

Comments, Objections or Suggestions
on
**THE COMMITMENT PROPOSAL
IN CASE NO. 44 OF 2025**



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I INTRODUCTION

A Background

By its order dated 4 February 2026 in Case No. 44 of 2025 ("Section 26(1) Order"), the Hon'ble Competition Commission of India ("Commission") formed a prima facie view that InterGlobe Aviation Limited ("IndiGo") has contravened Sections 4(2)(a)(i) and 4(2)(b)(i) of the Competition Act, 2002 ("Act") in relation to the cancellation of flights between 3 and 5 December 2025. On 23 July 2026, the Commission published a notice inviting comments on the commitment application filed by IndiGo under Section 48B of the Act ("Commitment Application"), to be received by 13 August 2026.¹

This is among the first occasions on which the Commission has invited public comment on a commitment application in an abuse of dominance matter.

B About the Centre

The Cyril Shroff Centre for AI, Law & Regulation ("Centre"/"CSCAILR") at Jindal Global Law School at O.P. Jindal Global University focuses on world-class research, knowledge creation, training, and capacity building, while engaging closely with government bodies, intergovernmental organizations, corporates, think tanks, legal institutions, and academia to shape governance and regulation for India and the world.

The Centre connects scholarship with real policy implementation, produces high-quality research and actionable recommendations, and works directly with policymakers to support responsible AI innovation and the development of state-of-the-art regulatory frameworks, grounded in law and societal needs.

The Centre welcomes the opportunity to comment on the Commitment Application.

C Executive Summary of Comments

The Centre's comments are directed at the framework questions the Commitment Application raises. Our submissions are on three specific themes:

- ▶ **Suitability of the commitments to address competition challenges:** The commitments should be matched to the heads of abuse actually identified. The Section 26(1) Order invokes the unfair condition limb under Section 4(2)(a)(i) and not the unfair price limb under Section 4(2)(a)(ii). The fare protection commitment is calibrated to a pricing concern that does not form part of the prima facie case, while the lock-in harm that does form part of it remains unaddressed.
- ▶ **Effectiveness of the slot release commitment:** The Centre submits that this remedy has some potential to address competition concerns. However, to form views on this and assess impacts, the competition assessment supporting the slot release commitment should be placed on the public record before the application is determined. The Section 26(1) Order contains no assessment of airport slots as a competition barrier, and the slot-related information is not available for review.
- ▶ **Implications for compensation:** The Centre submits that acceptance of the commitments would foreclose the route to compensation under Section 53N. The Centre respectfully submits that this consequence calls for an express proportionality assessment with a careful consideration of this implication.

II DETAILED COMMENTS

A Suitability of the commitments to address competition challenges

The Centre submits that the fit between the commitment offered and the abuse alleged should be carefully examined in the context of the fare protection commitment. The Commission has formed a prima facie view that IndiGo has contravened Sections 4(2)(a)(i) and 4(2)(b)(i). These violations concern imposition of an unfair condition and a limitation on the provision of services respectively. There is no allegation of imposition of unfair pricing under Section 4(2)(a)(ii). Nonetheless, IndiGo has offered a commitment of fare protection referable to Rule 135 of the Aircraft Rules, 1937.

The Centre submits that a commitment must be assessed against the head of abuse it is said to answer, and makes two submissions in that regard:

- ▶ *First*, the fare protection commitment responds to a concern that does not form part of the prima facie case, while the condition that does form part of it, namely the absence of any alternative available to a locked-in passenger, remains unaddressed; and
- ▶ *Second*, and in the alternative, if the Commission considers the commitment to answer a pricing concern, the applicable standard is the competition standard for unfair pricing, and not the tariff standard under Rule 135.

Our detailed analysis is presented below.

(a) Context

The Section 26(1) Order in the case invokes Sections 4(2)(a)(i) and 4(2)(b)(i). The finding recorded in this regard is that passengers who had booked tickets were left with no real choice but to accept last-minute cancellations, were required to seek alternatives on their own, and, given IndiGo's dominant position, were effectively locked in and lacked viable alternatives.²

To this, IndiGo has offered a commitment that it will comply with rules of fare protection under Rule 135 of Aircraft Rules, 1937. Rule 135(1) of the Aircraft Rules, 1937 requires every air transport undertaking to establish tariff "having regard to all relevant factors, including the cost of operation, characteristics of service, reasonable profit and the generally prevailing tariff", and Rule 135(2) requires that the established tariff be published. The obligation is ex ante and applies to the tariff the undertaking itself establishes. It applies to every carrier irrespective of their market position, and it takes the generally prevailing tariff as one of its reference points.

(b) Analysis

Failure to address competition concern

Sections 4(2)(a)(i) and 4(2)(b)(i) of the Act concern a dominant enterprise imposing an unfair condition and a limitation on the provision of services respectively. In this case, it has been prima facie found that IndiGo:

- ▶ unfairly imposed on its consumers the condition of cancellation of tickets unilaterally; and
- ▶ its position in the market limited provision of services by others.

