlines believe that these factors – enhancing customer reach, widening the offer to customers and giving confidence to the market about products offered in combination with other carriers – will generate additional traffic, and hence revenue, at relatively low cost[[18]](#footnote-18). For example, a figure of 20% was mentioned by one airline as an example of the expected increase in passenger traffic when an interline connection is upgraded into a code-share connection.

However, it is possible that part of the motivation of carriers in entering into code-share agreements is to allow them, jointly, to dominate a market, allowing capacity to be restricted or prices to be raised (or to remain high), resulting in disadvantages for purchasers and discrimination against other airlines. It is part of the purpose of this study to identify situations in which this is more likely to occur.[[19]](#footnote-19)

Since the airline industry is a differentiated products industry, air travel demand is derived from a discrete choice model where each consumer chooses the product with the bundle of characteristics that maximizes her utility. The discrete choice approach to modeling consumer demand has been used extensively in differentiated products industries.9 This approach has the advantage of allowing the researcher to explicitly model consumers’ heterogeneity, which is crucial in differentiated products industries.10

1. **CODE SHARING AND COMPETITION LAW**

Although most airline alliance partners code-share on flights (whenever permitted by regulators), not all code-share agreements are between alliance partners.[[20]](#footnote-20) While codeshare agreements therefore represent a lower level of co-operation than full membership of the airline alliances, they nevertheless involve significant levels of coordination between the airlines involved. In addition to the use of an airline’s code on a flight operated by a different airline, code-share agreements always involve an underpinning set of operational and commercial agreements concerning at least access to, and prices for, seat inventory, and in many cases additional features such as changes to separate agreements allocating revenue and shared frequent flyer programmes.[[21]](#footnote-21)

Antitrust enforcement is critical to ensuring that the benefits of airline competition sought by Congress are realized by consumers.[[22]](#footnote-22) The Antitrust Division has maintained an active antitrust enforcement program in the airline industry for many years.[[23]](#footnote-23) During the 1980s, the Division recommended that the Department of Transportation (which had authority over airline mergers until 1989) disapprove two mergers, TWA/Ozark and Northwest/Republic, which involved the merger of the only two hub carriers at St. Louis and Minneapolis respectively.[[24]](#footnote-24) The merging carriers were the only airlines providing nonstop service between the hub city and smaller cities in the surrounding region (such as Bismarck, North Dakota and Cedar Rapids, Iowa).[[25]](#footnote-25)

In August 2002, Delta, Continental, and Northwest submitted code-sharing and frequent-flyer program reciprocity agreements to the U.S. Department of Transportation (DOT) for review. The DOT expressed concerns about the potential competitive effects of the proposed Delta/Continental/Northwest code-sharing alliance.[[26]](#footnote-26) The DOT’s main concern lies in the significant extent to which the three airlines’ route networks overlapped, which is unlike any other existing domestic alliance. The DOT’s analysis revealed that the three airlines offered overlapping services in 3,214 markets accounting for approximately 58 million annual passengers. Given the broad nature of discussions that is required to implement the alliance, the DOT is concerned that such communications among the carriers may result in collusion, either tacit or explicit, on fares and service levels

1. **EFFECTS OF CODE SHARING: AIRLINES**
2. **Traffic and revenue**

Code sharing potentially enables the partner airlines to increase their traffic and revenue (and thereby profits). This will often be at the expense of competing airlines. However, some of the airlines’ gains may come from new traffic stimulated by increased competition among alliances and between alliances and other airlines (General Accounting Office 1995). The extent of the gains to the alliance partners will be affected by factors such as the scope of the code sharing network and the degree of integration between the carriers.[[27]](#footnote-27)

Airlines involved in code sharing may currently be achieving first mover advantages. Code sharing mainly affects the relative attractiveness of individual airlines and it might be argued that, in the longer term when all airlines are able to enter into such arrangements on a large number of routes, the benefits will be limited to traffic generation as there will no longer be traffic diversion benefits to individual airlines.

The potential sources of traffic and revenue diversion attributable to code sharing are larger networks, better co-ordination of operations, improved service frequency, more attractive frequent flyer schemes and CRS display advantages.[[28]](#footnote-28)

1. **Network size**

In an environment of globalisation and carrier alliances, the ability of an airline to offer services to a wide range of destinations is an important marketing mechanism. Code sharing enables an airline to expand the number of destinations that it advertises in its promotional material and flight schedules. Network expansion through other strategies, such as mergers or acquisition of other carriers, is often constrained by foreign ownership laws and nationality clauses in bilateral air service agreements. Codes haring may provide a mechanism to deal with some of these restrictions, particularly where a foreign airline is prevented from operating past a small number of international gateways in a large market such as the US. There may also be marketing benefits to an airline if a code share arrangement provides access to an attractive airport that it would otherwise be unable to access. For example, a code share arrangement with Virgin Atlantic enables Delta to advertise non-stop flights to Heathrow, an airport that it is unable to serve with its own aircraft (Nuutinen *1995*). Alternatively, code sharing may provide an airline with increased access (through a partner airline’s operations) to landing slots, gates and/or terminal space at an airport that it already serves.

