



**COMPETITION COMMISSION OF INDIA**

**Case No. 59 of 2015**

**In Re:**

**Turbo Aviation Pvt. Ltd.  
22, Gagan Vihar Colony,  
Begumpet, Hyderabad, Telangana**

**Informant**

**And**

- 1. Bangalore International Airport Ltd.  
Administration Block,  
Kempegowda International Airport,  
Bengaluru, Karnataka**

**Opposite Party No. 1**

- 2. GVK Power & Infrastructure Limited  
Paigah House, 156-159, Sardar Patel Road,  
Secunderabad, Telangana**

**Opposite Party No. 2**

- 3. Airports Authority of India  
Rajiv Gandhi Bhawan,  
Safdarjung Airport, New Delhi**

**Opposite Party No. 3**

**CORAM**

**Mr. Ashok Chawla  
Chairperson**

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

**Mr. Augustine Peter  
Member**

***Case No. 59 of 2015***

***Page 1 of 13***



**Mr. U.C. Nahta**  
**Member**

**Justice G. P. Mittal**  
**Member**

**Appearances:** Advocates Shri Rajshekhar Rao, Shri Amit Mishra and Shri Sakshi Agarwal along with Shri V. Umesh, Managing Director for the Informant and Advocate Shri Ashish Jha for Bangalore International Airport Ltd.

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

1. M/s Turbo Aviation Pvt. Ltd. (hereinafter, the '**Informant**') has filed the information in the instant case under the provisions of section 19(1)(a) of the Competition Act, 2002 (hereinafter, the '**Act**'). In the information, *inter alia*, it is alleged that Bangalore International Airport Limited (hereinafter, '**OP 1**'/'**BIAL**'), GVK Power & Infrastructure Limited (hereinafter, '**OP 2**') and Airports Authority of India (hereinafter, '**OP 3**') [collectively hereinafter, '**OPs**'] have infringed the provisions of sections 3 and 4 of the Act.
  2. The Informant is stated to be a company incorporated under the Companies Act, 1956 and, *inter alia*, engaged in providing ground handling services (hereinafter, '**GHS**') to various domestic airlines and services for chartering of aircraft. It has also recently launched its own airline under the name of 'TruJet'. OP 1 is stated to be a registered company under the Companies Act, 1956 and, *inter alia*, engaged in operation, maintenance, development, design, construction, upgradation, modernization and management of Kempegowda International Airport at Bangalore (hereinafter, '**KIAB**'). OP 2 is an Indian conglomerate and has diversified interests across various sectors such as energy, airports, transportation, hospitality, *etc.* including 43% shareholding in OP 1 through its subsidiary Bangalore Airport & Infrastructure Developers
- Case No. 59 of 2015**



Pvt. Ltd. (hereinafter, 'BAI'). OP 3 is a statutory authority established under the Airports Authority of India Act, 1994 and is responsible for development, finance, operation, and maintenance of airports.

3. Briefly stated, *vide* letter dated 30.03.2015, the Informant sought OP 1's approval for self-handling of GHS in KIAB in view of its proposed 'TruJet' flight operations at KIAB. OP 1, in its reply dated 06.04.2015, stated that:

*".....We will be more than happy to facilitate a discussion between Turbo Megha Airways and the GHA's at KIAB toward achieving a reasonable rate that will help with your start-up operational costs. However, given the current volume of growing ATMs and passenger traffic, BIAL is regrettably not in a position to consider your request for self-handling."*

4. The Informant has alleged that, citing security reasons and congestion at KIAB, OP 1 has refused to allow it to offer self-handling of GHS and no explanation has been provided as to how self-handling of GHS by the Informant would cause security problems and congestion at KIAB. It is averred that OP 1, without showing any willingness to resolve the issue, has simply asked the Informant to negotiate the rate with the existing GHS agencies at KIAB. This, as per the Informant, amounts to abuse of dominant position in contravention of the provisions of section 4 of the Act.
5. The Informant has stated that the market for provision of GHS at KIAB in India is the relevant market to be taken in the instant case. In regard to the dominant position, it is averred that OP 1 and OP 2 constitute a group in terms of the Act and the Informant has alleged abuse of group dominance by OP 1 and OP 2. It is stated that KIAB is the only airport serving the requirement of air transport services in the city of Bengaluru and nearby areas and no new or existing airport is permitted to operate as a domestic or international airport within 150 kilometers of KIAB. Further, OP 1 in its capacity as the airport



