

**BEFORE THE**  
**COMPETITION COMMISSION OF INDIA**

**Dated:- 11.01.2012**

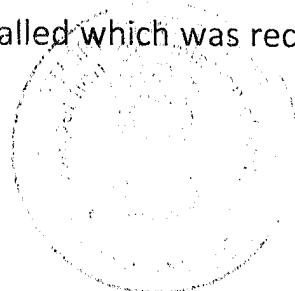
**Reference Case No. 01/2011**

**In Re: Domestic Air Lines**

**ORDER**

The present order relates to a reference dated 06.05.2011 received by the Commission from Ministry of Corporate Affairs, Government of India ("MCA") under section 19(1)(b) of the Competition Act, 2002 (the Act). In the reference it was stated that due to the strike called by the pilots of Air India with effect from the midnight of 26<sup>th</sup> April, 2011, different airlines had started charging exorbitant fares for the tickets. It was also mentioned in the said reference that in normal course also one could not buy tickets online, even though seats were available, and tickets had to be bought at higher prices near to the date of departure. The Commission was also asked to consider the possibility of passing an order under section 33 of the Act.

2. The Commission considered the above reference and decided to call a representative of Directorate General of Civil Aviation (DGCA) on 09.05.2011 in order to ascertain details about the fares during the period and also to ascertain the practice adopted by various airlines as regards booking of tickets. A preliminary report from Director General (DG) was also called which was received on 09.05.2011.



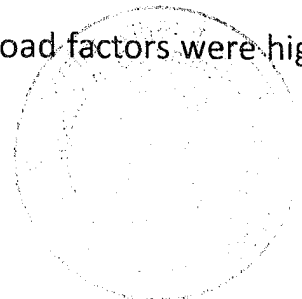
3. The Commission after considering various aspects of the case in its meeting held on 09.05.2011 arrived at a conclusion that there exists a *prima facie* case and passed an order under section 26(1) directing the DG to cause an investigation into the matter.

4. In order to consider the matter under section 33 of the Act, notices were issued on 10.05.2011 to the airlines. While the matter was considered on 13.05.2011, the authorized representatives of various airlines requested for a time of one week to file written submissions in response to the aforesaid notice. The Commission considered their request and directed them to file written submissions by 20.05.2011 and to appear before the Commission on 25.05.2011 to explain their position.

5. The Commission considered the matter on 25.05.2011 when authorized representatives from various airlines argued their case. The submissions of various airlines are summarised as under:

5.1 In its replies, M/s Spice Jet Limited submitted that its air fares were on an average about 7% higher as compared to the previous two weeks prior to strike by the pilots of Air India i.e. from 13<sup>th</sup> April to 26<sup>th</sup> April, 2011. There was a spurt in demand and load factor went up from 73% to 84% during the strike period. This, however, cannot be seen as either unusual or abnormal as the holiday season coincides with end April period and a 7% to 10% increase in fares is usually observed during the period beginning with end April through May.

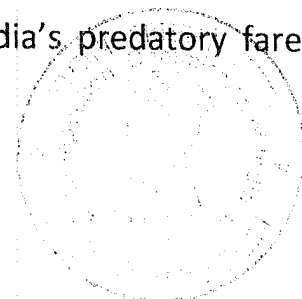
5.2 It was also stated that fares during the period between 27<sup>th</sup> April and 8<sup>th</sup> May 2011 were higher by about 9% on Year to Year basis and load factors were higher



by 140 basis points. Moreover, during this period fuel prices also had increased by around 35%-40% which contributed to higher fares. Further, fares for the period 9<sup>th</sup> May to 11<sup>th</sup> May 2011 (post strike) were only marginally lower by 2% – 3% over the period of the strike, clearly illustrating that the higher fares were a direct reflection of the higher input cost rather than attributable to any abnormal increase in fares.

5.3 The airline also submitted that SpiceJet was the first private carrier to initiate support to Air India during strike period and had committed Air India to help in carrying their passengers. The airline had agreed on a fare with Air India which was around 10% lower than the prevailing last week's fares and were in constant touch with the Air India management to minimise the impact of disruption on their passengers. During the strike period, it carried 5554 passengers of Air India on the pre-agreed rates of Air India on its flights. In fact, on several of the flights it had offered even the last available seats to Air India so that they could manage their disrupted passengers better.

