

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
4. Indian Association of Tour Operators (IATO)
310, Padma Tower II
22, Rajendra Place
New Delhi - 110 008
5. Association of Domestic Tour Operators of India (ADTOI)
Flat No.101, 1st Floor,
Antriksh Bhawan, 22, Kasturba Gandhi Marg
New Delhi-110 001
6. Enterprising Travel Agents' Association (ETAA)
C/o Bombay Travels Private Limited
7-B, Hassan Manzil, 71, August Kranti Marg,
Gowalia Tank, Mumbai 400 036

..... Opp. Parties



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 under section 19(1)(a) of the Competition Act, 2002 through its counsel Ferida Satarawala.

2. Stated briefly, the case pertains to a boycott call given by trade associations of the travel agents in India against a few international airlines, on account of the shift from 'commission basis' fee structure to 'transaction fee' structure, and the demand to restore the former business model. One of the members of the Opposite Party - 1 i.e. the Informant in the present case, did not heed to the boycott call, which resulted in its expulsion from the Association. The matter was brought before a court of law, which dismissed the civil suit filed by the informant. Thereafter, the informant filed present information before the Competition Commission of India for alleged violation of section 3(1) and 3(3) of the Competition Act, 2002 by the opposite party-1.

3. Facts of the case, based on the information, report of the Director General (DG), depositions of the parties before the Commission and views of related agencies, issues arising thereon and findings of the Commission are dealt in subsequent sections of this order.

BACKGROUND

Overview of the international air travel sector in India

4. The aviation industry in India that includes domestic and international circuits has shown a healthy growth over the last few years, both in number of passenger volumes and scheduled flights. Relevant statistics available on the website of the Director General of Civil Aviation (DGCA) reveals that during the five year period 2004-05 to 2008-09, total passenger traffic has grown by 68% i.e. from a total of 17,266,915 passengers during 2004-05 to 28,933,903 passengers during 2008-09.

5. 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 - 50 million Indians will travel abroad by 2020 as per estimates of United Nations World Tourism Organization (UNWTO).



6. Therefore, in order to grab a larger share of this burgeoning Indian aviation sector, large international carriers operating in India such as British Airways, Singapore Airlines, Virgin Atlantic, Emirates etc. are either increasing the number of flights to various Indian cities or they are adding more destinations to include new cities. Similarly, smaller players such RAK Airways and Garuda Indonesia are starting to fly into the country, as international airlines attempt to gain a foothold in the growing India-bound market.

Role and function of Travel Agents

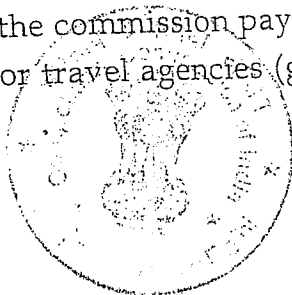
7. It has been estimated that almost 90% of airline tickets booking in India is done through travel agencies. In fact, a look at the international figures indicates that world over, the dependence of consumers on travel agencies for air ticketing services is very high and almost everywhere the percentage of air tickets booked through travel agents is between 80 and 90.

Change in business model: Switch from commission to transaction fee

8. Traditionally, the travel agents have been getting a fixed commission by the airlines on every ticket sold by them. However, of late, there has been a shift in some countries to the transaction fee model wherein the travel agent charges the passenger an amount depending on the service rendered and bouquet of services offered, the outcome of which would be to enhance overall customer service standards. Globally, the airline companies, especially in Europe and US, have gradually shifted from commission fee structure to transaction fee model, facilitated by widespread usage of internet and ecommerce.

9. The process of shifting the business model started in the US in 1995 when seven airlines i.e. American, Delta, US, Trans World, United, Northwest and Continental Airlines joined hands to put a cap on commissions paid to travel agencies. In October 1999, airline commissions were reduced to 5% and finally eliminated in the US in March 2002. The Amadeus Report brings out the following three key variables that triggered the end of the commission model:

- The unsustainable financial losses by airlines due to the growth of low cost carriers (LCCs) leading to an increase in the number of bankruptcies.
- No negative consequences from previous commission cuts: airlines had progressively lowered the commission payments starting in February '95.
- No effective recourse for travel agencies (group actions prohibited by US law).



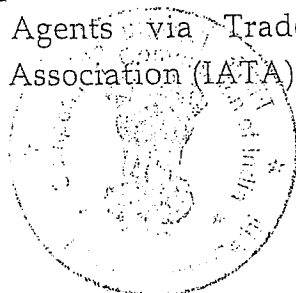
10. The decision of some of the international airlines to implement transaction fee in place of commission in India was not well taken to by the travel agency business in India. The instant case is a consequence of reaction to this by one of the trade associations of travel agents in India in response to the change in business model by an international airline. The later sections of this order shall go into the details of the case.

Impact on consumers in India

11. 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 that the consumer is not adversely affected.

12. In the context of India, this overwhelming dependence of consumers on travel agencies has special significance because a considerable proportion of air travellers reside in towns and villages that do not have airline offices. Even, access to internet booking is very limited because of lack of internet facilities and electronic payment mechanism. 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. In effect, the airline passenger has perforce dependence on the services of travel agencies.

13. Most of the travel agents are members of trade associations - in India there are six such associations. These Travel Trade Associations serve several functions primarily among these is the accrediting the travel agents for tourism related activities including provision of visa services. More significantly airlines issue tickets to Travel Agents via Trade Associations recognized by International Air Transport Association (IATA).



Facts stated in Information filed by the Informant

14. The informant i.e. Uniglobe Mod is a travel agent rendering various travel related services and a company incorporated under the Companies Act, 1956 with its registered office at New Delhi. It is an International Air Transport Association (hereinafter referred to as 'IATA') accredited travel agent and a member of two more associations namely Travel Agent Federation of India (hereinafter referred to as 'TAFI'), Travel Agents' Association of India (hereinafter referred to as 'TAAI'). Uniglobe Mod 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.

