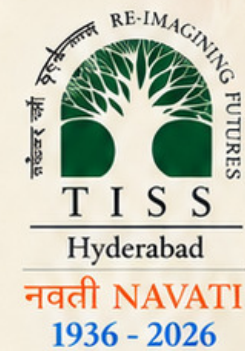


WORKING PAPER SERIES  
TISS Hyderabad

TATA INSTITUTE OF SOCIAL SCIENCES  
Hyderabad Campus  
Mansa Hills, Rajendranagar  
Hyderabad 500 030, Telangana, India



WORKING PAPER SERIES  
TISS Hyderabad

## AVIATION REGULATION IN INDIA

*Some Observations from Ownership,  
Insolvency, and Competition Regulation*

**Mohit Kumar Gupta**

School of Public Policy and Governance, TISS Hyderabad

Working Paper No. 16  
2026

TATA INSTITUTE OF SOCIAL SCIENCES  
Hyderabad Campus

# Aviation Regulation in India

## *Some Observations from Ownership, Insolvency, and Competition Regulation*

Mohit Kumar Gupta  
School of Public Policy and Governance, TISS Hyderabad

Working Paper No. 16 | 2026

### Copyright

© Tata Institute of Social Sciences, 2026. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of the Tata Institute of Social Sciences, except for brief quotations used for academic and non-commercial purposes with due acknowledgement of the source.

### Disclaimer

The views, opinions, and interpretations expressed in this working paper are entirely those of the author and do not necessarily reflect the views or policies of the Tata Institute of Social Sciences, its Hyderabad Campus, or any other institution or organisation with which the author is affiliated. The author alone is responsible for the content, including any errors or omissions.

Working papers are circulated to stimulate discussion and invite critical comment. They may be revised for later publication.

### Suggested citation

Gupta, Mohit Kumar. 2026. *Aviation Regulation in India: Some Observations from Ownership, Insolvency, and Competition Regulation*. TISS Hyderabad Working Paper No. 16. Hyderabad: Tata Institute of Social Sciences.

### Published by

Tata Institute of Social Sciences, Hyderabad Campus  
Mansa Hills, Rajendranagar, Hyderabad 500 030, Telangana, India

# Aviation Regulation in India

## *Some Observations from Ownership, Insolvency, and Competition Regulation*

Mohit Kumar Gupta<sup>\*,\*\*</sup>

### Abstract

India's civil aviation sector, in keeping with the trajectory of the rest of the economy, has arguably moved towards a liberalised regime in the last three decades. However, quite paradoxically, despite the attempts to liberalise it, it is at present, in terms of air-line carriers, one of the most concentrated aviation markets among major economies. Against this backdrop, the paper examines some of the key components governing Indian aviation regulation – the rules for foreign investment and ownership, insolvency law, and competition regulation – all of which have been dealt with in the existing scholarship mostly as distinct and self-contained regulatory limbs. This existing regulatory understanding, though very useful for analytical purposes, has evolved in domain-specific silos that obscure how these distinct regulatory areas interact with, and reinforce, one another to produce the structural outcomes currently witnessed, for instance the limited number of domestic air carriers. To understand this better, the paper examines and illustrates key dimensions of each regulatory limb: the Substantial Ownership and Effective Control (SOEC) regime with respect to ownership regulation, and India's adherence to the Cape Town Convention and its domestic implementation with respect to cross-border investment. It also locates recent developments that existing scholarship has not yet comprehensively absorbed, such as the consolidation of Air India and Vistara from the viewpoint of competition and ownership regulation, the insolvency of key carriers, the enactment of the Bharatiya Vayuyan Adhiniyam, 2024, and the IndiGo scheduling crisis of December 2025 and its aftermath, situating these at the intersection of competition and structural regulation. Overall, the paper argues that even the so-called liberalisation era of Indian aviation has not translated into deregulation or a retreating state. Instead, the experience of Indian aviation regulation reveals an entrenched, state-led regulatory architecture in which the state continues to set the rules of the game by selectively (re)defining and (re)regulating

---

\* Assistant Professor, School of Public Policy and Governance, Tata Institute of Social Sciences (TISS), Hyderabad. Email: mohit.gupta@tiss.ac.in.

\*\* The author is grateful to an anonymous reviewer whose comments on an earlier version of this paper helped to shape its arguments more coherently.

each limb. Such a pattern is not merely a lack of coordination among sectoral regulators but a mechanism of differential visibility of regulation, insofar as liberalisation is extended where it is politically legible and internationally scored, and withheld where the register is technical, unwatched and within national boundaries. The paper argues for a more comprehensive and integrated regulatory architecture for aviation in India.

**Keywords:** aviation regulation, Insolvency and Bankruptcy Code, Competition Commission of India, asymmetric market concentration, Bharatiya Vayuyan Adhiniyam, Cape Town Convention

## 1. Introduction

The regulatory architecture governing India's civil aviation sector can appear to be one that comprises a set of discrete regulatory domains. This understanding draws a division in which key regulatory domains such as ownership, financing, and foreign investment are treated as questions of industrial policy and sovereignty, insolvency and bankruptcy regulation as a matter of creditor rights and asset recovery, and competition regulation as a question of market structure and consumer welfare. The presence of sector-specific regulators in India for each of these areas has further entrenched this discrete regulatory understanding. The existing scholarship on aviation regulation has also, correspondingly, addressed the institutional apparatus, instruments, and reform trajectories of each domain largely on its own terms.<sup>1</sup> The central premise of this paper is that this compartmentalised understanding, while analytically convenient, misses the key regulatory issue confronting Indian aviation today: these domains do not operate independently of one another but reinforce one another, and their coordinated operation is an important part of the explanation for the current state of the sector, in which a single dominant carrier now accounts for close to two-thirds of the domestic market. It follows that an inquiry into any one of these regulatory domains in isolation is not equipped to address this regulatory issue in its totality.

The focus of the present paper is mainly the airline carriers, and the ownership, insolvency, and competition regulation that governs them. Of these three regulatory limbs, the ownership limb has been addressed in the literature principally through the evolution of the Substantial Ownership and Effective Control (SOEC) requirement and its uneasy coexistence with the liberalisation

---

<sup>1</sup> J. W. Lee and U. Varottil, "Against Aviation Orthodoxy: India's Foreign Investment Regime for the Airline Industry", *Brooklyn Journal of International Law* 44, no. 1 (2018): 51–110; S. B. Bhat, "Turbulence in Indian Aviation Financing Sector: Time to Understand and Implement the Cape Town Regime in the True Spirit", *Uniform Law Review* 29, no. 1 (2024): 1–35, <https://doi.org/10.1093/ulr/unae001>.

of non-airline investment.<sup>2</sup> The literature on the chequered implementation of the Cape Town Convention of 2001 offers one of the most comprehensive accounts of the regulatory issues attending the financing of a capital-intensive, asset-specific industry.<sup>3</sup> What neither strand of this literature has systematically undertaken is to connect the ownership and financing limb to the sector's other regulatory areas, namely insolvency and competition regulation.

The paper adopts a doctrinal and institutional approach to aviation-sector regulation, examining the relevant statutory provisions, the role of the regulators, and the relevant case law. The cases that we discuss are situated at the intersection of at least two of the three regulatory limbs. Such an analysis makes it possible to establish that the three limbs interact, to trace the mechanisms and sequencing through which they do so, and to show how their interaction produced particular outcomes. These specific regulatory outcomes – such as the permanent exit of a firm rather than its resolution, and incumbent absorption rather than the independent survival of a competing firm – cumulatively produced the present structure of India's downstream aviation market. In arguing this, the paper seeks to go beyond accounts of the Indian aviation sector that identify a single regulation or regulator as the cause of the concentrated market structure observed today. Instead, it argues that gaps in regulation, and in the working of regulatory institutions, produced several specific outcomes that shaped and reinforced the current structure of the sector.

The paper's second intervention is to examine some key contemporary developments in Indian aviation and to map them onto the regulatory limbs mentioned above. These include the completion of Air India's privatisation and the consolidation of Vistara, AirAsia India, and Air India Express into a single group, and the December 2025 IndiGo scheduling crisis. The paper argues that these developments show how gaps across regulations and regulators – competition regulation, insolvency regulation, the functioning of the Directorate General of Civil Aviation (DGCA), and the apertures emanating from the recently enacted Bharatiya Vayuyan Adhiniyam (BVA) – reinforce one another.

Examining the key regulatory issues in Indian aviation and their interplay, and mapping recent developments onto these regulatory limbs, not only provides a more comprehensive account of the aviation sector's regulatory architecture but also establishes that the emergence of the regulatory state in India has not translated into a withdrawal or retreat of the state from ownership, insolvency and competition questions, leaving market forces to settle them. It has instead meant a state

---

<sup>2</sup> Lee and Varottil, "Against Aviation Orthodoxy".

