

Chapter 5 Role of MoCA

5.1 Air Service Agreements (ASAs)/ “Bilaterals”

5.1.1 Overview

The Convention on International Civil Aviation of December 1944, also known as the Chicago Convention, established the International Civil Aviation Organisation (ICAO)³⁵. The Convention also established rules of airspace, aircraft registration and safety, and detailed the aviation rights of the signatory countries in relation to air travel.

International commercial aviation traffic rights are usually expressed as “**freedoms of the air**”, which constitute a set of commercial aviation rights granting a country’s airline(s) the privilege to enter and land in another country’s airspace. The convention officially recognises five freedoms. The first two freedoms viz.:

- 1st freedom – the right to fly over a foreign country, without landing there; and
- 2nd freedom – the right to refuel or carry out maintenance in a foreign country³⁶ on the way to another country

are covered by the International Air Services Transit Agreement (IASTA), which has been accepted by 129 countries (as of summer 2007).

The 3rd, 4th and 5th freedoms, described below, are negotiated between countries through Air Services Agreements (ASAs) (also referred to as “bilateral agreements”).

Table 5.1 – 3rd, 4th & 5th Freedoms of the Air

Freedom	Description	Example
3 rd	The right to fly from one’s own country to another country	New Delhi – London for Air India
4 th	The right to fly from another country to one’s own country	London – New Delhi for Air India
5 th	The right to fly between two foreign countries (and take and put down traffic) during flights, when the flight originates or ends in one’s own country	New Delhi – London – New York and vice versa for Air India (5 th freedom rights granted by UK)

In addition to the first five freedoms, several other “freedoms” have been added, although most are not officially recognised under international bilateral treaties.

³⁵ A specialized agency of the United Nations charged with co-ordinating and regulating international air travel.

³⁶ i.e. for non-traffic purposes

In particular, 6th freedom – the right to fly from a foreign country to another foreign country while stopping in one’s own country – has gained considerable importance. For example, the 6th freedom traffic of Emirates³⁷ involves flying passengers from India through Dubai (its home state) to UK/ USA. Many international airlines especially those operating from city states/ small states (e.g. Emirates/ Dubai; Qatar Airways/ Qatar; Cathay Pacific/ Hong Kong; Singapore Airlines/ Singapore) derive a large portion of their passenger traffic revenues from 6th freedom traffic.

Other unofficial freedoms include:

- seventh freedom (the right to fly between two foreign countries, while not offering flights to one’s own country) e.g. Singapore Airlines flying directly from UK to USA;
- eighth freedom (the right to carry passengers between two or more points in a foreign country) e.g. British Airways flights from London carrying passengers between New York and Los Angeles in the USA;
- ninth freedom (the right to carry passengers within a foreign country without continuing service to or from one’s own country) e.g. a foreign airline running “stand-alone” flights within France.

However, as of now, these 7th, 8th and 9th freedoms are generally only of marginal commercial importance.

5.1.2 ASAs/ Bilateral Agreements

Traffic rights for operation of international air services are specified through bilateral Air Service Agreements (ASAs, also referred to as “bilateral agreements” or simply “bilateral”). These ASAs or bilateral agreements are concluded bilaterally, usually on the basis of reciprocity and fair/ equal opportunity, and provide the legal framework for scheduled air services between two countries. Under these ASAs, traffic rights and capacity entitlements are exchanged between the countries on the basis of market requirements. The ASAs clearly specify the “entitlements” of the designated airline(s) of both countries in terms of frequency of operations, number of seats, points of call etc.

In recent times, the concept of “open skies policy”, which permits unrestricted air services between countries with minimal government intervention, has gained some ground. The European Union – US Open Skies Agreement of March 2007 is a landmark in this direction. However, most other countries have bilateral agreements with regulated air services/ entitlements. Even the ASEAN Multilateral Air Services/ Air Freight Services Agreements of May 2009 call for a calibrated and gradual implementation to allow countries with less developed airline industries to cope with more developed ones.

Upto 2000, bilateral entitlements to/ from India were in line with end-to-end traffic projections based on 3rd and 4th freedom traffic – i.e. carrying passengers from the home country to another country and vice-versa; also, foreign carriers were restricted only to

³⁷ Also known by its airline code “EK”

major airports in India. During 2003-04, bilateral entitlements were liberalised, and foreign airlines were permitted to operate to “interior points” in India i.e. beyond the major airports.

5.1.3 Revised policy on “Utilisation of traffic rights on international routes” - December 2004

While approving the MoCA note on the ASA with Tunisia in September 2004, the Cabinet also directed that “issues related to building up of the capacity both in the public and private sector for providing air services between India and other countries and optimal utilisation of such capacity” should be examined and brought up before the Cabinet at an early date. In this context, MoCA moved a Cabinet note in December 2004 for “Utilisation of Traffic Rights on International Routes”.

According to the MoCA:

- While bilateral air traffic rights on international routes between India and other countries were decided on the basis of reciprocity, at present, the actual utilisation of available rights on international sectors was highly imbalanced. While utilisation by foreign airlines was around 65 per cent, that of our airlines was only around 30 per cent; as a result, foreign airlines derived disproportionate economic advantage out of the traffic rights. Further, out of 100 countries with which India had ASAs, airlines of 51 countries operated to India, while Indian carriers operated only to 25 countries.

After the substantial increase in bilateral entitlements from 2004-05 onwards, the trend of imbalanced utilization of entitlements (with higher utilization by foreign carriers) continued. This was notwithstanding the permission granted to private Indian carriers to fly on international routes.

- While Indian entitlements had remained grossly underutilised, there was a problem of inadequate capacity on most international routes from India, with passengers finding it difficult to obtain seats for nearly six months of the year. The Ministries of External Affairs, Tourism and Commerce, as well as trade, industry and tourism bodies had been reiterating the need to liberalise international air services so that seats were available to/ from India all through the year.
- Acknowledging the problem of serious capacity constraints on international routes during several months of the year, the MoCA had adopted a ‘limited open sky’ policy to cater to peak season requirements (which had expanded substantially from 2003-04 onwards), permitting designated airlines to operate unlimited number of services to their respective points of call for three to six months in a year.
- The bulk of the traffic rights were available with AIL (with IAL designated to operate to SAARC, Gulf and SE Asian countries and Jet Airways and Air Sahara designated to operate to some SAARC countries). However, traffic entitlements of foreign airlines had

to be progressively enhanced to meet the requirements of trade and tourism, on account of AIL's inability to utilise the entitlements.

The following aspects were considered for utilisation of traffic rights and build capacity on international services:

- **Strengthen AIL to enable it to utilise traffic rights on international routes**
 - ❖ AIL would be approaching Gol in due course with its fleet acquisition project report (which would include additional infusion of equity and provision of Gol guarantee to the borrowings related to fleet acquisition); the proposal would be considered by Gol on merit.
 - ❖ Also, it was proposed that traffic rights for AIL would be reserved in accordance with its operational plans for the next two years.
 - ❖ The existing compensation being received by AIL (through Government-mandate commercial agreements with foreign airlines), may be allowed to continue, subject to review over the next five years.
- **Synergy between Air India and Indian Airlines on fleet and network utilisation**
 - ❖ In view of IAL's request to operate more international routes, Gol needed to consider whether it would allow two of its PSUs to compete against each other on international routes (which would be to the detriment of both). On the other hand, from the shareholders' perspective, Gol might prefer better synergy and integration in the operations of AIL and IAL.
 - ❖ MoCA referred to the study through the consulting firm (AT Kearney) commissioned jointly by AIL and IAL at MoCA's behest so as to achieve better operational integration between the two airlines. The study suggested that there was immense potential for value creation through collaboration on fleet and network between the two airlines, and suggested that improved collaboration between AIL and IAL would generate potential benefits of Rs. 340 crore for the Gol as the common shareholder (of which Rs. 238 crore could be generated through efficient network integration).
 - ❖ Better synergy and operational integration between AIL and IAL would be a better strategy towards strengthening both the airlines and creating an appropriate hub and spoke arrangement within the country to make the best possible utilisation of traffic rights in the international sector; a win-win situation could be created for both airlines;
 - ❖ In view of the above aspects, appropriate measures may be formulated and implemented by MoCA for establishing improved operational synergy between the two airlines for their mutual benefit.

The fleet acquisition proposals for both AIL and IAL (not referred to in the MoCA note) were still in process as of December 2004. If indeed “operational synergy” between the two airlines was considered, we are unable to ascertain why the underlying assumptions behind the fleet acquisition proposals of AIL and IAL did not reflect proposals for such operational synergy, and also why a common fleet acquisition strategy (if not joint fleet acquisition) was not considered.

We are also unable to ascertain why the AT Kearney Study report of 2004, which found that there was “immense potential for value creation through collaboration on fleet and network between the two airlines” was not taken up again till March 2006 (just a few months after completion of independent aircraft acquisitions by both AIL and IAL), just before the “in principle view” of Gol in favour of the merger of AIL and IAL was taken.

