

BEFORE THE
COMPETITION COMMISSION OF INDIA

Dated: - 10-01-2012

RTPE 05/2009 of MRTPC

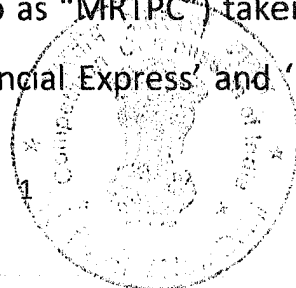
Suo-Motu Case No.02/2010

In Re: Domestic Air Lines

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

The present order relates to two different matters before the Commission in which it has been alleged that by acting in concert, Indian domestic airline operators have colluded to raise airline fares together.

2. Out of these two cases, RTPE case No. 5 of 2009 relates to an investigation before the office of Director General, Investigation and Registration - DG(I&R), Monopolies & Restrictive Trade Practices Commission (hereinafter referred to as "MRTPC") taken up on the basis of news reports published in the 'Financial Express' and 'Economic Times' on



11.02.2009 that airline operators in India had simultaneously withdrawn promotional offer fares of Rs. 1/- and Rs. 99/-, and hiked their air fares by 25 percent across the board in February 2009. The other case, suo- motu case no. 2 of 2010 relates to allegations in media that acting together the airlines had raised their fares around diwali season of 2010, cognizance of which was taken up by the Commission and an order was passed directing Director General (DG) to conduct investigation into the matter.

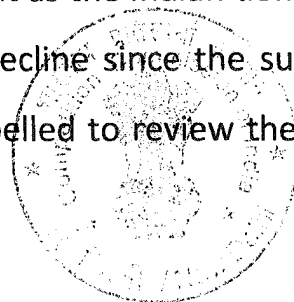
3. The allegations and findings of investigation conducted by DG in each of these cases are discussed below in the order.

3.1 RTPE Case No.5 /2009

3.1.1 RTPE case no. 5 of 2009 was received by the Commission on transfer from the office of DG (I&R), MRTPC under section 66 (6) of the Competition Act, 2002 (hereinafter referred to as the 'Act').

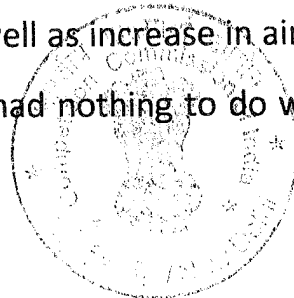
3.1.2 As per the directions of MRTPC, DG (IR) conducted a preliminary investigation into the matter. In response to the notice of DG (IR), submissions were made by various domestic airlines denying the allegations of cartelisation.

3.1.3 In its replies, Air India submitted that as the Indian domestic air travel market had gone through a significant decline since the summer of 2008 due to global financial crisis, it was compelled to review the fare structure



in January 2009 in a bid to stimulate demand and with a view to remain in competition. However, even reduction in the airfares did not result in increase in carriage and its daily passenger carriage declined by 253 per day between December 2008 and January 2009. Since the fares were increased by its competitors in the month of February 2009, it was also compelled to increase its fares to meet out competition. However, in many sectors, the revised fares charged were still lower than that of the competitors. Moreover, it also continued to offer lower fares against the tickets purchased well in advance for reaching out to the segments in the market which are known to be price sensitive.

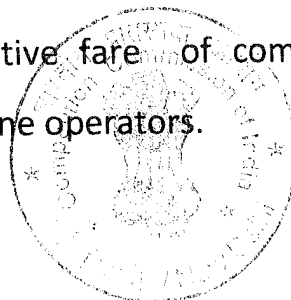
3.1.4 It was submitted by Kingfisher Airlines Ltd. that it had not increased the fares during the period of reference but only restored the fares to December 2008 levels. The Airline also submitted that it had lowered the air fares during December 2008 with a view to boost the demand. However, lower fares did not yield the expected result; rather its traffic got reduced by 14% compared to the traffic during January 2008. It further brought out that the company was incurring a loss because of economic slowdown across the globe. Therefore, fares were raised in February 2009 to generate as much revenue as possible to cover the costs. It was also brought out that it follows a dynamic pricing model by which consumers are benefited by paying lower fares in case they book tickets in advance. Kingfisher Airlines also argued that due to factors like increased cost on account of aircraft lease, maintenance as well as increase in airport charges it was compelled to raise the fares which had nothing to do with the fares



of other airline operators and furthermore it was not aware of any collective increase in air fares by all the domestic airlines.

