

BEFORE THE
COMPETITION COMMISSION OF INDIA
CASE NO. 03/2009
DATE OF DECISION: 04.10.2011

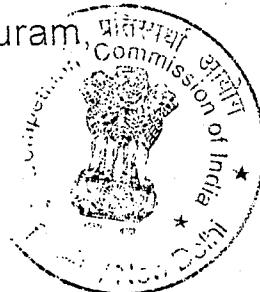
IN THE MATTER OF --

Uniglobe Mod Travels Pvt. Ltd.
7C, DDA Shopping Centre,
5th Floor, New Friends Colony,
New Delhi - 110065

..... Informant

1. Travel Agents Federation of India,
509, 'The Avenue'
International Airport Road,
Opp. Hotel Leela, Andheri East,
Mumbai - 400059
2. Travel Agents Association of India,
2-D, Lawrence and Mayo House,
276, Dr. D.N.Road, Fort,
Mumbai - 400001
3. IATA Agents Association of India,
Central Secretariat,
39/6800, C-3, 5th Floor,
Vallamattam Estate, Ravipuram,
Cochin - 682015

..... Opp. Parties



As per R. Prasad, Member & M.L. Tayal, Member
(Dissenting)

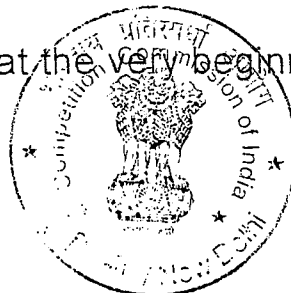
ORDER UNDER SECTION 27 OF THE
COMPETITION ACT, 2002

The informant, Uniglobe Mod Travels Pvt. Ltd. has filed the instant information against the opposite party No.1 on 21.07.2009 under section 19(1) (a) read with section 3(1) and 3(3) of the Competition Act, 2002 through its counsel Ferida Satarawala. The matrix of facts, issues arising therefrom and decisions thereon are dealt with in detail in this order.

1. BACKGROUND

Overview of the international air travel sector in India

1.1 Since this case relates to issues that emerge from the dynamics of international air travel industry and related travel agency services in India, it is pertinent to briefly outline the scenario existing in this sector at the very beginning.



1.2 With the Indian economy posting a healthy rate of growth over the past decade, the passenger volumes and numbers of scheduled flights of both domestic and international air travel sectors have shown substantial increase. Detailed statistics relating to this is available on the website of the Director General of Civil Aviation (DGCA). As per the latest figures of 2008-09, the total numbers of passengers travelling to India was 14,116,845 while the total numbers travelling from India was 14,817,058 adding up to an impressive grand total of 28,933,903 passengers travelling in the international sector. As compared to a total of 17,266,915 in 2004-05, the latest figure of 28,933,903 represents a whopping 68 % increase over 5 years.

1.3 According to a recent study conducted by the Nielsen Company, "Decipher The Indian Outbound Travel Industry: India Outbound Travel Monitor 2010" the Indian outbound travel industry is poised for extraordinary growth after the slowdown. 50 million Indians will travel abroad by 2020 as per estimates of United Nations World Tourism Organization (UNWTO). Thus, travel agency services will see a considerable growth in the coming years and will hold a pivotal position.



1.4 India is seen as a growing market for international airline traffic. International airlines are cutting flights to several destinations in the wake of a worldwide slump in business, but they are doing just the opposite in India because they believe the country's international air traffic will only grow in the coming years.

1.5 Large carriers already operating in India such as British Airways, Singapore Airlines, Virgin Atlantic, Emirates etc. are either increasing the number of flights to Indian cities they already fly to, or beginning to fly to new cities, while smaller players such RAK Airways and Garuda Indonesia are starting to fly into the country.

1.6 This surge is also because international airlines are trying to gain a foothold in the India-bound market before domestic private carriers grow into a threat. Other reasons include a nearly liberalized bilateral government policy with other countries and sustained economic growth amidst worldwide recession.

Conflict of interests

1.7 The global aviation industry is also waging a battle against rising aviation fuel costs. This has led them to formulating new strategies to cut costs. One such move was to gradually shift from "commission based" payment to travel agencies to "productivity

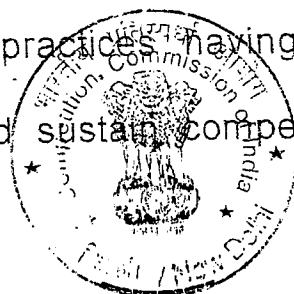


linked bonus” model where travel agencies are expected to charge service fees or transaction fees. Naturally, this decision created certain repercussions in the travel agency business in India and the instant case is a consequence of such repercussions where one of the trade associations of travel agents in India reacted to the change in business model by an international airline. The later sections of this order shall go into the details of the case.

1.8 The impact of any friction between the airlines industry and travel agencies would be felt by the large and growing numbers of consumers of those services in India. In the chain of travel related service, the travel agencies form the first and direct link with the consumers and hence have a special significance. Therefore, there is need to closely examine their conduct to ensure the common man and consumer is not adversely affected. In this, the Commission is guided by the spirit of the Competition Act, 2002.

Concerns about competition

1.9 This spirit of the Competition Act, 2002 is enshrined in its preamble that states that it is “An Act to provide, keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to



protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto.”

1.10 As the facts discussed ahead would reveal, almost 90 percent of airline tickets booking in India is done through travel agencies. In fact, a look at the international figures indicates that world over, the dependence of consumers on travel agencies for air ticketing services is very high and almost everywhere the percentage of air tickets booked through travel agents (whether online or offline) is between 80 to 90 %.

Impact on consumers in India

1.11 In context of India this overwhelming dependence of consumers on travel agencies has special weight because a considerable proportion of air travellers reside in towns and villages that do not have airline offices. The vast numbers of Indian workers and small traders from places like Kerala, Gujarat and Punjab who frequently fly to and from sectors like the Middle East, South East Asia, the UK, Canada and America for employment hail from small towns or even villages that have no presence of international or even domestic airlines. The same holds true for the huge numbers



of Haj pilgrims from India every year. According to the estimates given by the Haj Committee of India, over 170,000 pilgrims have travelled to Saudi Arabia in 2010. A big section of these would come from non-metropolitan areas with no option for booking directly with airlines. All these men and women have to perforce depend on the services of travel agencies.

1.12 Online booking through internet is slowly developing as an alternative to travel agencies but again, for India in general and small towns in particular the penetration of internet is still far from world standards. The latest figures given by International Telecommunications Union show that internet penetration and usage is only 6.9 % as of 2010. The figure is far lower for non-metropolitan areas. In contrast, the penetration of landlines / mobile phones is much higher at 58.17% in 2010. Coupled to this fact is the relatively low level of education of a substantial number of men or women who fly out to places like Africa and the Middle East for unskilled jobs. According to estimates of Ministry of Labour, over 1.5 million unskilled workers go to Middle East alone every year. Most of them are not conversant with internet usage and complexity of booking tickets online and paying for tickets



online. This makes telebooking through travel agents a better, and often the only option for people in small towns and villages.

1.13 In light of the above position, this Commission is acutely conscious of the possibility of harm that anti-competitive behaviour by travel agencies may cause to their consumers, particularly in non-metropolitan areas of India who have practically no alternatives in terms of air ticketing services. Therefore, this case is of special significance.

Trade associations and competition law

1.14 Since the case involves some actions taken by a trade association of travel agents in India, it is also pertinent to briefly talk about the nature and role of trade associations and how they interface with competition laws.

1.15 Trade associations are organizations (formal or informal) that create a means for businesses involved in a specific industry to join together for furthering their common interests. Funded by the member companies, a trade association focuses on such activities and functions which may not be pursued efficiently by single firms on their own but are better suited for a collaborative effort.



1.16 The functions of a trade association typically include the following:

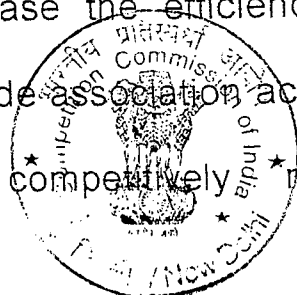
- Providing a platform for member firms to meet on a regular basis, identify and discuss industry specific issues and concerns
- Providing a unified voice to lobby on matters of legislation that are having or are anticipated to have an impact on the industry
- Working as a channel of communication to the government/government institutions on public policy pertaining to the industry
- Carrying out research projects or studies which aim to promote and represent the interest of the industry
- Promulgating standards, codes of practice
- Developing linkages with international counterparts on bilateral/multilateral trade negotiations
- Collecting and disseminating information on market and industry developments among member firms
- Preparing and publishing papers, periodicals or reports and organising conferences, seminars and exhibitions with a view



to extend knowledge and information or seeking reorientation of Government policy in relation to the industry

1.17 While in many industry sectors a single trade association is operative, existence of multiple trade associations are also found in some instances. Formal trade associations are registered societies which are governed by their Memorandum of Association and the Rules and Regulations framed there under. Benefits to member firms provided by trade associations may include representation of the firm at the highest levels of policymaking, networking opportunity with other market players, accreditation etc. Associations represent manufacturers, importers, wholesalers, retailers, service providers, as well as myriads of professions or trades. Associations can be national in scope, or represent either state or local interests. The common denominator is to provide members with the ability to conduct joint activities efficiently.

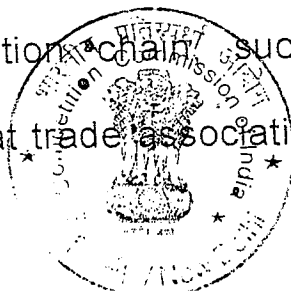
1.18 Trade associations perform many valuable functions which can significantly increase the efficiency and performance of a sector. Many of the trade association activities may be regarded as pro-competitive or competitively neutral. However, trade



associations remain vulnerable to stepping beyond the limits placed by competition law because, by definition, they involve meetings, discussions and cooperation amongst various – often virtually all – competitors in a particular line of business. Such collaboration between otherwise competing firms raises the possibility that cooperation may overflow into coordination, thus lessening competition.

1.19 According to OECD, *“trade associations offer opportunities for repeated contacts between direct competitors; they may also serve as a vehicle for activities that restrict competition. A fair number of the cartel cases brought by competition agencies around the world directly or indirectly involve a trade association. A trade association may itself organise, orchestrate and enforce naked antitrust violations, or may simply facilitate them.”*

1.20 Trade association activities can present competition problems from vertical (i.e. distributional) and horizontal (i.e. competitive) perspectives. When trade associations represent more than one segment in the distribution chain, such as wholesalers and retailers, it is possible that trade association activities will result in



potentially unlawful vertical as well as horizontal restraints. Historically, however, trade association activities that have led to violation of competition law, have mostly been horizontal in nature.

1.21 According to a research paper by Global Association Services, the following areas of trade associations' activities are sensitive to breaches of European Union's competition law:

- a. **"Information exchange**, i.e. gathering of statistical information, market research, the exchange of opinion or experience, assessment of the overall economic situation in the industry and benchmarking, leads to an increased transparency in the market and has a competition enhancing effect (improved products, lower prices, etc.). Trade associations should ensure that the level of transparency does not allow for the identification of normally confidential competition-sensitive information related to individual member companies and transactions.
- b. When sharing and comparing best practices of members, trade association must ensure that the general **exchange of experiences** does not result in coordinated market conduct by the members (e.g. identical pricing).



c. If members of a trade association reach an agreement which breaches competition law **during a meeting of the association** (even through spontaneous remarks), the association can be fined for merely providing the "forum" for the infringement (i.e. deals achieved for price fixing, output fixing, terms and conditions of credit and sales, market sharing, group boycotts, resale price maintenance, etc.). Trade associations must therefore ensure that any spontaneous remarks and suggestions that could lead to proposals for specific joint market conduct are avoided at any occasion and distance themselves from them when they occur.

d. **Recommendations** from the association may also lead to uniform conduct on the market by its members (even if labeled as non-binding), creating a risk of an infringement of competition law. The association must assess its recommendation's compatibility with competition law prior to issuing any.

e. Discriminative **membership rules**, which restrict access to the association or prohibit member companies' association in alternative organizations, or restrict members from



terminating their membership, may lead to competition concerns, because membership in a trade association may be essential for a company to compete on a specific market.

f. One of the roles of a trade association is to keep its members updated on specific issues and developments relevant for their industry. Statements made by the association on specific issues may influence members to stop conducting business with certain parties. This practice may be considered by the as a **boycott** measure. However, not every single call by trade association to its members to stop their business with other companies will necessarily result in a competition law infringement. The line between the permitted exercise of the trade association's activities and the prohibited call for a collective boycott is usually very fine and has to be examined and determined very carefully on consideration of facts of each case."

1.22 Liability for anticompetitive coordination on trade associations may arise on two levels:

Direct

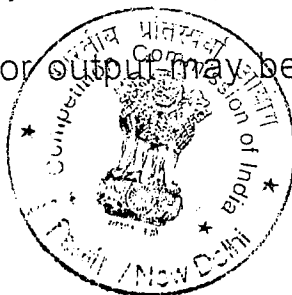


- The trade association may take a primary role in coordinating the activities of its members or in facilitating collusion between them; Such activities may include:

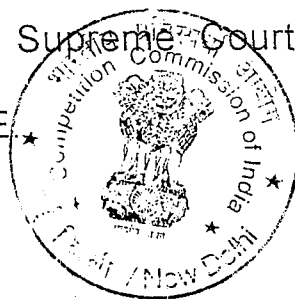
Coordination on price/output quantities/market share:

Trade associations can indulge into coordination on price, output quantities or market allocation among their member companies. In *United States v. Association of Retail Travel Agents case*, ARTA developed a position for its travel agent members on the prices and terms upon which they should be compensated, and then invited and encouraged members not to deal with travel providers that did not follow its prescription. This amounted, in effect, to an invitation to engage in price-fixing. There could also be instances 'overt cartels', where trade associations have rules that fix prices or prescribe upper or lower limits on prices/fees.

Industry Codes of Conduct: Less extreme, but also likely to be unlawful, are industry codes of conduct that restrain competition. A boycott call by an association in aid of a restraint on price or output may be treated as a violation of competition law.



Setting of Standards: Standards set by associations may also have anticompetitive effect. Standards can be used as a device to enforce a price fixing agreement by excluding new entrants or by punishing members who deviate from the cartel. In *American Society of Mechanical Engineers v. Hydrolevel Corp.*, a manufacturer of safety devices for water boilers made competitive use of the position of one of its employees as a vice-chair of the relevant standards-setting subcommittee of ASME. To meet a competitive threat from another company, the employee worked with the chair of the subcommittee to request an opinion from ASME concerning the competitor's product. The chair then responded to the letter that he himself had helped draft, erroneously suggesting, on ASME stationery, that the competitor's product was unsafe and in violation of ASME's code. The employee was later commended in his personnel file for "efforts and skill in influencing the various code making bodies to 'legislate' in favor of [the manufacturer's] products." The U.S. Supreme Court upheld a finding of liability against ASME.



Such expulsion mechanisms could be put in place by having subjective and opaque membership rules as well.

Indirect

- Members of a trade association may use the opportunities for contact and cooperation provided by the trade association to form anticompetitive agreements; the most obvious example is outright price-fixing, bid-rigging, or market division by members at trade association meetings.

1.23 Trade associations, therefore, are subject to scrutiny by competition authorities around the world and competition enforcement is increasingly focussed on trade associations' practices that facilitate collusion among the members. As per a Study by Margaret Levenstein and Valerie Suslow on 'Cartel Bargaining and Monitoring: The Role of Information Sharing', among the 41 international cartels (all fined by European Commission) studied, 11 had active Trade Association involvement while 8 of them used trade association meetings as cover. In a specific case pertaining to Bakery Industry in Malawi, the Master Bakers Association was involved in price-fixation, and hence there



was no competition in the market. The Ministry of Commerce and Industry in 1998 intervened in a bread boycott which the consumers Association of Malawi had called when the Bakers Association had increased and fixed the price of bread. The Ministry demanded immediate dissolution of the cartel and since then competitive bread prices have been noted in the market.

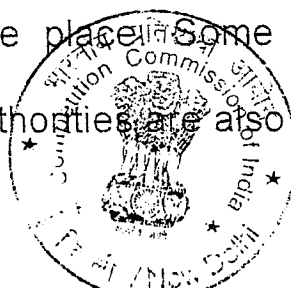
1.24 Detection and determination of anti-competitive practices by trade associations is challenging. While certain forms of coordination arranged by or conducted under the ambit of a trade association may be restrictive of competition by their very nature, other forms of coordination can be considered anticompetitive only when full account is taken of the economic circumstances in which the coordination occurs, including the existing conditions of competition in a particular market. Recent international experience in antitrust enforcement suggests that most trade association activity is subject to the 'rule of reason' analysis and is not condemned as *per se* violative of the anti trust laws. The process of deciding whether, when and how a particular trade association or any of its activity breaches the Competition Act may be based on the following inquiry:



- Does the association have market power or exclusive access to an element essential to effective competition?
- Is the contemplated activity likely to have 'appreciable adverse effect on competition'?
- Is there a plausible efficiency justification for the contemplated activity?
- Does the potential economic benefit of the contemplated activity outweigh its potential economic cost?

1.25 Competition jurisdictions all over the world have taken action against many trade associations including in India by erstwhile MRTP Commission.

1.26 Trade associations are not immune to the consequences of an antitrust infringement, and when they are responsible for organising and executing the infringement, they can be subject to fines separately from the members. Trade associations can also be held accountable, if they are found to be creating a forum for anti-competitive behaviour to take place. Some of the international experiences of competition authorities are also given below.

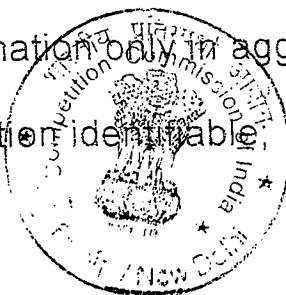


1.27 Competition Bureau, Canada

The Bureau has recently issued draft enforcement guidelines dealing specifically with trade association activities (*Draft Information Bulletin on Trade Associations*). The 'Association Guidelines' set out the Bureau's position on the application of the Competition Act overall to trade association activities. In this regard, the Association Guidelines outline the elements to establish an offence under the Competition Act, set out examples of association conduct that can in some instances potentially raise competition law issues under the Act and provide guidelines for trade association compliance programs including illustrative past trade association cases.

