



COMPETITION COMMISSION OF INDIA

Case No. 28 of 2015

In Re:

**Shri Udit Gupta
32, Vasudha Enclave,
Pitampura, Delhi**

Informant

And

**Interglobe Aviation Limited
Central Wing, Ground floor,
Thapar House, 124 Janpath,
New Delhi**

Opposite Party No. 1

**Director General for Civil Aviation
Aurobindo Marg,
Opp. Safdarjung Airport,
New Delhi**

Opposite Party No. 2

CORAM

**Mr. Ashok Chawla
Chairperson**

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

**Mr. Sudhir Mital
Member**



Mr. Augustine Peter

Member

Mr. U. C. Nahta

Member

Mr. M. S. Sahoo

Member

Present: Ms. Padma Priya, Advocate for the Informant

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

1. The present information has been filed under section 19(1)(a) of the Competition Act, (hereinafter referred to as the ‘Act’) by Shri Udit Gupta (hereinafter referred to as the ‘Informant’) against M/s Interglobe Aviation Limited (hereinafter referred to as ‘OP 1’) and Director General for Civil Aviation (hereinafter referred to as ‘OP 2’) alleging contravention of the provisions of section 4 of the Act.
2. Facts of the case may be briefly noted:
3. As per the information, OP 1 operates an airline under the name of ‘IndiGo’. The Informant is stated to have booked online a return ticket on 27.08.2014 for his travel from Delhi to Mumbai and back on 30.11.2014 and 06.12.2014, respectively. OP 1 is a leading domestic airline in the country with highest market share of 32.8% of the total aviation sector and enjoys a dominant position. OP 1 also claims to be committed to an ‘on-time performance’ for its flights, and has the



maximum number of connections on the route / sector Delhi – Mumbai – Delhi, with a total number of 28 flights on the said route.

4. The Informant has alleged that being a dominant, OP 1 has devised a standard form of terms and conditions for the public to book their flights. Any person desirous of travelling by an IndiGo flight is required to accept those conditions in totality, irrespective of how onerous and one-sided the terms and conditions may be. It is alleged that a passenger has no choice to negotiate but to accept the said terms and conditions.
5. The Informant is primarily aggrieved by the terms under the head Flight Delays / Cancellation which reads as under:

“Flight Delays or Cancellations

.....If an IndiGo flight is cancelled, rescheduled or delayed for more than three hours (depending on the length of the journey), a Customer shall have the right to choose a refund; or a credit for future travel on IndiGo; or re-booking onto an alternative IndiGo flight at no additional cost (subject to availability); subject to the requirements under the local laws of the country in which the flight has been cancelled, rescheduled or delayed.....”

6. The Informant’s return flight on 06.12.2014, scheduled to depart at 16.40 hours from Mumbai and arrive at Delhi at 18.40 hours was delayed to depart at 18:00 hours from Mumbai. The Informant has stated that he requested the customer care of OP 1 to reschedule his flight either with OP 1 or any other flight. The Informant was informed that the change would be at a significant cost, which had to be borne by him. The Informant has alleged that he made several calls to the customer care as well as supervisory staff of OP 1 but they



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refused to assist him. The Informant is alleged to have been informed that it will not be possible for OP 1 to process his said request since the delay was less than the duration of the flight from Mumbai to Delhi.

7. The Informant sent many emails seeking explanation for rejecting his said request to which OP 1 clarified that *“depending on the length of journey”* means, *“...in case where the delay in the flight is more than the duration of the flight.....Further, when you contacted our call centre for rescheduling as the flight was delayed by one hour and 30 minutes at that time and thus our call centre team had to decline your request for rescheduling to an alternate flight.”*
8. The Informant has alleged that the above justification of the OP 1 is clearly an afterthought. Indigo has, under the general provisions for booking, specifically mentioned to check and verify the itinerary atleast 12 hours before the departure time. However, OP 1 made changes in the flight schedule within 5 hours of its departure and allegedly refused to assist the Informant as per his convenience and adhered to unfair terms. Due to disparity between the bargaining power, OP 1 alleged to have imposed such unfair terms and conditions. The Informant has placed reliance on some court judgments also. He has pointed out that OP 1 has reserved unbridled discretion to change the schedules and/or cancel, terminate, divert, postpone, reschedule or delay any flight where they reasonably consider this to be justified for commercial reasons. However, in case of a passenger, his legitimate right to choose an alternate flight in case of unreasonable delay by the airline, is restricted and controlled by the airlines as per their whims and fancies.



