

**Airline Pilots Guild of Sri Lanka v. SriLankan Airlines Ltd.**

RTIC Appeal (In-Person)/99/2017 - Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Summary of Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure) – *Heard as part of formal meetings of the Commission on 13.11.2017, 08.01.2018, 06.02.2018, 23.03.2018, 24.04.2018 and 09.05.2018*

*Record of Proceedings and Order delivered on 12<sup>th</sup> June 2018*

**Present**

Mr. Mahinda Gammampila	Chairman
Ms. Kishali Pinto-Jayawardena	Member
Mr. S.G. Punchihewa	Member
Dr. Selvy Thiruchandran	Member
Justice Rohini Walgama	Member

**In Attendance**

Mr. Piyathissa Ranasinghe	Director General
Ms. Mathuri Maran	Legal Researcher

<b>RTI Request filed on</b>	: 29.06.2017
<b>IO responded on</b>	: 19.07.2017
<b>First Appeal to DO filed on</b>	: 02.08.2017
<b>DO responded on</b>	: 23.08.2017
<b>Appeal to RTIC filed on</b>	: 15.09.2017
<b>Written Submissions/Further Written Submissions filed:</b>	
By the Appellant - 04.12.2017/18.01.2018/14.02.2018; By the Public Authority - 05.01.2018/05.02.2018/20.02.2018	

**Counsel for the Appellant:**

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Buddhika Chandrasekara, apprentice counsel

**Counsel for the PA:**

Dr. Shivaji Felix, AAL

**Appellant (Pilots Guild) represented by:**

Captain Ruwan Vithanage, President, Airline Pilots Guild of Sri Lanka

Captain Malik Latiff, Airline Pilots Guild of Sri Lanka (ALPGSL)

Mr. S. Malawikankanamge, Airline Pilots Guild of Sri Lanka (ALPGSL)

**PA represented by:**

Mr. M.A. Ranasinghe, Head of Group – Legal, SriLankan Airlines

Ms. Shiara Sellamuttu, Group Legal Affairs Manager (Information Officer), SriLankan Airlines

**Brief Description of the Facts**

The Appellant had requested the following information from the Public Authority:

1. Salaries and other allowances and/or benefits of:
  - a. The CEO of SriLankan Airlines Limited
  - b. Head of Human Resources (HHR) of SriLankan Airlines Limited
  - c. Chief Commercial Officer (CCO) of SriLankan Airlines Limited
2. All information related and/or connected to Pakistan International Airlines' (PIA) correspondence with SriLankan Airlines Limited
3. All information related and/or connected to PIA initial entry into an agreement with SriLankan Airlines Limited and all information relating to the Agreement with SriLankan Airlines Limited including the said agreement
4. All financial information (including but not limited to profits and/or losses and damages) connected to the Agreement and/or arrangement between PIA and SriLankan Airlines Limited
5. All information related to and/or connected to the termination of the Agreement and/or arrangement between PIA and SriLankan Airlines Limited
6. All information related to and/or connected to the cancellation of the order of Airbus A350 Aircraft (including but not limited to all Agreements and/or correspondence related to ordering of Airbus A350 Aircraft and the cancellation thereof)
7. All information related to and/or connected to the cost of personal flying training for the A320 jet conversion borne by SriLankan Airlines Limited and/or any party for the CEO Mr. Suren Ratwatte.

The initial information request was made to the IO on 29.06.2017. The IO had responded on 30.06.2017 with an acknowledgement, and on 19.07.2017 responded to the request refusing the information citing exemptions under Section 5 (1) of the RTI Act, 19.07.2017, while making a reservation that the Public Authority will provide part of the information under request no (4) and part of the information under request no (6).

In respect of the refusal of information disclosure, the exemptions cited by the Public Authority regarding item 1 of the information request were Sections 5(1) (a) and 5(1)(g), the exemptions cited regarding items 2- 5 of the information request were Sections 5(1)(b) (ii) and 5 (1) (d), the exemptions cited regarding item 6 of the information request were Sections 5(1)(i), 5(1)(d) and 5(1)(m) and the exemptions cited regarding item 7 were Sections 5(1) (a) and 5(1)(g).

Believing that the IO had granted incomplete, misleading and false information and citing the Public Interest importance of the information request, the Appellant appealed to the DO on 02.08.2017. The DO responded on 23.08.2017 refusing to provide the information in items 1 and 6. Re items 2-5, the DO had stated that the requests were extremely vague and widely phrased and they would be considered if the Appellant is more specific, as the repercussion of releasing such voluminous correspondence would affect relations between the stated two countries, namely Sri Lanka and Pakistan. Following this response, the Appellant appealed to the Commission on 15.09.2017.

### **Matters Arising During the Hearing**

Counsel for the Appellant submitted that the appeal on the said information request had been filed due to the lack of transparency of the PA. The PA had been suffering substantial losses which had been reflected in every annual report of the PA. The Appellant had an interest in this matter *qua* the Airline Pilots Guild of Sri Lanka as their salaries are paid by the PA, but the pilots were also concerned as citizens since SriLankan Airlines was being bailed out by public funds. In recent years, the losses faced by the PA had been getting worse amidst allegations of mismanagement, cronyism, and nepotism which had worsened during the past 10 – 15 years including allegations of contracts being given with vested agendas to other parties at substantial rates which had been widely reported and was of public record.

It was contended that the alleged mismanagement and corruption had sullied the name of SriLankan Airlines which had once maintained a good reputation and had been named in the list of top 10 global airliners. Counsel for the Appellant further submitted that a reduction in the number of passengers flying via SriLankan Airlines had not been evidenced as a matter of record. Consequently, he questioned as to how the PA claimed that it was suffering losses?

Moreover, the PA had been entering into loss- making contracts, for example the contract with Pakistan International Airlines (PIA) which was the subject of one of the information requests and in a context where the counterpart signatory in that country was now undergoing criminal investigations. Despite this, he pointed out that the contract was being hailed as a success in Sri Lanka. As a result of the controversy, the contract has been cancelled, Counsel for the Appellant claimed.

He further submitted that even though Section 5 of the RTI Act, No.12 of 2016 lists exemptions as a basis on which information may be refused, there is a public interest override in Section 5(4) which is to the effect that “notwithstanding the provisions of subsection (1), a request for information shall not be

refused where the public interest in disclosing the information outweighs the harm that would result from its disclosure” and affirmed that the Appellant was relying on the same.