In terms of exchange of information, the Guidelines suggest the following to reduce Competition Act risk:

- Collecting only historical information;
- Disseminating information only in aggregated form with no specific firm information identifiable;



- Using an independent data collection agency; and
- Not requiring that data be provided by members – making the information supply voluntary only

It has also been suggested that meetings of association members should employ clear agendas, and that minutes be taken which comprehensively note all issues discussed. Issues not on the agenda should not be discussed, and informal conversations or side discussions amongst members should be avoided. The Bureau also recommends that trade associations have legal counsel review agendas and minutes, and attend all association meetings where there is potential for discussion of sensitive subjects. It suggests that the association should have a document retention program setting out what documents are to be kept and for how long.

In terms of Membership Rules, the recommendation is that association membership should be voluntary and based on transparent, objective criteria. Finally, the trade associations may establish competition law compliance programs and appoint a

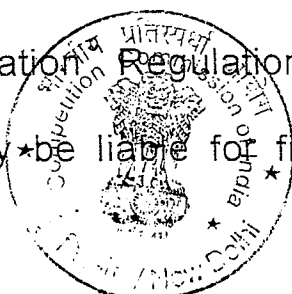


Compliance Officer to assist them with complying with the requirements of the Competition Act.

1.28 European Commission

Since the 1970s it has been the practice of the European Commission to hold trade associations responsible for anti-competitive practices along with their members. The list of cases in which trade associations have been at the heart of cartels includes amino acids (2001), citric acid (2002), carbonless paper (2004) and industrial tubes. In most of these cases, the trade associations had a legitimate purpose, but turned to anti-competitive activity once the official agenda of meetings was finished.

The reform of EC competition law has introduced considerable change for trade associations and their members. The Modernisation Regulation (Reg. 1/2003) has introduced an obligation on undertakings, including trade associations, to self-assess whether their conduct is in line with EC competition law. In particular, the Modernisation Regulation provides that trade association members may be liable for fines imposed on "their"



trade association in the event of insolvency. The recent decision-making practice of the European Commission and European Courts indicates that the mere provision of a "forum" for competition law infringements can lead to the imposition of high fines on a trade association. This reform and practice, coupled with the European Commission's declared commitment to fight more vigorously against so-called 'hardcore' competition law infringements, makes compliance with competition law increasingly important for trade associations.

The following recent EC competition law developments are particularly relevant for associations of undertakings and their members:

- Since Regulation 1/2003 (the "Modernisation Regulation") came into force, trade associations and their members must assess for themselves the potential competition law implications of their behaviour.
- If members of a trade association reach an agreement during a meeting of the association which breaches competition law, the association can be fined for merely providing a "forum" for the infringement.



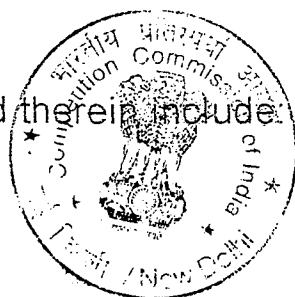
- Undertakings which are members of trade associations may be held liable for any fines imposed on the trade association.

The Commission can fine an association of undertakings up to 10% of the total turnover generated by the association in the previous financial year for a breach of competition law. This amount can be increased if the infringement is linked to the activities of its members i.e. a maximum of 10% of the total worldwide turnover of all the members which are active on the relevant market in question. National competition authorities may impose fines for breaches of European, as well as purely national, competition law.

1.29 Australian Competition and Consumer Commission (ACCC)

The ACCC has produced a specific guide for industry associations which outlines the most relevant issues for both industry associations and their members which also includes '*tips*' on how to avoid breaching the Act.

The key points mentioned therein include



- Trade association rules need to be clearly stated and transparent so that all members understand their obligations. Secondly, it needs to be ensured that rules do not dictate how association members must price their goods or services. If the rules require members to price their products or services in certain ways this may breach the Act's rules on price fixing.
- It should be ensured that any sanctions imposed on a member for breaking the rules are reasonable and not an excuse to exclude businesses from the association.
- Associations need to be careful while laying down requisite qualifications or skills before to be a member of the association so that these restrictions are reasonable and are not imposed to limit competition for the members.
- Associations should be very careful when issuing recommended price lists or fee schedules as they may be used to form an agreement to fix, control or maintain prices, and this type of agreement is prohibited by the Act.
- Finally, an industry association may also be asked for assistance where members are considering engaging in anti-competitive conduct, because that conduct will benefit their business and also the broader public. In these circumstances,



there are procedures in place where, if the ACCC can be satisfied that the conduct would be in the public interest, businesses can be granted protection from legal action under the Act. Industry associations can apply for this protection on behalf of their members.

1.30 Organisation for economic Cooperation and Development (Competition Policy Roundtables 2007) illustrates how activities of a trade association have the potential to lead to a breach of the competition rules:

“Trade associations remain by their very nature exposed to antitrust risks, despite their many pro-competitive aspects. Participation in trade and professional associations’ activities provide ample opportunities for companies in the same line of business to meet regularly and to discuss business matters of common interest. Such

Meetings and discussions, even if meant to pursue legitimate association objectives, bring together direct competitors and provide them with regular opportunities for exchanges of views on the market,



which could easily spill over into illegal coordination. Casual discussions of prices, quantities and future business strategies can lead to agreements or informal understandings in clear violation of antitrust rules. It is for this reason that trade associations and their activities are subject to close scrutiny by competition authorities around the world. [Emphasis added]".

1.31 The Canadian Competition Bureau in its Information Bulletin in 2008, issued guidelines for trade association. Relevant extracts are reproduced below:

"General

- Educate members and staff on the provisions of the Competition Act that would have a direct effect on association activities.
- Put in place a Compliance Program, which would include appointing a Compliance Officer. Exercise caution in the formulation and implementation of guidelines in relation to any important competitive aspect of their members' business activities.
- Implement clear guidelines on association activities.



- *Make the board sufficiently diverse so as to minimize the risk of competition law violations. It is preferable if an association's board of directors include more than competitors.*

Information Sharing and Data Collection

- *Obtain legal advice on sensitive issues such as data collection and exchange, standard-setting or joint activities in the marketplace.*
- *Avoid discussing current or future prices, costs, output levels, market allocations, business plans or bids.*
- *Base information exchanges on historical, aggregated data.*
- *The more generalized the information, the lower the risk of an anti-competitive effect.*
- *Do not exchange competing members' individual price lists and information about particular member transactions.*
- *Use an independent third party to conduct the information gathering and collation.*
- *Collect data in a way that preserves the anonymity of members.*
- *Ensure that participation in any information exchange is voluntary.*

Agendas & Meetings



- Adhere to clear agendas and record the minutes of the meetings.
- Review minutes of association meetings and report any errors.
- Note the arrivals and departures of members in the minutes.
- Do not use association meetings to discuss future prices, business strategies or comment on specific competitive activities of members.
- Avoid private meetings between competitors where sensitive competitive information is discussed.
- Allow all members to attend meetings so as not to exclude a specific group or segment.
- Establish and adhere to a document retention policy.
- When in doubt, seek legal advice about the activities being proposed or discussed.

Membership

- Have clear membership criteria that are not arbitrary and based on the legitimate objectives of the association;
- For those applicants who are not granted membership into an association give them reasons for refusal and allow an appeal process

Sanctions/Discipline



- *Do not impose sanctions aimed at inducing members to follow association recommendations that, if carried out, would have an anti-competitive effect.*

Self-Regulation

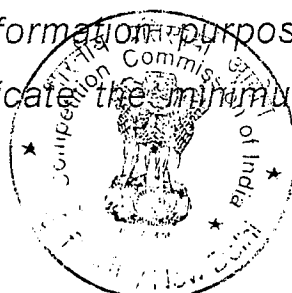
- *Ensure that regulations are related to the legitimate purpose of the self-regulating program.*
- *Ensure that regulations are impartially administered.*
- *Consult legal counsel prior to implementing regulations.*

Voluntary Codes

- *Ensure that voluntary codes have the explicit commitment of the association leaders.*
- *Ensure that voluntary codes include a clear statement of objectives and expectations.*
- *Ensure open consultation in the development and implementation of the code and ensure that the process for designing and implementing such codes be transparent.*

Fee Guidelines

- *Fee guidelines must clearly indicate that they are provided for information purposes only and are not intended to indicate the minimum level of acceptable fees.*

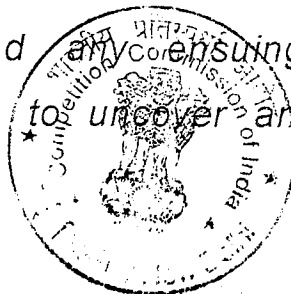


- *In conducting fee surveys for the purpose of implementing a guideline, use an independent third party to conduct the information gathering and collation.*
- *In conducting fee surveys, ask respondents what fees, on average, they have charged over the period as opposed to what fees are acceptable or desirable.*
- *Do not use fee guidelines to induce members to move to the highest price recorded in the guideline.*
- *Do not impose sanctions on members who choose not to follow association fee guidelines.*

Legal Counsel's Role

- *Ensure that legal counsel approve the agenda or minutes of any association meeting.*
- *Have legal counsel actively participate in association meetings.*
- *Ensure that association by-laws are reviewed by counsel.*

Finally, should an association discover that it was involved in activities that may violate the criminal or penal provisions of the Act it can, in certain circumstances, approach the Bureau and request immunity from prosecution in return for co-operating with the Bureau's investigation and any ensuing prosecutions. The Immunity Program³¹ seeks to uncover and stop criminal anti-

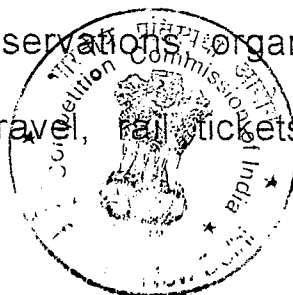


competitive activity prohibited by the Act and to deter others from engaging in similar behaviour.”

2. In view of the role of trade associations discussed above and the growth of jurisprudence in international jurisdictions and drawing upon the best practices guidelines propagated by international competition authorities, the present matter involving associations of travel agents is being disposed of by this order.

3. Factual matrix of the matter as disclosed in the information is as under:-

3.1 The informant is a company incorporated under the Companies Act, 1956 and its registered office is situated at New Delhi. The informant is operating as a travel agency and is an International Air Transport Association (hereinafter referred to as 'IATA') accredited travel agent. The IATA code of the informant in Delhi is 14-3-36416 and for Mumbai the code is 14-3-40981. The informant provides travel related products to large and small corporates. It sells airlines tickets, makes hotel reservations, organises overseas travel insurance, visas for travel, rail tickets, cruises and other



leisure products. The informant is a franchisee of Uniglobe Travel (South Asia) Pvt. Ltd. who has been awarded franchising rights by the internationally reputed Uniglobe Travel, Canada, for the South Asia Region. Uniglobe Travel South Asia Pvt. Ltd. operates 45 franchisee locations in India covering 25 cities. The informant enjoys wide and substantial goodwill and reputation in travel industry including corporate clients.

3.2 The opposite party no.1 namely, Travel Agent Federation of India (hereinafter referred to as 'TAFI') is a registered society and is an association of registered IATA travel agents, governed by its Memorandum of Association and the rules and regulation framed there under. The informant is enrolled as an active member of TAFI since 1999 and is paying membership of Rs.2,000/- per year.

3.3 In order to enjoy the following benefits it is important for a travel agent to be a member of Travel Agents' Association of India (hereinafter referred to as 'TAAI'), IATA Agents Association of India (hereinafter referred to as 'IAAI') or the TAFI.



- (a) To submit form in the passport office,
- (b) To obtain tourism license from the Department of Tourism which is necessary for getting airport passes from the Department of Civil Aviation,
- (c) For registration at Embassies as well as to submit visa forms.

3.4 Due to the impact of global economic slowdown the airlines industry has altered its air fare structure including in relation to payment of commission on sale of their tickets by the travel agents.

3.5 Singapore Airlines (SQ) issued a notice to the travel agents to the effect that from 1st Nov. 2008 onwards it would stop payment of commission to travel agents on sale of SQ tickets but a travel agency can recover its cost of operation and servicing by charging a service fee or a transaction fee on sale of tickets based on the kind and level of service it provides. Transaction Fee model works best in a service industry and increases service standards of the industry.

Apart from Singapore Airlines many other International



Airlines have also adopted service fee model and operating on zero commission.

- 3.6** Since Dec. 2008 the TAFI has been threatening its members including informant to boycott business and commercial dealings with Singapore Airlines and not to sell its air tickets to their clients. The members have also been directed to return the ticket stock to the airlines and TAFI has circulated a proforma of the 'SQ Capping Letter'.
- 3.7** The TAFI has been threatening its members with suspension and expulsion including the informant on a website "no-to-zero.in", specially created for the boycott call, if they failed to comply with the direction of the Association.
- 3.8** The informant did not sign the aforesaid letter nor it returned the ticket stock of Singapore Airlines and has openly shown that it will not participate in the boycott. A show cause notice was sent by TAFI to the informant on Feb. 16, 2009 through e-mail to show cause as to why the informant should not be expelled from the membership. Again on Feb.25, 2009 the informant was sent another e-mail informing it about its suspension with immediate effect and it was also threatened to be expelled from the membership.



3.9 Thereupon the informant filed a suit for declaration and injunction before the Delhi High Court and in the written statement filed by TAFI in that suit it was admitted that it issued directive for the boycott of sale of Singapore Airlines tickets and impugned action of suspension related to breach of that call.

3.10 It has also been pointed out that after effecting the "Transaction Fee" the price of Singapore Airlines tickets have been reduced significantly in the past year, thus benefiting its customers.

3.11 It has been alleged that the TAFI has operated in a cartel-like manner and its impugned actions constitute "collective boycott" and are indicative of a horizontal agreement which limits output and hence has a negative market effect and prohibited under the Competition Act, 2002. It has also been alleged that TAFI, which is an association of enterprises has entered into an agreement regarding provision of services, which was likely to cause an appreciable adverse effect on competition within India. The impugned agreement does not increase efficiency in the provision of services and the



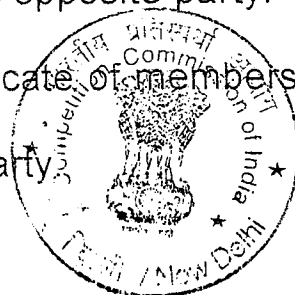
opposite party have perpetuated the cartel by issuing retaliatory action. Violation of section 3(3) (b) of the Competition Act, 2002 has been alleged.

4. The informant has prayed for the following reliefs:-

- (a) To direct TAFI to discontinue the boycott of Singapore Airlines;
- (b) To declare the suspension of the informant illegal, invalid and void ab initio;
- (c) To insure that TAFI does not issue boycott directives against any other airlines in the future;
- (d) To award cost to the informant, and
- (e) Any other relief in favour of the informant may be awarded which the Commission deems fit and proper in the facts and circumstances of the case.

5. The informant has filed following documents in support of contentions raised by it in the information:-

- (i) Copy of the Board Resolution.
- (ii) Copy of the Memorandum and Association and Rules and Regulations of the opposite party.
- (iii) Copy of the certificate of membership of the informant issued by the opposite party.



- (iv) Copy of Capping Letter dated 12.2.2009.
- (v) Copy of e-mail show cause notice dated 16.2.2009.
- (vi) Copy of decision dated 25.2.2009 suspending the informant.
- (vii) Copy of reply dated 25.2.2009 sent by the informant through its advocate.
- (viii) Copies of interview and letter of General Manager, Singapore Airlines.
- (ix) Copies of various communications/directives etc. appearing on the website including the impugned directives of boycott.
- (x) Copies of the Complaint in Suit No. 454/2009, written statement filed by the opposite party therein as also the replication of the petitioner thereto filed in Hon'ble Delhi High Court.
- (xi) Copy of Order dated 7.7.2009 passed by Hon'ble Delhi High Court.

6. The Commission took cognizance of the matter under section 19 of the Competition Act, 2002 and upon forming an opinion under section 26(1) of the Act that there exists a prima facie case, it referred the matter to the Director General for investigation vide its order dated 04.08.2009.



7. Findings of DG

- 7.1 The Director General after receiving the direction from the Commission had the matter investigated through the Additional Director General and after completion of investigation submitted his report to the Commission on 16.12.2009.
- 7.2 The DG in order to examine the issues, asked the TAFI to submit, inter-alia the details about the constitution of TAFI, copy of its Memorandum and Articles of Association, details of membership, reason for issuing notices to its constituent members with respect to providing services to customers for Singapore Airlines, copy of minutes of meeting of TAFI, copy of e-mails and other correspondences etc. Singapore Airlines was also asked to submit the details of effect of boycott on their sales along with their views on the boycott directive issued by the TAFI. To comprehend the background of the payment of commission to travel agents by the airlines the role of International Air Transport Association (IATA), relevant laws governing the issue in India, role of Civil Aviation Regulator i.e. Director General of Civil Aviation (DGCA) and



the representation made before it by the rival parties, petition & reply filed by parties before the Delhi High Court were taken into the account by the DG.

