ALPHA UK – OLL'S REAL BUYER?

The Sunday Leader last week set out a litany of questionable issues on the handling of the privatisation of Orient Lanka Ltd., by the Public Enterprise Reform Commission (PERC). These are very material and serious issues, upon which PERC would stand answerable and accountable to Parliament, under the provisions of the Public Enterprise Reform Commission of Sri Lanka Act No. 1 of 1996.

In terms of policies enunciated on transparency and public accountability, public interest would demand accountability by PERC to the public. It is in such very public interest and on behalf of the public, that these scrutinies are being carried out and exposed by *The Sunday Leader.*

Is privatisation the mere restructuring of financial statements and selling of shareholdings in state owned enterprises? Is not privatisation very much more than that? Is it not a process of change, whereby private enterprise and investment is mobilised into state owned enterprises, safeguarding and protecting socio-economic goals and national interests?

Nevertheless, PERC privatised Orient Lanka Ltd., an exclusive duty free operator at the Bandaranaike International Airport, by the mere outright sale of the majority shareholdings of Orient Lanka Ltd., whereas a franchise operation in accordance with established international practice, would have been in the national interest as amply evinced by *The Sunday Leader*.

Whilst a more beneficial franchise proposal from the Weitnauer Group, Switzerland, the 3rd largest duty free operator in the world, was already before PERC, such franchise proposal was disregarded and PERC proceeded to sell outright the majority shareholdings of Orient Lanka Ltd., to Alpha Airports Group PLC leaving a trail of questionable issues.

SALE & PURCHASE AGREEMENT

On May 25, 1996 a Sale and Purchase Agreement had been entered into between Brandigampolage Chandradasa Perera, Secretary to the Treasury, acting for and on behalf of the Government of Sri Lanka [GOSL] and Alpha Airports Group PLC, [Alpha], a Company incorporated in England and Wales and having its registered office at 203-205 The Vale Acton London W3 7QS and Orient Lanka Ltd. This Agreement had been entered into in pursuant to Alpha Airports Group PLC's letter of intent dated January 20, 1996 i.e. 4 months previously.

The preamble to the said Agreement, inter-alia recites: - "B. In pursuit of the GOSL's policy on privatisation, the GOSL has requested the Public Enterprise Reform Commission ("PERC"), a body corporate established by the Public Enterprise Reform Commission of Sri Lanka Act No. 1 of 1996 to advise ad assist the GOSL to divest 60% of the shares (1,800,000 shares) it beneficially and legally owns in the Company"- "E. The GOSL evaluated the Offer, and other bids, and accepted the Offer."

It is pertinent to note that PERC had advised and assisted the government and that the government had evaluated the offer of Alpha Airports Group PLC and other bids received and had accepted such offer after such evaluation. Would it not mean that the Weitnauer offer as well as the Alpha offer had been evaluated, obviously professionally? Had this really happened? It is incomprehensible, as to how the Weitnauer franchise offer was disregarded, if a proper professional evaluation had really been carried out?

In addition to the 60% shareholdings in Orient Lanka Ltd., sold to Alpha Airports Group PLC, an option had also been given by the government to Alpha Airports Group PLC to purchase further 37% shareholdings of Orient Lanka Ltd., after a period of 2-years at a pre-determined price of Rs. 666.66 per share, as per Clause 8.2 of the Sale and Purchase Agreement - "8.2 The GOSL hereby grants to ALPHA an Option exercisable at any time during the Option Period to require the GOSL to sell to ALPHA free

from all liens, charges and encumbrances all the Option Shares (excluding however the Employee Shares) in the capital of the Company for the Option Price."

"Option", "Option period", "Option Shares" and "Option Price" have been defined under Clause 1 of the Sale and Purchase Agreement as follows - "OPTION" means the option granted by ALPHA to the GOSL or (as the case may be) the GOSL to ALPHA pursuant to Clause 8.1 or 8.2 below. - "OPTION PERIOD" means in respect of an Option the period commencing on the second anniversary of the Settlement Date and expiring on the day before the third anniversary of the Settlement Date. - "OPTION PRICE" means six hundred and sixty six Rupees and six hundred and sixty six thousandth of a Rupee (666.666 Rs.) for each Option Share. - "OPTION SHARES" means nine hundred thousand or more (but not exceeding one million two hundred thousand) ordinary shares of Rupees ten (Rs.10.00) each which includes the Employee Shares will comprise all the issued shares in the capital of the Company which are owned by the GOSL following the sale of the Shares to ALPHA pursuant to this Agreement."

In addition Alpha Airports Group PLC had undertaken to re-purchase the 3% Employees' shareholding at Rs. 555.55 per share as per Clause 7.1.1 of the Sale and Purchase Agreement - " 7.1.1 The parties acknowledge that the GOSL intends to provide the Employee Share to employees of the Company on, or soon after, the Settlement Date and ALPHA undertakes to repurchase those Employee Share at a price of not less than Rs. 555.555 per share."