The PA then informed the Commission that on 02.08.2017, it had provided the details of the revenue collected through the contract with PIA which constituted part of the information requested under request no (4) and part of the information under request no (6) as follows;

- a. The total revenue generated by SriLankan Airlines pursuant to entering into an Agreement with Pakistan International Airlines (part of Request No 4)
- b. The specific information of the cost of canceling aircraft lease agreements for A350-900 aircrafts (part of Request No 6)

Notification of the same had been sent on 19.07.2017 and information subsequently provided on 02.08.2017.

The IO stated that she had written to the 3rd parties (Airbus and AerCap) mentioned in item 6 of the Appellant’s information request by letter dated 19.07.2017 in line with the mandatory requirements laid down in Section 29 of the Act that a Public Authority must take into account the representations made by a third party if information that related to confidential information supplied to the Public Authority by a 3rd party, is requested under the RTI Act. By the same letter dated 19.07.2017, she had apprised the Appellants that the 3rd parties had responded requesting that the information be not disclosed in consequence of which the Public Authority took a decision under and in terms of Section 29(2)(c ) to deny that portion of the information. The letters from Airbus and AerCap had been included in the response from the DO dated 23.08.2017.

Responding, the President of the Appellant body submitted that there is considerable public interest in this matter and that the letters denying the information did not do justice to the Appellants’ request. He claimed that consequent to the information request against the Public Authority being filed, a campaign directed against the persons instrumental in initiating RTI proceedings had been evidenced within the institution. He also alleged that generally and due to the loss of confidence in the national carrier, close to 80 pilots have left the national carrier.

Following examination of the information request of the Appellant which was determined to be wide and generalised in content and during the consideration of this appeal on 13.11.2017, the Appellant was directed by this Commission to ascertain which information requested by the Appellant is already in the public domain, to identify the crux of the information needed and to file the streamlined request by 04.12.2017 (RTIC Minutes, 13. 11.2017). The said revised information request was submitted by the Appellant on 04.12. 2017. However, due to objections being taken by the Public Authority that the said revised request attempted to add new items to the original information request that is on appeal before this Commission (Vide WS of the PA, dated 05.01.2017), it was decided to revert to the original information request submitted by the Appellant as aforesaid (RTIC Minutes of 08.01.2018).

On 06.02.2018, Counsel appearing for the Public Authority raised a preliminary objection in relation to the jurisdiction of the Commission to hear this appeal on the basis that it did not come within the ambit of Section 43 of the Right to Information Act (hereafter the RTI Act) which defines a public authority as a ‘company incorporated under the Companies Act, No 7 of 2007’ (hereafter the Companies Act, 2007)

being that it was an existing company that was 're-registered' under the Companies Act, 2007 which ( as was argued) falls outside the ambit of the RTI Act.

Following hearing both parties on this matter, Order was delivered on 23.03.2018, dismissing the said preliminary objection (Vide <http://www.rticommission.lk/web/images/pdf/23032018/ul-rticappea-jurisdiction-point-22032018.pdf>). It was held that SriLankan Airlines comes within the ambit of Section 43 of the Right to Information Act, which defines a Public Authority as a 'company incorporated under the Companies Act, No 7 of 2007' in which the State or a public corporation or the State and a public corporation together hold twenty five per centum or more of the shares or otherwise has a controlling interest.

By electronic notification dated April 20th 2018, the Public Authority (SriLankan Airlines) informed the Commission that it would not be appealing the order delivered by the Commission on the Preliminary Objection regarding Jurisdiction.

Further and in relation to the specific exemption raised relying on Section 5 (1) (m) of the RTI Act, (cited to refuse item 6 of the information request), a direction by this Commission to the Public Authority to establish documentary evidence to show that this concerned information contained in a Cabinet Memorandum in relation to which a decision had not yet been taken, was not substantiated, thereby rendering the citation of that exemption of any effective legal force.

### **Order**

It is important to note that the main objective of Sri Lanka's RTI Act, as detailed in its substantive provisions and underpinned by the overarching force of the preamble which embodies the fundamental values and the philosophy of the Act, is to 'foster a culture of transparency and accountability in public authorities by giving effect to the right of access to information and thereby promote a society in which the people of Sri Lanka would be able to more fully participate in public life through combating corruption and promoting accountability and good governance.'

The central focus given to transparency and accountability in Public Authorities is clear. In that regard, it may be said that the preamble of Sri Lanka's RTI Act, even more unambiguously underpins the principle of maximum disclosure, subject to narrowly defined exceptions that must also yield to the public interest override.

It is instructive to note that this is contrasted with, for example, the preamble of India's RTI Act (2005) which refers to the 'harmonizing of conflicting interests' (absent in its SriLankan counterpart); "...and whereas revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Government's optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information; and whereas it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal.'

It is manifest therefore that, where the public purse is concerned, and the alleged financial irregularities of a particular Public Authority are under scrutiny in an Appeal before us, this Commission will be particularly watchful of the public interest. We will proceed with consideration of each item of the Appellant's request with this overriding caution in mind.

### **Information Requests 1 and 7**

These two requests will be considered together given the subject matter of both.

Information Request 1 relates to the following;

1. Salaries and other allowances and/or benefits of:

- a. The CEO of SriLankan Airlines Limited
- b. Head of Human Resources (HHR) of SriLankan Airlines Limited
- c. Chief Commercial Officer (CCO) of SriLankan Airlines Limited

Information Request 7 relates to the following;

7. All information related to and/or connected to the cost of personal flying training for the A320 jet conversion borne by SriLankan Airlines Limited and/or any party for the CEO Mr. Suren Ratwatte.

In the course of hearings in this appeal, it was pointed out to the Public Authority (RTIC Minutes of 08.01.2018) that, in terms of the RTI Regulations gazetted in Regulation 20 (1) (ii) on proactive disclosure (Gazette No. 2004/66, 03.02.2017), there is a duty on the PA to disclose certain information proactively to the Public. Regulation 20 (1) (ii) states as follows:

*01. In accordance with the power to direct a Public Authority to provide information in a particular form under Section 15(d) of the Act and in keeping with the overriding principle of Proactive Disclosure, all Public Authorities shall routinely disseminate, at a minimum, the following key Information including through a digital or electronic format;*

*(ii) "Organizational information: Organizational structure including information on personnel, and the names and contact information of executive grade public officials, their remunerations, emoluments and allowances." (emphasis ours)*

It was also pointed out by this Commission that the said Regulation imposes a voluntary duty on Public Authorities which relates to the lowest standard possible in respect of information disclosure. However, the process of reactive disclosure detailed in Sections 24 to 25 of the Act signifies a much higher level of information disclosure, in consonance with the principle of maximum disclosure subject to narrowly defined exceptions set out in Section 5 (1) and its various sub-sections and subject also to the public interest override contained in Section 5(4) of the Act.