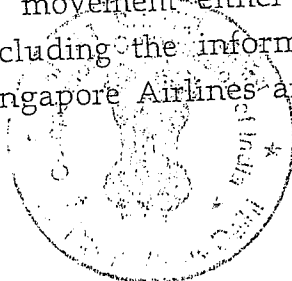
15. The opposite party no. 1 TAFI is a registered society and is an association of registered IATA travel agents, governed by its Memorandum of Association and the rules and regulation framed thereunder. The informant is an active member of TAFI since 1999.

16. It is important for a travel agent to be a member of TAAI, IATA Agents Association of India (hereinafter referred to as 'IAAI') or the TAFI in order to enjoy certain benefits like:

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

17. In the month of July-August 2008, several international airlines including Singapore Airlines issued a notice to the travel agents to the effect that from 01.11.2008, it would stop payment of commission to travel agents on sale of their 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.

18. Trade Associations did not respond favourably to this altered air fare structure and presumably, on behalf of Travel Agents, intervened more aggressively on the issue. Since December 2008, TAFI and other trade associations, who joined the movement either overtly or tacitly, have been threatening its members, including the 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 unsold ticket stock to the airline. Further, to highlight its intentions, TAFI has circulated a proforma of the 'SQ Capping Letter' to be signed and returned by all its members.

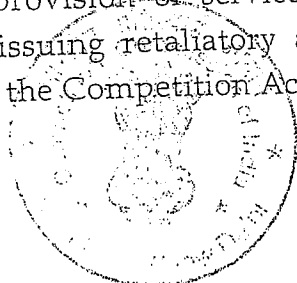
19. In order to reinforce the boycott call, TAFI has been threatening its members with suspension and expulsion by various media including posting the same on a specially created website 'no-to-zero.in', if they failed to comply with the direction of the Association.

20. The informant neither signed the aforesaid capping letter nor did it return the unsold ticket stock of Singapore Airlines and has openly shown that it will not participate in the boycott call. A show cause notice was sent by TAFI to the informant on February 16, 2009 through e-mail to show cause as to why the informant should not be expelled from the membership. On February 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 of the association.

21. 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.

22. 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.

23. 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 supply of Singapore Airlines (SQ/ Singapore Airlines) tickets and hence has a harmful market effect which is prohibited under the provisions of 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(1) read with section 3(3) (b) of the Competition Act, 2002 has been alleged.

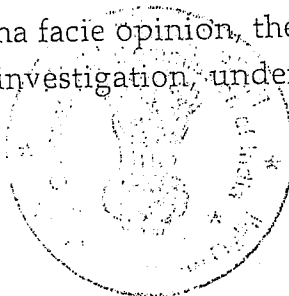


24. The informant prayed for the following reliefs:-
- (a) To direct TAFI to discontinue the boycott of Singapore Airlines;
 - (b) To declare the suspension of the informant illegal, invalid and void ab initio;
 - (c) To insure that TAFI does not issue boycott directives against any other airlines in 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.

25. 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 Plaint 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.

26. Having formed a prima facie opinion, the Commission referred the matter to the Director General for investigation, under section 26(1) of the Act, vide its order dated 04.08.2009.



Anti-competitive concerns of Trade Associations activities

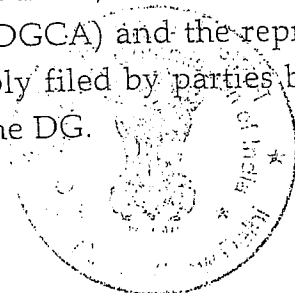
27. The present enquiry relates to the activities of Travel Trade Associations vis-à-vis their members which could potentially violate Section 3(1) read with Section 3(3) of the Act impacting competition in the market of travel industry.

28. Trade associations and their activities often tend to go beyond the limits of facilitation required by their members and thus attract scrutiny by competition authorities. Experience in Canada, European Commission etc. has lead competition authorities to examine their activities from the lens of competition policy, while attempting to define the limits of action by trade associations. According to a study (published in December 2006: The Pros and Cons of Information Sharing conference volume, Mats Bergman, ed., Stockholm, Sweden: Konkurrensverket, Swedish Competition Authority) by Margaret Levenstein and Valerie Suslow on 'Cartel Bargaining and Monitoring: The Role of Information Sharing', among the 41 international cartels studied (all fined by European Commission), 11 had active trade association involvement while 8 of them used trade association meetings as cover for coordinated anti-competitive activities.

Findings of DG

29. The Director General after receiving direction from the Commission investigated the matter and submitted his investigation report to the Commission on 16.12.2009.

30. The DG, asked 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 asked to submit the details of effect of boycott on their sales along with their views on the boycott directive issued by 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.



31. During the course of investigation, statements of Mr. PradeepLulla, Acting President, Mr. Ajay Prakash, General Secretary, Mr. Praveen Chugh, Ex. President of TAFI were also recorded.

32. 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. November. The agents were offered productivity link bonus and were suggested to adopt transactions /service fee model.

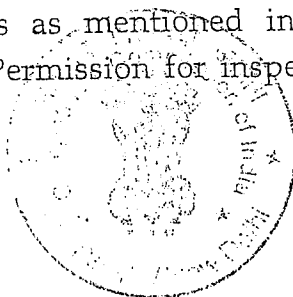
33. From the information gathered by the DG, it was revealed that beside TAFI, two other travel agents associations namely Travel Agents Association of India (TAAI), IATA Agents Association of India (IAAI) were also involved in issuing directives to boycott the sale of tickets of airlines.

34. The TAFI along with other travel agents associations exerted pressure on these airlines for restoring the fixed percentage of commission to travel agents. While domestic airlines viz, Jet Airways, Kingfisher etc. gave in to the pressure and agreed for a 3% commission to the travel agents, 16 foreign airlines including Singapore Airlines did not accede to the demand and as a result, the Opposite Parties gave the boycott call against SQ.

