Through Registered Post/AD

IN THE COMPETITION APPELLATE TRIBUNAL

2ND Floor, Federal Courts Complex, G-11/1, Islamabad
email: registrartribunal@gmail.com
Tel No: 051-9320208, Fax No: 051-9320203

No. 512(iii) /Reg./CAT/2025
Dated: 11-07-2025

INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN
Vs.
COMPETITION COMMISSION OF PAKISTAN

NOTICE

APPEAL NO. 09/2025

Take notice that under rule 51 of the Competition Appellate Tribunal Rules, 2015, attested copies of the Judgment dated **09-07-2025** is enclosed for information and record.

2. Given under my hand and stamp of the Tribunal, this 11th day of July, 2025.

Competition Appellate Tribunal Islamabad

(MUSTAJAB ALAM)
Registrar
REGISTRAR
Competition Appellate Tribunal
Government of Pakistan
Islamabad

Office of the Registrar
Diary No. 509
Date 16/07/25

1. **Institute of Chartered Accountant of Pakistan,**
   Through its Secretary
   Chartered Accountants Avenue,
   Clifton, **Karachi.**

2. **Dr. Farough Naseem & Co.,**
   Plot No. 46-E/4, Block No. 06, PECHS,
   Main Shahrah-e-Faisal, **Karachi.**

3. **Competition Commission of Pakistan,**
   ISE Tower, 7th Floor, 55-B, Jinnah Avenue,
   Islamabad.

Chairman Secretariat
Diary No. 1424 ERT
Date Received 15-7-25
Date Forwarded 16-7-25

IN THE COMPETITION APPELLATE TRIBUNAL CAMP OFFICE
(MTRI BUILDING, CLIFTON, KARACHI)
Diary No.10/2017

Appeal No.09/2025

Institute Chartered Accountants of Pakistan

...............Appellant

V/S

Competition Commission of Pakistan

...............Respondents

Present:	Mr. Justice Sajjad Ali Shah, Chairperson Dr. FaizIllahiMemon, Member Technical-I, Mr. AsimAkram Member Technical-II
For the Appellant:	Mr. FaroughNaseem, Advocate for appellant
For the ICAP:	Mr. Umair Jamal, Secretary ICAP
For Respondent:	Mr. Muhammad Hafiz Naeem, Senior Legal Advisor for CCP.
Date of hearing:	18-06-2025.
Date of Announcing:	09-07-2025

ORDER

Justice Sajjad Ali Shah, Chairman.

Through instant appeal, the Appellant i.e. Institute of Chartered Accountants of Pakistan (ICAP) has impugned order dated 11th March, 2009 passed by two members of the Competition Commission of Pakistan whereby the Appellant was directed to withdraw its notification No.ATR-14 of 2008 within 15 days of the impugned order, failing which a fine of Rs. 300,000/- per day of infringement was imposed beside a fine of Rs. 1 million for violating the provision of Section 4(1) of the Competition Ordinance 2007.

2. Mr. Farough Naseem learned counsel for the Appellant contended that the Appellant is a statutory body created under the Chartered Accountants

CERTIFIED TO BE A TRUE COPY
REGISTRAR
Competition Appellate Tribunal
Islamabad
Dated: 11/7/25

