

## HI-JACKING TENDER PROCEDURE

The Air Lanka privatisation transaction, that had been carried out by the Public Enterprise Reform Commission [PERC], in quite a strange and questionable method and manner, is the topic of conversation, not only amongst knowledgeable business and social circles, but also amongst the ordinary masses of this country today. Neither the Peoples Alliance government, nor its privatisation agency, PERC, has been able to explain, as to why, such an important privatisation transaction of the country's national airline, enjoying international rights and privileges, had been carried out in such a hasty manner, shrouded in secrecy, apparently causing embarrassment and concern, even to the Board of Directors of Air Lanka, itself!

### EXPERTISE AND COMPETENCE ?

The Peoples Alliance government spokesmen, who have appeared to make public pronouncements on this controversial Air Lanka privatisation transaction, have been, Chairman PERC, Dr. P.B. Jayasundara and Director General, Mano Tittawela. With no disrespect, whatsoever, to these two officials, the public of this country are legitimately entitled to know, their qualifications, experience and competence, in the sphere of privatisation, moreso particularly, regarding the privatisation of a national airline, which in itself presents dimensions of other complexities, other than those associated with the privatisation of a public sector industrial or commercial enterprise.



Chairman PERC Dr. P.B. Jayasundara



Director General PERC Mano Tittawela

Clearly in the eyes of the public, Chairman, Air Lanka, Harry Jayawardena has not publicly positively endorsed the Air Lanka privatisation transaction, as the best deal for the country. Why ? On the contrary, Chairman, Air Lanka, Harry Jayawardena's conduct, actions and pronouncements, as exposed in the media, which he has not contradicted to-date, undoubtedly has left an indelible impression in the minds of the public, that he not only was not a party to this controversial Air Lanka privatisation transaction, but also, that he was not at all satisfied with such transaction. For some unknown reason, he appears to have had only acquiesced thereto, significantly having it recorded by implication, that he had not gone through the relevant agreements pertaining to this Air Lanka privatisation transaction and that such agreements had been presented to him as a fait accompli, whereby he and the Board of Directors of Air Lanka Ltd., had not even been given adequate or reasonable time, to have considered such voluminous and complex agreements, which they had been called upon to hastily approve and adopt.

Once again, without any disrespect to the two People Alliance government officials, Chairman, PERC, DR. P.B. Jayasundera and Director General, Mano Tittawela, who in the public eye appear to be the People Alliance governments' spokesmen, making public pronouncements and taking responsibility therefor, a cogent question, that necessarily has to be entertained in the public interest, is as to what their business acumen and experience have been, compared to that of Chairman, Air Lanka, Harry Jayawardena, a self-made hard headed entrepreneur, who had in fact been one of the most successful bidders, in acquiring the majority shareholdings of Distilleries Company of Sri Lanka Ltd., and Lanka Milk Foods Ltd., under the privatisation programme carried out by the former United National Party government, but however, on a transparent open competitive basis, with bidding on the trading floor of the Colombo Stock Exchange, quite unlike the Air Lanka privatisation deal.

### **WHAT BUSINESS JUSTIFICATION ?**

Ought not other well known and reputed international airlines, that had applied for pre-qualification, have been required to bid, on an open competitive basis on the trading floor of the Colombo Stock Exchange, or atleast on a tender basis, to have at least established a bench mark, of what the price level would have been, for a 40 % shareholding of Air Lanka Ltd., even to have subsequently negotiated with Emirates Airlines for some reason, giving the option of first refusal to Emirates Airlines at such price, for such whatever reason ?

Were the options of trunkating other profitable areas of business of Air Lanka Ltd., such as, catering and ground handling services, considered, to have been privatised separately, which options, normally and ordinarily ought to have been considered in such a privatisation? If not, why not?

In the aforesaid circumstances, those who had been responsible for handling this controversial Air Lanka privatisation transaction, most certainly ought to have equipped themselves, with profitability and cash flow projections in respect of each of such profit centers of Air Lanka Ltd., taking into account, also the enhanced volumes, and levels of operations, as a consequence of acquiring and putting into service 6 new Airbus aircrafts and the anticipated increase in traffic volume through Colombo. Such profitability and cash flow projections normally and ordinarily ought to have been discounted to give the net present value, that is the present net worth of Air Lanka Ltd., taking into account all spheres of business activity, including ground handling and catering.

Ought not Chairman PERC, Dr.P.B. Jayasundera and Director General, Mano Tittewela, made known such profitability and cash flow projections and discounted net present value thereof, to justify the sale of 40 % shareholding of Air Lanka at US \$ 70 Mn., to Emirates Airlines. That too, with US \$ 45 Mn. being paid immediately and the balance US \$ 25 Mn. being paid 2 1/2 years thereafter, whereby the present value for the 40 % shareholding of Air Lanka Ltd., would not be US \$ 70 Mn. but would be very much lesser, when one takes into cognisance, the net present value of US \$ 25 Mn., to be paid 2 1/2 Years later.