The fare escalation described in the Order³ is the consequence of that condition and is a measure of the resulting loss. Imposition of unfair pricing has not been alleged as an abuse in itself. If it had been, the alleged contravention could have been made under Section 4(2)(a)(ii). But, it was not and it was pointed to Sections 4(2)(a)(i) and 4(2)(b)(i).

Yet, IndiGo has offered a commitment of fare protection. As a result:

- ▶ this commitment addresses a concern that does not form part of the prima facie case. As a result, it deserves scrutiny for being a suitable remedy to address competition violations prima facie determined against IndiGo.
- ▶ the commitment misses addressing the real anti-competitive condition. The abusive condition alleged is that a passenger whose flight is cancelled by IndiGo has nowhere else to go. It could have been addressed by a commitment to re-accommodate affected passengers on other carriers at IndiGo's own cost or any other similar mechanism. Yet, it has not been considered.

Pricing commitment should be based on the Act

Nonetheless, and in any case, the fare protection commitment should be as per competition law and not DGCA requirements. Under the Act, the Commission evaluates if a price imposed by a dominant player is unfair or not as per the United Brands test.⁴ As per this test, a price is unfair where it bears no reasonable relation to the economic value of the service supplied, and the inquiry proceeds in two stages:⁵

- ▶ whether the difference between the cost actually incurred and the price actually charged is excessive, and,
- ▶ if so, whether the price is unfair in itself or when compared with competing products.

The inquiry requires a cost-to-price analysis and involves an assessment of whether the prices are attributable to the exercise of market power.

However, IndiGo has offered a commitment that it will comply with the Rule 135 of the Aircraft Rules, 1937 (discussed above) in respect of its fares. This pricing commitment is not based on the Act and the standards used by the Commission. The Commission must consider that:

- ▶ In complying with Rule 135, the airlines are benchmarked only against the generally prevailing tariff in the market. If the market is already pricing services in an anti-competitive manner due to the conduct of the dominant firm, a commitment to conform with prevailing tariffs will not address unfair pricing concerns.
- ▶ Under Rule 135, it is the airlines themselves that establish and publish the prices. In complying with Rule 135, the airlines are not assessed, at any stage, on whether the prices quoted by them are attributable to their market power or not. Accordingly, a commitment not to exceed that tariff is not a commitment not to impose unfair pricing as per the Act.

In rejecting IndiGo's jurisdictional objection in this case, the Commission has already held that the appearance of the expressions "excessive", "predatory" and "oligopolistic" in Rule 135(4) does not, by itself, satisfy competition law scrutiny. Accordingly, as a corollary, a commitment framed by reference to the Rule 135 tariff does not, by itself, discharge a competition concern.

(c) Recommendation

- ▶ The order should identify, for each accepted commitment, the specific head of abuse under Section 4(2)(a)(i) or Section 4(2)(b)(I) that it is found to address.
- ▶ Nonetheless, if the remedy is being offered for unfair pricing, it should be based on the standards of competition law.

B The competition assessment for the slot release commitment should be published

The Section 26(1) Order, which is in the public domain, delineates the relevant market as the market for domestic air passenger transport services in India and assesses dominance by reference to factors such as passengers catered, available seats, presence on Category-I routes under the Route Dispersal Guidelines, fleet size and comparative profitability. The Order contains no assessment of airport slots. It does not:

- ▶ consider slots as an input on which rival carriers depend,
- ▶ treat airport slots as an entry barrier as per Section 19(4) of the Act, and
- ▶ identify the airports at which slot scarcity is said to operate.

As a result, it is unclear whether a temporary release of slots would enable rival carriers to deploy capacity in response. Indeed, recently, even a long-term release of slots did not create incentives for other players to compete against IndiGo.

Release of slots is efficacious as a commitment only where slot access is the operative constraint. If the constraint is aircraft and crew availability, or where the airports concerned are not capacity-constrained at the relevant times, the release of slots will not translate into capacity restored to the market, and the commitment will not answer the concern under Section 4(2)(b)(i).

Accordingly, the Centre offers no view on whether the slot release commitment should be accepted. It submits that consultees are not presently in a position to comment on it, and that this is capable of being remedied before the application is determined. The Centre submits that before the application is determined, the Commission should:

- (i) publish a non-confidential statement of its assessment of whether access to airport slots operates as a constraint on rival carriers in the relevant market, and of the airports and periods at which any such constraint is said to arise;
- (ii) specify in any order the treatment of released slots for the purposes of historic precedence and the applicable utilisation threshold; and
- (iii) allow a further period for comment once that material is available.

C Proportionality assessment regarding compensation

The Centre submits that the Commission accepting the Commitment Application will foreclose the route to compensation for persons aggrieved due to IndiGo's anti-competitive conduct. Accordingly, the Centre submits that the Commission should undertake a clear proportionality assessment, including, a cost-benefit analysis of foreclosing the routes to these remedies.

