

BEFORE THE  
COMPETITION COMMISSION OF INDIA  
CASE NO. RTPE 09/2008  
DATE OF DECISION: 17.11.2011

IN THE MATTER OF

M/s. FCM Travel Solutions (India) Limited,  
JC-43, Khirki Extension, Malviya Nagar,  
New Delhi - 110017

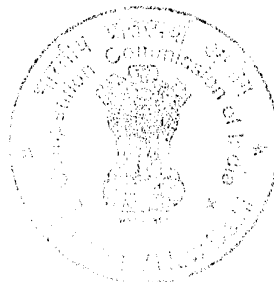
..... Informant

1. Travel Agents Federation of India,  
509, 'The Avenue'  
International Airport Road,  
Opp. Hotel Leela, Andheri East,  
Mumbai – 400059

2. IATA Agents Association of India,  
C/o Speedwings Travel & Cargo (P) Ltd.  
II Floor, Oxford Business Centre,  
Sreekandath Road,  
Ravipuram Cochin - 682016

3. Travel Agents Association of India,  
2-D, Lawrence and Mayo House,  
276, Dr. D.N.Road, Fort,  
Mumbai – 400001

..... Opp. Parties



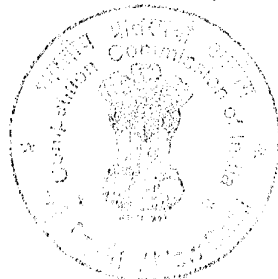
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ORDER UNDER SECTION 27 OF THE

COMPETITION ACT, 2002

**(Majority Order)**

1. Consequent upon the repeal of Monopolies and Restrictive Trade Practices Act (hereinafter referred to as 'MRTP Act') this case has been received by transfer on 04.03.2010 from the office of DG (I & R), MRTP Commission under section 66(6) of the Competition Act, 2002.
2. The informant, FCM Travel Solutions (India) Ltd. filed the instant information before the DG (I&R), MRTP Commission through its counsel, Sondhi Narula Dalal on 25.02.2009 alleging cartelization and adoption of restrictive and monopolistic trade practices by the opposite parties. The facts, in brief, as stated by the informant are as under :-
  - 2.1 Informant is the largest corporate travel company in India and is a member of opposite parties namely, Travel Agents Federation of India (hereinafter referred to as 'TAFI'), IATA Agents Association of India (hereinafter referred to as 'IAAI')



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and Travel Agents Association of India (hereinafter referred to as 'TAAI'). It is a wholly owned subsidiary of an international organization based at Australia, namely, Flight Centre Limited, Australia. It is also recognised by the Ministry of Tourism, Govt. Of India.

2.2 TAFI is an association of travel agents registered under the Societies Registration Act, 1860 and under Bombay Public Trust Act, 1950. The main objects of TAFI, inter-alia, are to harmonize relations in the trade and for better representation on a collective platform at all levels within the framework of the applicable law.

2.3 IAAI is a registered association of travel agents formed under the Travancore-Cochin, Literacy, Scientific and Charitable Societies Registration Act, 1955. It is a national forum formed exclusively of IATA accredited travel agents in India and established for their welfare, equality and justice.

2.4 TAAI was formed in 1951 by a group of leading travel agents. The primary purpose of establishing TAAI was to protect the interests of those engaged in the industry, to promote its



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orderly growth and development and to safeguard the rights of the travelling public.

- 2.5 It has been stated by the informant that in November 2008, most of the international airlines, including Singapore Airlines and Silk Airlines announced 100% cuts in the commission of the agents on Airlines tickets. Some of the travel associations, who were unhappy with the reduction of commission, formed a cartel and as a result thereof, TAFI, TAAI and IAAI started intimidating the member travel agents and advised all their members to boycott selling of tickets of these airlines and divert bookings to other airlines.
- 2.6 It has been further alleged that since 3<sup>rd</sup>/4<sup>th</sup> week of December, 2008, the opposite party have been continuously sending emails to their member travel agents including informant who did not boycott Singapore and Silk Airlines.
- 2.7 On receiving the emails of the opposite parties, the informant explained its stand that as the reduction in commission was in line with international practices and the decision by the aforesaid two airlines was taken on global basis, the informant being an international organization cannot adopt any unilateral



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measure without the sanction and approval of the principal company. Informant further explained to the opposite parties that refusing to sell tickets of these airlines would not only cause inconvenience to the travelling public but would invite serious actions against them in different parts of the country and anti-trust proceedings globally.