35. The opposite parties 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. The members were also threatened with the suspension and possible expulsion from the membership of the respective associations in case of non-compliance.

36. 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(1) read with 3(3) (b) of the Competition Act, 2002.

37. 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 parties as mentioned in DG's report for offering their comments / objections. Permission for inspection of records to the concerned parties was also granted.

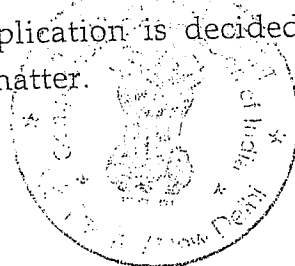


38. In response, TAFI, TAAI and IAAI filed their replies which were considered by the Commission. The Commission also afforded all the opposite parties an opportunity of personal hearing on 15.04.2010 - Shri Bhupendra Singh Chauhan, Advocate represented TAAI and TAFI and on behalf of IAAI, Shri George 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.

Reply of opposite party no. 1 (TAFI)

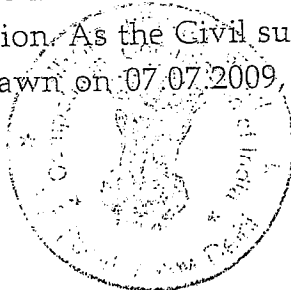
39. Briefly stated following submissions have been made:-

- The opposite party has not entered into any agreement as defined under section 3(1) of the Competition Act.
- The opposite party is not a business entity and hence not covered under the definition of 'enterprise' as provided in the Act.
- Competition Commission of India is not competent to intervene in administrative action of suspension and termination as it is internal matter of respondent.
- 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.
- The alleged actions of TAFI are nothing more than 'collective bargaining'. Additionally, the Commission cannot look in to the grievance of suspension of the informant.
- Since, TAFI has moved application for impleadment of Singapore Airlines, Ministry of Civil Aviation, DGCA and IATA as necessary parties, unless that application is decided the Commission should not proceed further in the matter.



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

- The information is not filed by the competent person as he has no proper authorization on behalf of the informant company.
- 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.
- 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.
- TAFI 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 has it directed its constituent members to return the ticket stock to the airlines.
- 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.
- 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. As the Civil suit filed by the informant has been dismissed as withdrawn on 07.07.2009, the matter came to an end.



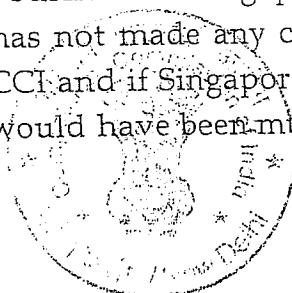
Further, the pleadings of the parties in that case cannot be relied upon in another matter before a different judicial/ competent authority.

- It has been stated in paragraph 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.
- TAFI has prayed that the informant is not entitled to any relief and the information deserves to be dismissed with heavy cost.

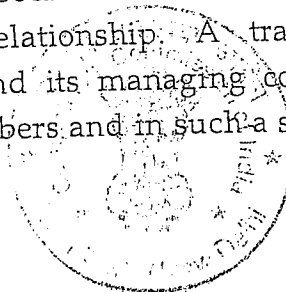
Reply of TAAI

41. Briefly stated following submissions have been made:-

- 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.
- TAAI has not initiated any disciplinary action against the informant nor has it suspended or terminated it from the membership of TAAI.
- It has not been provided a copy of information filed by Uniglobe Mod Travels Ltd. In spite 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.
- 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.
- 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.



- DG has failed to quantify the effect 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 an Expert in Economic Matters with CCI. The report of the Expert is not relevant because issue of payment of transaction fee over commission model 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.
- 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.
- The DG has not considered the contentions raised by the informant in paragraph 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.
- 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.
- 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.
- 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



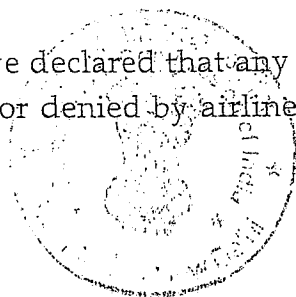
be issued by managing committee of TAAI to its members. A trade association can only make advise, request or appeal. Even at present, majority of member TAAI are still selling Singapore Airlines tickets and they have not been expelled on this ground.

42. 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.

Reply of IAAI

43. IAAI has submitted its arguments, which is summarized in the following paragraphs:

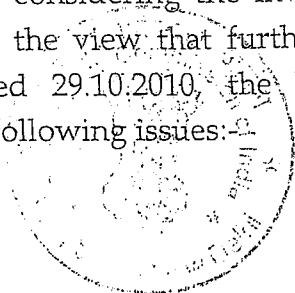
- Commission is a lawful remuneration due to travel agents and as per the legal provision in India, commission to travel agents is mandatory. Some airlines have unilaterally stopped paying commission to the travel agents terming it 'zero commission'. Non-payment of commission is thus an illegal act and the Competition Commission of India cannot ask travel agents to support an airline that has indulged in illegal activity.
- 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.
- IATA - prescribed 'commission' was transparent, specific and in order. Commission denied to agents does not go the Airlines', coffers nor does it benefit 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.
- 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 and is violative of the Competition Act.

- 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.
- 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 that 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.
- Up-front deals are clandestine in nature 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.
- 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.
- In their rebuttal, the trade associations have held that their action has not affected any competition spirit in India as they have not done anything to block, bar or seal direct sales window of SQ. It is on this basis that TAAI has contended that DG's analysis of a drop in sales of SQ requires authentication.

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



- (i) 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).
- (ii) Names of office bearers and other members of the associations through whom the associations acted in giving the boycott call against Singapore Airlines.
- (iii) Nature of financial gain to the associations and their members due to the boycott call given by them against Singapore Airlines.
- (iv) 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.
- (v) Investigation on contravention as per Section 3(4) of the Act relating to vertical agreement between associations and their members supported by documentary evidences.
- (vi) Definition of market and the appreciable adverse effect of anti-competitive agreement on competition within India, and
- (vii) Requisite information/ data for assessment/levy of penalty under Section 27 of the Act in case the violation is established.

