THE COMPETITION APPELLATE TRIBUNAL, ISLAMABAD

Before: Mr. Justice Sajjad Ali Shah, Chairman
Dr. Faiz Illahi Memon, &
Mr. Asim Akram, Members Technical – I & II, respectively.

Appeal No. 22 of 2025

Date of Hearing: 02-07-2025
Date of Judgment 11-08-2025.

Appellant: **M/s Hyundai Nishat Motors**

Respondent: **Competition Commission of Pakistan**

For the Appellant: Mohammad Azeem and Saleema J Khawaja, Advocate

For the Respondent: Mr. Haider Afzal Khan, Advocate Hafiz Naeem, legal advisor and Miss Ayesha Saleem, Advocate for the CCP.

JUDGEMENT

Dr. Faiz Illahi Memon, Member Technical-I:- The appeal under consideration has been preferred by M/s Hyundai Nishat Motors, a JV consisting of three entities, namely Nishat Group, Sojitz Corporation, (Japan) and Millat Tractors Ltd Hyundai Motor Company (Korea), agitating order of the Competition Commission of Pakistan (**"Commission"**), passed on 15th April 2022, imposing a penalty of Rs. 25 million (**"Impugned Order"**) for compromising the provisions of Section 10(2)(b) of the Competition Act, 2010 (The Act). The

-Sdappealed order, as per record, reveals that the Commission took suo moto notice of the Appellant's advertisement by initiating proceedings u/s 30(1) of the Act.

2. The culmination of proceedings was preceded by an enquiry report received by the Commission on 05.01.2021, where after a show cause notice (SCN) was rolled out on 05.03.2021, whereby the Appellant was required to submit a cogent rebuttal/defense. After a lag of four (04) years and after two (02) hearings held on 14.06.2021 and 12.03.2025, the Impugned Order was passed on 15.04.2025.

3. In essence, the enquiry report held the Appellant guilty of not abiding by Section 10(2)(a) and (b) of the Act, whereas the order passed on 15.04.2025 reveal that the Commission did not concur with the violation of Section 10(2)(a) as suggested by the enquiry report but did hold that the Appellant had indeed violated Section 10(2)(b), and thus a penalty of PKR 25 million was imposed, payable within thirty (30) days of the passing of the order of the Commission.

4. The Appeal filed before this tribunal was fixed for hearing. The counsel of the Appellant and the Commission appeared and argued the case at length.

5. The counsel of the Appellant made elaborate submissions in writing as well as before this tribunal, which essentially hovered around legal aspects of the case but also pleaded on the basis of facts leading to the inappropriate order passed by the Commission. The counsel submitted that the delegation of powers to the enquiry committee was not permissible since sub-delegation is not permissible under the statute, citing various judgments. Furthermore, the counsel also submitted that the proceedings initiated by the Commission on the basis of complaints filed by two individuals were not within the four corners of law as the

two individuals did not qualify to be "undertaking" as distinctly spelled out in Section 2(1)(q); hence, the consequential action was ab initio void and ultra vires. Additionally, the letter written by the Appellant to the Commission requesting to clarify whether the proceedings being initiated are suo moto or otherwise, was not responded at all by the Competition Commission. The counsel elaborated that the element of bait advertising, as mentioned by the Commission in its order, comes under the purview of the provinces, and it is not mentioned in the federal legislative list; hence it is beyond the competence of the Commission to invoke such action. The counsel also submitted that the proceedings initiated in 2021 were by a three-member bench which was given necessary replies, but after a wait of nearly four (04) years, the proceedings were reinitiated, this time by a two-member bench which passed the Impugned Order. While making his submissions, the counsel also relied on various other orders, inter alia 2023 SCMR 1991 decided on 29.03.2022 by a three-member bench of the Honorable Supreme Court of Pakistan, which provides adequate guidelines for the Commission and the actions that it has to fulfill while initiating and finalizing the proceedings in accordance with the mandate given to it under the statute.

6. On the factual plane, the counsel of the Appellant vehemently argued that the advertisement published by the Appellant on Facebook live streaming event held on 11.08.2020 and simultaneously the advertisement published in the newspaper gave the disclaimer that it is a limited-time offer, which is the industry norm and practice as done by other automobile manufacturers, yet singling it out is a case of pick and choose which does not ensure across-the-board justice. The counsel submits that the Appellant launched its new sports utility vehicle "Hyundai

CERTIFIED TO BE A TRUE COPY
REGISTRAR
Competition Appellate Tribunal
Islamabad
Dated: 12-08-2025

Tucson" and announced an introductory price of PKR 4,899,000 for the GLS/FWD model and PKR 5,39 ,000 for the Ultimate/AWD model, and 300 vehicles were earmarked, equivalent to its one-month production, extending a benefit of Rs. 200,000 to customers on a first-come-first-serve basis.

7. It was almost the peak of Covid-19, and the market conditions were absolutely suppressed; therefore, to lift the market and attract buyers, introductory price was announced. The 300 units were sold in the first 24 hours, and it was accordingly announced on the Facebook page on 13.08.2020 that all its units had been successfully sold to buyers. The Appellant also ensured that all the buyers i.e., 300 were given the vehicles without any hidden or additional cost, whereas not a single penny of the buyers exceeding 300 units was retained at all by the Appellant, which could give rise to any malafide or non-transparent action on part of the Appellant in conducting its business.

