

COMPETITION COMMISSION OF INDIA

20.09.2010

Case No. 37 of 2010

Travel Agents Association of India

Informant

British Airways

Opposite Party

Order under section 26 (2) of the Competition Act, 2002

Travel Agents association of India ('the informant') has filed the instant information on 05.08.2010 under section 19 of the Competition Act, 2002 ('the Act') against British Airways ('the opposite party') alleging violation of sections 3 and 4 of the Act.

2. The relevant facts as stated in the information are as under:

- 2.1 The informant is a trade association of travel agents in India and is a non-profit organization with the object, *inter alia*, of welfare of travel agents in India. The opposite party is a foreign airline operating in India having substantial share of air travel business in India.
- 2.2 That the opposite party vide its letter dated 26.03.2010 addressed to many travel agents who are members of the informant-association gave notice of its decision to revoke its ticketing authority for Area 3 location (India) effective from 01.05.2010. It is alleged that decision of the opposite party is arbitrary and without any reasonable grounds and with a clear intention to dilute competition in India. It has further been alleged that the opposite party has tied up with few big travel agents in India and is giving them incentives. The opposite party has restricted its ticketing authority to these big agents only and in a way it is adopting unfair trade practices affecting healthy competition in India. It is also stated that as per International Air Transport Association (IATA) guidelines, India falls in Area 3.
- 2.3 That the informant-association took up the matter with IATA of which the accredited travel agents and opposite party are members. But IATA refused to intervene into the matter citing the dominant position of the carriers (airlines). IATA admitted that even the orders passed

by Travel Agency Commissioner (TAC) on such issues are not implemented by the airlines and IATA has no mechanism to implement the same. TAC of area 3 has also expressed its helplessness in implementation of any orders on British Airways. As IATA did not intervene, the informant association has no option but to raise the issue under the Competition Act, 2002 to save healthy competition in India and to prevent abuse of dominant position by British Airways by refusing to deal with travel agents in India.

- 2.4 That due to the arbitrary and illegal decision of opposite party, business of selling tickets of member travel agents of the informant association all over the country is badly affected.
- 2.5 That the aforesaid action of the opposite party amounts to abuse of dominant position under sections 3 and 4 of the Act as there is clear denial to travel agents for sale of tickets.
- 2.6 The withdrawal of authority from travel agents to sell air tickets of British Airways is a clear act of denial of free access to sell air tickets in Indian market by British Airways and is violative of section 4(2) (c) of the Act.
- 2.7 That the opposite party airlines has expressly refused to deal with accredited travel agents in India and has tied up with few big travel agents to whom it is remunerating by giving commissions/incentives, etc. which is an anti-competitive agreement.
- 2.8 The impugned directive or agreement/action if implemented or complied with shall have the following effect:
 - (a) It will cause adverse effect on competition in India as the air passengers in India shall have less alternatives to buy tickets of British Airways.
 - (b) It shall result in loss of revenue of travel agents across the country.
 - (c) It shall seriously effect the competition in the travel sector in India. As the impugned action shall deprive the travel agents of selling tickets of British Airways.
 - (d) It will restrict the class and numbers of suppliers of air tickets of British Airways and services connected therewith.
 - (e) It will restrict and/or withhold the output or supply of air tickets of British Airways.
 - (f) It will have the effect of preventing, distorting and restricting competition in air tickets of British Airways

3. On the basis of above allegations the informant has prayed for following reliefs:

- (a) To direct the opposite party airlines to immediately withdraw any directive/notice issued by it, *inter alia*, withdrawing its authority to sell air tickets by travel agents in the country.
- (b) To direct the opposite party airlines not to enter into any anti-competitive agreement with few travel agents for selling its tickets exclusively.
- (c) To inquire into the circumstances that led to abuse of dominant position by British Airways at the cost of travel agents in India and pass necessary order to prohibit such future abuse by imposing exemplary costs on it.
- (d) To direct the British Airways to bear cost of these proceedings.

4. The matter was considered by the Commission in its meeting held on 15.09.2010. The Commission carefully examined all the allegations made in the information and the relevant material available on record with regard to the facts of the case.

5. It has been alleged by the informant that the opposite party has partnered with a few big travel agencies in India and has entered into agreements with such agencies and at the same time is refusing to deal with the travel agents whose ticketing authority has been withdrawn by it and thereby adversely affecting healthy competition in India. The Commission has very carefully gone through the averments and allegations made in the information and on a perusal thereof it appears that the informant has not supplied any details of such big agencies with whom British Airways has allegedly entered into exclusionary agreements. Besides, the informant has not provided any data or particulars which may reflect the adverse impact thereof on competition in India. Thus, no case has been made out by the informant ^{establishing} on contravention of section 3 of the Act against the opposite party.

6. It has also been averred by the informant that the opposite party has abused its dominant position. This contention of the informant has no substance. The informant has not furnished ^{by any supporting} ~~the required~~ details or information which may suggest that the opposite party is holding a dominant position in the relevant market of travel agency service of booking tickets of British Airways in area 3 location. Thus, except making ~~baseless~~ ^{plain} allegations, the informant has not been able to substantiate its case against the opposite party for abusing its alleged dominant position by placing any reliable material in this regard. Therefore, the allegation of the informant against the opposite party on the grounds of violation of section 4 of the Act is ~~thoroughly baseless~~ ^{unsubstantiated} and is liable to be rejected.

7. It is the contention of the informant that because of the arbitrary and illegal decision of the opposite party, business of travel agents who are members of the informant association is badly affected all over the country. Here also it is observed that the informant has not provided any details of such alleged business loss.

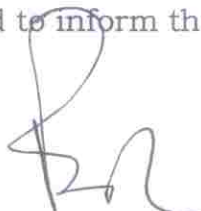
8. It may be noted that for forming a *prima facie* opinion for ordering investigation, allegations have to be supported in material particulars. In the present case, the informant has not ^{produced} made any such ^{material} effort and rather it has rested content after making ~~vague and bald~~ ^{plain} allegations against the opposite party without any basis thereof. 2

9. After going through the entire relevant material on record and taking into consideration the facts and circumstances of the case and the issues involved, the Commission is of the opinion that there does not exist a *prima facie* case for making a reference to the Director General for conducting investigation into the matter. The Commission, therefore, decides to close the matter under section 26(2) of the Act.

10. The informant has also moved an application under section 33 of the Act for grant of *ad interim ex parte* relief against the opposite party. As it has already been held that there does not exist a *prima facie* case for making a reference to the DG for conducting investigation into the matter, the present application is also not maintainable and the same is accordingly dismissed.

11. The Secretary is directed to inform the informant accordingly.


Member (G)


Member (P)


Member (GG)


Member (AG)


Member (T)


Chairperson