- **Allowing Indian scheduled carriers to operate on international routes.**
 - ❖ Even if the proposals for strengthening AI and achieving better synergy between AIL and IAL were implemented, there would be a significant gap between our entitlements and actual utilisation of traffic routes (especially on major routes like USA, SE Asia and India-UK). As against this, the utilisation of rights on some major routes by foreign countries had been far higher, one factor being their policy to designate more than one airline to operate on international routes.
 - ❖ Since most of the economic advantages during the open sky period go to airlines of other countries, there was enough justification and scope for designating more airlines of India to operate on international routes. This was also in line with the recommendations of the trade and industry bodies, Ministry of Tourism (MoT) and Ministry of Commerce & Industry (MoCI), the Naresh Chandra Committee, and an NCAER study commissioned by MoCA.
 - ❖ More and more countries were moving in the direction of allowing more than one airline to operate on international routes. Consequently, it was felt that we would be in a position to more optimally utilise our traffic rights on international routes and rectify the imbalance by designating more airlines.
 - ❖ However, a calibrated approach was recommended, to enable the national carriers to get time to adjust to the competitive environment, and Gulf routes were to be reserved for AIL and IAL for the next 3 years, while other Indian scheduled airlines were to be allowed to operate on all other international routes. Also, to eliminate “non-serious” operators, only Indian scheduled carriers with a minimum of five years continuous operation and having a minimum of 20 aircraft were to be allowed to operate on international routes.
 - ❖ Due consideration was to be given to the operational plans of AIL/ IAL while allotting allotments to Indian scheduled carriers.

- **Commercial Agreements**

- ❖ Most of the commercial agreements were based on the premise that our airlines needed to be compensated for the unilateral operations by the foreign airlines, and that the foreign airlines were unduly benefiting by carrying **6th freedom traffic**; this may be difficult to enforce, once other Indian scheduled carriers were allowed to operate on international routes against our unutilised entitlements.

Interestingly, this is the only reference in the note to the fact that foreign airlines were unduly benefiting by carrying 6th freedom traffic.

- ❖ Globally, it was not a normal practice to mandate commercial agreements during Government level talks, and it was left to the respective airlines to explore suitable co-operative arrangements that were mutually beneficial. Further, there were major inconsistencies in the terms of commercial agreements from country to country. Also, the fares charged by foreign airlines would be lower, if they were not required to provide compensation to the Indian national carriers, and many airlines and countries had represented against unreasonably high amounts of compensation, which were making it difficult to continue with their operations.
- ❖ Consequently, MoCA proposed that the practice of demanding compensation from foreign airlines by way of Government-mandated commercial agreements be discontinued henceforth; all new operations by foreign carriers would be free from such agreements, and all existing Government-mandated commercial agreements would be reviewed and phased out over the next five years.

Envisaged Benefits of Liberalised Policy

Four major benefits out of the proposed liberalised policy for utilisation of traffic rights were highlighted:

- Passengers would have greater choice for international travel.
- India's utilisation of traffic rights on international routes would improve.
- Tariffs on international routes were likely to become more reasonable and affordable.
- AI and IA would both gain by synergising their operations.

The proposal of MoCA on utilisation of traffic rights on international routes was approved by the Cabinet in December 2004, and guidelines for operation of Indian scheduled carriers on international routes notified by DGCA in January 2005.

In our view:

- ***The proposal for allowing private Indian carriers to operate on international routes was justified on the grounds of "unutilised entitlements" on international routes. As detailed later, the justification of under-utilization of entitlements by AIL/ IAL was partially flawed. In the North American sector, utilisation by AI was substantially***

higher than that of foreign airlines, while utilisation by private Indian carriers was lower. It is only in the Africa, Asia, Soviet Region, and to an extent the Gulf sector, that there was significant under-utilisation by AI; in these regions, the utilisation by the private Indian carriers was also poor.

- *The benefit of the liberalised policy to Indian passengers in terms of choice for international travel, as well as lower tariffs, is noted. GoI could well have justified the grant of rights to private Indian carriers on account of the need for AIL/ IAL to move out of their protected environment and function in a competitive environment, which might have forced improvements in operational efficiency. However, this justification was not explicitly used.*
- *The critical issue, that the MoCA note did not adequately address, is the “undue benefit” to foreign airlines by 6th freedom traffic; this is described in a later section.*

5.1.4 Impact of enhancement in capacity entitlements under “bilaterals”

5.1.4.1 Background

The key entitlements exchanged through bilateral agreements usually cover the following aspects:

Table 5.2 - Key terms of bilateral agreements

Capacity	<p>Capacity is generally indicated in terms of seats/ week or frequencies/ week or a combination thereof, with some variations:</p> <ul style="list-style-type: none"> • In the case of Singapore, the determined capacity also includes “units” (based on the type of aircraft deployed). • In an “open sky” bilateral agreement (e.g. India-USA), entitlements are unlimited (with no restrictions on seats/ frequencies etc.). In the “near open sky” agreement with UK, there is a restriction of frequencies only in respect of flights to/ from Mumbai/ Delhi airports, and unlimited entitlements in respect of all other airports. For ASEAN/ SAARC countries, India has an “open sky” policy for 18 tourist destinations. <p>Generally, the capacity entitlements are reciprocal, with some minor variations.</p>
Flexibility/ margin	<p>Since sticking to the exact seat entitlements may not always be operationally feasible, the agreement may provide for flexibility or margin (typically 1 or 2 per cent) beyond the specified seat entitlements</p>
Points of call	<p>This indicates the points of call for the foreign carriers (i.e. Indian airports to which the foreign airlines can operate flights from/to) and points of call for the Indian carriers (i.e. foreign airports to which the Indian airlines can operate flights from/to).</p>

Traffic rights	The bilateral agreement may or may not allow for 5 th freedom (“beyond”) rights for one or both parties with/ without restrictions. For example, the India-Singapore agreement includes Jakarta, Perth and Sydney as “beyond” points for Indian carriers i.e. Indian carriers can take passengers from Singapore to Jakarta/ Perth/ Sydney and vice versa.
Seasons	Different capacities could be specified for the summer and winter seasons or for specific seasons (e.g. summer 2009 or winter 2009/10).

We conducted a review of bilateral liberalisation in respect of the following 18 countries from pre-liberalisation (2004) and post liberalisation (2008-09/ 2009-10):

Table 5.3 – Region and Name of countries whose bilateral agreements reviewed

Gulf/ Middle East	Dubai (UAE), Oman, Kuwait, Bahrain, Qatar, Saudi Arabia
Europe	UK, Germany, France, Switzerland
North America	USA, Canada
SE Asia and Oceania	Singapore, Thailand, Malaysia, and Australia
Africa	South Africa and Mauritius

Initially, the mechanism for determining exchange of traffic rights involved correspondence to ascertain the views of the relevant stakeholders (including AIL), before bilateral talks. Subsequently, a mechanism was evolved whereby, prior to bilateral talks, an inter-Ministerial Meeting (chaired by Secretary, Civil Aviation) was held with Ministries, such as External Affairs, Tourism and other relevant Ministries; eligible Indian carriers were also invited for their views. The bilateral talks themselves were generally documented in the form of minutes.

5.1.4.2 Bilaterals in the Gulf Region

The Gulf route is a major sector in India’s outbound traffic, mainly consisting of migrant labour. A summary of capacity enhancement and points of call at the beginning of liberalization and as on 2008-09/ 2009-10 in respect of six nations in the sector, as well as a brief profile of utilisation of capacity entitlements by the Indian/ foreign carriers, is depicted below:

Table 5.4 – Summary of capacity entitlements (pre and post liberalisation) under bilaterals for Gulf countries

Country	Pre-liberalisation			Post-liberalisation			Remarks
	Year	Capacity Entitlements	Points of call (for foreign/ Indian carriers)	Year	Capacity Entitlements	Points of call (for foreign/ Indian carriers)	
Dubai (UAE)	2003-04	10,400 seats/ week	6 Foreign/ Indian	2008-09	54,200 seats/ week	14 foreign/ Indian	Dubai carrier's utilisation (98.5%); Indian carriers utilisation (45.9 %)
Oman	2003-04	3774 seats/ week	4 foreign / Indian	2010-11	11,550 seats/ week	12 foreign/ Indian	Oman carrier's utilisation (11,242 seats); Indian carriers (8447 – 9697 seats) in 2009-10
Kuwait	2003-04	5200 seats/ week	5 foreign/ Indian	2007-08	12,000 seats/ week + 2% flexibility	9 foreign/ Indian	Kuwait carrier's utilisation (7880-10254 seats); Indian carriers (3863-4154 seats) in 2007-08
Bahrain	2003-04	11,186 seats/ week	7 foreign/ Indian	2009-10	13,768 seats/ week	9 foreign/ Indian	This increase in allocation was despite the entire Gulf Air entitlement going to Bahrain, and the remaining erstwhile shareholder countries getting their entitlements separately.