3.1.5 Denying the charges of cartelization, Inter Globe Aviation Ltd (IndiGo), replied that it has never acted in a collusive manner, although the fares offered by the competitors are definitely a determining factor in determining its fares. It also submitted that its fares are dependent upon dynamic pricing principle wherein fares are cheaper for bookings in advance and gradually increase as the booking date gets closer to the departure date. With regards to withdrawal of promotional offers it submitted that such fares are introduced in the lean seasons in order to boost the market demand and remain for a limited period since they are designed to be for a short term either for a fixed duration or for a limited inventory of seats or both and end when the duration is over or the inventories are exhausted.

3.1.6 In its reply, Paramount Airways (Pvt.) Ltd. submitted that there was no reference to their airline in the news item which caused the initiation of proceedings in the entire matter and as such there was no reason to furnish any reply. Go-Air in its reply denied that it had entered into agreement with any airlines to sell tickets at a higher price. It also submitted that it has adopted web based reservations and fare system which work on dynamic pricing model based on various market forces such as product strength, seasonality, demand, load and comparative fare of competitors. No response was received from the other airline operators.



3.1.7 Meanwhile, provisions of the Competition Act,2002 were notified and pursuant to that the case was transferred to the Commission under the provisions of section 66 (6) of the Act.

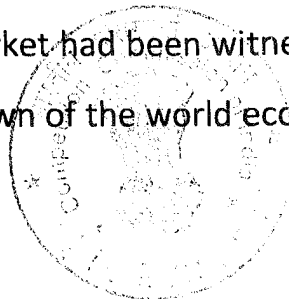
3.1.8 The Commission, on receipt of the case from MRTPC, considered the matter in its meeting held on 10.06.2010 and after forming a *prima facie* opinion referred the matter to the Director General (DG) for investigation into the matter under the provisions of section 26 (1) of the Act.

3.2 DG's Investigation and Findings

3.2.1 In compliance to the directions of the Commission, DG conducted investigation into the matter and submitted his investigation report on 23.12.2010 in accordance with the provisions of section 26 (3) of the Act.

3.2.2 In course of investigation proceedings before the DG, all the airlines denied the allegations and re-iterated their position on the lines submitted before DG(I&R), MRTPC stating that there was no anti-competitive agreement among the airlines pursuant to which they withdrew promotional fares and raised fares in the month of February 2009.

3.2.3 Based upon investigation carried out by him, it has been brought out by DG that the domestic air travel market had been witnessing a significant decline since mid 2008 due to slowdown of the world economy. In order to

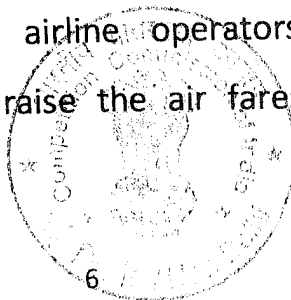


stimulate demand, the airline operators had lowered the airfares in the month of January 2009. However, the same did not stimulate demand. Therefore, they restored their previous price levels.

3.2.4 On the basis of available material, DG has concluded that although there was increase in fares during February 2009, the increase during the period under investigation was not uniform across all the airlines, all the sectors and all class of tickets. Further, no evidence was also found during the course of investigation with regard to withdrawal of promotional fares by all the airlines simultaneously across all the sectors.

3.2.5 DG has brought out that in airline industry there is a high degree of transparency over prices and volumes and airlines fares are instantaneously available over computer reservation systems. The fares are kept by each airline at a competitive level and also tend to move together. However, price parity alone may not be sufficient to show that the airlines have acted in a collusive manner and acted as a cartel. The price increase was not affected in tandem by all airline operators and no evidence could be found during the course of investigation that the increase in the fares was a result of premeditated/concerted action of the airline operators.

3.2.6 According to DG, no evidence has been found to establish and conclude that the domestic airline operators had reached some understanding/ agreement to raise the air fares during the reference



period. Hence, according to DG, no case of cartelization or anti-competitive agreement under section 3(3) of the Act is made out in this matter.