9. The Informant has also stated in the information that all airlines have imposed such arbitrary conditions on the passengers. The second largest player Jet Airways has imposed similar condition in case of delay of one hour. Air India has not mentioned any such time, however, when a call was made by the Informant to their call centre, an executive confirmed that the passenger shall have a right to choose a flight of his convenience in case of delay of more than 60 minutes but the same is not written as part of its terms and conditions.
10. Based on the above allegations, the Informant has alleged that the conduct of OP 1 is in contravention of the provisions of section 4 of the Act. Thus, the Informant has prayed, *inter alia*, for initiation of an inquiry under the Act.
11. The Commission has perused the material available on record. The arguments made by the counsel on 21.05.2015 on behalf of the Informant were also considered by the Commission.
12. The Commission notes that the Informant has not sought any relief against OP 2 in the instant case. It is further observed from the information available on the website of OP 2 that it endeavours to promote safe and efficient air transportation through regulation and proactive safety oversight system.
13. The facts of the present case indicate that the Informant is aggrieved primarily by the alleged conduct of OP 1 imposing arbitrary, unfair and unreasonable conditions on the passengers. Thus, the relevant product market for OP 1 would be the "*market of air transport*



services for passengers”. As regards relevant geographic market is concerned, the Commission observes that the alleged conduct of OP 1 regarding flight delays and cancellation of flights is emanating from the regulations laid down by Director General of Civil Aviation (DGCA) entitled “Civil Aviation Requirements Section 3 – Air Transport Series ‘M’ Part IV Issue I, dated 6th August, 2010”. As the said regulations are applicable throughout the territory of India, the relevant market in the present case would be the “*market of air transport services for passengers in India*”.

14. The Commission notes from the information available in public domain that seven companies were engaged in 2014 in the air transport service in India - Air India (includes both Air India Express and Alliance Air), Go Air, Indigo (Interglobe Aviation Limited), Jet Airways (including JetLite), SpiceJet, Air Costa and Air Asia. In terms of domestic passengers who availed the services of these airlines, OP 1 (31.8 % market share) leads the market followed by Jet Airways (21.7 % market share). Air India (18.4 % market share) and SpiceJet (17.4 % market share) are placed at third and fourth position, respectively. Go Air is at fifth position with 9.2 % market share. Air Costa and Air Asia are at sixth and seventh positions with 0.9 and 0.5% market share, respectively. (Source: <http://dgca.nic.in/reports/Traffic-ind.htm>).
15. In view of the above, OP 1 appears to be a leading player in terms of domestic passengers availing the airline services. However, since the Act provides that an enterprise is dominant if it can operate independently of competitive forces prevailing in the relevant market, the Commission took into consideration other aspects as well such as the value of total assets (in balance sheet) of a company. Since the data of the value of total assets for 2013-14 of few companies is not available in public domain, the Commission finds it appropriate to take into account and consider the figures of the total assets of the preceding years.



16. The Commission observes from the data of the value of total assets of the preceding years that Air India has an asset value of Rs.53,000 crores (as on 31.03.2012) and Jet Airways has an asset value of Rs.20,000 crores (as on 31.03.2014), which is 8.4 and 3.1 times of the asset value of OP 1 (Rs.6,400 crore as on 31.03.2013). The figures clearly indicate that the size of the asset value of OP 1 is lesser than Air India and Jet Airways. (*Source: Industrial Outlook, CMIE*).
17. Another factor for determination of dominance is the dependence of consumers on the enterprise. Presence of other players in a significant way in the relevant market indicates that the consumers have option to avail service from other players in the relevant market. The consumer does not seem to be dependent on OP1.
18. Further, it has been noted that most of the flight tickets are either booked online or through agents. The cost of information (about flights, fare, timing and availability *etc.*) is negligible. The consumer can easily compare fare, timing and availability of seats across various airline companies. It helps passenger to take well informed decision and pick the best available option.
19. The Commission observes that no information is available in the public domain indicating the position of strength of OP 1, which enables it to operate independently of competitive forces prevailing in the relevant market. Further, the Informant has also not produced any cogent material to show the dominance of OP 1 in the market. Thus, *prima facie*, OP 1 does not appear to be in a dominant position in the relevant market. In the absence of dominance of OP 1 in the relevant



market, its conduct need not be examined under the provisions of section 4 of the Act.

20. In light of the above analysis, the Commission finds that no *prima facie* case of contravention of the provisions of section 4 of the Act is made out against OP 1 in the instant matter. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.

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

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

Sd/-
(M. S. Sahoo)
Member

New Delhi
Date: 25/06/2015