<sup>3</sup> Bhat, "Turbulence in Indian Aviation Financing".

that continues to actively (re)write the rules in each domain, but does so limb by limb, without reconciling the cumulative effect of those rules on market structure. The rest of the paper is organised as follows. Section 2 provides a background to Indian aviation liberalisation, from the Air Corporations Act, 1953, to the more recent post-2022 consolidation of the Tata-owned airline group. This includes an analysis of the ownership limb – the SOEC framework and its uneasy coexistence with liberalised non-airline investment. Section 3 turns to the financing limb specifically, examining the Cape Town Convention and its domestic implementation as the ownership limb’s financing-side counterpart. Section 4 examines the insolvency limb of regulation, arguing that the Insolvency and Bankruptcy Code, 2016 (IBC), has not adequately protected aircraft financiers and has also accelerated the permanent exit of competing carriers, thereby undermining both the ownership limb’s objective of attracting capital and competition regulation’s objective of a contestable market. Subsequently, Section 5 examines competition regulation, arguing that the Competition Commission of India’s (CCI) transaction-specific merger-review apparatus – anchored in notification thresholds and the Appreciable Adverse Effect on Competition (AAEC) factors – is structurally not adequate to address concentration arising on account of a sequence of exits and combinations. Section 6 then shows how the three limbs interact to produce a self-reinforcing loop of concentration, maps recent developments onto this loop, and situates the analysis within calls for India to move from an ex-post to an ex-ante regulatory posture. Section 7 sets out directions for reform, including the case for a comprehensive, integrated regulatory framework, and Section 8 offers concluding observations.

## **2. The Liberalisation Trajectory of Aviation: From State Monopoly to Asymmetric Concentration**

A crucial juncture in the post-Independence trajectory of India’s civil aviation sector was the enactment of the Air Corporations Act, 1953, following which the nine existing airlines were nationalised into two state entities, Air India International and Indian Airlines.<sup>4</sup> For nearly four decades thereafter, Indian aviation operated mostly as a state monopoly, with private carriers permitted only limited operations. Ownership restrictions in this period were driven by considerations of national sovereignty, with no explicit role for insolvency or competition regulation – a structure that naturally privileged the incumbent state carriers by design rather than by market outcome.

It was only in 1994 that the Air Corporations Act, 1953, was repealed, thereby ending the state monopoly and permitting the entry of private carriers in the Indian aviation market. This also

---

<sup>4</sup> Air Corporations Act, 1953 (Act No. 27 of 1953).

marked the commencement of the next phase of Indian aviation. This phase of aviation regulation followed closely on the broader economic liberalisation of the country that began in 1991. In 1997, the government permitted foreign direct investment (FDI) of up to 40 per cent in Indian airline companies, while barring the direct or indirect participation of foreign airlines.<sup>5</sup> By contrast, non-resident Indians (NRIs) and overseas corporate bodies (OCBs) were permitted to invest up to 100 per cent. The Naresh Chandra Committee's 2003 report, however, challenged this exclusion of foreign airlines, recommending that the ceiling on foreign investment be raised to 49 per cent, citing the highly capital-intensive nature of the airline business.<sup>6</sup> This recommendation went unimplemented for nearly a decade; it was only as the sector's financial distress deepened between 2007 and 2010, reflected in the rising cumulative losses of airline companies, that the Working Group on Civil Aviation for the Twelfth Five Year Plan (2011–12) examined the threshold for foreign investment in the sector. In January 2012, following an inter-departmental review, a threshold of 49 per cent was arrived at, as against the more conservative 26 per cent proposed by the Department of Industrial Policy and Promotion, and the Cabinet formalised this in September 2012, permitting foreign airlines to invest up to 49 per cent, inclusive of FDI and foreign institutional investment.<sup>7</sup> In our view, the period after 2012 marked another phase of aviation ownership policy because, for the first time, foreign airlines were permitted to invest up to 49 per cent in Indian carriers, subject to SOEC conditions requiring that the Indian carrier's principal place of business remain in India, that its chairman and two-thirds of its directors be Indian citizens, and that substantial ownership and effective control vest in Indian nationals.

Subsequently, the Arvind Mayaram Committee, constituted in 2013 and tasked with rationalising India's FDI regime economy-wide, recommended raising the aviation ceiling further, but civil aviation was pointedly left out of the sectors that received higher caps when the government acted on the Committee's other recommendations in July 2013. Aviation ownership policy was thus no longer being settled by aviation-specific expert bodies at all, but was folded into, and then stalled within, general FDI reform. Despite this freeze, the changes already made enabled the entry of certain players: Etihad Airways acquired a 24 per cent stake in Jet Airways in 2013, and Tata Sons entered into joint ventures with Singapore Airlines and AirAsia that led to the creation of Vistara

<sup>5</sup> P. Hooper, "Liberalisation of the Airline Industry in India", *Journal of Air Transport Management* 3, no. 3 (1997): 115–23.

<sup>6</sup> Ministry of Civil Aviation, Government of India, *Report of the Committee on a Road Map for the Civil Aviation Sector* (Naresh Chandra Committee) (New Delhi: Government of India, 2003).

<sup>7</sup> Ministry of Civil Aviation, Government of India, *Report of the Working Group on Civil Aviation for the Twelfth Five Year Plan (2012–2017)* (New Delhi: Government of India, 2012).

and AirAsia India in 2013 and 2014 respectively. The next phase of reforms, beginning in 2016, permitted up to 100 per cent foreign investment by non-airline investors while leaving the 49 per cent cap and SOEC conditions intact for foreign airline investors.<sup>8</sup> The same year, the National Civil Aviation Policy, 2016, abolished the infamous “5/20 rule” that had required domestic carriers to complete five years of domestic operations and operate twenty aircraft before flying international routes, replacing it with a fleet-size-based threshold intended to benefit newer entrants such as Vistara and AirAsia India.<sup>9</sup>

The most consequential ownership-side development since 2016, and in the latest phase of aviation regulation, was the privatisation of Air India, with the Tata group acquiring 100 per cent of the company in January 2022. The interplay of regulatory limbs is already evident at this stage: the change in ownership coincided with the consolidation of four Tata-linked or Tata-adjacent carriers (Air India, Air India Express, Vistara, and AirAsia India), which had competed alongside IndiGo, SpiceJet, and GoAir, into effectively two Tata-owned groupings, raising the competition concerns examined below. One of the key reasons for this concentrated outcome also lay in another regulatory area, the insolvency limb, insofar as two carriers, Jet Airways in 2019 and Go First in 2023, exited the market through insolvency proceedings before the sector’s ownership structure could be tested by their continued independent operation, making the sector more concentrated. Before turning to those details, however, it is important to examine the ownership and financing limbs more closely.

The distinction between foreign airline investors and foreign non-airline investors is central to understanding ownership regulation in Indian aviation, as it is in most other jurisdictions.<sup>10</sup>

In the Indian context, non-airline investors may hold up to 100 per cent of an Indian carrier without SOEC conditions attaching, subject to government approval beyond 49 per cent. Foreign airlines, by contrast, remain capped at 49 per cent and subject to SOEC conditions requiring an Indian chairman, two-thirds Indian directors, and Indian “effective control”.<sup>11</sup> This dichotomy would be more readily defensible if foreign airline ownership posed a materially greater safety or security risk than foreign financial ownership; the more plausible explanation lies in interest-group politics,

---

<sup>8</sup> Lee and Varottil, “Against Aviation Orthodoxy”.

<sup>9</sup> Ministry of Civil Aviation, Government of India, *National Civil Aviation Policy 2016* (New Delhi: Government of India, 2016), [http://www.civilaviation.gov.in/sites/default/files/Final/\\_%20NCAP\\_2016\\_15-06-2016.pdf](http://www.civilaviation.gov.in/sites/default/files/Final/_%20NCAP_2016_15-06-2016.pdf).

<sup>10</sup> I. Lelieur, *Law and Policy of Substantial Ownership and Effective Control of Airlines: Prospects for Change* (Aldershot: Ashgate, 2003).

<sup>11</sup> Lee and Varottil, “Against Aviation Orthodoxy”.

in which incumbent carriers have consistently lobbied against foreign airline entry on competitive rather than security grounds – most visibly in their opposition to AirAsia India, Vistara, and the prospective entry of Qatar Airways. The practical effect of the distinction has been to channel foreign capital toward passive financial investment in incumbents – through public listings or through NRI-structured control, as with Jet Airways and IndiGo’s own co-founder – rather than toward strategic investment by experienced foreign carriers capable of introducing genuine competitive discipline. The ownership regime has thus been structurally biased toward reinforcing incumbency even as its formal terms have liberalised. More than a decade after the 2012 liberalisation of ownership rules, no genuinely independent, foreign-airline-backed challenger carrier survives in the Indian market – a striking outcome for a jurisdiction whose foreign investment regime for airlines has been described in the comparative literature as unusually liberal in form.

An investor or lender seeking to finance or acquire an Indian carrier must, in addition, navigate multiple regulators: the Consolidated FDI Policy administered by the Department for Promotion of Industry and Internal Trade; DGCA licensing requirements administered under the erstwhile Aircraft Rules, 1937 (now transitioning to rules under the BVA, 2024), alongside the Bureau of Civil Aviation Security (BCAS); the Companies Act, 2013, for charge registration; sectoral security clearances; and, since the 2017 abolition of the Foreign Investment Promotion Board, a ministry-by-ministry approval process for investments exceeding the automatic-route threshold. This regulatory fragmentation – multiple regulators, no single-window clearance, and a persistent contradiction between the Consolidated FDI Policy’s permission of 100 per cent non-airline investment without SOEC conditions and the DGCA’s continuing insistence that SOEC vest in Indian nationals irrespective of the FDI policy – creates exactly the kind of forum-shopping and interpretive uncertainty that undermines investor confidence independently of the liberalisation the government has publicised.