Acode share agreement may enable a carrier to enter, or retain a presence in, thin markets that it cannot serve profitably on its own[[29]](#footnote-29). For example, Qantas code shares with Air Vanuatu on the Australia-Vanuatu route as load factors would not be viable if it introduced its own aircraft on to the route. Code sharing may also be used by a carrier which wants to access new markets without incurring the *sunk* costs associated with launching additional services using its own aircraft.

1. **Co-ordination of operations**

Improved co-ordination of services associated with code sharing may strengthen the competitive position of participating airlines. This factor will be particularly important in cases where it provides improved access to domestic feed (and distribution) for international airlines which have limited access to behind-gateway traffic as a result of restricted cabotage rights, nationality clauses in bilateral agreements or constraints on foreign ownership. For example, an arrangement with USAir provides British Airways with code share access to 52 cities in the US in place of its previous interline arrangements with several US carriers.

As noted earlier, in assessing the impact of code sharing it is important to distinguish any benefits that could be achieved from other aspects of an alliance. However, the role (and effect) of code sharing may be very difficult to isolate. For example, it has been argued that a common flight code acts as a signal to passengers that **two** airlines are co-operating in the provision of a connecting service and that many desirable product characteristics (for example, co-ordinated schedules, single check-in and shared frequent flyer programs) are being provided (Civil Aviation Authority 1994, **57).[[30]](#footnote-30)** In this situation, code sharing would provide a marketing benefit to the airlines (and a benefit to consumers in terms of information about service quality) even if it was not a necessary input into achieving improved co-ordination.

1. **Service frequency**

Code sharing may enable a carrier to market more frequent services on particular routes. For example, as noted earlier, the arrangement between Ansett and MASon the Australia-Kuala Lumpur route enables both carriers to offer more frequent services than if each carrier only sold seats on services operated by its own aircraft.

1. **Frequent flyer schemes**

Acode share arrangement' may increase the number of routes or services on which a traveller is able to obtain frequent flyer points with a particular airline.[[31]](#footnote-31) This will make the airline more attractive to some travellers and potentially divert traffic from competing airlines. However, these benefits will not always be attributable to code sharing since reciprocal benefits under frequent flyer schemes can be provided without code sharing arrangements.[[32]](#footnote-32)

For example, members of Ansett's frequent flyer program can earn points on flights with Cathay Pacific but there are no code share arrangements between the two airlines.

1. **Cost factors**

Expansion of a carrier’s network through code sharing potentially provides the airline with economies of scope and density. Economies of scope will be achieved if code sharing enables the partners to serve new markets without having to expand other parts of their operation to accommodate the new markets.[[33]](#footnote-33) There may also be economies of scope[[34]](#footnote-34) in terminal operations.[[35]](#footnote-35) A code share arrangement which increases the traffic of the partner airlines on existing routes and services will result in economies of density since there will be more intensive use of fixed facilities and aircraft (Gellman Research Associates 1994,24-25).

Code sharing may enable an airline to gain or maintain a presence on a route without having to operate equipment on that route.[[36]](#footnote-36) This will provide cost savings on thin routes through lower operating costs or higher load factors. It may also enable an airline to provide services using another carrier which has lower costs as a result of factors such as more suitable aircraft.[[37]](#footnote-37) For example, an airline which operates larger aircraft such as the B747 on transcontinental routes may find that on short, low density routes it is more economical to code share with another carrier which operates smaller aircraft such as the B737.[[38]](#footnote-38) In addition, code sharing may enable an airline to deploy its own aircraft and resources to more profitable routes.[[39]](#footnote-39)

In some cases, code sharing facilitates an airline’s entry into new markets by reducing the costs involved, particularly costs that would be irretrievable (that is, sunk costs).[[40]](#footnote-40) For example, the arrangement between Virgin Atlantic and MASenables the new entrant (Virgin) to gauge the demand for its Europe-Australia services without incurring the costs of operating its own aircraft on all sectors of the route.[[41]](#footnote-41)

1. **EFFECTS OF CODE SHARING ON CONSUMERS**

If competition is effective, code sharing benefits to the airlines will be passed on to consumers. Consumers may also receive other benefits such as access to larger networks, better co-ordination of flights, more frequent services, lower fares, wider choice of carriers and better access to frequent flyer rewards. However, there are potentially costs, particularly in terms of consumer deception.