PUBLIC ISSUE OF 37% SHAREHOLDINGS ?

Though PERC had made belief that such 37% shareholdings would be sold to the general public on the Colombo Stock Exchange making Orient Lanka Ltd. a listed public company, the Sale and Purchase Agreement, however, appears to be significantly silent on such very material and important issue, whereby the public of Sri Lanka would participate in the broadbased ownership of state owned enterprises, in this instance - Orient Lanka Ltd. The Sale and Purchase Agreement, however stipulates that Alpha Airports Group PLC would have an option to purchase such 37% shareholding of Orient Lanka Ltd., after a period of 2 years from May 1996 - that is May 1998. Therefore such public issue of 37% shareholdings of Orient Lanka Ltd., at present held by the government, would have to be made before May 1998. When would PERC do so?

Now that the operations of Orient Lanka Ltd. is being carried out by a international duty free operator, would it not be reasonable to anticipate and expect levels of around 50% gross profit on sales turnover, that is said to prevail in the international duty free trade, particularly at international airports, as had been stated by Weitnauer in their franchise proposal and of which 50% gross profit on sales turnover, Weitnauer had offered 20-25% of the sales turnover as a franchise payment to the government!

Hence, to ensure the success of the expected public issue of the balance 37% shareholdings held by the government, it would be the duty and responsibility of PERC to ensure that acceptable levels of profitability are achieved by Orient Lanka Ltd. in its current operations.

Whilst the Sale and Purchase Agreement had been entered into on May 25, 1996 the payment by Alpha Airports Group PLC to the government for the 60% shareholding of Orient Lanka Ltd. was to be settled on May 29, 1996 or such other date thereafter as may be agreed in writing by the Government of Sri Lanka and Alpha Airports Group PLC. In pursuance thereof the Sale and Purchase Agreement provided, inter-alia, for the delivery by the government of the following: -" 2.4 GOSL shall deliver at the offices of PERC not later than 3 p.m. Sri Lanka time on the Settlement Date to ALPHA.- " 2.4.1 share transfer in respect of the Shares duly executed in favour of ALPHA (and/or) as it may direct) together with an original share certificate for the Shares." - " 2.4.2 a letter from the Secretary to the Treasury confirming that the Cabinet of Ministers of the GOSL in Sri Lanka have approved the sale by the GOSL and transfer of the Shares to ALPHA." - " 2.4.6 two copies of the Concession Agreement duly executed by the Airport and Aviation Services (Sri Lanka) Limited and a certified copy of the Resolution of the

Board of Directors of Airport and Aviation Services (Sri Lanka) Limited authorising the execution of the Concession Agreement."

12-YEAR ISLANDWIDE MONOPOLISTIC EXCLUSIVITY

The duration of the Sale and Purchase Agreement had been given as follows:- "14. Except with respect to specific provisions in this Agreement providing explicitly otherwise, this Agreement shall come into effect on the Execution Date and continue until twelve (12) years after the Settlement Date or the date on which neither ALPHA or any Affiliate of ALPHA any longer holds any interest in the Company whichever is earlier."

This however does not imply, that the majority shareholding of Orient Lanka Ltd., held by Alpha Airports Group PLC would devolve back on the government, whereas Alpha Airports Group PLC would continue to enjoy the beneficial ownership of Orient Lanka Ltd. The 12-year period obviously is in respect of several Clauses and Covenants of government's assistance and support for a period of 12-year exclusivity. Alpha Airports Group PLC has separately entered into a Concession Agreement with the Airport & Aviation Sri Lanka Ltd. presumably for such 12-year period. The payment to Airport & Aviation Sri Lanka Ltd. as per the offer documents was indicated to be 3% of sales turnover.

Having continuously operated exclusively for a 12-year period Orient Lanka Ltd. owned in the majority by Alpha Airports Group PLC would enjoy legitimate expectancy for the renewal of such Concession Agreement for a further period or is it that the members of PERC, who handled this privatisation transaction would under-write that it would not be so? Would they be willing to do so?

Most questionably, it is not only the duty free selling facility at the International Airport that had been packaged into such 12-year deal with Alpha Airports Group PLC, but also every other duty free selling facility anywhere in Sri Lanka as per Clause 4.4 of the Sale and Purchase Agreement - "4.4 The GOSL undertakes that during the duration of this Agreement it shall give and/or shall procure to be given to the Company the first option to operate, all new duly free facilities selling Goods in Sri Lanka at the Airport and all other airports in Sri Lanka on the same basis as, and on terms no less favourable to the Company than, those contained in the Concession Agreement, (subject however to an adjustment to the Concession Rent relative to the then prevailing market rates for floor rental of similar size shops at airports in Sri Lanka selling goods similar to the Goods). The GOSL will in addition give the Company the first refusal in respect of any duty free shops in sites outside such airports subject to terms to be negotiated with the GOSL and/or its agencies. The GOSL hereby undertaking to act in good faith so as to reach or procure to reach agreement on such terms with ALPHA. In this clause the terms `Concession Rent' and `Goods' shall have the same meanings as in the Concession Agreement."