2.8 In spite of the explanation given by the informant, the opposite parties continued to exert pressure on their members to follow their dictates and started indulging in protest in the nature of 'morcha' and 'nation wide bandh'.

2.9 It has been alleged that TAFI vide its letter dated 13.02.2009 conveyed to the informant that the managing committee of TAFI has unanimously decided to suspend the informant from its membership and also informed that the suspension of informant will be conveyed to IATA and all others concerned.

2.10 It has been alleged by the informant that the aforesaid suspension notice was issued with the sole aim to tarnish the image of the informant in the international travel agent community and amongst its customers being fully aware that



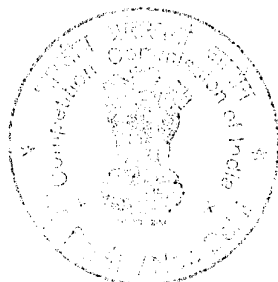
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this would seriously affect and prejudice the business interest of the informant.

2.11 It has been averred that by not boycotting the aforesaid airlines the informant has not affected the business interest of any of the members of opposite parties and on the contrary has only followed the guidelines and business policy of its principals and has acted in accordance with the international norms, which are pro consumer. It has been further stated that the call of boycott was taken by opposite parties unilaterally and it cannot be imposed on their members.

2.12 The informant, therefore, requested the Director General, MRTP Commission to register the complaint and initiate inquiry in the alleged cartelisation and monopolistic and restrictive trade practices being adopted by opposite parties.

3. The Director General (I&R), MRTP Commission undertook a preliminary investigation on the basis of the complaint filed by the informant and asked the opposite parties to file their comments on the complaint made by the informant vide his letter dated 16.03.2009.



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4. TAFI and TAAI filed their replies to the notice issued by DG (I&R) on 09.05.2008 & 24.02.2009 respectively.
5. Contentions raised by TAFI in its reply dated 09.05.2009 are summarised as below :
  - 5.1 TAFI is not carrying any trade or business and therefore it cannot be said to be involved in any unfair trade practice. Being a non-commercial entity and established with charitable purpose TAFI is outside the scope and ambit of MRTP Act.
  - 5.2 Suspension of informant is a civil dispute which has been coloured by informant as alleged unfair trade practice. The suspension of informant is an internal administrative matter and MRTP Commission is not empowered to look into such issues.
  - 5.3 TAFI has not intimidated its members to follow its dictate nor has it advised its member to boycott Singapore and Silk Airlines and stop selling their tickets. Member travel agents are free to manage their business without any restriction or objection from TAFI.
  - 5.4 On the basis of stand taken by TAFI, MRTP Commission was requested to drop the proceedings.



6. The pleas taken by TAAI in its reply dated 24.02.2009 are summarised as below:
- 6.1 The informant has levelled unfounded allegations against TAAI. TAAI has not found any cartel with TAFI and IAAI or is involved in monopolistic trade practices as alleged by the informant.
- 6.2 TAAI is only an association of members and is not involved in any trade or vocation on its own and therefore there is no question of TAAI being involved in cartelisation or adopting restrictive trade practice as alleged.
7. At this stage the matter was transferred to the Competition Commission of India under section 66(6) of the Competition Act, 2002 in consequence of the repeal of the MRTP Act.
8. This matter was considered by the Commission in its meeting held on 18.06.2010 and after examining all the facts and circumstances of the case and issues involved therein, the Commission formed an opinion that there existed a prima facie case for directing the Director General (hereinafter 'DG') to conduct investigation into the matter.
9. The Director General after receiving the direction from the Commission had the matter investigated through the Additional



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Director General and after completion of investigation submitted his report to the Commission on 10.12.2010.

10. During the course of investigation TAFI and TAAI were issued notices by the DG to submit their responses along with the other relevant information in order to examine the allegations made by the informant. However, inspite of having received notices dated 05.08.2010 and reminders dated 16.08.2010 and seeking repeated extensions for furnishing the desired information both the parties did not submit their replies to the notice issued by the DG. The third opposite party, i.e., IAAI requested that as this case is similar in nature with case no. 3/2009 its response filed in that case may be taken on record for the purpose of this case also. Besides this the statement of Mr. P.K.G Thrakan the Counsel for IAAI was recorded on oath by the DG. The DG has also stated that similar information (case no. 3/2009) was filed by another travel agent, Uniglobe Mod Travels Pvt. Ltd. against the opposite parties alleging cartelisation by them in giving a boycott call against the sale of tickets of Singapore Airlines and Silk Air in which



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investigation was conducted in compliance of the order of the Commission and all the opposite parties had filed their responses and had submitted the desired information. In addition to this, statement of office bearers of the opposite parties were recorded in that case and therefore in view of the similarity of facts and non-cooperation by TAFI and TAAI in the present matter the investigation has been concluded based on the replies submitted by the opposite parties in case no. 3/2009 including the statements of their office bearers.