1. **Network size**

**It** was noted earlier that code sharing enables an airline to expand the number .of destinations that it advertises in its promotional material and flight schedules.[[42]](#footnote-42) Development of a larger network will provide benefits to consumers. If the arrangements simply involve the addition of the airline’s code to existing interline services without any improved co-ordination of services between the partners, it could be argued that the benefits to consumers would be minimal or non-existent.

A code share arrangement may also provide consumers with improved arrangements for baggage handling, access to lounge facilities or check-in facilities.[[43]](#footnote-43) This could occur where an airline achieves access to better facilities operated by its partner at an overseas airport or where the two airlines are able to combine and upgrade their facilities at an airport.

Co-ordination **of** operations.

The replacement of interline arrangements by code share services may provide significant benefits to consumers through better co-ordination of schedules and transfers. It seems likely that, where code sharing is part of a broader alliance between two carriers, there will also be improvements in areas such as faster transfer times, easier connections for passengers, through fares and baggage check-in through to the final destination. However, as noted earlier, in assessing the impact of code sharing it is important to consider whether the improved co-ordination would have been possible in the absence of code sharing.

1. **Service frequency**

Where code sharing enables a carrier to market more frequent services on a particular route, there may be benefits to consumers.[[44]](#footnote-44) For example, a passenger who travels outbound on a particular airline’s aircraft will have a greater range of options for the return flight if the airline code shares with another carrier which offers flights at different times on the same route. In addition, a return air fare with one airline would generally be cheaper than separate fares for inbound and outbound flights with two different airlines (for given quality of service). Code sharing will therefore potentially enable a consumer to access more convenient flights, or alternatively to travel on specified flights at a lower total fare, in some circumstances.

1. **Fares**

It was noted earlier that code sharing potentially provides significant benefits to airlines in terms of lower operating costs. These may benefit consumers if the cost savings are passed on to them in the form of lower fares (compared to the base case).[[45]](#footnote-45) However, where code sharing is accompanied by other cooperative arrangements between airlines with significant market shares, there may be some reduction in competition with the result that the cost savings will not flow on to consumers.

1. **Frequent flyer schemes**

Consumers who are members of frequent flyer schemes receive greater benefits if they maximise their travel with the airlines operating the schemes to which they belong. ***As*** passengers flying on code share flights will often be eligible for frequent flyer points for these flights, code sharing may provide additional points (and therefore increased benefits if reward thresholds are passed) to consumers.[[46]](#footnote-46) However, as noted earlier, these frequent flyer benefits will not always be attributable to code sharing since they can be provided without code share arrangements.[[47]](#footnote-47)

Additional benefits attributable to code sharing are most likely to arise in situations where alternative carriers on the route do not have a frequent flyer scheme or the passenger only has membership of a scheme operated by one of Australia’s domestic carriers.[[48]](#footnote-48) For example, code sharing by Qantas on services operated by Solomon Airlines and Air Vanuatu provides an opportunity for members of the Qantas scheme to earn frequent flyer points that would otherwise be unavailable on these routes.

1. **Consumer deception**

A consumer may feel misled if an airline or travel agent does not indicate at the time of booking that a different airline will be operating all or part of a service under the booking airline’s code and number.[[49]](#footnote-49) One decision to book a seat on a particular flight will often be affected by the consumer’s perceptions of non-price factors such as safety, on-board service, reliability or aircraft type. Since it is difficult for a consumer to obtain detailed information on these non-price factors for multiple airlines, the identities of the airlines operating flights will often be sued as an indicator of these factors.

Thus, if the consumer is unaware that another airline with potentially different characteristics will operate the flight, he or she will select the flight using inadequate information and potentially make a sub-optimal choice. While the consumer may be able to rely on the airline issuing the ticket to choose code share partners with similar service quality in some cases, there will also be situations where the partner has significantly different characteristics.

The potential lack of consumer transparency with code share arrangements becomes particularly significant when airlines base their marketing. On characteristics such as a high level of safety, superior on-board service or a specific aircraft. [[50]](#footnote-50)When these undertakings are not adequately discharged by a partner airline which has lower standards than the airline which issued the ticket, consumers will feel deceived if they were unaware at the time of booking of the carrier operating the service.[[51]](#footnote-51) While such inconvenience may also occur with an interline service, potential problems may be less apparent to the intending passenger at the time of booking a seat on a code share service.

Similarly, a code share service may give the impression that a particular flight is non-stop or involves only refuelling stops. However, if one airline operates part of the service and another airline operates a connecting service to the destination, the consumer may suffer unforeseen inconvenience from the need to transfer to another aircraft. A change of aircraft involves both physical in convenience for the passenger and an increased possibility of lost luggage.