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Country	Pre-liberalisation			Post-liberalisation			Remarks
	Year	Capacity Entitlements	Points of call (for foreign/ Indian carriers)	Year	Capacity Entitlements	Points of call (for foreign/ Indian carriers)	
							Bahrain carrier's utilisation (11109-13071 seats); Indian carriers (2718-2396 seats) in 2009-10
Qatar	2003-04	2872 seats/ week	5 foreign / 1 Indian	2010-11	24,778 seats/ week	13 foreign/ 1 Indian	This was apparently on political considerations. Qatar carriers' utilisation (18,140 -21,100 seats); Indian carriers (5294 – 4680 seats) in 2010-11
Saudi Arabia	2003-04	8500 seats/ week; 13 frequencies	4 foreign/ 3 Indian	2008-09	20,000 seat/ week; 75 frequencies	8 foreign/ 3 Indian	Saudi carriers' utilisation (8333 – 12294 seats); Indian carriers (5955-9896 seats) in 2008-10

The above table clearly reflects huge increases in capacity entitlements on different sectors in the Gulf region. The utilisation of enhanced entitlements by the foreign carriers was almost invariably higher than that of the Indian carriers; a significant reason for this was 6th freedom traffic from India routed through these foreign countries to other destinations, and not merely “point-to-point” traffic.

5.1.4.2.1 India- Dubai sector

As an illustrative case of the liberalisation of bilateral entitlements, a chronology of events relating to the Dubai sector, covering the period from May 2007 to March 2010, (when the seat capacity was increased from 18,400 seats/ week to 54,200 seats/ week and points of call in India were increased from 10 to 14), is summarised below:

Table 5.5 - Chronology of enhancement of entitlements for capacity/ points of call for Dubai sector

Timeline	Event(s)
<p>May 2007</p>	<p>Bilateral entitlements were increased from 18,400 seats/ week to 21,950 seats immediately with further increases to 26,700 seats (winter 2007/08), 28,200 seats (summer 2008) and 29,100 seats (July 2008).</p> <p>It was also agreed that due to the congestion at Mumbai resulting in non-availability of slots, the UAE airline (Emirates) would “make best efforts to utilise the enhanced capacity at Mumbai, by upgrading the equipment on the existing frequencies to the extent possible.”</p>
<p>September/ October 2007</p>	<p>Emirates filed a winter 2007 schedule for 28 services/ week to/ from Mumbai, against their existing operation of 19 services/ week, and indicated that despite best efforts to upgrade the aircraft, they were unable to do so due to non-availability of aircraft. Director of Regulations & Information (DRI), DGCA advised consideration of Emirates’ request by MoCA, since the MoU did not put any definite cap on the number of frequencies. SO(A) recommended concurrence to the increase in frequency, which was approved by MoCA for the winter 2007 schedule.</p>
<p>December 2007</p>	<p>Emirates requested upgradation of aircraft from 237 seater A-330 to 380 seater B-777 on 42 services during December 2007. DRI, DGCA indicated that while there was no justification for permitting Emirates’ request, in view of the open sky policy during the peak season and “non-availability of seats to the travelling public”, MoCA might like to consider the case.</p> <p>JS(R), MoCA indicated that the Minister, Civil Aviation had discussed this case with him, and “in view of the winter rush and problem of getting seats on the flights, it was felt that we may agree to the upgradation request”. This was approved by the Minister.</p>

Timeline	Event(s)
January 2008	<p>SO(A) proposed that MoCA may agree to Kozhikode as an additional point of call for both Emirates (Dubai) and Air Arabia (Sharjah) on the ground of “long pending demands” from the Sharjah and Dubai CAAs and other requests, and that this could be formalised through exchange of letters without holding bilateral talks. Secretary, MoCA approved this proposal.</p> <p>Kozhikode was approved as an additional point of call whereas Dubai remained the only point of call for Indian carriers.</p>
March 2008	<p>Dubai CAA suggested bilateral talks for reviewing and increasing the existing entitlements and market access. DGCA indicated that the request of Dubai CAA for increase in capacity entitlements appeared to be justified, since the entitlements were being fully utilised by the designated airlines and the load factors were in the “vicinity of 80% or so.”</p> <p>However, AIL strongly recommended against the holding of bilateral talks and grant of additional opportunities to Emirates for at least one more year (till mid-2009) on the following grounds:</p> <ul style="list-style-type: none"> • Capacity entitlements under India/ Dubai bilateral had increased by nearly 60 per cent only 9 months ago, in addition to increases of 7,190 seats in respect of other bilaterals for UAE (excluding Dubai). • Emirates had a seat factor of 86.9 per cent (during April/ November 2007) but the Indian carriers seat factor averaged only 74.9 per cent (during January – December 2007)³⁸ which was essentially because the Indian carriers mainly carried 3rd/ 4th freedom traffic, while Emirates was able to carry large volumes of 6th freedom traffic between India and points beyond Dubai. 53 per cent of Emirates’ carriage was mainly to/ from UK, Germany, USA, Qatar, Saudi Arabia etc. The adverse impact of Emirates’ 6th freedom carriage on AIL’s UK services was substantial. • The expected increase in capacity deployment by the Indian/ Dubai carriers would more than adequately meet market requirements till mid-2009, with likely situation of excess capacity. • With each tranche of additional capacity entitlements, Emirates would be able to further increase its 6th freedom carriage to/ from UK/ Europe/USA to the detriment of the Indian carriers, also adversely affecting AIL’s plans to operationalise its European hub and increase capacity deployment to USA, Canada, UK and Europe. <p>Despite AIL’s reservations, SO(A) indicated that there was “merit in the case of considering bilateral talks” with Dubai, on account of the load factor of 80 per cent, and interest shown by private carriers. The proposal for holding bilateral talks was approved by the Minister.</p>

³⁸ Contrary to DGCA’s claims of seat factors “in the vicinity of 80 per cent or so”.

Timeline	Event(s)
<p>April 2008</p>	<p>To finalise the negotiating strategy, an “inter-ministerial meeting” chaired by Secretary, MoCA was held. JS(R), MoCA highlighted the requests of Jet Airways, JetLite and Air Deccan for operations on this route. It was decided that India should “secure the traffic entitlements sought by our own carriers” over the schedules upto winter 2009-10 which would be in the interest of our own carriers and the travelling public.</p> <hr/> <p><i>Thus, while the Cabinet approval of December 2004 was premised on allowing private Indian carriers to use unutilised bilateral entitlements, the above “negotiating strategy” was based on increasing bilateral entitlements so as to meet the requirements of the private Indian carriers.</i></p> <hr/> <p>At the bilateral talks, the Indian side indicated that although the Indian carriers had 5th freedom rights beyond Dubai, they were not being utilised and “change of gauge”³⁹ could facilitate that. After negotiations, the two sides agreed to increase entitlements gradually to 39,200 seats (immediately, 48,200 seats (winter 2008/09), 51,200 seats (summer 2009) and 54,200 seats (winter 2009/10). The Indian request for a provision for “change of gauge” and Dubai’s request for additional points of call (Amritsar, Mangalore, Pune, Trichy, Coimbatore and Goa) were to be considered through correspondence.</p>
<p>August/ September 2008</p>	<p>Dubai CAA stated that they agreed to the proposal for change in gauge “in principle”. However, due to acute infrastructural constraints at Dubai airport, they would “need to revisit the India proposal at a later date, once the facilities and infrastructure at the upcoming Jebel Ali Airport were more suitably geared and ready to accommodate such arrangements”.</p> <p>AIL indicated that:</p> <ul style="list-style-type: none"> • While Emirates was able to derive substantially greater traffic under the India/ Dubai bilateral (due to 6th freedom traffic and access to 10 points of call in India), Indian carriers were essentially carrying only 3rd/ 4th freedom India/ Dubai traffic. The “change in gauge” provision would enable Indian carriers to operate to Dubai from various points in India with smaller aircraft to feed larger aircraft beyond Dubai to points in Europe / North America. • The infrastructure constraints at Dubai airport cited by Dubai CAA for change of gauge was only an excuse for completely denying Indian carriers an opportunity that Emirates had been enjoying for decades. • Although during discussions in April 2008, the Dubai delegation had

³⁹ “Change of gauge” enables airlines to manipulate capacity commensurate with traffic on different segments of a route. This could be implemented through change of aircraft (from smaller to bigger or vice versa) or change in number of frequencies. Through change in gauge, Indian carriers would be able to accumulate traffic from different parts of India and transfer it to separate, bigger aircraft (using Dubai as a hub) to USA/ UK/ Europe and vice versa.