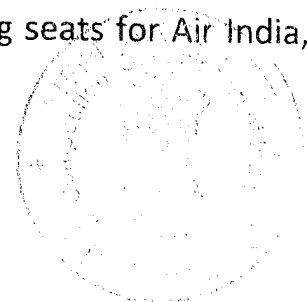
5.4 The airline also submitted that it would be very pertinent to point out that over the past few months, Air India had been pursuing a strategy of being the price leader in the market in a bid to regain lost market share and increase load factors. Fares of Air India were below those that of even Low Cost Carriers during the months of March and April and any consumer who would have booked an Air India ticket earlier and wished to cancel and rebook his journey on account of the strike would have encountered higher fares even with a Low Cost Carrier. This might have been treated by consumers as high and exorbitant fares, but they were clearly getting misled in comparison with Air India's predatory fares that



they might have availed. It is also pertinent that Air India continued with such predatory pricing approach even after the strike.

5.5 On the issue of non-availability of tickets online, the airline submitted that SpiceJet's available seat inventory is always available to the consumers for booking at any given time. The system is designed in a manner that the lowest available fare and inventory is always displayed. In terms of agreement with Air India, due to the disruption arising out of the strike, it had to make bulk-bookings and block the seats for the passengers affected on a particular flight/route. Air India, thereafter, confirmed names and details of the passengers they wished to transfer. When this was done, invariably only the last few seats were left behind and the airline reservation system automatically moved the available seats to a higher fare bucket. This would end up making SpiceJet's fare a bit higher for the regular passenger looking for a last-minute seat. However, in no case the last minute fare exceeded the highest fare for that sector submitted one month in advance to DGCA.

5.6 According to the airline, it also happened that the number of seats that were offered by SpiceJet to Air India was not completely taken up by the Air India passengers and in such a case the unutilized seats had gone empty which resulted in loss of opportunity for SpiceJet as the same seats could have been sold at lower fares otherwise. Further, by offering to carry Air India passengers, SpiceJet actually suffered due to the fact that on one hand, the seats were offered to Air India at pre-agreed rates which were much lower than the prevailing fares in the market at that point of time and on the other by booking seats for Air India, the

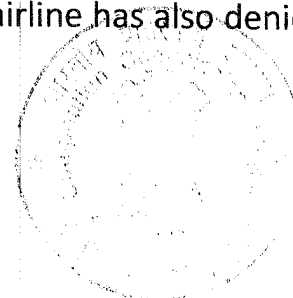


airline suffered an opportunity loss as the fares for the available seats became higher and consequently unattractive to the consumer.

5.7 In its reply Kingfisher Airlines has submitted that it does not charge any of its passengers "spot fares". The airline files all its fares with the Airline Tariff Publishing Company ("ATPCo"), which in turn distributes the same to major Global Distribution Systems, such as Sabre, Galileo and Amadeus. ATPCo distributes these fares even to Kingfisher's website/portal on which passengers are free to purchase airline tickets. It takes a minimum of 24 hours for Kingfisher to make any fare changes through ATPCo. Given the aforesaid facts, it is not possible for Kingfisher to charge higher than its published fares; even in the case of a passenger purchasing a ticket less than 2 hours before the scheduled departure time of a particular flight.

5.8 Kingfisher has also denied that the methodology for determination of fares reduces transparency to a level of information asymmetry allegedly resulting in sub-optimum exercise of consumer choice or reduction of consumer surplus. It has been denied that it charges the highest category fares even when seats are available in the lower buckets. It has also been clarified that there is no understanding between the different airlines with regard to sectors like Delhi-Dehradun or Delhi-Leh and it has been denied that the degree of variation of fare charges for different sectors is not sufficiently transparent.

5.9 Kingfisher has also submitted that they have not hiked its fares by taking advantage of the strike and that its last moment fares were hiked as compared to maximum fares published on Kingfisher's website. The airline has also denied that



the average price of air tickets or alleged spot price allegedly charged before the strike was much lower as compared to the fares charged during the strike.

5.10 The airline also contended that it would be not correct to conclude that the Civil Aviation Industry lacks transparency or is a sector conducive to collusive behavior and that non-disclosure of seat allocation for each bucket or the mechanism of making changes in bucket size has any competition concerns with respect to section 3 of the Act.

5.11 Denying that there is any opacity in bucket fares or seat allocation, the airline has stated that there is nothing to support that its conduct is anti-competitive or in violation of Section 3 of the Act and that its conduct has caused any harm to the consumers.

5.12 In its reply before the Commission, M/s Jet Airways denying any charge of anti-competitive practices submitted that the change in its fares is dynamic and the fares increase with increase in demand for seats and as the flight gets closer to the date of departure, the lower fare buckets get exhausted and may no longer be available. As such, for a passenger who makes a booking closer to the date of travel, the lower fares may not be available as lower fares may have earlier been booked by a majority or a large number of passengers. The fares that are offered to a passenger at a particular point of time for a selected flight, is governed by the availability of seats. The airline has submitted that airline seats are like a perishable commodity. Once a flight takes off, the seat has no value. Therefore, the airline does not gain anything by charging a fare which the market cannot bear.



