



Fair Competition for Greater Good

COMPETITION COMMISSION OF INDIA

Case No. 18 of 2013

In Re:

Shri Vineet Kumar

Informant

And

Ministry of Civil Aviation

Opposite Party

CORAM

**Mr. Ashok Chawla
Chairperson**

**Dr. Geeta Gouri
Member**

**Mr. Anurag Goel
Member**

**Mr. M. L. Tayal
Member**

**Mr. Justice (retd.) S.N. Dhingra
Member**

**Mr. S. L. Bunker
Member**



Order under Section 26(2) of the Competition Act, 2002

1. The present information has been filed by Shri Vineet Kumar ('the informant') who claims to be a public spirited citizen to protect and promote the interests of the passengers who use air transport services in India under section 19(1)(a) of the Competition Act, 2002 ('the Act') against Ministry of Civil Aviation ('the opposite party'/ MOCA) alleging *inter alia* contravention of the provisions of section 4 of the Act.

2. It is averred in the information that MOCA *vide* its order dated 31.10.2012 constituted a committee named as 'the Aircraft Acquisition Committee (AAC)' to consider and examine the applications/ proposals for providing air transport services and applications/ proposals for permitting import or acquisition of aircraft for various purposes and also to consider proposals for initial NOC for flying training institutes, *etc.* The informant has alleged that all the members of AAC are the officers of the units/ divisions of MOCA and there is no representation from the other stake holders, particularly the private air transport service providers. It has been alleged by the informant that such a composition of the Committee, which is loaded overwhelmingly in favour of MOCA, is against all cannons of fair play.

3. Referring to the terms of reference of the AAC, the informant submits that it examines and appraises applications/ proposals from the air transport capacity perspective after considering the air traffic demand, safety, security, financial commercial and other relevant aspects of the proposal to ensure orderly growth of air transport services. After examination and appraisal, the AAC makes appropriate recommendations on the various categories of proposals.

4. It has been alleged by the informant that the guidelines prescribed for the AAC by MOCA are clearly violative of the provisions of section 4 of the



Act. It has been alleged that MOCA being the regulator as well as the provider of air transport services through its units/division, viz. AAI and Air India, has farmed these guidelines imposing unfair terms in complete disregard of basic principles of the competition law and thereby severely limiting and restricting the provisions of services and market therefor. These guidelines also have the result of the denial of market access to the willing enterprises. Further, it is alleged that MOCA by so hindering the freedom of trade is depriving the consumers of quality and affordable air transport services in competitive environment. By virtue of impugned guidelines, it is restricting and impeding the freedom of trade of air transport service providers by putting open ended provisions for approving/ disapproving the applications for providing air transport services including acquisition/ import of aircrafts *etc.*

5. It is the case of the informant that MOCA is going slow in allowing private airlines to import more aircrafts, which has raised question about the roles of MOCA in the investment and financial decisions of market participants. The informant has also alluded to a news item which reported that a Delhi based low-cost private airlines which had sought permission from ACC for import of 16 aircraft during this current calendar to add to its fleet, was instead permitted to import only 5 aircrafts.

6. The informant has made detailed reference to the various clauses of the impugned guidelines to contend that the same are violative of the provisions of section 4 of the Act. It is however unnecessary to reproduce the same in view of the reasons stated below.

7. The informant, essentially, appears to be aggrieved by the guidelines issued by MOCA to be followed by AAC while considering and examining *inter alia* the applications/ proposals for providing/ permitting air transport services/ import or acquisition of aircrafts for various purposes. The informant has impleaded MOCA in the present case as the opposite party and has



defined *regulation and provision of air transport services in India* as the relevant market.

8. On perusal of the information and the material filed therewith, it appears that the present information is not maintainable as MOCA does not appear to be an 'enterprise' within the meaning of the term as defined in section 2(h) of the Act for the purposes of the present case.

9. In this connection, it may be pointed out that section 2(h) of the Act defines the term 'enterprise' meaning as a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relating to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.

10. As per the subjects allocated to MOCA *vide* the Second Schedule to the Government of India (Allocation of Business) Rules, 1961, the activities and functions of MOCA essentially include *inter alia* regulation of civil aviation sector and formulation of policy for the civil aviation sector. These activities of MOCA *per se* cannot be considered as commercial activities as implied in the definition of the term 'enterprise' as defined in section 2 (h) of the Act.

11. Thus, in light of the definition of the term 'enterprise', it is evident that MOCA while framing the impugned guidelines is not engaged in any economic activity as envisaged under the Act. Formulation of policies is not



an activity which *per se* may be amenable to the jurisdiction of the Commission.

12. Before parting with this order, it may be noted that subsequent to the filing of the present information, MOCA abolished AAC. Thereupon, the Commission *vide* its order dated 23.04.2013 while noticing the fact of abolishing of AAC granted the informant time to file supplementary information. On 25.06.2013, the informant sought more time to file the submissions. In the submissions so filed, the informant sought yet more time to file the additional submissions after '*procuring the specific relevant information*' from MOCA.

13. For the reasons noted above, it is not necessary to further dilate on this aspect. The information is not maintainable and deserves to be closed forthwith in terms of the provisions contained in section 26(2) of the Act.

14. It is ordered accordingly.

15. The Secretary is directed to inform the parties accordingly.

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(Geeta Gouri)
Member



Fair Competition for Greater Good

Sd/-
(Anurag Goel)
Member

Sd/-
(M. L. Tayal)
Member

Sd/-
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(S. L. Bunker)
Member

New Delhi

Date: 06/08/2013