Timeline	Event(s)
	<p>stated that the proposal was acceptable to them and would be confirmed after speaking to their higher authorities, subsequently – <i>perhaps because agreement had already been reached on the quantum of increase in capacity entitlements, and they were aware that non-acceptance of the Indian proposal re “change in gauge” would not be a breaking point for the talks</i> – they advised that they had not been able to contact their higher authorities, and the matter would be finalised through correspondence.</p> <p>AIL therefore recommended that the Dubai CAA be advised to immediately accept the proposal for “change in gauge”, while the request for additional points of call could be considered during the next round of bilateral talks (so as to bring pressure on the Dubai CAA).</p>
March 2009	<p>Dubai CAA reiterated that they would be in a position to provide Indian carriers with change of gauge facility at Jebel Ali Airport from later 2012 onwards (asking India for their “formulation” on change of gauge), and requested that initially 3 additional points – Amritsar, Mangalore, Trichy - be authorised for summer 2009 operations.</p> <p>CMD, AIL wrote (March 3, 2009) to Secretary, on the basis of media reports of Fly Dubai announcing commencement of operators to Pune, Chandigarh, Amritsar, Jaipur and Goa (effective June 2009) indicating the following:</p> <ul style="list-style-type: none"> • India had access to only one point (Dubai), while the UAE carriers already had access to 10 points of call. • During the April 2008 talks, the Dubai delegation had stated that while the Indian proposal for “change in gauge” was acceptable, they could not obtain the required approval from the higher authorities over telephone, and would do so on their return to Dubai. However, subsequently, the Dubai CAA had indicated that they would revisit the change in gauge proposal for Jebel Ali Airport (and not Dubai airport) between 2012 and 2018 (i.e. 4 to 10 years later). • No additional points of call should be granted. If it became absolutely essential to consider grant of additional points, Dubai should not be granted access to Pune, Amritsar, Mangalore and Trichy, as Air India Express operated direct services to these points. <p>CMD, AIL again wrote (25 March 2009) to Secretary, MoCA, reiterating the above and indicating that access to 10 points of call in India had enabled Emirates to funnel traffic from different parts of India to various points in the world to the detriment of the Indian carriers. Grant of additional points of call would only strengthen Emirates’ “hubbing” of Indian traffic over Dubai and should not be permitted. Further enhancement in the sector would result in similar requests from others and Dubai’s request for holding bilateral talks in June/ July 2009 should not be accepted.</p>

Timeline	Event(s)
	<p>On this letter, JS(P) indicated that <i>“because of Dubai’s present precarious financial situation, the entire project at Jebel Ali is reportedly held up”</i> and suggested a wording to determine that the change of gauge facility <i>“is made available, say by 2010 at the present airport, but can be considered for Jebel Ali operations from 2012 or whenever ready”</i>. After discussion with CMD, AIL and CMD, Air India Express, JS(S) proposed allocating Chandigarh and Lucknow – where there was little possibility of 6th freedom traffic. This was approved by the Secretary, MoCA.</p> <p>Thus Dubai got two more additional points of call whereas Indian carriers got none.</p>
<p>April/ May/ June 2009</p>	<p>Dubai CAA reiterated their request for 6 additional points of call, and indicated their agreement in principle for change of gauge at Jebel Ali Airport from 2012. SO(A) proposed grant of Coimbatore and Goa as additional points of call and also sending the change of gauge formulation to Dubai for their consideration. This was approved by Secretary, MoCA.</p> <p>In response, Dubai CAA indicated that they would <i>“revert in due course”</i> on the Indian formulation for change of gauge, but asked for the other four additional points of call as well as 1300 additional seats to Kolkata.</p> <p>SO(A) proposed for accepting request for enhancement of entitlements to Kolkata (since it merely amounted to <i>“shifting of agreed enhancements from winter 2009/10 to summer 2010”</i>) as well as a reminder to Dubai on acceptance of the change in gauge formulation. While Secretary, MoCA did not agree to advancing the winter schedule, Minister, CA indicated that <i>“JS(P) may discuss the entitlement issue with Secretary, CA and then put up”</i>. JS(P) indicated that he had informed Secretary of Minister, CA’s directions.</p> <p>Coimbatore and Goa were approved as additional points of call in addition to 1300 additional seats to Kolkata whereas Dubai remained the only point of call for Indian carriers.</p>
<p>August/ September 2009</p>	<p>AIL again wrote to Secretary, Civil Aviation indicating that:</p> <ul style="list-style-type: none"> • The grant of additional 4 points of call (Chandigarh, Lucknow, Coimbatore and Goa) would effectively result in substantial enhancement of bilateral opportunities for Dubai with no reciprocal benefits for the Indian carriers. • Since Jebel Ali Airport did not provide any connectivity and was not an airport to/ from which AIL would be operating, this effectively meant denial of the change in gauge facility. <p>AIL recommended that Dubai CAA be advised that commencement of operations to the 4 additional points of call would be permitted only after change of gauge facility at Dubai Airport (and not Jebel Ali Airport) became available.</p>

Timeline	Event(s)
February/ March 2010	<p>On the request of UAE for re-allocation of capacity entitlements to allow for operation of Fly Dubai from/ to Chandigarh, Lucknow and Coimbatore, Secretary, MoCA wrote to the Principal Secretary to PM indicating that:</p> <ul style="list-style-type: none"> • In view of the over-capacity in the Indian market and Fly Dubai being a low cost carrier, this were likely to further depress fares and adversely affect Indian carriers and • The request of Fly Dubai (commencing from Summer 2010) would be considered, but in a calibrated manner so as to minimise the impact on Indian carriers. <p>The proposal for allowing Fly Dubai to operate to/from Lucknow – for the time being was approved by the Minister, CA.</p>

The sequence of events clearly demonstrates the one-sided nature of benefits to Emirates/ Dubai (through enhancement of entitlements and additional points of call in India). Despite the repeated protestations of Air India on the lack of reciprocity and the funnelling of 6th freedom traffic by Emirates through Dubai from interior locations in India, even change of gauge facility at Dubai International Airport was not adequately pursued, nor linked to grant of additional benefits. This resulted in vague commitments for such facility, not at Dubai Airport but at the upcoming Jebel Ali Airport (an impractical option for AIL and other Indian carriers) and that too with distant timeframes between 2012 and 2018. Clearly, while the Dubai CAA actively protected the commercial interests of its airlines, MoCA failed to obtain appropriate quid pro quo.

The progressive enhancement of capacity entitlements and additional points of call adversely affected AIL's operations to Dubai. During 2009-10, while the capacity deployed by Dubai carriers ranged from 48663 to 53664 seats/ week (98.5 per cent of entitlements), the corresponding capacity deployed by the Indian carriers ranged from 24916 to 25390 seats/ week (45.9 per cent of entitlement). AIL's deployment⁴⁰ accounted for just 9.7 per cent of the Indian deployment; during 2009-10, it achieved a PLF of 67.4 per cent and incurred an operating loss of Rs. 42 crore⁴¹. However, the adverse impact of the enhanced entitlements (through Emirates' 6th freedom traffic operations) on AIL's flights to USA/ UK/ Europe could not be quantified.

In September 2006, PMO had forwarded two letters to MoCA from Shri Abani Roy and Shri Ajay Chakraborty, MPs. Shri Roy's letter referred to the policy under which the Gulf

⁴⁰ Excluding operations of its subsidiary, AICL

⁴¹ AIL's flights to Dubai started incurring operating losses from 2007-08 onwards (roughly coinciding with the substantial jump in seat entitlements/ points of call).

region had been reserved for PSU airlines for three years, and, as per the assurance given by the Hon'ble Minister (CA), this needed to be increased to 5 years. The file notings indicated that “in the draft civil aviation policy....on Gulf routes, reservation of all traffic rights for AIL and IAL is proposed to be extended from 3 yrs to 5 yrs. There is no proposal to review these provisions”, and suggested informing the PMO appropriately. However, the subsequent notings indicated that “OSD to MCA has conveyed that reply to PMO need not go.” In fact, the reservation for AIL/ IAL continued only for 3 years i.e. till December 2007.

Clearly, the Gulf sector was AIL/ IAL’s most profitable international segment before the liberalised policy on bilateral entitlements. AIL repeatedly expressed strong reservations to MoCA against the proposals/ requests from Gulf countries for increase in seat entitlements as well as additional points of call at interior locations in India. This was on the grounds that the existing capacity was well in excess of “genuine” / point-to-point traffic (i.e. 3rd / 4th freedom traffic) and that these proposed increases largely reflected 6th freedom traffic, which would adversely affect AIL’s performance not only on the Gulf sector, but also other sectors like UK/ USA/ Europe. Despite AIL’s reservations, MoCA went ahead with massive increases in entitlements from 2004-05 onwards.

5.1.4.3 European Region

Entitlements in the European sector were also enhanced substantially. A summary of the enhancements for UK, Germany, France and Switzerland is given below:

Table 5.6 - Summary of capacity entitlements (pre and post liberalisation) under bilaterals for European Region

Country	Pre-liberalisation			Post-liberalisation		
	Year	Entitlements/ week	Points of call (for foreign/ Indian carriers)	Year	Entitlements/ week	Points of call (for foreign/ Indian carriers)
UK	2003-04	16 frequencies + 3 extra (7600 seats)	4 foreign/ 3 Indian	2005-06	56 frequencies (Mumbai/ Delhi – London) + unlimited on other sectors	7 foreign/ 6 Indian
Germany	2003-04	12 frequencies.	5 foreign/ 5 Indian	2009-10	61/63 frequencies	9 foreign/ 8 Indian
France	2003-04	5200 seats/ week	3 each	2009-10	18375 seats/ week	6 foreign/ 4 Indian

Country	Pre-liberalisation			Post-liberalisation		
	Year	Entitlements/ week	Points of call (for foreign/ Indian carriers)	Year	Entitlements/ week	Points of call (for foreign/ Indian carriers)
Switzerland	2003-04	5700 seats/ week	3 each	2009-10	5700 seats/ week	4 foreign/ 3 Indian

Many of the European countries were the destinations for 6th freedom traffic from India through Gulf and other carriers. In addition, competition from other Indian carriers and national carriers of these European countries contributed to AIL's declining performance.

5.1.4.4 North American Region

Upto 2003-04, the agreement with the USA allowed unlimited frequencies, with limits only on the points of call. In 2005-06, this was liberalised to unlimited points of call, which AIL was in favour of. In 2010-11, AIL's utilisation was 8120 – 6454 seats, and Jet Airways – 3556 seats; US carriers' utilisation was 7805 - 7679 seats.