3.3 The Commission considered the investigation report submitted by DG in its meetings and decided to send a copy of the report to all the airline operators for filing their objections /replies, if any.

3.4 Replies of the Airline Operators

3.4.1 Kingfisher Airlines Ltd. in its reply dated 29.03.2011 requested to close the matter stating that it is in agreement with the findings of DG. Go Airlines (India) Ltd. in its reply to the Commission on 21.04.2011 also stated that it has nothing more to add to the findings of DG and submitted that no further action is needed in the matter. Spice Jet Ltd. submitted its reply to the Commission on 21.04.2011 wherein it reiterated the submissions made by it before DG. Spice Jet Ltd. also requested to close the matter bringing out that despite more than 100% increase in input cost over last five years, the airline fares have remained more or less static, which shows that the consumers have in fact been benefited over the years.

3.4.2 Jet Airways submitted its reply to the Commission on 25.04.2011 wherein it agreed with the findings of DG that there is no concerted action or cartelization among the airline operators to fix the air fares and agreed with the findings of DG that there is no violation of the provisions of Section 3 (3) of the Act by the airline operators.

3.4.3 Inter Globe Aviation Ltd. (IndiGo) in its reply to the Commission dated 28.03.2011 submitted that it did not raise the prices during the period of investigation. The airline has also stated that it agrees with the findings of DG that price parity alone may not be sufficient to say that the airline operators have acted in a collusive manner. The basic tenets of pricing actions of all airlines are 'Price-Parallelism' or 'Price Parity' and IndiGo also matches competitive fares where it feels that demand will not outstrip the supply. However, these actions only cannot be construed as collusion since price-parallelism in itself is not an evidence to establish cartelization and the increase in air fares by the airline operators was not in tandem and was not a result of concerted action. According to the airline, in absence of any evidence, only newspaper reports cannot form the basis for establishing cartelization and anti-competitive agreements.

4. Suo-Motu case no. 2 of 2010

4.1 In the suo-motu case no. 2 of 2010, the Commission took cognizance of the media reports that during October-December, more specifically, around the diwali season of 2010, taking advantage of the increased demand, the domestic airline carriers, by acting in concert charged exorbitant fares from the passengers. It was also alleged that while the demand had gone up, a good number of aircrafts were alleged to have been grounded in pursuance of a tacit collusion among the airlines.

4.2 The Commission also took note of the fact that as per the Air Transport Circular 2 of 2010 dated 19.11.2011 circulated to all scheduled airlines by DGCA, every air transport undertaking is required to publish tariff

established by it on its website or two daily newspapers, and display such tariff in a conspicuous part of its office and in the office of its agent. However, various airlines were charging excessive fares on the pretext of taxes/surcharge like IN Tax, JN Tax, Fuel Surcharge, XT charge and Base fare. Even the ticketing agents were not informed by the carriers about the breakup of these taxes, surcharges and justification for the same, making the entire fare structure non-transparent.

4.4 The Commission considered the matter in its meeting held on 23.12.2010 and after taking into consideration all the material available on record, formed an opinion that there exists a *prima facie* case and accordingly directed the DG to cause an investigation into the matter.

5. Report of DG

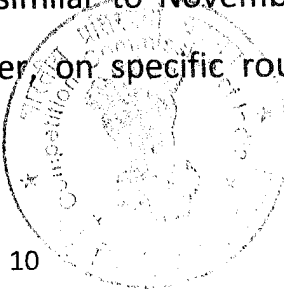
5.1 After conducting investigation, DG submitted his investigation report to the Commission in which he determined the relevant market in the matter as the service of passenger carriage provided by airline operators in India. After analysing the market structure, it has also been found by DG that no single airline enjoys a position of dominance in this relevant market.

5.2 DG examined the business models of different airlines and found that all airlines are following dynamic pricing principle where fares move according to factors like capacity, market demand, seasonality and time of flight. The fares in various sectors respond to demand and vary from season to season and may also vary during a single day. Fare levels or class of seats/tickets are referred as inventory buckets in airline industry. The airlines allocate different fares to different buckets. After analysing the fare

dynamics of airlines, DG has submitted that airlines fix various fare buckets ranging from very low if tickets are purchased in advance or high if they are purchased at the last minute and when the load is higher. The fares are visible on the websites of airlines showing break ups of all its components and taxes and vary depending upon the date and time of booking. Thus, while a passenger booking tickets early may get a cheaper fare, it may not be the same in case of another passenger who is booking tickets closer to the date of departure.

