



CASE STUDY 19

JANUARY 2014

Uniglobe Mod Travels Pvt. Ltd. v. Travel Agents Association of India & Ors* (Anticompetitive Agreements)

Forum:Competition Commission of India¹**Legislative Provisions Referred:****Competition Act, 2002**

1. Section 3- 'Anticompetitive agreements'
2. Section 19- 'Inquiry into certain agreements and dominant position of enterprise'

Aircraft Rules, 1937

3. Section 135(1)-Tariff for air transportation

Parties to the Case:

1. Uniglobe Mod Travels Pvt. Ltd, Delhi - Informant
2. Travel Agents Federation of India(TAFI)- OP1
3. Travel Agents Association of India (TAAI)-OP2
4. IATA Agents Association of India (IAAI)-OP3
5. Indian Association of Tour Operators (IATO)-OP4
6. Association of Domestic Tours of India(ADTOI)-OP5
7. Enterprising Travel Agents' Association (ETAA)-OP6 ---Opposite Parties²

Facts of the Case:

The Informant, a company registered under the Companies Act, 1956 is a travel agency providing various travel related services. It is an International Air Transport Association (IATA) accredited travel agent and is also a member of two more associations TAFI (OP1) and TAAI (OP2). In the month of July-August 2008 some international airlines including Singapore Airlines issued a notice stating that the practice of paying commission to agents on sale of tickets was to be discontinued, however agents were free to charge their customers a transaction fee in order to recover their costs of operations etc. This notice was not received favourably and it has been

alleged that OP 1, 2 & 3 had been threatening their members to boycott their commercial dealings with Singapore Airlines, return unsold stock to them and also sign a "SQ (Singapore Airlines) capping letter". The informant company did not give into these demands and was subsequently suspended and then expelled. Thereafter the informant filed a suit of declaration and injunction to the Delhi High Court where in a written statement it was admitted that OP1 had issued a directive for boycott of dealings with Singapore Airlines and the impugned suspension was the result of a breach of that call. It is the case of the informant that the OP had entered into anticompetitive agreements i.e. acted in a cartel-like manner resulting in the restriction of supply of Singapore Airlines tickets in violation of Section 3 of the Competition Act, 2002³.

Main Issues:

1. Whether the CCI has jurisdiction in the present matter?

CCI- The CCI found that as far as jurisdiction is concerned it was amply clear from the Act that there is no question of lack of jurisdiction in the present case. It was observed that it is true that change of business model is an internal matter for within the associations but the focus of the current investigation was not the switch from commission payable to transaction fee based model but the impugned "collective-boycott" and cartel like manner of conduct. It was however made clear that those internal matters/decisions of the associations if they cause or are likely to cause an Appreciable Adverse Effect on Competition (AAEC) in India then those matters fall within CCI jurisdiction.

2. Can the acts and conduct of the OP violate Section 3 of the Act, as has been alleged by the Informant?

* Uniglobe Mod Travels Pvt. Ltd. v. Travel Agents Association of India & Ors, Case No. 03/2009, available at, <http://www.cci.gov.in/May2011/OrderOfCommission/UniGlobeMainOrder071011.pdf> (last accessed on 03/12/2013).

¹ Hereinafter referred to as 'CCI'.

² Hereinafter collectively referred to as 'OP'.

³ Hereinafter referred to as 'the Act'.

DG- From the information gathered, DG found that OP 1,2 & 3 had pressurised the airlines to restore the earlier business model of paying commission and also threatened with suspension and expulsion its own members in case they don't boycott their commercial dealings with those airlines that were non-compliant to the associations' demand. These associations took out advertisements and put up hoardings in Mumbai and Bangalore to the same effect. However OP 4, 5 & 6 have had minimal or no involvement at all in those matters. The DG further reported that the 'restriction on the provision of service' which in this case is issue and sale of Singapore Airlines tickets to the 'consumers' which in this case are the passengers or likely passengers of these airlines drove an existing competitor out of the market to the extent of reduction of sales of these airlines' tickets. Further it was found that there had been no additional benefits to the consumers and in analysing the Section 19(3) factors for determining AAEC found no pro-competitive effects of the impugned boycott call. Thus, the DG concluded violations of Section 3(3)(b) read with Section 3(1) have occurred since the activities of the associations restricted supply of services through collective intent of its members.

OP1 & OP2 - They took the position that it is difficult to conclude that there has been any AAEC since the DG has failed to investigate the financial impact on travel agents and on the passengers as a result of the boycott call of the Singapore Airlines tickets.

OP 3- They submitted that the withdrawal of sales support by travel agents had not reduced competition in the market and in particular there was no chance of Singapore Airlines being driven out of the market as a result of the alleged boycott since other channels of selling were still open to them and the travel agents had nothing to block access to these.

CCI- The Commission on evaluating the responses and rebuttals of the OP, given the presumptive nature of Section 3 (3) found that the move to change the business model by the airlines did not justify the collective boycott by the OP of Singapore Airlines tickets. On issues raised regarding the legality of the change of business model by OP 1, 2 & 3, the CCI made clear that this was not the subject matter of the issue at hand and did not need determination in order to arrive at whether the collective conduct of the OP and its members contravened the Act. The CCI did however clarify the stand of the Government of India and stated that there is no illegality in the

decision of the airlines to forego commission charges to travel agents.

The CCI disagreed with the DG and instead found that OP 4, 5 & 6 through their tacit compliance were involved in the boycott call and thus contravened Section 3 of the Act. Thus the OP were, under Section 27, asked to cease and desist from any overt or tacit anticompetitive conduct and additionally OP 1, 2 & 3 were asked to pay a penalty of INR 1 lac each owing to the higher gravity of their anticompetitive conduct. In an appeal, COMPAT also upheld the order of the CCI⁴.

Dissenting Order:

As per the dissenting order passed in this case, the OP 4, 5 & 6 have not been found guilty of violating the provisions of the Act. No reasons explaining the difference in opinion was forthcoming in the dissenting order.

Analysis of the Main Order by CCI:

There were issues of fact and issues of law that needed determination in this case. The DG went to great lengths in gathering information from the relevant sources about the correct factual situation and ascertaining whether there was in fact a collective boycott call issued by the OP and whether concerted cartel like conduct had actually occurred. It was then a matter of law whether the boycott amounted to anticompetitive conduct as deemed by section 3 of the Act. Interestingly, the order also considered and analysed whether there were any pro- competitive effects that could justify the concerted practices. This case was amongst the first few to be decided under section 27 of the Act and thus penalties were probably low.

The CCI even though it clarified that the legality of the switch from commission payable to transaction fee was not at the heart of the investigation, looked into it and clarified the legal position. CCI rightly held that the decisions of the associations causing or are likely to cause an Appreciable Adverse Effect on Competition (AAEC) in India fall within CCI jurisdiction.

Prepared By: Shikha Mehra, CIRC

⁴ COMPAT order dated 10th July, 2013, available at http://compat.nic.in/upload/PDFs/julyordersApp2013/10_07_13.pdf (last accessed on 08/12/2013).