- 7.3 During the course of investigation statements of Mr. Pradeep Lulla, Acting President, Mr. Ajay Prakash, General Secretary, Mr. Praveen Chugh, Ex. President of TAFI were recorded.
- 7.4 It transpires from the report of the DG that during July/August 2008 travel agents received letter from nearly all the airlines conveying their decision to reduce the agency commission from 5% to 0% w.e.f. Nov. 2008 and agents were offered productivity link bonus and were suggested to adopt transactions/service fee model.
- 7.5 From the information gathered by the DG it was revealed that beside TAFI two other travel agents associations namely Travel Agents Association of India (TAAI), IATA Agents Association of India (IAAI) were also involved in issuing directives to boycott the sale of tickets of airlines.
- 7.6 The TAFI along with other travel agents associations exerted pressure on these airlines for restoring the fixed percentage of commission to travel agents

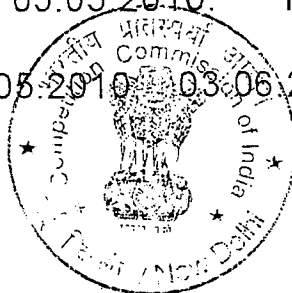


- 7.7 Domestic airlines Jet Airways, Kingfisher etc. gave in to the pressure and agreed for a 3% commission to the travel agents but 16 foreign airlines including Singapore Airlines did not accede to the demand and as a result the Opposite Parties gave the boycott call against the SQ.
- 7.8 The Opposite Parties in order to make their call of boycott successful sent e-mails to their members to boycott sale of tickets of Singapore airlines and issued directives through advertisement in newspapers and put up hoardings in Mumbai & Bangalore to the same effect.
- 7.9 The members were also threatened in case of non-compliance with the suspension and possible expulsion from the membership of the respective associations.
- 7.10 DG has concluded that the call to boycott issued by TAFI and other associations in the form of an agreement which limited/controlled the supply of Singapore airlines tickets to the consumer of India (supply of provision of service) and thus is a violation of Section 3(3) (b).
8. The Commission after examining the report of DG and the entire material available on record in its meeting held on



05.01.2010 decided that copies of DG report be sent to each of the concerned parties as mentioned in DG's report for offering their comments/objections. The Commission also decided to grant permission for inspection of records to the concerned parties and afforded opportunity of hearing as per the relevant regulations framed under the Act.

9. In response TAFI, TAAI and IAAI filed their replies which were considered by the Commission. The Commission also afforded all the opposite parties an opportunity of personal hearing 15.04.2010. On that date on behalf of TAAI and TAFI Shri Bhupendra Singh Chauhan, Advocate and on behalf of IAAI Shri George Tharakan and Shri Harjeet Singh Chawla, Advocates appeared before the Commission and made oral submissions. The request of authorised representatives of IAAI to make further written submissions was allowed and written submissions dated 30.04.2010 were submitted on behalf of IAAI on 05.05.2010. The matter was again considered on 06.05.2010, 03.06.2010, 22.06.2010 and 13.7.2010.



10. Reply of opposite party no. 1 (TAFI)

(a) *Preliminary objections and submissions:*

Briefly stated following submissions have been made:-

- 10.1** The opposite party has not entered into any agreement as defined under section 3(1) of the Competition Act.
- 10.2** The opposite party is not a business entity and hence not covered under the definition of 'enterprise' as provided in the Act.
- 10.3** Competition Commission of India is not competent to intervene in administrative action of suspension and termination as it is internal matter of respondent.
- 10.4** The Singapore Airlines against whom the boycott call is alleged to have been given, has not made any complaint against the TAFI and the informant has no locus to file present information.
- 10.5** The alleged actions of TAFI is nothing more than 'collective bargaining'. Additionally, the Commission cannot look in to the grievance of suspension of the informant.
- 10.6** The TAFI has moved application for impleadment of Singapore Airlines, Ministry of Civil Aviation, DGCA and IATA



as necessary parties and unless that application is decided the Commission should not proceed further in the matter.

(b) Reply on merits

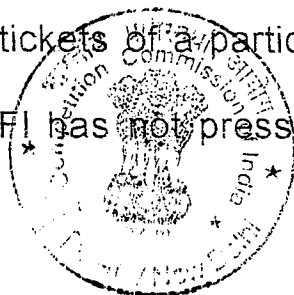
The TAFI has denied the allegations levelled against it by the informant and has stated as under:-

10.7 The information is not filed by the competent person as he has no proper authorization on behalf of the informant company.

10.8 The airlines like Singapore Airlines, Lufthansa and others have indulged into unfair and restrictive trade practices that are affecting competition in India and in respect of their arbitrary and concerted decision to reduce commission payable to travel agents to 'zero' complaints have been filed before the MRTP Commission.

10.9 These airlines have circulated 'agreement' to be signed by the travel agents which adversely affects the interest of the travel agents and the Commission should consider the whole issue to protect the fair competitive environment.

10.10 The TAFI has never directed or compelled the informant to sell or not to sell air tickets of a particular airline including Singapore Airlines. TAFI has not pressurised its constituent



members through e-mail or on Internet to boycott business and commercial dealings with Singapore Airlines only nor it has directed its constituent members to return the ticket stock to the airlines.

10.11 The information has been filed only on the basis of an interview given by General Manager, India of Singapore Airlines which was published in the newspaper and such report cannot be read in evidence. The Singapore Airlines has formed a cartel along with other airlines like Air Canada, Air France etc. and by not adhering to the guidelines providing for a reasonable commission to be paid to the travel agents for selling air tickets and thus depriving travel agents of their legitimate dues.

10.12 The informant was given a show cause notice in furtherance of the said directive on Internet in accordance with law (para 16).

10.13 As the Civil suit filed by the informant has been dismissed on 07.07.2009 the matter came to an end. Further, the pleadings of the parties in that case cannot be relied upon in another matter before a different judicial/competent authority.



(c) Reply to Legal submissions:

10.14 TAFI has not violated any provisions of the Competition Act, 2002 while regulating its affairs/management. Jurisdiction of the Commission to interfere / regulate the affairs of the TAFI is barred and only Civil Court of Competent Jurisdiction can look into issues of suspension or expulsion of a member from association.

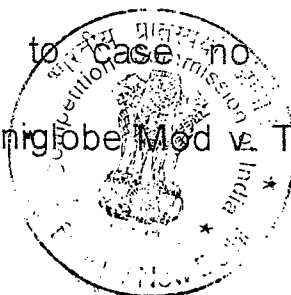
10.15 It has been stated in para 22 of the information that after switching to 'transaction fee' model the customers of Singapore Airlines are benefited by low prices of air tickets and this fact itself shows that there is no negative effect on the market nor competition is adversely effected.

10.16 TAFI has prayed that the informant is not entitled to any relief and the information deserves to be dismissed with heavy cost.

11. Reply of TAAI

Briefly stated following submissions have been made:-

11.1 TAAI is not a party to case no 03/2009 before the Commission titled as Uniglobe Mod v. TAFI and the report of



the DG has been prepared in connection with the said case and no relief has been prayed for against TAAI by the informant.

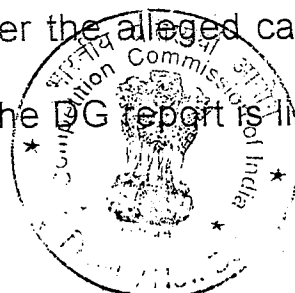
- 11.2** TAAI has not initiated any disciplinary action against the informant nor it has suspended or terminated it from the membership of TAAI.
- 11.3** It has not been provided a copy of information filed by Uniglobe Mod Travels Ltd. inspite of a request made in this behalf under RTI Act and because of this reason TAAI cannot be expected to reply to the report of DG.
- 11.4** DG has not examined any of the office bearers of TAAI and therefore he has made wrong conclusions about TAAI in his report. Investigation by DG was not carried out in a transparent manner. The report of the DG appears to be based on few e-mails and some unauthenticated photocopies which is against the rules of evidence. The methodology adopted by DG is defective and because of this the report is vitiated.
- 11.5** Though the DG has concluded that because of alleged formation of cartel by TAAI with TAFI the business of Singapore Airlines has been affected but Singapore Airlines



has not made any complaint in this regard either to DGCA, MOCA or to CCI and if Singapore Airlines had been impleaded as a party the position would have been much clear.

11.6 DG has failed to quantify the affect of alleged boycott on the business of Singapore Airlines. In this respect the DG relied upon a report titled as '*Service Fee Module better than Commission*' prepared by Mr. Hari Prasad, an Expert in Economic Matters with CCI. The report of the Expert is not relevant because issue of payment of transaction fee over Commission was not an issue before the Commission. Moreover the report does not say that the business of Singapore Airlines has suffered because of alleged boycott of trade associations or that competition in India has been adversely affected.

11.7 The report of DG does not even mention the business size of travel trade in India much less of Singapore Airlines. The report does not have any data of sales of Singapore Airlines tickets prior to and after the alleged call of boycott and in the absence of this input the DG report is liable to be rejected.



11.8 The DG has not considered the contentions raised by the informant in para 22 of the information whereby it has been stated that the prices of Singapore Airlines tickets have been reduced significantly in the past year, thus benefiting customers. If this fact is true then it cannot be concluded that competition in India has been adversely affected.

11.9 TAAI is a trade association formed to protect interest of travel agents fraternity in India and they are pursuing their aim in a legitimate manner therefore the Commission cannot interfere in the working of TAAI.

11.10 In fact Singapore Airlines itself has formed cartel with other foreign airlines with a view to reduce commission to travel agents on sale of tickets from 5% to zero. TAAI has filed a complaint before the Commission against Lufthansa German Airlines and others and unless investigation in that case is completed the finding of DG in this case should not be accepted.

11.11 DG has failed to appreciate that the relationship between the managing committee of trade association and that of its members is not that of employer-employee relationship. A trade association is run in a democratic



manner and its managing committee members are elected from amongst its members and in such a situation no 'directive' can ever be issued by managing committee of TAAI to its members. A trade association can only make advise, request or appeal. Even at present time majority of member TAAI are still selling Singapore Airlines tickets and they have not been expelled on this ground.

11.12 On the strength of above submissions it has been prayed that since principles of natural justice have been grossly violated by not affording free and fair opportunity to TAAI. The report of DG should be rejected.

12. Reply of IAAI

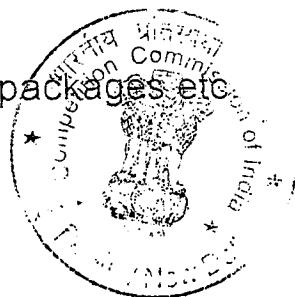
12.1 Commission is the lawful remuneration due to travel agents and as per the legal provision in India commission to travel agents is mandatory. Some airlines have unilaterally stopped paying commission to the travel agents terming it 'zero commission'. Non payment of commission is thus an illegal act and the Competition Commission of India cannot ask travel agents to support an airline that has indulged in illegal activity.



12.2 Only 16 foreign airlines have taken a decision not to pay commission to the travel agents though other airlines including National & Domestic Airlines peacefully pay commission. Thus it is clear that the 16 airlines have formed a cartel to drive travel agents out of business which is causing an Appreciable Adverse Effect on Competition in India.

12.3 IATA – prescribed ‘commission’ was transparent, specific and in order. Commission denied to agents does not go the Airlines’, coffers nor it benefits consumers. With a view to have a control on the remuneration paid to agents the airlines have introduced ‘zero commission’ and have brought in an array of remunerative schemes which they can control absolutely such as :

- a) PLB (Productivity Linked Bonus)
- b) Consolidation
- c) Up-front deals
- d) Back-end deals
- e) Promotional offers, packages etc

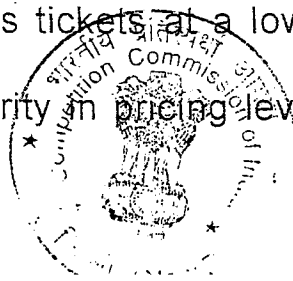


If this is allowed to happen thousands of travel agents will go out of business or will become slaves to major players such as PLB Agents.

12.4 Though the airlines have declared that any agent can opt for PLB but later on it can be restricted or denied by airlines at their pleasure. Specifics of PBL have also not been made clear and it could vary from airline to airline. Apparently PBL system introduces monopoly tendencies and unfair trade practices which in effect eliminates competition is violative of the Competition Act.

12.5 In the western countries airlines support non IATA approved travel agents (called consolidator) by offering a slightly discounted fare but the airlines who have introduced zero commission extend (consolidation) discount in discriminately to their favoured agents flouting all norms.

12.6 On the pretext of bulk sales certain favoured agents are allowed to sell tickets at published fare, appropriate a discount and remit the balance amount only to airlines which enables them to offers tickets at a lower price which is the basic cause for disparity in pricing levels of tickets in India.

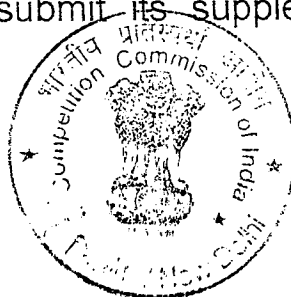


On the other hand under BSTP(Billing & Settlement Plan) – IATA rules the travel agents have to remit full sale amount to BSP that would pay back commission in due course. This practice is adopted to restrict under cutting tendencies in the market.

12.7 Up-front deals are in nature clandestine and evidently fall within the ambit of restrictive trade practice whereas in back-end deals the remuneration is paid at the fag end of a financial year to reward greater achievements.

12.8 Promotional offers and special packages is alright for the trade as long as such incentives are open for all. However some airlines have joined hand with their favoured agents to subvert such practices by offering cash discounts, free tickets, barter arrangements etc.

13. The Commission, after considering the investigation report of the DG, was of the view that further enquiry was necessary in the matter and therefore, vide its order dated 29.10.2010 directed the DG to submit its supplementary report on the following issues:-



A. Role and activities of TAAI and IAAI in detail. Role and activities of three other non-IATA registered travel agents associations namely, Indian Association of Tour Operator (IATO), Association of Domestic Tour Operators of India (ADTOI) and Enterprising Travel Agents Association (ETAA).

B. Names of office bearers and other members of the associations through whom the associations acted in giving the boycott call against Singapore Airlines.

C. Nature of financial gain to the associations and their members due to the boycott call given by them against Singapore Airlines.

D. Details of effect of boycott call on Singapore Airlines ticket sales and how did it limit or control the supply of Singapore Airlines tickets to consumers in India.



E. Investigation on contravention of Section 3(4) of the Act relating to vertical agreement between associations and their members supported by documentary evidences.

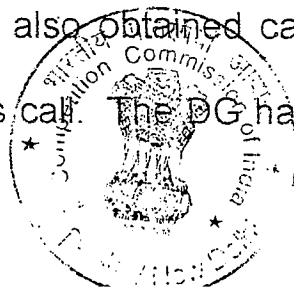
F. Definition of market and the appreciable adverse effect of anti-competitive agreement on competition within India, and

G. Requisite information/data for assessment/levy of penalty under Section 27 of the Act in case the violation is established.

Supplementary Investigation Report

14. DG, after conducting the in depth investigation, filed its supplementary investigation report dated 07.12.2010. The findings of the DG, in brief, are as under:-

14.1 On the role of TAAI, DG has reported that TAAI has given a boycott call to its members not to sale the tickets of Singapore Airlines and Silk Air and also obtained capping letters from its members in support of its call. The DG has also mentioned that

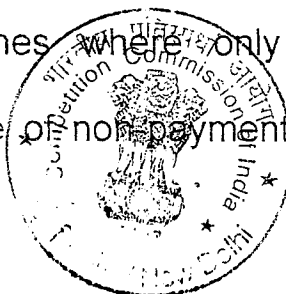


although TAAI denied that it had issued any notices to its members not to sale tickets of Singapore Airlines but it did not cooperate in the investigation by not providing the copies of minute of meetings of its members and details of its meeting with other travel associations as well as copies of newspaper advertisement regarding the boycott call. In absence cooperation from TAAI the DG has relied upon the evidence collected from other sources. The details submitted by Singapore Airlines (placed at **Annexure - 4**) showed that TAAI was actively pursuing the matter with Singapore Airlines alongwith TAFI and IAAI in various meetings held from 13th January, 2009 to 12th May, 2009. The statement of the President of TAAI published in TAAI Newslines (An E – Bulletin, Issue no. 13 dated 25.03.2009, copy placed at **Annexure – 5**) further goes on to strengthen the fact that the TAAI was actively pursuing the withdrawal of support to Singapore Airlines and was asking its members to send capping letters. This fact is further validated by various news items published in the TAAI Newslines dated February, 2009 and 30.04.2009. On the basis the evidence gathered by the DG it has been concluded that the participation of TAAI

alongwith other association in giving boycott call of Singapore Airlines is clearly established.

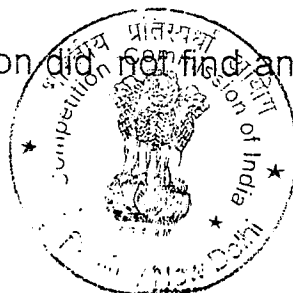
14.2 On the role of IAAI, DG has found in his investigation that based on the statement of the representative of IAAI, emails, circulars and notices issued and advertisements and hoardings put up on behalf of IAAI and also the active participation of IAAI in giving the boycott call and negotiating the Singapore Airlines it is clearly established that IAAI, in agreement with, TAFI and TAAI has given the boycott call to its members against sale of tickets of Singapore Airlines and Silk Air.

14.3 On the role of ETAA, DG has concluded that the contention of ETAA that its members do not issue airlines tickets and, therefore, cannot boycott is acceptable. Moreover, besides appearance of name of ETAA on various emails issued by TAFI, TAAI, IAAI, the investigation could not find any other evidence to establish involvement of ETAA in the campaign against Singapore Airlines and Silk Air. ETAA was also not seen as a party in taking up this issue with any government authority or with Singapore Airlines where only TAFI, TAAI and IAAI represented the issue of non-payment of commission to travel agents.



14.4 Regarding the role of ADTOI, It has been concluded by DG that besides, the advertisement, public notices and circulars issued by TAFI, TAAI or IAAI, the name of ADTOI did not appear in any other document or correspondence. The Singapore Airlines which is the affected party in the present case also could not show any record of its meeting with ADTOL. ADTOI also did not represent before DGCA or went to the court on this issue. The DG has, therefore, expressed agreement with the assertions of ADTOI that it did not give its consent for inclusion of its name in the advertisements/ mails issued by TAFI, TAAI or IAAI.

14.5 On examination of role of IATO in the boycott call, it has been concluded by DG that IATO was not found to be involved in issuing any directives to its members to boycott sale of tickets of Singapore Airlines and Silk Air as its members are not in the business of international ticketing. Like other non-IATA agents association, its name has been used by the IATA agents association without obtaining its consent. IATO also neither had approached the Singapore Airlines nor any court of law regarding non-payment of commission to travel agents and, therefore, the investigation did not find any involvement of IATO in the boycott call.