Since in the offer for sale, no mention had been made of such duty free selling facilities outside the Bandaranaike International Airport, the Weitnauer Group of Companies in their letter dated September 30, 1995 had requested from PERC, inter-alia, clarification on this very issue, stating — "In addition, we note that exclusivity will be granted to the Airport shop only. Since a precedent of organising Down Town Duty Free Shops in the past, any such proposition in the future will naturally affect sales. We would like to know your response in this regard for us to consider the financial implications if given a scenario in the future." However, PERC had been significantly silent and no reply had been received by the Weitnauer Group in regard to such very specific inquiry. Why?

In addition, approval has been given for Orient Lanka Ltd. owned and managed by Alpha Airports Group PLC to freely operate foreign exchange accounts with no control whatsoever as per Clause 4.1.3 in the Sale and Purchase Agreement. -

" 4.1.3 the Company will at all times be permitted freely to operate foreign exchange accounts with the intent that no exchange control clearance or consents whatsoever will be required for the Company to hold and deal in any foreign currency." Ironically, such duty free selling rights at international airports accrue to the benefit of the respective countries, and the profit margins in foreign exchange should add to the foreign exchange earnings of the particular country.

REAL BUYER - ALPHA AIRPORTS HOLDINGS B.V.

Treasury Secretary B. C. Perera —
Did he know who the real buyer was?

However, the most startling disclosure of all is that it is not Alpha Airports Group PLC, the international duty free operator, who has been the real and actual contracting party and to whom the beneficial ownership of the majority shareholding of Orient Lanka Ltd., had been sold. The actual and real buyer as disclosed in Clause 4.1.5 of the Sale and Purchase Agreement is another company defined as an Affiliate of Alpha Airports Group PLC., U.K. a Company named Alpha Airports Holdings B.V., registered in the Netherlands - " 4.1.5 ALPHA which has declared that it is purchasing the Shares as the trustee for and on behalf of its Affiliate ALPHA Airport Holdings B.V. shall be entitled to have the shares transferred to the said Affiliate and the GOSL shall do everything necessary to facilitate such transfer including procuring the permission of the Controller of Exchange and to permit ad facilitate the said Affiliate to have and enjoy all the benefits privileges and rights of the Share Investment External Rupee Account (SIERA) as if the Share were originally purchased by the said Affiliate and notwithstanding such transfer then ALPHA shall ensure that the said Affiliate conforms to and performs all such obligations which may stand assigned to that Affiliate consequent to such transfer."

Alpha Airports Holdings B.V., has not been specifically stated to be a subsidiary company of Alpha Airports Group PLC, but however has been defined as an Affiliate company of Alpha Airports Group PLC.

Clause 10.1 of the Sale and Purchase Agreement further provides that Alpha Airports Group PLC, without the approval of the Government of Sri Lanka may assign the Sale and Purchase Agreement or any of its rights and obligations thereunder to an Affiliate, which clearly in this instance stands to be interpreted as Alpha Airports Holding B.V. - "10.1 This Agreement shall inure to the benefit of, and shall be legally binding upon, the Parties and their respective successors and permitted assigns. Unless otherwise provided for herein or subsequently agreed in writing neither the GOSL nor ALPHA may assign this Agreement or any rights or obligations hereunder in whole or in part to any third party or

parties without prior written consent of the other of them save that ALPHA may assign this Agreement or any of its rights or obligations hereunder to an Affiliate."

The above arrangement as per Clause 4.1.5 of the Sale and Purchase Agreement is not only startling, but also shocking, since it is an established well known practice upheld by the Attorney General that a successful bidder, could not substitute itself, by another party, whether affiliate or otherwise. Was not the international duty free operational expertise, a pre-requisite stipulated by the advertisements calling for offers by PERC, that too from international duty free operators only? Is Alpha Airports Holdings B.V. also a well established and experienced international duty free operator? If not, would it ever have been qualified to have been considered as an acceptable and qualified party in the very first instance to have been afforded the shareholdings of Orient Lanka Ltd., that was advertised by PERC? Does this not make a mockery of the whole process and violate the cardinal premise and condition of the very qualification stipulated for such share offer? Who takes responsibility for such action?