Ordinance, 1961 mainly to regulate the profession of accountants. The appellant on 13-08-2008 revised/issued a Notification bearing number ATR-14 prescribing "minimum hourly charges/minimum fee for audit arrangement" for its members, which triggered Competition Commission of Pakistan to issue notice dated 8th September, 2008 seeking an explanation from the Appellant as to why the ATR-14 may not be considered as a violation of Section 4(1) of the Competition Ordinance 2007. The Appellant submitted their response vide letter dated 27th September, 2008 which was considered by the Commission but was not found satisfactory giving rise to a show cause notice dated 20th October 2008 under Section 30 of the Competition Ordinance, 2007 calling upon the appellant to submit its response on or before 28th October, 2008 and to effect appearance for being heard. Though the appellant did not submit any response to the show cause notice but affected due representation to avail the opportunity of hearing and also submitted written submissions. Thereafter the learned Single Member of the Commission vide its order dated 4th December 2008 decided the matter by holding that ATR-14 violates Section 4(1) of the Competition Ordinance, 2007, however keeping in view that the Appellant was engaged in improving the standard of professional Accountants and being sole regulator of accountancy profession, no penalty was imposed under section 38 (2) (a), however the Appellant was directed to withdraw ATR-14 by 19th December, 2008 failing which a penalty of Rs.300,000/- per day of infringement was imposed under Section 38 (3) of the Ordinance 2007. The Appellant thereafter challenged the order of the Single Member before a bench of two Members of the Commission as provided under Section 41 of the Ordinance, 2007 who after hearing the parties dismissed the appeal through the impugned order.

3. Mr. Farough Naseem learned counsel for the Appellant contended that the order directing penalty of Rs.300,000/- per day for alleged infringement of Section 4 of Ordinance, 2007 throughout till withdrawal of ATR-14 has remained

CERTIFIED TO BE A TRUE COPY
REGISTRAR
Competition Appellate Tribunal
Islamabad
Dated: 11/7/25

suspended in appeal, therefore no such penalty could be levied. Per counsel learned Single Member directed withdrawal of ATR-14 by 19th December, 2008 failing which penalty of Rs.300,000/- per day was imposed, however said order was suspended by the two Members Bench of Commission on 18-12-2008 well before the expiry of the period provided for the withdrawal of ATR-14. Thereafter the two Members Bench of Commission dismissed the Appeal on 11thMarch, 2009 again providing a period of 15 days for withdrawing ATR-14 and that order too was suspended by the Hon'ble Supreme Court of Pakistan on 19th March, 2009 well before expiry of 15 days and the said interim order of the Supreme Court till date is operating. Thereafter upon promulgation of Act, 2010 the Hon'ble Supreme Court has sent the matter to this Tribunal for treating this appeal pending and to decide it in accordance with law. It was argued that since the Appellant on 14-06-2019 during the operation of such interim order suspending the penalty has withdrawn ATR-14, therefore the Appellant has not violated the impugned order even for a single day, therefore the question of per day penalty has come to an end. Learned counsel in support of his contention has placed reliance on the Judgment of the Hon'ble Supreme Court in the case M/s R.C.D Ball Bearing limited v/s Sindh Employee Social Security Karachi (PLD 1991 SC 308) holding that where the order imposing penalty of such nature is suspended, there is no violation of order and consequently no penalty could be imposed.

4. It was next contended that the learned Single Member keeping in view that the appellant is engaged in improving the Standard of Profession did not impose penalty for the alleged violation of Section 4(1) of the Ordinance, 2007 but in appeal the learned Bench imposed fine of Rs. 1 Million for such violation. Per counsel the Bench of the CCP under the circumstances had no jurisdiction at all to impose the fine for the simple reasons that fine under Section 38 (5) of Ordinance could only be imposed for criminal offence and not for violating the provision of Section 4(1) of the Competition Ordinance, 2007. In support of his contention,

CERTIFIED TO BE A TRUE COPY
REGISTRAR
Competition Appellate Tribunal
Islamabad
Dated: ..1/17/19...................

reference was placed on Federation of Pakistan v/s Shah Muhammad 2021 SCMR 1249. Learned counsel though did not argue but in his written submission added a ground that since the learned single member did not impose any penalty therefore in appeal penalty could not be imposed without issuance of a fresh show cause notice. Reliance has been placed on the Judgment of the Supreme Court in the case of Collector Sahiwal & 2 others versus Mohammad Akhtar (1971 SCMR 681).

