

COMPETITION COMMISSION OF INDIA

15th September, 2010

Case No. 39/2010

Informant: Travel Agents Association of India

Opposite Parties: Balmer Lawrie & Co. Ltd. & Anr

Order under Section 26(2) of Competition Act, 2002.

1. This information has been filed under section 19 of the Competition Act by the informant M/s. Travel Agents Association of India, through their authorized representative, M/s INDUS LAW FIRM, Shri Bhupendra Singh Chauhan, Advocate on 06.08.2010 against the opposite parties for quashing the alleged arbitrary and anti competitive order/office memorandum (No.19024/1/E.IV/2005, dated 24.03.2006) issued by the Ministry of Finance, Department of Expenditure, Government of India, inter alia, directing government officials to purchase travel tickets/ tour exclusively from opposite parties, namely, Balmer Lawrie & Co. Ltd. or Ashok Travels and Tours Ltd. and thus violating the provisions of section 4 of the Competition Act,2002.

2. The informant is a trade association of travel agents in India incorporated as a company under the companies Act, with the main objective of promoting the welfare of travel agents fraternity in India.

3. It has been alleged by the informant that the opposite parties entered into an agreement with the Government of India and in pursuance of which an Office Memorandum was issued to all government departments with strict directions to purchase all travel tickets from opposite parties only. This office memorandum (No.F.No. 19024/1/E.IV/2005 dated 24.03.2006) has been issued by Dy. Secretary to Government of India, Ministry of Finance, Department of Expenditure, E.IV branch, New Delhi.

4. It has been alleged that the above action and conduct of the Government of India involving opposite parties is also an abuse of dominant position and has resulted in denial of market access to travel agents fraternity at large. As per the informant the impugned office order has caused appreciable adverse effect on the competition in India as the government officials using air transport in India shall only purchase air ticket from opposite parties and no other alternatives are available.

5. It has been further alleged that by issuing impugned order the Government of India has adopted a practice that gives protection to the opposite parties thereby restricting the class and number of suppliers of air tickets to the government officials and amounts to preventing, distorting and restricting competition in government travel sector in India.

6. On the basis of above averments violation of section 3 and 4 of Act by the opposite parties has been alleged by the informant and it has sought various reliefs including the relief to quash/eliminate the order/ office memorandum (No. 19024/1/E.IV/2005, dated 24.03.2006) issued by the Ministry of Finance, Department of Expenditure, particularly clause 3(viii) which inter alia directs government officials to purchase travel tickets exclusively from respondents .

7. The informant has also filed an application under Section 33 of the Act seeking an ad interim ex parte relief as under :

“Direct the government to not to implement directive/notification dated 24.03.2006, inter alia directing the government departments to purchase travel tickets/tours exclusively from the opposite parties, till the time the matter is decided by the Commission”.

8. The matter was considered by the Commission in its meeting held on 01.09.2010 and it was decided to call the informant to explain the matter on 15.09.2010. Accordingly notice dated 01.09.2010 was issued by the Commission which was duly served upon the informant and its counsel. On the date fixed, i.e., 15.09.2010 neither the informant nor the counsel appeared nor any written submission was submitted in this regard. Therefore, the matter is being disposed of on the basis of material available on record.

9. The Commission has considered carefully all the allegations made in the information and the entire material available on record with regard to the facts of the case . Before examining the allegations of violation of Competition Act in this case , it is essential to discuss the contents of the OM in question. The

OM dated 24-03-2006 was issued by the Ministry of Finance ,Department of Expenditure with an explicit objective of taking advantage of the increasing competition and air travel schemes of various airlines in order to ensure utmost economy in air travel expenses of Government officials. It would not be out of context to reproduce the provisions of para 3 wherein the relevant guidelines have been enumerated;