This is the same institutional fragmentation that Section 3 below shows recurring, in a different but structurally related form, in the financing and Cape Town Convention context. The paper argues that it is this recurrence, rather than any single provision, that explains how the ownership aspect of regulation in aviation has contributed to concentration. The December 2025 IndiGo scheduling crisis illustrated a further, related layer of this fragmentation: it exposed the absence of any body monitoring whether a single carrier’s crew-planning practices, governed by the DGCA’s Flight Duty Time Limitations (FDTL) mandate, posed a systemic risk to the aviation network. Although this is a safety-regulatory gap, it has direct competition-regulatory consequences, as dis-

cussed further in Section 6. Before that, the next section turns to the financing constraint and the Cape Town regime, which this paper treats as complementary to the ownership regulation.

### 3. The Financing Constraint and the Cape Town Regime: Ownership's Other Half

Aviation is clearly a capital-intensive sector in which carriers generally lack conventional collateral for raising the capital that investment requires. The industry has therefore developed an asset-based financing model in which the aircraft itself is the underlying collateral, frequently involving multiple creditors across multiple jurisdictions holding parallel security interests in the same airframe. This model disadvantages creditors relative to debtors and, since most such creditors are foreign institutions, it requires standardised international rules governing the terms of investment. The Cape Town Convention, 2001, and its Aircraft Protocol constitute the principal such instrument, providing for the constitution and effects of an international interest in mobile equipment and associated rights.<sup>12</sup>

This financing limb of aviation regulation is therefore not, in substance, separate from the ownership limb; it is its financing-side counterpart. The SOEC determines who may own and control an Indian carrier, while the Cape Town regime determines the price and certainty at which that carrier, once owned, can finance its fleet. The two together reinforce the same structural bias toward incumbency, because both raise the relative cost of capital for challenger carriers more than for balance-sheet-strong incumbents. India's accession to the Cape Town Convention and its Aircraft Protocol in 2008 was intended to resolve contracting uncertainty between creditors and debtors by creating an internationally recognised, enforceable set of rules irrespective of divergent national laws on non-possessory security interests. It provided for de-registration of aircraft through the Irrevocable De-Registration and Export Request Authorisation (IDERA) mechanism, enabling creditors to repossess and export aircraft on default without protracted litigation. Despite accession, India's implementation has lacked clarity from the outset.<sup>13</sup> For instance, India's declaration under Article 39(1)(b) of the Convention is internally incoherent, extending protection to "any entity" of the state rather than confining it to government rights as the Convention contemplates, and mistakenly referencing "another aircraft object" in a provision that is not aircraft-specific. These drafting issues fed directly into a sequence of judicial and administrative failures in which the DGCA resisted

---

<sup>12</sup> Convention on International Interests in Mobile Equipment and Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, 16 November 2001, 2307 U.N.T.S. 285; Bhat, "Turbulence in Indian Aviation Financing".

<sup>13</sup> Bhat, "Turbulence in Indian Aviation Financing".

de-registering aircraft notwithstanding valid IDERAs. The clearest instance was the Kingfisher Airlines insolvency, in which the German-headquartered lessor DVB Aviation Finance had to litigate before the Delhi High Court, in *DVB Aviation Finance Asia Pte Ltd v. Directorate General of Civil Aviation*,<sup>14</sup> merely to obtain de-registration of aircraft it had financed after Kingfisher resisted on the basis of a disputed purchase option; a somewhat related pattern recurred in subsequent lessor litigation involving SpiceJet before the same court.

The legislative response was the insertion into the Aircraft Rules of Rule 30(7), which mandated de-registration within five working days of a valid IDERA application, and Rule 32A, facilitating export, in 2015 and 2017 respectively. The result was a regime that is creditor-friendly on its face and creditor-unfriendly in the details of its drafting and operationalisation. The financing constraint operates as a structural bridge between the ownership limb and the competition limb. This was evident in the fact that, for the two years in which the Go First moratorium dispute remained unresolved, aircraft financing was demonstrably more expensive and less certain in India than the Cape Town regime promises internationally. In response, the Aviation Working Group (AWG) downgraded India's Cape Town Convention Compliance Index rating twice during the Go First dispute – ultimately to 2 out of 5, with a negative watchlist outlook – citing the DGCA's prolonged failure to process lessor de-registration requests. That downgrade was reversed only after the fact, following the Delhi High Court's April 2024 order and the passage of the Protection of Interests in Aircraft Objects Act, 2025.<sup>15</sup> The AWG raised both of India's compliance variables from 2 to 3, lifted the country's overall adjusted score from 50 to 61, and removed India from its watchlist. Beyond the rating deficit, this episode showed the mechanism by which a moratorium dispute concentrated in time can still leave a permanent structural mark – the carriers exposed to that two-year window of uncertainty, Go First foremost among them, did not survive it, while incumbents with stronger balance sheets absorbed the resulting capacity. Therefore, the ownership and financing limbs jointly explain why the carriers that have actually entered and survived in the Indian market – IndiGo and the Tata-owned group – are precisely those that could self-finance or access NRI/incumbent-linked capital, while carriers dependent on foreign strategic capital or on Cape-Town-reliant lessor financing, such as Jet Airways and Go First, did not survive. The next section builds on this by showing how the insolvency limb operationalised, rather than merely coincided with, that exit.

<sup>14</sup> *DVB Aviation Finance Asia Pte Ltd v. Directorate General of Civil Aviation*, W.P. (C) 7661/2012 and CM No. 4208/2013 (Delhi High Court, 8 April 2013).

<sup>15</sup> Protection of Interests in Aircraft Objects Act, 2025 (Act No. 17 of 2025).

#### 4. The Insolvency Limb: From Fragmented Regime to Structured Code, and Still Unresolved

Before 2016, secured lending in India was governed primarily by the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002,<sup>16</sup> which empowered secured creditors to enforce security interests without court intervention but expressly excluded aircraft from its scope. This left aviation financiers without the principal domestic self-help remedy available to other sectors even before Cape Town Convention issues arose. In fact, prior to the IBC, corporate insolvency in India was governed by an admittedly fragmented regime – winding-up under the Companies Act, 1956, recovery proceedings under the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 – under which proceedings routinely took years, asset value eroded during the interim, and no single forum had jurisdiction to bind all creditor classes to a time-bound outcome. The move from this fragmented regime to the structured, time-bound IBC, 2016,<sup>17</sup> was, on its own terms, a genuine institutional innovation: a single adjudicating forum in the form of the National Company Law Tribunal (NCLT), a mandatory moratorium to permit an uninterrupted resolution attempt, and statutory timelines intended to resolve distress within 180 to 330 days rather than the multi-year proceedings SICA and its predecessors had allowed.

Yet for aviation specifically, the shift from fragmentation to structure has not translated into effective resolution. On the contrary, it has made the underlying problem more visible and more acute, for reasons that are sector-specific rather than incidental. The IBC imposes a moratorium, extendable up to 330 days in aggregate inclusive of judicially sanctioned extensions, that explicitly bars “the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor”. This provision directly overrides India’s Cape Town Convention Article XI declaration opting for “Alternative A,” which commits India to transferring possession of aircraft to creditors within a maximum waiting period of two calendar months. Section 238 of the IBC compounds the conflict by giving the Code overriding effect over any other law or instrument, including, on its face, India’s international treaty commitments.

This conflict, latent since the IBC’s enactment, became acute in the Go First insolvency of 2023. Go First filed for voluntary insolvency before the NCLT in May 2023, citing the grounding of roughly

---

<sup>16</sup> Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Act No. 54 of 2002).

<sup>17</sup> Insolvency and Bankruptcy Code, 2016 (Act No. 31 of 2016).

half its Airbus fleet owing to defective engines; the NCLT admitted the petition and imposed a moratorium on 10 May 2023, and the National Company Law Appellate Tribunal (NCLAT) upheld that admission on 22 May 2023, rejecting lessors' attempts to repossess aircraft in the interim. Lessors seeking immediate possession and de-registration were thus met with the same protracted process that the Cape Town regime and the 2015–2017 Aircraft Rules amendments had been designed to eliminate. The DGCA, citing the moratorium, declined for months to process de-registration applications for aircraft leased to Go First. The Aviation Working Group's consequent downgrade of India's compliance rating triggered a corrective notification (S.O. 4321(E)) issued by the Ministry of Corporate Affairs on 3 October 2023<sup>18</sup> under Section 14(3)(a) of the IBC, exempting Cape Town Convention transactions relating to aircraft, aircraft engines, airframes, and helicopters from the Section 14(1) moratorium. This notification, however, made no express provision for retrospective application, and it was only in a judgment of 26 April 2024 that the Delhi High Court, in proceedings brought by Go First's lessors against the DGCA, directed the de-registration of all 54 aircraft leased to the carrier within five working days and applied the October 2023 notification retrospectively to reach that result. By that point, the aircraft had sat grounded, un-maintained, and depreciating for close to a year – value that a functioning Cape Town regime would have preserved for redeployment elsewhere, and that instead was substantially destroyed. That the correction required an executive notification of uncertain retrospective effect, tested only through further litigation, rather than a legislative amendment resolved in advance, illustrates the ad hoc, reactive character of Indian aviation insolvency reform: each crisis produces a targeted fix addressed to the specific failure mode of the preceding case, rather than a systemic recalibration of the relationship between domestic insolvency policy and international financing commitments.<sup>19</sup>

Parliament eventually converted this interim, litigation-tested notification into primary legislation through the Protection of Interests in Aircraft Objects Act, 2025. It received parliamentary approval in April 2025, came into force on 1 May 2025, and was followed by implementing rules notified in January 2026. The Act gives the Cape Town regime overriding effect over inconsistent domestic law, including the IBC's moratorium provisions, and fixes a two-month repossession window along the lines of Article XI. This statutory fix arrived seventeen years after India's 2008 accession to the Convention, and only after the Go First crisis had already destroyed substantial aircraft value during a year of grounding, itself further evidence of the reactive, crisis-triggered sequenc-

<sup>18</sup> Ministry of Corporate Affairs, Notification S.O. 4321(E), 3 October 2023, exempting transactions under the Cape Town Convention from the moratorium under Section 14(1) of the Insolvency and Bankruptcy Code, 2016.