5. It was further contend that the Appellant being autonomous statutory body created under the Chartered Accountants ordinance (x) of 1961 to regulate the profession of Chartered Accountants at the best could be termed as an undertaking in terms of Section 2(p) of Competition Ordinance, 2007, having the powers to make bylaws and also to issue necessary directions for regulating and improving the profession of Chartered Accountants and such directions by way of ATR-14 issued by the appellant unless termed to be an agreement cannot be taken cognizance by the Commission. Counsel while referring to the provisions of Section 4(1) of the Ordinance, 2007 contended that the law specifically provides that the directives of such nature can only be taken cognizance of by the commission if issued by an "Association of undertaking", whereas for an undertaking the only prohibition is not to enter into an agreement with other undertaking having the effect of preventing, restricting or reducing the competition within the relevant market and since the appellant had not entered into any agreement with other undertakings therefore the Commission had no jurisdiction, to question the directions issued by the appellant by way of ATR-14.

6. It was additionally contended that the directions by way of ATR-14 had statutory backing and were issued under Section 27(2) (kk) of the Ordinance, 1961 which empowers the Appellant to "issue directives to the members of the institute on professional matters" and consequently such statutory regulation being bylaws could not have been taken cognizance of by the Commission. Mr. Farough

Naseem has further while referring to Schedule 1 Part1 entry-11 of the Ordinance, 1961 which provides that: -

> A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct.
>
> 11 "if he accepts a position as auditor previously held by some other Chartered Accountants in such condition as to constitute under cutting"

has argued that such directives were not only within statutory competence of the appellant but issued with the sole object of improving the profession of Chartered Accountants, therefore do not fall within the ambit of section 4(1) of the ordinance, 2007. In written submission it has been additionally pleaded that show cause was defective as it does not specifying the Sub Section of Section 38 which was being invoked for imposing penalty. Reliance was placed on the judgment of the Supreme Court in the case of Assistant Collector of Customs & others versus M/s Khyber Electric Lamps (2001 SCMR 838).

7. On the other hand, Mr. Hafiz Naeem, Senior Legal Advisor for the CCP contends that the directions ATR-14 issued by the (ICAP) cannot be termed as bylaws. He while referring to Section 27 of the Ordinance, 2007 contended that bylaws can only be issued after the approval of Federal Government and thereafter are to be duly gazetted and ATR-14 has neither the approval of Federal Government nor was ever gazetted. Consequently, at the best, it can be said to be a directive. It was asserted that even such directives do not fall within the ambit of Section 27(2) (kk) as such directives do not pertains to professional matters but fix minimum fee of audit arrangements and consequently violates the provision of Section 4(1) of the Ordinance, 2007.

8. As to the status of the appellant it was contended that though the appellant is an autonomous statutory body to regulate the Profession of Accountants whose practice constitute economic activity and is structured as "association of undertakings". It was contended that the structure of the appellant is based upon a

CERTIFIED TO BE A TRUE COPY
REGISTRAR
Competition Appellate Tribunal
Islamabad
Dated: 11/7/25

general body comprising of all accountants members, such general body elects 8 members from amongst themselves whereas four members are nominated by Government and such body is called "General Counsel" which has issued the ATR-14 and this body regulates the affairs of Accountants. It was submitted that in these circumstances the appellant is nothing but "association of undertaking" therefore were rightly held as such. It was further submitted that Section 2(p) of ordinance 2007 which defines undertaking even provides that an "undertaking" shall include an "association of undertakings" therefore the order impugned was competently passed. On the question of fine/penalty and its imposition by appellant bench of the Commission. Mr. Naeem beside referring to Rule-22 of "The Competition Commission (Appeal) Rules 2007" contended that though the Appellate Bench of the Commission has used the word fine but for all intent and purposes the reading of impugned order would show that it was a penalty.