Supplementary Investigation Report

45. At this stage, it may be observed that the matter was considered by the Commission in its various meetings and the parties were also accorded personal hearings on various dates. It is pertinent to mention that on perusal of documents on record including the information, report of the DG, written/ oral submissions filed/ made by the parties and in light of the totality of evidence on record, the Commission found no justification for the differentiation made by the DG for the purposes of the investigation between IATA accredited travel agents associations (TAFI, TAAI and IAAI) and non-IATA accredited travel agents associations (IATO, ADTOI and ETAA). The Commission therefore, vide its order, dated September 29, 2010, opined that a further inquiry is necessary in the matter in terms of section 26(8)

of the Act and accordingly, the DG was directed to enquire and investigate further into the matter.

46. 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:-

Role of TAAI:

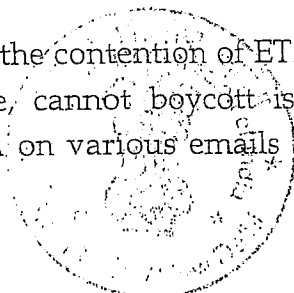
46.1 TAAI has given a boycott call to its members not to sell the tickets of Singapore Airlines and Silk Air and also obtained capping letters from its members in support of its call. The DG has also mentioned that although TAAI denied that it had issued any notices to its members not to sell tickets 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 of cooperation from TAAI, the DG has relied upon the evidence collected from other sources. The details submitted by Singapore Airlines (placed at **Annexure - 4**) show 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 of 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.

Role of IAAI:

46.2 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.

Role of ETAA:

46.3 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.

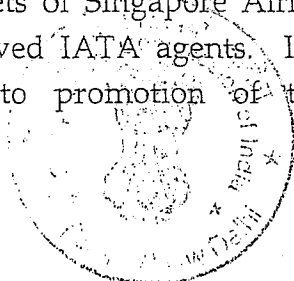
Role of ADTOI:

46.4 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. 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.

Role of IATO:

46.5 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.

46.7 DG has further reported that the service in the present case is the sale and issue of Singapore Airlines and Silk 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 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 drove the existing competitor out of the market to the extent of reduction in the number of tickets sold. Further, there is 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



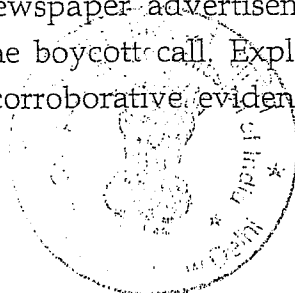
development by means of production or distribution of goods or provision of services and in contrast the boycott call has led to decline of availability of tickets of Singapore Airlines to the air travellers.

46.8 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 appreciable 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.

47. 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.

48 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:-

- (i) Functional or any other relationship between these associations and TAFI, TAAI and IAAI or their members.
- (ii) 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?
- (iii) Name , logo, etc., consistently appeared on the memo/circulars, e-mail, communications, newspaper 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.



- (iv) List of the office bearers of these organizations including names and contact information.
- (v) Audited balance sheets and profit and loss account for financial year 2007-08, 2008-09 and 2009-10.

Reply of TAAI

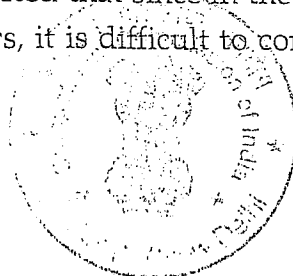
49 In response to the above notices, TAAI vide its reply dated 12.01.2011 submitted that the Commission should not direct an investigating agency which claims to be independent from it, to enquire on certain issues. The TAAI further objected that the Commission cannot play the role of judge as well as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

49.1 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.

49.2 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.

49.3 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.

49.4 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.



49.5 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.

49.6 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.

Reply of TAFI

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

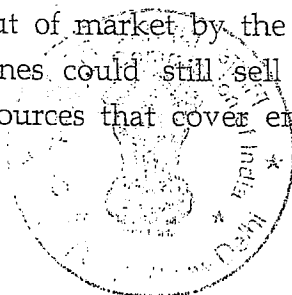
Reply by IAAI

51 IAAI filed its reply dated 21.01.2011 and contended that as per DGCA's order dated 05.03.2010, 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.

51.1 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.

51.2 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 reinstate commission just as the national carrier and some other foreign airlines reinstated.

51.3 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).

51.4 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.

Reply of ADTOI

52. 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.

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

52.2 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.

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

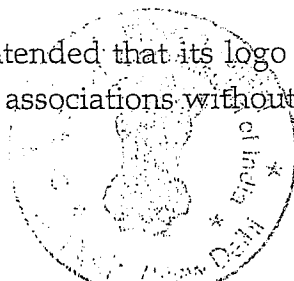
52.4 The ADTOI provided the details of its office bearers and balance sheets etc as required by the Commission. It has also contended that it is not an enterprise in terms of the provisions of the Act.

Reply of ETAA

53. 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.

53.1 As per the reply, 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.

53.2 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.



53.3 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.

Reply of IATO *

54. The IATO filed its reply dated 18.05.2011 and contended that it has not been found to be involved in any anticompetitive 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 week time to file its reply in pursuance of the notice dated 01.06.2011 issued by the Commission under section 43 of the Act.

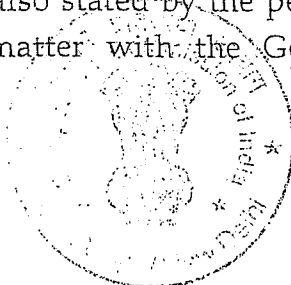
Reply of the Informant

55. 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.