5.3 As regards increase in fares during this period, it was found by DG that during the reference period there had not been much alteration in the bucket fares of different airlines. Although there was a minor increase in some of the buckets in case of some airlines, there were reductions as well. For instance, DG has found that while in case of Jet Airways and Jet Lite, there was a minor increase in certain bucket class in certain sectors, in some other sectors fares also got reduced between during October-December 2010. Further, in some bucket class, fares did not increase just before diwali, but after diwali around 3rd Week of November 2011.

5.4 DG also found that in case of Spice Jet, highest fares charged on some dates in the month of September 2010 were about the same as around diwali i.e. the last week of October and first week of November 2010. DG has also noted that the average fare in case of Spice Jet for the month of November 2010 was more or less similar to November 2009 and in line with previous few months. However, on specific routes, on peak dates



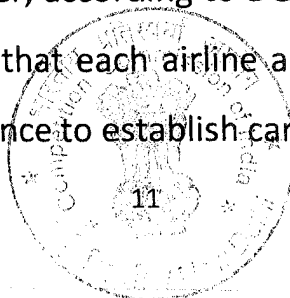
around the festival, since fares were driven by supply and demand, only the high fare inventory was available.

5.5 In case of IndiGo, DG found that there was no substantial change in the fares between October and November 2010, though last day fares in general in the month of November tended to be higher than those of October due to higher demand.

5.6 As regards Kingfisher Airlines also, DG noted that between September and November 2010, while in some sectors there was a minor increase during Diwali as compared to previous declared fares, there had also been reduction in other sectors. DG also found that the fares of Air India had undergone revision in November 2010 by Rs. 100 or Rs.200, although there was revision of about 10% earlier also in the month of June 2010. In case of Go-Air, as per data made available on sectors, DG found that there had not been any change in the fares within its different bucket categories during the period under reference.

5.7 Inquiries were also made by DG from DGCA on the issue, which attributed increase in airfares in the months of Oct.-Dec.2010 to peak traffic season coupled with gradual increase in ATF effective Sept. 2010.

5.8 DG, in his report of investigation, has observed that generally fares of all scheduled domestic airlines go up as the flight gets closer to the departure date. To this extent, it may be said that there is a certain degree of price parallelism. However, according to DG, this appears to be more in view of competitive pricing that each airline adopts which in itself cannot be said to a conclusive evidence to establish cartelisation.



5.9 Based upon evidences gathered in course of proceedings, DG has concluded that there is no evidence to establish any concerted action on part of the airlines to determine and fix prices during October-December 2010 or around the diwali season of 2010. Minutes of meetings of the Federation of Indian Airlines (FIA) were also called for by DG to find out whether issue of fixing prices was discussed among the airlines. However, according to DG, the minutes of meetings of FIA made available did not reveal anything which would suggest collusion or cartelization with a purpose to increase air fares.

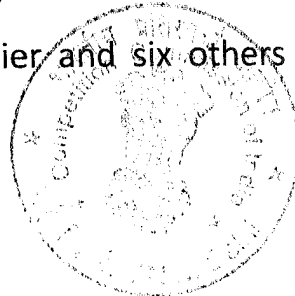
5.10 In the context of alleged collusion, DG also investigated whether various airlines had reduced supplies during the period to create a situation of scarcity so that fares could be raised in the times of high demand. However, no evidence to support this could be found to suggest any concerted action on the part of airlines. It was found by DG that in case of Spice Jet there were certain sectors on which operations were discontinued due to technical reasons. Go Air denied that there had been any reduction in flights during June-November 2010. Jet Airways gave list of reduction in flights on certain dates during March-April 2010 and October 2010 due to commercial reasons and transfer to subsidiary company -Jet Lite. Kingfisher in its replies submitted that due to technical problem there was situation of aircrafts on ground. In case of Indigo it was found there had been no reduction rather there had been significant increase in flights on a majority of routes. Based upon available evidences, DG therefore, concluded that there was no concerted action on part of all the airlines to reduce the supplies in terms of reduction in number of flights.