9. TRIBUNAL'S OPINION ON SUSPENSION OF PENALTY

With all due respect at our Command we are of the opinion that it is not for us to decide the consequences of interim orders suspending the order imposing Penalty during the period of infringement or to hold as to whether during such period Penalty for infringement could be recovered or not. In our humble opinion such question squarely falls within the domain of member/officer of the CCP who would execute its order if sustained throughout and the appellant would be at liberty to take all such plea's at that juncture. Our domain is to see as to whether the Commission could legally impose a Penalty of Rs.300,000/- per day till the infringement of order continues. A bare perusal of Section 38(3) of Order 2007 reveals that the Commission is empowered to impose a Penalty up to Rupees One million for every day in cases where the violation is continuing one. Consequently, we hold that the Penalty so imposed by Commission was well within its statutory domain.

CERTIFIED TO BE A TRUE COPY
REGISTRAR
Competition Appellate Tribunal
Islamabad
Dated: 11/7/25

10. TRIBUNAL'S OPINION ON FINE/PENALTY

We fully agree that there is fine legal distinction between "Fine" and "Penalty". A penalty "per mitra's legal and Commercial Dictionary" is a sum of money which the law exacts payment of by way of punishment for doing some act which is prohibited or for not doing some act which is required to be done. Likewise, Oxford English Dictionary defines Penalty as a "punishment imposed for breaching the law, rule, or contract. Whereas Fine as per mitra is "A sum imposed as a punishment for an offence a forfeiture or penalty paid to an injured party in a Civil action and Oxford defines fine as a sum of money exacted as penalty by a court of law or other authority. These definitions of word "Penalty" and "Fine" make it very clear that in the ordinary parlance the word fine and penalty are interchangeable and therefore mere using the word fine instead of Penalty without understanding the context and circumstance imposing such Fine/Penalty would not render the order illegal or without jurisdiction, liable to be set aside. A perusal of Para-73 of the impugned order imposing fine instead of penalty would make it absolutely clear that the penalty of Rs.300,000/- per day for continuing infringement of the directions to withdraw AT-14 under section 38(3) of Ordinance, 2007 was imposed by the learned single member and was maintained in appeal through impugned order but by using the word "fine" instead of "penalty". Consequently, we hold that the penalty so imposed by the Commission was well within its statutory domain and mere using the word "fine" instated of "penalty" would not render such order liable to be set aside.

11. TRIBUNAL'S OPINION ON IMPOSING FINE/PENALTY OF RS. 1 MILLION BY THE APPELLATE BENCH OF THE COMMISSION.

We have already rendered our opinion on the question of applying the word Fine in the impugned order instead of Penalty, consequently for all intent and purposes the fine imposed by the Appellate Bench under section 38(2)(a) to be treated as penalty. However, the question which requires our consideration is as to

CERTIFIED TO BE A TRUE COPY
REGISTRAR
Competition Appellate Tribunal
Islamabad
Dated: 11/7/25

whether the Appellate Bench of the Commission has the power to impose any penalty on its own. In the instant case the learned single member of the commission after due application of its mind and upon giving reason did not impose any penalty for the contravention of any provision of chapter-II under section 38(2) (a) of the Ordinance, 2007 and has only imposed penalty for continuing the violation after the directed period under section 38(3) of the Ordinance, 2007. However the appellate Bench while maintaining the penalty imposed by the single member under section 38 (3) of the Ordinance 2007 has imposed penalty under section 38(2)(a) of the Ordinance 2007. The powers of the Appellate Bench of the Commission are detailed in Rule-22 of the Competition Commission (Appeal) Rules, 2007 which reads as follows:-

> 22. Decision of appeal._(1) The Appellate Bench in appeal may, *inter alia,* confirm, remand, set aside or cancel the impugned order or enhance or reduce the penalty or make such other order as it may deem just and equitable in the circumstances of a case.
>
> (2) The decision of the Appellate Bench shall be made unanimously or by majority of votes if the Appellate Bench comprises or more than two members. In the event of a split verdict, the original order appealed against shall hold and shall have effect as the final order of the Commission.

