



**COMPETITION COMMISSION OF INDIA**

**Case No. 75 of 2015**

**In Re:**

**Airline Operators Committee (AOC), Delhi  
Through its Chairman Shri Gopala Krishnan Nair  
3.124, CIP Level, T-3, IGI Airport  
New Delhi-110037**

**Informant**

**And**

**Delhi International Airport Pvt. Ltd. (DIAL)  
Through its Chairman Shri G. M. Rao  
New Udaan Bhawan  
Opp. Terminal 3, IGI Airport  
New Delhi-110037**

**Opposite Party**

**CORAM**

**Mr. Ashok Chawla  
Chairperson**

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

**Mr. Sudhir Mital  
Member**

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

**Mr. M. S. Sahoo  
Member**

**Justice (Retd.) Mr. G. P. Mittal  
Member**



**Appearances:** Shri Krishna Kumar, Advocate for the Informant alongwith Shri Gopal Krishnan Nair, Chairman of Airline Operating Committee (AOC), Delhi.

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

1. The present information has been filed by Airline Operators Committee (AOC), Delhi through its Chairman Shri Gopala Krishnan Nair ('the Informant'/ 'AOC') under section 19(1)(a) of the Competition Act, 2002 (the 'Act') against Delhi International Airport Pvt. Ltd. (the 'Opposite Party'/ 'OP'/ 'DIAL') alleging *inter alia* contravention of the provisions of section 4 of the Act.
2. Facts, as gathered from the information, may be briefly noted:
3. The Informant is stated to have been established pursuant to the recommendations of International Air Transport Association (IATA) for facilitating the movement and handling of passengers, baggage, cargo, mail *etc.* for the airlines operating at Indira Gandhi International Airport, New Delhi. It is also averred that AOC, Delhi, since the setting up, has been carrying on various activities, including activities which are non-aeronautical services and representing and protecting the interest of the airlines in various forums/ authorities/ statutory bodies. It is stated to be duly authorized in carrying on all the activities on behalf of the airlines in this connection.
4. The Opposite Party *i.e.*, DIAL is a company incorporated under the Companies Act, 1956 and is a joint venture consortium of GMR Group, Airport Authority of India, Malaysia Airport and Fraport. It is stated that DIAL entered into an Operation, Management and Development



Agreement ('OMDA') with Airport Authority of India on 04.04.2006. The initial term of concession is stated to be 30 years extendable by a further period of 30 years.

5. It is averred that while carrying out its activities in terms of the constitution as recommended by IATA, AOC has been co-ordinating with DIAL and the airlines to ensure and facilitate implementation of various agreements entered into between DIAL and the airlines. By way of illustration, the Informant referred to the agreements entered into between DIAL and Air France. It is stated that similar agreements have been entered into between DIAL and other airlines as well.
6. In this connection, the Informant *inter alia* made reference to an agreement dated 23.12.2013 entered into between DIAL and Air France for licensing office space with the licence term upto 31.03.2015. It is stated that Air France has paid the licence fee according to the terms of the said agreement for the period ending 31.03.2015.
7. It is alleged that while the agreement dated 23.12.2013 was in force, DIAL sent a letter to Air France stating that the prevailing/ applicable licence fee rates for the locations mentioned in the agreement and in possession and custody of Air France shall stand revised w.e.f. 01.04.2015. It is alleged that the licence fee was increased by 100.27% without any consultation or discussion. It is also alleged that on or about April 2015, Air France received an invoice for non-aeronautical services being Invoice No. 4000021051 dated 02.03.2015 (with due date 09.03.2015) requiring Air France to pay an amount of Rs. 2,76,905.60/- based on the increased licence fee.
8. It is further stated that Air France thereafter represented through AOC and by way of letter dated 05.02.2015 and sought clarifications besides



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objecting to the whimsical and arbitrary increase of the licence fee and also increase in the rentals contrary to the agreement/ arrangement and the practice that has been prevailing. AOC and Air France as well as other airlines also objected to the increase in the rentals in an exorbitant and unreasonable manner.

9. It is alleged that the action of DIAL, which is a dominant undertaking, is unreasonable and the exorbitant increase in the rates of rental by more than 100% is in contravention within the meaning of section 4(2)(a) & (b) of the Act and is a total abuse of its dominant position.
10. Further, it is also alleged that most of the members of AOC had received similar and/ or identical letters of demand from DIAL and the same have not been attached alongwith the information to avoid prolixity. However, leave was craved to file compilation of documents pertaining to each of the airlines in due course and also as and when called for.
11. After giving a chart detailing the increase in rentals by DIAL in respect of various airlines, it is alleged that in the case of many of the member airlines like Lufthansa, Turkmenistan Airlines, Saudi Arabian Airlines, Japan Airlines, Malaysia Airlines, British Airways, United Airlines, Gulf Air, Thai Airways, Ethiopian Airlines and Sri Lanka Airlines *etc.* the increase in the office space rental has been more than 100%. In other words, it was alleged that instead of the 7.5% increase proposed every year as envisaged in the licence deed, DIAL has unilaterally and whimsically, without assigning any basis whatsoever, chosen to increase the rental by 100%. With regard to some other airline members, the increase in rent has been varying from 25% to 100% and in most of the cases, it is more than 100%. However, it is pointed out that in some of the cases like Celebi Airlines, Vistara Airlines and China Southern Airlines, DIAL has accepted and agreed to increase the rental by only 7.50%.



