



CASE STUDY 07

SEPTEMBER 2013

M/S. Fcm Travel Solutions (India) vs Travel Agents Federation of India*

Forum:

Competition Commission of India (CCI)

Acts/ Sections referred to:

The Competition Act, 2002 (herein referred to as the Act)

Section 3: Anti- competitive agreements,

Section 3(3): limits or controls production, supply, markets, technical development, investment or provision of services,

Section 3(4): agreement at different stages in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services,- refusal to deal,

Section 26: procedure for inquiry.

Parties to the case

Informant: M/s FCM Travels Solution (India) Limited

Respondent: Travel Agents Federation of India & others

Brief facts of the case

In November 2008, the international Airlines including Singapore Airlines & Silk Airlines announced 100% cuts in commission of the travel agents. Some of the travel associations, who were unhappy with the reduction of commission, formed a cartel and as a result thereof, TAFI (Travel Agents Federation of India), TAAI (Travel Agents Association of India) and IAAI (IATA Agents Association of India) 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.

The Associations also persuaded their members to join them and boycott the sale of Singapore & Silk

Airlines. The Informant didn't join the movement and as a result, the associations after giving a warning expelled the informant. The informant filed the instant complaint before DG (I&R), MRTP Commission alleging cartelization and adoption of restrictive trade practices. On the basis of the information received, the DG initiated the investigation. The association maintained that protest was a peaceful way of collective bargaining and should not be construed as a way to curb competition in market.

Consequently upon the repeal of MRTP Act, this case was transferred to Competition Commission of India under the Competition Commission Act, 2002.

Issues before the Commission and its observations thereupon

The CCI upon inquiry found that the present case is similar to one of the cases¹ that CCI has already decided in the past. The associations namely, TAFI & TAAI didn't cooperate during the investigation and as a result, CCI decided the case on the basis of the replies filed by the respondent in one of the case bearing no. 03/2009 coupled with the statements given by the office bearers of associations. On the basis of the information received and relied upon, CCI decided the following issues:

Issue 1 Whether the Conduct of the association is anti-competitive under the provisions of the Competition Act 2002?

The Commission referring to case no. 03/2009 and the reply filed by TAFI, the admissions made by the TAFI in Delhi High Court in case No. 454 of 2009, press statements issued by office bearers of the respective

¹<http://www.cci.gov.in/May2011/OrderOfCommission/UniGlobeDissentOrder071011.pdf>

* M/s FCM Travels Solutions (India) Ltd. Vs Travel Agents Federation of India & others, decided on 17/11/2011, available at <http://www.cci.gov.in/May2011/OrderOfCommission/fcmtravelmainorder17nov2011.pdf>

associations in newspapers, hoarding placed clearly indicate that conduct of the airline in boycotting the sale of Singapore airlines is anti-competitive under the provisions of the Competition Act, 2002. As a result of which Singapore Airlines sales went down by 29%.

Issue 2 Whether the acting upon on the boycott call given by TAAI, TAFI & IAAI resulted in formation of vertical agreements between the associations & their members?

The Commission did not agree to the view given by Director General that call to boycott call made by TAAI & other associations amounted to vertical agreements.

The Commission stated that for the applicability of section 3(4) of the Act, it is necessary that the enterprise must be at different levels of production chain in different markets, which is not in the present case, since the travel association and travel agents both the not engaged in providing travel agency services, it's only the agent.

Issue 3 Whether owing to the resumed selling of the Singapore Airline tickets makes the instant proceedings in fructuous?

The Commission observed that although the travel agents have lifted the boycott on Singapore Airlines & resumed the sale of tickets of Singapore Airlines since January 2010, but this will not bind the Commission from exercising its jurisdiction & power from taking within its purview the past anti-competitive activities.

However, Commission stated that as penalty has already been imposed on the associations in similar case (03/2009, mentioned above), hence there will be no double jeopardy for one act. Thus the Commission opined that there is no penalty on associations but directed them to refrain from such anti-competitive activities in future.

Analysis of Order

The case laid two cardinal principles in competition jurisdiction. Firstly, it expanded the scope of CCI in adjudicating past anti-competitive matters and secondly, it identified & addressed a thin line of difference between the anti-competitive agreement and collective bargaining.

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