Submission of DGCA

56. In order to understand whether payment of commission is mandatory as alleged by the association, 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.

57. 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).

58. 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.

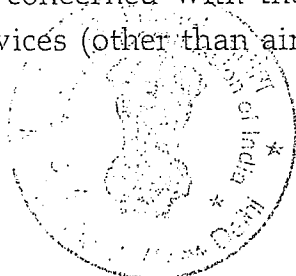
Gist of DGCA Order and subsequent stand taken by the Ministry of Civil Aviation, Government of India

58.1 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).

58.2 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 per cent 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 54A 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.

58.3 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.

58.4 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.



58.5 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.

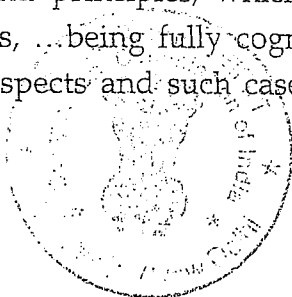
58.6 The named airlines were directed to ensure compliance of existing statutory provisions regarding determination of tariff as per rule 135 (1) and display of the fare and other components as per rule 135 (2) and (2A).

58.7 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.

58.9 The Commission's concern is with competition rather than with the legality of tariff fixation. Internationally, in several competition jurisdictions the Authorities have upheld freedom of trade as one of the important components of competition and not the actions of trade associations to curtail this freedom by relating to prevailing terms and conditions including tariff fixation. It may be relevant to refer to the outcome of a few cases on trade association across various jurisdictions in order to gain insights.

Perspective from other jurisdictions

59. In the context of present matter the following case laws from other jurisdictions may be also considered, with a view to have a better appreciation of the different perspectives and principles, which have emerged in other countries in regard to relevant issues, ... being fully cognizant of the fact that our law may be different in important aspects and such case law can only be of some help in the



initial period of development of our jurisprudence without being applicable as such in cases before us:-

59.1 United States

- (i) 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 U.S. 213:-

"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."

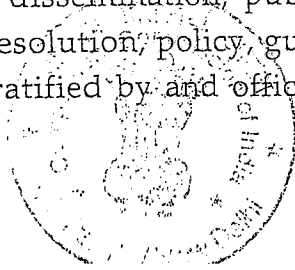
- (ii) In *Klor's, Inc. v. Broadway-Hale Stores, Inc.*, 359 U.S. 207 (1959) the following observations made by U.S. Supreme Court very succinctly bring out the effect of group boycott:-

"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.)

- (iii) A similar case of travel trade association is that of *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 per cent 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.

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.”

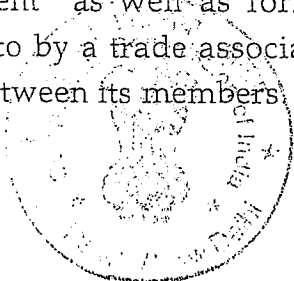
59.2 European Union

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.

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.

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. A few cases of interest are cited below:

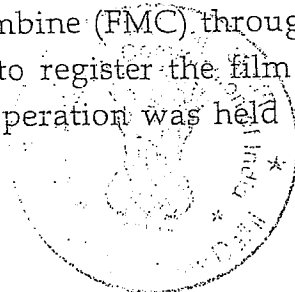
- (i) The concept of decision of an association of undertakings is given a very wide interpretation under the International case law. For example, in *8/72 Vereeniging van Cementhandelaren v. Commission* {1972} ECR 977 and *Visa International-Multilateral Interchange Fee OJ* {2002} L.318/17 it has been 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



- (ii) 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.
- (iii) 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 per cent 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'.

60. Decisions under MRTP Act

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.



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.

ISSUES

61. The Commission 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 DG report and the contentions raised by the parties in their oral and written submissions.

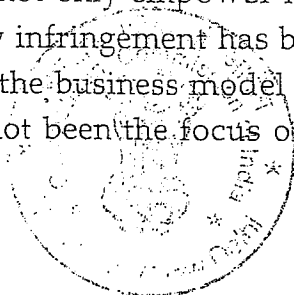
62. On the basis of the information received, reply of the opposite parties thereon and the investigation of the DG as also on the objections to the DG report and the supplementary report and opinion of DGCA and Ministry of Civil Aviation, following general issues emerge for consideration:

1. Whether the Commission has jurisdiction in the present matter?
2. Whether the provisions of Section 3 of the Competition Act, 2002 have been contravened by opposite parties?

ISSUE 1:

63. With respect to the jurisdiction of CCI, it is elaborate and well defined in the Competition Act, 2002 and briefed in its preamble. For that matter, CCI has every right to investigate a matter even on *suo motu* basis, if it is of the view that competition has been impinged or that is likely to be impinged by any act – relevant provisions in the Act not only empower it to take a *prima facie* decision but also to pass an Order if any infringement has been revealed.

64. As far as intervening in the business model i.e. remuneration to the travel agents is concerned, this has not been the focus of investigation/inquiry by the



Commission. A change in business model in the present instance is an internal matter with no implications for competition on the part of either parties and may be settled elsewhere.

65. Having said that, while the above may be an internal matter of the associations, if such actions relate to or are consequences of agreements which cause or are likely to cause an appreciable adverse effect on competition, the Commission is statutorily empowered to inquire into such acts. Therefore, the plea that the Commission lacks jurisdiction in the present case is without any merit and the same is accordingly rejected.

ISSUE-2:

66. That leaves with Issue-2 namely whether the actions of the opposite parties to boycott sale of SQ tickets has resulted in limiting the market and amounts to a breach of the provisions of Section 3 the Competition Act, 2002.

67. To examine this issue, following two relevant points need to be determined.

67.1 Whether a deliberate decision was taken by the opposite parties to boycott the sales of SQ tickets and has it resulted in violation of Section 3 of the Act?