The Appellant sets out its basis for asking the said information on the fact that it is in the public interest to disclose how much these named officers are being paid given that news reports had cited that an exorbitant amount of public funds were being expended, which had to be ultimately borne by taxpayers. It was submitted that it is 'trite law' that an Authority cannot conceal information regarding the salaries and/or emoluments paid to its employees and cited as authority for this proposition, *Jyoti Seherawat v Gvt of India*, GNCT, File No CIC/AD/A/2012/003341 which had held that such payments are 'sourced from the tax paid by the people in general' and that therefore, 'the information belongs to the public and they have a right of access to it as per the RTI Act. It has to be disclosed under Section 4 voluntarily and of a member of the public seeks it, it cannot be denied.'

The Public Authority cited exemptions detailed in Sections 5(1) (a) and 5(1)(g) to refuse disclosure of the information in both instances. The said Sections read as follows;

Section 5 (1) (a);

*“the information relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the larger public interest justifies the disclosure of such information or the person concerned has consented in writing to such disclosure;”*

Section 5 (1) (g)

*“the information is required to be kept confidential by reason of the existence of a fiduciary relationship;”*

Where Information Request No 1 was concerned, it clarified that clause 13.1 of People Administration and Engagement Policy Manual of SriLankan Airlines Ltd states that the remuneration policy of the employees is decided by the Board of Directors (subject to any collective agreement governing salary which is not the case here), that salaries of Senior Management officers are based on contracts entered into between the employer and the employee based on competitive considerations and subject to confidentiality provisions. Further it was stated that in the Annual Accounts of the Company, the salaries of the members of the Senior Management are provided as a total amount.

The Public Authority relied on Indian precedents to establish these arguments; *Girish Ramchandra Deshpande Vs Cen. Information Commissioner and Others*, Special Leave Petition (Civil) No. 27734 of 2012, decided on 03/10/2012, decision of the Supreme Court) and *Mrdr Dheeraj Kapoor Vs Directorate of Health and Family and Others*, File No.CIC/SA/A/2014/000494, decided on 31/10/2014, decision of the Central Information Commission).

Where Information Request No 7 was concerned, it contended that this too related to the content of the personal employment contract of the CEO of the Public Authority who had strongly objected to the disclosure of any information relevant thereto. It was also stated that ‘given the restructuring process that is contemplated in the future, there is potential massive risk that a foreign CEO having aviation expertise and qualifications may be proposed to replace the existing SriLankan CEO. The company was also mindful of the control in the company, for the SriLankan citizens and took this aspect into consideration when permitting the CEO to undertake flight training for the A320 jet conversion.’

Evaluating these arguments in the factual context of this Appeal, it must be observed at the outset that, the Public Authority’s citation of *Mrdr Dheeraj Kapoor Vs Directorate of Health and Family and Others (supra)* is misconceived (as was pointed out by this Commission, vide RTIC Minutes of 08.01.2018) as the *ratio* in that case, in fact, supported the provision of the requested information with regard to salaries. In this appeal, the information in issue related to details of salary (from date of joining) including basic pay, non-practise allowance, grade pay, dearness allowance, house rent allowance, academic/annual allowance, transport allowance (taxable/non-taxable) and education cess. It was decided that all the information was in the public domain and thus it can be disclosed both voluntarily and upon an information request being filed.

Examination of relevant precedents by the Indian judiciary and its information commissions indicates that the above principle re disclosure of salaries, allowances etc has been articulated as a rule. The distinction drawn in both *Mrdr Dheeraj Kapoor Vs Directorate of Health and Family and Others (supra)* and *Girish Ramchandra Deshpande Vs Cen. Information Commissioner and Others (supra)* is that, as contrasted with salary details and allowances etc, 'personal information' (including details of income tax returns), the disclosure of which is not related to the larger public interest may not be disclosed under the RTI Act, unless the larger public interest demands it.

Particularly useful in assessing competing arguments in this Appeal is the observation in *Vijay Prakash Vs Union of India* [W.P. (C) 803/2009] which pointed out that, 'a distinction must be made between "official" information inherent to the position and those that are not, and therefore affect only his/her private life. This balancing task appears to be easy; but is in practice, not so, having regard to the dynamics inherent in the conflict... the balancing exercise, necessarily dependent and evolving on case by case basis, may take into account the following relevant considerations, (inter alia), whether the disclosure will furnish any information required to establish accountability or transparency in the use of public resources.'

Precedents from elsewhere also support the general principle that disclosure of salaries does not constitute 'personal information' that comes within an applicable privacy exemption. In *Uzoegwu FOC Esq v Central Bank of Nigeria & Attorney General of the Federation* (FHC/ABJ./CS/1016/2011, 5 July 2012), the Federal High Court of Nigeria ruled that salaries of high level officials at the Central Bank must be disclosed under freedom of information provisions, observing that "where the interest of the public is in clash with the individual interest . . . the collective interest must be held paramount." In *Kariuki v Attorney General* (Case No. 403 of 2006, 8 July 2011), the High Court of Kenya held that salaries of Armed Forces personnel are not private.

In the matter before us, it is clear that the information requested by the Appellant in information requests (1) and (7) must be disclosed for the reason that this is, by its very definition, information that directly relates to the financial accountability and transparency of the Public Authority in the expenditure of public funds. This is all the more so by virtue of the pre-eminent position that it holds as the country's national air carrier and in the context of widespread public concerns in regard to financial management of the Public Authority, which this Commission is duty bound to take cognizance of. This is quite apart from the fact that, the information in Request No 1 is anyway encompassed within the ambit of Regulation 20 (1) (ii) on proactive disclosure (Gazette No. 2004/66, 03.02.2017).

Where the citation of the exemption in Section 5(1) (g) is concerned, it bears emphasis that the traditional definition of 'fiduciary' is, a person who occupies a position of trust in relation to someone else, therefore requiring him / her to act for the latter's benefit within the scope of that relationship (P.D. Finn "Fiduciary Obligations" (1st Edn 1977) para 465-466).