Qantas has indicated that steps are taken to ensure that consumers are not misled by its joint service arrangements.[[52]](#footnote-52) For example, it reportedly advise passengers at the time of booking that, for Australia-Vancouver services, sectors beyond Honolulu are operated by Canadian Airlines International and that a change of aeroplane takes place in Honolulu (IASC 1995a, 4). Similarly, Qantas has advised the International Air Services Commission (IASC) that systems are in place to ensure that passengers are informed that Air Vanuatu is the operating carrier on Australia-Vanuatu services (MC 1995b, *6).[[53]](#footnote-53)*

1. **Computer reservation systems**

The impact of code share arrangements on CRS displays may also involve elements of consumer deception which adversely affect consumers. [[54]](#footnote-54)In particular, if similar or more convenient flights are crowded out from the first screen as a result of multiple listing of code share flights, consumers may not be made aware of attractive travel alternatives.[[55]](#footnote-55)

1. **Passenger liability**

Code sharing may also raise some issues in relation to passenger liability (OECD 1995,13). This is most likely to *occur* where the countries in which the airlines are registered are not signatories to the Guadalajara Convention.[[56]](#footnote-56) For these airlines, code share flights are regarded as successive carriage flights under the Warsaw Convention and passenger liability therefore rests with the airline operating the flight. Problems may occur where the operating carrier’s contractual terms on liability differ from those of the code share partner (for example, hits on compensation).

This issue is unlikely to arise where the code share partners are signatories to the Guadalajara Convention. Most countries, including Australia, are signatories to this convention and airlines code sharing on Australian services are likely to be covered by it.[[57]](#footnote-57)

1. **ANTITRUST EFFECTS OF THE CODE SHARING AGREEMENTS**

The increases in airline traffic and revenue and the reductions in costs may be pro-competitive. However, code sharing is often accompanied by other cooperative arrangements which may facilitate anti-competitive practices. The arrangements are most likely to have a negative impact on competition when they include practices such as joint pricing and sale of capacity and the partner airlines have substantial market shares.[[58]](#footnote-58)

It is also important to recall that the assessment of code sharing involves comparison with the situation in the absence of code sharing (the base case).

Even though a code share arrangement may not enhance competition in some situations, the alternative to such an arrangement may be less competitive. Similarly, it has been argued that code sharing is rarely the core of an airline alliance, and that the competition implications of code sharing are less important than the implications of the co-operative agreements of which code sharing is only a part (Civil Aviation Authority 1994,57). The impact of code sharing on competition can be considered in terms of the promotion of global alliances, and specific impacts.

There is a range of views on the potential long-term impact of airline alliances and large groupings of carriers. Code sharing may be considered to be broadly anti-competitive if it is viewed as a method by which airlines are able to form large groupings that in turn are likely to dominate the international airline industry.[[59]](#footnote-59) With this view, such carriers and groupings may eventually reach an accommodation in order to reduce competition and may be able to drive out non-aligned carriers. Alternatively, code sharing may be assessed as broadly pro-competitive where global alliances are considered to be a key component of airline competition and code sharing is an essential part of such alliances. These alliances enable carriers to work more effectively with rights available under bilateral agreements and may therefore be a means for strengthening competition in international aviation. [[60]](#footnote-60)

1. **Specific impacts**

The preceding discussion of the impact on airlines identified several aspects of code sharing that may affect the level of competition in particular circumstances. Expansion of a smaller carrier’s network and domestic feed/distribution will often improve its competitive position relative to larger carriers, but such an expansion by larger carriers may either promote or reduce competition. Similarly, the use of code share arrangements may enable airlines to develop more sophisticated methods for working with rights available under bilateral agreements and therefore either compete more effectively or drive out smaller rivals. Larger carriers benefit from code sharing with smaller carriers where the arrangements provide increased traffic feed into major hubs.

‘Code sharing may have a positive impact on competition on thin routes where there is only sufficient traffic to support several flights a week by a single operator (for example, Australia-Solomon Islands). In this case, the sale of capacity by a second airline may provide some competition where the carrier markets its own capacity in dependently.[[61]](#footnote-61)

Code sharing may also facilitate new entry by reducing the costs (and risks) incurred by a new entrant. The impact on competition may be even greater if the code share entrant subsequently introduces its own aircraft onto the route.

Code sharing with a larger airline may improve the position of a smaller airline relative to other large carriers and hence promote competition. For example, a code share arrangement with Delta has reportedly strengthened Virgin Atlantic’s competitive position against British Airways through factors such as access to a wider range of destinations in the US and extra revenue.