5.13 M/s Interglobe Aviation Ltd. (IndiGo) in its reply dated 24.05.2011 submitted that it has not indulged in any kind of anti-competitive practices and has not contravened any provision of the Act. According to the airline, its conduct has been in consonance with the spirit of fair competition, and its business practices are competition law compliant. Further there is no urgency in the present matter and hence an interim order would amount to unnecessary intervention which will distort the market and result in price fixation by the Commission. The airline has brought out that that even the sectoral regulator, the DGCA does not interfere with price setting. Therefore, in the interest of air passengers the Commission should also refrain from setting tariffs.

5.14 According to the airline, there is nothing on record to even remotely suggest that the airlines, whether expressly or tacitly, agreed to an increase in the number of seats in higher buckets during the period of strike by Air India's pilots. In fact, IndiGo's pricing structure during the period remained unchanged and consciously and as a matter of public policy, IndiGo chose to sell seats without going to their higher fare buckets such that the stranded passengers were not unduly inconvenienced.

6. After hearing all the parties, the Commission arrived at a conclusion that the matter for any relief may be considered once report of investigation from DG is received.

7. As per the orders, investigation was conducted by the DG and report of investigation was submitted to Commission.

7.1 In course of investigation, DG made inquiries from the airlines operating in domestic market in India along with the intermediaries such as travel portals and



travel agents. During the course of investigation, probe letters were issued to six private airlines, Jet Airways, JetLite, Kingfisher, SpiceJet, Go Air and Indigo, operating in domestic sector in India, inter-alia, seeking information on the issue of hike in fares during 27.04.2011 to 06.05.2011 and the procedure adopted by them in allocation of seats in different buckets. Information was also obtained from Air India and DGCA with regards to the information available with them having a bearing on the case. In addition, the representatives of the two leading air travel agents, M/s Balmer Lawrie & Co. Ltd. and M/s Ashoka Travels & Tours were also examined on oath to understand the working of the pricing system and to know the highest price on which sale of tickets was made during 27.04.2011 to 06.05.2011. Notices were also issued to two major travel web portals i.e. makemytrip.com and yatra.com to examine the system of pricing and sales of tickets & linkages with the airlines.

7.2 In course of investigation, DG considered the relevant market in the matter as the service of passenger carriage by airlines operating within India.

7.3 DG observed that out of airlines in the domestic market, no airline has market share of more than 20%. Even if Jet Airways and JetLite are taken together they do not cross more than 27% for both the months – April and May 2011. According to DG, this shows that no player is dominant and is in a position to independently drive the market.

7.4 DG while considering the issues involved in the case analysed the reservation system adopted by all airline carriers through which they make allocation of inventory, make changes in fares, do the bookings and allow travel agents/ web portals to do bookings on their behalf. As per the findings of DG, Indigo airline



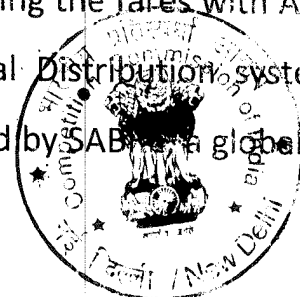


employs the Navitaire Open skies reservation (RES) which is a commonly used system by multiple Low Cost Carriers around the world. It is a web based distribution system which allows customers and travel agents to make bookings directly through the web site. Fares and allocations are entered directly into the system by each analyst and are not required to be filed with ATPCo.

7.5 According to DG, Spice Jet has an internal IT system to handle pricing changes and do not need to communicate with any system or vendor outside the airline. It has a reservation system provided by M/s Navitaire of USA. The system takes schedules, fares and inventory as inputs and distributes the same to the customers. The fare slabs are designed from the lowest to the highest and are based on number of seats sold in a particular slab which are managed based on a variety of parameters like demand, competitive fares etc. Go Air has Radix as computer Reservation System and its tickets are not available on Global Distribution System like other LCCs. The dynamic pricing model adopted by Go Air takes into account the market changes, demand patters, seasonality, weekends etc. to maximize revenue.

7.6 DG has gathered that unlike Full Service Carriers, Low Cost Airlines do not file its fares with any third party neutral platform like ATPCo or the Global distribution systems like Sabre, AMDEUS or Galileo.

7.7 As per DG, Kingfisher makes fare revisions by filing the fares with ATPCo from where the fares get distributed to various Global Distribution systems (GDS) worldwide. Kingfisher's reservation system is hosted by SABRE a global computer

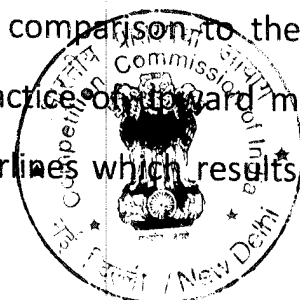


reservation system where all bookings made at Kingfishers Airlines Officers/website are ticketed. Jet Airways and Jetlite have also been using SABRE as its Computer Reservation system.

7.8 Based on replies of airlines, DG has reported that the airlines follow a dynamic pricing principle and their fare slabs are designed from the lowest to the highest. The fare slabs move up progressively towards the date of departure and/or as the flights are filled up. Every city pair has its own pricing which may or may not match other routes in the same distance category. Pricing is determined by a lot of market-related factors, distance being only one of them. Cost is not the only basis of pricing and the pricing is market and demand driven.

7.9 DG has brought out that Passenger Load Factor (PLF) of an airline, called load factor in general is a measure to know how much of an airline's passenger carrying capacity is used. The load factor of Spice jet, Go Air and Indigo prior to strike period was 73.64% 74% and 84.2% whereas the load factor during strike period was 84.33% ,84% and 90.6% respectively. This indicates that load factor had significantly increased during May 2011, especially during the period of Air India pilot's strike when the supply of seat inventory was reduced which resulted in increase in demand for seats in other Airlines.

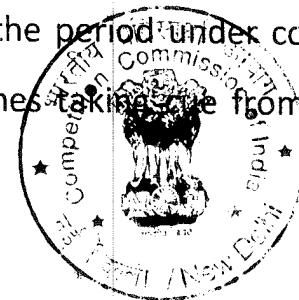
7.10 According to DG, almost every airline has shown increase in number of seats in higher buckets during the period of strike in comparison to the pre- strike period. This is indicative of the fact that the practice of upward movement of seats to higher price buckets is adopted by all airlines which results into higher



amount of payment by the passengers for the said seats. Thus, in this manner, the airlines control the number of seats and shift them upwards to command higher prices from the consumers.

7.11 DG has also submitted that all the airlines which are subject to investigation in this report are the members of Federation of Indian Airlines (FIA) which deals with the matters of common interest to the member airlines dealing with policies such as ground handling policy, applicability of various regulations, taxes and levies, operational guidelines put in place by DGCA. DG has submitted that it has been gathered that the issue of price fixation and allocation of seats to different price bands are not discussed in the FIA meetings. It has also been informed that no meeting of FIA was held during the recent past particularly during or immediately before the strike period. Therefore, the shifting of seats to higher price bands (buckets) was a decision and an act of individual Airline.

7.12 According to DG, as regards determining the prices in different buckets and allocation of inventory in these buckets, most of the airlines have stated that they take cue from the fares of their competitors. The airline market is an oligopolistic market and there is no bar on shifting inventory from one price band to other. Hence, looking at the prevailing rates for a city pair of flight as displayed by the rival airlines on their websites, an airline can shift the number of inventory from lower price band to higher price band for maximizing the revenue. This is a regular practice adopted by all the airlines. For the period under consideration, the number of inventory was moved by all airlines taking cue from each other which shows parallel behaviour on their part.



7.13 DG has brought out that Airline Industry worldwide follows and implements a dynamic fare pricing regime which entails allocation of the inventory of seats to several different fare bands (buckets). This is also followed by domestic airlines in India. The air fare in different levels (buckets) charged from the passengers were within the tariff sheets submitted by the Airlines to the DGCA in terms of Air Transport circular 2 of 2010. No limit has been prescribed by the DGCA or any other regulatory authority on the price cap or number of seats in each bucket. The airlines have stated that they allocate number of seats in a particular bucket on the basis of historical reasons, flight timings, demand load, and also taking cue from the competitors. It is established that the airlines were found to be involved in moving seat inventory to the higher price band (buckets) during the period of strike by Air India pilots, which has also been accepted by the representatives of airlines and reflected in the statistical data submitted by them. This practice was found to be in vogue throughout the year depending on the load and demand factor, thereby controlling/ limiting the supply of seats in a specific price band.

7.14 According to DG, Air India passengers were accommodated by the Airlines at the agreed price which was below the prevalent market price, which indicates that seats at lower price level were available and could have been sold at a lower price band to the other passengers. However, this was not made available to them. The load factor had increased during the strike period. Further, number of seats had been substantially increased in the higher price bands (buckets) by the airlines which establish the fact of shifting lower price buckets into higher price buckets.



7.15 DG has also submitted that no fair display of number of seats is made by the airlines and there is an asymmetry of information, making the whole system non-transparent and opaque. The airlines never display the actual number of seats available in a particular price band to the customer or the travel agents/web portals. However, in GDS system adopted by Full Service Carriers, the travel agents can see the availability of upto 9 seats even though the actual number available may be more. Thus there is no transparency on the part of airlines with respect to their inventory before the customers. They tend to close or move the lower fare tickets to higher price bands as and when they see an opportunity.

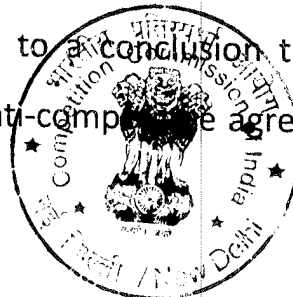
7.16 On the basis of available facts and evidences collected in course of investigation, DG has concluded that there is no express or tacit agreement, resulting in cartelization amongst the airlines. According to DG, however, it is evident that during the period of the strike by the pilots, the load factor of other airlines had increased. The airlines are following various price bands (bucket systems) and as no transparency is maintained regarding number of seats determined/available in each bucket, and the fare system is dynamic, the number of seats was moved from lower bucket to the higher buckets with respect to the period of strike on account of increase in demand. This is a regular practice adopted by all the airlines which has also been acknowledged by them. Further, by moving the seats from lower price band to higher price band, the airlines increased the airfare, charging higher amounts. This is a clear case of hike in the price where due to the excess demand and restrictive supplies (because of the grounding of Air India flights), the airlines increased their number of seats in higher price band; thereby the last moment customers had to pay higher than the normal price.



7.17 According to DG, provisions of section 3 of the Act stipulate that any practice carried on or decision taken which determines sale/purchase price directly or indirectly or limits or controls production/supplies or market shall be presumed to have an Appreciable Adverse Effect on the Competition (AAEC). Investigations have revealed that Airlines exercise control over the supply of inventory i.e. number of seats availability, for which they are charging higher rates and there is asymmetry in information also as clear cut number of seats have not been displayed due to the various reasons stated. This is anti-consumer and anti-competitive and is in contravention of section 3(3) of the Act.

7.18 According to DG, the act of airlines amount to price determination in an oligopolistic market, wherein without actual discussion or explicit agreement one competitor would change the price and others in the market would follow with unspoken mutual understanding. Though there was no explicit agreement among the players, however, action in tandem to increase the fares by shifting buckets by taking cue from others by the airlines during the period under consideration was nothing but a practice to limit and control the inventory of seats for undue maximization of profits and hence was violative of provisions of Section 3(3) of the Act.

8. The Commission observes that the issue of cartelization among airlines has come up for determination in two cases earlier – RTPE case no. 5 of 2009 and suo-motu case no. 2 of 2010 in which a detailed order has been passed. The Commission in those two cases had come to a conclusion that there was no evidence to establish any cartelization or anti-competitive agreement among the Indian domestic airlines.



8.1 The Commission notes that in the present matter also, DG has not found any agreement resulting in cartelization amongst the airlines. What has been considered as violation of provisions of section 3(3) of the Act is the 'practice' followed by all the airlines of shifting seats to a higher price buckets which amounts to control over supply of seats and results into higher fares.

8.2 The Commission observes that before discussing the issue further, it would be pertinent to have a look at the wordings of section 3(3) which are reproduced as under;

*“ (3) Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which—*

*(a) directly or indirectly determines purchase or sale prices;*

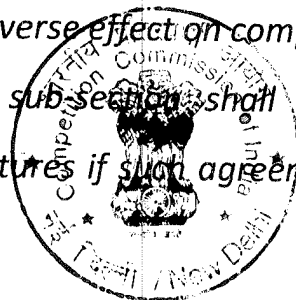
*(b) limits or controls production, supply, markets, technical development, investment or provision of services;*

*(c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;*

*(d) directly or indirectly results in bid rigging or collusive bidding,*

*shall be presumed to have an appreciable adverse effect on competition:*

*Provided that nothing contained in this sub-section shall apply to any agreement entered into by way of joint ventures if such agreement increases*



*efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services.*

*Explanation.—For the purposes of this sub-section, "bid rigging" means any agreement, between enterprises or persons referred to in sub-section (3) engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding."*

8.3 A plain reading of the provisions of section 3(3) makes it clear that actually it is 'practice' carried on by any 'association of enterprises' or 'association of persons', including 'cartels', engaged in identical or similar trade of goods or provision of services, which is required to be looked into to find out whether the said practice has resulted into any of the four acts and conduct mentioned in section 3(3) of the Act.

8.4 The Commission notes that in the present matter the impugned practice has not been found to be emanating out of any association of enterprises or association of persons. It is also not a case where there is any evidence to suggest that the impugned acts of shifting seats from lower buckets to higher buckets has emanated out of a practice carried on or insisted upon by Federation of Indian Airlines, which is the forum where the individual Indian domestic airlines normally interact.

8.5 The Commission notes that DG has stated that the airlines are following the practice of shifting the fares from lower to higher fare bucket and as a result not





only the lower buckets seats are controlled but fares are raised in times of higher demand which is anti-consumer and anti-competitive. However, in this regard the central point for consideration is whether this practice has been adopted by individual airlines with a design to harm competition in the market or a general practice followed by all the airlines keeping in view the business models being followed by them. Based on the discussion in the subsequent paras, the Commission is of the view that this, rather than being an anti-competitive practice, is a business model of pricing which is followed not only in India but internationally.

8.6 The Commission has examined the issues related to business models and system of yield management techniques and dynamic pricing regimes being followed by the airlines in detail in the two orders – RTPE No. 5 of 2009 and suo-motu case no. 2 of 2010. However, for having clarity on the entire matter, the Commission feels that it would be pertinent to discuss those issues in this order as well in brief, which are discussed in the following paragraphs.

8.7 The Commission observes that the business models followed by the airline operators in India are not uniform. There are two broad categories of airlines in India– Full Service Carriers and Low Cost Airlines. While in Jet group, Jet Airways is a Full Service Carrier, its subsidiary Jet Lite is a Low Cost Airline. Jet Airways also runs low cost flights by the name of Jet Konnect. Likewise while Kingfisher is Full Service Carrier, Kingfisher Red is its Low Cost Airline. Air India, the national carrier operates as a Full Service Carrier, although it also has a Low Cost Carrier also by the name of Air India Express. The other three airlines, Go Air, Indigo and Spice



Jet are operating as Low Cost Airlines and are also called Budget Airlines due to the lower fares offered by them.

8.8 The Commission observes that characteristics of Low Cost Airlines and Full Service Carriers are different. While Full Service Carriers offer all frill services; Low Cost Airlines are offering no-frill services and economise on cost. Low Cost Airlines employ various web-based distribution systems like Navitaire Open Skies reservation (RES) system and Radixx which allow customers as well as the travel agents to make bookings directly through the websites of these airlines. This is unlike the Full Service Carriers, who are using Global Distribution System. Full Service Carriers send the entire fare sheets electronically to ATPCo in USA, which in turn distributes the same to the major Global Distribution Systems - like Sabre, AMDEUS or Galilio as also to other third parties. In case of LCCs, fares and allocations are entered directly into the system and do not require to be filed with ATPCo. The reason for choosing the direct distribution system by Low Cost Airlines in contrast to the global distribution system of Full Service Carriers is stated to be possible savings on account of multiple additional cost components involved in the global distribution system like IATA clearing house fee, fare filing process with ATPCo etc.

8.9 The Commission observes that in such a case where Full Service Carriers and Low Cost Airlines are following different business models and are having varying cost structures, it would be difficult to reach a common understanding among all of them regarding a practice of this nature, with a view to increasing fares and reducing supplies, particularly when the airlines are competing with each other for getting additional share of passengers.



8.10 The Commission also notes from the findings of DG that the airlines are following a system of yield management and dynamic pricing in which the main principle followed is to optimize seating capacity on their flights. The principles of dynamic pricing involve a set of pricing strategies which are employed by airlines with a view to optimising profits. The dynamic pricing is meaningful in airline industry since not only the service is a perishable commodity to be consumed at a point in time, capacity is also fixed in advance. These two characteristics have bearings upon the pricing strategies of airlines because of possible variations in the opportunity cost of sale.

8.11 The Commission further notes that due to the dynamic pricing system, an airline may change its fares daily or even within a day if a need is felt for fare adjustments in accordance with prevalent conditions in the market, realising that the right fare to charge for a bucket class is what a customer would be willing to pay. The airlines know that in case they fail to determine correct fares and their tickets are underpriced, they may lose out to its competitors. However, by overpricing the fares, the airline may not get enough passengers on its flights, losing out price sensitive passengers to the competitors. Thus, under a system of dynamic pricing, airlines are striving constantly to adjust rates in response to changing conditions of supply and demand in market. Inherent in the system of dynamic pricing is a system of demand-based pricing wherein during periods of low demands, lower rates are offered and with increase in demand, fares in lower rate categories are closed and higher rates become visible.