But what is being requested here are the 'salaries and other allowances and/or benefits' of three named executive officers of the Public Authority which does not come within the ambit of a fiduciary relationship. In our view, this information cannot be automatically equated with disclosure of 'employment contracts' which, by their very nature, comprise far more information than salary details, even though the Public Authority has submitted the confidentiality of the same as justification under Section 5 (1) (a) and (g) to refuse disclosure. The question as to whether 'employment contracts' can be



disclosed under and in terms of the RTI Act remains to be decided by the Commission in the factual circumstances of another appeal since that question is not in issue this instance.

In sum and confined to the substance of these two information requests that are before us, we rule that, in any event, the exemptions cited by the Public Authority (viz; Section 5(10(a) and (g) yield to the imperative provisions of Section 5 (4) of the Act in that the information requested is such that the public interest in disclosing the information outweighs the harm that would result from their disclosure.

The decision of the Designated Officer is reversed on this portion of the information request.

### **Information Requests 2, 3, 4 and 5**

These cumulatively comprise - (2); All information related and/or connected to Pakistan International Airlines' (PIA) correspondence with SriLankan Airlines Limited, (3); All information related and/or connected to PIA initial entry into an agreement with SriLankan Airlines Limited and all information relating to the Agreement with SriLankan Airlines Limited including the said agreement, (4); All financial information (including but not limited to profits and/or losses and damages) connected to the Agreement and/or arrangement between PIA and SriLankan Airlines Limited and (5); All information related to and/or connected to the termination of the Agreement and/or arrangement between PIA and SriLankan Airlines Limited.

The Public Authority has stated (viz; WS of the PA, dated 05.01.2018) that the information asked for in Information Requests 2, 3 and 4 relate to the contractual obligations between Pakistan International Airlines (PIA) and SriLankan Airlines as follows;

- A. Memorandum of Understanding dated 28th July 2016 with PIA;
- B. Wet lease agreement dated 04th August .2016 with PIA;
- C. Wet lease extension agreement dated 02nd November 2016 with PIA

The Public Authority submitted that a Memorandum of Understanding dated 28th July 2016 had been entered into by the Public Authority with PIA, in terms of which PIA agreed to dry lease 3 Airbus A330-300 from the Public Authority in October or November 2016, until each aircraft reaches the age of 6 years and that the parties had agreed to negotiate, finalize and execute relevant dry lease agreements, on or before 30th September 2016 or any other date as mutually agreed. However, as the two parties could not agree on the terms, conditions and financial commitments of the dry lease agreement before the expiry of the mandated date, namely 30th September 2016, the MOU came to an end through effluxion of time and not through termination of the agreement. As such, the Public Authority stated that there was no 'termination' of the contract between PIA and the Public Authority, with the result that Information Request No 5) had no practical validity.

It was submitted that following the lapsing of the MOU, PIA and the Public Authority entered into a wet lease agreement dated 04.08.2016, for a period commencing from 10/08/2016 to 09/11/2016, i.e., for a period of 3 months and further a wet lease extension agreement dated 02.11.2016 was also executed between the parties, by which the original wet lease agreement was extended, for a further period of 3 months, commencing from 10/11/2016. The contractual obligations between the parties expired on 09/02/2017, in relation to the said wet lease.

Section 5(1)(b) (ii) and 5 (1) (d) were cited by the Public Authority as the basis to refuse information disclosure. These Sections state as follows;

Section 5 (1) (b) (ii)

*“would be or is likely to be seriously prejudicial to Sri Lanka’s relations with any State, or in relation to international agreements or obligations under international law, where such information was given by or obtained in confidence;”*

Section 5 (1) (d)

*“information, including commercial confidence, trade secrets or intellectual property, protected under the Intellectual Property Act, No. 36 of 2003, the disclosure of which would harm the competitive position of a third party, unless the public authority is satisfied that larger public interest warrants the disclosure of such information;”*

The Public Authority contended that clause 24.3 of the wet lease agreement dated 04/08/2016 contains a confidentiality clause and the Public Authority as well as the PIA ‘has expressly agreed to treat the information provided therein as confidential and that parties will not disclose any information contained in the contract, without the prior written consent of the other party.’ (viz paragraph 66 d) of the WS of the OA, dated 05.01.2018).

In so far as the exemption under Section 5 (1) (d) is concerned, it is maintained by the Public Authority that the agreements and information in issue contain commercially sensitive and important information between international business partners.

The contention of the Appellant in asking for this information is on the basis that the transaction with PIA has been ‘mired in public controversy’ with allegations of irregular practices on both sides and that extensive losses have been suffered by both parties as a result. Further, it has been pointed out that the services of the CEO of PIA had been terminated following PIA’s transaction with the Public Authority pursuant to allegations of corruption and irregular practices in connection with the leasing of the aircraft (viz; on page 9 of the WS of the Appellant dated 4<sup>th</sup> December 2017).

In turn, the Public Authority has stated that the total revenue generated by it, in relation to the said wet lease agreement, by electronic mail notification to the Appellant dated 02/08/2017 was LKR 2,986,716,769/31 and to state further before this Commission that the profit and loss account on the wet lease agreement entered into with PIA established that the Public Authority had made a profit of LKR 1,104.41 million (viz; paragraph 71 of the WS of the PA, dated 05.01.2018). Thus, the Public Authority has affirmed that disclosure of information pertaining to losses does not arise.

In relation to the applicability of the exemptions in Sections 5 (1) (b) (ii) and Section 5 (1) (d) to the refusal of information disclosure in this Appeal, we have considered this matter carefully and perused the contents of the agreements given to us by the Public Authority. On the Public Authority’s own submission, the information asked for by the Appellant relates to an MOU (upon which no financial or legal commitments arose, viz; paragraphs 61 and 73 of the WS of the PA, dated 05.01.2018) and agreements that have now, in the Public Authority’s words ‘lapsed with the effluxion of time’ (viz; paragraph 72 of the WS of the PA, dated 05.01.2018). Therefore it must be categorically reminded that these requests for information disclosure do not relate to ongoing contracts as such but arise in relation

to past agreements. This distinction is important for the purposes of assessing information disclosure in issue in this Appeal.

The approach taken to similar challenges of information disclosure in other comparable jurisdictions may be useful in this context. In *Transnet Ltd. and Another v. SA Metal Machinery Co (PTY) Ltd* (case no 147/05, 29 November 2005), the Supreme Court of Appeal of South Africa (final court of review except in constitutional matters) considered a similar objection raised in regard to Section 36(1)(c) of South Africa's Promotion of Access of Information Act (2000) which prohibits providing access to a third party trade secret or information that "would be likely to cause harm to the third party's commercial or financial interest."

