

No.AV.13030/34/2013-DT

Government of India
Ministry of Civil Aviation

B Block, Rajiv Gandhi Bhawan
New Delhi, dated 24.9.2013

To,

1. **Federation of Indian Airlines**
I-1734, First Floor, Chittaranjan Park,
New Delhi 110019.
2. **IATA Agents Association of India**
Central Secretariat, C/o Speedwings Travel & Cargo (p) Ltd.,
Sreekanth Road, Cochin 682016.
3. **Travel Agents Federation of India**
National Secretariat, 509 "The Avenue" International Airport Road
Opp. Hotel Leela, Andheri (E) Mumbai 400059.

Sub: Order of the Secretary to Government of India, Ministry of Civil Aviation in appeal filed by federation of Indian Airlines under Rule 3B of the Aircraft Rules, 1937 against circular no. 9/76/2012-IR Dated 17.12.2012 issued by the Office of Directorate General of Civil Aviation on Charging of Transaction Fee by Airlines.

Sir,

I am directed to forward herewith a copy of Order of the Secretary to Government of India, Ministry of Civil Aviation in appeal filed by Federation of Indian Airlines under Rule 3B of the Aircraft Rules, 1937 against circular no. 9/76/2012-IR Dated 17.12.2012 issued by the Office of Directorate General of Civil Aviation on Charging of Transaction Fee by Airlines for information and necessary action at your end.



Yours faithfully,

Signature
(S V Ramana)

Under Secretary to the Government of India
Tele-fax: 24610374

Encl: a/a

Copy to;

DGCA with a request to give wide publicity to this order and also to ensure its compliance by the airlines.

Copy also to:

Secretary, Civil Aviation
JS(A)
EA

Signature
25/9

Signature
25/9

Signature
25/9

O/C

Signature
Under Secretary

No. AV. 13030/34/2013-DT
Government of India
Ministry of Civil Aviation

New Delhi - 110 003
Dated the 16th September, 2013

ORDER OF THE SECRETARY TO GOVERNMENT OF INDIA, MINISTRY OF CIVIL AVIATION IN APPEAL FILED BY FEDERATION OF INDIAN AIRLINES UNDER RULE 3B OF THE AIRCRAFT RULES, 1937 AGAINST CIRCULAR NO. 9/76/2012-IR DATED 17.12.2012 ISSUED BY THE OFFICE OF DIRECTORATE GENERAL OF CIVIL AVIATION ON CHARGING OF TRANSACTION FEE BY AIRLINES.

1. The Federation of Indian Airlines(FIA)filed an appeal dated 6.2.2013 under Rule 3B of the Aircraft Rules, 1937 against the Circular No.9/76/2012-IP dated 17.12.2012 issued by the Office of Directorate General of Civil Aviation (DGCA) restricting charging of transaction fee by airlines since the same violates the provisions of Rule 135 of the Aircraft Rules, 1937.

2. The Hon'ble High Court of Delhi, passed an order dated 18.02.2013 directing that IATA Agents Association of India (IAAI) shall be heard by the Secretary Civil Aviation where the appeal of the FIA has been filed and it would be open for the IAAI to raise all objections which may be available in accordance with law.

3. In order to give a fair opportunity to both the parties before deciding the case, hearing was held in the Ministry of Civil Aviation on 19.03.2013and on 25.6.2013 in which the representatives of the airlines, as well as those belonging to IATA Agents Associationwere invited. Views of all the parties were heard at length.

3. The main thrust of the arguments taken by FIA through hearing and their written submissions is that neither the Aircraft Act nor the Aircraft Rules prohibit the airlines to include the Transaction Fee payable to the travel agents in the air-tickets. The definition of "tariff" provided in clause 54 A of rule 3 of the Aircraft Rules recognizes the commission payable to the agents and under Rule 135(1), airlines have the right to establish the airfare in line with criteria as set out in rule 135(1). Therefore, contrary to the purported non-compliance of Rule 135 by the airlines in the impugned Circular, Rule 135 allows airlines to fix its own airfares and give its break-up.

4. FIA also stated that Transaction Fee very transparently reflects the fees charged by the travel agent for the services rendered. They further submitted that Transaction Fee is payable or reflected in the air tickets, only when the bookings are made through travel agents. The Transaction Fee is not payable by the passengers if they choose to book their tickets directly with the airlines, either over the counter or through the Web Portals of the airlines. Therefore, it is choice of the passengers to book the air tickets either to the travel agents or not. Since the travelling passenger purchases the air ticket, Transaction Fee helps the travelling passenger identify the amount paid towards the fee in lieu of the services of the travel agents.The Transaction Fee model propagates transparency and allows the passengers to make informed choice while booking their air-tickets. Remuneration to the travel agents by way of the Transaction Fee is desirable as it balances the interests of airlines, travel agents and passengers by introducing transparency to the process.