12. It is also alleged that the basis for increment in rentals apart from being totally arbitrary and whimsical is discriminatory and in many cases perverse. The enhancement of the rentals is also described as wholly misconceived and onerous on the members in as much as the members were allegedly forced to pay exorbitant rentals without there being any basis or reasons for such increase.
13. It has also been averred that DIAL is adopting a high handed attitude in as much as initially it was agreed that the increase in rental would be only nominal and to the extent of services rendered. Many of the member airlines were informed at the time of shifting of their offices from Terminal 1D to Terminal 3, that in the event they surrendered part of the space, they would be given space on rent at T3 Terminal at a concessional rate and also the increment in the office space rental would not be in any event more than 7.5 % per annum. This is stated to be apparent from the fact that in most of the agreements entered into between member airlines and DIAL, the increase has invariably, in fact, never been more than 7.5% in the past years. Even in the case where enhancement had been provided specifically, the percentage increase agreed to at all times has not been more than 7.5% per annum. DIAL is consequently estopped from now increasing the rent by more than 7.5% after having assured and committed to the member airlines as well as to AOC.
14. Lastly, it was submitted that it was agreed that the base rate for rentals should be Rs. 1,822 per sq. mtr. as a prevailing rate for the financial year 2009-10 and thereafter there ought to have been escalation @ 7% per year only. However, it is alleged that DIAL has arbitrarily required the member airlines to pay more. It was, thus, submitted that the member airlines should not be required to pay in any event an amount beyond Rs. 7.5% per annum, calculated based on the basis of base rate @ Rs. 1822 per sq. mtr.



only. It was also pointed out that even if the price index were to be taken into account for the relevant period, the enhancement of 7.5% itself would be very much on the higher side and the increase beyond that amount would be certainly a gross abuse of dominant position.

15. Based on the above averments and allegations, the present information has been filed by the Informant against the Opposite Party seeking investigation into the matter alongwith the various reliefs sought therein.
16. The Commission has perused the material available on record besides hearing the counsel appearing for the Informant.
17. The Informant - which has described itself as a Committee - is, as noted *supra*, stated to have been established pursuant to the recommendations of IATA for facilitating the movement and handling of passengers, baggage, cargo, mail *etc.* for the airlines operating at Indira Gandhi International Airport.
18. The nub of the grievance of the Informant emanates out of the letters received by its airlines from DIAL whereby and whereunder DIAL has increased the rentals charged by it in respect of the office space provided to the member airlines of AOC. Such increase has been alleged as arbitrary, unreasonable, exorbitant and discriminatory without there being any consultation or discussion by DIAL with the other stakeholders.
19. To examine the alleged abusive behaviour against DIAL, it is necessary to delineate the relevant market. As the allegations pertain to unfair and discriminatory increase in the rentals charged by the airport operator DIAL in respect of the office space licenced to the airlines at Terminal- 3 (T3) of Indira Gandhi International Airport (IGIA), the relevant market may be



taken as market for ‘*provision of office space to the airlines for non-aeronautical services at T3, IGIA, New Delhi*’.

20. In this relevant market, DIAL *prima facie* appears to be in a dominant position as this joint venture consortium by virtue of Operations, Management and Development Agreement dated 04.04.2006 entered into with AAI has the exclusive right and authority during the term of the agreement (*i.e.*, for a period of 30 years) to undertake operation, maintenance, development, design, construction, upgradation, modernization, finance and management of the airport and to perform services and activities constituting aeronautical and non-aeronautical services at the Indira Gandhi International Airport. The initial term of concession is extendable by a further period of 30 years.
21. Coming to the specific instances of abuse as highlighted in the information, it may be noted that by virtue of the grant/ concession, DIAL is free to fix the charges for non-aeronautical services subject to the provisions of the existing contracts and other agreements. Thus, the issue of levy of charges for non-aeronautical services is not, as such, in question. The question is the alleged unfair and discriminatory increase in the rentals charged by DIAL.
22. On a careful perusal of the information and the documents filed therewith, it may be seen that through various letters issued to various airlines by DIAL, the rental for office space licenced by DIAL has been increased ranging from 25% to over 100%. For felicity of ready reference, the relevant Annexure- ‘K’ of the information which contains the necessary details, is extracted below:



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### Increase in Rental Office Space by DIAL

| S. No. | Name of the Airline       | License Fee prior to the enhancement of price (Rs.) per sq. mtr. | Letter date by which enhancement was sought | The price License Fee (Rs.) per sq. mtr. | Percentage Increase (%) |
|--------|---------------------------|--|---|--|-------------------------|
| 1.     | Lufthansa                 | 1306.10  | 03.02.2015                                  | 2615.72                                  | 100.27                  |
| 2.     | Air France                | 1306.11  | 03.02.2015                                  | 2615.72                                  | 100.27                  |
| 3.     | Turkmenistan Airlines     | 1306.10  | 03.02.2015                                  | 2615.72                                  | 100.27                  |
| 4.     | China Airlines            | 1710.39  | 03.02.2015                                  | 2615.72                                  | 52.93                   |
| 5.     | Singapore Airlines        | 1696.43  | 03.02.2015                                  | 2615.72                                  | 54.19                   |
| 6.     | Saudi Arabian Airlines    | 1306.11  | 03.02.2015                                  | 2615.72                                  | 100.27                  |
| 7.     | Japan Airlines            | 1306.10  | 01.02.2015                                  | 2615.72                                  | 100.27                  |
| 8.     | China Southern Airlines   | 1944.79  | 01.04.2015                                  | 2615.72                                  | 34.50                   |
| 9.     | Aeroflot Russian Airlines | 1306.10  | 28.01.2015                                  | 2615.72                                  | 100.27                  |
| 10.    | Emirates                  | 1669.21  | 01.02.2015                                  | 2615.72                                  | 56.70                   |
| 11.    | Finnair                   | 1579.51  | 01.02.2015                                  | 2615.72                                  | 65.60                   |
| 12.    | Austrian Airlines         |  |   |  | 100.00                  |
| 13.    | KLM Royal Dutch Airlines  | 1306.11  | 03.02.2015                                  | 2615.72                                  | 100.27                  |
| 14.    | Air Astana                |  |   |  | # DIV/ 01               |
| 15.    | Uzbekistan Airways        | 1306.10  | 03.02.2015                                  | 2615.72                                  | 100.27                  |
| 16.    | Malaysia Airlines         | 1523.00  | 03.02.2015                                  | 2615.72                                  | 71.75                   |
| 17.    | Etihad                    | 1700.33  | 01.02.2015                                  | 2615.72                                  | 53.84                   |
| 18.    | Srilankan Airlines        | 1306.11  | 03.02.2015                                  | 2615.72                                  | 100.27                  |
| 19.    | Ethiopian Airlines        | 1864.88  | 1.2.2015                                    | 2615.72                                  | 40.26                   |





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|-----|-----------------|---------|---------------------|---------|--------|
| 20. | British Airways | 1306.11 | 01.04.2015          | 2615.72 | 100.27 |
| 21. | United Airlines | 1306.11 | 01.04.2015          | 2615.72 | 100.27 |
| 22. | Cathay Pacific  | 1661.72 | 01.02.2015          | 2615.72 | 57.41  |
| 23. | Gulf Air        | 1306.10 | 01.02.2015          | 2615.72 | 100.27 |
| 24. | Virgin Atlantic | 1306.10 | 03.02.2015          | 2615.72 | 100.27 |
| 25. | Oman Air        | 1822.00 | Nil letter received | 2615.72 | 43.56  |
| 26. | Thai Airways    | 1306.11 | 03.02.2015          | 2615.72 | 100.27 |
| 27. | Qatar Airways   | 1306.10 | 03.02.2015          | 2615.72 | 100.27 |
| 28. | Mahan Air       | 1810.36 | 03.02.2015          | 2615.72 | 44.49  |

23. From the above, it is apparent that DIAL has proposed enhancement of licence fee on per square meter basis in a varying manner from 25% to over 100% to make the same uniform *i.e.*, Rs. 2615.72/- per sq. mtr. The Commission notes that the central argument of the Informant to the effect that it was agreed that the base rate for rentals should be Rs. 1,822/- per sq. mtr. as a prevailing rate for the financial year 2009-10 and thereafter there ought to have been an escalation @ 7.5% per year only, is misconceived. There is nothing on record to suggest that it was agreed that the increase in rental would be only nominal. Similarly, it is not borne out from the records that the increment in the office space rental would not be in any event more than 7.5 % per annum. In fact, the increase envisaged @ 7.5% was during the subsistence of the agreement on annual basis. Once the term of the agreement to license office space expired by efflux of time, the said limit was not attracted. In the absence of any material, a mere increase in the rental for the fresh term of the agreement cannot be viewed as *per se* unfair particularly when the license fee appears to be rationalized in a uniform manner.

24. In view of the above, the Commission is of view that no case is made out against the Opposite Party for contravention of the provisions of section 4 of the Act and the information is ordered to be closed forthwith in terms of the provisions contained in section 26 (2) of the Act.



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

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

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

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

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

**Sd/-**  
**(M. S. Sahoo)**  
**Member**

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

New Delhi  
Date: 17/11/2015