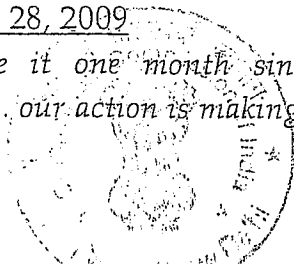
67.1.1 TAFI, TAAI and IAAI have denied that they issued any directive to their members to boycott the sale of tickets of Singapore Airlines. However, facts of the case speak otherwise. A series of e-mails sent by TAFI to its constituent members establishes that it has, in fact, issued directives to boycott 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."

E-mail dated January 28, 2009

"Tomorrow will make it one month since we withdrew support from Singapore Airlines. 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.

E-mail dated February 12, 2009

"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 April 20, 2009

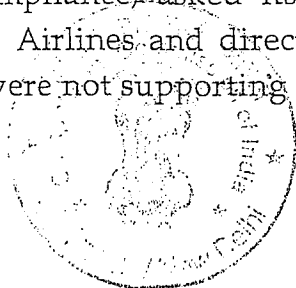
"1083 agents across the country have submitted capping letters to SQ. Many of us have subsequently been capped to zero."

"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."

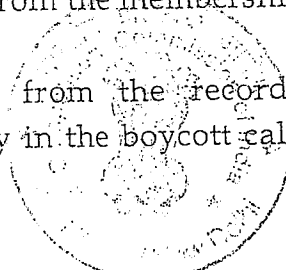
67.1.2 The boycott call given by TAFI was also followed by TAAI and IAAI. This factum is also established from the joint circular issued by all these associations (placed as Annexure - 29 in DG Report). The circular reads as under:

"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."

67.1.3 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. 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'.



- 67.1.4 Apart from the emails as pointed out by the DG in his report, 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 even to the extent asking 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.
- 67.1.5 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), filed by the TAFI in response to civil suit filed by the informant in the High Court also confirms the call of boycott given by the Association.
- 67.1.6 Besides, on oath statements of President of TAFI, Shri PradipLulla, 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 relevant extracts of their statements (Copy of statements placed as Annexure-9 in DG report.)
- 67.1.7 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. 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.
- 67.1.8 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.

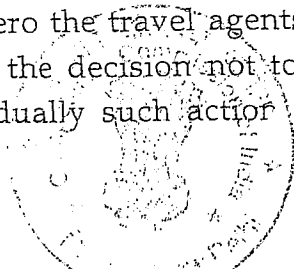
67.1.9 The statement of President of TAAI published in TAAI Newslines, Issue No.13 dated 25.03.2009 placed at Annexure-5 of DG report and Issue No.14 dated 30.04.2009 placed at page 9 of his supplementary report further corroborates the involvement of TAAI. These statements not only confirm continuation of withdrawal of support to Singapore Airlines but also seek capping letters from its members.

67.1.10 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. RajjiRai and Mr. PradeepLulla spoke of how important it was to stay committed in our fight against zero commission and specially in our battle with SQ (Singapore Airlines)...."

67.1.11 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 BijiEeapan and Shri NareshRajkotia, 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.



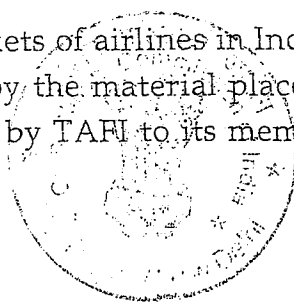
The explanation offered by Shri Tharakan is diagonally opposite to the import of circulars, e-mails, advertisements and statements etc. issued by IAAI individually as well as collectively with TAFI and TAAI.

67.1.12 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.

67.1.13 On perusal of the information, the findings of DG and the depositions and other evidence available on record as noted above, we are of the opinion that the travel agents associations viz., TAFI, TAAI and IAAI had given the call for boycott to its members against sale of tickets of Singapore Airlines. However, we are unable to agree with the findings of the DG that the other associations viz., IATO, ADTOI, ETAA were not found to be associated with the boycott call. It is manifest from the documents collected by the DG that the name and logo of IATO, ADTOI and ETAA appeared on the various communications by the travel agents associations calling for a boycott of sale of tickets of Singapore Airlines. Besides, IATO, ADTOI and ETAA also participated in the various meetings organized by the travel agents associations on the issue of boycott. As no disclaimer was issued by IATO, ADTOI or ETAA denying their support or participation during the currency of the boycott call and hence we are unable to accept the explanations/ clarifications by IATO, ADTOI and ETAA at this stage. Accordingly, we are of the considered opinion that IATO, ADTOI and ETAA supported the call for boycott of sale of tickets of Singapore Airlines issued by TAFI, TAAI and IAAI. It is *non sequitur* to argue that IATO, ADTIO and ETAA are not directly engaged in the ticketing activities for the present purposes.

67.2.1 Did the boycott affect consumer?

67.2.2 Majority 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 earlier in this order, 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 do not use these services due to various constraints. 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 non-metro cities.

67.2.3 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?"

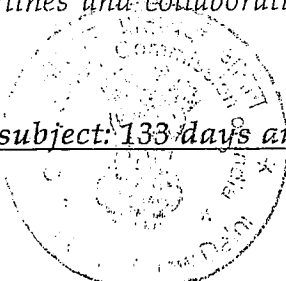
E-mail dated January 20, 2009 sent by TAFI (placed at Annexure-28 of DG report)

"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).

67.2.4 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.

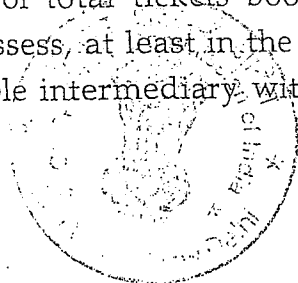
67.2.5 Careful examination of all the facts & figures as disclosed by TAFI and other opposite parties and referred above leads to the conclusion that opposite parties do hold sway over the sale of tickets of airlines in India. It is also true in case of sale of Singapore Airline's tickets.