The Court held that a confidentiality clause cannot shield a contract of a state company with a third party from disclosure. It was held that the Public Authority (Transnet Limited, which was a state-owned company acting through the National Ports Authority of South Africa) was obligated to conduct its operations in a transparent and accountable manner. The Court further held that the confidentiality clause could not protect disclosure of bidder's information after the contract had been awarded and emphasized that parties cannot circumvent the terms of South Africa's information law by resorting to a confidentiality clause.

In *Public & Private Development Centre v Power Holding Company of Nigeria & the Honorable Attorney-General of the Federation* (FHC/ABJ/CS/582/2012, Federal High Court of Nigeria), it was affirmed that three conditions must be concurrently present for a public institution to deny a request for information in terms of Section 15(1)(b) of that country's Freedom of Information Act of 2011, (pertaining to contractual negotiations with third parties); (1) the transaction must still be at the negotiation stage, (2) a third party must be involved, and (3) the disclosure of the information must reasonably be expected to interfere with the contractual or other negotiations of a third party.

Comparable provision relating to contractual negotiations, as present in the Nigerian information regime, is not contained in Sri Lanka's RTI Act. However, the Public Authority has taken shelter under Section 5 (1) (d) of the RTI Act to plead that the disclosure will involve information that is of 'commercial confidence... harming the competitive position of a third party' as contemplated in that Section. But as has already been noted, these agreements between the Public Authority and PIA that are requested by the Appellant are no longer in force.

Moreover, the exact manner in which 'commercial confidence' and 'competitive interests' will be attracted by the information disclosure remain in doubt. *Transnet Ltd. and Another v. SA Metal Machinery Co (PTY) Ltd* (supra) established the principle that Public Authorities relying on harm to third party interests to justify refusals must show that these harms are "not simply possible, but probable". Where the SriLankan law is concerned, a Public Authority is, in fact, put under a greater burden as it has to demonstrate that the larger public interest does not warrant the disclosure of the information, as stipulated in Section 5(1)(d) itself as well as in Section 5 (4).

It is a peculiar feature of the RTI Act, that sub-sections (a) and (d) of the exemptions in Section 5(1) themselves contain the need for assessment of the 'larger public interest' as inherent in those sub-sections, in addition to the general public interest override in Section 5(4) which cuts across all exemptions. The significance of that double emphasis in regard to these two sub-sections is notable and

this Commission will therefore be specially cognizant of that emphasis when Public Authorities seek to rely on the same.

Where the confidentiality clause is concerned, upon the Commission directing that the Wet lease agreements in issue be submitted to it for scrutiny, the same was submitted by the Public Authority on 26.04.2018. Upon scrutiny of the PIA Wet lease Agreement dated 04.08.2016 and specifically clause 24.3 of the same, it is evident that the confidentiality clause contained therein is made subject to exceptions detailed in sub-sections 24.3.1 to 24.3.3.

Our attention is particularly drawn to subsection 24.3.2. which states that the confidentiality clause will be excepted 'as may be required by any applicable law or court order or directive from any Government Entity.' As such, it is eminently established that the said agreement itself has made provision for exceptions therein, including 'as may be required by any applicable law' which should considerably lessens the fear of the Public Authority that information disclosure, if such is directed under and in terms of the RTI Act, could be construed as an 'affront' to a foreign government with diplomatic ties and relationships being very 'fragile and volatile' (viz; paragraph 66 e) of the WS of the PA dated 05.01.2018).

We agree with the submission of the Appellant during hearing into this Appeal, as illustrated in *Transnet Ltd. and Another v. SA Metal Machinery Co (PTY) Ltd* (supra) that a confidentiality clause cannot prevent information disclosure after the contract/agreement had been awarded, where the accountability of public funds and the transparency of the Public Authority is in issue.

Consequently we rule that Section 5(1) (b)(ii) and Section 5 (1) (d) are not established as legally adequate grounds to refuse the information asked for. The burden to establish the 'serious prejudice' caused thereby, which is an inevitable condition of pleading the exemption under Section 5(1)(b) (ii) has not been satisfactorily discharged by the Public Authority in terms of that Section read with Section 32 (4) of the Act.

We also rule that, in any event the public interest override in Section 5(4) and as inherently contained in Section 5 (1) (d), will apply to release the information contained in Information Requests 2, 3, 4 and 5, namely; the Memorandum of Understanding dated 28th July 2016 with PIA, the Wet lease agreement dated 04th August 2016 with PIA and the Wet lease extension agreement dated 02nd November 2016 with PIA which is decided by this Commission to come within the ambit of information that may properly be released under this Act. The decision of the Designated Officer is reversed on this portion of the information request.

In the circumstances, we are not inclined to rule on the issue raised by the Appellant that, the exemption in Section 5 (1)(b) (ii) must be read *in pari materia* with the exception in Section 5(1) (b) (i) of the Act (viz; at paragraph 29 (b) of the WS of the Appellant, dated 18.01.2018).

#### **Information Request 6**

All information related to and/or connected to the cancellation of the order of Airbus A350 Aircraft (including but not limited to all Agreements and/or correspondence related to ordering of Airbus A350 Aircraft and the cancellation thereof).

The legally applicable exemptions cited by the Public Authority in respect of item 6 of the information request are Sections 5(1)(i) and 5(1)(d). These Sections state as follows;

Section 5 (1) (d)

*“information, including commercial confidence, trade secrets or intellectual property, protected under the Intellectual Property Act, No. 36 of 2003, the disclosure of which would harm the competitive position of a third party, unless the public authority is satisfied that larger public interest warrants the disclosure of such information;”*

Section 5 (1) (i)

*“subject to the provisions of section 29(2)(c), the information has been supplied in confidence to the public authority concerned by a third party and the third party does not consent to its disclosure;”*

The Public Authority submitted as follows; (Vide; paragraphs 79 to 88 of the WS of the PA dated 05.01.2018);