1. **FACTORS THAT ANTITRUST AGENCIES KEEP IN MIND**

A key issue in the examination of code sharing is its impact, as a commercial strategy, on competition and consumer welfare. Any assessment should clearly distinguish between the effects that are attributable to code sharing and the effects that are attributable to other aspects of airline alliances.[[62]](#footnote-62) The effects of code sharing vary in response to factors such as the size of the partners, their market shares and the characteristics of the routes involved.[[63]](#footnote-63) As extensive use of code sharing is a recent development, further evolution of these arrangements may lead to changes in their effects. In the longer term, code sharing may become less widespread if airlines are able to obtain similar benefits through alternative strategies such as mergers or different forms of alliances.[[64]](#footnote-64)

Code sharing potentially provides benefits to the partner airlines as a result of increases in traffic and revenue, which particularly reflect marketing effects, and a reduction in costs.[[65]](#footnote-65) It cannot be presumed to be pro-competitive or anticompetitive in all situations, and the effect on competition needs to be assessed in terms of the market circumstances in each case.[[66]](#footnote-66) From the consumer perspective, there is particular concern about deception arising from code sharing. However, there are potentially benefits to consumers such as access to larger networks, more convenient schedules and transfers, more frequent services, and improved access to frequent flyer.

The antitrust agencies had a lot to keep in mind while assessing the nature of alliances, first was to provide a “typology” of airline code-shares, listing the various types of agreement (and circumstances in which they obtain) and their associated features, in particular access to capacity and financial settlement arrangements[[67]](#footnote-67). The benefits to airlines, and the association of code-shares with other forms of cooperation also needed to be considered. Finally, the Commission required a full inventory of existing code-share agreements involving EU carriers.

The second major area of work was the development of a conceptual framework for the assessment of the competitive effects of code-share agreements.[[68]](#footnote-68) The framework was to take into account the different types of code-shares already identified, and in particular, the various contractual features found in different agreements. The framework was to address the extent to which code-shares affect market entry into the markets in which they operate, and to what extent they impact other markets[[69]](#footnote-69). The welfare impacts of code-share agreements were to be assessed, in particular the effects on prices paid by consumers.

1. **Code Sharing as viewed in Europe**

Code sharing has been considered by the European Union (previously called the European Community) and by individual countries in Europe. European carriers are generally free to enter into code share or block space arrangements anywhere in the European Union (McNeill 1993, 14). The European Commission does not examine code share arrangements as such but rather considers their impact on competition.[[70]](#footnote-70) European carriers are allowed to enter into such arrangements unless they result in a monopoly. Airlines can also code share on intercontinental routes to destinations where they both hold traffic rights, but they cannot use the system to get into markets, which were previously closed, to them[[71]](#footnote-71).

The Authority cautioned that it was unrealistic to attribute all or even most of the benefits of airline alliances to code sharing, although in a few cases significant benefits might result from code sharing in isolation.[[72]](#footnote-72) It viewed codes haring as a relatively cheap way of advertising that some form of airline co-operation exists.

It can safely be concluded that the effect of code sharing on competition between airlines would vary 'from case to case. In some cases, such as the withdrawal of a service by one of the partners as a direct result of code sharing, the burden of proof that the arrangement was not anti-competitive might reasonably fall on the partners.[[73]](#footnote-73) In other cases, code sharing would strengthen one or both of the partners in a way that would enable them to be more effective competitors in the broader market.[[74]](#footnote-74) The Authority considered that most cases would fall between these two extremes and consequently be more difficult to deal with. However, the competition implications of most code share arrangements in isolation were likely to be overshadowed by effects associated with the wider airline partnership of which code sharing would normally be just a part.

1. **COMPETITION LAW, CODE SHARING AND INDIA**

The Competition Act, 2002 was enacted in India under which the Commission was established with a view to act as a watchdog of anti-competitive practices and behaviors in the market place. The new act is the nascent stage and has begun to encounter the problems that its more experienced western counterparts have already tackled. The basic thrust of the antitrust law globally, is consumer welfare and economically tackle the market conditions. The principles remain the same and the competition principles applied in west can act as guidelines for the CCI. The aviation market in India has also started to sprout completion issues and code sharing agreements between the national carriers inter se and international carriers have begun to increase. Recently, the CCI gave its opinion in the code sharing agreement between Kingfisher and Jet and has fairly applied Indian legislation with the western strategy.