8. The counsel of Commission also dealt at length defending the Impugned Order, stating that the legal issues raised by counsel of the Appellant are not in consonance with the explicit powers given to Commission by the Act, and that the Commission invoked its suo moto jurisdiction vested under Section 30(1) of the Act by initiating enquiry, and on the basis of enquiry report, adequate opportunity of being heard was provided for apparent violation of Section 10 of the Act. The counsel submitted that suo moto enquiry under Section 30(1) of the Act empowers the Commission to act on any source including its own observations about the Appellant's advertisement. The proceedings under Section 30 were appropriately based on recommendations contained in the enquiry report and the Impugned Order amply demonstrates that the proceedings emanated

CERTIFIED TO BE A TRUE COPY
REGISTRAR
Competition Appellate Tribunal
Islamabad
Dated: 12-08-2025

from suo moto action. At the same time, the Commission also considers complaints from informal sources, but in this case no formal complaint was filed, thus the plea of the Appellant is totally unfounded. Furthermore, the counsel also submitted that Commission is not legally mandated to disclose the order initiating enquiry against the Appellant, which is essentially internal document. However, extending due deference to the order of the Hon'ble Supreme Court, the Appellant was provided a gist of the reasoning for initiating enquiry vide letter dated 16.09.2020 followed by the SCN enabling the Appellant to submit proper defense. The counsel also defended the stance of the Commission on bait advertising, which prejudiced the consumers, and also defended the powers delegated by the Commission in accordance with Section 28(2) of the Act. The counsel also relied on SRO 1128(I)/2019 dated 24.09.2019. Lastly, the counsel also dwelt on the bench constitution powers of the Chairperson, as given to him by the law.

9. Arguments of both sides have been heard and the record perused. Touching upon the legal plane, before discussing the factual issues and considering the orders of the Hon'ble Supreme Court cited by the Appellant, it is the conclusive opinion of this tribunal that the Appellant was extended opportunity of being heard and it also adequately cooperated with the Commission by filing its replies whenever required to do so. Hence, the Appellant was not condemned unheard. As far as the constitution of the benches is concerned, it is the exclusive right of the Chairperson of the Commission to do so. The powers of delegation were also delegated lawfully in accordance with Section 28(2) of the Act read with SRO 1128 (I)/2019 dated 24.09.2019 and SRO 1097 (I)/2020 dated 07.09.2020 which

CERTIFIED TO BE A TRUE COPY
Competition
Dated: 12-08-2025

clearly states that the Commission has delegated its functions and powers particularly under section 28 (2) whereby the Chairperson may constitute benches or authorize any member to conduct proceedings under section 30 of the Act and to pass any order under section 31 or any enabling provision of the Act. As such there appears to be no substance in the arguments of the counsel of the Appellant in so far as the delegation of powers of the Chairperson are concerned.

10. The suo moto powers invoked by the Commission are well within its rights as guaranteed by the law. The Impugned Order at no place would mention initiating proceedings against the Appellant on the basis of complaints filed by individuals who do not qualify to be undertaking in view of Section 2 (1) (q) of the Act. All along suo moto action has been referred, thus rendering the agitation of Appellant at rest so far as in appropriate and unlawful nature of proceedings is concerned.

11. From the record made available and the arguments of the counsel of Appellant, it has been inferred that the Facebook livestreaming on 11.08.2020 and the corresponding advertisement in the newspapers should have stated and amplified in clear terms the time period of the introductory scheme of two models launched by the Appellant and the number of vehicles falling into the subsidized category. However, a disclaimer was also given to the buyers, and the discontinuation of the scheme was also brought to the notice of the buyers on the very next day in its Facebook post. It has also been deduced that no booking price was withheld and not returned to the unsuccessful buyers. For ease of reference, it is considered prudent to reproduce Section 10(2)(b) of the Act:

Section 10 – Deceptive marketing practices

(2) The deceptive marketing practices shall be deemed to have been resorted to or continued if an undertaking resorts to—

(b) the distribution of false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method or place of production, properties, suitability for use, or quality of goods;

Plain reading of the above would reveal that the foregoing section deals with the distribution of false information, which is not the case in the instant matter, or misleading information, including the distribution of information lacking a reasonable basis related to the price, character, method, etc. The complete review of Section 10(2)(b) of the Act would entail that the Appellant did not display false information nor did it compromise on the properties, quality, or the method or place of production, but failed to spell out the time and number of vehicles in unequivocal or pronounced terms. The law has to take into account the industry norms and practices into consideration, and the deadly pandemic by the name of Covid-19 prevalent at that particular point in time across the world, where uncertainty would loom large and enormous business conglomerates were facing closure or experiencing mammoth losses. In that particular scenario, where normal business-conducive conditions were non-existent and in the wake of absence of wrongdoing resulting in losses to buyers, the imposition of a penalty of PKR 25 million on the Appellant appear excessive and out of proportion. Also, considering that this was the first instance of default on part of the Appellant. Lastly, taking into view the absence of quantifiable data whereby the Appellant would statistically indulge in bait advertising and market manipulation harming the business interests of its competitors, the penalty imposed by the Commission cannot be upheld in totality. The same is reduced to PKR 5 million on account of not mentioning of time period during which subsidized scheme was to last and the apparent non-disclosure of number of vehicles ear-marked for the introductory price. The inconspicuous disclaimer in the advertisement did actually mislead the consumers/buyers and had sufficient ingredients of lacking reasonable basis, thus attracting section 10 (2) (b) of the Act. Apart from the reduction in the quantum of penalty, the remaining order of the Commission is upheld.