The above would only be one aspect, from a pure business and commercial point of view, but here is an instance of a national airline, with international rights and privileges enjoyed, as the national carrier of a sovereign country, in the global market place, inter-alia, including landing rights, frequencies and capacities of carriage of passenger traffic and freight. Have the intrinsic values of these tapped and untapped resource potentials been taken into account, as they ought to have been, in determining the valuation to have been placed on the 40 % shareholdings of the Air Lanka Ltd., that has been sold to Emirates Airlines on the advice of PERC, by the government of Sri Lanka, on the basis, of exclusive negotiations, conducted questionably away from the public glare, in a supposed era of proclaimed high profile transparency. What has Emirates Airlines brought to the table, as it were, for the benefit of Air Lanka Ltd., in comparison with the benefits to Emirates Airlines in its tie-up with Air Lanka Ltd.?

## VOLUMINOUS & COMPLEX AGREEMENTS HASTILY RUSHED ?

Not only Chairman, Air Lanka Ltd., Harry Jayawardena could complain, that very voluminous and complex agreements had been presented to him for approval and adoption, without him having had the opportunity of having examined and given his mind thereto, but also, Secretary Ministry of Finance and Secretary to the Treasury, Dixon Nilaweera, responsible for having executed such voluminous and complex Air Lanka privatisation agreements and documents, for the sale to Emirates Airlines, of 40% shareholdings of Air Lanka Ltd., held by him, as the Secretary to the Treasury, on behalf of the government, had only been appointed to such post of Secretary of Ministry of Finance and Secretary to the Treasury, very recently! Had he had the time to have examined and given his mind, to such voluminous and complex agreements pertaining to such important privatisation of the national carrier?

## PEOPLE'S ALLIANCE GOVERNMENT POLICY TO PARLIAMENT

In the foregoing scenario *The Sunday Leader* in the public interest, reproduces some brief extracts of President Chandrika Bandaranaike Kumaratunge's policy statement to Parliament on January 6, 1995 - "You will recall that the first piece of legislation presented by my government to this august assembly had, as its aim, the restoration of integrity and honour to the public life of our motherland. This legislation, which Parliament enacted unanimously, provided for the establishment of a Permanent Commission on Bribery and Corruption. The most striking feature of this legislation is the robust and complete independence of the Commission from political interference.... Corrupt politicians can no longer have recourse to membership of the country's supreme legislature as a shield against investigation of, and punishment for, gross abuse of public power. In this way we have espoused and upheld, the value of transparency and accountability in the public life of the Republic.... The Airbus deal and the ground bus deal had particularly offended the international financial institutions.... In the name of privatisation, the past regime had engaged in virtual daylight robbery of valuable national assets. In most cases, the award of contracts had violated all accepted norms and procedures.... Nowhere in the entire world would you come across such brazen pillage and plunder of a people's wealth.... They have only succeeded in enriching some powerful persons close to the leadership of the last regime.... The government's approach to privatisation will be distinguished by full transparency and accountability, which have been notoriously absent in the past. There will be no crony privatisation in the future."

**'The Airbus deal and the ground bus deal had particularly offended the international financial institutions. In the name of privatisation, the past regime had engaged in virtual daylight robbery of valuable national assets. In most cases, the award of contracts had violated all accepted norms and procedures....Nowhere in the entire world would you come across such brazen pillage and plunder of a people's wealth.' — Chandrika Kumaratunga**

These, no doubt, are noble words eloquently delivered to Parliament, as the policy statement of the People's Alliance government, for which, each and every People's Alliance Member of government is accountable and responsible for, whether it be Lakshman Kadirgamar or G.L. Peiris or any other. This is not mere rhetoric on the People's Alliance election platform, based upon which the people of this country overwhelmingly voted the People's Alliance government into power. This is the policy framework proclaimed to Parliament, within which, the People's Alliance government would be held accountable and responsible to have carried out their programmes of work in conformity therewith.

The packaging of the procurement of 6 Airbus aircraft, at a reported cost of US \$ 550 Mn., which together with related equipment, is reportedly expected to cost around US \$ 700 Mn., without adherence to mandatory public sector procurement and tender procedures, could not be explained, given the policy framework of the Peoples Alliance government presented to Parliament, as aforesaid, by none other than President Kumaratunge, herself. Would not Chairman PERC, Dr. P.B. Jayasundera and Director General PERC, Mano Tittewela, as officials of the People's Alliance government, have been duty bound to have acted in strict conformity with such Peoples Alliance government policy framework presented to Parliament. If not, how and why?

