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**COMPETITION COMMISSION OF INDIA**

**Case No. 32 of 2016**

**In Re:**

**Ms. Shikha Roy  
B-13, LGF, G.K. Enclave – II  
Greater Kailash - II  
New Delhi - 110048**

**Informant**

**And**

**Jet Airways (India) Limited  
Global One, 3<sup>rd</sup> floor, 252, LBS Marg,  
Kurla (West), Mumbai – 400070**

**Opposite Party No. 1**

**SpiceJet Limited  
319, Udyog Vihar, Phase IV  
Gurgaon – 122016**

**Opposite Party No. 2**

**InterGlobe Aviation Limited  
Level 1, Tower C, Global Business Park  
DLF City, Mehrauli Gurgaon Road  
Gurgaon – 122002**

**Opposite Party No. 3**

**Go Airlines (India) Limited  
1<sup>st</sup> Floor, C-1, Wadia International Centre  
Pandurang Budhkar Marg, Worli  
Mumbai – 400025, Maharashtra**

**Opposite Party No. 4**

**Air India Limited  
Airlines House,  
113, Gurudwara Rakabganj Road  
New Delhi – 110001**

**Opposite Party No. 5**

**CORAM**

**Mr. Ashok Kumar Gupta  
Chairperson**

**Ms. Sangeeta Verma  
Member**

**Mr. Bhagwant Singh Bishnoi  
Member**



**Present:**

For SpiceJet Limited	Mr. Abhishek Sharma, Advocate along with Mr. Shashi Shekhar, Executive (Legal) of OP-2
For InterGlobe Aviation Limited	Mr. Raj Shekhar Rao, Senior Advocate with Mr. Sagardeep Rathi, Mr. Pranjal Prateek and Mr. Ebaad Nawaaj Khan, Advocates
For Go Airlines (India) Limited	Mr. Vihang Virkar and Mr. Karun Jhangiani, Advocates along with Mr. Prashant Shinde, Senior General Manager (Legal) of OP-4
For Air India Limited	Mr. Pratik Majumdar, DGM of OP-5

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

1. The Information in the present case was filed by Ms. Shikha Roy (**‘Informant’**) under Section 19(1)(a) of the Competition Act, 2002, (the, **‘Act’**) alleging, *inter alia*, contravention of the provisions of Section 3 of the Act by Jet Airways (India) Limited (**‘Jet Airways’**), SpiceJet Limited (**‘Spice Jet’**) and InterGlobe Aviation Limited (**‘Indigo’**).
2. The Informant has averred herself to be an Advocate and the Opposite Parties in the matter are domestic airlines - providing air transportation services to passengers in India.
3. The Informant had submitted that during the period of Jat Agitation in the month of February 2016, domestic airlines tickets skyrocketed to exorbitant rates, particularly between Delhi-Chandigarh and Delhi-Amritsar routes. It was averred that there had been a trend in the aviation industry that the airlines had increased their ticket price as per their will to exploit the passengers during extraordinary conditions, as evidenced in the past during the Chennai floods and Nepal earthquake. The Informant alleged that steep and simultaneous fluctuation



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in air tickets prices by airlines was violative of the provisions of Section 3 of the Act.

4. The Commission considered the matter and after holding preliminary conference with the Informant and counsel(s) appearing on behalf of the Opposite Parties on 25.05.2016, the Commission decided to make a reference to the Director General of Civil Aviation (DGCA), in terms of the provisions of Section 21 A of the Act, for seeking its opinion on the issues raised/ allegations made in the Information, reply to which was received on 26.07.2016. Later, *vide* an order dated 25.01.2018, the Commission decided to seek certain data/ information from five airlines *i.e.* Jet Airways, SpiceJet, Indigo, Go Airlines (India) Limited (**'Go Air'** / **'OP-4'**) and Air India Limited (**'Air India'**/ **'OP-5'**) under Section 36(4) of the Act.
  