67.2.6 The action of the opposite parties with their collective boycott of sale of Singapore Airlines tickets would lead to impact on the sale and supply of Singapore Airline's tickets. The opposite parties have claimed that the sale of Singapore Airlines tickets has been reduced by considerable percentage. The effect of the 'agreement' between TAFI, TAAI and IAAI to boycott the sale of Singapore Airlines tickets as per 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.

67.2.7 DG, on the basis of the above analysis, 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 and also of Sec 3(4).

COMMISSION'S VIEW

68 The Commission's views on the various contentious matters raised are first addressed to evaluate and assess if the action of trade association are anti-competitive. Given the fact that tickets booked through the travel agents account for more than three-fourth of total tickets booked, there is a definite market power that travel agents possess, at least in the short run. The travel agents are a necessary and indispensable intermediary without which the ticketing would be very difficult.



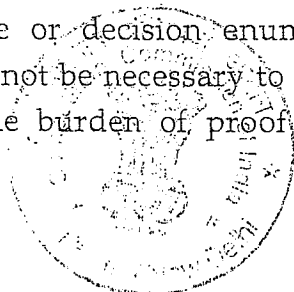
68.1 *Conduct of Trade Association:*

68.1.1 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.

68.1.2 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, a view held by international competition authorities (refer to case laws cited earlier). 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.

68.2 *Presumptive nature of Sec 3(3)*

68.2.1 At the outset, the Commission examined the aspect that Sec 3(3) is a presumptive section. If the intent of an agreement is to restrict competition in any manner, it will naturally attract provisions of section 3 of the Competition Act. 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, it may not be necessary to show an effect on competition, thereby shifting the burden of proof upon the opposite parties to



show that impugned conduct does not causes appreciable adverse effect on competition.

68.2.2 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 –

(i)

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

(iii)

(iv)

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

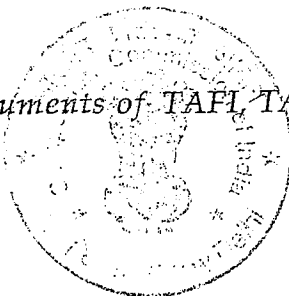
68.2.3 The Commission has examined the arguments put forward by the DG that Sec 3(3) is a presumptive rule and furthermore, on the basis of his analysis which show a decline in the sales of SQ tickets, thus impacting the final consumers by limiting the supply of SQ tickets.

68.2.4 The Commission having noted the views of the DG considers it appropriate to examine the rebuttals put forward by the opposite parties especially. 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 or that there is no AAEC as enumerated under section 19(3) of the Act.

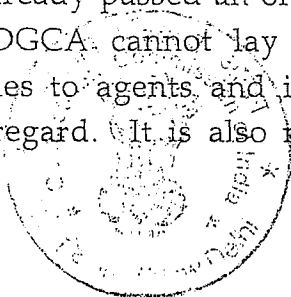
68.2.5 In their rebuttal, the trade associations have stated that their action has not affected competition in India as they have not done anything to block, bar or seal direct sales window of SQ.

68.3

Evaluation of Arguments of TAFI, TAAI and IAAI



- 68.3.1 The travel trade associations TAFI, TAAI and IAAI 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 reasons that 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. 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 above, the ground realities in Indian context makes such conduct by the opposite parties have a serious impact on consumers.
- 68.3.2 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 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.
- 68.3.3 Arguments were raised by the opposite parties on the legality of 'payment of commission' by airlines to the travel agents. The opposite parties have contended that 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. 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. 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.

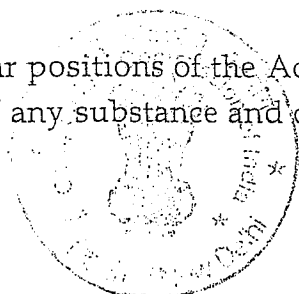
68.3.4 That being the factual situation, the Commission considers it as totally irrelevant for the purpose of this enquiry to delve upon this issue and as such cannot be allowed to be used as justification for the anti-competitive conduct of the opposite parties.

68.4 *Definition of Enterprise*

68.4.1 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.

68.4.2 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."

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



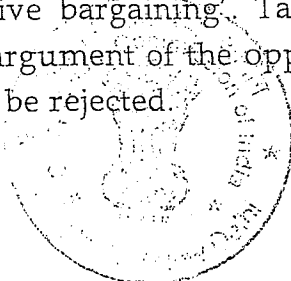
68.4.4 There is no dispute as to the fact that constituent members of respective opposite parties are travel agents who provide travel agency services to the consumers. Therefore, they are engaged in an activity of providing travel agency services to the customers and they fall squarely within the definition of 'enterprise' provided in the Act. Further, sub-section (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.

68.4.5 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 earlier, 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, the conduct of the opposite parties is covered under section 3(1) read with section 3(3) of the Act.

68.5 *Collective Bargaining*

68.5.1 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.

68.5.2 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.



68.6 *Implead Ministry of Civil Aviation, DGCA, IATA & Singapore Airlines as necessary Parties*

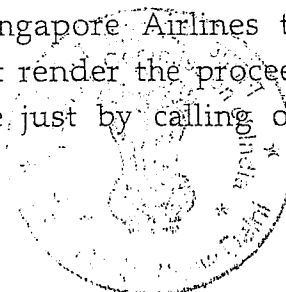
68.6.1 The next argument raised by the opposite parties is that the Ministry of Civil Aviation, DGCA, IATA & Singapore Airlines are necessary parties in this matter and their non-impleadment will vitiate the inquiry.

68.6.2 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 along with 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.

68.7 *Proceedings becoming Infructuous*

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

68.7.2 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 get 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.