As bare perusal of the Rule-22 would reflect that the Appellate Bench of the Commission has power to enhance or reduce the penalty but does not have the power to impose a penalty. We have not come across with any provision in the Ordinance 2007, more particularly in Section 41 thereof which provide for the Appeal to the Appellate Bench of Commission or in Appeal Rules 2007 which saddles the Appellate Court with the power of imposing penalty on a violation on which no penalty has been imposed in the order in original. Though Rule-22 empowers the Appellate Bench "to make such other order as it may deem just and equitable in the circumstances of the case" but in our opinion such provision cannot be stretched to cover imposing of a penalty. The power to impose penalty being a Penal Provision must be conferred through legislation and in the absence of an expressed statutory provision no penalty could be imposed.

Additionally, the concept of appeal being a continuation of original proceedings and that the Appellate Court has all the powers of Court of Original Jurisdiction is not applicable to these proceedings on all fours as there is no provision in the Ordinance, 2007 parallel to Section 107 of Cod e of Civil Procedure and specially when the legislature by means Section 33 of the Ordinance, 2007 has restricted the application of C.P.C barring for few matters.

12. **TRIBUNAL'S OPINION ON APPELLANT'S STATUS.**

It is very important to note that it has not been argued before us that the ATR-14 which fixes "minimum hourly charges" and prescribes "minimum fee for audit arrangement" has not prevented, restricted or reduced the competition within the relevant market, hence not violated of Section 4(1) of the Ordinance, 2007 and perhaps such realization compelled the appellant to withdraw such directives on 14-09-2019. Before us, it has been argued that such directives pertain to professional matter and saved by Section 27(2) kk or issued to prevent under cutting in terms of Schedule I Part I entry II Ordinance, 1961 and secondly that since the appellant is an undertaking, therefore could have validly issue such directions as Section 4 only prohibits "association of" undertakings" from issuing such directions. It was also argued that in case of an undertaking the only bar placed by Section 4(1) is that it cannot enter into agreement with other undertaking in violation of Section 4 of Ordinance, 2007. To examine such plea, we would refer and reproduce Section 4 (1) of the Ordinance 2007 which prohibits issuance of directions by an "association of undertaking" and bars an "undertaking" from entering into an agreement in violation of Section 4 and would also reproduce Section 2(1) (p) which defines undertaking.

CERTIFIED TO BE A TRUE COPY
REGISTRAR
Competition Appellate Tribunal
Islamabad
Dated: 11/7/23

Section-4. Prohibited agreements.__(1) No undertaking or association of undertakings shall enter into any agreement or, in the case of an association of undertakings, shall make a decision in respect of the production, supply, distribution, acquisition or control of goods or the provision of services which have the object or effect of preventing, restricting or reducing competition within the relevant market unless exempted under section 5 of this Ordinance.

Section 2(1) (p):- "undertaking" means any natural or legal person, governmental body including a regulatory authority body corporate, partnership, association, trust or other entity in any way engaged, directly or indirectly, in the production, supply, distribution of goods or provision or control of services and shall include an association of undertakings.

13. It is important to note that the Ordinance, 2007 does not separately defines "Association of undertaking" but Section 2 (1) (P) after defining "undertaking" provides that the term undertaking shall include "Association of undertaking meaning thereby that an "undertaking" or "association of undertakings" be it natural or legal person, governmental body, a regulatory authority, body corporate, partnership, association, trust or other entity if found violating the provision of Section 4(1) of the Ordinance, 2007 could be taken cognizance of by the Competition Commission, therefore the appellant being a regulatory authority even otherwise could be validly held liable for violating the provisions of Section 4(1) of the Ordinance, 2007, therefore the submission that being an undertaking cannot be held liable for issuing "direction in the form of ATR-14" falls to the ground.