5. The Commission, after analyzing the price data supplied by the airlines, was *inter alia* of the *prima facie* view that there has been a general increase in the ticket prices on certain routes, especially in respect of tickets sold near to departure date/time during the Jat Agitation period and that this increase was noted to operate within a small-time frame. The Commission also noted that with the use of algorithms, there exists a high possibility of collusion with or without the need of human intervention or coordination between competitors. Accordingly, the Commission was of the view that there was a need for investigation of the algorithms used by the airlines, so as to determine whether the fares set by the airlines during the alleged period were an outcome of collusion or not. Thus, the Commission was of the opinion that there exists a *prima facie* case for investigation by the Office of the Director General (DG) in the matter with regard to alleged cartelization by the airline companies *viz.* Jet Airways, SpiceJet, Indigo, GoAir and Air India during the Jat Agitation in February 2016 in contravention of the provisions of Section 3(3) of the Act. Accordingly, the Commission, *vide* its order dated 09.11.2018 passed under Section 26(1) of the Act, directed the DG to cause an investigation to be made into the matter.



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6. The DG in its investigation report concluded that no contravention of Section 3(3) read with Section 3(1) of the Act was found against the conduct of Spice Jet, Air India, Go Air and Indigo during the period of Jat Agitation, *i.e.* between 18<sup>th</sup> to 23<sup>rd</sup> February, 2016. In relation to Jet Airways, the DG in its report has stated that Jet Airways was grounded in April, 2019 and thereafter, Hon'ble National Company Law Tribunal (NCLT), Mumbai *vide* its order dated 20.06.2019 admitted the insolvency petition filed by lenders' consortium led by State Bank of India against Jet Airways, under the Insolvency and Bankruptcy Code, 2016 (IBC). In his reply, the Resolution Professional also informed that a moratorium including institution of suits, execution of any judgement, decree or order in any court of law, tribunal has also been extended by the Hon'ble NCLT. Further, due to grounding of Jet Airways and un-availability of any employee/personnel, the Resolution Professional could not provide any price data, booking dates, capacity of flight, number of passengers flown and the number of price buckets used by Jet Airways during the period of Jat Agitation. Accordingly, the DG was constrained to exclude Jet Airways from the purview of this investigation. In this view of the matter, any reference to the Opposite Parties/ OPs hereafter in this order would be to OP-2 to OP-5 only.
7. The Commission considered the Investigation Report filed by the DG in its ordinary meeting held on 15.12.2020 and decided to forward electronic copies thereof to the Informant as well as OP-2 to OP-5 for filing of their respective objections/ suggestions thereto, if any. The said parties were also allowed to file their objections/suggestions, if any, to the Investigation Report latest by 22.01.2021 along with a brief synopsis thereof. Further, the parties were also allowed to file their respective responses to the objections/ suggestions filed by the other parties, if so desired, by 05.02.2021. The parties were directed to appear for a final hearing on the Investigation Report on 23.02.2021 at 10:30 A.M through Video Conference (VC) mode.
8. So far as OP-1 is concerned, in view of the corporate insolvency resolution process under the IBC and the declaration of moratorium under Section 14 of the



IBC by the Hon'ble NCLT, which *inter alia* includes prohibition on “*the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority...*”, the Commission decided to keep the present proceedings *qua* OP-1 in abeyance. The resolution professional for OP-1 was directed to keep the Commission informed about the status and disposal of said insolvency proceedings from time to time. A copy of the DG Report was also directed to be forwarded to the resolution professional for information and record.

9. Subsequently, at the request of OP-2, the Commission *vide* its order dated 03.02.2021, decided to grant extension of time till 12.02.2021 to all the parties to file their respective objections/suggestions, if any, to the Investigation Report. The parties were further allowed to file their responses to the objections/suggestions filed by the other parties, if so desired, by 19.02.2021. However, the date of final hearing (*i.e.*, 23.02.2021) on the Investigation Report was kept unchanged.
10. None of the parties filed any written objections/suggestions within the stipulated timelines except Air India which submitted a brief reply *vide* an email dated 21.02.2021. Accordingly, the Commission in its ordinary meeting held on 23.02.2021, heard the learned counsel(s)/representative appearing on behalf of OP-2 to OP-5 through virtual mode wherein they reiterated the findings of the DG during their submissions and urged the Commission to accept the Investigation Report filed by the DG.
11. As regards the Informant, it was observed that neither the Informant nor her counsel appeared on the scheduled date of final hearing. However, the learned counsel representing the Informant sent a letter dated 18.02.2021 stating therein that the Informant has not received the Investigation Report filed by the DG, electronically or through courier. Another identical communication was sent by the learned counsel representing the Informant under the cover of an e-mail dated