#### 11. Findings of DG Report

11.1 As per the report of DG the genesis of the boycott call can be traced in the gradual process of reduction in travel agents' commission started on 31<sup>st</sup> July, 2000 with the expiry of IATA resolution 016a. This provision provided for payment of 9% commission on international air transportation to IATA accredited agent. After the expiry of this resolution various airlines reduced their commission from 9% to 5% in a phased manner by 2004. Against this reduction, travel agents' association made a representation before the DGCA – the Civil



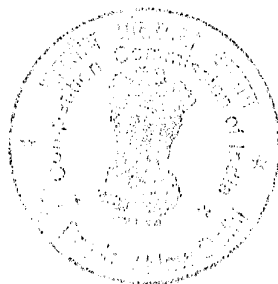
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Aviation Regulator, citing provisions of aircraft rules 1937. DGCA, however, refused to intervene, in view of the extant IATA Resolution prevalent at that time.

11.2 It is also revealed from the report of the DG that during July/August 2008 travel agents received letter from various airlines conveying their decision to reduce the agency commission from 5% to 0% w.e.f. Oct./Nov. 2008 and agents were offered productivity link bonus and were suggested to adopt transactions/service fee model. This transition purportedly was on account of change in the business environment in the aviation industry. Major airlines which issued the notices included NACIL, Jet Airways, Kingfisher Airlines, Singapore Airlines, Air Canada, Air France, North West Airlines and KLM.

11.3 The travel agents associations, namely, TAFI, TAAI & IAAI mounted pressure on these airlines for reverting back to the old system of fixed percentage of commission to travel agents.

11.4 Domestic airlines Jet Airways, Kingfisher etc. gave in to the pressure and agreed for a 3% commission to the travel agents but 16 foreign airlines including Singapore Airlines did not



accede to the demand and as a result the Opposite Parties gave the boycott call against the Singapore Airlines (SQ).

11.5 The Opposite Parties in order to make their call of boycott successful sent e-mails to their members to boycott sale of tickets of Singapore airlines and issued directives through advertisement in newspapers and put up hoardings in Mumbai & Bangalore to the same effect.

11.6 The members were also threatened in case of non-compliance with the suspension and possible expulsion from the membership of the respective associations. The informant who did not toe the line of opposite parties was firstly suspended and finally expelled from the membership by TAFI.

11.7 DG has concluded that the call to boycott issued by TAFI, TAAI & IAAI is in the form of an agreement which limited/controlled the supply of Singapore airlines tickets to the consumers of India (supply of provision of service) and thus is a violation of Section 3(3) (b). It has also been submitted by the DG after factual analysis that due to the collective boycott of Singapore Airlines sale of its tickets dropped by 29% in



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2009 as against 2008. The DG after examining the role of three other travel agents associations in the collective boycott, viz, Indian Association of Tour Operators (IATO), Association of Domestic Tour Operators of India (ADTOI) and Enterprising Travel Agents Association (ETAA) has come to the conclusion that these associations were neither involved in issuing any directive to their members to boycott sale of tickets of Singapore Airlines and Silk Air nor their members are engaged in sale of tickets of Singapore or any other international airlines.

11.8 The DG has further come to the conclusion that participation by the consequent members of these associations by refusing to deal with Singapore airlines acting upon the boycott call given by TAAI, TAFI & IAAI amounted to vertical agreement between these associations and their members which has resulted into appreciable adverse effect on competition within India and thus, it violative of section 3(4) read with section 3(1) of the Act.

12. The Commission considered the report of the DG and vide its order dated 05.01.2011 directed the informant and the



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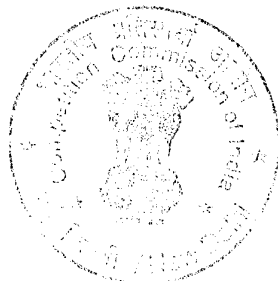
opposite parties to file their replies/objections to the DG report and also directed that if they so desire they can make oral submissions on 09.02.2011.