In its majority opinion, the Commission referred to the joint statement issued by Jet Airways and Kingfisher Airlines on 13th October 2008, to announce an agreement to the formation of an alliance which would help both carriers significantly rationalize and reduce costs and provide improved standard of service and a wider choice of air travel options to consumers and which will also offer the best possible fares for the benefit of the consumers.[[75]](#footnote-75) Further, the purported purpose of the alliance was to tide over the slowdown in the aviation industry due to the global recession in 2008.[[76]](#footnote-76)

The scope of the alliance between the two airlines *inter alia* included code sharing on both domestic as well as international flights.[[77]](#footnote-77) The Commission in reference to the report of the DG, held that the agreement could neither be said to have been for determining the airfares or for limiting the supply or allocating the market in terms of the provisions of Section 3(3)(a), 3(3)(b) and 3(3)(c) of the Code-sharing Agreement Act.[[78]](#footnote-78)

The Commission further held that such agreements were not limited to Jet Airways And Kingfisher Airlines but such agreements had also been entered by these parties with other domestic as well as other international airlines.[[79]](#footnote-79) Subsequent to such an agreement, the market share of both the parties has remained constant with Kingfisher Airlines reporting losses in March 2009 and March 2010.[[80]](#footnote-80)

Referring to the Agreement as whole, the Commission that the Re-Protection Agreement entered into by the parties on 21st May 2009, was helpful for passengers as it avoided circumstances wherein a passenger would be left stranded.[[81]](#footnote-81) Also, since the rate the other airline will receive is determined under the SRA, it prevents competitors from taking undue advantage and increasing fares at the last moment.[[82]](#footnote-82) Such agreements enable the airline to cut down their operating costs, which in turn leads to better fares for passengers.[[83]](#footnote-83) Hence, the Agreement was held not to be anti-competitive under section 3(3)(a)/(b)/(c) of the Act.[[84]](#footnote-84)

R. Prasad under Section 27 of the Act gave the Dissenting opinion.[[85]](#footnote-85) He concluded that the opposite parties could have measures independent of each other to reduce costs and improve efficiency. Making agreements with competitors would lead them to distort the market in their favor.[[86]](#footnote-86) In the absence of such an alliance, it was stated that the opposite parties would have competed with each other as well as other players in the market boosting competition in the sector, which would *interalia* lead to the availability of the best options to the consumers.[[87]](#footnote-87)

The conduct of both parties of simultaneously increasing the fuel surcharge by Rs. 400/- when air turbine fuel increasedand subsequently not decreasing the fuel surcharge when the air turbine fuel prices decreased was highlighted.[[88]](#footnote-88) Thus, the provisions of Section 4(2)(a)(i) were contravened.[[89]](#footnote-89) The Agreement between the airlines not only had the effect of foreclosing competition, but was also likely to create entry barriers in the sector for new players.[[90]](#footnote-90)

There was no doubt that the provisions of services had been reduced in the market which led to a shortage of seats which in turn led to an increase in the ticket prices.[[91]](#footnote-91) However, at the same time it could be shown that the consumers also suffered due to the activities of the two parties.[[92]](#footnote-92) Hence, there had been contravention of Section 4(b)(i) of the Act.[[93]](#footnote-93)

Finally, the high degree of “parallelism” in terms of increasing the ticket prices and subsequent market behavior was in contravention of Section 3(3)(a) of the Act.[[94]](#footnote-94) To sum up, due to the activities of the aforementioned airlines there had been contravention of Section 3(3)(a) and 3(3)(b) of the Act as well as that of Sections 4(2)(a)(i) and 4(2)(b)(i) were found to be contravened.[[95]](#footnote-95)

1. **CONCLUSION**

Code sharing potentially provides benefits to the partner airlines as a result of increases in traffic and revenue, which particularly reflect marketing effects, and a reduction in costs. In addition, all carriers on a route may benefit from any additional traffic that is generated. Code sharing may also be used for anti-competitive purposes by the partner airlines in some circumstances.

These factors suggest that code sharing cannot be presumed to be precompetitive or anti-competitive in all situations. The effect on competition needs to be assessed in terms of the market circumstances in each case. Code sharing potentially involves costs to consumers in the area of consumer deception. It may provide benefits to consumers through access to larger networks, more convenient schedules and transfers, more frequent services, and improved access to frequent flyer rewards.

A key issue in the examination of code sharing is its impact, as a commercial strategy, on competition and consumer welfare. Any assessment should clearly distinguish between the effects that are attributable to code sharing and the effects that are attributable to other aspects of airline alliances.

The effects of code sharing vary in response to factors such as the size of the partners, their market shares and the characteristics of the routes involved. As extensive use of code sharing is a recent development, further evolution of these arrangements may lead to changes in their effects. In the longer term, code sharing may become less widespread if airlines are able to obtain similar benefits through alternative strategies such as mergers or different forms of alliances.