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19.02.2021 again reiterating the same averments except with a Note at the foot of the letter wherein it was requested that the DG Report may be served on the address mentioned thereat. In this regard, the Commission noted that the Informant was duly served with a certified copy of the order of the Commission dated 15.12.2020 along with a CD containing electronic copy of the DG's Investigation Report *vide* letter dated 21.12.2020. The said letter was sent to the Informant on the address available on record, as provided by the Informant in the Information filed before the Commission, through speed post which was duly delivered on 26.12.2020, as per India Post Tracking System. In fact, this address was still mentioned in the e-mail dated 19.02.2021 sent by the learned counsel representing the Informant. In these circumstances, merely providing one more address to get yet another copy of the Investigation Report was noted as wholly untenable and dilatory. The Commission also took a serious note that neither the Informant nor its counsel appeared before the Commission today when the matter was fixed for hearing.

12. However, in the interest of the justice and to provide a further opportunity to the Informant, the Commission *vide* its order dated 23.02.2021, directed that the Informant be provided with another copy of the Investigation Report and the Informant was allowed to file its suggestions/ objections to the said report latest by 29.03.2021, with an advance copy to OP-2 to OP-5. These OPs, thereafter, were also allowed to file their response on the objections/ suggestions filed by the Informant within 2 weeks thereafter, *i.e.*, latest by 12.04.2021. However, the Informant did not furnish any response/ comments to the DG Report.
13. Be that as it may, suffice to note that proceedings before the Commission are inquisitorial in nature and remedies issued are *in rem* and as such, though any member of the public can bring any anti-competitive behaviour to the notice of the Commission by filing an Information as per the provisions of the Act and the Regulations framed thereunder, the scope and level of participation of the Informant has to be clearly appreciated in light of the statutory architecture and judicial pronouncements. In this regard, it is instructing to note that after



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bringing the alleged anti-competitive conduct to the notice of the Commission, the statutory mechanism would work as provided under the Act and during the subsequent inquiry/ investigation process, if any, by very nature of the things, the role of the Informant would be confined to such assistance, as may be required by the Commission or the Office of the Director General, as the case may be. In such proceedings, it would be wholly out of scheme of the Act if the Informant is allowed to consider itself as *dominus litis* in such *in rem* proceedings. Thus, the role of the Informant during inquiry and investigation stage is merely that of an information provider and in this truncated role of the Informant under the scheme of the Act, the Commission is satisfied that sufficient opportunity had already been accorded to the Informant to make its submissions on the DG Report in writing as well as an opportunity to advance oral arguments. Besides, as pointed out earlier, even after oral hearing, the Informant was allowed an opportunity to file its suggestions/ objections, which it failed to avail.

14. In view of the above, the Commission considered the matter in its ordinary meeting held on 04.05.2021 and decided to pass an appropriate order in due course.
15. The period of Jat Agitation was alleged to be from 18<sup>th</sup> to 23<sup>rd</sup> February, 2016 and the sectors investigated by the DG, that were specifically affected, were Delhi-Amritsar, Amritsar-Delhi, Delhi-Jaipur, Jaipur-Delhi, Delhi-Chandigarh and Chandigarh-Delhi. The investigation tried to ascertain whether the increase in air-ticket prices during the period of Jat Agitation was the result of an agreement between the OPs and whether price data suggested any uniformity in prices indicative of price parallelism.
16. The DG noted that all the airlines had operated flights including scheduled and non-scheduled/additional flights in all the aforesaid 6 sectors during the period of Jat Agitation. As per the DG report, scheduled flights are those flights which are approved in advance from DGCA and Airport Authority of India and are



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given slots in a schedule. Whereas non-scheduled/ additional flights are those flights for which *ad-hoc* permission is taken from DGCA and Airport Authority of India considering the exigent circumstances.