- “(i) The basic criteria for selecting airlines other than Indian airline/Air India would be better and more competitive prices being offered by the other airlines.
- (ii) Various incentive schemes and concessional fares offered by Indian Airlines/Air India will also be fully utilised.
- (iii) Each officer who is undertaking domestic travel by air, within his entitled class, should endeavor to take advantage of the concessions being provided by the airlines, to effect possible saving vis-à-vis the normal fares.
- (iv) Officers should try to make their bookings in advance the extent possible so that benefit of discounted fares can be obtained. However, the official work should not be deferred because discounted fares are not available.
- (v) Under no circumstances ,should the fare exceed the normal fare of the entitled class offered by the Indian Airlines/Air India or their subsidiaries.
- (vi) Individual officers are encouraged to make bookings through the Internet. It would require a credit card through which payments can be made. Reimbursement of service charges expenses on such credit card would be permissible.
- (vii) Schemes offered by airlines which are co-branded with the credit cards can also be availed. However this would need one time prior approval of the concerned Financial Advisor/Competent Authority for obtaining and utilizing such credit card.
- (viii) Wherever the officer seeks to utilize the service of travel agents, it should be limited to M/s Balmer Lawrie &company and M/S Ashok travels and Tours. The above agencies would also ensure that procurement of tickets is made on best available bargain across all airlines.”

9.1 It is obvious that the main objective of this OM is to rationalize the expenditure by taking advantage of competition among airlines. As per this OM

a Central Government Official is free to procure air ticket directly from any airline or through Internet for official domestic visits. It is only when an official wants to utilize the services of travel agents it has been limited to the opposite parties, who are also required to ensure that the procurement of the ticket should be on the best bargain across all airlines. Thus the allegation of the informant that the government officials have no alternative but to purchase tickets only from the opposite parties, being factually incorrect, cannot be sustained.

9.2 In the present case, Government of India is the consumer of air ticketing services and a consumer is free to make a choice as far as selection of goods or services are concerned. This has also to be considered in view of direct accrual of benefit to the consumer i.e. Government of India. Having imposed the condition upon the opposite parties to procure the air tickets on the best bargains available across all airlines, the consumer i.e. Government of India is doing nothing but ensuring benefit to itself.

9.3 It is evident from the record that the informant has made allegations against the Government of India but it has not been made a party in the present matter. Otherwise also, the Department of Expenditure, Ministry of Finance, Government of India cannot be said to be engaged in any activity which relates to production, storage, supply, distribution, acquisition or control of article of goods or provision of services. Therefore, the Government of India is not covered under the definition of enterprise provided in section 2(h) of the Act. The impugned O.M. issued to govern the official travels of its employees cannot be termed as an activity which can have any bearing on competition in the relevant sector. Moreover, the Government of India is the consumer in the present case, availing the services of the opposite parties in the procurement of air tickets for its employees for official domestic visits.

9.4 There is no case of horizontal agreement/restraint under Section 3(3). OM issued by the Department of Expenditure, Ministry of Finance, Government of India cannot be treated as an agreement on horizontal line. The opposite parties and the Government of India are not engaged in the business of identical or similar trade of goods or provision of service. The Government of India, in the present case, is a consumer and not engaged in the identical or similar trade of goods or services as that of the opposite parties.

9.5 The Government of India, being a consumer, is not producing anything, so it cannot be said that there is a vertical agreement between the Government

of India and the opposite parties. The alleged refusal to deal has not resulted out of any vertical agreement, as discussed above. It is the choice of the Government of India, like a normal consumer, to avail the service of a particular travel agency. Moreover, there is a direct accrual of benefit to the Government of India. Hence the provisions of Section 3(4) are also not attracted.

9.6 So far as the allegation relating to abuse of dominance is concerned the informant has not placed any cogent or credible material to substantiate its averment. The relevant market in this case is the air ticketing service market of domestic air travel. The policy of government has ensured competition by allowing free and fair environment in the relevant market. Thus, in the present case the Government of India being itself a consumer, cannot be said to be a dominant enterprise in the relevant market. The impugned O.M. has been issued apparently with a view to ensure economy in air travel expenses. Therefore, no case of contravention of section 4 of the Act is made out in this case against the Government of India or the opposite parties. The Commission has also taken into consideration various guiding factors as laid down in section 19(4) while taking its view that the opposite parties are not enjoying a dominant position in the relevant market.

10. In view of the foregoing discussion the allegations made in the information do not fall within the mischief of either section 3 or section 4 of the Act. Therefore, the Commission is of the view that the information filed by the informant and the material as placed before commission do not provide basis for forming a prima facie opinion for referring the matter to the Director General to conduct the investigation. The matter is therefore liable to be closed at this stage forthwith. The necessary corollary of this is that the interim relief prayed for is also not maintainable and the application of the informant under section 33 is disposed of accordingly.

11. The matter is therefore closed under Section 26(2) of Competition Act, 2002. Secretary is directed to inform the Informant accordingly.

Member (T) Member (AG) Member (G) Member (GG) Member (P)

Chairperson