

**COMPETITION COMMISSION OF INDIA**

**Case No. 35/2012**

**Date: 07/11/2012**

**IATA Agents Association of India**

**Informant**

**Vs**

**Federation of Indian Airlines and others**

**Opposite Parties**

**ORDER UNDER SECTION 26 (2) OF THE COMPETITION ACT, 2002**

The information in the instant case has been filed by IATA Agents Association of India (“the informant”) u/s 19 (1) (a) of the Act against Federation of Indian Airlines, M/S Air India Ltd, Jet Airways (India) Ltd. & M/S Gulf Air (“Opposite Parties”) alleging contravention of sections 3 & 4 of the Competition Act 2002 (“the Act”).

2. As per the information, the members of the informant IATA were accredited travel agents all over India and engaged in the sale of air tickets relating to air travel both domestic and international. OP No. 1 was an apex body of air lines in India, formed by the Full Service Carriers (FSC) & Low Cost Carriers (LCC). OP No. 2 & 3 were its members among FSC. Apart from these two, there were other members including Indian Airlines and King Fisher Airlines Ltd as FSC. The airlines being the members of the OP No. 1 among FSC were paying Commission to the members of the informant and all other recognized travel agents at the rate of 3 % average on the sale of tickets by them. It was

informed by OP No. 2 through letter dated 12-06-2012 that the Commission to travel agents would be reduced from 3% to 1% w.e.f. 16-07-2012. Similar letters were issued by OP No. 3 & 4 dated 16-06-2012 and 20-06-2012 respectively.

3. It was alleged by the informant that the OPs 2,3, & 4 under the banner of OP No. 1, joined together, to form a cartel resulting into a horizontal agreement and decided to reduce the commission to travel agents from 3% to 1%. It was the apprehension of the informant that the other member FSC airline of the OP No. 1 would follow the same decision to the detriment of the members of the informant.

4. The informant further alleged that OPs controlled more than 90% air lines business in India and by virtue of this dominant position, the said group of enterprise was dictating terms to travel agents and thereby abusing their dominant position.

5. The Commission perused the information and material on record and also heard the counsel for informant. The main allegation of the informant is that the OPs had reduced the commission of travel agents from 3% to 1% by forming a cartel. The ***Commission, in case no. 14/2009, Travel Agents Association of India v. Lufthansa German Airlines***, held as under:-

*“The investigation by the DG has shown that number of IATA travel agents has also increased post impugned decision of the airlines. Only on the basis of the fact that the airlines have chosen to discontinue the commission based model, it cannot be presumed that they have done it in concert to fix the price of their air tickets. There is no material on record to show that subsequent to abolition of commission, the prices of the air tickets of Opposite Parties have gone up. Thus it cannot be said that harm has been caused to the end consumers by abolishing*

*the system of payment of commission to the travel agents by the Opposite Parties”.*

**6.** Further the Commission, in *case no. 3/2009, Uniglobe Mod Travels Pvt. Ltd. V/s Travel Agents Federation of India and others*, had also discussed the issue of commission payable to travel agent and observed as under:-

*“it is also borne out from the perusal of record that DGCA has already passed an order in this respect wherein it has been said that DGCA cannot lay down quantum of commission payable by airlines to agents and it is up to the airlines to take a decision in this regard. It is also mentioned in that order that the Aircraft Rules does not say that there shall be paid –a-commission to the agents although airlines or travel agents cannot levy transaction fee in lieu of commission as it is not covered within the definition of tariff given in clause 54(a) of Rule (3) of the Aircraft Rules 1937. DGCA has directed the airlines to ensure compliance of existing statutory provisions regarding determination of tariff and display of fare in accordance with the provisions of Rule 135 of Aircraft Rules 1937. Moreover, in view of the subsequent clarification issued by the Ministry of Civil Aviation, Government of India vide its letter dated 12.08.2010 the contention raised by the opposite parties loses force as it has been made amply clear that if the airlines do not pay any commission to the travel agents it will not be a violation of Aircraft Rules, 1937. The issue of the legality of ‘payment of commission’ to travel agents by the Singapore Airlines has been very clearly laid to rest in the light of stand taken by the Government of India.”*

**7.** To substantiate its allegations of cartel formation by the OPs, the Informant has relied upon the letters sent to it by the OPs on almost similar dates wherein they have decided to reduce the Commission paid to travel agents from 3% to 1% on basic fare and fuel surcharge on sale of all domestic and international

tickets by them. The Commission, after carefully examining the letters issued by the OPs, notes that the OP No. 1 had issued a letter dated 12.01.2012 to the Informant mentioning that member airlines are contemplating measures including reduction in Commission to the travel agents for restoring the financial health of airlines in India and the OP No. 2 had issued a letter dated 12.06.2012 to all the travel agents in western India informing them about its decision of reduction of their commission w.e.f. 16.07.2012. The OP No. 3 had issued a letter dated 13.06.2012 mentioning the reduction of the Commission payable to the travel agents w.e.f. 16.07.2012 and the OP No. 4 had also issued letter dated 20.06.2012 to all the travel agent in India informing them about the reduction of the Commission payable to them w.e.f. 01.08.2012. On the basis of said letters, it is observed that the decision of reduction in the Commission by the OPs was not taken collectively on the same date and the reduction in the Commission was also made effective from different dates. Although, the decision of reduction in Commission was made effective by OP No. 2 and 3 from 16.07.2012 but, it was made effective by OP No. 4 from 01.08.2012. It is worth mentioning here that OP No. 2 is a Government of India enterprise and OP No. 3 and 4 are private enterprises thus, it is unlikely that any Government enterprise will form a cartel with private enterprises. Therefore, in absence of any other evidence, the conduct of OPs prima facie does not show any concerted action on their part. Further, the Commission is of the considered view that issuance of letters by the OPs simpliciter is not sufficient to establish concerted action on their part unless the said action is supported by other evidence which is absent in the present case. Therefore, the Commission observes that prima facie the conduct of OPs does not seem to be violating the provisions of section 3 of the Act.

**08.**Regarding the allegation of abuse of dominant position, the relevant market in the present case is 'market of passenger carriage service provided by airlines

operating in India for both domestic and international routes.’ As per the report of DGCA (Directorate General Of Civil Aviation), the market share of Air India and Jet Airways in domestic airlines is only 17.6% and 21.4% respectively. According to the information available on public domain, none of the OPs have a substantial market share to affect the market, competitors or the consumers in its favour. Therefore, the OPs do not seem to be in dominant position and hence there is no contravention of section 4 of the Act.

**09.**In the result, the Commission is of considered opinion that there exists no prima facie case and the matter deserves to be closed forthwith.

**10.** It is ordered accordingly.

**11.**The Secretary is directed to inform the parties.

**12.**The informant has also moved an application under section 33 of the Act. Since the Commission has closed the matter under section 26(2) of the Act, nothing survives in this application and the same stands disposed of accordingly.

Sd/-  
**(H.C. Gupta)**  
Member

Sd/-  
**(R.Prasad)**  
Member

Sd/-  
**(AnuragGoel)**  
Member

Sd/-  
**(GeetaGauri)**  
Member

Sd/-  
**(M.L.Tayal)**  
Member

Sd/-  
**(JusticeS.N.Dhingra)(Retd.)**  
Member

Sd/-  
**(Ashok Chawla)**  
Chairperson