13. Comments on behalf of TAFI and TAAI were filed by their counsel Mr. Bhupendra Singh Chauhan vide his letter dated 24.01.2011 and he also made oral submissions before the Commission on 09.02.2011. IAAI and informant even after being served did not file any reply/objections to the DG report and nor availed the opportunity to make oral submissions.

**14. Replies of TAFI & TAAI**

Since the replies filed on behalf of these parties contain identical submissions these are not dealt with separately and are summarized as below:

- 14.1 It has been submitted that DG, CCI has exceeded its jurisdiction and brief by holding TAFI & TAAI guilty of breaching section 3(1) and section 3(4) of the Competition Act.
- 14.2 It has also been contended that a travel agent cannot be compelled to sell tickets of a particular airline similarly as any



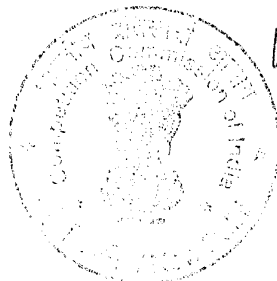
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airline cannot be compelled to sell its tickets through travel agents.

14.3 These associations have taken a plea that DG, CCI has wrongly concluded that these trade associations are 'enterprises' as defined under the Competition Act, 2002. It has been further contended that this issue being a preliminary one, the Commission should have decided this issue first before proceeding further in the matter.

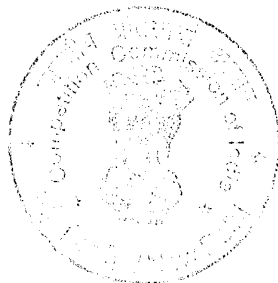
14.4 It has been submitted that after being informed about the oppression unleashed by certain airlines upon their travel agents by resorting to zero commission, TAFI & TAAI being trade associations of travel agents had suggested to their members to offer resistance to such airlines who have themselves formed cartels on the pricing of air tickets. Offering resistance in a democratic set up to such oppression whereby Singapore Airlines wants travel agents to sell its tickets free is legitimate.

14.5 It has also been submitted that the Commission should not direct an investigating agency which claims to be independent



from it, to inquire on certain issues and the Commission cannot play the role of judge as well as investigator simultaneously.

- 14.6 It has been further contended that the Commission has failed to comprehend that it is a case of disciplinary action taken by TAFI against one of its member i.e., informant which is coloured as competition issue.
- 14.7 Relying on the letter dated 12.08.2010 of Singapore Airlines filed in case no. 03/2009 wherein it was stated that most of the travel agents have resumed selling the tickets of Singapore Airlines since January, 2010, it has been submitted that the present proceedings have become infructuous. Otherwise also, Singapore Airlines has never made a complaint for the alleged boycott.
- 14.8 TAFI & 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 model' adopted by Singapore Airlines by reducing the commission to 'zero'. As per the



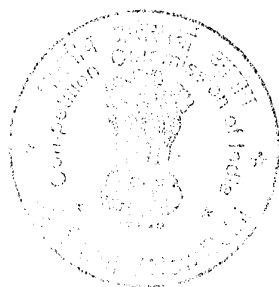
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objections of the TAAI if all the travel agents associations of India have protested against the alleged illegal act of Singapore Airline in collective manner for the benefit of travel agents fraternity, there is nothing wrong as it is a peaceful collective bargaining.

14.9 Objection has also been raised that the DG has believed the data of the sale of ticket submitted to him by Singapore Airlines without duly scrutinizing and authenticating the same. Therefore, the said data cannot be accepted by the Commission. The DG reached at a vague conclusion without specifying any period of such boycott or date of such call ever given by these travel agents associations in India

14.10 It has been 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. Both parties have objected that since in his report the DG has not analyzed the above factors, it is difficult to conclude that the competition in India is adversely effected.



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14.11 It has been 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. The DG has not taken into account the fact that in January, 2008 there was no alleged boycott given by any of travel agents associations in India. If at all sale figure are to be taken these should be from January, 2009 to January, 2010.

14.12 As per the submissions, 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 and then expelled the Informant for its not complying with the directive of the TAFI not to sell the tickets of the Singapore Airlines.

### **Decision**

15. We have carefully examined the entire material available on record including the order passed by the DGCA and the letter dated 12.08.2010 issued by the Ministry of Civil Aviation, Government of India to DGCA as well as the DG report and the contentions raised by the parties in their written and oral submissions.