17. The DG analyzed whether there have been any significant changes in the total revenue, average revenue per ticket, total number of tickets sold/unsold during this period. The DG also examined the bucket system followed by the airlines and the pricing mechanism. In this regard, for comparison purposes additional three (3) days prior to Jat Agitation period, *i.e.* 15.02.2016, 16.02.2016 and 17.02.2016 and one (1) day post Jat Agitation period, *i.e.* 24.02.2016 were also analyzed by the DG.
18. The DG found no uniformity among the different airlines with regard to the individual fare buckets. As per the DG, the analysis of the records of scheduled and additional flights of the OPs along with the depositions of their representatives showed that tickets for the six sectors *viz.* Delhi-Amritsar, Amritsar-Delhi, Delhi-Jaipur, Jaipur-Delhi, Delhi-Chandigarh and Chandigarh-Delhi, were sold at higher fare buckets by all the four airlines during the period of Jat Agitation. The representatives of all the 4 OPs clarified that for inventory optimization and revenue maximization, tickets from one fare bucket were shifted to another during the period of Jat Agitation. However, no uniformity in the total revenue, average price per ticket, peak demand being experienced by the airlines in different sectors and deployment of scheduled and additional flights were found, to indicate any form of arrangement/ agreement among the airlines in the aforesaid six sectors during the period of Jat Agitation. The DG observed from the analysis of tickets and deposition of representatives of Spice Jet, Go Air and Indigo that due to Jat Agitation, the alternative modes of transport like rail and road transport were not readily available and therefore, the demand for tickets was high. However, the investigation did not reveal any identical pricing by various airlines in the aforesaid six sectors during the period of Jat Agitation. The investigation also analyzed the ticket pricing for various buckets prior to 48 hours before the departure of a flight, wherein no price parallelism or





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identical pricing of tickets by the airlines/ OPs were registered for any of the aforesaid six sectors.

19. The DG also investigated the possibility of collusion among the OPs by use of algorithms in-built in their software ticket pricing system. In this regard, the DG has noted that algorithm is a formula configured for each airline by the software provider on the basis of historical data provided by the airline. Based on the pattern of sale of inventory (Tickets) in the previous year, the algorithm configured in the software allocates inventory to various fare buckets which have specific price points. Buckets are alphabetical codes used by the airlines to depict different fares at which the tickets are sold. The airline generally opens the flight a year in advance and based on the previous year's price and the competitive price, allocates fares to each of the bucket. For example, the fare on a particular route would be the maximum closer to the departure of the flight and *vice-versa* and accordingly sale of tickets closer to departure would be made from the bucket with the highest price point. The early bookers get the cheapest fare, and the last-minute booking attracts the maximum price for the same economy class ticket. This type of pricing is called dynamic pricing.
20. During the investigation, the representatives of the airlines were asked to explain about the mechanism of dynamic pricing and bucket system of fare pricing of the respective airlines. The DG found that Spice Jet uses *Navitaire* software which is a proprietary software programmed through an algorithm which allocates inventory or seats to various buckets at different prices based on the historicity of the concerned flight. However, the route analyst uses his discretion to change the inventory pattern taking into account the current market situation. In case of Air India, fares are determined on a manual basis by the route controllers some months before the departure of flight. It also uses a revenue management software called *PROS* which allocates inventory/seats to different fare buckets. The algorithm of software works on the historical data of ticket pricing that has been collected and stored over a period of time by *PROS*. Go Air also uses *Navitaire* software which enables the route analyst to distribute the



inventory for different price buckets on the basis of historical data of the concerned flight. Another software *QL2* is also used to extract the price data of tickets sold by other airlines. Further, during the period of Jat Agitation, *RADIX* software was being used for inventory distribution and inputs regarding the historical factors were provided to the software company for configuring a custom-made algorithm for Go Air so as to establish various price points taking into account the demand and supply for tickets in the market. Indigo was found to be using three softwares for pricing of tickets for any particular route. These softwares are *Navitaire*, *AirRm* and *QL2*. The DG also noted that the *Navitaire* version of software used by Spice Jet is different from the *Navitaire* software used by Indigo. In view of the statement of the representatives of the airlines, the DG observed that different softwares are being used by the airlines for pricing of tickets in different fare buckets.