In respect of Canada, upto 2003-04, the entitlement was for 2100 seats/ week + 2 services with two points of call each. This was increased in 2007-08 to 35 frequencies with 4 additional points of call each. In 2010-11, AIL's utilisation was 2394 seats, and Jet Airways – 1778 seats; the Canadian carriers' utilisation was nil.

USA and Canada were also important destinations for 6th freedom traffic from India through other carriers; in our opinion, this contributed partly to the adverse performance of AIL on North American routes.

5.1.4.5 South East Asia and Oceania Region

The liberalisation of entitlements in respect of the SE Asia and Oceania region is summarised below:

Table 5.7 – Summary of capacity entitlements (pre and post liberalisation) under bilaterals for SE Asia and Oceania

Country	Pre-liberalisation		Post-liberalisation		Remarks		
	Year	Entitlements	Points of call (for foreign/ Indian carriers)	Year		Entitlements	Points of call (for foreign/ Indian carriers)
Singapore	2003-04	23.05 units + 1650 seats + 5 unlimited frequencies to 18 points ⁴²)	6 + 18 Foreign/ 1 Indian	2008-09	31.15/ 32.75 units + 1650 seats + 5 unlimited frequencies to 18 points) + 20.65 units	7 + 18 Foreign/ 1 Indian	Singapore carriers' utilisation (22364-22121 seats); Indian carriers utilisation (13719-11456 seats) from 2008-09
Thailand	2003-04	9895 seats/ week	8 foreign/ 2 Indian	2007-08	23,609 seats/ week (+2745)	8 + 18 foreign/ 3 Indian	Thai carriers' utilisation (13325-12955 seats); Indian carriers utilisation (7818-9065 seats) during 2007-09
Malaysia	2003-04	7000 (+ 1500) seats/ week	6 foreign/ 3 Indian	2007-08	22531 seats/ week	6 + 18 foreign/ 6 Indian	Malaysian carriers' utilisation (10161-10003 seats); Indian carriers' utilisation (5557-4129 seats) from 2008-09 onwards

⁴² These 18 tourist destinations were separately identified for unlimited flights from ASEAN and SAARC countries

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Country	Pre-liberalisation			Post-liberalisation			Remarks
	Year	Entitlements	Points of call (for foreign/ Indian carriers)	Year	Entitlements	Points of call (for foreign/ Indian carriers)	
Australia	2003-04	2100 seats/ week	3 points each	2009-10	8531 seats	5 points each	Australian carriers utilisation (711-891 seats); Indian carriers (under CSA ⁴³) 355 seats in 2009-10

⁴³ CSA- Code Share Agreement

SE Asian carriers (notably from Thailand, Malaysia etc.) were again important 6th freedom traffic carriers, who were benefited considerably by the substantial increase in capacity entitlements.

5.1.4.6 Africa Region

We reviewed liberalisation of bilateral entitlements for two countries – South Africa and Mauritius:

- In the case of South Africa, entitlements were increased from 14 frequencies and 3 points of call each to 28 frequencies and 6 points of call each in 2008-09. AIL did not operate any flights to South Africa
- In the case of Mauritius, entitlements were increased from 4 frequencies and 3 points of call (for foreign airlines) to 14 frequencies and 4 points of call (for foreign airlines). AIL did not operate flights to Mauritius.

5.1.5 First Right of Refusal

As part of the liberalised policy for bilateral entitlements, it was noted that “*due consideration would be given to operational plans of Air India/Indian Airlines before allotting entitlements to other Indian carriers*”; it is not clear whether this wording actually amounts to a “First Right of Refusal” in the strict sense of the term.

Accordingly, the requests by the other Indian carriers for operations on international sectors are forwarded by MoCA to AIL for its comments. We reviewed thirteen requests pertaining to proposed international operations of Jet Airways, etc. forwarded by the MoCA for AIL’s comments.

- In many cases, AIL was in agreement with the requests, when unutilised entitlements were available for use by other Indian carriers.
- However, in some cases of proposed operations by the private carriers on their own/ through code sharing arrangements, AIL expressed its reservations, stating that the capacity deployed in the market was more than the existing genuine market requirement, and that further addition of capacity would result in slump in individual market share, reduction in seat factor, dilution of yields, affect the profitability of the routes and were thus not in the best interests of the national carrier.

Further, AI Management stated (May 2011) that in many cases in the past, MoCA had not sought the views of AIL, when the Indian private carriers had “filed” for their additional operations.

While AIL would, no doubt, be expected to try to protect its commercial interests, in our view, the liberalised policy merely allows AI to have the first right to utilise the

entitlements. This does not necessarily extend to restricting deployment of private carriers, as there was already adequate capacity.

The general problem of severe competition on account of 6th freedom carriers is, of course noted. The other problem that AIL had with code sharing arrangements of private Indian carriers (apart from domestic code share rights not being specifically exchanged under bilateral agreements) was that it was unable to offer its own domestic network for code share, due to non-availability of a single code reservation system. As pointed out in an earlier section, had AI joined the Star Alliance in a timely manner, it could have reaped the full benefits of such code sharing.

5.1.6 Commercial Arrangements

The exchange of bilateral opportunities is generally based on the principle of fair and equal opportunity and balance of benefits to the airlines of the two countries. In case of inequality of benefits due to unilateral operations and or imbalanced operations by foreign carriers, the inter-governmental ASA/ Memorandum of Understanding (MoU) generally require such unilateral/ imbalanced operations/ imbalance in points of call/ benefits derived by the airline of one side perceived to be substantially larger than those of other side, to be covered by Commercial Arrangements between the designated airlines of the two sides. Such Commercial Arrangements are in several forms:

Table 5.8 – Types of Commercial Agreements

Pool Agreements	Under this arrangement, airlines of both sides are operating and the revenues earned by the airlines are pooled and shared in a pre-determined ratio, subject to ceiling.
Joint Venture Agreements	Under this arrangement, the flights are operated by one airline (operating airline) while the capacity is sold by the airlines of both sides under joint flight number. The net revenues (after reckoning costs) are shared equally between the airlines, subject to minimum guaranteed return payable by the operating airline to the other airline.
Compensation Agreements	An arrangement under which the operating airline pays a pre-determined compensation to the airline of the other side.
Code Share/ Block Space Agreements	An arrangement under which flights are operated by one airline (operating airline) and the other airlines (participating/marketing airline) obtains seats (fixed block or free sale) from the operating airline and sells this capacity as its own flight under its own reservation system. The revenue generated by sale of these seats on such flights in excess of the agreed seat price is retained by the marketing airline.

AIL had concluded Commercial Arrangements/ Agreements with 20-26 foreign airlines operating into India which enabled AIL to earn revenues without operating the routes.

These ranged from Rs. 200-500 crore during 2001-10; such Government-mandated commercial agreements were phased out after December 2009, while in respect of smaller airlines (with 7 flights or less), these were phased out from January 2008 itself.

5.1.7 Joint Position Paper on Bilateral Rights

In February 2011, the representatives of three major airlines – Jet Airways, Kingfisher Airlines and Air India – put forth a joint position paper on the bilateral rights exchanged in the recent past⁴⁴ for the Confederation of Indian Industry (CII)'s National Committee on Civil Aviation. The main findings of the three airlines were as follows:

- The traffic rights exchanged under bilateral agreements are already far in excess of the true 3rd/ 4th freedom market requirements in respect of several countries. As a result, in most of the cases, the capacity deployed under the bilateral is also in excess of the market requirements.
- The capacity entitlements under various bilateral during the period from January 2004 (pre-liberalisation) till March 2010 had increased by 282 per cent⁴⁵. Further, many foreign carriers had also been granted access to a large number of interior points in India, resulting in negating the home country advantage for Indian carriers.
- Since the available entitlements are far in excess of the true 3rd/ 4th freedom traffic potential, this has encouraged the mega carriers to carry significant volume of 6th freedom traffic to/ from India. The grant of access to interior points has further increased the 6th freedom component of the carriage by these mega carriers, as the 3rd/ 4th freedom potential from these interior points is generally quite low. These interior points with low potential should ideally be served by the home country carriers over their hubs.
- **The grant of access to a large number of interior points in India, coupled with the grant of capacity entitlements far in excess of true 3rd/ 4th freedom market situation has resulted in a situation where the foreign carriers are funneling Indian traffic over their hubs i.e. outside India.** This has adversely affected the growth of strong hubs in India to the detriment of the Indian carriers (both for domestic and international operations), Indian airports and other agencies involved in the civil aviation industry.
- **In terms of volume, the 6th freedom carriage to/ from India by Emirates (EK) is the highest – 2.4 million passengers (59% of its traffic).** Even Air Arabia, a low cost carrier which is supposed to work on the model of point-to-point sale, had 43% 6th freedom traffic.
- Since the increased entitlements were granted even before the Indian carriers had a proper hub airport, foreign carriers' operations from most of their countries are already much more than the Indian carriers' operations, pre-empting the Indian carriers from expanding their operations in these markets. It is because of such pre-emption and excess entitlements exchanged that the utilization of entitlements by the Indian carriers

⁴⁴ The views expressed in this position paper of February 2011 had largely been highlighted earlier by AIL in a detailed letter to MoCA in April 2010, but to no avail.