16. We have also noted that the facts of this case as well as issues involved therein are identical to the facts and issues of case no. 03/2009 in which we have passed the final order under section 27 of the Act on 04.10.2011 and only the informants are different travel agents.
17. It is also seen that DG has based his investigation report on the basis of replies and information filed by the opposite parties before him in the earlier case no. 03/2009. Furthermore TAFI & TAAI did not choose to file any reply before the DG and IAAI requested that the reply filed in case no. 03/2009 should be taken on record as its reply in this case also. Even the contentions raised by TAFI & TAAI in their written and oral submissions before the Commission in this case have been previously taken by them in case no. 03/2009 and we have dealt with these contentions at great length in our order dated 04.10.2011 passed in case no. 03/2009.
18. Therefore, in view of our order dated 04.10.2011 passed in case no. 03/2009 which squarely covers the facts and issues as well as contentions raised by TAAI & TAFI in the present matter, there is no need to reproduce our decision in the present matter. Suffice



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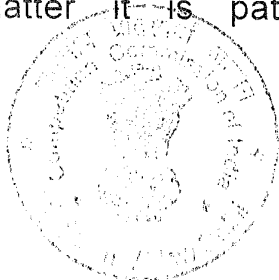
to say that after considering the evidences in form of e-mails issued by the opposite parties to their constituent members, statements of office bearers of TAFI recorded by the DG, the admissions made in the written statement filed by the TAFI before Delhi High Court in case no: CS (OS) No. 454 of 2009, press statements issued by the office bearers of opposite parties, advertisement issued in the newspapers and hoardings placed in Mumbai and Bangalore, the order passed by DGCA as well as the letter issued by Ministry of Civil Aviation dated 12.08.2010 and evaluating the contentions raised by the opposite parties we came to the conclusion in case no. 03/2009 that the conduct of the opposite parties in boycotting the sale of tickets of Singapore Airlines falls foul of section 3(3)(b) read with section 1 of the Competition Act, 2002. We have concluded that it was fully established by cogent and credible evidence that TAFI, TAAI & IAAI as also three other non-IATA travel agents associations namely, Indian Association of Tour Operator (IATO), Association of Domestic Tour Operators of India (ADTOI) and Enterprising Travel Agents Association (ETAA) have contravened the above provisions which resulted into limiting the



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supply of provision of travel agents services as well as sale of tickets of Singapore Airlines and consequently sale of Singapore Airlines tickets dropped by 29% due to the boycott call given by these associations.

19. We have also observed that the DG, besides finding the conduct of the opposite parties contravening the provisions of section 3(3) (b) has also come to the conclusion that the participation by the consequent members of these associations by refusing to deal with Singapore airlines acting upon the boycott call given by TAAI, TAFI & IAAI amounted to vertical agreement between these associations and their members which has resulted into appreciable adverse effect on competition within India and thus, it is violative of section 3(4) read with section 3(1) of the Act. However, the findings of the DG that there can be a vertical agreement between the travel agents associations and their members cannot be accepted. For the applicability of the section 3(4) of the Act it is necessary that the enterprises must be at different stages or levels of production chain in different markets in respect of provision of services, whereas in the present matter it is patently clear that travel agents



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associations themselves are not engaged in providing travel agency services. Therefore, in respect of provision of travel agency services there cannot be any vertical agreement between the opposite parties and their constituent members and hence section 3(4) is inapplicable in such scenario.

20. The Commission has already imposed penalty under section 27(b) of the Act on TAFI, TAAI & IAAI in case no. 03/2009. The nature and contravention of provision of section 3 is identical in its objects and effects in the instant case and emanates from the collective boycott of Singapore Airlines by these associations for the same period of time. Therefore, we do not seem it appropriate to impose penalty in the instant case also. Therefore, exercising the powers vested in sub section (a) of section 27 of the Act we pass the following order;

- (i) The opposite parties, namely, TAFI, TAAI & IAAI and also IATO, ADTOI and ETAA 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.



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21. Secretary is directed to send a copy of this order immediately to the concerned parties for compliance. A copy of the order may be sent to informant also.

Sd/-  
Member (CG)

Sd/-  
Member (AG)

Sd/-  
Member (C)

Certified True Copy



*S. P. Gahlaut*  
24/11/2011  
S/P. GAHLAUT  
ASSISTANT DIRECTOR  
Competition Commission of India  
New Delhi