21. The DG also investigated as to whether there is a common algorithm which facilitates collusive behaviour among airlines. It was found by the DG that the algorithm of one airline is different from the algorithm of another airline due to fact that the inputs provided to software companies regarding the historical behavior of flights are different from airline to airline. This leads to different types of custom-made algorithms suited for the needs of a particular airline. Further, the final call for inventory allocation is taken by the respective route analysts of different airlines.
22. As per the investigation report, the analysis of the information submitted by the OPs did not reveal any uniformity or specific trend with respect to opening of buckets by different Airlines. Further, the real time prices are available to the airlines through the electronic platforms of travel portals like Clear Trip and Make My Trip.
23. Based on the statements of the representatives of airlines, the DG also observed that the additional flights were operated by all the airlines during the Jat Agitation period on account of an official directive issued by DGCA for



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reducing congestion of traffic and for welfare of passengers stranded in affected sectors *viz.* Delhi- Amritsar, Amritsar-Sector, Delhi-Jaipur, Jaipur-Delhi, Delhi-Chandigarh and Chandigarh-Delhi.

24. Investigation also tried to ascertain as to whether there were any specific guidelines for pricing of air tickets issued by DGCA. In this regard, the DG found that DGCA or any other regulatory authority has issued no guidelines regarding the pricing of air tickets by the airlines. Further, DGCA was also requested to provide the details for the regulatory mechanism for determining the air fare charged by the individual airline with reference to Rule 135 of Aircraft Rules, 1937. DGCA *vide* its reply dated 27.08.2020 clarified that airlines were free to fix the reasonable tariff under the Rule 135 (1) of Aircraft Rules, 1937. The mandate of DGCA is limited to monitoring the air fares displayed by the airlines at their respective websites. Therefore, airlines are free to fix their prices subject to compliance with Rule 135 of Aircraft Rules, 1937.
25. In view of the above analysis, the DG found no contravention of Section 3(3) read with Section 3(1) of the Act against the conduct of Spice Jet, Air India, Go Air and Indigo during the period of Jat Agitation *i.e.* 18<sup>th</sup> to 23<sup>rd</sup> February, 2016.
26. The Commission has perused the Investigation Report submitted by DG and the material available on record and the Commission proceeds to determine whether the airlines entered into any anti-competitive agreement in violation of the provisions of Section 3 of the Act. At the outset, it can be noted that existence of an 'agreement' is *sine qua non* before ascertaining whether the same is anti-competitive or not in terms of the scheme of Section 3 of the Act. In this regard, it may be noted that the definition of 'agreement' as given in Section 2(b) of the Act requires *inter alia* any arrangement or understanding or action in concert whether or not formal or in writing or intended to be enforceable by legal proceedings. The definition, being inclusive and not



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exhaustive, is a wide one. The understanding may be tacit and the definition even covers situations where the parties act on the basis of a nod or a wink. There is rarely a direct evidence of action in concert and in such a situation, the Commission has to determine whether those involved in such dealings had some form of understanding and were acting in coordination with each other. Further, considering the fact that since the prohibition on participating in anti-competitive agreements and penalties the offenders may incur if found in contravention of the provisions of the Act, are well known, it is normal that such activities are conducted in a clandestine manner, where the meetings are held in secret and the associated documentation reduced to a minimum. Even if the Commission discovers evidence explicitly showing unlawful conduct between enterprises such as the minutes of a meeting, it will normally be only fragmentary and sparse. So, it is often necessary to reconstruct certain details by deduction. In most cases, the existence of an anti-competitive practice or agreement must be inferred from a number of coincidences and indicia which, taken together, may, in the absence of any other plausible explanation, constitute evidence of the existence of an agreement. In the light of the definition of the term ‘agreement’ stated above, the Commission has to find sufficiency of evidence on the basis of benchmark of preponderance of probabilities.

27. Thus, establishment of ‘agreement’ would require some explicit or tacit arrangement amongst the parties wherefrom a concert between them can be deciphered. This may include, amongst others, exchange of information in the form of communications/ e-mails or in any other form of communication amongst the competitors, whether – explicit or tacit, oral or in writing, formal or informal including through parallel conduct which cannot be otherwise explained *etc.* In this regard, suffice to note that during investigation, the e-mail dumps of the OPs were requisitioned by the DG, but no such e-mails were found which can show any exchange of information among the airlines establishing any form of collusion during or after the period of Jat Agitation.