operator, has complete discretion with regard to any activity relating to handling of aircraft, passengers, baggage and cargo at KIAB. Also, OP 1 may grant service-provider rights to any party for the purpose of carrying out such activities on such terms and conditions as it deems appropriate. It is submitted that the size and resources of OP 1 is much larger compared to the Informant and also, it has economic power and commercial advantages over the Informant. Further, during the year 2013-14, the turnover of OP 1 was Rs. 912 crores whereas it was only Rs. 22.38 crores in case of the Informant. OP 1 also enjoys substantial vertical integration and consumers are dependent upon it. Accordingly, it is alleged that OP 1 is in a dominant position in the market for provision of GHS at KIAB.

6. As per the Informant, OP 1 has refused to allow it to provide self-handling of GHS citing security and congestion problems despite the fact that it has got all security clearances and is offering GHS at several airports including at Hyderabad, Visakhapatnam, Tirupathi, Vijayawada and Surat; which are subject to similar security requirements like at KIAB. This, according to the Informant, amounts to limiting the provision of GHS at KIAB in contravention of section 4(2)(b) of the Act. Further, it is stated that the existing two GHS agencies at KIAB *i.e.*, M/s Globe Ground Pvt. Ltd. (hereinafter, '**Globe Ground**') and Air India SATS (hereinafter, '**AISATS**') are offering GHS @ Rs. 6,500/- and Rs. 6,250/- respectively on per flight basis which is almost double the rate of Rs. 3,600/- per flight that the Informant is willing to offer. The Informant has alleged that by not allowing it to provide GHS at KIAB, even at a lower rate as compared to the existing service providers, OP 1 has denied market access to it, which is in violation of section 4(2)(c) of the Act.
7. The Informant has further alleged that by leveraging its dominance in the market for airport operations, OP 1 is able to extend its dominance to protect GHS market to the detriment of the airline operators which is in violation of section 4(2)(e) of the Act. The said activity is evident from the fact that OP 1



has refused to allow airlines to self-handle GHS and forced them to avail the services of the existing GHS agencies at a higher cost.

8. The Informant has also alleged that OP 3, through the Airports Authority of India (General Management, Entry for Ground Handling Services) Regulations, 2007 dated 18.10.2007, has ensured that the airlines are prevented from self-handling of GHS and are made to avail the services of OP 3/ Joint Venture Company of OP 3 or any other GHS provider nominated by OP 3. In this regard, clause 3 of the said Regulations may be note worthy:

*“(1) A carrier may carry out ground handling services at metropolitan airports, that is, the airports located at Delhi, Mumbai, Chennai, Kolkata, Bangalore and Hyderabad, by engaging the services of any of the following, namely:*

- i) Airports Authority of India or its Joint Venture Company;*
  - ii) subsidiary companies of the national carrier, that is, National Aviation Company of India Limited or its joint ventures specialized in ground handling services: Provided that third party handling may be permitted to these subsidiaries or their Joint Ventures on the basis of revenue sharing with the Authority subject to satisfactory observance of performance standards as may be mutually acceptable to the Authority and these companies;*
  - iii) any other ground handling service provider selected through competitive bidding on revenue sharing basis, subject to security clearance by the Central Government and observance of performance standards.*
- (2) At all other airports, in addition to the entities specified in sub-regulation (1) of regulation 3, self-handling may be permitted to the airlines, excluding foreign airlines.*
- (3) All concerned agencies shall ensure that the state-of-the-art equipment are used and 'best practices' are followed.*



*(4) Airlines or entities presently involved in ground handling which are not governed by these regulations shall not be permitted to undertake self-handling or third party handling with effect from the first day of January, 2009.”*