Alpha Airports Holdings B.V., Schipholweg 875, 2143 CC, Boesingheliede, Netherlands, is a company registered on September 22, 1994 in the Netherlands, with a Registered Share Capital of DFL 200,000 i.e. Rs. 5.8 million apparently as an investment company and not as an international duty free operator. The only shareholder has been given as Alpha Airports Group PLC, UK. The Directors of the Company are Frans Christiaan Mooi and Robert Buurman, both of Netherlands.

Would Alpha Airports Holdings B.V., having been a Company registered in September 1994, with a Share Capital below Rs. 6.0 million, have been qualified by PERC for the purchase of the majority shareholdings of Orient Lanka Ltd., only one year thereafter in 1995? Though at present Alpha Airports Holdings B.V. is apparently a subsidiary of Alpha Airports Group PLC, U.K., it has been defined as an Affiliate? Why? How would Alpha Airport Holdings B.V. with such a share capital less than Rs. 6 million, have financed the purchase of the majority shareholdings of Orient Lanka Ltd., without other financiers? Should not PERC have ascertained who they are?

What is there to prevent, after the registration of the majority shareholdings of Orient Lanka Ltd., in the name of Alpha Airports Holdings B.V., for Alpha Airports Holdings B.V. to sell a majority of its own shareholdings to outside shareholders, even at a premium, thereby in effect re-selling the ownership of the majority shareholdings of Orient Lanka Ltd.? What steps and safeguards have been taken by PERC to prevent such an occurrence, more so particularly in the light of the recent scandalous Kotagala Plantations debacle? If not, why? The basic question that arises is, as to why the transaction had been so structured in such manner to enable such very strategy?

WHAT THEN IS THE ROLE OF ALPHA AIRPORTS GROUP PLC ?

Once the shares are transferred in the name of the actual and real purchaser Alpha Airports Holdings B.V., how does Alpha Airports Group PLC, U.K. operate the duty free facility ? Would it not be for a management fee or charge ? Clause 7.4.2 of the Sale and Purchase Agreement provides as follows:- " 7.4.2 .... For the avoidance of doubt nothing in this Agreement shall prevent or restrict ALPHA from charging the Company for services provided by ALPHA or any Affiliate to the Company. Payments on account of expenses such as reimbursement of head office expenses the corporate overheads inter-company interest etc. shall be made against the Company only with the unanimous approval of the Board of Directors of the Company."

Any such management arrangements obviously would not have been considered when decision was made to sell the majority shareholding of Orient Lanka Ltd. to a international duty free operator and such arrangements, if any, would only further erode the interest of the balance government shareholdings and its marketable price. The irony is that it is specifically recited, that all offers had been evaluated, obviously professionally, and the franchise offer of Weitnauer, offering to pay the Government 20-25% of the sales turnover, continuously as an outright payment, had been disregarded.

The Chart gives the potential annual revenue to the government on the basis of Weitnauer Group's franchise proposals at a 10% p.a. conservatively projected sales turnover growth, which would have given a net present value of around Rs. 3000 million. If the growth in sales turnover was to be 20% p.a. (last 3 years average 40% p.a.), then the net present value would have been around Rs. 4500 million. However, PERC without publicly opening the offers at the closure of bids on November 15, 1995, sold 60% shareholdings of Orient Lanka Ltd., outright for Rs. 1000 million, together with stocks and cash amounting to Rs. 285 million, with an option to purchase a further 37% shareholdings that too, to another company, who had presumably not participated in the offer!! However, ironically, it is stated that all this had been professionally evaluated. If so, by whom? Was it by J.M.S. Brito, the visiting consultant from London?

WEITNAUER'S PROPOSALS

Year	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Potential Concession Fees to Government on the basis of Initial Proposal in April 1995 -											
Projected Turnover - Rs. Mn.	1000	1100	1210	1331	1464	1610	1771	1948	2143	2358	
Concession Fees - Rs. Mn.	250	275	302	332	366	402	442	487	535	590	
Potential Concession Fees to Government on the basis of final Proposal in November 1995 -											
Projected Turnover - US $ Mn.		22.00	24.20	22.60	25.30	32.20	35.40	39.00	42.20	47.20	51.90
Concession Fees - US $ Mn.	(	5.00	4.24	5.32	5.86	6.44	7.09	7.79	8.57	9.43	10.37
Stocks & Cash - US $ Mn.	(	5.40									
Rs.Mn. [@ 60/-]		570	254	319	352	386	425	467	514	567	622
Potential Concession Fees to Government if Turnover Growth is 20% p.a.											
Projected Turnover - US $ Mn.		22.00	26.40	31.70	38.00	45.60	54.70	65.70	78.80	94.60	113.50
Concession Fees - US $ Mn. US $	(	5.00	4.68	6.34	7.60	9.12	10.94	13.14	15.76	18.92	22.70
Stocks & Cash - US $ Mn. US $	(	5.40									
Rs.Mn. [@ 60/-]		570	280	380	456	547	656	788	945	1135	1362

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