

**Uniglobe Mod Travels Pvt. Ltd v/s. Travel Agents Federation of India &Ors. (“Uniglobe”)<sup>1</sup>****Facts:**

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 (**OP-1**) and TAAI (**OP-2**).

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 (IATA Agents Association of India) 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 OP-1 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 anti-competitive 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 Act.

Having formed the prima facie opinion CCI referred the matter to the DG for investigation under section 26(1) of the Act vide its order dated 04.08.2009.

**Issues:**

Following issues were framed by CCI:

1. Whether the CCI has jurisdiction in the present matter?
2. Whether the provisions of sections 3 of the Act have been contravened by Opposite parties?

**Ratio:**

CCI’s view was that the trade associations’ conduct is liable of two-fold anti-competitive conduct. A trade association is responsible for breach of section 3 of the Act embodied in a decision taken by that association, and additionally the constituent enterprises of association may be held liable for contravention of section 3 arising from a concerted practice between them. *“A decision taken by a trade association which has the purpose of fixing prices, or limiting the output of*

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<sup>1</sup>CCI Case No. 3 of 2009, decided on October 4, 2011.

*members, or allocating the market among its members, will be prohibited under section 3 of the Act as a form of anti-competitive co-ordination, a view held by international competition authorities. Similarly, the Act prohibits the individual members of a trade, association from entering into an agreement or engaging in a concerted practice which limits output or allocates the markets. This will be the case regardless of whether the intention is to restrict competition or not”.*

*“The section 3(3) is a presumptive section, once the existence of prohibited agreement, practice or decision is established, it may not be necessary to show an effect on competition, thereby the burden of proof is shifted to the Opposite Parties to show that impugned conduct does not cause appreciable adverse effect on competition”.* It was pointed out that after the effecting of “transaction fee”, the price of Singapore Airlines tickets have been reduced significantly, thus benefiting its consumers.

The Opposite Parties failed instead to prove the ultimate benefits for consumer by taking the “collective bargaining” campaign as they have defined. The Opposite Parties contended that Travel Agents Association are not covered under the definition of ‘enterprise’, therefore the provisions of the Act do not apply to their activities. The CCI satisfactorily contested that *“the members of respective Opposite Parties are travel agents who provide travel agency services to the consumers. Therefore, the members fall squarely within the definition of ‘enterprise’.*

Section 3(3) covers also the practice carried on or decision taken by any association of enterprises engaged in identical or similar trade of goods or provision of services. It cannot be deniable that OP-1, 2 and 3 are association of enterprises which are engaged in providing identical or similar kind of travel agency services to the consumers.

*“Agreement’ has been defined in section 2(b) of the Act and includes any arrangement or understanding or action in concert whether formal or in writing. From the analysis of the evidence this fact has also been established that TAFI, TAAI and IAAI acted in concert to enforce the decision of the boycott of Singapore Airlines tickets. As has been observed earlier, a collective boycott organized between competing undertakings in order to place pressure on another competitor or a supplier is a form of output limitation. Therefore, the conduct of the opposite parties is covered under section 3(1) read with section 3(3) of the Act”.*

#### **Penalty imposed by CCI:**

The Opposite Parties were, under Section 27, asked to cease and desist from any overt or tacit anti-competitive conduct and additionally OP 1, 2 & 3 were asked to pay a penalty of Rs. 1 lakh each owing to the higher gravity of their anti-competitive conduct.

#### **Appeal before COMPAT:**

In an appeal made by the Opposite Parties, COMPAT also upheld the order of the CCI.