### **IS THERE COMMISSION ON AIRBUS DEAL? WHO IS THE AGENT ?**

In conformity with normal international commercial practice, would not Airbus Industrie have had an agent covering its sales to the territory of Sri Lanka? Would not such agent, whoever it may be, have got an unfair advantage, if commissions as contractually due, is to be paid by Airbus Industrie on this exclusively negotiated procurement of 6 Airbus aircrafts? Would not statements, such as "most favoured customer treatment", be mere bunkum of marketing and sales talk, inasmuch as, gimmicks such as a free television set, if one were to buy a photocopier? On the contrary, on such an important and costly procurement, ought not the comparative prices of comparable aircrafts internationally prevalent have been professionally evaluated by knowledgeable experts in the international aircraft industry? Ought not such a report have been obtained? If so, ought it not have been made public? If not, why?

### **PERC'S PREVIOUS DEALS !!**

Kelani Valley Plantations Ltd. had recorded a profit of Rs 212.7 Mn. for the year ended 31st December 1997, after paying its managing agents, DPL Plantations Ltd. Rs.29.5 Mn. as the managing agent's profit share, whilst for the year ended 31st December 1996, the profit of Kelani Valley Plantations Ltd., had been Rs. 86.3 Mn., after managing agent's profit share of Rs. 23.1 Mn., making a total profit of Rs. 299 Mn., excluding the profits of Rs. 52.6 Mn. in the hands of DPL Plantations Ltd., as the managing agents. In November 1995, PERC sold 51% of Kelani Valley Plantations Ltd., to DPL Plantations Ltd., at the ridiculously questionable price of Rs. 102 Mn. In addition, DPL Plantations Ltd., invested mandatorily convertible debentures of Rs 140 Mn., affording them a 71.2 % ownership of Kelani Valley Plantations Ltd., at an effective purchase price only of Rs. 142.3 Mn., upon the conversion of such mandatorily convertible debentures. The 71.2 % share of the Kelani Valley Plantations Ltd., profits for the 2 years 1996 and 1997 amounts to Rs. 212 Mn., as against the effective purchase consideration of Rs. 142.3 Mn. for such 71.2% shareholding!!

In January 1996, PERC sold 60% shareholding of Orient Lanka Ltd., to Alfa Airports Group PLC UK, for only Rs. 1,000 Mn., [with stocks and cash of Rs. 285 Mn.], after advertising the re-bidding of such privatisation offer, giving only 4 days notice, including a week-end. PERC announced to the media the sale of such shareholding concluded on Friday January 19, 1996 on the very next Monday, January 22, 1996, clearly without Cabinet approval at that point of time for such public pronouncement to have been so hastily made. Contrary to such hasty decision, the Orient Lanka Ltd. privatisation transaction was finally transacted and concluded with agreements signed 4 months thereafter on May 25, 1996, selling the said 60% shareholding to another company Alfa Airports Holdings BV registered in the Netherlands, that could not have got pre-qualified to have so procured Orient Lanka Ltd., in violation of known tender norms and procedures.

This outright sale of a national right of a duty free franchise at the international airport, was made by PERC in the very teeth of a franchise proposal from the 3rd largest Duty Free operator in the world, Weitnauer Group, Switzerland, whose franchise proposal ought to have brought over Rs. 5,000 Mn., over ten years giving a net present value of over Rs. 3,000 Mn. Weitnauer's representations on March 25, 1996 to all Members of PERC and to Finance Ministry Consultant J.M.S. Brito and Chairman Orient Lanka Ltd., D.Y. Liyanage offering even to have further negotiations, curiously had fallen on deaf ears, without Wietnauer even having had a response to their such representations.

## **WHO IS RESPONSIBLE ?**

The above privatisation transactions, amongst other, had been analytically exposed by *The Sunday Leader* during 1997, with no refutation, whatsoever, from the People's Alliance government or from the officials of PERC, who have carried out such privatisation transactions to the detriment and loss of the government and the country. Dr. P.B. Jayasundera, who appears to have spear-headed the Air Lanka privatisation transaction, in a manner, let alone in the public sector, even in the private sector would not have been carried out without proper disclosure and deliberations at the board of Directors, was also a very much responsible member of PERC, under the then Chairmanship of Rajan Asirwatham, responsible, amongst other, for the above privatisation transactions of Kelani Valley and Orient Lanka. Would Air Lanka also prove to be in the same mould?

*- Published in The Sunday Leader on 19.4.1998 by Nihal Sri Ameresekere under the pseudonym 'Bismark'*