Registrar/ SLA-2
08-12-25

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. 650 (iii) /Reg./CAT/2025
Dated: 05-12-2025

**PAKISTAN INTERNATIONAL AIRLINES**
**Vs.**
**Competition Commission of Pakistan**
**NOTICE**
**Appeal No.08/2025**

Take notice that under rule 51 of the Competition Appellate Tribunal Rules, 2015, attested copies of the judgment dated **04-12-2025** is enclosed for information and record.

2. Given under my hand and stamp of the Tribunal, this 5th day of December, 2025.

Competition Appellate Tribunal Registrar

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

Office of the Sr Legal Advisor
Diary No. 738
Date 9/12/2025

1. **Pakistan International Airlines**
   Customer Services Division, 2nd Floor, Safety Building,
   CAA Rd, Faisal Cantonment,
   **Karachi. (021-111-786-786)**

2. **Mr. Haroon Abbasi,**
   Dy. General Manager (Legal)
   Room No. 314, 3rd Floor, PIA Booking Office,
   Fazal-e-Haq Road, Blue Area,
   **Islamabad.**

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

Chairman Secretariat
Diary No 580 Ext.
Date Received 09-12-25
Date Forwarded 09-12-25

# IN THE COMPETITION APPELLATE TRIBUNAL, ISLAMABAD

(Appeal No. 08 of 2025)

**Present:** **Justice (R) Muhammad Junaid Ghaffar, Chairperson.**
**Dr. Faiz Illahi Memon, Member Technical-I.**
**Mr. Asim Akram Member Technical-II.**

Pakistan International Airlines Corporation.....................Appellant

Versus

Competition Commission of Pakistan........................Respondent

**For the Appellant:** Mr. Haroon Bilal Sharif, Advocate.

**For the Respondent:** Mr. Hafiz Naeem, Senior Legal Advisor, and Mr. