

COMPETITION COMMISSION OF INDIA

Case No. RTPE 3/2008

Dated: 02.12.201

***In Re* : Federation of Indian Airlines & Others**

Order under Section 26(6) of the Competition Act, 2002

Consequent upon the repeal of the MRTP Act, 1969, the present information has been received by transfer on 04.03.2010 from the DG (I&R), Monopolies and Restrictive Trade Practice Commission under Section 66(6) of the Competition Act, 2002 (the Act).

Factual Background

2. The MRTP Commission took Suo Moto Cognizance of the matter on the basis of an Article published in the newspaper viz., Economic Times on 17.01.2008 wherein it was reported that all the Airlines under the banner of Federation of Indian Airlines (hereinafter referred to as OP-1) have decided to charge a minimum fare of Rs. 500 to improve their bottom lines and as a result of this decision passengers have to pay at least Rs. 2025 for even short distances or even if the passenger wins a free ticket. As a result of fixing of minimum fare additional cost in terms of increased fare has been imposed on the consumer and competition in the airline industry has been reduced. It was also reported that the Federation of Indian Airlines with a view to enforce such fixing of minimum fare has decided to take action against those airlines who violate the said decision.

3. The MRTP Commission ordered a preliminary investigation into the matter by the DG (I&R) on 31.01.2008. DG (I&R) requested the OP-1 to furnish the comments on the allegations made in the news item. The FIA filed its reply on 12.03.2008 denying all the allegations made in the news item and also filed documents in support of its

contentions. DG (I&R) also issued the letters to following airlines on 01.04.2008 for their comments on the allegations made against them in the news items;

- (a) Air India Limited (hereinafter referred to as OP-2),
- (b) Indian Airlines (hereinafter referred to as OP-3),
- (c) Jet Airways India Pvt. Ltd. (hereinafter referred to as OP-4),
- (d) Kingfisher Airlines Ltd (hereinafter referred to as OP-5),
- (e) Sahara Airlines Ltd. (hereinafter referred to as OP-6),
- (f) Deccan Airlines Pvt. Ltd. (hereinafter referred to as OP-7),
- (g) Spice Jet Limited (hereinafter referred to as OP-8),
- (h) Go Airlines (India) Pvt. Ltd. (hereinafter referred to as OP-9),
- (i) Inter globe Aviation Ltd. (hereinafter referred to as OP-10),
- (j) Paramount Airlines (Pvt.) Ltd. (hereinafter referred to as OP-11).

4. Replies from all the Opposite Parties (except Sahara Airlines) were received wherein they denied the allegations of fixing minimum fare. As Sahara Airlines was acquired by the Jet Airways and Indian Airlines and Air India were merged into a single entity called National Aviation Company Ltd., hence, single reply from each was received.
5. DG (I&R) also sought additional information from the opposite parties. In response to the probe letters replies from OP-1, OP-2, OP-4, OP-5 (including erstwhile OP-7), OP-11, OP-10 and OP-9 were received. OP-8 did not file its reply. DG (I&R) could not submit the preliminary investigation report in the matter till 01.09.2009 the date on which MRTPC Act, 1969 was repealed. Accordingly, the matter was transferred to this Commission under Section 66 of the Act.

Reference by Commission to DG under Section 26(1) of the Act

6. The matter was considered by the Commission in its meeting held on 16.06.2010. After forming an opinion that there exists a *prima facie case* the Director General was directed to investigate the matter and submit his report within 45 days.

7. The DG, during the course of investigation, sought information from FIA regarding its functioning, details of special committees, minutes of its meetings etc. As the airlines had already filed their replies before DG (I&R), MRTPC the DG did not find it necessary to call for any additional information from them.
8. In the meanwhile OP-1 and OP-10 filed writ petitions before the Hon'ble High Court of Delhi challenging the order dated 16.06.2010 passed by the Commission directing the DG to investigate into the matter. The above writ petitions were dismissed by the Hon'ble High Court by its order dated 06.10.2010. Thereafter FIA submitted the required information before DG.
9. After completion of investigation the DG submitted his report to the Commission on 16.11.2010.