14.6 It has been also found by the DG that the boycott decision was taken by these associations because of the reduction in commission by the Singapore Airlines, which resulted into financial loss to the members of the associations. However, this decision by association has the purpose and effect of limiting the provision of service and is prohibited as a form of anti competitive agreement. Further, it has been reported that the total ticket sale of Singapore Airlines dropped by 29% in 2009 as against to 2008 due to the boycott call given by TAFI, TAAI and IAAI. It has been also concluded by DG in its supplementary report that most of the members of these associations followed the diktat of their respective associations and refused to deal with Singapore Airlines. Therefore, such action also falls foul of Section 3(4)(d) of the Act.

14.7 DG has further reported that the service in the present case is the sale and issue of Singapore Airlines and Silks Airlines tickets to the consumers. As per DG this service is provided by various travel agents who are affiliated to IATA also by virtue of their membership to the association. The consumer in the present case is the traveller who uses or is likely to use the services of these airlines. Analysing the factors provided in section 19 (3) of



the Act for determining the appreciable adverse effect on competition (AAEC), DG has concluded that it is clear that the boycott call given by these associations not only drove the existing competitor out of the market to the extent of reduction in the number of tickets sold but there is also no accrual of benefit to the consumers or improvements in provisions of services, rather they have been deprived of the tickets of Singapore Airlines to the extent of availability of tickets through the approved IATA agents. It has also been concluded that the boycott does not lead to promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services and in contrast the boycott call has led to decline of availability of tickets of Singapore Airlines to the air travellers.

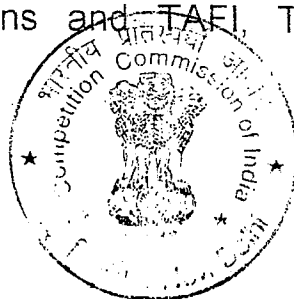
14.8 Lastly, the DG has concluded that the action of three associations in boycotting the sale of tickets of Singapore Airlines by forcing their members to follow their line of thinking has had appreciate adverse effect on competition within India due to restricted availability of tickets of Singapore Airlines to the consumers. As per DG this fact is well established by the decline in sales of tickets of Singapore Airlines through travel agents in



the year 2009 as compared to the sales figures in the year 2008. The associations namely TAFI, TAAI and IAAI have, therefore, violated the provisions contained in section 3(3)(b) read with 3(1) of the Act.

15. The Commission considered the supplementary report of the DG and vide its notice dated 22.12.2010 directed the TAFI, IAAI and TAAI to file their comments / objections to the supplementary report of the DG and a copy of the supplementary report was also sent to the aforesaid parties.
16. The Commission vide its notice dated 03.05.2011 also directed the ADTOI, IATO and ETAA to file their submissions or objections to the DG report dated 16.12.2009 and supplementary report dated 07.12.2010. A copy of both the reports was also sent to the said associations. In the aforesaid notice the Commission has also directed the ADTOI, IATO and ETAA to furnish the following information:-

- A. Functional or any other relationship between these associations and TAFI, TAAI and IAAI or their members.



- B. What is (are) the business model (s) adopted by the members of these associations, including the service they provide, the business arrangement they have with other associations including members of TAFI, TAAI and IAAI ? Who are the top ten revenue earning members of these associations?
- C. Name , logo, etc., consistently appeared on the memo/circulars, e-mail, communications, news paper advertisements and bill boards which are allegedly part of the boycott call. Explanation and factual position, full documentary and corroborative evidence in case of non involvement of these associations.
- D. List of the office bearers of these organizations including names and contact information.
- E. Audited balance sheets and profit and loss account for financial year 2007-08, 2008-09 and 2009-10.

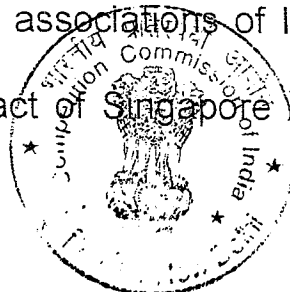


17. Reply of TAAI

17.1 In response to the above notices, TAAI vide its reply dated 12.01.2011 submitted that the Commission should not direct an investigating agency which claims to be independent from it, to enquire on certain issues. The TAAI further objected that the Commission cannot play the role of judge as well as investigator simultaneously.

17.2 The TAAI has also submitted in its reply that the present proceedings have become infructuous since, the travel agents have resumed selling the tickets of Singapore Airlines. Otherwise also, Singapore Airline has never made a complaint for the alleged boycott.

17.3 TAAI further submitted that as per Rule 135 of Aircraft Rule, every airline is supposed to pay commission to travel agents for sale of tickets and Indian laws till date has not approved the 'transaction fee module' adopted by Singapore Airlines by reducing the commission to 'zero'. As per the objections of the TAAI if all the travel agents associations of India has protested against the alleged illegal act of Singapore Airline in collective



manner for the benefit of travel agents fraternity, there is nothing wrong as it is a peaceful collective bargaining.

17.4 As per the objections of the TAAI, the DG has believed the data of the sale of ticket submitted to him by Singapore Airlines without duly authenticating the same. Therefore, as per the TAAI, the said data cannot be accepted by the Commission.

17.5 The TAAI has also contended that the DG has not conducted any investigation on the financial gain by the travel agents or associations of travel agents and the issue of impact of boycott call on the passengers, particularly with regard to the fares. TAAI has objected that since in the supplementary report the DG has not analyzed the above factors, it is difficult to conclude that the competition in India is adversely effected.

17.6 The TAAI has further submitted that the DG has wrongly concluded that the loss of sales of air tickets suffered by Singapore Airlines is from Jan, 2008 to Dec, 2009. As per the response of TAAI, the boycott call started on 29.12.2008 therefore, for all practical reasons the comparisons of sales figures from Jan, 2008 to Dec, 2009 are completely irrelevant.



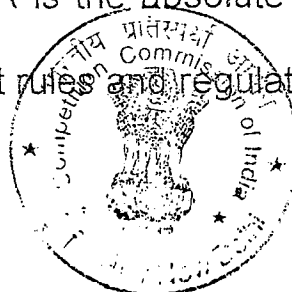
17.7 As per the submissions TAAI the informant had not been expelled by TAFI at the time of the filing of the information but the DG has perversely concluded that TAFI has first suspended than expelled the Informant for its not complying with the directive of the TAFI not to sell the tickets of the Singapore Airlines.

18. Reply of TAFI

The TAFI vide its reply dated 12.01.2011 reiterated the version adopted by TAAI and has not submitted anything in addition to that.

19. Reply by IAAI

19.1 IAAI filed its reply dated 21.01.2011 and contended that as per DGCA's order dated 05.03.2010 the commission is the sole lawful remuneration for travel agents against the sale of tickets and it cannot be nil or zero. As per the aforesaid reply of IAAI, it has contended that DGCA is the absolute authority to legislate on the Aircraft Act, Aircraft rules and regulations.



19.2 As per the reply filed by the IAAI, the decision of airlines to withdraw the commission paid to travel agents is a violation of commercial agreements with the travel agents. Thereby, travel agents are justified in withdrawing the sale of tickets of foreign airlines.

19.3 The IAAI has also submitted that the decision of travel agents was not intended to drive Singapore airline out of business, it was only to prompt the airlines to re-instate commission just as the national carrier and some other foreign airlines reinstated.

19.4 It has been further submitted by IAAI that withdrawal of sales support by travel agents has not affected any "competition" spirit in India for the purposes of Sec 19(3) (a) to (e) except (b). As regards 19(3)(b) which reads "driving existing competitors out of market", there was no chance or possibility that Singapore Airlines would be driven out of market by the alleged "boycott" for the simple reason that Singapore Airlines could still sell their tickets through their own counters and their on-line sources that cover entire Indian Market. Further, the travel agents did not do anything to block, bar or seal direct sales windows of Singapore Airlines which could have invoked 19(3) (b).



19.5 The IAAI has also stated in its reply that there has not been any adverse effect on competition in India except 29% drop in the ticket sales of Singapore Airlines.

20. Reply of ADTOI

20.1 The ADTOI vide its reply dated 12.05.2011 has submitted that it has no functional relationship with TAFI, TAAI and IAAI or their members. Some of the travel agents are members of one or more of these associations since there is no restriction on travel agents in this regard.

20.2 ADTOI further submitted that being the association of tour operators it is not aware of the business modal adopted by its members, including the service they provide and the business arrangements they have with other associations.

20.3 As per the contention of the ADTOI, it has no information on top 10 revenue earning members of the associations since it never sought such information from its members.

20.4 The ADTOI has further submitted that it has never given any alleged boycott call at any point of time.



20.5 The ADTOI provided the details of its office bearers and balance sheets etc as required by the Commission. It has also contended that it is not an enterprise in terms of the provisions of the Act.

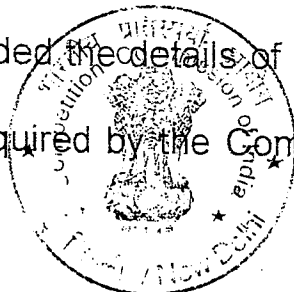
21. Reply of ETAA

21.1 The ETAA filed its reply dated 11.05.2011 and contended that it is the associations of non IATA members and have to purchase ticket for international and domestic travel through an IATA accredited agent, many of whom are the members of TAFI, TAAI and IAAI.

21.2 As per the reply of ETAA, is not aware with the business model of other entities and since the matter of turnover is confidential, it do not seek data in this regard from its members.

21.3 ETAA has also contended that its logo and name may have appeared on the letters issued by the other associations without any specific authorization given by it.

21.4 The ETAA has also provided the details of its office bearers and balance sheets etc as required by the Commission. It has also



contended that it is not an enterprise in terms of the provisions of the Act.

22. Reply of IATO

The IATO filed its reply dated 18.05.2011 and contended that it has not been found to be involved in any anti competitive activity in terms of the provisions of Section 3(3) of the Act. It has also submitted that it is not liable to provide any information or evidence since DG has not found any violation of the provisions of the Act by it. Further, vide its reply dated 20.06.2011, IATO sought four weeks time to file its reply in pursuance of the notice dated 01.06.2011 issued by the Commission under section 43 of the Act.

23. Reply of the Informant

The Informant vide its reply dated 21.01.2011 has submitted that the investigation report of the DG support all the contentions and information provided by it.



24. ISSUES

On the basis of the contentions, raised by the rival parties the following issues, relevant for deciding the matter, emerge for determination:

- (i) Whether a decision was taken by the opposite parties to boycott the sale of tickets of Singapore Airlines and directives were issued to their members in pursuance thereof with a view to exert pressure on Singapore Airlines to restore the fixed percentage of commission to travel agents?
- (ii) If the answer to issue No. 1 is in affirmative then whether the boycott directives issued by the opposite parties to the member travel agents not to sell Singapore Airlines tickets amounted to coordinated decision on the part of the opposite parties to limit or control provision of service and they have thereby violated the provision of section 3 (3) (b) read with section 3(1) of the Competition Act, 2002?



25. View of DGCA

25.1 Having come to know that DGCA is ceased with the matter relating to payment of commission, the Commission vide its order dated 10.09.2009 sought the views of the DGCA. The office of DGCA forwarded to the Commission a copy of order dated 05.03.2010 passed by the DGCA with its letter dated 11.03.2010.

25.2 Relevant extracts of the aforementioned order no. No. AV. 26012/2/2008-TE Dated the 5th March, 2010 of DGCA, are reproduced below:

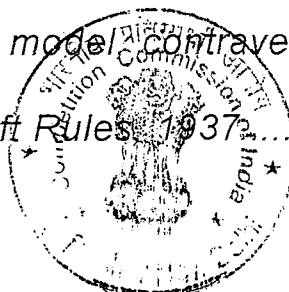
"6. Having dwelt upon the purpose and scheme of rule 135 of the Aircraft Rules, 1937, it now needs to be determined as to whether it is lawful for an airline to establish a tariff under sub-rule (1) of rule 135 without including any commission payable to the agents. The answer to this limited question is affirmative, as the rule does not say that there shall be paid a commission to the agents. It only stipulates that the tariff shall include the commission payable to the agents. So, if there is no commission payable the same will naturally not be



included, and the tariff so established, without the commission, shall be displayed and advertised in accordance with sub-rule (2). However, it would be oversimplification of the issue if the enquiry were to be limited to that. The enquiry will remain incomplete unless the next logical question is also examined, that is, whether it is lawful for the airlines or the agents to charge from a customer a 'transaction fee' that is neither established under sub-rule (1) nor displayed under sub-rule (2). A bit of reflection on the rules will lead us to the conclusion that the answer to this question is negative. The reasons for this negative answer are twofold. Firstly, it has to be appreciated that a law reflects the policy of the Government on the concerned subject and the policy in the case of sub-rule (1) of rule 135 is that an airline should establish a tariff and that tariff should include the commission payable to the agents. Reducing the commission to zero percent and then levying a transaction fee that is not reflected anywhere in the relevant law is a colourable exercise that goes against the government's policy and violates



the legal provisions contained in sub-rule (1) of rule 135 read with the definition of "tariff" given in clause 54A of rule 3. Secondly, levying of transaction fee also contravenes sub-rule (2) of rule 135, as it is a charge over and above the consolidated fare to be displayed or advertised under that rule. The policy behind sub-rule (2) is consumer protection and it aims at providing complete transparency to a passenger regarding the cost of a ticket. Therefore, once a consolidated fare has been displayed on the website or in an advertisement in a newspaper, levying of any extra charge defeats the very purpose of transparency and thus cannot be supported in law. In brief, it may be stated that the zero commission system adopted by some airlines in India and levying transaction fees in lieu commission and which does not have any legal authorization makes it contrary to law. In other words, the 'net fare' or 'the transaction fee model' is not sustainable under the relevant law since charging of transaction fee, which is an integral part of this model, contravenes the relevant provisions of the Aircraft Rules, 1937.

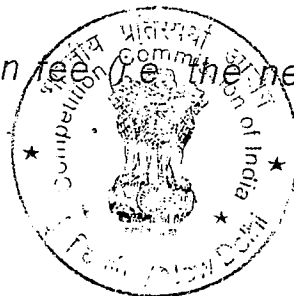


8. It is also considered necessary to deal with and dispose of the reference made by one airline representative to the bilateral air services agreement between India and the country of that airline. It is true that the article on tariffs in the bilateral agreement provides for deregulation of tariffs, which means that the designated airlines are not required to file tariffs with the aeronautical authorities, or obtain their approval for the same. But there is nothing so special about this provision as the national law of India on the subject, as contained in rule 135 of the Aircraft Rules 1937, also reflects the same policy. The airlines are neither required to file tariffs nor obtain approval of DGCA for the same. In other words, the quantum of a tariff is not to be looked into by DGCA. But it does not mean that there shall be no tariff established by the carriers. The same logic applies to the commission. The quantum of commission is not the concern of DGCA. But that does not mean that there shall be no commission. In this view of the matter, there appears to be no conflict between



the tariff provision of the bilateral air services agreement and the national laws of India on the subject.

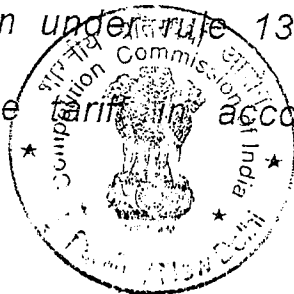
9. *The examination of this subject will remain incomplete without giving due consideration to the impact of the zero commission system on the consumer interest. It appears that this system is detrimental to the consumer interest in more than one way. Firstly, since the zero commission system is loaded with a transaction fee, the consumer has to pay extra money in the form of transaction fee. Secondly, an unscrupulous agent can charge an exorbitant amount as transaction fee from the customer. Thirdly, this system is giving rise to market dominance by some big agents, who are paid hefty amounts by the airlines in the name of productivity. This phenomenon too is not in the interest of the consumer as it reduces competition among agents. Overall, it may be seen that the impact of the zero commission system does not help consumers. The zero commission system coupled with transaction fee (i.e. the net fare model) is*



not as per law and is devoid of merit from the consumer point of view.....

It may be clearly stated here that the existing rule 135 of Aircraft Rules, 1937 does not prescribe transaction fee as a part of tariff to be determined by airlines and also does not require consumers to pay the transaction fee as a part of air tariff. However, DGCA is not concerned with the transaction fee being charged by agents on account of services (other than air ticket), if any, being provided by them to their customers. The practice being enforced by the named airlines is not in accordance with Aircraft Rules, 1937.....

Further, Rule 135(1) requires airlines to determine tariff which by definition includes commission. Rule 135 (2) has been amended recently by the Government vide Notification GSR No 254(E) dated 16.04.2009 to require airlines to display a 'single consolidated fare' and give its break-up also for consumer's benefit. It is clear that the statutory position under rule 135 clearly requires airlines to determine tariff in accordance with law,



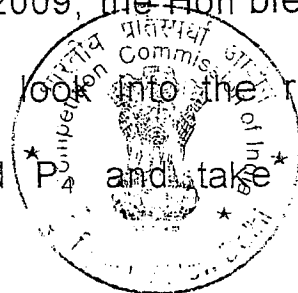
including commission payable to agents. The existing law also requires airlines to display total fare & its components. In view of the foregoing, analysis and legal provisions, the named airlines are directed to ensure compliance of existing statutory provisions regarding determination of tariff as per rule 135(1) and display of the fare and the components as per rule 135(2) and (2A).....

It may also be clarified that DGCA has also set up a monitoring mechanism in DGCA to ensure compliance of the provisions of rule 135 by the airlines. However, it is made very clear that as per rules DGCA cannot lay down quantum of commission payable by airlines to agents. It is entirely up to the airlines to take a decision in this regard in consultation with agents taking in to account various commercial factors such as the market conditions, the cost of the Agents' establishments, etc & statutory definition of 'tariff'. But the commission cannot be replaced by transaction fees



25.3 It transpires from the perusal of the order of DGCA that a Writ Petition No. 16551 of 2009 was filed by the IATA Agents Association of India (IAAI) in the Hon'ble High Court of Kerala challenging the zero commission policy adopted by some international airlines in India. It was contended by the Petitioners that as per rule 135 (2) of the Aircraft Rules 1937, an airline has to fix the tariff in accordance with the rules and while fixing the tariff, the commission payable to the travel agents should also be taken into account and the price reflected in the ticket. It was further contended that barring some airlines, who had adopted zero commission policy, the rule was being complied with by all airlines. The writ petition was directed against the airlines that were not following this rule. It was also stated by the petitioners in the writ petition that they had taken up the matter with the government of India by way of representations (copies of which were attached with the petition as exhibits P₃ and P₄).