9. The Informant has also invited the attention of the Commission to the Director General of Civil Aviation's (DGCA) Circular AIC SL. No. 3/2010 dated 2<sup>nd</sup> June, 2010 on grant of permission for providing ground handling services at airports other than those belonging to the Airports Authority of India, which allegedly prohibits self-handling of GHS by airlines. The relevant exception from the said circular may be noted:

*“1.2. In accordance with the Airports Authority of India (General Management, Entry for Ground Handling Services) Regulations, 2000, an airline operator may carry out ground handling services at an airport either by itself or engage the services of any of the following, namely:*

- (i) Airports Authority of India;*
- (ii) Air India or Indian Airlines; and*
- (iii) Any other agency licensed by the Airports Authority of India.*

*1.3. The Airports Authority of India (General Management, Entry for Ground Handling Services) Regulations, 2000, have been made under Section 42 of the Airports Authority of India Act, 1994 and thus are applicable to the airports managed by the Airports Authority of India. With the restructuring of certain airports and development of a few Greenfield airports in the private sector, it has become imperative for the Central Government to lay down the eligibility criteria for various agencies to undertake ground handling services at non-AAI airports. The number of such agencies to be permitted at each airport is also to be determined by the Government having regard to all the relevant factors such as demand for such services, available infrastructure and competitive environment, without compromising the safety and security aspects.*



*1.4. Rule 92 of the Aircraft Rules, 1937 provides that the licensed public aerodromes shall, while providing ground handling services themselves, ensure a competitive environment and allow the ground handling service providers permitted by the Central Government to provide ground handling services at such aerodromes without any restriction. These ground handling service providers shall, however, be subject to security clearance of the Central Government. As such, it is for the Central Government to decide the agencies who can provide ground handling services at various aerodromes and also the eligibility criteria for such service providers.*

*2. Eligibility Criteria for Ground Handling Service Providers: While the Airports Authority of India would promulgate the necessary regulations, with the previous approval of the Central Government, under the Airports Authority of India Act, 1994, with respect to provision of ground handling services at the airports under their control, it has been decided by the Central Government that with immediate effect, the following entities shall be eligible to undertake ground handling services at airports other than those belonging to the Airports Authority of India:*

*(A) All Metropolitan Airports, i.e. the airports located at Delhi, Mumbai, Chennai, Kolkata, Bangalore and Hyderabad*

*(i) The airport operator itself or its Joint Venture (JV) partner;*

*(ii) Subsidiary companies of the national carrier i.e. National Aviation Company of India Ltd. or their joint ventures specialized in ground handling services.*

*Third party handling may also be permitted to these subsidiaries or their JVs in the basis of revenue sharing with airport operator subject to satisfactory observance of performance standards as may be mutually acceptable to the airport operator and these companies; and*

*(iii) Any other ground handling service providers selected through competitive bidding on revenue sharing basis by the airport operator*



*subject to security clearance by the Government and observance of performance standards as may be laid down by the airport operator.*

*Note.— A minimum of two ground handling service providers shall be authorized at these airports in addition to the subsidiaries of National Aviation Company of India Ltd.”*

10. The Informant has also averred that, due to collusion between OP 1 and OP 3, preferential treatment is being given to the national carrier, who is also one of the competitors and private airlines are treated in an unfair and discriminatory manner. Because of the said collusion, it is alleged that competition is being adversely affected which is in contravention of section 3(1) of the Act.
11. Based on the above averments, the Informant has, *inter alia*, prayed the Commission to direct OP 1 to cease and desist from refusing to grant permission for self-handling of GHS and to allow the Informant to self-handle GHS at KIAB; to direct OP 1 and OP 2 to discontinue from abuse of their group dominance in the relevant market; to direct OP 3 to discontinue its anti-competitive agreement entered into with OP 1; to grant interim relief under section 33 of the Act; and to pass any other order as the Commission may deem fit and proper in the facts and circumstances of the case.
12. The Commission has perused the information and additional submissions filed by the Informant and the material available on record. The Commission has also heard the Informant and OP 1, through their advocates, on 24.09.2015.
13. The Commission observes that the allegations of the Informant emanate from the fact that OP 1, being the airport operator at KIAB, denied permission to the Informant to self-handle GHS for its proposed ‘TruJet’ flight operations, without providing any explanation as to how self-handling of GHS would lead to security problems and congestion at the airport. The Informant is also aggrieved with the fact that while OP 1 and the national carrier have been permitted to provide GHS at the metropolitan airports, self handling of GHS





by private airlines has been prohibited which places them at a competitive disadvantageous position. Accordingly, the Informant has alleged violation of sections 3 & 4 of the Act in the matter.