<sup>19</sup> Bhat, "Turbulence in Indian Aviation Financing".

ing this paper identifies as characteristic of Indian aviation regulation, even though the eventual legislative outcome is a genuine improvement over the notification-only regime described above.

The significance of insolvency regulation lies not only in this technical conflict with the Cape Town regime but in its aggregate market effect. It is here that the structured, time-bound resolution code is shown to have under-delivered. The IBC's stated object, following the earlier Kingfisher Airlines collapse of 2012 that preceded its enactment, was to replace liquidation-biased fragmentation with a resolution-biased, going-concern-preserving process. In practice, India's insolvency and pre-insolvency processes eliminated Jet Airways. The carrier entered corporate insolvency resolution on 20 June 2019, and its resolution plan was approved by the NCLT in June 2021 but was never implemented by the successful resolution applicant, the Jalan-Kalrock Consortium (JKC). The Supreme Court, invoking its plenary powers under Article 142 of the Constitution, ordered the carrier into liquidation on 7 November 2024 after finding that JKC had repeatedly failed to honour the approved plan's funding and payment obligations despite successive extensions. The Court's judgment<sup>20</sup> expressly criticised the functioning of the NCLT and the NCLAT in the case, reflecting wider problems in the implementation of the IBC. Go First's resolution process likewise failed to attract a viable bidder, and the carrier was ordered into liquidation, while SpiceJet has repeatedly come close to insolvency, its aircraft lessors' repossession efforts complicated further by unresolved dues under the Central Goods and Services Tax Act, 2017, which blocked the "No Dues Certificate" lessors required to complete repossession in 2021. Each of these near-misses or exits removed a carrier that, whatever its individual commercial failings, represented an alternative pole of competition to IndiGo and the Tata-owned Air India group. The IBC's resolution architecture, which is built on a Committee of Creditors that must approve a resolution plan by the requisite majority within statutory timelines failing which liquidation follows, is, in the aviation context, structurally biased toward liquidation rather than resolution. More recently, this view has been echoed in the argument that the IBC in general has been biased toward pushing companies into liquidation rather than attempting resolution.<sup>21</sup>

The particularity of aviation is that a distressed carrier's principal assets – leased aircraft, airport slots and route rights – are neither owned outright by the corporate debtor nor easily transferable as a bundle to a new resolution applicant once lessors have terminated their leases during the

---

<sup>20</sup> *State Bank of India v. Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch*, Civil Appeal Nos. 5023–5024 of 2024 (Supreme Court of India, 7 November 2024), 2024 LiveLaw (SC) 866.

<sup>21</sup> M. S. Sahoo, "The Insolvency and Bankruptcy Code: Resolution or Liquidation? A Decade in Review", *Indian Journal of Corporate and Insolvency Law* 4, no. 1 (2026): 1–22.

moratorium period. The assets that could, in principle, sustain an independent going concern are instead dispersed: aircraft to other lessees, slots to existing carriers through the DGCA's slot-allocation process, and routes to whichever carrier can absorb them fastest, generally an incumbent with spare fleet capacity. This is not merely a structural inference from how the moratorium and slot-allocation rules operate; it is what happened in both instances. Following Jet Airways' cessation of operations in 2019, the DGCA reallocated the carrier's slot pairs at Delhi and Mumbai – India's two most capacity-constrained, and commercially most valuable, airports – to existing carriers – principally SpiceJet and IndiGo, with Vistara among the other beneficiaries – on an interim basis initially meant to last three months, which became effectively permanent once Jet Airways failed to resume operations. The government's allocation criterion, favouring carriers able to induct replacement aircraft fastest, by construction favoured established operators with ready access to fleet over prospective new entrants. The government subsequently applied the same slot-reallocation approach as an explicit precedent when Go First's roughly 810 slots at major airports came up for redistribution following its 2023 grounding, with Air India and IndiGo positioned as the principal beneficiaries. In neither case did the vacated capacity return to the market as a new, independent competitor; it was absorbed by existing operators and, with SpiceJet's own subsequent decline, has accrued increasingly to the two incumbents whose combined market share is traced in Section 5. In this manner, the insolvency regime, though designed and evaluated purely as a creditor-protection and expedited-resolution instrument, functions in practice as a competition-shaping instrument that existing literature has not adequately connected to the ownership limb's stated liberalisation objectives. A regime that makes it harder for foreign strategic capital to enter, through SOEC, and easier for domestic capital to exit without effective resolution, through a moratorium architecture that undermines lender confidence even as it nominally protects debtors, produces, jointly, precisely the narrowing of the competitive field that, as the next section shows, the CCI's merger-review apparatus is not designed to register adequately.

## **5. The Competition Limb: What Merger Control Misses, and What Abuse-of-Dominance Reaches**

The discussion in the previous sections has shown how the ownership, financing, and insolvency limbs of regulation bear on the level of concentration in Indian aviation. The most visible outcome, as Table 1 below shows, is that IndiGo and the Air India group together control close to 90 per cent of the domestic market as of 2026, with IndiGo alone holding approximately two-thirds.

Table 1 sets out the underlying figures:<sup>22</sup> IndiGo, India's dominant carrier, controlled 63.0 per cent of the domestic market by passengers carried in 2024–25, up from 61.6 per cent the year before and against 22.3 per cent a decade earlier – almost tripling its share over the period in which ownership and insolvency policy were, on their own terms, being progressively liberalised. Combined with the Tata-owned Air India group, the two carriers together account for close to 90 per cent of domestic passenger traffic. The result is an oligopoly in which a single dominant firm operates alongside a smaller, non-constraining second player. The practical significance of that asymmetry, rather than of concentration as such, is what the December 2025 IndiGo scheduling crisis exposed: the ripple effects of a single point of failure in a network-critical sector.

**Table 1:** Domestic market share (%) in terms of passengers carried, by carrier, 2014–15 and 2024–25

| Carrier                                                                | 2014–15                 | 2024–25        |
|------------------------------------------------------------------------|-------------------------|----------------|
| IndiGo                                                                 | 22.3                    | 63.0           |
| Air India Group (Air India, Vistara, Air India Express, AirAsia India) | 20.0*                   | 26.0           |
| Jet Airways                                                            | 21.2                    | 0 (liquidated) |
| SpiceJet                                                               | 17.6                    | 2.0            |
| GoAir / Go First                                                       | 8.8                     | 0 (liquidated) |
| Akasa Air                                                              | n/a (not yet operating) | 6.4            |
| Others                                                                 | 10.1                    | 2.6            |

*Source:* Compiled from the DGCA Handbook of Statistics 2014–15 and monthly domestic traffic reports for 2024–25 and June 2026.

\*The 2014–15 figure aggregates the pre-merger Tata-linked and full-service Air India Group entities then operating (Air India and the newly launched Vistara).

There is little comparative precedent for this level of concentration: even in the relatively concentrated domestic market of the United States, the four largest carriers each hold between roughly 16 and 21 per cent, with no single carrier commanding a majority, and China's "big three" state carriers hold comparably non-dominant shares.<sup>23</sup> This concentration is comparable in degree to the extreme asymmetries observed in other Indian network-industry sectors, such as telecommunications – but with a crucial difference: in digital-platform and telecommunications markets, competitive dynamics are shaped substantially by demand-side network effects, which are largely inapplicable to aviation. Aviation's concentration must instead be explained principally by supply-side regu-

<sup>22</sup> Directorate General of Civil Aviation (DGCA), *Domestic Air Traffic Statistics, June 2026* (New Delhi: Ministry of Civil Aviation, Government of India, 2026).

<sup>23</sup> K. Wang, A. Zhang, and Y. Zhang, "Key Determinants of Airline Pricing and Air Travel Demand in China and India: Policy, Ownership, and LCC Competition", *Transport Policy* 63 (2018): 80–89.

latory dynamics rather than by network effects. India's Competition Act, 2002,<sup>24</sup> contains two analytically distinct tools, and they perform very differently against the concentration this paper traces. Merger control under Sections 5, 6, and 20(4) is, by statutory design, transaction-specific and therefore structurally blind to concentration accumulated across a sequence of exits and combinations such as those discussed above. Abuse-of-dominance review under Section 4, by contrast, is not transaction-specific: it examines the conduct of a dominant firm against the market as it currently stands. The issue is therefore not that competition law is structurally incapable of addressing accumulated dominance, but that the route by which it does so is slow, dependent on an individual complaint or crisis, focused on conduct rather than structure, and arrives only after consolidation has already occurred. We therefore argue for an ex-ante structural safeguard in sectors such as aviation.