25.4 In its judgement dated 13.07.2009, the Hon'ble High Court of Kerala directed the DGCA to look into the representations contained in exhibits P₃ and P₄ and take a decision in accordance with law.



26. Gist of order of DGCA and subsequent stand taken by the Ministry of Civil Aviation, Government of India

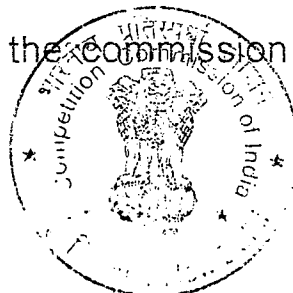
26.1 It is lawful for an airline to establish a tariff under sub-rule 1 of rule 135 of the Aircraft Rules, 1937 without including any commission payable to the agents as the rule does not say that there shall be paid-a-commission to the agents. It only stipulates that the tariff shall include the commission payable to the agents. So, if there is no commission payable, the same will naturally not be included and the tariff so established, without the commission, shall be displayed and advertised in accordance with sub-rule (2).

26.2 It is unlawful for the airlines or the agents to charge from customer a 'transaction fee' that is neither established under sub-rule (1) nor displayed under sub-rule (2). Reducing the commission to zero percent and then levying a transaction fee i.e. not reflected anywhere is against the Government's policy and violates provisions of sub-rule (1) of rule 135 read with the definition of 'tariff' given in clause 54 s(a) of rule (3) of the Aircraft Rules, 1937. Secondly, levying of transaction fee also contravenes sub-rule (2) of rule 135, as it is a



charge over and above the consolidated fare to be displayed or advertised under that rule. Therefore, the zero commission system adopted by some airlines in India and levying transaction fee in lieu of commission does not have any legal authorization and is contrary to law.

- 26.3** According to rule 135 of Aircraft Rules, 1937 transaction fee cannot be part of tariff as determined by airlines and also does not require consumers to pay the transaction fee as a part of air tariff.
- 26.4** The DGCA is not concerned with the transaction fee being charged by agents on account of services (other than air tickets), if any, being provided by them to their customers.
- 26.5** It was made very clear that as per rules **DGCA cannot lay down quantum of commission payable by airlines to agents.** It is entirely up to the airlines to take a decision in this regard in consultation with agents taking into account various commercial factors such as the market conditions, the cost of the agents' establishments etc. and statutory definition of 'tariff'. But the commission cannot be replaced by transaction fees.



26.6 The named airlines were directed to ensure compliance of existing statutory provisions regarding determination of tariff as per rule 135 (1) and display of the fare and other components as per rule 135 (2) and (2A).

26.7 It is pertinent to mention that Ministry of Civil Aviation, Government of India subsequently issued a letter no. AV.26025/3/2009-A to DGCA on 12.08.2010 wherein it has been categorically stated that there is no violation of any provision of the Aircraft Rules by the foreign airlines if they do not pay commission to the travel agents and there is no express provision in the Aircraft Rules which makes it mandatory for the airlines to pay commission to the agents. It has also been clarified that the commission will form part of tariff only if it is paid and not otherwise and that the airlines cannot be asked to pay commission only on the ground that the commission figures in the definition of tariff. The DGCA was also asked to inform all the airlines about the stand of the Government that it is not mandatory to pay commission to travel agents by airlines.

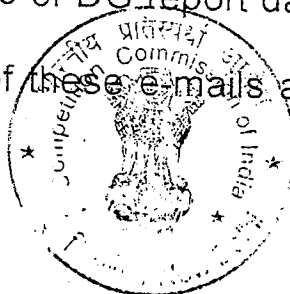


27. The Commission has carefully examined the entire material available on record including the order passed by DGCA and the letter dated 12.08.2010 issued by Ministry of Civil Aviation, Government of India to DGCA as well as the contentions raised by the opposite parties in their oral and written submissions. The Commission has also taken into consideration the role of trade associations, global practice and the relevant decisions of U.S., European Union etc.

28. **Determination of Issue No. 1**

28.1 Though the TAFI, TAAI and IAAI have denied the fact of issuing any directive to their members to boycott the sale of tickets of Singapore Airlines and issuing threats to ensure the compliance thereof but facts of the case speak otherwise.

28.2 A series of e-mails sent by TAFI to its constituent members established that it has in fact issued directives to boycott the sale of Singapore Airline's tickets. Copies of these e-mails are placed in Annexure-28 of DG report dated December 16, 2009. Extracts of some of these e-mails as are relevant are reproduced as under:-



E-mail dated January 20, 2009

"The joint meeting of all Associations in Mumbai on 15th

- Jan was a huge success. Over 350 people attended the meeting and were unanimous in their resolve to continue the fight for as long as it takes for SQ to buckle. Wholesalers, tour operators, portals and the rank and file of all associations are united and determined to regain our legitimate commission from all airlines."*

E-mail dated January 28, 2009

"Tomorrow will make it one month since we withdrew

support from Singapore Airlines. There's a difference between courage under fire and foolhardiness, but some people take longer to figure out the difference our action is making a huge difference to the loads on SQ-they are down by close to 66% as compared to Dec-Jan last year.

The agent fraternity is holding firm, the detractors have been identified and most of them have come



on board. It now remains to be seen how long any airline can afford to fly empty.

The struggle will continue and escalate until we achieve our goal. If we can survive for one month without selling SQ, we can survive for ever. How long can they survive in this country if the travel trade withdraws support?"

E-mail dated February 12, 2009

"First of all, we are indeed very thankful to all of you for your supporting us whole heartedly in fighting for our legitimate right to commission specially when it came to withdrawal of support to Singapore Airlines.

As a FINAL PUSH in nailing the coffin of Singapore Airlines, we hereby now request ALL MEMBERS OF ALL ASSOCIATIONS TO FORWARD THEIR REDUCTION OF SQ/MI CAPPING TO ZERO LETTERS TO THEIR REGIONAL & CHAPTER HEADS OF THEIR ASSOCIATIONS ON PRIORITY BASIS."



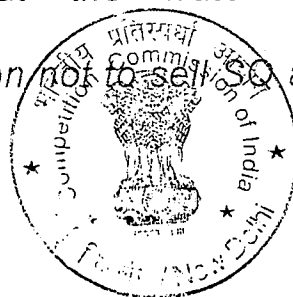
E-mail dated March 7, 2009

It is now over two months since we withdrew our support to Singapore Airlines and the results are there for all to see. It's unfortunate that SQ is not willing to admit its mistake and remains adamant. If they do not come around, we will be left with no option but to further escalate our action and to target the destination along with the airline."

E-mail dated April 20, 2009

"1083 agents across the country have submitted capping letters to SQ. Many of us have subsequently been capped to zero. Jai ho. Contrary to what SQ thought would happen this unprecedented action has only buoyed our morale.

Many members have written in to say things like "We have been crowed" or "Proud to be capped". It is obvious that the fraternity is united in its determination not to sell SQ again until or legitimate



demand for a fair remuneration is met. And it is evident that many, many agents across the country, regardless of which Association they belong to, have united like never before to make the airlines realize that we will not work for them for free.

There's also a bunch of wholesalers in Delhi who have consistently refused to support us, in spite of repeated requests. It's time you completely stop dealing with them. It's also about time you make it known that none of us will associate with these black sheep – neither commercially nor socially.

There are many wholesalers, consolidators and portals that are supporting the cause they are our friends and they are the ones we will do business with. The same goes for those MNCs who have refused to budge, despite our repeated requests to them. They have been given the opportunity to show their support and they have failed to do so.

Please DO NOT buy any tickets from them and do not attend any social functions where they are invited.



In conclusion:-

- a) *Please give your surrender of capping letters to SQ (with a copy to your associations' chairperson) immediately, in case you have not done so already.*
- b) *Stop issuing tickets from the detracting consolidators completely.*
- c) *Socially boycott these consolidators & MNC's totally."*

28.3 From the perusal of these e-mails it is abundantly clear that TAFI issued a directive call asking its constituent members to boycott the sale of tickets of Singapore Airlines in order to exert pressure on it to roll back its decision to reduce the commission to travel agents to zero percent. It is also evident that TAFI in order to secure compliance asked its members to submit capping letters to Singapore Airlines and directed them to stop dealing with the members who were not supporting the call for 'boycott'.

28.4 The boycott call given by TAFI was also followed by TAAI and IAAI. This factum is also established from the joint circular



issued by all these associations (placed as Annexure – 29 in DG Report). The circular reads as under:

“As per the decision of all the agents associations, effective 29th December, 2008, there will be no sale of Singapore Airlines tickets by all travel agents in the country, till further notice. All customers to please bear with us for the inconvenience caused. We would be more than happy to make your travel arrangements on alternate airlines of your choice.”

28.5 As has been brought out by the DG in his report that not satisfied with these efforts all the opposite parties also issued advertisements in various newspapers and put hoardings/bill boards in Mumbai and Bangalore regarding suspension of ticket sale and boycott of Singapore Airlines tickets and even asked Singapore Airlines either to give in to the demands of travel agents Associations or to close its operation in India. Copies of these advertisements are placed in Annexure – 30-31 of the DG report. These actions and conduct of the opposite parties leave no manner of doubt that irked by the decision of the Singapore Airlines to abolish the commission



to the travel agents on sale of its tickets all the three opposite parties representing travel agents across the length & breadth of the country took collective decision to boycott the sale of tickets of Singapore Airlines.

28.6 The plea of TAFI that it did not issue any directive to its members calling upon them to boycott the sale of tickets of Singapore Airlines is falsified from its own admissions made by it in the Written Statement dated 21.04.2009 filed before the Hon'ble High Court of Delhi in case number CS (OS) No.454 of 2009 (copy placed as Annexure-27 in DG report). This Written Statement was filed by the TAFI in response to civil suit filed by the informant in the High Court. The relevant paragraphs read as under:-

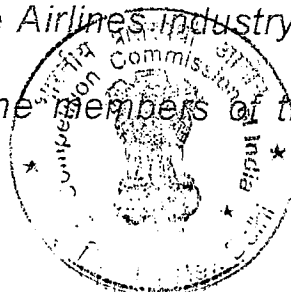
“Para 3- Without prejudice to the foregoing, it is submitted that action of the Defendant in issuing the Show Cause Notice dated February 16, 2009 and thereafter, suspending the Plaintiff in terms of decision of the Managing Committee of the Defendant dated February 25, 2009, is proper, justified and absolutely legal. It is further submitted that the decision and the



directives of the Defendant, inter alia to its members not to issue tickets of Singapore Airlines and the proposed action of expulsion of the Plaintiff from the membership of the Defendant are also absolutely legal, justified and valid and in line with the aims and objectives of the Defendant.”

“Para 7- In the light of the said decision taken by the Defendant Association, a directive was issued by the Defendant to all its members not to act as agent for Singapore Airlines and /or sell any airline tickets of Singapore Airlines. It is submitted that such decision is wholly legitimate and justified in the facts and circumstances of the case.”

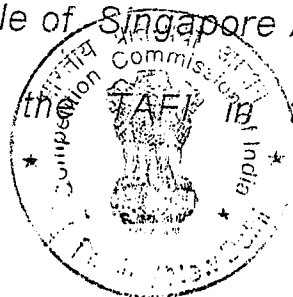
“Para 10- Unfortunately, the Plaintiff before this Hon’ble Court, for selfish reasons and /or for reasons best known to it, chose to blatantly flout the said decision/directive of the Defendant Association, and continued to book and sell tickets of Singapore Airlines, thereby projecting to the Airlines industry that there was lack of unity amongst the members of the Association.



In any event, such action of the Plaintiff was in clear breach of specific directives given by the Defendant Association to protect the interests of its members and such action of the Plaintiff amounted to misconduct and working against the Defendant Association, entitling to the Defendant Association, inter alia, to suspend the Plaintiff from its membership, as also to take further action in terms of Rules and Regulations of Defendant Association."

"Para 14-*To this end, the Defendant has, on the internet and via e-mails, informed its constituent members, that suspension and expulsion could be consequence if the direction of the Defendant not to deal with Singapore Airlines is violated by any member of the Defendant. Contents of the foregoing paras of the Written Statement are reiterated."*

"Para 23 *The direction at the Website, accessible to the constituent members of TAFI and e-mails, to suspend the sale of Singapore Airlines tickets, have been issued by the TAFI in the facts and*



circumstances stated above and the said directions are absolutely legal and binding on its members”

28.7.1 It is also mentioned that the aforesaid written statement was supported by the affidavit of Shri George Kutty, Chairman of the North Indian Chapter of TAFI authorized to depose on behalf of TAFI. In his affidavit he has stated that paragraphs 1 to 24 of the reply of the accompanying written statements were based upon information received by him from the records of TAFI and believed by him to be true.

28.7.2 In view of the unambiguous and categorical admissions made by TAFI before the High Court of Delhi it is clearly established that not only TAFI issued directives to its members to boycott the sale of Singapore Airlines tickets but it also in fact threatened them with suspension and expulsion in case of non-compliance with the said directives. In the case of informant the said threat was in reality executed and it was firstly suspended and thereafter expelled from the membership.

28.7.3 It is also seen from the records that on the request of the counsel for informant (Plaintiff in the case before Delhi High

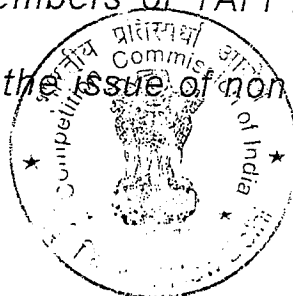


Court) to withdraw the suit in view of the promulgation of Competition Act, 2002 the leave to withdraw the suit was granted and suit was dismissed as withdrawn by High Court vide its order dated July 7, 2009.

28.8 Besides, on oath statements of President of TAFI, Shri Pradip Lulla, President of TAFI and Shri Ajay Prakash, National General Secretary of TAFI, recorded by Addl. DG during the course of investigation bear clear testimony to the fact that the trade associations of travel agents had taken a concerted decision to boycott the sale of Singapore Airline's tickets and when few members chose to ignore the directive the TAFI suspended them for not toeing the line. This fact is reinforced by the following relevant extracts of their statements (Copy of statements placed as Annexure-9 in DG report.)

Statement of Shri Pradip Lulla, President of TAFI

"Q.7 How many other members of TAFI besides Uniglobe, were suspended on the issue of non submission of SQ



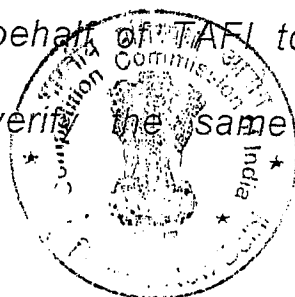
Capping Letter and what is their status now? Please provide the name and address of all these members?

*Ans. **There were quite a few members suspended.** I would provide you the names and address within seven days.*

Q.8 What was the exact directive issued to the members on this issue and what was the nature of deviation by the suspended members ?

Ans. The directive was simply to withdraw sales or substitute the sale on other airlines which were giving us the commission. But certain agents not only flouted but encouraged the other agents to flout. Now this was seriously considered by the Managing Committee to explain as we were only seeking the survival and welfare of our members. To this many of the suspended members followed the directive with the exception of a handful few with whom the suspension continued.

Q.10 I am showing you an e-mail dated 16th February 2009 issued by you on behalf of TAFI to (the information provider). Please verify the same by putting your



signature. Please also similarly identify and verify your e-mail 25th February 2009?

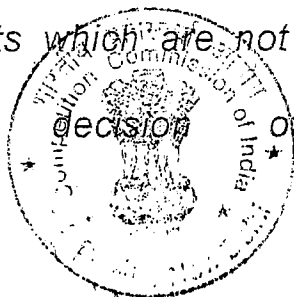
Ans. Seen and signed. I have marked them as PL/5 + PL/6 for identification purpose.

Q.11 Please give us the background where the decision to boycott the sale of Singapore Airlines was taken. Who decided about the same?

Ans. chapters the withdrawal of support to Singapore airlines in particular This decision was first fostered in a meeting at Panchsheel Club, Delhi where it was a call of all agents from various associations. Then in subsequent meetings in Mumbai and other and other airlines which gave no commission was adhered to."

Statement of National Secretary General of TAFI, Shri Ajay Prakash

"Q.7 TAFI has issued e-mails to the members for not selling the Airlines tickets which are not compensating them. Whether this decision of TAFI is in

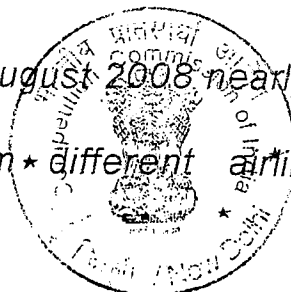


collaboration/association with the other Travel Agents Association of India?

Ans. TAFI as one of the Travel Agents Association consulted/discussed with the other Travel Agents Association on the issue of commission since the issue is common to all the Travel Agents and is critical for survival. It was a collective decision of all the association not to support Singapore Airlines and other Airlines who did not offer join remuneration or compensation as per the IATA passenger sales agency agreements. The names of these associations are TAAI, IAAI, IATO, ADTOI and ETAA and the facts are already provided to commission with regard to the consensus.

Q.8 TAFI and its members along with other associations acted in concert with other organization like IAAI, IATO, ADTOI and ETAA and formed a strategy against airlines for not selling tickets which is anti-competitive? Tell us the entire sequence of events?