Code sharing potentially provides benefits to the partner airlines as a result of increases in traffic and revenue, which particularly reflect marketing effects, and a reduction in costs. It cannot be presumed to be pro-competitive or anticompetitive in all situations, and the effect on competition needs to be assessed in terms of the market circumstances in each case. From the consumer perspective, there is particular concern about deception arising from code sharing. However, there are potentially benefits to consumers such as access to larger networks, more convenient schedules and transfers, more frequent services, and improved access to frequent flyer rewards.

1. Gellman Research Associates 1994, *A Study of International Airline Code Sharing,* Gellman Research Associates Inc, Jenkintown. [↑](#footnote-ref-1)
2. IASC 1995a, *Determination* - *An Allocation of New Capacity to Canada to Qantas Airways Limited,* Determination Number IASC/DET/9508, International Air Services Commission, Canberra. [↑](#footnote-ref-2)
3. Ibid [↑](#footnote-ref-3)
4. Nuutinen, H. 1995a, ’Independent regional rebuilds value’, *The Airmark Aviation Economist,* June/July, 14-21. [↑](#footnote-ref-4)
5. IASC 1995a, *Determination* - *An Allocation of New Capacity to Canada to Qantas Airways Limited,* Determination Number IASC/DET/9508, International Air Services Commission, Canberra. [↑](#footnote-ref-5)
6. *Supra* note 2 [↑](#footnote-ref-6)
7. *Supra* note 2 [↑](#footnote-ref-7)
8. *Supra* note 1 [↑](#footnote-ref-8)
9. *Supra* note 2 [↑](#footnote-ref-9)
10. *Supra* note 4. [↑](#footnote-ref-10)
11. ECAC & European **Union** 1994, *Code Sharing,* Paper for ICAO World-Wide Air Transport Conference on International Air Transport Regulation: Present and Future, Montreal, 23 November 6 December. [↑](#footnote-ref-11)
12. Ibid. [↑](#footnote-ref-12)
13. *Supra* note 4. [↑](#footnote-ref-13)
14. *Supra* note 11. [↑](#footnote-ref-14)
15. T. H., Park, J.-H. & Zharig, A. 1995, ’The Effects of Airline Codesharing Agreements on International Air Fares’, paper presented at **7th** World Conference, on Transport Research, Sydney, July. [↑](#footnote-ref-15)
16. *Supra* note 2. [↑](#footnote-ref-16)
17. Civil Aviation Authority 1994, *Airline Competition on European Long Haul Routes,* Civil Aviation Authority, London [↑](#footnote-ref-17)
18. *Supra* note 1. [↑](#footnote-ref-18)
19. *Supra* note 2 [↑](#footnote-ref-19)
20. *Supra* note 1 [↑](#footnote-ref-20)
21. Civil Aviation Authority 1994, *Airline Competition on European Long Haul Routes,* Civil Aviation Authority, London [↑](#footnote-ref-21)
22. Ibid. [↑](#footnote-ref-22)
23. TPC 1995, *Determination* - *Application for Authorisation in Respect of an Application* ***for*** *Authorisation Lodged under* s.88(2) *of the Trade Practices Act by Qantas Airways Limited and British Airways Plc,* Application No. A90565, Trade Practices Commission Canberra. [↑](#footnote-ref-23)
24. McNeill, L. 1993, ‘Maximum advantage from a minimum of investment’, *The Avmark Aviation Economist,* April, 14-16. [↑](#footnote-ref-24)
25. *Supra* note 21. [↑](#footnote-ref-25)
26. *Supra* note 21. [↑](#footnote-ref-26)
27. *Supra* note 15. [↑](#footnote-ref-27)
28. *Supra* note 23. [↑](#footnote-ref-28)
29. *Supra* note 21. [↑](#footnote-ref-29)
30. *Supra* note 21. [↑](#footnote-ref-30)
31. *Supra* note 21. [↑](#footnote-ref-31)
32. *Supra* note 15. [↑](#footnote-ref-32)
33. *Supra* note 28. [↑](#footnote-ref-33)
34. McNeill, L. 1993, ‘Maximum advantage from a minimum of investment’, *The Avmark Aviation Economist,* April, 14-16. [↑](#footnote-ref-34)
35. *Supra* note 23. [↑](#footnote-ref-35)
36. *Supra* note 21. [↑](#footnote-ref-36)