### *5.1 Merger Control: Jurisdictional Thresholds and the AAEC Standard*

India's merger-control regime under the Competition Act, 2002, operates in two analytically distinct steps. The first is jurisdictional: Sections 5 and 6 set out structural notification thresholds – asset and turnover values at the enterprise and group level – that determine whether a transaction constitutes a “combination” requiring prior notification to the CCI at all. Since the Competition (Amendment) Act, 2023,<sup>25</sup> this threshold set has also included a deal value threshold (DVT): a combination is independently notifiable if its value exceeds ₹2,000 crore and the target has substantial business operations in India, regardless of whether the asset/turnover thresholds are met. The DVT was introduced specifically to close a gap the asset/turnover thresholds had left open in digital and technology markets, where a target's competitive significance is often disproportionate to its balance-sheet size. The second step is substantive: once a combination is notified, Section 6(1) prohibits any combination that causes or is likely to cause an Appreciable Adverse Effect on Competition (AAEC) within the relevant market in India, and Section 20(4) sets out the factors – including actual and potential competition, entry barriers, the level of combination already present in the market, countervailing buyer power, the likelihood of a significant and sustainable price or margin increase, and the extent of consumer benefit through innovation or efficiency – that the CCI must have due regard to in making that determination.

<sup>24</sup> Competition Act, 2002 (Act No. 12 of 2003).

<sup>25</sup> Competition (Amendment) Act, 2023 (Act No. 9 of 2023).

The CCI's September 2023 conditional approval of the Air India–Vistara merger<sup>26</sup> was evaluated through this apparatus. The transaction cleared the notification thresholds as a combination, and the CCI's substantive review under Section 20(4) identified 48 overlapping domestic origin-destination route pairs and 24 overlapping international route pairs on which the merged entity's combined market share was as high as 70 to 85 per cent, and addressed that concern not through slot divestiture but through voluntary minimum-capacity commitments: Air India (and, on the relevant international pairs, Singapore Airlines) undertook to maintain scheduled capacity on those routes at least at 2023 levels for four financial years, monitored by an independent auditor. Understood on its own terms, as a single transaction assessed route-by-route against a pre-merger baseline, this was a more granular exercise than a purely national-level AAEC analysis would suggest, and the CCI's order should be credited for working at the route-pair level rather than only the national-aggregate level. What the order could not do, given the statute's transaction-specific design, was examine the sequence of exits and consolidations that had already reshaped the market before this transaction was even notified: AirAsia India's and Air India Express's absorption into a single low-cost entity, Vistara's own absorption into Air India, and the prior exits of Jet Airways and Go First. These arose from the interplay of the ownership, financing, and insolvency limbs discussed in Sections 2 to 4, but their cumulative effect, over the decade in which they occurred, was to raise concentration to a point that no single subsequent transaction, however carefully reviewed, could by itself either cause or cure. A transaction-by-transaction AAEC analysis is, in this specific sense, discrete and blind to market structure as a whole: its unit of analysis is the "relevant market" as it stands immediately before and after the specific combination under review, not the market as reshaped by a sequence of ownership-driven and insolvency-driven exits stretching back over a decade, and a four-year capacity commitment with a defined sunset is a correspondingly thin answer to what this paper has shown to be a permanent structural change. Moreover, a four-year behavioural commitment secured through negotiation is a materially weaker instrument than an ex-ante designation regime of the kind proposed in Section 7, since it expires on a fixed date regardless of whether the underlying concentration has changed, and its scope is confined to the specific route pairs identified at the time of the transaction rather than to the carrier's market position as a whole.

Aviation consolidation has run in a direction the DVT was not designed to capture, insofar as AirA-

---

<sup>26</sup> Competition Commission of India (CCI), Order under Section 31 of the Competition Act, 2002, in the matter of the combination between Tata SIA Airlines Limited (Vistara) and Air India Limited, Combination Registration No. C-2023/07/1032, 1 September 2023.

sia India's absorption into Air India Express, the group's low-cost arm, and Vistara's merger into Air India, were structured as intra-group restructurings and share-swap mergers rather than arm's-length acquisitions at a discrete, disclosed deal value exceeding ₹2,000 crore, and even where notifiable, their competitive significance lay in route and slot concentration rather than in the deal consideration itself. A threshold calibrated to catch technology acquisitions, where the deal price signals underlying market power, does little to catch a sequence of asset-heavy, network-industry consolidations in which the relevant scarcities – take-off and landing slots, route rights, and aircraft on order – are not well proxied by transaction value at all.<sup>27</sup>

### 5.2 Abuse of Dominance: The CCI's IndiGo Investigation

Merger control is, however, only one of the two tools the Competition Act supplies. The second is the Section 4 prohibition on abuse of a dominant position, which the CCI invoked following the widespread flight cancellations by IndiGo in December 2025 that disrupted Indian domestic aviation. The scheduling crisis was attributed principally to a shortfall in available captains following the implementation of the revised FDTL norms. The CCI took cognizance of the matter on 18 December 2025 and, on a complaint filed by an affected passenger, issued a prima facie order under Section 26(1) of the Competition Act on 4 February 2026 in *Kartikeya Rawal v. InterGlobe Aviation Limited* (Case No. 44 of 2025),<sup>28</sup> directing its Director General to investigate. The order rejected IndiGo's jurisdictional objection, which argued that the matter fell within the DGCA's exclusive sectoral remit, holding that the Competition Act's jurisdiction over dominance and its abuse operates alongside, rather than being ousted by, sector-specific safety and service regulation.

According to the Commission's order, IndiGo consistently accounted for approximately 60 to 63 per cent of domestic passenger market share and approximately 60 to 61 per cent of total domestic Available Seat Kilometres (ASKM) – a capacity measure the Commission treated as reflecting “not only passenger volumes but effective control over market capacity and supply-side conditions” – across FY 2023–24 and FY 2024–25. Further, IndiGo was the sole operator on well over 60 per cent of domestic city-pairs by 2025–26, against a far smaller share a decade earlier, when the market still

<sup>27</sup> On the broader problem of consolidation that escapes threshold-based merger notification, see T. G. Wollmann, “Stealth Consolidation: Evidence from an Amendment to the Hart-Scott-Rodino Act”, *American Economic Review: Insights* 1, no. 1 (2019): 77–94. For the European Commission's attempt to reach below-threshold transactions through Article 22 referrals, and its subsequent annulment, see European Commission, Decision to accept Article 22 EUMR referral requests in Case M.10188, *Illumina/GRAIL* (2021), annulled in *Illumina and GRAIL v. Commission*, Joined Cases C-611/22 P and C-625/22 P (CJEU, Grand Chamber, 3 September 2024).

<sup>28</sup> Competition Commission of India (CCI), Order under Section 26(1) of the Competition Act, 2002, *Kartikeya Rawal v. InterGlobe Aviation Limited*, Case No. 44 of 2025, 4 February 2026.

had several competing full-service and low-cost carriers. On this evidence, the Commission found *prima facie* that IndiGo's conduct during the disruption – withholding a significant share of scheduled capacity through mass cancellations while simultaneously raising fares on the same routes – amounted to an abuse of dominance: exploitative excessive pricing under Section 4(2)(a)(i), and exclusionary denial of market access through artificial scarcity under Section 4(2)(b)(i). The Commission directed the Director General to report within 90 days.

Further, in July 2026, IndiGo's parent, InterGlobe Aviation Limited, filed a commitment proposal under Section 48B of the Competition Act, a mechanism introduced by the Competition (Amendment) Act, 2023, without admitting any contravention. It offered to constitute a Crisis Management Group capable of activation within an hour of a large-scale disruption, to refrain from fare increases during declared disruptions, and to temporarily surrender slots to airport authorities for reallocation during such events; the CCI invited public comments on the proposal under its commitment regulations. This episode bears on the claim that merger review, or competition law generally, “cannot reach” accumulated concentration, and three considerations are important in this regard. First, the abuse-of-dominance route is inherently reactive and complaint-dependent: it took a passenger's individual grievance, arising out of an acute operational crisis, to trigger scrutiny of a market structure that had been building for the better part of a decade and that was, on the DGCA's own data, already visible in 2023–24. Second, it is conduct-focused rather than structure-focused: the Commission's order addresses IndiGo's pricing and capacity-withholding conduct during a specific disruption, not the underlying market share and route-concentration that made that conduct possible in the first place and that will persist regardless of the outcome of this particular case. Third, the remedy on offer – a crisis-management protocol, a no-overcharging commitment, and temporary slot surrender during declared disruptions – is a materially weaker instrument than a designation regime that imposed continuous, *ex-ante* resilience and capacity obligations on a carrier crossing a defined dominance threshold. Overall, the CCI's intervention is best read not as evidence that competition law is structurally blind to accumulated dominance, but as a manifestation of how late, how narrowly targeted, and how dependent on crisis and complaint even a successful intervention against that dominance turns out to be.