Ans. Somewhere in July/August 2008 nearly all travel agents received letters from different airlines stating that

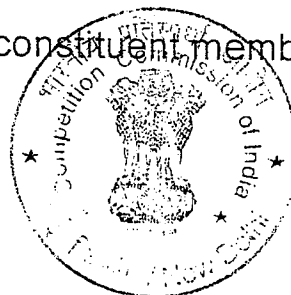


effective from October 1/November 1 2008, the commission which needs to be paid to Travel Agent in terms of then existing agreement (5% then) was proposed to be brought to 0%. The Travel Agents were asked to charge, instead of the commission, a transaction fee on different sectors as suggested by the airlines. This affected all the travel agents cutting across all the Travel Agents Association which are TAFI, TAAI, IAAI, IATO, ADTOI and ETAA. Members of all these associations met under a loose grouping "Indian Travel Fraternity." The "Transaction Fee" model was not acceptable to majority of the members. The issue was taken up with the Indian Carriers. Jet/Kingfisher/Air India and they agreed to roll back the abolition of the commission. Earlier the commission was 5% of the Basic Fare, after roll back it was made 3% of the Gross Fare. So, it was more or less the same. Singapore Airlines has promised that they will follow what Indian Carriers would do to the Indian Travel Agents Fraternity. Even after the roll back of Indian Carriers, the Singapore Airlines did not restore the commission payment. As a



result all the members of "Indian Travel Agents Fraternity" told their respective members not to sell the tickets of Singapore Airlines until the commission payment is reinstated. Failing which the members of different association could be subjected to disciplinary action by the associations which could also result in suspension and /expulsion. The incident of TAFI with one of its members was one such disciplinary episode as the members persisted with selling tickets of Singapore Airlines which it was not supposed to do."

28.9 It is also evident from the record that TAAI and IAAI also participated actively in the boycott call and issued directives to their members to stop the sale of Singapore Airlines tickets. In fact the evidence collected by the DG clearly establishes that the decision to boycott the sale of Singapore Airlines tickets was taken collectively by all the three travel agency associations, namely TAFI, TAAI and IAAI and it was ensured by them that their constituent members followed their diktat.



28.10 The details of meetings furnished by Singapore Airlines and placed at Annexure-4 of supplementary DG report revealed that TAFI, TAAI and IAAI held meetings with Singapore Airlines on 30.01.2009, 05.03.2009, 16.03.2009, 22.04.2009 and 12.05.2009 to discuss the issue of payment of commission to the travel agents.

28.11 Further, the involvement of TAAI in the boycott call gets established from the bouquet of unrebutted evidence highlighted below:

28.11.1 The news item published in the 12th issue of TAAI Newsline dated February, 2009 further strengthens the fact of involvement of TAAI. It states, "TAAI and the Travel Agents Fraternity had a Dharna at Jantar Mantar on 30th January against commission cuts by airlines wherein 500 plus agents attended. The meeting was fiery, with hard hitting speeches by our President followed by the Travel fraternity team. The Press and Media was present and Banners and Placards were put up all over the venue. Leaflets were distributed to the passer by public. Later the TAAI President and office bearers of the Travel fraternity visited the Singapore Airlines



office at Ashoka estate. The SQ office was expecting us and police protection had been arranged by them. The President and the team met Mr. Ang Beng Siong, the Manager NR for SQ. The meeting lasted for 90 minutes and our points were put across without mincing any words. We are sure the message that we want commission to come back will go through loud and clear to SQ.”

28.11.2 Another statement of the President of TAAI published in TAAI Newslines, Issue No.13 dated 25.03.2009, placed at Annexure-5 of DG report further corroborates the involvement of TAAI. This statement not only confirms continuation of withdrawal of support to Singapore Airlines but also seeks capping letters from its members. It runs as follows:

“Dear TAAI Colleagues,

It is unfortunate that our marathon meeting between all association heads and Singapore Airlines on 16th March, in Mumbai ended in a stalemate. The meeting had been called by SQ to resolve our dispute regarding withdrawal of support of SQ/MI on account of non payment of commission.



We had made it very clear to Mr. Foo that these terms and conditions were not acceptable to us agents and that if they wanted to do business in India then they have to abide by the prevalent conditions in our country. Despite that, he continued to emphasise on the TF module, knowing very well that if had failed only because of the airlines themselves who were unable to meet the basic conditions viz.

Price Parity

Cut & Pay

Remuneration to the Agents

Dear Members, as our demand of our 5% commission has still not been accepted by SQ/MI we shall continue our withdrawal of support. We too know how to remain adamant. Mr. Foes's letter amounts to a veiled threat to the entire membership and threats are not something the Travel Fraternity looks upon lightly.

I once again request all of you to continue with your unflinching cooperation for the withdrawal of support to SQ and wish to thank each and every one of you for your efforts so far.



The battle continues and is being escalated.

Our goal is our right to remuneration which we deserve for selling 85% of any airline's inventory. Our mantra is "Give us our legitimate right" COLLEAGUES, LET US STAY UNITED AND FIGHT THIS TO THE VERY END.

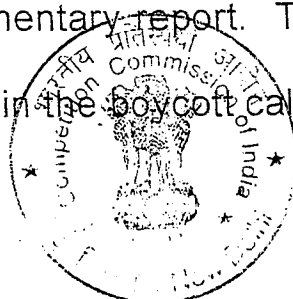
The Indian Travel Fraternity is in discussion about our next line of action but in the meantime all of you, who have not yet sent their capping letters to the TAAI Secretariat, please do so immediately. This is of utmost importance and our weapon to success.

UNITED WE STAND, UNITED WE GAIN!!!

Rajji Rai

President – TAAI"

28.11.3 Similarly, the President of TAAI exhorted its members to surrender their capping letters to sell Singapore Airlines tickets through his statement published in E-bulletin, Issue No.14 dated 30.04.2009 and has been reproduced by the DG at page 9 of his supplementary report. This again reinforces the involvement of TAAI in the boycott call.



28.11.4 The decision of boycotting the sale of Singapore Airlines tickets was taken collectively by TAFI and TAAI is further validated by the news item published in the above referred issue of TAAI Newslines under the heading 'TAAI – TAFI MEET IN MUMBAI.' The relevant extracts as reproduced in supplementary DG report at page – 10 are as under:

“The TAAI-TAFI meet in Mumbai on 2nd April saw full attendance. The hall was packed with members from both associations in a mighty show of solidarity and unity.....

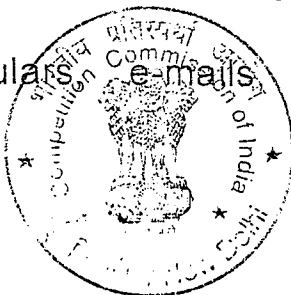
The Presidents of both the Associations, Mr. Rajji Rai and Mr. Pradeep Lulla spoke of how important it was to stay committed in our fight against zero commission and specially in our battle with SQ (Singapore Airlines)....”

28.12 Although the IAAI has denied its involvement in the boycott call but it has been seen in the preceding paras that it has been party to the collective decision of boycott and active participants in enforcing that decision. The advertisement published in various newspapers and hoardings, public notices taken out, e-mails and circulars issued on behalf of coordinating travel agents associations including IAAI unequivocally demonstrate that IAAI has been a party to the



boycott call given against sale of Singapore Airlines tickets. These evidences form part of the DG report and have remained unrebutted.

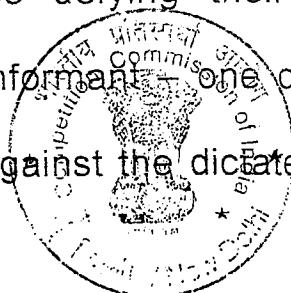
28.12.1 Further, during the course of supplementary investigation the DG recorded on 24.09.2010 statement of Shri P.K.G. Tharakan, Attorney and practicing Advocate, who appeared on behalf of Shri Biji Eeapan and Shri Naresh Rajkotia, National Secretary of IAAI (placed at Annexure 7 of supplementary DG report). In his statement Shri Tharakan did not deny the issuance of e-mails by IAAI alongwith other travel agents associations nor he denied the existence of circulars, newspapers advertisements, public notice and hoardings regarding suspension of sale of tickets of Singapore Airlines but he gave the explanation that since the Singapore Airlines had reduced the commission to zero the travel agents had no responsibility to sell its tickets and since the decision not to sell its tickets was taken by travel agents individually such action cannot be termed as boycott. The explanation offered by Shri Tharakan is diagonally opposite to the import of circulars, e-mails, advertisements and



statements etc. issued by IAAI individually as well as collectively with TAFI and TAAI.

28.12.2 Examination of contents of e-mails issued by CEO – IAAI dated 31.12.2008 and 13.03.2009 (copies placed at Annexures – 8 and 9 of supplementary DG report) leave no doubt in our mind that not only IAAI was a party to the collective decision of boycott but was also actively enforcing the decision on its constituent members.

28.13 The cumulative effect of the evidence collected by the DG during investigation and referred to above lead to inevitable conclusion that with a view to brow beat the Singapore Airlines to accept the demand of TAFI, TAAI and IAAI to revert to 'commission' based system these associations took a concerted decision to boycott the sale of Singapore Airline's tickets and to ensure compliance by their constituent members, they sent threatening emails and if any member was found to be defying their dictate he was ruthlessly punished. The informant – one of the brave souls which chose to stand up against the dictate of 'boycott'- had



to bear the brunt of ire of TAFI and was crucified in the last. The contention raised by the opposite parties that neither they had issued any directive to their members to boycott the sale of Singapore Airline's tickets nor they have pressurized them through email or otherwise cannot be accepted in view of uncontroverted evidence available on record including their own admissions. It is also noteworthy that the copies of DG report along with Annexures were supplied to the opposite parties but they have not challenged the veracity of documentary evidence placed on the record. No plausible explanation in this regard has also been offered by the opposite parties. In the light of clinching evidence available on record and discussed above the answer to issue No. 1 is in affirmative.

28.14 Before proceeding further it is pertinent to mention that on the direction of Commission the DG also investigated the role of three other non-IATA travel agents associations namely, Indian Association of Tour Operator (IATO), Association of Domestic Tour Operators of India (ADTOI) and Enterprising Travel Agents Association (ETAA) in the alleged anti competitive decision to boycott the sale of Singapore



Airlines tickets. The DG after making thorough investigation has come to the conclusion that no evidence other than appearance of names and logos of ETAA, ATDOI and IATO on various emails issued by TAFI, TAAI and IAAI and other advertisements was found which could establish the involvement of these non-IATA travel agents associations in the alleged anti competitive conduct. On the basis of responses filed by these associations before the DG as well as the statements of President of ETAA, Shri Karl Dantas, President of ADTOI, Shri Rakesh Lamba and President of IATO, Shri Rajesh Mudgil, DG has given the finding that members of these associations are not engaged in issuing tickets of any airlines and therefore, are incapable of boycotting the sale of Singapore Airlines tickets. The DG has also concluded that these associations had not given their consent for use of their names or logos in e-mails and advertisements issued by TAFI, TAAI and IAAI. The DG has further stated that none of these associations participated in the meetings held with Singapore Airlines or in the proceedings before DGCA or any Court. The findings of DG have been discussed in para 14 of this order. These three



associations have reiterated their respective stands taken before the DG in their replies filed before the Commission in response to the notice issued to them. In the absence of any evidence to the contrary we find no reason to disagree with the findings of DG report in this respect. Therefore, we dissent with the main order of the Commission dated 4.10.2011 finding ETAA, ATDOI and IATO in contravention of the provisions of the Act.

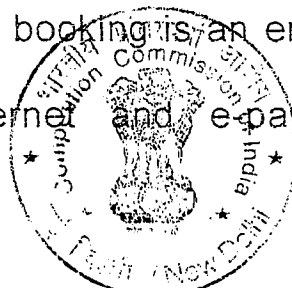
29. Determination of Issue No. 2

29.1 While determining Issue No. 1 we have concluded that all the opposite parties, namely TAFI, TAAI and IAAI took a collective decision to boycott the sale of Singapore Airline's tickets and issued directives to respective member travel agents to ensure compliance. In case any member chose to defy the directive and continued its commercial dealings with Singapore Airlines he was dealt with severely. The case of the informant is a glaring example of the coercive nature of the directive of the boycott call. Informant was not only suspended but also expelled from membership by TAFI for defying the 'boycott' call. All these facts, established by



credible evidence, unmistakable show that the directives issued by opposite parties were forced upon the members and left no room for any member to take his own independent decision in respect of continuance or otherwise of his business dealings with Singapore Airlines.

29.2 Most of sale of tickets of airlines in India takes place through travel agents. This fact is supported by the material placed on record. For example in the email dated 02.12.2008 sent by TAFI to its members it has been claimed that travel agents sell close to 90% of all tickets sold by the Airlines (copy of email placed at Annexure-9 of DG report). Further this fact has been reiterated in the advertisement placed by opposite parties and published in Business Standard dated January 19, 2009 wherein it has been stated that "Indian travel agents contribute to over 90% of all airlines ticket sales in India" (copy placed at Annexure-30 of DG report). As observed in para 1.11 and 1.12 supra, a vast proportion of consumers in India who travel in international sectors depend on travel agents. Although internet booking is an emerging alternative, the penetration of internet and e-payment services is



presently insignificant and a large number of consumers, particularly in non-metro areas are not educated enough to use these services. This Indian reality makes consumers more dependent on travel agencies than their counterparts in more developed economies. Therefore, it can be safely inferred that opposite parties wield considerable market power in respect of sale of tickets of airlines. As a result, any practice or decision adopted by travel agencies in India would have considerably more impact on consumers in India, especially on consumers from rural or semi-urban areas.

29.3 That above inference gets further strengthened from the examination of following extracts of e-mails;

E-mail dated December 31, 2008 sent by TAFI

" let us prove to SQ that the only way to do business in India is through the Indian travel agents. They might be sitting pretty for the next few years because of returning traffic. But who will give them traffic originating from India if we do not sell them?"



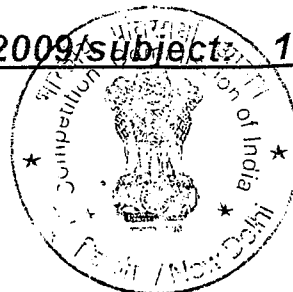
E-mail dated January 20, 2009 sent by TAFI (placed at Annexure-28 of DG report)

“Singapore Airlines and Silk Air are bleeding and the rudimentary first-aid of halving fares and offering PLBs does not seem to be helping them.”

E-mail dated April 20, 2009/subject: Capping by SQ

“Our analysis reveals that SQ’s sales in February this year are down to 50% as compared to their sales in February last year. This figure would have been much higher and we would have been closer to reaching a solution with SQ if it were not for most of the MNCs and a few unscrupulous consolidators, for who have been conniving with the airlines and collaborating with each other to sabotage our joint effort.”

Mail dated May 13, 2009/subject: 133 days and counting-update on SQ

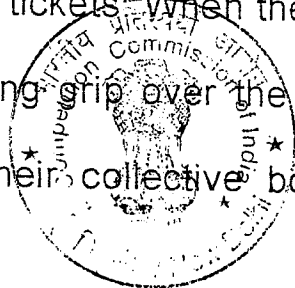


"133 days and counting...Over 1100 agents have voluntarily surrendered capping.. Singapore Airlines sales are down over 45% as compared to the same period last year..."

Our standoff with SQ must surely rank amongst the longest in the history of Civil Aviation. The whole world is waiting and watching to see how long the Indian Agents can hold out." (Copies placed as Annexures-32 of DG report).

29.4 Besides, the National General Secretary of TAFI Shri Ajay Prakash in his statement recorded by DG on November 6, 2009 (placed at Annexure-9 of DG report) has disclosed that approximately 1400 travel agents are members of TAFI.

29.5 Careful examination of all the facts & figures as disclosed by TAFI and other opposite parties and referred above leads to irresistible conclusion that opposite parties hold sway over the sale of tickets of airlines in India. It is also true in case of sale of Singapore Airline's tickets. When the opposite parties have such an overwhelming grip over the sale of air travel tickets the outcome of their collective boycott of sale of



Singapore Airlines tickets would have only one result i.e. supply of Singapore Airline's tickets would get limited. Going by the claims made by the opposite parties the sale of Singapore Airlines tickets has indeed been reduced by considerable percentage. The effect of the agreement between TAFI, TAAI and IAAI to boycott the sale of Singapore Airlines tickets has been clearly demonstrated by the DG in his supplementary report wherein it has been shown that the total sale of tickets of Singapore Airlines dropped by 29 % in 2009 as against 2008 due to the boycott call. Not only the boycott call given by the opposite parties has resulted into limiting the supply of Singapore Airlines tickets but it has also restricted the choices available to consumers.

29.6 DG has come to the conclusion that actions of opposite parties are anti-competitive in terms of provisions of section 3(3)(b) of the Competition Act, 2002. The relevant sub-section (3) of section 3 reads as under:

"Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice

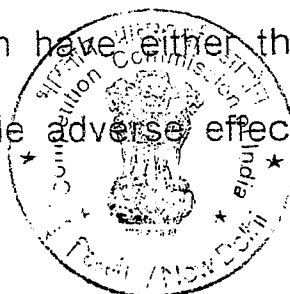


carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which –

- (a)
- (b) limits or controls production, supply, markets, technical development investment or provision of services;
- (c)
- (d)

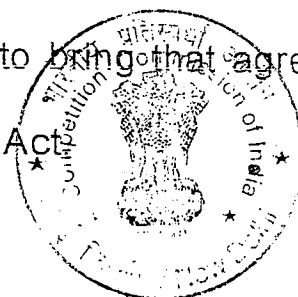
shall be presumed to have an appreciable adverse effect on competition.

29.7 For the purpose of proper appreciation of applicability of relevant provisions relating to anti-competitive agreements, it is useful to consider the various elements of section 3 of the Act in some detail. Section 3(1) of the Act prohibits and section 3(2) makes void all agreements by association of enterprises or persons in respect of production, supply, distribution, storage, acquisition or control of goods or provisions of services which have either the *object* or the *effect* of causing appreciable adverse effect on completion



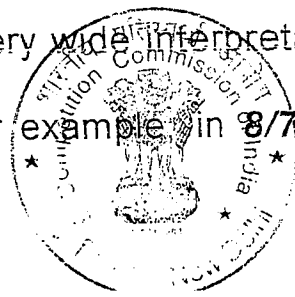
within India. It becomes explicit by the use of expression, "*causes or likely to cause an appreciable adverse effect on competition in India*" in section 3(1) of the Act. The said expression also finds place in section 3(4) and section 32 of the Act. Further, the definition of cartel provided in section 2(c) of the Act also lends support to such interpretation as even an attempt to control the production, distribution, sale or price of goods for provision of services by an association of producers, sellers etc. will be sufficient to bring them within the ambit of term cartel.