- a) Prior to procuring the A350 aircraft, the Public Authority obtained an expert report on the wide body fleet renewal of its fleet from Seabury Consulting, an independent aviation consulting service. In the said report it was recommended that the Public Authority finalize the transactions for the delivery of Airbus A350 aircrafts;
- b) Thereafter, three (03) lease agreements were entered into with International Lease Finance Corporation dated 27th September 2013, and one (01) lease agreement was entered into with AerCap Global Aviation Trust (“AerCap”) dated 12th November 2014 each for the lease of Airbus A350-900 aircraft (the rights of the International Lease Finance Corporation under the (03) mentioned lease agreements were subsequently novated to AerCap);
- c) By agreement dated 28th June 2013, the Public Authority entered into an agreement with Airbus S.A.S. to purchase four A350 aircrafts. Accordingly three Aircraft are to be delivered in 2020 and one Aircraft is to be delivered in 2021;
- d) Subsequently and given what the Public Authority has termed, ‘the drastic change of the company’s financial (sic, performance) over the years’, the Public Authority commissioned two further expert reports on *inter alia* , network and fleet evaluation, strategic option review, and commercial feasibility of operations, from Skyworks and Nyrus in 2015 and 2016;
- e) In light of the financial projections and the recommendations therein, the Public Authority entered into termination agreements to terminate 1 lease agreement by way of a Termination and Amendment Agreement dated 6th April 2016 and 3 lease agreements by way of a Termination and Amendment Agreement dated 4th October 2016, signed between the Public Authority and International Lease Finance Corporation and/or AerCap;
- f) The cancellation of the 4 A350 Aircrafts to be purchased from Airbus are still under discussion and no termination fee has been agreed.

Assessing these submissions of the Public Authority, it must be pointed out that this bland description of facts in relation to the purchase and termination of the order of Airbus A350 Aircraft is a wholly inadequate pointer to the gravity of the financial loss suffered thereby by the Public Authority. These enormous losses are acknowledged in the Annual Reports of the Public Authority (2015-2016, at p 75 and (2016-2017, at p 76), where it is stated that the net loss of the Public Authority increased by 124% during 2106-2017 compared to the previous year.

On page 87 of the same Report, it is detailed that during the year, the Public Authority had entered into a Termination and Amendment Agreement with a Lessor to cancel three A-350-900 aircraft scheduled to be delivered during the third quarter of 2016/2017 at a cost of USD 98 million with the cancellation fee being USD 90 million. Further, the Public Authority cancelled a lease agreement to obtain one A-350-900 aircraft (scheduled to be delivered in November 2017) with the lease cancellation fee being USD 17.77 million.

The Appellant has meanwhile pointed out that, the irregularities in these transactions had been the subject of scrutiny by the Parliamentary Committee on Public Enterprises (COPE) (9<sup>th</sup> August 2016) and had been widely reported across national media (at page 12 of WS of the Appellant, dated 04.12.2017).

The Public Authority also argued that the lease agreements for the Airbus aircrafts do not strictly form part and parcel of the revised request for information submitted by the Appellant which referred to only purchase and cancellation agreements. However as this Commission will hand down its ruling in respect of the terms of the original information request by the Appellant (dated 29.06.2017) as agreed by the parties during the hearing of this Appeal (RTIC Minutes of 08.01.2018).

The phrasing of the said information request in item No 6 in the original information request is wide enough (if not imprecise enough) (viz 'all information related to and/or connected to the cancellation of the order of Airbus A350 Aircraft, including but not limited to all Agreements and/or correspondence related to ordering of Airbus A350 Aircraft ...) to encompass agreements relating to the leasing of Airbus A350 Aircraft and therefore this objection cannot stand.

Further, the Public Authority stated that, acting in terms of Section 29(1) of the RTI Act read with Section 5 (1) (i) , the relevant third parties, Airbus S.A.S and AerCap were served with notices requesting as to whether consent was given for the disclosure, in response to which Airbus S.A.S. and AerCap refused the disclosure of the requested information, respectively by email dated 19/07/2017 and email dated 11/07/2017.

It is of note that the responses sent by the two third parties in this Appeal, declining to give consent to the information disclosure is different in content. In the electronic mail notification dated 19/07/2017 sent in response to the notice by the Public Authority on 12.07.2016, Airbus S.A.S detailed the portions of the Purchase Agreement that, in its opinion, will fall under 'commercially sensitive information.'

Thus, Airbus S.A.S. has stated that 'relevant documentation which if disclosed to the competitors of Airbus or competitors of SriLankan Airlines would put Airbus at a significant disadvantage...in particular is considered as commercial sensitive information- but not limited to-any pricing and price revision mechanisms, purchase incentives and credit memoranda, pre-delivery payment schedules, warranties and guarantees, financing agreements and any other commercial concessions to SriLankan Airlines....."

The electronic mail notification by AerCap on 11/07/2017 in response to the notice sent by the Public Authority on 06.07.2017 which requires the third party to respond on the impact of the confidentiality clause in the termination agreements only states that it 'does not consent' to the requested information stipulated in the notice set by the Public Authority.

In the course of assessing the primacy of information disclosure in item 6 of the Information request of the Appellant in the context of the applicability of Section 5 (1) (i) read with Section 29 of the Act, the Commission called for and obtained the following documents from the Public Authority;

1. 1 Purchase Agreement for four A350 aircraft
2. 04 Lease Agreements (for four A350 aircraft)
3. Termination Agreement dated 4 October 2016 for three A350 aircraft
4. Termination Agreement dated 6 April for one A350 aircraft
5. Minutes of Board Meeting held on 1 March 2013 at the Hon. Speaker's residence, Battaramulla where board approval was granted in principle for the purchase of four A 350 aircraft and for the lease of an additional A350 aircraft; Minutes of Board meeting held on 14<sup>th</sup> March 2013 where formal board approval was granted; Minutes of Board meeting held on 9<sup>th</sup> September 2015 to authorize the negotiation and execution of an operating lease agreement for 1 A350 aircraft with AreCap or its nominee to be delivered during the fourth quarter of 2017; Minutes of Board meeting held on 9<sup>th</sup> March 2016 regarding the cancellation of the lease of 1 A350 aircraft due to be delivered in November 2017; Minutes of Board meeting held on 28<sup>th</sup> September 2016 regarding the termination of the lease of 3 A350 aircraft due to be delivered on October and November 2016.
6. Consequent to the Commission perusing the above stated Minutes of Board meeting held on 28<sup>th</sup> September 2016 regarding the termination of lease of 3 A350 aircraft due to be delivered on October and November 2016, the Commission also called for and obtained Board Paper dated 8<sup>th</sup> March 2016 titled 'Cancellation of the Lease of One A350-900 aircraft' relating to the Circular Board Resolution dated 9<sup>th</sup> March 2016

It was clarified that the Public Authority has not yet entered into any termination agreements in respect of the purchase of four A-350-900 aircraft from Airbus S.A.S.

We will consider information disclosure under this segment of the Order in three respects; first, the agreements in issue between the Public Authority and AerCap/Airbus S.A.S., secondly, the reports of Seabury, Skyworks and Nyrus which formed part of the process relating to the purchase and cancellation of the said aircraft and thirdly, the relevant Board papers and Minutes of the Public Authority regarding the matter in issue.