The AAEC factors under Section 20(4), and the price-and-output logic of the small but significant non-transitory increase in price (SSNIP) test that underlies much conventional merger-effects analysis, share a further limitation specific to aviation, distinct from the abuse-of-dominance analysis above. First, extreme aggregate concentration coexists with route-level monopoly, as the CCI's

own sole-carrier route counts confirm; a national-level Herfindahl–Hirschman Index (HHI) calculation, of the kind merger review under Section 20(4) implicitly relies upon in assessing “level of combination in the market,” is not by itself well-equipped to capture this, because a market can register as statistically less concentrated at the national level than it is on the specific routes and at the specific slots that determine a given passenger’s actual choice set. Second, the entry barriers that Section 20(4) directs the CCI to consider are not, in aviation, a static function of market structure at the time of a proposed combination; they are the cumulative product of the ownership and financing constraints examined in Sections 2 and 3 above. Third, as the December 2025 crisis illustrated, extreme concentration in a network-critical sector such as aviation carries a systemic-failure cost that neither the SSNIP test’s focus on price and output effects, nor even the abuse-of-dominance analysis above, was designed around. The government’s own response to this was to fast-track the licensing of three new carriers – Shankh Air, Alhind Air, and FlyExpress – explicitly to address the concentration problem. That response has itself supplied further evidence for this paper’s financing-constraint argument in Section 3: Alhind Air’s launch, initially targeted for 2025–26, has been repeatedly delayed by difficulties in aircraft acquisition and funding. This points precisely to the SOEC- and Cape Town-linked financing constraint traced earlier, which disadvantages new entrants relative to incumbents. A licensing response that does not also address the financing constraint is unlikely by itself to produce the resilience-relevant new entry the government intends. From a competition perspective, the reform this paper suggests for the sector is an ex-ante regulatory posture that identifies systemically significant carriers in advance of any specific anti-competitive act, rather than waiting for a complaint, as happened in the CCI’s IndiGo investigation. The draft Digital Competition Bill, which is premised on ex-ante regulation, offers a possible template for this kind of designation, although only a weak precedent at present, since the Bill has not been introduced in Parliament and remains under review at the Ministry of Corporate Affairs. The next section discusses how the three limbs interact.

## **6. The Self-Reinforcing Loop of Regulatory Limbs**

### ***6.1 The Commercial Counterfactual***

One can argue that IndiGo’s dominance owes little to regulation and much to successful commercial execution: an early, large aircraft order book, a sale-and-leaseback fleet-financing model that kept capital costs low, and a disciplined low-cost operating structure that produced consis-

tently lower unit costs than its competitors. By this logic, IndiGo would likely have reached something close to its current market position on commercial merit alone, regardless of how SOEC, the Cape Town regime, the IBC and competition regulation had been designed. Its competitors – Jet Airways, Kingfisher, and Go First – failed, on this account, for reasons substantially internal to each firm: over-leveraged expansion, a mismatched full-service cost structure, and a manufacturer-specific engine defect, respectively.

This paper does not deny the commercial explanation but relocates it. We do not argue that regulation caused IndiGo's commercial success or its rivals' initial distress. For instance, the engine defect that grounded half of Go First's fleet was obviously not a regulatory one, just as Jet Airways' and Kingfisher's over-leveraged balance sheets were commercial decisions the firms made themselves. The claim we are making is narrower: that regulation determined how that commercial distress was resolved – whether it ended in an independently operated going concern that could, in principle, have continued to discipline IndiGo's pricing and capacity decisions, or in permanent exit and the dispersal of the distressed carrier's assets to the incumbents already best placed to absorb them. Go First is the clearest example precisely because its triggering cause was so evidently commercial and exogenous. A defective-engine grounding is, in principle, a recoverable shock; what foreclosed recovery for Go First was not the engine problem itself but the regulatory interaction between the insolvency moratorium and Go First's Cape Town Convention obligations, and the consequent inability of its lessors to repossess and redeploy the grounded aircraft for around a year, which destroyed asset value the moratorium was in principle meant to preserve. Regulatory non-synchronisation thus converted a temporary operational crisis into a permanent market exit. The same logic applies, with variation in the specific mechanism, to Jet Airways: its underlying financial distress was undeniably commercial in origin, but the failure, over more than five years of proceedings, to implement an approved resolution plan converted a firm that had a court-approved path back to operation into one that never flew again. In both cases, the commercial counterfactual explains why distress occurred; it does not explain why distress ended in liquidation and asset dispersal to IndiGo and the Tata-owned group rather than in resolution, restructuring, or a sale as a going concern to a new entrant. This is a regulatory-design question: not that liberalisation-era Indian aviation regulation produced IndiGo's market position, but that it converted its rivals' commercial distress into permanent exit rather than independent survival, and did so with sufficient regularity across three separate episodes – Jet Airways, Go First, and the slower attrition of SpiceJet – that the pattern is properly read as systemic rather than coincidental.

## 6.2 Capture, Incapacity, and Gradual Institutional Change

The claim that Indian aviation liberalisation has not produced a retreating state but one that continues to write and rewrite the rules of the sector is consistent with a well-established proposition in the regulatory-state literature: that liberalisation tends to produce more rules, not fewer.<sup>29</sup> These works make versions of this argument for other sectors and jurisdictions. Our argument is more specific, and has not been adequately made in the existing literature on Indian aviation: fragmentation across the ownership, insolvency, and competition limbs is not only a coordination failure but a mechanism of differential visibility. Liberalisation is extended where it is politically legible and internationally scored, for example in relaxing foreign-investment percentage caps and in treaty-accession events such as India's 2008 accession to the Cape Town Convention. By contrast, it is withheld, or effectively reversed in practice, where the relevant issue is technical, largely domestic, or unwatched outside specialist circles. This is evident in how the DGCA interprets "effective control" under SOEC, in how a moratorium provision interacts with an Article XI declaration, and in how merger-notification thresholds are calibrated to catch or miss a particular transaction structure. On this account, the state can be credibly liberal and functionally protective of incumbents at the same time, because the two commitments are made in different institutional languages to different stakeholders – the headline percentage figure to international investors and multilateral observers, the technical implementation detail to domestic incumbents and their regulators. There is usually no single forum in which the two commitments are made to confront one another, and when they do collide, regulatory problems of the kind discussed in previous sections arise.

That account, however, leaves an unresolved tension between two different pictures of the state. In one picture, the state is a strategic agent: it selectively re-regulates each limb in a manner that favours incumbents, as in the SOEC dichotomy, where incumbent carriers have lobbied against foreign airline entry on competitive rather than security grounds. In the other picture, the state is barely steering at all: it is reactive, producing one crisis-triggered fix for one failure mode at a time – the October 2023 notification responding to the Go First crisis, the 2025 Act arriving only after that notification's limits became acute, the CCI's IndiGo investigation arising from an individual passenger complaint rather than proactive market-structure monitoring. With no institutional mechanism

<sup>29</sup> S. K. Vogel, *Freer Markets, More Rules: Regulatory Reform in Advanced Industrial Countries* (Ithaca, NY: Cornell University Press, 1996); G. Majone, "From the Positive to the Regulatory State: Causes and Consequences of Changes in the Mode of Governance", *Journal of Public Policy* 17, no. 2 (1997): 139–67; N. K. Dubash and B. Morgan, eds., *The Rise of the Regulatory State of the South: Infrastructure and Development in Emerging Economies* (Oxford: Oxford University Press, 2013).

reconciling the cumulative effect of these piecemeal responses, these two accounts point toward opposite regulatory remedies. The evidence thus contains elements of both constrained capacity and regulatory capture by incumbents, which leaves open the question of whether integrating sectoral regulators is the way forward. Mahoney and Thelen's theory of gradual institutional change offers a way to hold both pictures simultaneously.<sup>30</sup>

This paper's evidence maps onto their categories of layering, drift, and conversion more precisely than either "capture" or "incapacity" alone. Layering is visible in the ownership limb: successive liberalisations of the headline foreign-investment cap have been layered onto an SOEC architecture whose underlying conditions were never removed, so that the formal liberalisation is real while the constraint it was layered onto survives underneath it, disadvantaging exactly the foreign-airline investor class most likely to bring competitive discipline. Drift is visible in the financing limb: India's Cape Town Convention commitments did not need to be affirmatively repealed to be eroded in practice – the Article XI two-month repossession commitment simply went unenforced as the IBC moratorium and DGCA administrative practice were applied around it, with no one institutional actor deciding to erode the commitment, until the erosion became severe enough, in the Go First case, to trigger external correction through the AWG rating mechanism. Conversion is visible, most strikingly, in the insolvency limb: the IBC was designed, debated, and is still formally evaluated as a creditor-protection and going-concern-resolution instrument, yet in aviation it has been redeployed without any amendment to an end its designers did not intend, namely determining which carriers survive as independent competitors and which exit permanently, their assets dispersed to incumbents. The framework explains how a systematic outcome – the narrowing of the competitive field – can arise without requiring any single actor to have intended it: layering, drift, and conversion each operate through actors pursuing local, often defensible objectives – protecting incumbent security concerns, prioritising creditor recovery timelines, resolving one crisis at a time – whose aggregate effect nonetheless favours incumbency. This is also the paper's answer to the capture-versus-incapacity tension: the state is neither a single coordinated agent executing a capture strategy nor simply incapable, but an institutional structure in which layering, drift, and conversion each independently push outcomes toward incumbency even where no actor in the sequence intended that aggregate result.