37. *Supra* note 15. [↑](#footnote-ref-37)
38. *Supra* note 15. [↑](#footnote-ref-38)
39. *Supra* note 21. [↑](#footnote-ref-39)
40. McNeill, L. 1993, ‘Maximum advantage from a minimum of investment’, *The Avmark Aviation Economist,* April, 14-16. [↑](#footnote-ref-40)
41. *Supra* note 15. [↑](#footnote-ref-41)
42. General Accounting Office 1995 *International Aviation: Airline Alliances Produce Benefits, but Effect on Competition is Uncertain,* United States General Accounting Office, Washington. [↑](#footnote-ref-42)
43. *Supra* note 15. [↑](#footnote-ref-43)
44. *Supra* note 15. [↑](#footnote-ref-44)
45. *Supra* note 40. [↑](#footnote-ref-45)
46. *Supra* note 40. [↑](#footnote-ref-46)
47. *Supra* note 15. [↑](#footnote-ref-47)
48. OECD 1995, *OECD International Futures Programme: Functioning* ***of*** *Competition,* SG/AU/AT(95)3, Organisation for Economic Co-operation **and** Development, Paris [↑](#footnote-ref-48)
49. *Supra* note 40. [↑](#footnote-ref-49)
50. *Supra* note 48. [↑](#footnote-ref-50)
51. *Supra* note 48. [↑](#footnote-ref-51)
52. *Supra* note 48. [↑](#footnote-ref-52)
53. Nuutinen, H. 1995a, ’Independent regional rebuilds value’, *The Airmark Aviation Economist,* June/July, 14-21. [↑](#footnote-ref-53)
54. Ibid. [↑](#footnote-ref-54)
55. Levine, M. 1987, '*Airline competition in deregulated markets: Theory, firm strategy and public policy*', *Yale Journal on Regulation,* vol. **4.** [↑](#footnote-ref-55)
56. *Supra* note 53. [↑](#footnote-ref-56)
57. Levine, M. 1987, '*Airline competition in deregulated markets: Theory, firm strategy and public policy*', *Yale Journal on Regulation,* vol. **4.** [↑](#footnote-ref-57)
58. Ibid. [↑](#footnote-ref-58)
59. General Accounting Office 1995 *International Aviation: Airline Alliances Produce Benefits, but Effect on Competition is Uncertain,* United States General Accounting Office, Washington. [↑](#footnote-ref-59)
60. Ibid. [↑](#footnote-ref-60)
61. *Supra* note 57. [↑](#footnote-ref-61)
62. *Supra* note 59. [↑](#footnote-ref-62)
63. *Supra* note 57. [↑](#footnote-ref-63)
64. *Supra* note 21. [↑](#footnote-ref-64)
65. *Supra* note 48. [↑](#footnote-ref-65)
66. *Supra* note 48. [↑](#footnote-ref-66)
67. *Supra* note 1. [↑](#footnote-ref-67)
68. *Supra* note 57. [↑](#footnote-ref-68)
69. *Supra* note 1. [↑](#footnote-ref-69)
70. *Supra* note 57. [↑](#footnote-ref-70)
71. *Supra* note 59. [↑](#footnote-ref-71)
72. *Supra* note 57. [↑](#footnote-ref-72)
73. *Supra* note 23. [↑](#footnote-ref-73)
74. *Supra* note 59. [↑](#footnote-ref-74)
75. *M.P Mehrotra v Jet Airways & Others*, Case No.4/2009 CCI, para 8.5 [↑](#footnote-ref-75)
76. Ibid. [↑](#footnote-ref-76)
77. Id. [↑](#footnote-ref-77)
78. The Indian Competition Act, 2002. [↑](#footnote-ref-78)
79. *Supra* note 75, para 8.9 [↑](#footnote-ref-79)
80. *Supra* note 75, para 8.9 [↑](#footnote-ref-80)
81. *Supra* note 75, para 8.10 [↑](#footnote-ref-81)
82. Id 8.10 [↑](#footnote-ref-82)
83. *M.P Mehrotra v Jet Airways & Others*, Case No.4/2009 CCI, para 8.13 [↑](#footnote-ref-83)
84. The Indian Competition Act. [↑](#footnote-ref-84)
85. *M.P Mehrotra v Jet Airways & Others*, Case No.4/2009 CCI, dissenting by R.Prasad. [↑](#footnote-ref-85)
86. *Supra* note 85, para 7.18 [↑](#footnote-ref-86)
87. *Supra* note 85, para 7.18 [↑](#footnote-ref-87)
88. *Supra* note 85, para 7.19 [↑](#footnote-ref-88)
89. *Supra* note 85, para 8.3 [↑](#footnote-ref-89)
90. *Supra* note 85, para 7.20 [↑](#footnote-ref-90)
91. *Supra* note 85, para 8.2 [↑](#footnote-ref-91)
92. *Supra* note 85, para 8.2 [↑](#footnote-ref-92)
93. The Indian Competition Act, 2002 [↑](#footnote-ref-93)
94. Ibid. [↑](#footnote-ref-94)
95. *Supra* note 85, para 9.1 [↑](#footnote-ref-95)