*Agreements in issue between the Public Authority and AerCap/Airbus S.A.S*

During the course of hearings in this Appeal, Counsel for the Appellants submitted that the primary focus of Item No 6 in the instant Information Request which is generally phrased, were the two

termination agreements entered into by the Public Authority with AerCap, respectively dated 6<sup>th</sup> April 2016 and October 4<sup>th</sup> 2016.

The objections raised by the Public Authority in terms of Section 5 (1) (i) read with Section 29 of the Act relates to information given by a 3<sup>rd</sup> party to the Public Authority and 'treated' as confidential at the time. These termination agreements have been scrutinized by us in relation to what might constitute information given by a 3<sup>rd</sup> party to the Public Authority and 'treated' as confidential at the time and this Commission has been unsuccessful in ascertaining the same.

In *Canada (Information Commissioner) v. Atlantic Canada Opportunities Agency*, [1999] F.C.J. No. 1723 (QL) (F.C.A.), A-292-96, judgment dated November 17, 1999.), The Information Commissioner's appeal from the decision of the Trial Division was allowed with the Court stating that in order to establish confidentiality, an 'undertaking of confidentiality' alone will not suffice but 'actual, direct evidence' was required.

In this Appeal, the Public Authority has not satisfied its burden to establish the exact basis on which section 5 (1) (d) and Section 5 (1) (i) read with Section 29 of the Act will apply to the contents of the termination agreements in issue, in terms of Section 32 (4) of the Act, apart from specifying that the termination agreements contains confidentiality obligations of the parties, as detailed in the letter of the Public Authority written to AerCap dated 6<sup>th</sup> July 2017 as aforesaid, asking for a response on whether the information was to be disclosed or not.

However, it is important to stress that the mere existence of a confidentiality clause in any agreement will not, by itself, suffice to bring Section 5 (1) (i) read with Section 29 of the Act into play in regard to the information requested. 'Actual, direct evidence' (Viz; *Canada (Information Commissioner) v. Atlantic Canada Opportunities Agency*(supra) will need to be established to show that the contested information related to information given by a 3<sup>rd</sup> party to the Public Authority and 'treated' as confidential at the time within the strict parameters of Section 5 (1) (i) read with Section 29 of the Act. As a body established under the Act to give effect to 'fostering a culture of transparency and accountability in Public Authorities', this Commission is duty bound to refrain from engaging in a restrictive reading of these clauses.

In fact, the confidentiality clauses in the two termination agreements on which the Public Authority hinges their objection, indeed provide that the said clause may be excepted, 'if disclosure is required as a result of applicable law' (Vide clause 6 (c) of termination agreement dated October 4<sup>th</sup> 2016 and clause 6 (b) of the termination agreement dated 6<sup>th</sup> April 2016).

In accordance with the principle articulated previously regarding the disclosure of information in Information Requests 2, 3, 4 and 5 of this Appeal, it must be stressed that a confidentiality clause by itself cannot prevent information disclosure after the contract/agreement had been awarded and where the accountability of public funds and the transparency of the Public Authority is in issue. In this instance, not only has the agreement with AerCap been entered into but it has been terminated as well and that too (as must be said) with great financial losses being incurred to the Public Authority which is being maintained as an ongoing enterprise by the state coffers, which undeniable fact cannot be casually swept aside by this Commission in evaluating information disclosure in terms of the RTI Act in this Appeal.



We rule that Section 5 (1) (d) and Section 5 (1) (i) read with Section 29 of the Act will not apply to bar the release of the termination agreements and that the two termination agreements entered into between the Public Authority and AerCap respectively dated 6<sup>th</sup> April 2016 and October 4<sup>th</sup> 2016 are to be released to the Appellant on the following basis;

- a) The said termination agreements have been completed and concluded. The existence of a confidentiality clause in the said agreements do not, by themselves, establish the applicability of Section 5 (1) (i) read with Section 29 of the Act as that is a contractual obligation *per se* and the Public Authority has failed to discharge the burden as required in terms of Section 32 (4) to establish what precise portions of the agreements related to information given by a 3<sup>rd</sup> party to the Public Authority and ‘treated’ as confidential at the time;
- b) In its contents, the said agreements comprise several components referring to Termination Fees and Payments, Termination, Assignment etc (Termination Agreement dated 6<sup>th</sup> April 2016) and Agreement on Termination of AGAT Lease, Termination Letter of Credit, Credit for Additional Leases. Delivery process etc. The primary clauses of the said agreements refer to an undertaking to pay termination/cancellation fees by the Public Authority. Consequently this Commission fails to discern as to what part of these documents may be construed as related to information given by a 3<sup>rd</sup> party to the Public Authority and ‘treated’ as confidential at the time or as to how the commercial or competitive interests of AerCap can be affected.
- c) In any event and for the reasons more fully set out earlier, the public interest override inherently contained in Section 5(1)(d) itself as well as Section 5(4) will apply to release the information, given the financial losses incurred to the State as a result of the same. As observed in *Rob Evans v Information Commissioner* (UK, Upper Tribunal Administrative Appeals Chamber, [2012] UKUT 313 (AAC)), there is a strong public interest towards disclosure in matters concerning public policy and the public purse. The decision of the Designated Officer not to release the said termination agreement entered into with AerCap is reversed.

However, where the documentation, in relation to the agreement dated 28<sup>th</sup> June 2013 which the Public Authority had entered into with Airbus S.AS to purchase four A350 aircrafts, is concerned, three aircrafts are to be delivered in 2020 and one aircraft is to be delivered in 2021. It is evident that this is an ongoing process and that ‘commercially sensitive information’ may be in issue as contemplated in Section 5(1)(d) including *inter alia*, pricing and price revision mechanisms referred to in the electronic mail notification of Airbus S.A.S dated 19/07/2017 as aforesaid.

We are also mindful of the principles articulated in *Public & Private Development Centre v Power Holding Company of Nigeria & the Honorable Attorney-General of the Federation (supra)* and in particular, the caution in regard to disclosure of the information reasonably be expected to interfere with negotiations of a third party. Further and emanating from the said purchase agreement, the Public Authority has not yet entered into any termination agreements in respect of the purchase of four A-350-900 aircraft from Airbus S.A.S.

In the circumstances, the decision of the Designated Officer not to release the said information pertaining to the purchase agreement with Airbus S.AS is affirmed.