14. A perusal of Section 4(1) which restricts "undertakings" from entering into any agreement and "association of undertakings" from taking any decision having the object or effect of preventing, restricting, reducing competition within relevant market would reveal that such distinction is not without purpose for the simple reasons that such violative activity cannot be performed by an "undertaking" through a decision which would only apply to itself, unless it enter into an agreement with other undertaking of like nature to restrict competition. On the other hand, "association of undertaking "is not necessarily supposed to enter

CERTIFIED TO BE A TRUE COPY
REGISTRAR
Competition Appellate Tribunal
Islamabad
Dated: 11/9/25

into any restrictive agreement with its member undertakings but in according with its mandate may issue directives to its member who either are bound to comply or voluntarily comply with such directives or even may not comply because issuance of such directives in itself is statutory violation. On the other hand, though the appellant is autonomous statutory regulatory body constituted to regulate the profession of accountants but its structure and composition makes its status as "Association of undertakings". The appellant comprises of a "general body" which consists of member accountants and to obtain a membership being a statutory requirement as the Ordinance 1961 defines the Chartered Accountant to be a member of appellant and each of such member performs commercial activity and be it a natural or legal person i.e a firm is an independent undertaking. Thus each member of the "General body" is an undertaking in itself. This "General Body" amongst itself elects 8 of its members accountant to represent them in the "General Counsel". Though there are four members nominated by the Federal Government but the member accounts elected by the "General Body" are in majority and are empowered to issue directives to regulate the profession of accountants which directives are binding on all its members (undertakings) therefore the appellant who is governed by its "General Counsel" can safely be termed as "Association of such undertakings".

15. <u>TRIBUNAL OPINION ON ATR-14</u>

Coming to the submission that the ATR-14 being a bylaw and was meant to regulate the profession of accountants and to prevent undercutting. With all due respect, in our opinion the argument is totally misplaced. The notification or directions issued by the council for carrying out the object of the Ordinance, 2007 can be claimed to be bylaws only when such directives/notification as required under Section 27(1) are published in official Gazette and have the approval of the Federal Government in terms of Sec. 27 (3) of Ordinance 1961. The ATR-14

CERTIFIED TO BE A TRUE COPY
REGISTRAR
Competition Appellate Tribunal
Islamabad
Dated: 11/7/25

neither has been published in official Gazette nor has the approval of the Federal Government cannot be called bylaws. We believe that Mr. Farough Naseem was fully aware of this position and therefore he has argued that such directives were issued under Section 27(2) kk and or Schedule 1 Pat 1 entry 11 to improve the profession of accountants and or to prevent undercutting. With all due respect we have not found logic in the argument for the reason that in case a member accountant accepts a position as auditors previously held by some other Chartered Accountants in such a condition as to constitute under cutting then the appellant can take action against such member for violating the restriction imposed by Schedule 1 Part 1 entry 11, therefore such reason does not justify the elimination of Competition by issuance of ATR-14. Now coming to Section 27 (2) kk which provides issuance of directives to the members on professional matter. We wonder how ATR-14 which fixes minimum fees/audit charges could be termed as a professional matter and even if it would have been so, it violates a specific statutory prohibition as contained in Section 4(1) of Ordinance 2007 and therefore could validly bring the penal consequences.

16. Beside we are of the firm opinion that fixing minimum fee for its member to charge could not be termed as professional matter or a step to improve the profession of accountants on the contrary it might be an impediment in the progression of the profession. In every profession the new entrants to get a recognition are willing to put extra labour on less charges and restricting them from charging below the prescribe rate would apply as a barrier in their progression beside restricting competition and consumers choice. In the circumstance the minimum fee fixing by ATR-14 neither falls within the ambit of professional matters nor it can be considered to be a step towards betterment/improvement of the profession of accountants, therefore was rightly directed to be withdrawn.

CERTIFIED TO BE A TRUE COPY
REGISTRAR
Competition Appellate Tribunal
Islamabad
Dated: 11/7/23

The appeal in the circumstances except to the extent of imposing penalty of Rupees One Million by the Appellant Bench of the Commission does not find favour with us and, therefore, is dismissed.

SD/-
Chairman 9/7/2025

SD/-
Member ~~Technical-I~~

SD/-
Member Technical- II

Announced in open court:

SD/-
9/7/2025

CERTIFIED TO BE A TRUE COPY
REGISTRAR
Competition Appellate Tribunal
Islamabad
Dated: 11/7/25