29.8 Therefore, if the object of any agreement itself is to restrict the competition then it will fall foul of section 3 of the Act, and in this case it is not required to further establish that such agreement has the effect of limiting the competition in the relevant market. On the other hand, if it is established that any agreement has the effect of distorting competition then it is not necessary to show that the object of such agreement is also to restrict competition. The necessary corollary of this would be that only one of the above two elements is required to be established in order to bring that agreement within the mischief of section 3 of the Act.



29.9 Further, section 3(3) of the Act applies not only to a agreement entered into between enterprises or associations of enterprises or persons or association of persons or between any person and enterprises but also with equal force to the 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 for sharing markets or customers. Once existence of prohibited agreement, practice or decision enumerated under section 3(3) is established there is no further need to show an effect on competition because then a rebuttable presumption is raised that such conduct has an appreciable adverse effect of competition and is therefore anti-competitive. In such a situation burden of proof shifts on the opposite parties to show that impugned conduct does not causes appreciable adverse effect on competition.

29.10 The concept of **decision of an association of undertakings** is given a very wide interpretation under the International case law. For example in **8/72 Vereeniging**



van Cementhandelaren V Commission {1972} ECR 977
and Visa International-Multilateral Interchange Fee OJ
{2002} L.318/17 it has been held by the European Courts
that decisions can include, not merely formal decisions
adopted by an association under any procedures laid down
in its constitution or founding documents but also the
constitution itself, any rules governing the association's
operations, binding regulations made by the association
and any non-binding recommendations made by it.
Similarly, the concepts of agreement and concerted
practice among undertakings have been interpreted widely.
In **Van Landewyck v Commission (1980) ECR 3125** it has
been held that agreements can include unwritten
agreements and "gentlemen's agreement" as well as formal
contracts. Moreover, an agreement entered into by a trade
association may be held to amount to be an agreement
between its members.

29.11 In case of trade associations (association of
enterprises), comprising of members which are themselves
enterprises, liability for anti-competitive conduct may arise two fold,
a trade association may be liable for breach of section 3 of the Act



embodied in a decision taken by that association, while additionally the constituent enterprises of association may be held liable for contravention of section 3 of the Act arising from an agreement or concerted practice between them. In addition to price fixing, three other categories of horizontal agreements like output limitations sharing customers or market and bid rigging are considered particularly harmful because they directly interfere with the outcome of the competitive process.

29.12 A decision taken by a trade association which has the purpose of fixing prices, or limiting the output of members, or allocating the market among its members, will be prohibited under section 3 of the Act as a form of anti-competitive co-ordination. Similarly, the Act prohibits the individual members of a trade association from entering into an agreement or engaging in a concerted practice which limits output or allocates the markets. This will be the case regardless of whether the intention is to restrict competition or not

29.13 It has been held in Pre-insulated Pipes (1999) OJ L-24/1 that a collective boycott, organized between competing undertakings in order to place pressure on another competitor or a

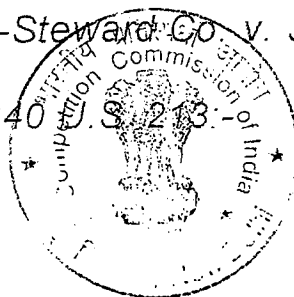


supplier is a form of output limitation and thus, a restriction of competition by object.

30. RELEVANT CASE LAWS OF OTHER JURISDICTIONS

U.S. CASE LAW

30.1 Group boycotts, or concerted refusals by traders to deal with other traders, have long been held by U.S. Courts to be in the forbidden category meriting per se condemnation. They have not been saved by allegations that they were reasonable in the specific circumstances, nor by a failure to show that they "fixed or regulated prices, parcelled out or limited production, or brought about a deterioration in quality." *Fashion Originators' Guild v. Federal Trade Commission*, 312 U.S., 457, 312 U.S., 466, 312 U.S. 467-468. *Cf. United States v. Trenton Potteries Co.*, 273 U.S. 392. Even when they operated to lower prices or temporarily to stimulate competition, they were banned. The U.S. Supreme Court has made the following observations in *Kiefer-Steward Co. v. Joseph E. Seagram & Sons*, 340 U.S. 211, 340



“such agreements, no less than those to fix minimum prices, cripple the freedom of traders and thereby restrain their ability to sell in accordance with their own judgment.”

30.2 In *KLOR'S, INC. V. BROADWAY-HALE STORES, INC.*, 359 U.S. 207 (1959) the following observations made by U.S. Supreme Court very succinctly bring out the effect of group boycott:-

“Plainly the allegations of this complaint disclose such a boycott. This is not a case of a single trader refusing to deal with another, nor even of a manufacturer and a dealer agreeing to an exclusive distributorship. Alleged in this complaint is a wide combination consisting of manufacturers, distributors, and a retailer. This combination takes from Klor's its freedom to buy appliances in an open competitive market, and drives it out of business as a dealer in the defendants' products. It deprives the manufacturers and distributors of their freedom to sell to Klor's at the same prices and conditions made available to Broadway-Hale, and, in some instances, forbid them from selling to it on any terms whatsoever. It interferes with the



natural flow of interstate commerce. It clearly has, by its "nature" and "character", a "monopolistic tendency." As such, it is not to be tolerated merely because the victim is just one merchant whose business is so small that his destruction makes little difference to the economy. Monopoly can as surely thrive by the elimination of such small businessmen, one at a time, as it can be driving them out in large groups. In recognition of this fact, the Sherman Act has consistently been read to forbid all contracts and combinations which "tend to create a monopoly." Whether "the tendency is a creeping one" or "one that proceeds at full gallop." (*International Salt Co. v. United States*, 332 U.S. 392, 332 U.S. 396.)

30.3 In Federal Trade Commission v. Superior Court Trial Lawyers Association 493 U.S. 411A a group of lawyers in private practice who regularly acted as court-appointed counsel for indigent defendants in District of Columbia criminal cases agreed at a meeting of the Superior Court Trial Lawyers Association (SCTLA) to stop providing such representation until the District increased group members' compensation. Federal Trade Commission (FTC) filed a



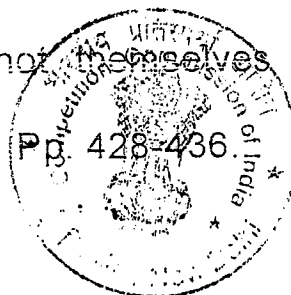
complaint against SCTLA and four of its officers (respondents), alleging that they had entered into a conspiracy to fix prices and to conduct a boycott that constituted unfair methods of competition violation of Section 5 of the FTC Act. The FTC ruled that the boycott was illegal per se and passed an order prohibiting respondents from initiating future such boycotts. The Court of Appeals vacated the FTC order.

30.3.1 The U.S. Supreme Court held that Respondent's boycott constituted a horizontal arrangement among competitors that was unquestionably a naked restraint of price and output in violation of the antitrust laws. Respondents' proffered social justifications for the restraint of trade do not make the restraint any less unlawful. Nor is respondents' agreement outside the coverage of the antitrust laws under *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, simply because its objective was the enactment of favourable legislation. The Noerr doctrine does not extend to horizontal boycotts designed to exact higher prices from the government simply because

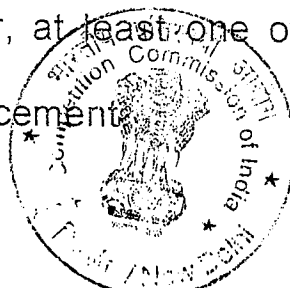


they are genuinely intended to influence the government to agree to the conspirators' terms.

30.3.2 The U.S. Supreme Court also held that the Court of Appeals' analysis denigrates the importance of the rule of law that respondents violated. The court's implicit assumption that the antitrust laws permit, but do not require, the condemnation of price fixing and boycotts without proof of market power is in error, since, although the *per se* rules are the product of judicial interpretation of the Sherman Act, they nevertheless have the same force and effect as any other statutory commands. The court also erred in assuming that the categorical antitrust prohibitions are "only" rules of "administrative convenience" that do not serve any substantial governmental interest unless the price-fixing competitors actually possess market power. The *per se* rules reflect a long-standing judgment that every horizontal price-fixing arrangement among competitors poses some threat to the free market even if the participants do not themselves have the power to control market prices. Pp. 428-436.



30.4 A trade association may openly exceed its legitimate function and organize anti-competitive activity. In **United States v. Association of Retail Travel Agents (ARTA)**, 1995-1 Trade Cas. (CCH) 70,957 (D.D.C. Mar. 16, 1995) the DOJ charged ARTA in connection with its efforts to orchestrate a boycott of travel providers that did not conform to ARTA's vision of an appropriate travel agent compensation system. ARTA's Board of Directors had adopted a written policy calling for a minimum ten percent commission on hotel and car rental sales by travel agents, the elimination of all distribution outlets for airline tickets other than travel agents, and payment of commissions based on full fares rather than the actual discounted prices. A few days later, ARTA hosted a press conference where it announced the content of this policy, and shortly thereafter, one of ARTA's board members announced that his travel providers whose commission and sales practices did not comport with the policy, and invited other travel agents to do likewise. Thereafter, at least one other board member made a similar announcement.



30.4.1 ARTA developed a position for its travel agent members on the prices and terms upon which they should be compensated, and then invited and encouraged members not to deal with travel providers that did not follow its prescription. the DOJ's complaint alleged that ARTA and its members agreed on commission levels and other terms of trade on which ARTA members and other travel agents should transact business with travel providers, and invited, encouraged and participated in a **group boycott** designed to induce travel providers to agree to those commission levels and terms of trade, all in violation of Section 1 of the Sherman Act. The case was settled by a consent decree in which ARTA was prohibited from "inviting or encouraging concerted action by travel agents or travel agencies to refuse to do business with specified suppliers of travel services or to do business with specified suppliers only on specified terms; and directly or indirectly adopting, dissemination, publishing, or seeking adherence to any rule, bylaw, resolution, policy, guideline, standard, adjective, or statement made or ratified by and officer,



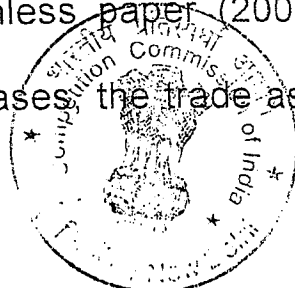
director or other official of defendant that has the purpose or effect of advocating or encouraging any of the [se] practices.”

Decisions of EU

30.5 In several cases in the 1970s the European Commission addressed prohibition decisions for competition infringements to trade associations in addition to their members, without however imposing fines on the associations.

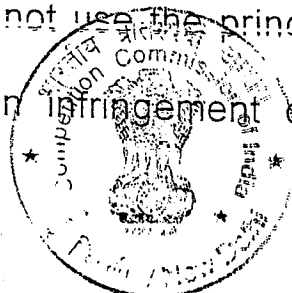
30.5.1 In the 1980s the European Commission started to impose fines on trade associations, starting with the BNIC case of 1982, concerning producers of brandy. In that case a fine was imposed only on the association not on the members. The first in which the Commission imposed a fine both on an association and on its members was the *roofing felt* case of 1986.

30.5.2 Since then, the list of cases in which trade association have been at the heart of cartels includes amino acids (2001), citric acid (2002), carbonless paper (2004) and industrial tubes. In most of these cases, the trade associations had a



legitimate purpose, but turned to anti-competitive activity once the official agenda of meetings was finished.

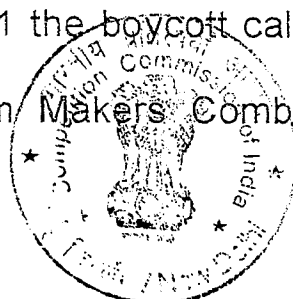
30.5.3 In the case of **French Beef, OJ L209** decided on 19.08.2003 in the face of difficulties on European beef markets federations of self- employed farmers had jointly set a minimum price and agreed to prevent imports from outside France. The Commission imposed fines totalling 16.7 million euros on six federations of French farmers. The press release accompanying the decision (Press release IP/03/479 of 2 April 2003) notes that: "This is the first time that the Commission has imposed fines on farmers' unions. The Commission recognises the importance of trade union freedom, but it is not the job of trade unions to assist in the conclusion and implementation of agreements that disregard the rules governing law and order and, more specifically, the competition rules." The court confirmed this and held that a union can legitimately defend the interests of its members, but cannot use the principle of freedom of association to justify an infringement of the competition rules.



30.5.4 The European Court of Justice in the case of **German Fire Insurance (1985) (OJ L35/20)** upheld the view of the Commission that trade associations cannot make price recommendations to their members in the European Union. In this case German Association of Property Insurers recommended increases in commercial premiums for industrial fire and consequential loss insurance of 10, 20, or 30 percent in specified circumstances. Although the recommendation was stated to be non-binding, the Court upheld the Commission's decision prohibiting the decision of association of undertakings considering that it constituted 'the faithful reflection of the (Association's) resolve to coordinate the conduct of its members'.

DECISIONS UNDER MRTP ACT

31. In Indian context under the MRTP Act (since repealed) it has been held in a number of cases that boycott calls given by trade associations are per se restrictive trade practices. In *Vinod Chopra v. Film Makers Combine* MANU/MR/0074/2001 the boycott call given by respondent association M/s Film Makers Combine (FMC) through a

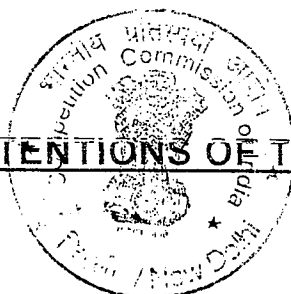


circular calling upon all the associations and not to register the film of the complainant and also to stop any kind of co-operation was held to be a deemed restrictive trade practice.

31.1 Similarly in DGIR v. Central Circuit Cine Association MANU/MR/0018/2002 the boycott of complainant cinema theatre by the members of respondent association, pursuant to the circular dated 11.03.1994 resulting in non-supply of films for screening was held to be a per se restrictive trade practice. Again in Johnson & Johnson Ltd. v. Maharashtra State Chemists & Druggists Association and ors. MANU/MR/0008/2002 it was held by the Commission that the boycott of the products of the complainant pharmaceutical company by the respondent association through issuing circulars is a restrictive trade practice and resultantly respondents were restrained from imposing any boycott or to interfere with the sale of the products of the complainant company in any manner.

32.

EVALUATION OF CONTENTIONS OF TAFI, TAAI and IAAI



32.1 Opposite parties have sought to justify the boycott call on the ground that since Singapore Airlines took unilateral decision to abolish the commission payable to the travel agents they had no other option but to resort to such kind of action to put pressure on Singapore Airlines to restore lawful remuneration. This argument is not acceptable for the following reasons:

32.2 Under the Competition Act, 2002 once the essential elements of section 3(3) are established, a presumption arises that such conduct has an appreciable adverse effect on competition. Of course this presumption can be rebutted if the opposite parties are able to prove that their conduct has pro-competitive effects as enumerated under section 19(3) of the Act. The opposite parties have not taken any plea in rebuttal of the presumption. Even otherwise the pro-competitive effects implicit in the factors provided in clause (d) to (f) as reproduced below are absent in the present case:-

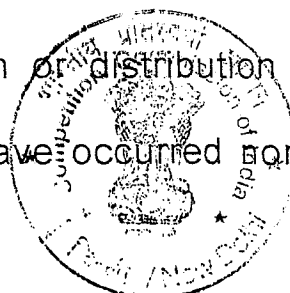
(d) accrual of benefits to consumers:



- (e) improvements in production or distribution of goods or provision of services;
- (f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

32.2.1 As has been shown above the boycott call given by the travel agent associations has deprived the consumers of the availability of choices of air travel tickets on the routes where the Singapore Airlines is operating. Thus, it is evident that no benefit has accrued to the consumers and on the contrary the conduct of the opposite parties has caused harm to the consumers. As discussed in para 29.2 above, the ground realities of India are such that the impact of such conduct by the opposite parties would have more serious impact on consumers in India, particularly those from non-metro areas, than it would in countries where alternatives such as internet bookings are more prevalent.

32.2.2 By boycotting the sale of Singapore Airlines tickets no improvement in production or distribution of provision or services can be said to have occurred nor has it resulted



into promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services. On the contrary, this conduct would cause immediate and clear deterioration of services of air ticketing for a number of consumers in India.

32.2.3 For rebutting the presumption raised under section 3(3) no extraneous factor in addition to the factors which find place in section 19(3) can be looked into. Therefore, abolishing the commission which was previously being paid to the travel agents cannot be a justifying factor for the opposite parties to indulge into patently anti-competitive conduct of collective boycott of sale of Singapore Airline's tickets. The tenacity and determined nature of their conduct is also evident from the repressive measures they have proclaimed to adopt towards any member who dares to dissociate from their boycott.

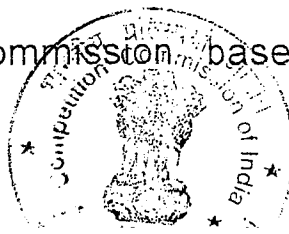
32.2.4 The fallacy of the argument advanced by the opposite parties is also exposed by the fact that the opposite parties have chosen to target only Singapore Airlines although it is



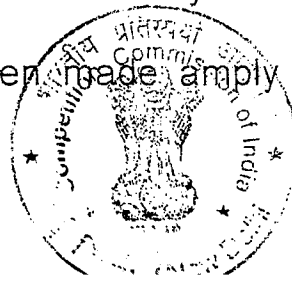
an admitted fact that many other foreign airlines have also abolished the commission based system.

33. The opposite parties have also contended that the payment of commission to travel agents is mandatory as per the legal provisions in India and no payment of commission is therefore an illegal act and the Commission cannot ask travel agents to support an airline that has indulged in illegal activity.

