



## COMPETITION COMMISSION OF INDIA

Case No. 29 of 2017

### In Re:

**International Air Transport Association (IATA)**

**800 Place Victoria, P.O. Box 113,  
Montreal - H4Z 1M, QC Canada**

**Informant**

**And**

**Air Cargo Agents Association of India (ACAAI)**

**28-B, Nariman Bhavan, Nariman Point,  
Mumbai - 400 021, Maharashtra**

**Opposite Party 1**

**Office Bearers of ACAAI**

**Opposite Party 2**

### CORAM:

**Mr. Devender Kumar Sikri**

**Chairperson**

**Mr. S. L. Bunker**

**Member**

**Mr. Sudhir Mital**

**Member**

**Mr. Augustine Peter**

**Member**

**Mr. U. C. Nahta**

**Member**

**Justice G. P. Mittal**

**Member**



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

1. International Air Transport Association (hereinafter, the "**IATA/Informant**") has filed the present information under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the "**Act**") against Air Cargo Agents Association of India (hereinafter, the "**ACAAI/OP 1**") and Office Bearers of ACAAI (hereinafter, "**OP 2**") alleging contravention of the provisions of Section 3 of the Act (hereinafter, OP 1 and OP 2 are collectively referred to as "**OPs**").
2. The Informant is stated to be an international non-profit trade association comprising of 265 member airlines belonging to 118 nations across the globe with its headquarters in Montreal, Canada. In India, the Informant is present through a wholly owned subsidiary *i.e.* IATA (India) Private Limited and a branch office in Mumbai. It is submitted that the role of the Informant is solely that of a facilitator for the aviation industry as a whole. Further, the airlines are not bound to become a member of the Informant and it is a voluntary decision on the part of the airlines to seek membership of the Informant.
3. As per the information submitted by the Informant, OP 1 is a national trade association that represents the air cargo industry in India. It has a membership of approximately 278 active members, 298 associate members, 42 allied members (including airlines) and 9 commercial members. Further, it is stated that OP-1 assists not only cargo agents/ freight forwarders but also various Central and State Government departments/authorities connected with the industry and deals with the Informant on behalf of its member air cargo agents.
4. It is alleged that the OPs are colluding and collectively boycotting business with airlines that seek to implement Cargo Accounts Settlement System ("**CASS**") in India. It is further alleged that such conduct of the OPs limits the supply of air cargo transportation services in India in blatant contravention of Section 3(3)(b) of the Act. Further, such conduct affects the end consumer and therefore, has an appreciable adverse effect on competition in India.



5. As per the Informant, CASS is a web-based online billing and settlement system which seeks to enhance administrative efficiency while giving rise to operational cost and benefits, and ensures safe and secure air cargo transport. It is submitted that participation in CASS is purely voluntary for both airlines and air cargo agents. Participation in CASS does not prevent a member airline from continuing to use the existing system for billing and settlement. Furthermore, it is not compulsory for cargo agents who are dealing with an airline that is participating in CASS to use CASS as well. Commercial terms in relation to invoicing and settlement (whether through CASS or otherwise) are bilaterally decided between individual cargo agents/members of OP-1 and the member airlines of the Informant.
6. It is averred that the OPs are exerting undue influence on its member agents taking advantage of such position of power. The OPs actively encourage and pressurize the member cargo agents to collectively boycott airlines implementing CASS, despite the benefits of CASS being acknowledged universally. The OPs, in their attempt to derail the implementation of CASS, are also persuading airlines to refrain from asking agents to join CASS in India. It is further alleged that the OPs are threatening to take action against airlines who seek to implement the same. The Informant has referred to certain emails and letters written by OP 1 to establish its allegations.
7. Based on the above facts and allegations, the Informant has *inter alia* prayed before the Commission to institute an inquiry against the OPs under Section 26(1) of the Act.
8. The Commission has carefully perused and considered the information and material available on record. The Commission notes that the Informant is aggrieved by the conduct of the OPs in allegedly trying to create disruptions in the implementation of CASS in India, through collective boycott and cartelization against the Informant and its constituent members. It is alleged



that such conduct of taking a decision to boycott those airlines that introduce CASS, results in limiting the provision of services of air transport cargo in India in violation of Section 3(3)(b) of the Act.