5.11 Taking into account all the facts gathered in course of investigation and after assessing all the evidences on record, DG has concluded in his report that no material evidence has been found to establish that the air fares had gone up during the period under investigation due to any express or tacit collusion and/or as a result of cartelization among the airlines.

6. The Commission has carefully considered the reports of investigation submitted by Director General in the aforesaid two cases and also the replies of various parties submitted in RTPE case no. 5 of 2009 before the Commission.

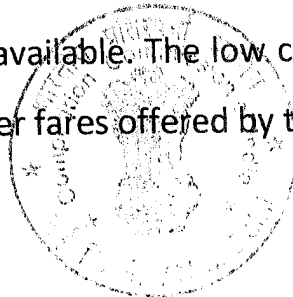
6.1 The Commission notes that in both these cases, the issues involved are identical; that the airlines had entered into anti-competitive agreements and colluded to raise fares, only the period of investigation in each case is different. While in RTPE No. 5 of 2009, the investigation relates to the month of February 2009, in suo-motu case no. 2 of 2010, the period of investigation pertains to October-December 2010, particularly, the diwali season of 2010.

6.2 The Commission notes that during the two periods of investigation which are the subject matter of this order, there were seven airlines operating in the Indian passenger airlines market, of which Air India happened to be a state run carrier and six others were either privately owned or public listed companies.



6.3 The Commission agrees with the determination of relevant market by DG as market of 'service of passenger carriage provided by airline operators in India'. The Commission observes that as per market share of each airline calculated by Directorate General of Civil Aviation (DGCA) taking into account the number of passengers flown by them and also as per the submissions of various airlines before DG, none of the players may be said to be enjoying a position of dominance in the relevant market. The market share also keeps on fluctuating every month depending upon the number of passengers flown by each airline.

6.4 As regards the allegation of collusion among the airlines, based upon the findings of DG, the Commission observes that the business model of all the airline operators in India is not the same. The domestic airlines operating in India can be categorized into two broad categories – 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, although in case of Go-Air, unlike other low cost airlines, one or two rows of business class fares is also available. The low cost airlines are also called budget airlines due to the lower fares offered by them.



6.5 The Commission observes that characteristics of Low Cost Airlines and Full Service Carriers are different. While Full Service Carriers offer all frill services like lunch, snacks and dinner on flight; low cost airlines are offering no-frills 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.

6.6 Full Service Carriers send the entire fare sheets electronically to the Airline Tariff Publishing Company (ATPCo) in USA, which in turn distributes the same to the major Global Distribution Systems - like Sabre, AMDEUS or Galileo 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.

6.7 The Commission notes that 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 additional cost involved in the global distribution system like IATA clearing house fee, fare filing process with ATPCo etc. The Full Service Airlines also incur additional costs for managing the entire process by hiring more number of staff to manage this activity.

6.8 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 structure, there would be little incentive to reach a

common understanding and agreement among all of them with a view to increasing fares and reducing supplies, more so when the airlines are competing with each other for getting additional share of passengers.

6.9 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 main rationale for employing system of yield management involving adjustments for seasonality in demand through a system of peak and off-peak pricing and therefore maximizing revenue is to manage the uncertainty that is borne out of varying and fluctuating demands in the airline industry.

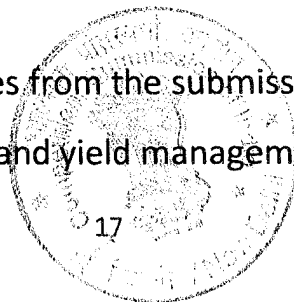
6.10 The Commission observes that the dynamic pricing mechanism is adopted in this industry since the service offered by the airline is to be consumed at a given point of time and because capacity is fixed in advance. These two factors have bearings upon the pricing strategies of airlines because of possible variations in the opportunity cost of sale.