⁴⁵ The actual increase in capacity entitlements is even higher due to lack of quantification/ partial quantification in respect of USA, UK and ASEAN/ SAARC.

appears to be low.

Consequently, they recommended the following measures:

- Entitlements should be rolled back, commensurate with true 3rd/ 4th freedom market requirement for Gulf (Bahrain, Qatar, Abu Dhabi, Sharjah, Dubai), Asia (Hongkong, Malaysia, Singapore, Thailand), Russia, and Europe (France, Germany and Netherlands).
- Entry to a foreign carrier to interior Indian points should be restricted, and access to numerous points under bilateral be withdrawn. In other cases, no increase in capacity entitlements/ traffic rights should be exchanged for the next five years, except where entitlements are less than the 3rd/ 4th freedom market requirement (based on Origin/ Destination data).
- Even if there is significant traffic potential from a point of call in India to another country, before granting access, it must be considered if the Indian carriers are already providing enough capacity.

5.1.8 Overall Impact of Enhanced Capacity Entitlements and Position of 6th freedom carriage

The capacity entitlements given to both the foreign and Indian carriers under Bilateral Agreements between India and other countries during the period from July 2004 to July 2010 had increased from 51.1 million to 180.48 million seats (two way) per annum representing an increase of 253.18 per cent. The increase in seat capacity entitlements ranged between 100 to 700 *per cent* for Gulf nations, 100 to 200 *per cent* for South East Asia nations, and 200 to 400 *per cent* for European nations. On account of the liberalised bilateral entitlements, leading international carriers increased coverage and frequency to major cities as well as interior points in India. There was also increased capacity deployment by competitor airlines to/ from interior points in India.

The details of the passenger carriage of the traffic from/ to India during the period 2009-10 by some of the airlines of the Gulf, South East Asia, Europe and North American nations as well as the 6th freedom traffic carried by these airlines are depicted below:

Table 5.9 – Break-up of passenger traffic to/ from India during 2009-10 carried by leading international airlines into 6th freedom traffic/ “point-to-point” traffic

Name of foreign airline	Total passengers (in lakh) carried from/to India	“Point-to-point” passengers (in lakh) carried from/to India	6 th freedom passengers (in lakh) carried from/to India	Percentage of 6 th freedom carriage
A. Gulf Region				
Emirates (UAE)	39.91	16.35	23.56	59
Jazeera Airlines	12.14	6.87	5.27	43

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Name of foreign airline	Total passengers (in lakh) carried from/to India	“Point-to-point” passengers (in lakh) carried from/to India	6 th freedom passengers (in lakh) carried from/to India	Percentage of 6 th freedom carriage
(Kuwait)				
Qatar Airways	9.54	2.12	7.42	78
Oman Air	9.36	5.37	3.99	43
Gulf Air (Bahrain)	6.58	1.38	5.20	79
Etihad Airways (Dubai/ UAE)	4.77	1.25	3.52	74
Kuwait Airways	4.76	2.85	1.91	40
Total	87.06	36.19	50.87	58
<i>B. South East Asia Region</i>				
Thai Airways	10.14	6.24	3.90	39
Singapore Airlines	9.99	5.11	4.88	49
Cathay Pacific	9.58	2.31	7.27	76
Sri Lankan	7.02	3.82	3.20	46
Malaysian Airlines	5.42	3.17	2.25	42
Total	42.15	20.65	21.50	51
<i>C. Europe Region</i>				
Lufthansa	11.37	1.49	9.88	87
British Airways	9.83	3.81	6.02	61
Air France	4.21	1.14	3.07	73
KLM (Netherlands)	3.17	0.76	2.41	76
Swiss	2.03	0.75	1.28	63
Austrian	0.97	0.14	0.83	86
Total	31.58	8.09	23.49	74
<i>D. North American Region</i>				
Continental	3.36	3.14	0.22	7
American Airlines	1.60	1.49	0.11	7
Delta	1.13	1.10	0.03	2
Northwest	0.52	0.34	0.18	34
Total	6.61	6.07	0.54	8

(Source: Joint Position paper on Bilaterals by AIL, Jet Airways and Kingfisher submitted to the CII National Committee on Civil Aviation in February 2011)

As can be seen above, the 6th freedom traffic from/ to India was largely captured by Emirates, Jazeera Airlines, Qatar Airways, Thai Airways, Singapore Airlines, Lufthansa, British Airways, Cathay Pacific, Continental, Northwest etc. The 6th freedom carriage by the foreign carriers to their total carriage from/ to India ranged from 40 to 79 per cent (Gulf carriers), 39 to 76 per cent (South East Asia carriers), 61 to 87 per cent (European carriers) and 2 to 34 per cent (North American carriers). The enhancement of capacity entitlements enabled foreign carriers to carry 6th freedom traffic, which could otherwise have been carried by AIL and other Indian carriers.

Further, as a consequence of the liberalised bilateral rights extended by MOCA, the private Indian carriers significantly ramped up their operations, and were granted permission to operate on international routes. The share of private Indian carriers increased substantially vis-à-vis the national carriers as summarized below:

Table 5.10 - International passenger traffic (in lakh) carried to / from India on scheduled services of selected Indian carriers

Year	IAL	AIL	Jet Airways	Jet lite
2004-05	16.77	31.05	1.21	1.04
2005-06	19.57	30.96	4.41	1.83
2006-07	22.55	31.42	8.25	2.58
2007-08	24.40	29.59	16.40	1.74
2008-09	21.33	22.49	31.07	1.95

In the response provided by AI (December 2009) to audit enquiries to MOCA, AI indicated that the liberal policy adopted by the GoI had resulted in overcapacity on both domestic and international markets, leading to lower occupancy factors and lower yields and heavy cash losses to Indian domestic and international carriers. Further, the Indian private carriers only introduced services to markets that had already been served by AI; this defeated the purpose of policy aimed at increasing air connectivity to/ from India, and adversely affected AI's occupancy factors and yields.

The issue regarding 6th freedom traffic has been repeatedly raised by AI, and to an extent also by other private Indian carriers. Considering the fact that the data depicted in the preceding tables in para 5.1.8 could have been easily collected by MoCA/ DGCA, it is not understood as to how such an obvious issue was largely ignored or not addressed in the file notings of MoCA, which has resulted in very adverse impact on Indian carriers.

The position paper of February 2011 of the three leading Indian international carriers – AI, Kingfisher and Jet Airways – only serves to confirm the serious problems with huge expansion of bilateral entitlements in respect of several countries (notably in the Gulf, SE Asia and Europe). This has facilitated several foreign airlines (predominantly Emirates) in tapping the vast Indian market and funnelling such traffic over their hubs (Dubai etc.) to various destinations in the USA, UK, Europe and elsewhere, through what is termed as “6th freedom traffic”. Although the bilateral agreements do not explicitly provide for exercise of 6th freedom rights, the entitlements exchanged are vastly in excess of “genuine” or point-to-point flying requirements between the two countries (termed as 3rd/ 4th freedom traffic based on Origin- Destination data) and implicitly allow “mega-airlines” with giant hubs to exploit 6th freedom traffic. In fact, the advertising campaigns run by many of these airlines make this intent clear. The notings on MoCA files while processing proposed entitlement liberalisation referring to the demand from the “labour class/ working class” Indians for more seats to/ from India (as projected by several agencies – MEA, Ministry of Tourism, MoCI), are, in a sense, misleading, since the “labour class/ working class” Indians would be interested only in point-to-point connectivity (largely to the Gulf/ Middle East), and not 6th freedom traffic (i.e. flights to UK/ USA/ Europe etc.)

While it is expected that the Indian scheduled carriers would try to protect their commercial interests to the extent possible (and lesser competition from foreign airlines would help them), the clear issue is one of a lack of a level playing field for AI (and other Indian airlines) before facing fierce competition. It is certainly not our case that AI should benefit from a protected environment, cloistered from competition from foreign airlines (and other Indian carriers), especially in the current era of economic liberalisation. However, the timing of the liberalisation of bilateral entitlements (notably the Gulf/ SE Asia/ Europe) from 2004-05 onwards left much to be desired:

- The delivery of AIL/ IAL’s new fleet acquisitions (approved by GoI in later 2005) was scheduled only between 2006 and 2010⁴⁶. Giving a reasonable timeframe of 2 or 3 years post- aircraft delivery for stabilisation of the expanded “footprint” could have provided AIL/ IAL a “level playing field” for competition.*
- It is only now (November 2010 onwards) that India finally has an international class airport at Delhi (T-3) capable of large scale hub and spoke operations (domestic/ international and international/ international); large scale development of other international airports in India facilitating hub and spoke operations (at the minimum where domestic and international terminals are co-located) will follow later. Again, giving a reasonable timeframe of 2 to 3 years after full-scale operationalisation of Delhi T-3 would have provided a level playing field to all Indian airlines (not just AIL/ IAL) to take on the mega carriers specialising in 6th freedom traffic.*

⁴⁶ Further delays in delivery of B787-8 dreamliner aircraft obviously could not have been foreseen, and considered.