---

<sup>30</sup> J. Mahoney and K. Thelen, eds., *Explaining Institutional Change: Ambiguity, Agency, and Power* (Cambridge: Cambridge University Press, 2010).

### 6.3 *The Self-Reinforcing Loop*

The preceding sections, and the counterfactual and theoretical discussion above, together suggest a self-reinforcing loop rather than three independent regulatory lacunae with respect to aviation regulation in India. The ownership limb liberalises entry conditions formally but channels capital toward incumbents rather than challengers, because the SOEC dichotomy disadvantages the category of investor most likely to challenge incumbents: the experienced foreign strategic airline. The financing limb, through institutional fragmentation and Cape Town implementation failures concentrated in the 2019–2024 period, raised the cost of capital disproportionately for carriers without incumbent-scale balance sheets. The insolvency limb, designed as a creditor-protection and expedited-resolution instrument, in practice under-protected aircraft financiers through its collision with the Cape Town regime while converting the exit of distressed carriers into a permanent rather than resolved outcome, mechanically reducing the number of competitive poles with each successive cycle. The competition limb’s merger-control tool, oriented around transaction-specific AAEC review, is structurally incapable of registering the cumulative effect of this sequence of exits and consolidations; its abuse-of-dominance tool can, and in the IndiGo case did, reach the resulting structure, but only after the structure had already crystallised into the kind of dominance the December 2025 crisis exposed. Each regulatory limb, evaluated on its own terms, can point to genuine liberalisation (ownership), attempts at modernisation (the IBC’s expedited timelines and the BVA’s consolidated statutory framework), or genuine doctrinal rigour (the CCI’s route-level merger review and its willingness to pursue an abuse-of-dominance case against the country’s largest carrier). Yet jointly, the three limbs have produced, and continue to sustain, a concentration more extreme, and more asymmetric, than that found in comparable large aviation markets.

### 6.4 *Recent Developments: The BVA and the December 2025 Crisis*

The Bharatiya Vayuyan Adhiniyam, 2024, one of the most recent policy interventions in the sector, has also not addressed these regulatory overlaps.<sup>31</sup> The Act came into force on 1 January 2025 and repealed the Aircraft Act, 1934, after ninety years. It retains the DGCA, the BCAS, and the Aircraft Accidents Investigation Bureau (AAIB) as the three principal regulatory authorities, extends regulatory scope to aircraft design, introduces a structured appellate mechanism, and strengthens penalties for aviation offences. What it does not do is more significant: it does not address the in-

<sup>31</sup> Bharatiya Vayuyan Adhiniyam, 2024 (Act No. 60 of 2024).

stitutional fragmentation surrounding the Cape Town Convention or the broader insolvency concerns central to the sector's financing and competition difficulties; it leaves untouched the Ministry of Civil Aviation's overarching supervisory power over the DGCA and BCAS; and it contains no provision coordinating its own operation with the Companies Act, 2013, the IBC, 2016, or the Competition Act, 2002. A statute passed explicitly to modernise Indian aviation through structural change thus missed the available opportunity to resolve the very fragmentation that acts as the structural driver of carrier concentration. The point here is not a criticism of the BVA on its own terms – a safety- and design-oriented consolidating statute need not also be a competition or insolvency statute – but a reminder that India has twice within a decade, in 2016 with the National Civil Aviation Policy and again in 2024–25 with the BVA, undertaken major aviation reform without using the occasion to reconcile the ownership, insolvency, and competition limbs with one another.

The Minister of State for Civil Aviation's admission to Parliament in early 2026 that IndiGo and Air India together held 89 to 91 per cent of the domestic market with IndiGo alone at 63 to 65 per cent, is itself an official acknowledgment of the concentration this paper has traced to its cross-limb origins, and it sharpens the question: how did a sector progressively liberalised on the ownership front become steadily more concentrated on the competition front? The answer lies in the interaction of the regulatory limbs, not in the liberalisation of any one of them.

Beyond the BVA and the IndiGo episode, further unresolved tensions illustrate the same pattern at a more granular level. The Companies Act, 2013, requires separate charge registration on pain of the charge being disregarded by a liquidator, even where an international interest is duly registered under the Cape Town regime. The Specific Relief Act, 1963, and the Code of Civil Procedure, 1908, under which courts retain discretion to grant interim injunctions or orders for the detention of aircraft, can frustrate Cape Town remedies notwithstanding their formal availability. Under the Central Goods and Services Tax Act, 2017, unresolved dues can hold up a lessor's "No Dues Certificate" and thereby block repossession, as they did in SpiceJet's case in 2021. Under the Foreign Trade (Development and Regulation) Act, 1992, the requirement for an Importer-Exporter Code created an additional – ultimately waived – obstacle to the re-export of repossessed aircraft. Each of these frictions is individually modest, but their cumulative effect is to raise the cost of capital for Indian carriers generally, with the heaviest relative burden falling on carriers without the balance-sheet strength to absorb financing-cost volatility – again, the smaller and newer carriers rather than the dominant incumbents.

## 7. Toward a Coordinated, Ex-Ante Regulatory Architecture

Against the background of the above discussion, this paper proposes four directions for reform, each aimed less at any single limb than at the interactions among them. First, ownership reform should be evaluated not merely by reference to the percentage ceiling on foreign investment but by reference to its likely effect on the number of independently viable competitive poles in the market. This requires a re-examination of the SOEC dichotomy itself: if the underlying security concern can be addressed through the “regulatory nationality” or “principal place of business” models adopted, with variations, in Hong Kong, Singapore, Australia, and New Zealand,<sup>32</sup> removing the distinctive disadvantage currently imposed on foreign airline investors – precisely the class of investor most likely to bring the operational discipline and balance-sheet strength needed to sustain a genuine independent competitor – merits serious consideration, provided it is coupled with the ownership-transparency safeguards necessary to prevent the NRI-route opacity that has itself drawn criticism.<sup>33</sup>

Second, insolvency reform should decouple the objective of creditor protection from the objective of competitive resolution. The Protection of Interests in Aircraft Objects Act, 2025, has now supplied an unambiguous, permanent statutory alignment between domestic insolvency law and India’s Cape Town commitments. However, what the 2025 Act does not – and was not designed to – address is that securing creditor repossession more quickly does nothing by itself to determine whether a distressed carrier’s assets re-enter the market as an independent going concern or are absorbed into an already-dominant incumbent. Insolvency processes for aviation should therefore build in an explicit preference, wherever commercially feasible, for resolution plans that preserve an insolvent carrier’s assets as an independently operated going concern, a preference broadly analogous to the structural remedies increasingly used in merger control itself, and one that faster repossession under the 2025 Act neither guarantees nor precludes.

Third, competition regulation should supplement, rather than replace, its existing merger-review and abuse-of-dominance toolkit with an ex-ante market-structure monitoring function specific to aviation – potentially through a strengthened Ministry of Civil Aviation–CCI coordination mech-

<sup>32</sup> Lelieur, *Law and Policy of Substantial Ownership*; P. Mendes de Leon, “Establishment of Air Transport Undertakings – Towards a More Holistic Approach”, *Journal of Air Transport Management* 15, no. 3 (2009): 96–104, <https://doi.org/10.1016/j.jairtraman.2008.09.017>; E. J. Moulds, “The Patchwork in the Sky: An Examination of How the Eight Largest Global Aviation Markets Regulate Trade, Investment and Alliances between Airlines” (PhD thesis, Maastricht University, 2022).

<sup>33</sup> Lee and Varottil, “Against Aviation Orthodoxy”.

anism – capable of designating a carrier that crosses a defined threshold as subject to enhanced resilience, contingency-planning, and information-disclosure obligations. The threshold for that designation should not, however, be market share alone. As this paper’s own evidence on route-level sole-carrier status shows, a carrier can acquire an outsized share precisely because it serves routes – typically smaller, less commercially attractive city-pairs – that no other carrier is willing to operate at all; a market-share threshold, applied without qualification, would penalise exactly the carrier providing connectivity that would otherwise go unserved, a poor basis for a resilience obligation. The designation criterion should instead be keyed to trunk-route capacity concentration and network dependence – the carrier’s share of the highest-density, highest-substitutability routes and the absence of comparable back-up capacity on routes where the designated carrier is functionally the only option – rather than to aggregate national market share as such. Such a mechanism could have anticipated the vulnerability exposed in December 2025, whereas the DGCA’s interventions – schedule cuts, fines, and a compliance bank guarantee – were reactive measures triggered only after the disruption had occurred.