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28. Be that as it may, even otherwise the investigation did not come across any evidence which can establish any concerted behavior amongst the airlines. In this regard, it is noticed from the DG Report that the DG analyzed aviation data of 338 flights to detect any pattern in pricing indicative of price parallelism and collusive behavior. The Investigation analyzed the total revenue generated by each of the Airline, average price per ticket, the dates of booking, the number of buckets used and the number of seats sold/ unsold for six sectors *viz.* Delhi-Amritsar, Amritsar-Delhi, Delhi-Jaipur, Jaipur-Delhi, Delhi-Chandigarh, and Chandigarh-Delhi during the relevant period. One of the major findings with regard to ticket pricing of airlines for the aforesaid six sectors is that all the six sectors witnessed high demand for air tickets due to onset of Jat Agitation which led to non-availability of alternative modes of transport like rail, road *etc.* Though, all the four airlines sold their tickets at higher fare buckets for scheduled and additional flights for the aforesaid six sectors, the investigation did not reveal any price parallelism or identical pricing of tickets by the airlines for any of the six sectors identified above.
29. As pointed out previously, the investigation has also examined the e-mails of the key personnel of various airlines in order to ascertain meeting of mind, if any, among the competitors for any form of collusive behavior or agreement to raise ticket prices during the period of Jat Agitation. However, the investigation did not reveal any incriminating emails or any form of electronic communication which may establish exchange of information or collusive behavior among the airlines. Thus, there is no evidence on record to suggest any concerted action or communication between the airlines to fix ticket prices or otherwise in coordinating supplies.
30. The Commission also notes from the DG Report that there is no uniformity with regard to the total revenue, average ticket price, peak demand experienced by various airlines, classification of various fare buckets, seating capacity of aircrafts and openings of buckets by various airlines. The investigation has not revealed any evidence of collusive behavior or agreement among the OPs.



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Fair Competition  
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31. The Commission also notes that widespread usage of algorithms in price determination by individual firms could pose possible anti-competitive effects by making it easier for firms to achieve and sustain collusion without any formal agreement or human interaction. The DG investigation has tried to ascertain whether a common algorithm was used in the ticket pricing system of various airlines. Based on the DG's investigation, the Commission notes that airlines are using different softwares for pricing of tickets in different fare bucket. It was found that Air India uses PROS software whereas RADIX is used by Go Air during the period of Jat Agitation. Further, both Spice Jet and Indigo use different versions of Navitaire software.
32. In relation to usage of common algorithm, the investigation revealed that the algorithms used by the airlines are different from each other as the inputs for the same is provided by the airlines itself, to the software developers, regarding the historical behavior of flights which vary across airlines. As pointed out by the DG, this leads to different types of custom-made algorithms suited for the needs of a particular airline. The Commission also notes that the final call for inventory allocation is taken by the respective route analysts of different airlines.
33. The airlines also operated additional flights during the period of Jat Agitation pursuant to an official directive issued by DGCA to all the airlines for reducing congestion of traffic and for bailing out the stranded passengers in the affected areas.
34. There is no evidence on record to establish cartel amongst the airlines during the period of Jat Agitation, *i.e.* 18<sup>th</sup> to 23<sup>rd</sup> February 2016 and having examined the material on record, the Commission finds no reason to differ with the findings recorded by the DG.
35. In view of the foregoing analysis, the Commission is of the opinion that no case of contravention of the provisions of Section 3(1) of the Act read with



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Section 3(3) thereof is made out against any of the five airlines. Therefore, the present matter is ordered to be closed forthwith under the provisions of Section 26(6) of the Act. A copy of this order be also forwarded to resolution professional of Jet Airways.

36. The Secretary is directed to inform all concerned, accordingly.

Sd/-  
**(Ashok Kumar Gupta)**  
**Chairperson**

Sd/-  
**(Sangeeta Verma)**  
**Member**

Sd/-  
**(Bhagwant Singh Bishnoi)**  
**Member**

**New Delhi**  
**Dated: 03 / 06 / 2021**