*The reports of Seabury, Skyworks and Nyrus*

Beyond refusing information disclosure on the basis that the reports of Seabury, Skyworks and Nyrus, (which formed part of the process relating to the purchase and cancellation of the said aircraft) contained detailed evaluation and vital information of the route network and fleet evaluation, strategic overview and business advisory of the Public Authority, and cannot be disclosed, in view of the fact it will seriously prejudice and jeopardize the business activities of the Public Authority and that the information contained in the reports will cause serious financial repercussions and detriment if they were utilized by competitors, no specifics were provided by the Public Authority in relation to the same.

Acting under Section 32 (1), which empowers this Commission to 'affirm, vary or reverse the decision appealed against and forward the request back to the information officer concerned for necessary action', we direct that the Public Authority release the reports of Seabury (February 2013), Skyworks (October 22<sup>nd</sup> 2015 and October 26<sup>th</sup> 2015) and Nyrus dated 18<sup>th</sup> March to the Appellant, with those portions of the said reports objectively assessed by the Public Authority as needing to be excluded within the meaning of 'commercial confidence harming the competitive position of a third party in terms of Section 5 (1)(d), which assessment is a statutory duty laid on the Public Authority by virtue of that Section.

The Public Authority may also assess if any portion of the reports therein may need to be excluded as coming within the ambit of information given by a 3<sup>rd</sup> party which was treated as confidential at the time in terms of Section 5(1)(i). Such portions of the reports may be severed under and in terms of Section 6 of the RTI Act and the Appellant shall be provided with access to the remaining portions.

As these are the two exemptions cited by the Public Authority in relation to refusal of information disclosure in Item 6 of the information request, we shall confine ourselves to those above stated exemptions in relation to the direction regarding discretion to sever.

The Public Authority is directed to notify this Commission within four weeks of the delivery of this Order as to whether the said reports will be released in full or if not, what parts of the said reports will be so severed under Section 6 of the Act, in order for the Commission to ascertain compliance with this directive.

*Relevant Board papers and Minutes of the Public Authority regarding the matter in issue*

In *Rajesh Gauhari Vs Education Consultants of India* (CIC/SG/A/2010/000643 18 January, 2011), India's Central Information Commission held that the disclosure of information ought to be the norm and not the exception. In *Gouhari, (supra)*, the Respondent claimed that disclosure of the meetings would harm the competitive position of a public authority while the Appellant submitted that minutes of meetings of a public authority must be within the public domain.

The CIC held that a critical test ought to be applied to permit an exemption under the notion of a competitive position. The minutes were ordered to be disclosed as the Public Authority had failed to produce documents to establish how disclosure would harm the competitive interest or a public authority or a third party. The supposed harm of a competitive position was decided as insufficient to justify non-disclosure of meeting minutes and it was ruled that competitive positions cannot be used broadly to exempt disclosure. Rather, the harming of competitive positions must be substantive and proven by the party claiming the exemption; otherwise they will be deemed frivolous.

This is particularly so when proceedings and/or a contract and/or an agreement to which the meeting minutes relate are already concluded, as is the case in this Appeal where the purchase/lease/termination of A350 aircraft had been concluded by the Public Authority.

In any event even where information is protected by a privacy or commercial confidence or fiduciary exemption as the case may be, the relevant information may be proved by severing only that information that is demonstrably protected. In *Shri Suhas Vaidya v Bank of Maharashtra*, (File No. CIC/MP/C/2014/900191/SH, File No. CIC/SH/A/2014/001847), the CIC directed the public authority to provide all minutes in question by severing information protected by commercial confidentiality.

Accordingly and acting under Section 32 (1) which empowers this Commission to 'affirm, vary or reverse the decision appealed against and forward the request back to the information officer concerned for necessary action', we rule that the below detailed Minutes/Board Papers be released to the Appellant, subject to the condition that those portions of the said Minutes/Board Papers capable of being objectively assessed by the Public Authority as needing to be excluded within the meaning of 'commercial confidence harming the competitive position of a third party under Section 5 (1)(d) or as information given by a third party which was treated as confidential at the time under Section 5(1)(i) be severed in terms of Section 6 of the RTI Act and the Appellant be provided with access to the remaining portions.

As these are the two exemptions cited by the Public Authority in relation to refusal of information disclosure in Item 6 of the information request, we shall confine ourselves to those above stated exemptions in relation to the discretion to sever.

The Public Authority is directed to notify this Commission within four weeks of the delivery of this Order as to whether the said Minutes have been released in full or if not, what parts of the below detailed Minutes/Board Papers of the Public Authority will be so severed under Section 6 of the Act, in order for the Commission to ascertain compliance with this directive.

- a) Minutes of Board Meeting held on 1 March 2013 at the Hon. Speaker's residence, Battaramulla where board approval was granted in principle for the purchase of four A 350 aircraft and for the lease of an additional A350 aircraft;
- b) Minutes of Board meeting held on 14<sup>th</sup> March 2013 where formal board approval was granted; Minutes of Board meeting held on 9<sup>th</sup> September 2015 to authorize the negotiation and execution of an operating lease agreement for 1 A350 aircraft with AreCap or its nominee to be delivered during the fourth quarter of 2017;
- c) Minutes of Board meeting held on 9<sup>th</sup> March 2016 regarding the cancellation of the lease of 1 A350 aircraft due to be delivered in November 2017;
- d) Minutes of Board meeting held on 28<sup>th</sup> September 2016 regarding the termination of the lease of 3 A350 aircraft due to be delivered on October and November 2016.
- e) Board Paper dated 8<sup>th</sup> March 2016 titled 'Cancellation of the Lease of One A350-900 aircraft' relating to the Circular Board Resolution dated 9<sup>th</sup> March 2016 and Board Paper titled 'Termination of the Lease of Three A-350-900 aircraft being delivered on October and November 2016 dated 26<sup>th</sup> September 2016;

*At the Right to Appeal Commission of Sri Lanka*

This Appeal is concluded, subject to the aforesaid clarifications if required by the Public Authority in regard to release of part of the information requested in item 6 of the Information Request in this Appeal.

We thank all counsel for their assistance in the matter.

Order is directed to be conveyed to both parties in terms of Rule 27 (3) of the Commission's Rules on Fees and Appeal Procedures (Gazette No. 2004/66, 03.02.2017).

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Mahinda Gammampila – Chairman

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Kishali Pinto – Jayawardena – Commission Member

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S.G. Punchihewa – Commission Member

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Dr. Selvy Thiruchandran – Commission Member

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Justice R. Walgama - Commission Member  
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