14. To analyse the allegations of infraction of the provisions of section 4 of the Act, the relevant market in terms of section 2(r) of the Act requires to be determined first, before proceeding to address the issue of dominance and abuse thereof. In this regard, the Commission notes that the operation and management of airports comprises of a host of services including (a) air traffic management services such as flight scheduling, slot allocation, air traffic control services, *etc.*; (b) aircraft maintenance and engineering services such as planning and preparation of a maintenance schedule, real-time health monitoring and troubleshooting of aircrafts, assistance for structural repair, documentation and management of technical data, *etc.*; and (c) GHS including ramp services such as (i) aircraft guiding and towing, baggage loading and unloading, freight and mail handling, refueling, de-icing, catering, lavatory drainage, water cartage, cleaning and ground power; and (ii) passenger related services such as check-in counter services, gate arrival and departure services, transfer counters, customer service and airport lounges *etc.* Considering the nature and intended use, the Commission is of the view that each of these services such as air traffic management services, aircraft maintenance and engineering services, and ground handling services constitute a distinct segment of airport operation and management services. As such, from a consumer's perspective (*i.e.*, airlines in this case), GHS is neither interchangeable nor substitutable with other airport facility services as stated above by reason of different characteristics of the services and intended use. Since the allegations in the instant case relate to GHS, the relevant product market in this case may be considered as the '*market for provision of ground handling services*'. With regard to the relevant geographic market, the Commission notes that provision of GHS at one airport cannot be substituted with other airport. Since the allegations in the instant case relate to provision of GHS at KIAB, the relevant geographic market is to be considered as



*‘Kempegowda International Airport at Bengaluru’.* Accordingly, the relevant market should be considered in this case as the *‘market for the provision of ground handling services at Kempegowda International Airport in Bengaluru.’*

15. The Informant has alleged abuse of group dominance by OP 1 and OP 2. In this regard, the Commission observes that OP 2; through one of its subsidiaries *i.e.* BAI holds 43% shares in OP 1. Therefore, OP 1 and OP 2 may constitute a group as per the explanation (b)(i) to section 5 of the Act which stipulates the requirement of exercise of 26% or more of the voting rights in another company. Accordingly, dominance of OP 1 and OP 2, as a group (hereinafter, **‘OP group’**), is to be determined in the instant matter.
16. The Commission observes that the OP group enjoys complete discretion in matters relating to handling of aircrafts, passengers, baggages and cargos at KIAB. As such, the OP group may grant service-provider rights to any party as it deems appropriate. In addition, because of the factors such as size and resources, economic power and commercial advantages, and vertical integration and dependence of consumers, OP group enjoys significant competitive advantage over the Informant in the relevant market. Further, there is also lack of countervailing buying power to constrain OP group’s operations in the relevant market. Thus, the Commission is of the view that the OP group is in a dominant position in the relevant market as defined above. However, it may be pointed out that dominance *per se* is not a violation of the provisions of section 4 of the Act as the Act proscribes only abuse of dominant position by a dominant enterprise in a relevant market.
17. The Informant has alleged that OP 1 has abused its dominant position by restricting the provision of GHS at KIAB and thereby denied market access in violation of the provisions of sections 4(2)(b) and 4(2)(c) of the Act. Further, GHS facilities at KIAB constitute an essential facility and OP 1, in its capacity of the airport operator, is in control of such facility at KIAB. It also appoints third party GHS providers and is at liberty to offer GHS to various domestic



airlines. However, the Commission observes that the afore-mentioned allegations of the Informant are to be seen in the light of the applicable laws governing GHS at various airports across India. It may be noted that self-handling of GHS at KIAB has been proscribed under the GHS Regulations. Further, the DGCA's circular on GHS also prohibits self-handling of GHS at KIAB and other metropolitan airports. It is pertinent to note that the number of GHS providers at each of the metropolitan airports has been determined by the Central Government having regard to the demand for GHS, available infrastructure and competitive environment.