6.11 The Commission further notes that dynamic pricing basically takes into account the fact that an airline may have inter-day or intra-day fare changes, if based upon market assessment a need for adjustments in fares is felt. The inherent logic behind the adjustments through dynamic pricing is the underlying principle that the right fare to charge for a bucket class is what a passenger would be willing to pay. For an airline, if it fails to determine correct fares and its tickets are underpriced, it may lose out to its competitors on revenue, which it could have otherwise earned.

However, by overpricing the fares, the airline may also face a situation wherein it does not get enough passengers on its flights, losing out price sensitive passengers to the competitors and consequently may also be left out of the market, without earning any revenue. Thus, under a system of dynamic pricing, airlines are required to constantly adjust rates in response to changing supply and demand conditions. In a way, dynamic pricing supported by real time access of information and integrated network is also demand induced 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. It is also possible that the adjustment of fares may not go only upward, it can go either way.

6.12 Based upon the finding of DG in both the cases under consideration, 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. In view of the same, cheaper tickets would be available when the flights are expected to fly half-filled or in a situation when the departure date is still far later from the date when the tickets are booked and there are many seats on a flight which have still not been booked .

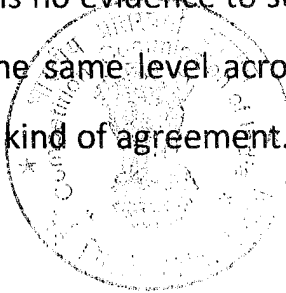
6.13 The Commission also notes from the submissions of airlines to DG that the system of dynamic pricing and yield management ensures that fares are



adjusted continuously on the basis of demand, inventory position of flights and competitive pricing by each airline. In such a condition when there are capacity constraints on flights, 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 seasons may also lead to peak period pricing. In case of non-peak seasons, lower fares will be charged to ensure that a flight or an airline at least meets a part of the fixed costs.

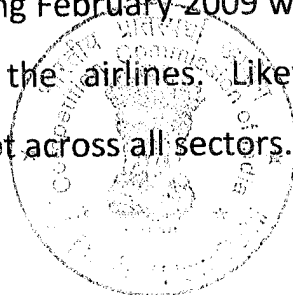
6.14 The Commission also notes on the basis of the findings of DG that airlines in India witness lean season in certain months and peak season in certain other months. The festive seasons of October, November and December tend to be the peak demand months for airline industry. During the period of increased demand and higher load factors, air fares tend to increase owing to the supply constraints. On the other hand, fares fall during the lean months to attract more passengers.

6.15 The Commission observes that due to the aforesaid market dynamics and a fair degree of transparency in fares among all the 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 cartelization, more so when there is no evidence to suggest that fares of all domestic airlines were kept at the same level across all the sectors and across all bucket class under some kind of agreement.



6.16 The Commission notes that airlines have submitted to the DG that each airline's fare structures is unique, since keeping price competitive to the last rupee is crucial to revenues and a minor difference in fare value may cause significant loss of sale. Since the fare structure is based on demand and supply and is dynamic in nature, the Commission finds 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.

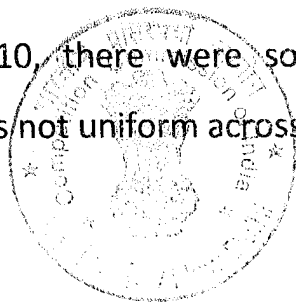
6.17 In backdrop of the aforesaid market characteristics, the Commission finds force in arguments of the airlines that the withdrawal of promotional fares and hike in airfares during February 2009 was more a result of response of airlines to the factors of general market conditions, seasonality and not due to anti-competitive agreement among the airlines. The year of 2008 had witnessed economic recession throughout the world causing downturn in aviation industry also. Therefore, in month of January 2009, in order to stimulate demand, the airlines lowered fares by introducing promotional fares. However, since there was no positive outcome of such a move, the airlines restored the fares at December 2008 levels. Since the airlines were responding to market conditions and demand on various sectors, increase in fares during February 2009 was also not effected across all sectors and across all the airlines. Likewise, the withdrawal of promotional fares was also not across all sectors.



6.18 Accordingly, the Commission also finds merit in contention of airlines that as against 2009, the year of 2010 had generated more demand as compared to previous year and this had a positive impact on overall airline bookings. The increase in demand caused bookings in the higher fare buckets during peak season like diwali of 2010 or during October-December 2010 for the passengers who had booked tickets close to the date of departure, giving an impression that passengers were being charged excessively.