- *Even the request of AIL in 2008 for deferral of further enhancement in entitlements to Dubai by just one year (to mid-2009) was not considered by MoCA, while agreeing to exchange of enhanced entitlements.*
- *Many of the small states in the Middle East have only one (or in a few cases two major airports or “points of call”) to offer, while the vast Indian market has numerous attractive interior locations with good commercial potential. The element of “reciprocity” or “give-and-take” in exchange of bilateral entitlements, except to an extent in the cases of Qatar (which was apparently guided by politico-economic considerations) could not be verified by us.*
- *While Dubai Airport is a major hub for 6th freedom traffic by Emirates Airlines, India could not obtain firm and immediate commitments from Dubai for “change of gauge” facility at Dubai Airport, which would at least have provided an opportunity for Indian carriers to funnel traffic in smaller capacity aircraft from interior Indian locations and take them onward to UK/ USA/ Europe and other destinations in larger capacity aircraft. Instead, the Dubai Government refused to make commitments in respect of their main airport (Dubai Airport) and only made vague commitments in respect of the upcoming Jebel Ali International Airport (which is, currently, mainly a cargo airport and is quite distant from Dubai Airport) and that too with distant timeframes between 2012 and 2018. Clearly, while the Dubai Government clearly protected the commercial interests of its airlines, MoCA failed to obtain adequate “quid pro quo”.*

Thus, while the liberalised policy towards bilateral entitlements benefited the Indian traveller considerably in terms of choices (and lower tariffs), the timing of the liberalisation (given the timing of AIL/ IAL aircraft acquisition, upgraded Indian airport with infrastructure with hub-spoke capabilities etc.) did not provide a level playing field to AI (and to a lesser extent other Indian private airlines). At this stage, Indian carriers will have to tackle renewed and serious challenges to compete effectively with established international “mega carriers” specialising in 6th freedom traffic.

However, this should not be considered as the only major reason for AI’s difficulties in competing with other international airlines; AI’s serious and chronic operational deficiencies (which are described elsewhere in this report) have also affected its ability to compete effectively.

5.1.9 MoCA's response

The Ministry's response (August 2011) as well as its stand at the Exit Conference (August 2011) is summarised below:

- They explained the larger role they played in addressing public interest, connectivity, safety etc. rather than just being the owner of the national carrier. Negotiations on bilaterals were held between the respective governments.
- The interest of the national carriers (AIL and IAL) was protected in the Gulf Region for three years, and also by way of extension of commercial arrangements for five years. Further, reciprocity and Air India's interest were always kept in view while deciding on bilateral rights.
- Regarding 6th freedom, the Ministry stated that this freedom was not given, but it flows as an unintended benefit from the 3rd and 4th freedoms. Further, they were in possession of documents wherein other Indian carriers had, on record, stated that they were not concerned with 6th Freedom. Also, Indian carriers were using 6th freedom to carry passengers to and from Nepal and Bangladesh.
- On the Dubai Sector, the Ministry explained that the 14 points of call in India had been given so as to provide better connectivity, on the request of the public, trade, people's representatives and workers and executives going abroad for work. Audit's recommendation of a possible roll-back could not be implemented. Further, Dubai was the largest market on the basis of 3rd / 4th freedom traffic, and AIL/ Indian carriers flew maximum flights from our cities to Dubai. The added advantage of using 5th freedom rights from Dubai and beyond for Indian carriers had not been covered by audit. The Government, suo-moto, tried to get change of gauge in the agreement, without any such demand coming from any Indian carriers.
- AIL had been granted the first right of refusal routinely. MoCA, however, based on the genuine intention of AIL, had been taking decisions in the interest of public.
- Regarding the CII Joint Position Paper authored by Kingfisher, Jet Airways and Air India and referred to in the draft Audit Report, the Ministry stated that this Joint Position Paper was not an official document, and was not available on Government record. Further, the chairman was the owner of a major airline. Therefore, it should not have been used in the Audit Report. According to them, the recommendations, conclusions drawn and figures pinpointing numbers to various airlines by the joint paper were thus of dubious veracity. However, they failed to provide alternate data, or indicated details of why the data was 'dubious'.
- While accepting the observation that the Indian carriers could not get the benefit of 6th freedom traffic due to the constraint of not having hubs in India facilitating transfers between domestic and international flights, the Ministry stated that they had to give priority to the interest of the general public over that of the airlines and that the Indian

carriers were not able to cater to many destinations, which were catered to by the foreign airlines. Thus, 6th freedom was inevitable, though this was not given expressly.

- The Ministry, however, agreed to streamline the bilateral policy and stated that they were working on a manual for bilaterals.

We do not agree with the Ministry's response for the following reasons:

- The 'unintended benefit' of 6th freedom traffic arose primarily on account of huge and generous expansion of entitlements by MoCA, without due consideration of 3rd and 4th freedom traffic from and to India. As pointed out in this report, the timing of such expansion, considering the constraint of hubs and delayed fleet acquisition by IAL/ AIL, did not provide for a level playing field for AI, and to an extent, other Indian carriers.
- The interests of the national carriers were not adequately protected. Such massive expansion of bilateral entitlements, well beyond 3rd/ 4th freedom traffic, did not amount to reciprocity, when AI made no requests for such increased entitlements for flying to other sectors. The requests of AI for reciprocal treatment, especially with reference to Dubai, were not appropriately addressed.
- The CCEA note of December 2004 for allowing private carriers to fly on international routes included just one incidental reference to 6th freedom traffic. In fact, while the note suggested allowing private carriers to avail of "unutilised entitlements", the negotiations with Dubai for enhanced entitlements was specifically premised on meeting the requirements of the private Indian carriers.
- The Ministry's claim that they had taken up the request for change of gauge at Dubai suo-moto is factually incorrect, as this had been specifically highlighted by AIL in numerous letters in 2008 and 2009 (highlighted in Table 5.5). In fact, the Ministry did not make adequate efforts to link the change of gauge with grant of additional points of call and enhanced capacity entitlements. As regards exploitation of 5th freedom rights by Indian carriers, during the Dubai bilateral talks of April 2008, the Indian side had specifically highlighted the fact that although the Indian carriers had 5th freedom rights beyond Dubai, they were not being utilized and change of gauge could facilitate that.
- As regards the data of "dubious veracity" indicated in the Joint Position Paper on Bilateral Rights prepared jointly by Air India, Jet Airways and Kingfisher for the CII National Committee on Civil Aviation, as well as the lack of available valid data on 6th freedom traffic as well as 3rd/ 4th freedom traffic, we noted that AIL had repeatedly quoted detailed statistics (in particular, in November 2008 and in April 2010) of 6th freedom carriage by other foreign airlines with regard to enhanced entitlements. In fact, the notings on the Ministry's files relating to examination of Dubai bilaterals have at no point of time stated that such data quoted by AIL was not valid, or was of dubious quality. Clearly, the Ministry's response is an after-thought.

A summary comparison of data indicated in the Joint Position Paper and AI's letters of November 2008 and April 2010 to MoCA reveals the following position:

**Table 5.11 - Data relating to 6th freedom carriage by the major airlines
(in percentage)**

Airline	Data as per		
	AIL		Joint position paper
	November 2008	April 2010	February 2011
Emirates	51	56	59
Gulf Air	85	79	79
Etihad Airways	67	66	74
Oman Air	36	Not Available	43
Kuwait Airways	41	Not Available	40
Thai Airways	46	39	39
Singapore Airlines	53	47	49
Malaysian Airlines	44	Not Available	42
Cathay Pacific Airlines	53	72	76
Lufthansa Airlines	75	81	87
British Airways	49	48	61
KLM Airlines	76	69	76
Air France	59	67	73

Source: AIL's letters to MoCA dated 19 November 2008, 13 April 2010 and joint position paper submitted to CII dated 7 February 2011.

Clearly, the trends indicated in AI's letters to MoCA and the Joint Position Paper were broadly consistent, in fact, showing a distinct increasing trend from 2008 to 2011 in many cases and can, by no means, be dismissed peremptorily as "dubious data".

5.2 MoCA's monitoring of performance of AIL, IAL and AI through MoUs

The annual MoU between the administrative Ministry of the GoI and the management of the Central Public Sector Enterprise (CPSE) is intended to be a performance monitoring tool for evaluating the performance of the CPSE at the end of the year with reference to the targets fixed at the beginning of the year. As per the guidelines of the Department of Public Enterprises (DPE), the performance evaluation has both 'financial' and 'non-financial parameters' having weightage of 50 per cent each. The non-financial parameters are further divided into dynamic parameters (30% weightage), enterprise specific parameters (10% weightage) and sector specific parameters (10% weightage).

The Ministry in its reply (August 2011) accepted the audit comment and stated that the MoU has been overhauled and an entirely new MOU with fresh parameters has been drawn up.