9. It is averred that two member airlines of the Informant communicated to their cargo agents in April, 2014 the airlines are initiating implementation of CASS for efficiency gains. The Informant alleges that irked by such decision of these two airlines to introduce CASS, OP 1 by way of an e-mail sent in May, 2014, persuaded its member agents to send a letter to a member airline of the Informant and sought a confirmation from the member agents in this regard. It is the allegation of the Informant that by requiring a confirmation from its member agents, OP 1 is exerting its influence and putting pressure on its member agents not only to send such letters to airlines but also to boycott any business relationship with them.
10. The Informant has referred to an email dated 07.05.2014 sent by OP 1 to its members in relation to the email received by cargo agents from its member airlines for implementation of CASS. *Vide* the said email, OP 1 circulated to its member agents a draft letter which was to be sent to the member airline of the Informant who sought to implement CASS. The Informant alleges that by circulating such draft letter, OP 1 is encouraging its member agents to collectively boycott airlines (who seek to implement CASS). Further, OP 1 is consistently urging its members to boycott the Informant's meetings relating to CASS. For the same, the Informant has relied on another email circulated by OP 1 to its members.
11. The Commission has carefully perused the said emails and letters and observes that OP 1 is not forcing its decision on the member agents and they are free to make independent decision concerning their participation in implementation of CASS by the airlines. Rather, the decision of OP 1 appears to be only recommendatory for the members. [Redacted]



12. [Redacted]
13. The Commission notes that an independent decision by an enterprise to offer or not to offer services at prevailing conditions does not raise antitrust concerns *per se*. However, an agreement among competitors not to offer services at prevailing conditions will raise antitrust concerns.
14. The Commission also notes that the Informant has not produced any evidence to establish that OP 1 has taken coercive action against any of its members who have agreed to participate in the CASS implementation. The Informant has merely stated that OP 1 is controlling the free will of its constituent members without any direct or indirect evidence suggesting that it is forcing its member agents to follow its dictates.
15. The Commission notes that the Informant has itself admitted in the information that there is an overwhelming response from member agents of OP 1 in support of introduction of CASS and various cargo agents came forward voluntarily to get their enrolment done for the training program. The Informant has also submitted that after the introduction of CASS on 01.06.2015, there has been a phenomenal increase in the number of participating cargo agents with more airlines and agents actively participating in CASS of their own volition. It is also an admitted fact that 14 airlines and more than 416 agents have received training to work on the CASS program. All these indicate that there is no collective boycott on the part of member agents of OP 1 and the member agents are taking independent commercial decision to participate/not to participate in the CASS program.
16. The Informant has also submitted that pursuant to the e-mails circulated by OP 1, several members of OP 1 have sent letters to the two member airlines of the Informant, incorporating the exact same language, as recommended by OP 1. These letters are alleged to be a clear evidence of concerted action and confirm withdrawal of support to airlines seeking to implement CASS. In this regard,



the Commission observes that though three members of OP 1 wrote similar letters to the airlines but the Informant has not provided any additional evidence to *prima facie* establish that this is a result of any concerted action on their part. The only additional evidence, which may be considered in this regard, is the emails written by OP 1 to its members circulating the draft letter. However, as already stated, the said emails are only recommendatory in nature and there is no direction from OP 1 to its member agents to mandatorily write to the airlines. Thus, it appears that OP 1 is not forcing its member agents to send the emails but has left the decision to the free will of the member agents. On the basis of available documents, it cannot be concluded that the letters written by member cargo agents of OP 1 was the result of a collective decision.

17. The Informant has itself admitted in the information that the consequences of not participating in the boycott call are not known. The Informant claims that perhaps, member agents were forced to send out such letters to the two member airlines of the Informant under the possibility of threat of suspension or even expulsion from the membership of OP 1.
18. Further, Section 3(3)(b) of the Act provides that any agreement entered between enterprises or decision take by an association which limits or controls provision of services is presumed to have an appreciable adverse effect on competition. To assess the alleged conduct of the OPs, it is important to analyse whether the emails written by OP 1 has limited the provision of services. In the instant case, the Informant has not provided any data which shows the negative impact on the business of the two member airlines of the Informant which can be attributed to the activities of the OPs. This is despite the fact that the alleged conduct happened in 2014 while the information has been filed in 2017.
19. The Commission notes that the Informant has failed to furnish any material that could *prima facie* suggest an agreement amongst the OPs, in contravention of Section 3(3)(b) read with Section 3(1) of the Act. The Commission,



therefore, is of the view that no *prima facie* case of contravention of the provisions of Section 3 of the Act is made out against the OPs. Accordingly, the matter is ordered to be closed in terms of the provisions of Section 26(2) of the Act.

20. The Secretary is directed to communicate to the Informant accordingly.

Sd/-  
**(Devender Kumar Sikri)**  
**Chairperson**

Sd/-  
**(S. L. Bunker)**  
**Member**

Sd/-  
**(Sudhir Mital)**  
**Member**

Sd/-  
**(Augustine Peter)**  
**Member**

Sd/-  
**(U. C. Nahta)**  
**Member**

Sd/-  
**(Justice G. P. Mittal)**  
**Member**

**New Delhi**  
**Date: 12/09/2017**