Fourth, and most fundamentally, these three reforms should be pursued in a coordinated rather than sequential manner – precisely because, as this paper has argued throughout, the current discoordination across limbs is itself the structural source of the problem identified at the outset. The most obvious model for this kind of coordination is the 2013 report of the Financial Sector Legislative Reforms Commission (FSLRC),<sup>34</sup> whose central recommendation was not, in fact, that all financial regulation be housed in a single mega-regulator, but that regulatory jurisdiction should follow regulatory function rather than sector or institutional type – so that, for instance, all conduct-of-business and consumer-protection regulation across the financial sector would sit with one body, and all prudential regulation with another, regardless of whether the regulated entity was a bank, an insurer, or a securities firm. Applied to aviation on its own functional terms rather than transplanted wholesale, the FSLRC’s logic does not straightforwardly support folding ownership, insolvency, and competition oversight into a single aviation super-regulator; it more naturally disaggregates along functional lines that already largely exist – safety and airworthiness with the DGCA under the BVA, insolvency resolution within the general IBC framework rather than a bespoke aviation-insolvency regime, and competition enforcement with the CCI – while adding the one functional layer that is genuinely missing: a systemic-risk and cross-limb coordination func-

---

<sup>34</sup> Financial Sector Legislative Reforms Commission (FSLRC), *Report of the Financial Sector Legislative Reforms Commission*, vols. I–II (New Delhi: Ministry of Finance, Government of India, 2013).

tion with no institutional home in the current architecture. This is a narrower, and in our view more defensible, reading of the FSLRC's recommendation than one favouring full regulatory integration, and it is closer to what the BVA's retention of the DGCA, BCAS, and AAIB as separate functional authorities already gestures toward without completing. A dedicated aviation-sector regulatory coordination statute, or formal inter-regulatory memoranda between the Ministry of Civil Aviation, the Insolvency and Bankruptcy Board of India (IBBI) and the CCI, implementing this coordination and information-sharing function without merging any of the three bodies' substantive mandates, would mark a genuine departure from the reactive, single-crisis-single-fix pattern that has characterised Indian aviation regulation since liberalisation began.

## **8. Concluding Observations**

India's aviation sector presents a genuine puzzle: a market progressively, and by international comparison unusually, liberalised on foreign ownership grounds has become one of the most concentrated aviation markets among major economies. This paper has argued that the puzzle resolves once the sector's principal regulatory limbs – ownership and investment, insolvency, and competition – are read together rather than in isolation, and that this cross-limb reading, rather than any single provision, explains a market structure that a purely doctrinal, limb-by-limb account cannot. The SOEC dichotomy channels capital toward incumbents rather than challengers; the interaction between the IBC and India's Cape Town Convention commitments repeatedly undermined creditor confidence in exactly the carriers least able to absorb higher financing costs, converting commercially triggered distress into permanent exit rather than independent resolution in both the Jet Airways and Go First cases, notwithstanding the IBC's own promise, relative to the fragmented pre-2016 regime, of structured and time-bound resolution; and while the CCI's abuse-of-dominance powers did, eventually, reach the resulting concentration in the IndiGo investigation, that intervention arrived only after a passenger complaint and an acute operational crisis, addressed conduct rather than structure, and offered a negotiated, time-limited commitment rather than the ex-ante structural safeguard this paper has argued the sector needs – while merger control proper, being transaction-specific by design, could not register the cumulative concentration these dynamics produced at all. The Bharatiya Vayuyan Adhiniyam, 2024, for all its significance as a modernising and consolidating statute, leaves this cross-limb dis-coordination untouched, and the December 2025 IndiGo scheduling crisis has made the practical cost of that dis-coordination difficult to ignore. The path forward, as this paper has suggested, lies not in further reform of any single limb in

isolation, and not in collapsing the three limbs into a single super-regulator, but in a coordinated, ex-ante-oriented architecture – one that shares cross-limb information and designates systemically significant carriers in advance of crisis, while keeping the DGCA, insolvency, and competition functions institutionally separate. Indian aviation liberalisation has not produced a retreating state, but a state that continues to write and rewrite the rules of the sector – through layering, drift and conversion.

## References

- Air Corporations Act, 1953 (Act No. 27 of 1953). India Code.
- Bharatiya Vayuyan Adhiniyam, 2024 (Act No. 60 of 2024). India Code.
- Bhat, S. B. “Turbulence in Indian Aviation Financing Sector: Time to Understand and Implement the Cape Town Regime in the True Spirit”. *Uniform Law Review* 29, no. 1 (2024): 1–35. <https://doi.org/10.1093/ulr/unae001>.
- Competition (Amendment) Act, 2023 (Act No. 9 of 2023). India Code.
- Competition Act, 2002 (Act No. 12 of 2003). India Code.
- Competition Commission of India (CCI). Order under Section 31 of the Competition Act, 2002, in the matter of the combination between Tata SIA Airlines Limited (Vistara) and Air India Limited. Combination Registration No. C-2023/07/1032, 1 September 2023.
- Competition Commission of India (CCI). Order under Section 26(1) of the Competition Act, 2002, in *Kartikeya Rawal v. InterGlobe Aviation Limited*, Case No. 44 of 2025, 4 February 2026.
- Convention on International Interests in Mobile Equipment and Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment. Cape Town, 16 November 2001. 2307 U.N.T.S. 285.
- Directorate General of Civil Aviation (DGCA). *Domestic Air Traffic Statistics, June 2026*. New Delhi: Ministry of Civil Aviation, Government of India, 2026.
- Dubash, N. K., and B. Morgan, eds. *The Rise of the Regulatory State of the South: Infrastructure and Development in Emerging Economies*. Oxford: Oxford University Press, 2013.
- DVB Aviation Finance Asia Pte Ltd v. Directorate General of Civil Aviation*. W.P. (C) 7661/2012 and CM No. 4208/2013. Delhi High Court, 8 April 2013.
- European Commission. Decision to accept Article 22 EUMR referral requests in Case M.10188, *Illumina/GRAIL* (2021). Annulled by the Court of Justice of the European Union (Grand Chamber), *Illumina and GRAIL v. Commission*, Joined Cases C-611/22 P and C-625/22 P, judgment of 3 September 2024.
- Financial Sector Legislative Reforms Commission (FSLRC). *Report of the Financial Sector Legislative Reforms Commission*. Vols. I–II. New Delhi: Ministry of Finance, Government of India, 2013.

- Hooper, P. "Liberalisation of the Airline Industry in India". *Journal of Air Transport Management* 3, no. 3 (1997): 115–23.
- Insolvency and Bankruptcy Code, 2016 (Act No. 31 of 2016). India Code.
- Lee, J. W., and U. Varottil. "Against Aviation Orthodoxy: India's Foreign Investment Regime for the Airline Industry". *Brooklyn Journal of International Law* 44, no. 1 (2018): 51–110.
- Lelieur, I. *Law and Policy of Substantial Ownership and Effective Control of Airlines: Prospects for Change*. Aldershot: Ashgate, 2003.
- Mahoney, J., and K. Thelen, eds. *Explaining Institutional Change: Ambiguity, Agency, and Power*. Cambridge: Cambridge University Press, 2010.
- Majone, G. "From the Positive to the Regulatory State: Causes and Consequences of Changes in the Mode of Governance". *Journal of Public Policy* 17, no. 2 (1997): 139–67.
- Mendes de Leon, P. "Establishment of Air Transport Undertakings – Towards a More Holistic Approach". *Journal of Air Transport Management* 15, no. 3 (2009): 96–104. <https://doi.org/10.1016/j.jairtraman.2008.09.017>.
- Ministry of Civil Aviation, Government of India. *Report of the Committee on a Road Map for the Civil Aviation Sector* (Naresh Chandra Committee). New Delhi: Government of India, 2003.
- Ministry of Civil Aviation, Government of India. *National Civil Aviation Policy 2016*. New Delhi: Government of India, 2016. [http://www.civilaviation.gov.in/sites/default/files/Final/\\_%20NCAP\\_2016\\_15-06-2016.pdf](http://www.civilaviation.gov.in/sites/default/files/Final/_%20NCAP_2016_15-06-2016.pdf).
- Ministry of Civil Aviation, Government of India. *Report of the Working Group on Civil Aviation for the Twelfth Five Year Plan (2012–2017)*. New Delhi: Government of India, 2012.
- Ministry of Corporate Affairs. Notification S.O. 4321(E), 3 October 2023, exempting transactions under the Cape Town Convention from the moratorium under Section 14(1) of the Insolvency and Bankruptcy Code, 2016.
- Moulds, E. J. "The Patchwork in the Sky: An Examination of How the Eight Largest Global Aviation Markets Regulate Trade, Investment and Alliances between Airlines". PhD thesis, Maastricht University, 2022.
- Protection of Interests in Aircraft Objects Act, 2025 (Act No. 17 of 2025). India Code.
- Sahoo, M. S. "The Insolvency and Bankruptcy Code: Resolution or Liquidation? A Decade in Review". *Indian Journal of Corporate and Insolvency Law* 4, no. 1 (2026): 1–22.
- Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Act No. 54 of 2002). India Code.
- State Bank of India v. Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch*. Civil Appeal Nos. 5023–5024 of 2024. Supreme Court of India, 7 November 2024. 2024 LiveLaw (SC) 866.
- Vogel, S. K. *Freer Markets, More Rules: Regulatory Reform in Advanced Industrial Countries*. Ithaca, NY: Cornell University Press, 1996.
- Wang, K., A. Zhang, and Y. Zhang. "Key Determinants of Airline Pricing and Air Travel Demand in China and India: Policy, Ownership, and LCC Competition". *Transport Policy* 63 (2018):

80–89.

Wollmann, T. G. “Stealth Consolidation: Evidence from an Amendment to the Hart-Scott-Rodino Act”. *American Economic Review: Insights* 1, no. 1 (2019): 77–94.