68.8. Reliability of data used by DG

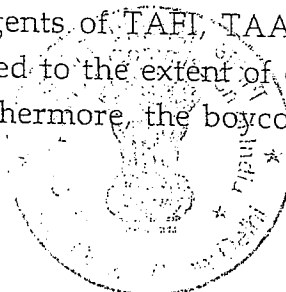
68.8.1 It has also been contended that as the DG has believed the data regarding drop in sale of tickets submitted by Singapore Airlines without duly verifying those, the same cannot be accepted by the Commission.

68.8.2 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 paragraphs. Moreover, the opposite parties have not adduced any evidence to show that 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 that the sale was down by 45-50%.

68.9 No Harm to Competition

68.9.1 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).

68.9.2 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 non-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.

68.9.3 The Commission while examining the contention whether travel trade associations in India have the ability to control or limit the supply of air-tickets note that any simplistic analysis of sales data will not be fully able to capture the dynamics / peculiarity of the industry. With regard to the fact that total sale of SQ dropped by 29% in 2009 as against 2008 needs to be examined with caution. In 2009, the impact of the action of travel trade associations saw a shift to other ticket booking channels, either directly or otherwise, as evident from following table:

	2009	2008	% change
Tickets sold by Travel agents (1)	155987	300952	-48%
Tickets sold through SQ offices & websites (2)	80091	32738	145%
Total Ticket Sales (=1+2)	236078	333690	-29%

68.9.4 It is clear that number of SQ tickets sold in India has shown an overall decline of 29% in 2009 vis-à-vis 2008, while the tickets sold through 'other than travel agency' channel has showed an increase of 145%. What is important for our analysis is that the effect of boycott has resulted in a 48% decline in tickets sold through travel agents, which accounted for a total of about 90% of aggregate tickets sold in 2008, the year in which boycott call was given.

68.9.5 The market for airline tickets for a full understanding needs to take into account the operation of other windows which include the practice of selling the tickets through bilateral and multilateral code sharing arrangement with other airlines. Moreover, 2009 was also a period of recession and the decrease in sales would need to be compared with the industry trend. But the important aspect that the Commission would like to draw attention is that while the trade

associations may not have sufficient capability to disrupt or limit supply of airlines tickets on all channels, they definitely do have the market power to disrupt one major channel of ticket sales. In the case of India, this channel (travel agent) contributes to 80-90% of all ticket sales. Therefore, the Commission opines that Sec 3(3)(b) has been violated.

- 68.9.6 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 by giving a call for boycott against SQ have contravened the provisions of section 3(3)(b) read with section 3(1) of the Act. Further opposite parties namely IATO, ADTOI and ETAA by their tacit conduct have supported the call for boycott hence contravened section 3(1) read with section 3(3)(b) of the Act.
- 68.9.7 The Commission has given its thoughtful consideration to all the facts and circumstances of this case before passing any order under section 27 of the Act. 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. While, some airlines (mainly domestic ones) reverted back to commission model, most of the foreign airlines stayed with the transaction-fee model. Singapore Airlines was one of the front runners 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 effect of which continued past 20.05.2009.
- 68.9.8 On the role of three other non-IATA travel agents associations namely, IATO, ADTOI and ETAA in the alleged anti-competitive decision to boycott the sale of Singapore Airlines tickets, the Commission having examined the arguments put forward by the DG and having heard the other non-IATA travel agents is not able to accept the findings of DG. The actions of these three parties namely IATO, ADTOI and ETAA, in playing along with the IATA travel agents, were also in conformity with the boycott call. While these

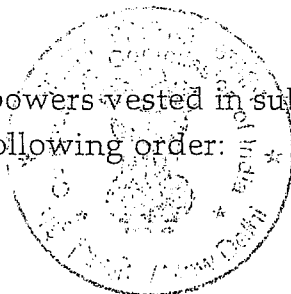
associations were not involved as directly and actively as the IATA accredited Associations, their tacit compliance is seen from the fact that no attempt was made to deny the usage of their logo etc., and there is also evidence of attendance at some meetings where these matters were discussed. Instead, they preferred to 'swim with the tide'. The strength and significance of their logo needs to be understood and appreciated. These three associations were, and are, required to ensure that associations act as facilitators of travel and must desist from the use of their logo or allowing such use, in the event of there being anti-competitive effects of actions of other Associations. Even small associations and players are important and can play a significant role in promoting / protecting competition in the market.

68.9.9 At this stage, we may also mention that from the letter submitted by Singapore Airlines which is annexed as annexure IV to the supplementary report of the DG, it appears that most of the travel agents have resumed selling the tickets of Singapore Airlines since January, 2010.

68.9.10 In view of the above the Commission is of the opinion that all the opposite parties may be directed to refrain from indulging in such anticompetitive conduct. Further, the three Opposite Parties, TAFI, TAAI and IAAI need to be considered for additional penalty apart from cease and desist, since the gravity of their anti-competitive conduct is higher. The Commission after considering the combined effect of all the factors in the context of facts and circumstances of the instant case, is of the view that the ends of justice will be sufficiently met if a penalty of Rs.1,00,000/- (Rupees One Lakh Only) is imposed upon 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.

ORDER

69. Accordingly, exercising the powers vested in sub section (a) & (b) of the Act the Commission passes the following order:



- (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 two months from the date of receipt of the order.
- (ii) A penalty of Rs.1,00,000/- (*Rupees One Lakh only*) each is also imposed on TAFI, TAAI and IAAI. The penalty shall be payable within two months from the date of receipt of the copy of this order.

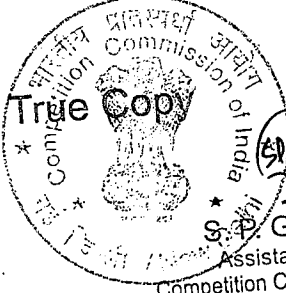
Secretary is directed to send a copy of his order immediately to the opposite parties for compliance, and informant.

Sd/-
Member (AG)

Sd/-
Member (GG)

Sd/-
Chairperson

Certified True Copy



S. P. GAHLAUT
Assistant Director
Competition Commission of India
New Delhi