Findings of DG Report

10. The D.G has identified following issues for the purpose of investigation:

- 10.1. Whether 8 domestic airlines under the banner of Federation of Indian Airlines had decided, formally or informally, to charge Rs.500/- as the minimum basic fare some times during December 2007 to January 2008, to improve their bottom line which resulted in a situation wherein passengers had to pay minimum fare of Rs.2025/- for even short distance, even if a passenger wins a free ticket through a promotional scheme, as reported in "The Economic Times" on 17.1.2008.
- 10.2. If answer to the above question is affirmative, whether such formal/informal understanding among airlines service providers can be said to be anti competitive having an appreciable adverse effect on competition in the Airlines industry detrimental

to the interests of the consumers by way of enforcing a minimum fare on the passengers.

10.3. Whether the airlines under the banner of FIA, during the relevant period, agreed to move unanimously and decided to take action against the erring carriers which went against the above said understanding of imposing a minimum basic fare of Rs.500/-. Whether such conduct of the FIA if any, can be treated as anti competitive in nature in violation to Section 3 of the Act?

11. After examining the relevant material the DG has found that answer to all the three issues is in ^{the} negative.

12. The DG has analysed the replies filed by the airlines and FIA and has come to the conclusion that there is no evidence or material to substantiate the allegation of fixing the minimum basic fare by the airlines in pursuance of the alleged decision taken by FIA.

13. The DG has also noted that the market structure of air transport services in terms of air fares is highly fragmented and almost all airlines have dynamic pricing model in which fares are time specific, day specific, month specific & sector specific etc. and because of this the air fares are market driven. On the basis of scrutiny of the traffic sheets furnished by airlines, the DG has come to the conclusion that airlines have been charging basic minimum fare even below Rs.500 around the period of media report and beyond that period also.

14. On the basis of factual analysis and the information submitted by FIA the DG has come to the conclusion that no violation of any provisions of the Competition Act, 2002 has been found from the material on record.

Decision

15. Looking into the background of domestic airline industry it is observed that Indian civil aviation sector has grown manifold in recent past. Several new players have entered the industry and many more are about to enter the arena. Apart from the state-owned airlines, a number of private companies have entered the market, thereby providing more choices to the passengers. The airlines are adding newer cities to their list of destinations almost covering length and breadth of the country. Increasingly more people are opting for traveling by air as it has become affordable as well as it reduces travel time compared to other means of transportation.
16. For applicability of Section 3(3) of the Act either there should be an agreement between enterprises or association of enterprises or persons or association of persons or between any person and enterprises or any 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 and provision of services which has the purpose of directly or indirectly fixing prices, limiting output or sales or sharing markets or customers.
17. In the present case there is no evidence to show that the above airlines have agreed to charge minimum fare from the consumers. In fact the scrutiny of the traffic sheets submitted by the airlines clearly shows that airlines are charging different basic minimum fare for different sectors and no uniform pattern is discernible in this respect. It is also gathered from the material on record that contrary to the allegation made in the print media, in many sectors the airlines are in fact charging minimum basic fare below Rs.500. Similarly there is nothing on record which could indicate that FIA has taken any decision with regard to charging of basic minimum fare by domestic airlines. On perusal of the minutes of FIA meetings also no such picture emerges. Examination of the minutes of FIA on the other hand indicates that the FIA was more concerned with the issues related to secure operational efficiencies, flight schedules, capacity

deployment and slot allocation etc. Therefore the essential ingredients of Section 3(3) are not satisfied in the present matter.

18. On the basis of foregoing analysis the commission comes to the conclusion that in the absence of any evidence the allegation of fixing the minimum basic fare by the airlines in pursuance of alleged decision taken by FIA has not been established and no violation of any provisions of the Act is made out.

19. In view of the above discussion and in the absence of any material to the contrary the Commission does not find any reason to disagree with the findings of the DG. Accordingly, the proceedings are hereby closed.

20. Secretary is directed to inform the parties accordingly.

Sd-
Member (G)

Sd-
Member (R)

Sd-
Member (P)

Sd-
Member (GG)

Sd-
Member (AG)

Sd-
Member (T)

Chair person