8.12 The Commission, therefore, observes that the concept of yield management and dynamic pricing principle would mean that the fares and availability of tickets



in each aircraft in each sector may change dynamically. The fare would move from lower to higher levels as the occupancy increases and the departure date comes closer.

8.13 The Commission also notes from the submissions of airlines to DG that fares are adjusted by them continuously on the basis of demand, inventory position of flights and competitive pricing by each airline. This is due to the uncertainty in demand which fluctuates with peak periods in which there is high demand and off-peak periods during which lower fares are required to ensure that a flight or an airline at least meets a part of the fixed costs. Airlines keep prices low when demand is low in an effort to stimulate demand. Similarly, there may be a case of higher fares in case of high demand.

8.14 Taking into account the factors as discussed above, the Commission observes that in such a condition, it is natural that fares would generally be higher during peak periods as compared to lean periods in the airline industry. Since the capacity on flights in case of the airlines is limited, increase in demand during peak periods may also lead to peak period pricing.

8.15 The Commission observes that due to the aforesaid factors and a fair degree of transparency of fares among all airlines in the sector, fares of all airlines generally move together and to this extent as has been found by DG there would be a case of price parallelism. However, the Commission holds that this on its own cannot be said to be indicative of any 'practice' being carried on in terms of section 3(3) of the Act.

8.16 The Commission notes that the case of airlines is that Airlines' fare structures are unique to each, since keeping price competitive to the last rupee is



crucial to sales and revenues and a minor difference in fare value may lead to a significant loss of sale. Since the fare structure is based on demand and supply and is dynamic in nature, there is merit in contention of airlines that sooner one books, lower the fare one gets. Therefore, it is possible that the different fares may be charged within the same flight from different customers; reason being difference in the date and time of booking, the person booking earlier may get a cheaper deal compared to a passenger booking at a later date.

8.17 In backdrop of the aforesaid market characteristics, the Commission finds force in arguments of the airlines that the increase in fares during the end April and beginning of May 2011 when the pilots of Air India had proceeded on strike due to which the capacities had reduced and which otherwise also was one of the peak season for air travels, was more a result of response of airlines to the factors of general market conditions, seasonality and not due to an anti-competitive practice followed by the airlines. The cancellation of flights on account of strike of pilots caused stress on the total capacities during a period of peak season and high demand. Thus, the passengers who booked last minute tickets could only avail higher bucket fares as the lower buckets got filled up completely.

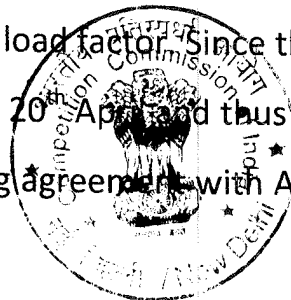
8.18 Accordingly, the Commission finds merit in contention of airlines that during the strike period, fares were not raised; only higher bucket seats available on airlines were sold. This was, however, not due to any concerted action or plan or due to collusion or concerted practice among the airlines but because of the higher demand and lesser supplies, due to both peak season for airline travel and reduced capacities.



8.19 The Commission notes that in order to find out whether there was increase in fares during the period of investigation as a result of collusion among the airlines, DG collected details of fares in case of each airline and found that there was no increase in reported bucket fares which are made available to DGCA every month. It was only a case that higher bucket fare seats were sold as against the lower bucket seats sold earlier in off –peak season.

8.20 The Commission also notes from the submissions of Go-Air before DG that it does not have any spot fares and follows traditional management techniques. During strike by Air- India pilots, they entered into an agreement with Air India under Irregular Operations (IROPS) on the same day itself and they were probably the first to accept passengers of Air India under Flight Interruption Manifest (FIM) without asking for any payment from the passengers. They provided movement to more than 2000 passengers of Air India during the period of strike. Further, fares charged by Go Air during the period from the passengers were in line with the fare sheet filed by them with DGCA. As a low cost carrier they sell about 75% of their seats in the lowest 2-3 fare levels which they maintained during the period of strike also.