18. With regard to the excessive prices being charged by the GHS agencies at KIAB, the Commission is of the view that the Informant's claim appears to be doubtful. A reference in this regard may be made to the comparison of rates for provision of GHS offered by the Informant and other agencies at eight selected airports, including at KIAB. It is observed that the Informant, while alleging the differences in GHS rates has not submitted any documentary evidence to substantiate its claims. Thus, the veracity of the Informant's claims appears to be doubtful. With regard to the allegations relating to the essential facility doctrine, the Commission notes that the Informant has failed to provide any material to show that access to the essential facility was actually denied. OP group had merely refused permission to self-handle GHS for TruJet's operations at KIAB. It is always open for the Informant to either enter into a joint venture agreement with OP 3/ airport operator itself/ subsidiaries of national carrier to provide GHS at KIAB. It may also be pointed out that neither the Informant has alleged nor has it provided any cogent material showing bias in the selection process of Globe Ground and AISATS as GHS providers at KIAB. In any case, it is a fact that the contracts executed by OP 1 with Globe Ground and AISATS for provision of GHS at KIAB are terminable ones conferring exit options not only to OP 1 but also to these companies. Further, OP 1 had only denied permission to self-handle GHS to the Informant for its TruJet' flight operations at KIAB in accordance with the provisions of the GHS Regulations. In view of the above, the Commission is of the opinion that the allegations pertaining to violation of
- Case No. 59 of 2015*** ***Page 11 of 13***



sections 4(2)(b) and 4(2)(c) of the Act by the OP group do not hold any ground.

19. Further, the Informant has alleged that the OP group is engaged in leveraging its dominance in the airport operations market to protect the market for provision of GHS at KIAB in violation of section 4(2)(e) of the Act. It appears from the allegation that the Informant's claim stems from the fact that OP group enjoys complete discretion in matters connected with selection of GHS providers at KIAB. The Commission notes that although the OP group is in a dominant position in the airport operations market, it is not clear as to how OP 1 is leveraging its dominant position in this market to protect the GHS market. This is so because OP 1 has been authorized to provide GHS at KIAB under the aforementioned GHS Regulations and DGCA's GHS circular. In any case, presently OP 1 is not providing any GHS at KIAB. In view of the above, the Commission is of the view that there is no case of violation of section 4(2)(e) of the Act in the instant matter.

20. The Commission also takes note of the fact that the issues raised by the Informant *viz.* GHS Regulation and DGCA's GHS circular are already subject matter of dispute before the Supreme Court in SLP (C) No. 7764 of 2011 arising from the judgment and order dated 04.03.2011 in W.P. No. 8004 of 2010 of the High Court of Delhi at New Delhi. The High Court of Delhi *vide* its order dated 04.03.2011 dismissed W.P. No. 8004 of 2010 filed by the Federation of Indian Airlines and upheld the circular and regulations stating, *inter alia*, that the said circular and regulations are part of a policy decision of the Union of India. The Hon'ble Supreme Court of India *vide* its order dated 04.04.2011 has issued notice on the aforementioned SLP and the same is pending before the Supreme Court.

21. The Informant has also alleged that OP 1 and OP 3 have entered into an anti-competitive agreement conferring special benefits on OP 1 through the GHS Regulations/ DGCA's GHS circular in violation of section 3(1) of the Act.



However, the Commission observes that the information does not disclose any kind of agreement between OP 1 and OP 3 which can be termed as anti-competitive in terms of any of the provisions of section 3 of the Act and the Informant has also not provided any cogent material in support of its allegations.

22. In the light of the above, the Commission is of the opinion that no *prima facie* case of contravention of the provisions of either section 3 or section 4 of the Act is made out against OPs in the instant matter. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.

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

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

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

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

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

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

**New Delhi**  
**Dated: 07.01.2016**