Our detailed analysis is presented below.

(a) Context

As per Section 53N(1) of the Act, any person is eligible to claim compensation from any enterprise determined to have acted in violation of the Act. Provided, this determination needs to be in a finding from the Commission (or, NCLAT and the Supreme Court) or pursuant to a settlement order under Section 48A of the Act.

The Act does not recognise the findings of the Commission under an order passed under Section 48B of the Act to be eligible for compensation. As per Regulation 6 of the Competition Commission of India (Commitment) Regulations, 2024, an order accepting commitments cannot be construed as a finding of contravention.

Accordingly, the Commission's decision to accept the Commitment Application in this case under Section 48B will foreclose any possibility for persons aggrieved from IndiGo's conduct to avail compensation before the NCLAT.

(b) Analysis

The Centre recognises the rationale for foreclosing access to compensation. It does incentivise parties to come forward. Therefore, our submission is not a submission against the commitment regime, and the Centre does not invite the Commission to disturb the settled architecture. Instead, the Centre's submission is that the architecture presupposes that the commitment route will be deployed in cases where the foreclosure of compensation is a proportionate price for the market correction obtained. Accordingly, the Centre submits that the Commission should assess proportionality of foreclosing this route clearly in its decision to accept the Commitment Application.

The Centre submits that the following salient features of having a route to compensation should be considered:

- ▶ **Sui Generis Remedy:** The grievances relating to cancellations and consequential high prices arising from IndiGo's conduct can find redressal under the Consumer Protection Act, 2019. However, the remedy provided under Section 53N for competition law violations is sui generis. The remedies available under the Consumer Protection Act, 2019 are not inadequate as to quantum. A consumer forum may award the cost of substitute travel and consequential loss. The difference is elsewhere. A complainant before the consumer fora must establish the conduct complained of against an enterprise as powerful as IndiGo which has more information, resources, and records than the complainant. Accordingly, an information asymmetry operates against the complainant at the threshold of establishing the conduct. On the other hand, Section 53N permits compensation to be claimed on the strength of a finding already arrived at by the Commission following investigation by the Director General which can uncover various kinds of deficiencies and violations. The acceptance of commitments would remove this benefit for the aggrieved.
- ▶ **Coverage of the compensation:** The consumer fora are open to consumers but Section 53N is open to any person, including enterprises. Businesses, corporate purchasers, insurers, and travel intermediaries affected by the same conduct of IndiGo have no remedy under the consumer framework. Indeed, these persons may be able to take relief under a civil claim. However, the contracts governing those claims might prevent effective relief as those contracts would have been negotiated considering IndiGo's market power. Accordingly, it is only Section 53N which affords an effective relief to wider stakeholders.

(c) Recommendation

The Centre respectfully submits that the Commission should undertake and record an express proportionality assessment before determining the application, addressing:

- (i) the nature and quantum of the harm perpetrated vis-a-vis the availability of any forum other than the NCLAT in which that harm may be redressed; and
- (ii) the weight of the prospective benefit said to flow from the commitments as against the extinguishment of the remedy under Section 53N.

III CONCLUSION

The Centre welcomes the opportunity provided to submit comments on the Commitment Application. The submissions above are directed at ensuring that the first substantive application of Section 48B in a regulated sector establishes a durable framework: that each accepted commitment is tied to an identified head of abuse, that the evidentiary basis for a remedy is available to those invited to comment upon it, and that the foreclosure of private enforcement is weighed rather than assumed.

The Centre remains committed to assisting the Commission in the development of the settlement and commitment framework, and remains available at csailr@jgu.edu.in.

References

- ¹ Competition Commission of India, Notice Inviting Public Comments on the Commitment Application Submitted by InterGlobe Aviation Limited in Case No. 44 of 2025, 23 July 2026.
- ² Section 26(1) Order, paragraph 41.
- ³ Section 26(1) Order, paragraphs 3 to 4 and 39.
- ⁴ See, Vivek Sharma v. Indraprastha Medical, Case No. 77(10) of 2015, para 66.
- ⁵ Case 27/76, United Brands Company and United Brands Continentaal BV v Commission [1978] ECR 207, paragraphs 250 to 252.
- ⁶ Section 26(1) Order, paragraph 25.
- ⁷ Section 26(1) Order, paragraphs 29 to 38.
- ⁸ Arindam Majumdar, Rivals see little upside in taking IndiGo's vacated slot, Economic Times (24 Jan 2026), available at: <https://economictimes.indiatimes.com/industry/transportation/airlines/-aviation/rivals-see-little-upside-in-taking-indigos-vacated-slot/articleshow/127320107.cms?from=mdr>
- ⁹ Kashish Makkar, "Will CCI repeat the European Union's mistakes?", Financial Express 22 September 2023, available at: <https://www.financialexpress.com/opinion/will-cci-repeat-the-european-unions-mistakes/3251001/>



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