5.2.1 Lack of Correlation between MOU Ratings and Financial Performance

A review of MoU ratings by DPE with composite scores of AIL, IAL and NACIL based on 1989-2008 audited data revealed the following position:

Table 5.12 – MoU ratings of AIL, IAL and NACIL/AI

Year	Air India Ltd. (AIL)	Indian Airlines Ltd. (IAL)	AI
1989-90	Good	NS/ NE ⁴⁷	-
1990-91	NS/ NE	NS/ NE	
1991-92	NS/ NE	NS/ NE	-
1992-93	Very Good	Poor	-
1993-94	Excellent	NS/ NE	-
1994-95	Fair	Excellent	-
1995-96	Fair	Excellent	-
1996-97	Very Good	Excellent	-
1997-98	NS/ NE	Excellent	-
1998-99	Very Good	Very Good	-
1999-2000	Very Good	Very Good	-
2000-2001	NS/ NE	Very Good	-
2001-2002	Good	Very Good	-
2002-2003	Very Good	Very Good	-
2003-2004	Very Good	Excellent	-
2004-2005	Good	Very Good	-
2005-2006	NS/ NE	Very Good	-

⁴⁷ Presumably, NS/ NE stands for "Not Submitted/ Not Evaluated"

Year	Air India Ltd. (AIL)	Indian Airlines Ltd. (IAL)	AI
2006-07	NS/NE	NS/ NE	-
2007-08	-	-	NS/NE
2008-09	-	-	NS/NE

Note: Effective 1 April 2007 due to merger of AIL and IAL, the new merged entity is known as AI

The above table reveals that over the 20 year period from 1989-90 to 2008-09, there was only one instance where AIL/ IAL/ NACIL received a poor rating viz. – Poor – IAL (1992-93). A substantial number of ratings were NS/ NE (Not Submitted/ Not Evaluated), which is the position continuing in uninterrupted fashion from 2006-07 onwards.

By contrast, a profile of the net profit/ loss of AIL, IAL, and AI over the same 20 year period from 1989-90 to 2008-09 reveals the following position:

Table 5.13 - Profile of Net Profit / (Loss) of AIL/ IAL and NACIL (AI) from 1989-90 to 2008-09

(Rs. in crore)

	AIL	IAL	NACIL
1989-90	70.89	NA	--
1990-91	81.23	NA	--
1991-92	145.89	NA	--
1992-93	333.14	NA	--
1993-94	201.90	-258.46	--
1994-95	40.80	-188.73	--
1995-96	-271.84	-109.98	--
1996-97	-296.94	-14.59	--
1997-98	-181.01	47.27	--
1998-99	-174.48	13.12	--
1999-00	-37.63	45.27	--
2000-01	-44.40	-159.17	--
2001-02	15.44	-246.75	--
2002-03	133.86	-196.56	--
2003-04	92.33	44.17	--
2004-05	96.36	65.61	--
2005-06	14.94	49.50	--
2006-07	-447.93	-240.29	--
2007-08	--	--	-2226.16
2008-09	--	--	-5548.26

In our view, the MoU ratings of AIL/ IAL/ NACIL bore little or no correlation with their actual financial performance, notwithstanding the 50 per cent weightage for financial parameters in the MoU.

A summary of the financial parameters adopted for IAL and AIL from 2004-05 to 2006-07 is given below:

Table 5.14 - Financial Parameters in MoUs with IAL

Year wise criteria value target/achievement-IAL									
Criteria type	Criteria	Unit	2004-05			2005-06			2006-07
			Weight in %	Target	Achievement	Weight in %	Target	Achievement	
Financial	Gross margin/gross block	Rs.	2	.063	.068	2	.070	.078	Not signed /not evaluated
	Net profit (loss)	Rs. in Cr	15	(24.75)	17.50	10	30.00	68.50	
	Gross profit (loss)	-do-	8	23.10	56.35	10	68.85	100.50	
	Gross margin (profit before int., depreciation & tax)	-do-	18	345.50	370.50	17	383.00	428.85	
	Gross sales	-do-	2	5041.00	5246.50	4	6417.75	6038.00	
	PBDIT/total employment	Rs. in lakh	5	1.85	1.99	7	2.06	2.33	

Table 5.15 - Financial Parameters in MoUs with AIL

Year wise criteria value target/achievement-ALL									
Criteria type	Criteria	Unit	2004-05 (BE)			2005-06			2006-07
			Weight in %	Target	Achievement	Weight in %	Target	Achievement	
Financial	Gross margin/gross block	%	2	8.70	Data not available	Not submitted/not evaluated			Not submitted/not evaluated
	Net profit/net worth	%	10	22.86					
	Gross profit/capital employed	-%	10	9.12					
	Gross margin	Rs.in cr	8	634.98					
	Gross sales (revenue)	-do-	4	6444.00					
	PBDIT/total employees	%	7	4.04					
	Added value/gross sales	%	9	5.04					

In our view, the inclusion of multiple criteria of the same or similar nature (e.g. gross margin, gross profit, net profit etc.) resulted in unnecessary duplication of parameters, without adding value in terms of monitoring.

In its reply (August 2011), the Ministry accepted the audit comments and noted them for future compliance.

5.2.2 Non-Financial Parameters adopted for MoUs

Audit scrutiny of the non-financial parameters revealed that weightages were assigned in respect of IA to different parameters as follows:

Table 5.16 – Non-financial Parameters in MoUs of IAL

Parameter	Weightage Assigned
Aircraft Utilisation (total)	10%
Technical Regularity	5% each
Foreign Exchange Earnings, Employee Productivity (ATKMs/ No of Employees); Customer Satisfaction (IMRB Rating); HRD (No. Of employees trained); Safety indicators	4% each
Preparation of corporate/ strategic plan; benchmarking; preparation of marketing plan	3% each
Cargo carried; Overall Load Factor; On-time Performance	2% each

Similar analysis in respect of AIL revealed the following position:

Table 5.17 – Non-financial Parameters in MoUs of AIL

Parameter	Weightage Assigned
Benchmarking; Aircraft Utilisation (total)	5% each
Induction of two aircraft; new station introduced on network	4% each
Customer satisfaction survey; growth in scheduled ATKMs; no. of commercial staff trained	3% each
On-time performance; reportable incidents indicator; operating revenue; operating costs; RTKMs/ Employee; No. Of Departments with ISO Certification; Preparation of Strategic Plan; Sundry Debtors; Hiring of Ground Service Department	2% each
Passenger Load Factor; Passenger Market Share; Expenditure on Product Upgradation and IT; Joint Ventures with one airline; disposal of one aircraft	1% each

By contrast, the traffic and operating parameters monitored by the DGCA include the following:

- Flight Cancellation Data and On-time Performance (Arrivals and Departures);
- Passengers Carried, Seat Kilometres Performed, and Growth in Passengers Carried;
- Passenger Load Factor;
- Cargo Carried and Ton Kilometres Performed;

- Weight Load Factor;
- Market Shares of Different Scheduled Airlines; and
- Passenger Complaints (No. Per 10,000 passengers carried);

In audit's view, the non-financial parameters included in the MoU included minor or insignificant parameters (preparation of plans of different types, number of employees trained, benchmarking, "technical regularity" etc.) or gave undue weightage to such parameters, at the cost of critical traffic and operating parameters in the airline industry (such as those being monitored by DGCA). This skewed the MoU ratings of IA and AI unduly to present a "rosy" picture of performance

The overall combination of financial and non-financial parameters devised for the MoUs were such as to ensure that the MoUs became a meaningless exercise, rarely (if ever) reflecting poor performance, and ensuring lack of effective accountability for all parties concerned.

The Ministry, in its reply (August 2011), accepted the audit comment and stated that the MoU was being revised, so that the parameters reflected the position correctly.

5.2.3 Other Serious Deficiencies in MoU Monitoring

- Part V of the MoU makes the Ministry responsible for monitoring the performance in terms of targets set out and parameters laid down in the MoU on a quarterly basis. Audit scrutiny of the correspondence files/documents related to MoU revealed no monitoring by MoCA, and no progress reports obtained and no feedback on achievement of targets communicated to the airlines. The only monitoring and evaluation of the MoUs was by DPE.
- During the period 1989-90 to 2006-07, MoUs of IAL were not signed/not evaluated five times and that of AIL six times. Further, MoUs were submitted at the fag end of the financial year and thus not used as an effective monitoring tool e.g. IAL's MoU for 2004-05 were signed in November 2004 and that of 2005-06 in October 2005, while AIL's MoU for 2004-05 was signed in September 2004.
- As regards 2007-08, the MoU for NACIL merely reflected the criteria "Completion of Merger", which was not completed (but was not evaluated). The MoU for NACIL for 2008-09 was forwarded to DPE in April 2009 after the completion of 2008-09.

The Ministry, in its reply (August 2011), accepted the audit comment and stated that fresh MIS for reporting performance of the airline to MoCA had been drawn up, and was subjected to periodic monitoring.

5.3 Grant of Undue Facilities

In March 2010, at a time when NACIL was going through a major financial crisis, MoCA issued an order, whereby the facility for upgradation of ticket for self and immediate family

for travel to the highest class available by Air India/ Indian Airlines, subject to availability of seats, was extended to all former Secretaries of the Ministry of Civil Aviation. The documents/ files relating to the processing and issue of this record were sought by audit, but were not provided.

In audit's view, the issue of this circular granting additional facilities, at this time of crisis of NACIL, indicates that MoCA was not acting as a responsible stakeholder. If at all, MoCA was of the view that such facilities need to be extended, such costs should be borne by the MoCA, and not by NACIL.

The implication of such upgradation may also be read with our audit findings relating to poor performance on first and business class, and the system of free upgrades, without adequate commercial value to NACIL.

The Ministry, in its reply (August 2011), noted the audit comment.