6.19 The Commission notes that in order to find out whether there was increase in fares during the two periods of investigation as a result of collusion among the airlines, DG has collected details of fares in case of each airline and found that increase in fares during February 2009 was not uniform across all sectors. Similarly, withdrawal of promotions fares was also not found to be uniform across all sectors. During the period of October-November 2010, DG found that there was no significant increase in the reported bucket fares in case of airlines except that due to higher demand, higher priced buckets which were available during that period were sold.

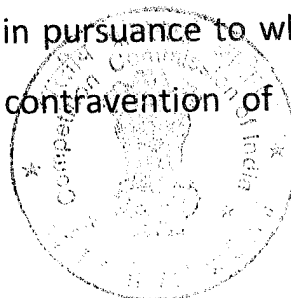
6.20 The Commission further notes that DG in course of his investigation has also found that while there was increase in some of the bucket fares during October-December 2010, there were some reductions as well. Further, increase in fares in was not uniform across all airlines and across all sectors.



6.21 The Commission observes that the aforesaid findings of DG do not establish that there was any concerted action on part of the airlines to raise prices during February 2009 and during October –December 2010 or the diwali season of 2010.

6.22 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 prices. 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.

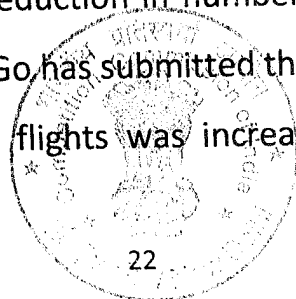
6.23 The Commission has also taken note of the expert report submitted by IndiGo as reported by DG in his investigation report, in which it has been observed that the airline industry has the characteristics of a competitive industry and there is an active price competition in terms of the levels of pricing offered by the airline operators with each of them frequently corresponding to each other's prices. All the airlines have a strong presence on all the major routes across India and relatively recent entrants like IndiGo have been able to establish a strong market presence. The Commission holds that in the absence of any evidence to establish that there was some agreement or understanding among the airlines for the two periods under consideration in pursuance to which fares were raised, the airlines cannot be held in contravention of the provisions of the Competition Act.



6.24 The Commission while holding so has also taken cognizance of replies of DGCA before DG that increase in airfares in the months of Oct-Dec 2010 was due to peak traffic season coupled with gradual increase in ATF effective from Sept. 2010, which supports the arguments of airlines that the rise in fares was more a function of demand and supply and not an outcome of any anti-competitive agreement.

6.25 The Commission notes from the findings of DG that like in any peak season, during diwali of 2010, load factor on airlines had increased and in some cases it was about 100%. Keeping with this trend, the percentage of tickets sold in the higher buckets of airlines had also gone up. To this extent, it may be said that there is a pattern in air fares going upwards together in a sense that during the period of high demand, fares of all airlines tend to move together. However, in absence of evidence of any organised, express or tacit collusion among the airlines, the Commission feels that it cannot be concluded that the airlines have entered into any anti-competitive agreement in violation of section 3(3) of the Act.

6.26 The Commission also observes that in course of investigation, DG has not come across any evidence which would suggest that there was any concerted action on part of airlines to reduce the capacities with a view to raise the fares in face of high demand during February 2009 and October-November 2010. Before DG, Airlines like GoAir, IndiGo and SpiceJet have denied that there was any reduction in number of flights during October-December 2010. In fact, IndiGo has submitted that on many sectors to cater to the demand, number of flights was increased. There is no evidence



which brings out any concerted action on part of airlines to reduce capacities in February 2009 either.

6.27 Based upon the foregoing, the Commission finds that no case of contravention of any of the provisions of Section 3(3) of the Act is made out against the airlines as has been alleged in these two cases.

7. Accordingly, the Commission concludes that since there are no evidences on record to suggest that the airline operators raised the air fares and/or withdrew their promotional fares across all sectors because of some agreement among them during the periods under investigation, the proceedings in these two cases deserve to be closed forthwith.

8. 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



S. P. Gahlaut
S. P. GAHLAUT
ASSISTANT DIRECTOR
Competition Commission of India
New Delhi