FIA also submitted that globally there is a shift from the agency commission to Transaction Fee Model or Net-Fare Model. However, keeping in view the need to pay the travel agents in exchange of their services, Transaction Fee Model has been put in place by the airlines.

FIA also submitted that in compliance of Rule 135(2A) of the Aircraft Rules and DGCA's Notifications/Circulars, the airlines are bound to indicate the total amount payable by a passenger and a complete break-up of the total amount, indicating the fare, tax, fees or any other charge, in any, separately. Thus member airlines of FIA follow the Rule 135(2A) of the aircraft Rules as well as DGCA's Notifications/Circulars while issuing the air tickets. The Transaction Fee is payable or reflected in the air-tickets, as a component of the airfare, when the bookings are made through the travel agents.

5. In view of the above, FIA has submitted that by issuing the impugned Circular, DGCA has acted contrary to the law governing the tariff of airlines. Further, the impugned Circular has been issued by DGCA without assigning any reason and prior notice. FIA also submitted that the impugned Circular does not mention as on which date it comes into effect from. In the above background, FIA has asked to set aside the impugned Circular.

6. The main contention of the IATA Travel Agents are that (i) Commission is legally recognized under the definition of Tariff as provided under Rule 3(54) of the Aircraft Rules 1937 and collection of Transaction Fee is impermissible, (ii) Every air transport undertaking is mandated to establish airfare including the commission payable to travel agents. Transaction Fee is not reflected in scheme of Rule 135 of the Aircraft Rules, (iii) DGCA vide its order dated 05.03.2010 made commission payable to the travel agents mandatory. Since no appeal has been preferred by FIA against the DGCA's order dated 05.03.2010, the present appeal against the impugned circular is not maintainable, (iv) hardship is being faced by the travel agents in absence of payment of commission to the travel agents.

7. IATA Travel Agents also submitted that the airline companies decided to decline payment of commission to the travel agents. They instead showing commission as part of air fares, required by agents to collect the commission by way of Transaction Fee from customers over and above the air fare shown in the ticket. This is not practical because passengers would not be willing to pay any amount which is not part of the air fare shown in the ticket.

8. The matter has been considered in light of the provisions of the Aircraft Act 1935 & Aircraft Rules 1937. Due weightage has been given to the arguments of both sides as set out in the preceding paragraphs.

The term 'Tariff' as defined in Rule 3 (54-A) of the Aircraft Rules means any fare rate or charge collected by an Air Transport Undertaking for the carriage of passengers, baggage or cargo including the commission payable to the agents, and the conditions governing such fare, rate or charge. That, however, does not mean that the Commission has to be necessarily paid to the travel agents by the airline companies.

Over the years, with the growth of industry and development of technologies leading to emergence of different types of intermediaries such as third party Web Portals. Initially it may be recalled before the advent of Information Technology (IT) revolution, the

distribution channels were restricted to airlines own counters and travel agents. Subsequently, airlines have opened their own web sites for the sale of air tickets for their flights. In addition, 3rd party web portals covering the tourism and travel industry have emerged in importance as an additional channel of distribution.

As a corollary to this development, new terminologies have emerged in the market in the place of "Commission" such as transaction fee, service fee, convenience fee etc. Essentially, these fees are collected by the intermediaries for the service being rendered by them in the market.

While there can be no objection to the use of these terminologies in the place of the word "commission", no one can charge, levy and collect any amount over and above the tariff as defined in the Act and the Rule 3(54-A). Therefore, the argument of the FIA that collection of Transaction Fees from the passengers by the travel agent is in line with the Rule 135 of the Aircraft Rules, is not acceptable.

In its submissions, the FIA has made the following points that are relevant to be noted:

- (a) That travel agencies are the primary source for travel resources for both individuals and tourist service providers;
- (b) That Internet travel agencies such as makemytrip.com, cleartrip.com, cleartrip.com etc., are convenient to the passengers;
- (c) That Online travel agencies have the advantage of being able to sell their products 24 hours a day and 7 days a week;
- (d) That, travel agents are an important part of distribution set up of an airline. They provide an entire gamut of services to customers including easy access of airline and other travel products to consumers, independent advisory services to their customers and a variety of convenient options to their customers;
- (e) That there are over twenty thousand travel agents spread over India who help sell airline inventory efficiently;
- (f) That travel agents consistently contribute over 60-75% of the overall business to the airlines.