8.21 Go-Air has also reported to DG that while its load factor was 76% in April 2010, in April 2011, the same was 75%. During the strike period also, the airline got only about 150-170 passengers per day for about 7-8 days which did not have a major impact on their market share or the load factor. Since the school vacation starts in April, demand starts picking up post 20<sup>th</sup> April and thus they were already experiencing high load factor. Due to having an agreement with Air India during the



strike period they lost a huge amount as they took Air India passengers at predetermined rate which was lower than the prevailing normal fare. As such, it has been contended by the airline that there was no case of any increase in fares at all, more so as they were under the obligation to carry passengers of Air India under the interline agreement at discounted and agreed fares to which they had honoured in full.

8.22 The Commission also notes that Jet Airways in its replies to DG has stated that it had not affected increase in fares during the strike period. Indian domestic market is characterized by certain peak periods when the demand soars. The summer season starting from April through the second week of June is one of the peak periods. However, even in this period there were no significant changes in fares during 27.04.2011 to 10.05.2011. It has also submitted that it does not have spot fares and its fares are established based on market forces and not merely on the operating costs. This is regardless of a particular airline's operating cost and the customer tends to gravitate towards the best competitive fare that is offered in the market.

8.23 Jet Airways has also submitted that it had entered into Special Re-protection Agreement with Air India under which about 12000 passengers were transferred to Jet Airways and Jet Lite at fare levels well below the market selling prices. The replies of Jet Lite have also been filed on similar lines.

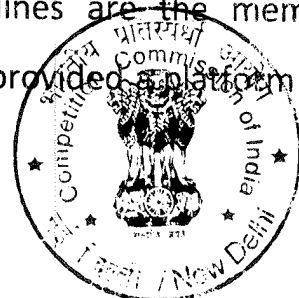
8.24 The Commission also finds that IndiGo has submitted to DG that there had been no substantial change in the routes/city pairs, of which IndiGo has been



providing services during the period of 24.04.2011 to 09.05.2011. The fares charged continued to be within the buckets, details of which were filed with DGCA and did not even touch the highest bucket during that period. That during the period indigo entered into an agreement with Air India to accommodate Air India's passengers , stranded due to Air India's pilot strike , at fares which were lower than IndiGo's prevailing fares. It has also been submitted that IndiGo does not follow the concept of "Spot Fares" and follows its pricing structure as submitted to the DGCA and available on its web site without taking undue advantage of the last minute opportunities by putting higher fares at the last moment.

8.25 The Commission also notes from the submissions of Spice Jet before DG that it is incorrect to say that it charged exorbitantly high since during the strike it was the first private carrier to initiate support to Air India and carry its passengers at pre-agreed price. Its lower fare seats were booked for Air India passengers which caused its fares to move up in higher buckets. However, in no case its fares exceeded the fares submitted to DGCA and there was no significant change in fares during the period. Further, Kingfisher has also submitted to DG that there was no increase in its fares during the strike period and they had accommodated the passengers of Air India as per pre-agreed rates. Only those passengers who cancelled their tickets on Air India and purchased fresh tickets might have to pay more.

8.26 The Commission also observes that the airlines are the members of Federation of Indian Airlines (FIA) which could have provided a platform to them





to enter into agreement to determine fares. However, the findings of DG based upon the minutes of FIA made available in course of investigation do not reveal anything which suggests cartelization among the airlines with a purpose to increase air fares.

8.27 Further, the Commission has also taken note of submissions of DGCA during interim relief proceedings that increase in airfares was due to peak traffic season coupled with reduced capacities as a result of strike by Air India pilots.

8.28 The Commission observes that like in any peak season, during April and May 2011 load factor on airlines had increased. In line with this trend, the percentage of tickets sold in the higher buckets of all the airlines had also gone up. To this extent, it may be said that there was a pattern in air fares going upwards together during the strike period and in general also during the period of high demand, fares of all airlines tend to move together. However, based on available evidence, the Commission holds that it cannot be concluded that the airlines had been carrying on any anti-competitive practice in violation of section 3(3) of the Act.

9. Based on the foregoing, the Commission finds that no case of contravention of any of the provisions of Section 3 (3) of the Act by the airlines is made out as has been alleged in the matter, and the proceedings in the case deserve to be closed forthwith.



10. Secretary is directed to convey the decision of the Commission to the parties accordingly.

Sd/-  
Member (GG)

Sd/-  
Member (G)

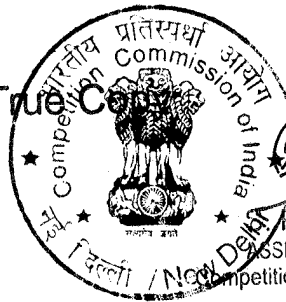
Sd/-  
Member (AG)

Sd/-  
Member (T)

Sd/-  
Member (D)

Sd/-  
Chairperson

Certified True Copy



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