JET AIRWAYS (INDIA) LTD. / ETIHAD AIRWAYS PJSC[1]

Etihad Airways PJSC (a company incorporated in United Arab Emirates and its national airline) was acquiring 24% equity interest in Jet Airways (India) Limited and other rights and benefits which the parties had mutually agreed upon by virtue of the shareholder's agreement, commercial cooperation agreement and investor's agreement, valued at Rs. 2060 Crore. Jet and Etihad jointly gave a notice under Section 6(2) to the Commission.

Interestingly, in the order of the Competition Commission, it has not been set out as to on what basis the Competition Commission exercised jurisdiction and examined the transaction. There is no discussion on either the assets of the entities or the financials arising from the proposed transaction.

Thereafter, in terms of Regulation 14, the parties were required to remove certain defects and provide necessary information and documents for which the parties sought extensions and furnished information in terms of Regulation 16. Further information was sought by the Competition Commission under Regulations 5 and 19 for which repeated extensions were given, taken and information was furnished and in the due course substantial changes were also made to the governing documents like SHA (Shareholder's Agreement), CCA (Commercial Cooperation Agreement) and CGC (Corporate Governance Code). Further, Air India also furnished its views and comments on the proposed combination under Regulation 19(3). After analysing the entire framework of this acquisition which was proposed for enhancing their airlines business through joint initiative, the Competition Commission gave a clearance to this deal stating that prima facie there was no competition concern in this deal.

It is pertinent to note that the Commission had also issued show cause notice to Etihad under Regulation 48 of the Competition Commission of India (General) Regulations, 2009 read with Section 43A[2] of the Competition Act, 2002 stating that the parties consummated and implemented certain parts of the combination and Etihad being the acquirer in the combination, failed to give notice in accordance with Section 6(2) of the Act. In the view of this, the Competition Commission imposed a penalty of Rs. 1 Crore on Etihad as an obligation to give notice to the Commission, as per Regulation 9 of the Competition Commission of India (Procedure in regard to the Transaction of Business relating to Combination) Regulations, 2011 was on Etihad. Later, in terms of Combination Regulations, the parties furnished the required additional information.

The CCI showcased a very pragmatic and a balanced approach towards companies that intend to enter into combinations either at a vertical or horizontal level and whether at the domestic or international level.

The Competition Commission thus after considering all the factors regarding Foreign Direct Investment (FDI), the impact of Bilateral Air Services Agreement (BASA) and the relevant factors mentioned in sub-section (4) of Section 20 of the Act held that:

[1] CCI's decision dated 12th November, 2013, in case bearing Combination Registration No. C-2013/05/122
[2] Power to impose penalty for non-furnishing of information on combinations

> *"... the Commission is of the opinion that the proposed combination is not likely to have appreciable adverse effect on competition in India and therefore, the Commission hereby approves the same under sub-section (1) of Section 31 of the Act. This approval however, shall have no bearing on proceedings under section 43A of the Act."*

In this case, the CCI was examining merger or arrangement in the context of airlines for the first time. This is a landmark ruling as the CCI has examined in great detail the impact of the proposed transaction on airline services for Etihad and Jet and its consequential impact on competition in India. The approach of the CCI provides clarity as to whether a merger or acquisition is likely to cause appreciable adverse effect on the competition and that whether such a transaction is permissible under the Competition Act.

The CCI's order holding that the proposed transaction did not have any appreciable adverse effect on competition in the relevant market was challenged before Competition Appellate Tribunal (COMPAT) by the Former Air India Executive Director, Mr. Jitendra Bhargava. The COMPAT dismissed the appeal challenging fair trade watchdog CCI's approval for the Rs. 2,060 crore Jet-Etihad deal, saying the appellant does not have "locus standi" to file the plea.[3]

[3] See http://www.thehindu.com/business/Industry/compat-dismisses-bhargavas-plea-against-jetetihad-deal/article5838939.ece