The foregoing submissions of the FIA clearly establish two facts: one, intermediaries play a significant role in the sale of airline inventory. Two, intermediaries do render service to air travelers who choose to purchase air tickets through them. Therefore, it is quite logical that intermediaries get a compensation that is equitable, fair and based on work done principle. Since keeping any fee outside the ambit of tariff is likely to adversely affect the objective of transparency, it is best that it is part of the tariff. That is also the intent of the legislation and that is why the "commission" is part of tariff.

Market is quite competitive. In the sense that there are many channels of distribution of air tickets available for the airline such as airline own counters, airlines own website, 3rd party web portals, Travel Agents at large. Similarly, for passengers there are many channels available to purchase tickets.

Therefore, there is no need to fix any rate, percentage or amount of commission payable by airlines to the intermediaries i.e. 3rd party web portals, travel agents for selling the tickets on behalf of the airlines to the passengers.

A submission has been made stating that inclusion of transaction fee etc. within the ambit of tariff may lead to a situation which may result in differential tariff (Dual Pricing) for different persons depending upon the source of purchase of ticket. This has been examined by the authority based on the principle of Non-Discrimination. It is an accepted principle that a passenger should be charged only for the services that he has utilized. Therefore, if he has not availed the services of the travel agent, it would not be appropriate to burden him with the commission payable to the travel agents. Therefore, differential tariff is justified as the same does not amount to discrimination if the basis of differential fare is fair and reasonable. In this case, sale of tickets through intermediaries facilitates an informed choice to the consumer as the intermediaries provide complete market intelligence giving a range of price information and availability of timings etc. Therefore, price differential can exist between a ticket purchased directly from airline counter or their website and through an intermediary. However, such a pricing mechanism has to be necessarily within the definition of tariff as provided in the Act and Rule which means the intermediaries cannot separately levy and collect any fee or charge over and above the tariff which has been fixed by the airlines.

This brings the question of whether the airlines have to take into account the compensation to be paid for the intermediaries in the process of sale of air tickets. The answer for this question is in the affirmative. However, fixing or determining or laying down of any basis for deciding the compensation to be paid for the intermediaries by the airlines is not required. Since the market is found to be adequately competitive, there is no need to intervene in the commercials between the airline industry and the distribution industry.

ORDER

The Federation of Indian Airlines (FIA), in their application dated 06/02/2013 (Exhibit P₃) have requested for setting aside of the Circular No. 9/76/2012-IR dated 17.12.2012 issued by the Directorate General of Civil Aviation.

It is clearly stated here that the term "Commission", "Transaction Fees", "Convenience Fees" or any other terms used for the purpose means the same i.e. payment of remuneration to the intermediaries for the services rendered by them and therefore, all these terms are treated as "Commission", mentioned in the existing rule 135 of Aircraft Rules, 1937 as a part of tariff to be determined by airlines. All these forms of levy of fees as remuneration to the intermediaries for the services rendered by them for issuing tickets to passengers on behalf of the airlines are permissible under the existing rules provided these are shown as part of Tariff within the definition of Tariff and no amount will be collected from the consumers over and above this.

Further, Rule 135(1) requires airlines to determine tariff which by definition includes commission. Rule 135 (2) requires airlines to display a 'single consolidated fare' and give its break-up also for consumer's benefit. It is clear that the statutory position under rule 135 clearly requires airlines to determine tariff in accordance with law, including commission payable to agents. The existing law also requires airlines to display total fare & its components.

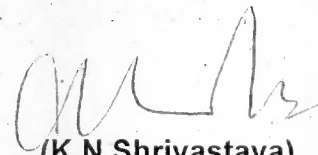
However, it is made very clear that as per the rules, DGCA cannot lay down quantum of

commission payable by airlines to agents. It is entirely up to the airlines to take a decision in this regard in consultation with intermediaries taking in to account various commercial factors such as the market conditions, the cost of the intermediary's establishments, etc& statutory definition of 'tariff'.

The Circular No. 9/76/2012-IR dated 17.12.2012 issued by the Directorate General of Civil Aviation is only a reminder of its order No. AV.23012/2/2008-TE dated 05.03.2010 which sought the airlines to abstain from charging over and above the fixed tariff and to ensure compliance of existing statutory provisions regarding determination of tariff as per Rule 135(1) and display of the fare and the components as per Rule 135(2) and (2A).

The regulator (DGCA) is directed to closely monitor the market situation to ensure that transparency is enhanced continuously as an on-going process and also watch for any market practices that may emerge in future which may be violative of the extant rules and regulations.

The application dated 06/02/2013 submitted by the Federation of Indian Airlines (FIA) is disposed of accordingly.



(K.N. Shrivastava)

Secretary to Government of India