33.1 At the very outset it is made clear that issue before the Commission is that whether the conduct of boycott of sale of Singapore Airlines has resulted into limiting or controlling the supply of air travel tickets and is therefore anti-competitive or not and the present controversy hinges on determination of this issue. For determining this issue the Commission is not at all required to enquire into the legality or otherwise of 'payment of commission' to travel agents by the Singapore Airlines. Both, travel agents associations and airlines may have their own reasons for justifying their stand on the point of 'commission based model' or



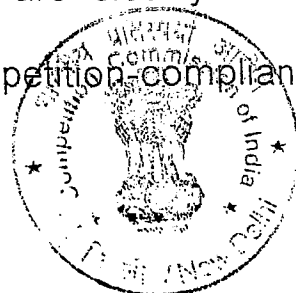
'transaction/service fee model' but for the purpose of disposing of this matter venturing into any sort of enquiry in the divergent stands is uncalled for. It is also borne out from the perusal of record that DGCA has already passed an order in this respect wherein it has been said that DGCA cannot lay down quantum of commission payable by airlines to agents and it is up to the airlines to take a decision in this regard. It is also mentioned in that order that the Aircraft Rules does not say that there shall be paid-a-commission to the agents although airlines or travel agents cannot levy transaction fee in lieu of commission as it is not covered within the definition of tariff given in clause 54 (a) of Rule (3) of the Aircraft Rules '1937. DGCA has directed the airlines to ensure compliance of existing statutory provisions regarding determination of tariff and display of fare in accordance with the provisions of Rule 135 of Aircraft Rules '1937. Moreover, in view of the subsequent clarification issued by the Ministry of Civil Aviation, Government of India vide its letter dated 12.08.2010 the contention raised by the opposite parties loses force as it has been made amply clear that if the



airlines do not pay any commission to the travel agents it will not be a violation of Aircraft Rules, 1937. The issue of the legality of 'payment of commission' to travel agents by the Singapore Airlines has been very clearly laid to rest in the light of stand taken by the Government of India.

33.2

That being the factual situation, we consider it as totally irrelevant for the purpose of this enquiry to delve upon this issue as this cannot be allowed to be used as justification for the anti-competitive conduct of the opposite parties. It is also emphasised that in the present case the decision not to sell the tickets of Singapore Airlines was thrust upon by the travel agent association on their constituent members and it was not the outcome of conscious and voluntary decision taken by individual travel agents. This conclusion is amplified by the fact that informant who chose to continue its business dealings with the Singapore Airlines was not only threatened but also suspended and expelled from the membership of TAFI. The behaviour and conduct of the opposite parties are clearly inconsistent with the expectations of competition-compliance from trade



associations as expounded in detail in paras 2 to 2.2 above.

34. The opposite parties have also contended that the Travel Agents Associations are not covered under the definition of 'enterprise' as they are not business entities and therefore, the provisions of Competition Act do not apply to their activities.

34.1 In view of the clear positions of the Act, the contention of the opposite parties is bereft of any substance and cannot be sustained.

34.2 The definition of 'enterprise' as provided in section 2(h) is as follows:-

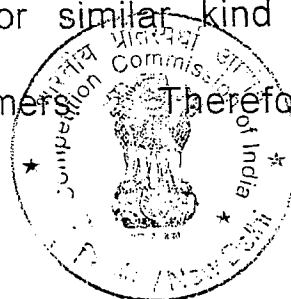
"enterprise" means a person or a department of the Government, who or which is, or has been, engaged in any activity relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services of any kind but does not include any activity of the Government relatable to the



sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.

34.3

There is no dispute as to the fact that constituent members of respective opposite parties are travel agents who provide travel agency services to the consumers. Therefore, they are engaged in an activity of providing travel agency services to the customers and they fall squarely within the definition of 'enterprise' provided in the Act. Further, subsection (3) of section 3 of the Act not only covers agreements entered into between enterprises or associations of enterprises but also the practice carried on or decision taken by any association of enterprises engaged in identical or similar trade of goods or provision of services. There is no denying the fact that TAFI, TAAI and IAAI are associations of enterprises which are engaged in providing identical or similar kind of travel agency services to the consumers. Therefore, this argument



advanced by the opposite parties has no substance and is liable to be rejected.

35. It has also been contended on behalf of TAFI that it has not entered into any agreement as defined under section 3(1) of the Act and therefore, it cannot be said to have contravened the provisions of section 3 of the Act.

35.1 In the light of the provisions of section 3 as elaborately discussed in the foregoing paras and clinching and reliable evidence analysed above this argument of TAFI cannot be sustained and is liable to be rejected. It has been established that the opposite parties not only took a decision to boycott the sale of Singapore Airlines tickets but also saw to it that such decision is implemented by all constituent travel agent members rigorously. The suspension and expulsion of the informant by the TAFI for not complying with the concerted decision and continuing its business dealings with Singapore Airlines itself speaks volume about this fact and goes to strengthen the culpability of TAFI. It has also come in evidence that apart



from the informant other travel agents who chose to defy the boycott call were suspended and their suspension were revoked only when they agreed to go along with the call.

35.2 Secondly, 'agreement' has been defined in section 2(b) of the Act and includes any arrangement or understanding or action in concert whether formal or in writing. From the analysis of the evidence this fact has also been established that TAFI, TAAI and IAAI acted in concert to enforce the decision of the boycott of Singapore Airlines tickets. As has been observed in para 29.14 a collective boycott organized between competing undertakings in order to place pressure on another competitor or a supplier is a form of output limitation. Therefore, there is not even a slightest doubt that the conduct of the opposite parties is squarely covered under the mischief of section 3(1) read with section 3(3) of the Act.

36. It has also been contended on behalf of the opposite parties that the boycott call given by the travel agent associations is nothing more than a 'collective bargaining'



intended to exert pressure on airlines to pay the legitimate compensation to the travel agents for rendering travel agency services.

36.1 First of all, the term 'collective bargaining' is ordinarily used in relation to employers and employees and despite claim of the travel agent associations to the contrary, it can never be understood to encompass the collective or group boycott in which competing undertakings are alleged to have colluded. Anticompetitive boycott is certainly distinct from a strike organized by trade unions or employees. In contrast 'collective bargaining' is constrained by section 3 of the Act which prohibits collusive or concerted conduct in the form of agreement, arrangement or understandings having the purpose or effect of lessening the competition.

36.2 It is also noteworthy that under the MRTP Act (since repealed) under section 3(d) trade unions or associations of workmen or employees formed for their own reasonable protection as such workmen or employees were exempted from the purview of the Act, but under the Competition Act,



2002 no such exemption has been allowed to even trade unions or employees associations.

36.3 Therefore, there is no justification for making a departure from the aim of the Act to foster competition in a case of group or collective boycott disguised as 'collective bargaining'. Taking into account the factors analysed above the argument of the opposite parties is devoid of any merit and is liable to be rejected.

37. It has also been contended that as the present matter pertains to internal administrative matter of TAFI the Commission is not competent to intervene in the matter.

37.1 As has been stressed in this order, the focal point of controversy in this matter is whether the impugned conduct of opposite parties wherein they have taken a concerted decision and acted thereupon which limited the output of sale of Singapore Airlines ticket and at the same time deprived the consumer of the choices available in that particular air travel sector falls foul of section 3(3)(b) read with section 3(1) of the Act or not. The purpose of inquiry of this matter has never been and probably can never be, to



find out the legitimacy of internal working of travel agents associations which is not anti-competitive in nature.

37.2

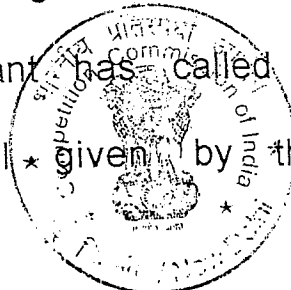
In this case it has been categorically established that the conduct of opposite parties amounts to contravention of section 3(3) (b) read with section 3(1) of the Act and the suspension and expulsion of the informant is inseparably interlinked with the anti-competitive act of the opposite parties. Therefore, since the action of expulsion of informant flows from the anti-competitive conduct of TAFI the Commission is fully competent to look into that aspect of the matter as well and the argument advanced by the opposite parties has no force and cannot be sustained.

38.

The next argument raised by the opposite parties is that the Ministry of Civil Aviation, DGCA, IATA & Singapore Airlines are necessary parties in this matter and their non-impleadment will vitiate the inquiry.

38.1

Though the opposite parties have taken this plea but they have not provided any logic or basis in support of their argument. The informant has called in question the impugned boycott call given by the travel agent



associations and has sought to protect his freedom of trade with any airlines of his choice and for determining this limited question the impleadment of the aforesaid parties is not required at all. The views and order of the DGCA is already on record and Singapore Airlines had furnished its views before the DG. The role and relevant resolution of the IATA was also taken into account by the DG in its report. The opposite parties were supplied with the copies of the report of DG alongwith all annexures and they had ample opportunity to present their views on those aspects also. Having come to the finding that impleadment of Ministry of Civil Aviation, DGCA, IATA & Singapore Airlines is not necessary for determining the real controversy before the Commission in this matter contention of the opposite parties is also devoid of any merit. Consequently the contention as well as the application dated 28.08.2009 of TAFI in this regard is hereby rejected.

39. It has also been contended by the opposite parties that since as per own admission of Singapore Airlines contained in its letter dated 12.08.2010 placed at Annexure 4 of supplementary DG report, the travel agents have resumed



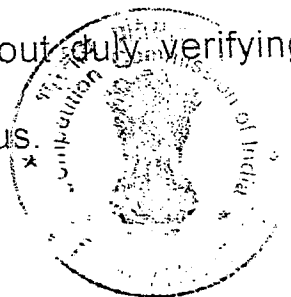
selling its tickets since January, 2010, the present proceedings have become infructuous. It has also been contended that Singapore Airlines has not made complaint regarding the alleged boycott.

39.1

Even if the fact that the travel agents have lifted the boycott and have resumed sale of Singapore Airlines tickets since January, 2010 is accepted, it will not render the proceedings before the Commission infructuous because just by calling off the boycott the past anti competitive conduct of the opposite parties does not gets washed away. Similarly, even if Singapore Airlines did not choose to join the present proceedings the Commission is fully empowered to look into the anti competitive conduct of the opposite parties and pass suitable orders. Therefore, the contentions raised above have no substance and are liable to be rejected.

40.

It has also been contended that as the DG has believed the data regarding drop in sale of tickets submitted by Singapore Airlines without duly verifying those, the same cannot be accepted by us.



40.1

The contention raised by the opposite parties is devoid of any merit and deserves to be rejected because the data relied upon by the DG only lends credence to the claim made by the opposite parties themselves which has been discussed in the preceding paras. Moreover, the opposite parties have not adduced any evidence to show that in fact there was no significant drop in the sale of Singapore Airlines tickets, rather, they have themselves claimed in the e-mails dated 20.04.2009 and 13.05.2009 (referred in para 29.3 supra) that the sale was down by 45-50 %.

41.

It has also been contended that withdrawal of support by travel agents to the Singapore Airlines has not affected competition in terms of section 19(3).

41.1

In the light of discussion held in foregoing paras this contention has also no substance and is liable to be rejected. While analysing the factors enumerated in section 19(3) of the Act it has been found that there is no accrual of benefits to the consumers or improvements in provisions of services by the boycott of sale of Singapore Airlines tickets. On the other hand the consumers have been deprived of



the tickets of Singapore Airlines to the extent of availability of tickets through the travel agents of TAFI, TAAI and IAAI and their choice has also been restricted to the extent of drop in the sale of Singapore Airlines tickets. Furthermore, the boycott cannot be said to have led to promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services. It is also pertinent to mention that the opposite parties have not adduced any evidence to show any pro competitive effects of the boycott call.

42. Conclusion

42.1 The preceding analysis has shown how international air travel sector in India has acquired significance over the past few years. With a grand total of 28,933,903 passengers travelling in this sector during 2008-09 and growth of 68% registered over the past 5 years, this is an important sector of the economy. The role of travel agents as facilitators for consumers has also been clearly established, particularly in context of large scale unskilled labour movements to the middle-east, Africa, south-east



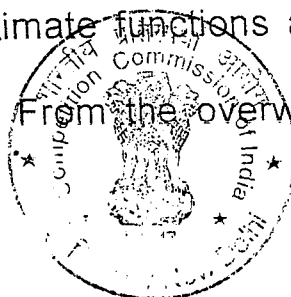
Asia, America etc. This importance is further underlined when viewed in the context of low level of internet penetration in India. These factors show why it is important to ensure competitive environment in this sector.

42.2

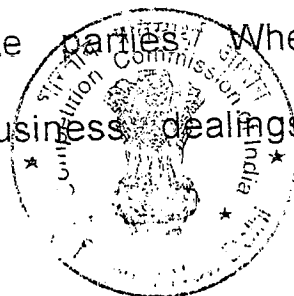
Paras 1.14 to 1.31 of this order goes into some length to examine the relationship between trade associations and competition laws. As observed therein, trade associations remain vulnerable to stepping beyond the limits placed by competition law because, by definition, they involve meetings, discussions and cooperation amongst various – often virtually all – competitors in a particular line of business. Therefore, it is desirable that they conduct their affairs with all due care to avoid the pitfall of falling foul of competition laws of India.

42.3

The forgoing analysis presents a tell tale story of travel agents associations formed with avowed objective to protect the interest of travel agents fraternity in India ending up in exceeding its legitimate functions and indulging into anti-competitive activity. From the overwhelming evidence



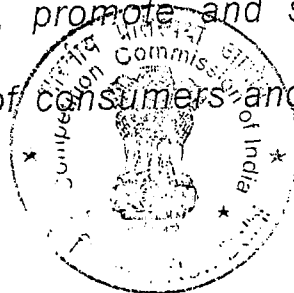
discussed in detail at para 29 above, it has been seen that the decisions taken by TAFI, TAAI & IAAI to boycott the sale of Singapore Airlines tickets and concerted action on their part to enforce their decisions by threatening the constituent member travel agents has not only resulted into the distortion of competition in the form of lower output of sale of air travel services but has also caused harm to the interest of consumers by depriving them of available choices in a particular air travel sector. The reliable evidence available on record goes on to establish the fact that the decision to boycott the sale of Singapore Airlines tickets was taken by the opposite parties with a view to force the airlines to roll back its decision to abolish the commission of travel agents. It has also been established by cogent and credible evidence that the opposite parties forcibly thrust their decisions upon the constituent member travel agents and if any travel agent was found defying their dictate he was severely dealt with. The case of informant provides an insight in the coercive nature of boycott call given by the opposite parties. When the informant continued to have business dealings with Singapore



Airlines, ignoring the boycott call, he was not only suspended but was expelled from membership by TAFI in the end. The essential elements of section 3(3) (b) have been established undoubtedly, raising presumption of appreciable adverse effect on competition. It has also been seen that there is not even a whisper from the opposite parties to rebut the presumption so raised. On the other hand it has also been found that pro-competitive factors enumerated in section 19(3) are absent in the present case. It is bounden duty of the Commission not only to prevent practices having adverse effect on competition but also to protect the interest of the consumers.

42.4 The observations above acquire great significance in view of section 18 of The Competition Act, 2002 that lays down the duties of the Competition Commission of India:

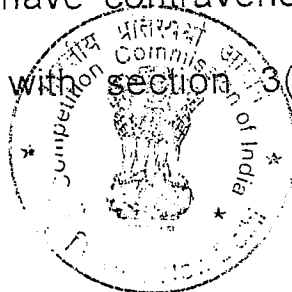
"Subject to the provisions of this Act, it shall be the duty of the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of



trade carried on by other participants, in markets in India....”

Thus very clearly, the legislature of India intended this Commission to safeguard freedom of trade. Any act that results in hampering the ability of any person or enterprise to engage in free trade is to be censured. The expulsion of the informant by TAFI as well as boycotting Singapore Airlines creates hindrances for free trade and hence it is the bounden duty of this Commission to intervene. As discussed in detail above, a considerable number of consumers are also adversely affected by such activities by the opposite parties. This Commission would fall short of the expectations of legislative intent of the Competition Act if such conducts are not prevented.

42.5 From the foregoing analysis of evidence and taking into account the contentions raised by the opposite parties it has been fully established that the opposite parties, namely TAFI, TAAI and IAAI have contravened the provisions of section 3(3)(b) read with section 3(1) of the Act. No



contravention of any other provision of the Act was either alleged or found.

43.

We have given its thoughtful consideration to all the facts and circumstances of this case before passing any order under section 27 of the Act. The dispute between associations of travel agents arose in the present case at the fag end of 2008 when most of the airlines shifted to 'transaction fee model' from 'commission based model.' As the commission, which was hitherto being paid to the travel agents, was reduced to zero the associations of travel agents finding the new model less remunerative resisted the move of airlines. Some of the airlines wilted under the pressure exerted by the associations and reverted back to commission based model but most of the foreign airlines did not oblige. Since the Singapore Airlines was one of the front runner in introducing the new model and did not revert back to the commission based system in spite of many parleys with the travel agents associations, it was targeted by the travel agent associations and because of this TAFI, TAAI and IAAI collectively decided to boycott the sale of its tickets in December, 2008. The standoff between the

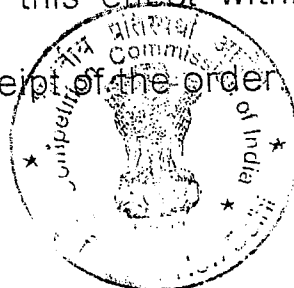


Singapore Airlines and these associations continued and as per the version of Singapore Airlines, the boycott was lifted and travel agents resumed the sale of its tickets since January, 2010.

44. After considering the combined effect of all the mitigating factors in the context of facts and circumstances of the instant case, we are of the opinion that the ends of justice will be sufficiently met if a penalty of Rs.1,00,000/- (Rupees One Lakh Only) is imposed upon each of the opposite parties, namely TAFI, TAAI and IAAI under section 27(b) of the Act, in addition to cease and desist order under section 27(a) of the Act.

45. Accordingly, exercising the powers vested in sub section (a) & (b) of the Act we passe the following orders against the opposite party namely, TAFI, TAAI and IAAI:

- i) The opposite parties are directed to refrain from indulging in such anti competitive conduct in future and are further directed to file an undertaking to this effect within one month from the date of receipt of the order.



- ii) A penalty of Rs.1,00,000/- (Rupees One Lakh only) is also imposed on each of the opposite parties. The penalty shall be paid by the opposite parties within one month from the date of receipt of the copy of this order.

46. Secretary is directed to send a copy of his order immediately to the opposite parties for compliance.

Sd/-
Member (R)

Sd/-
Member (T)

Certified True Copy

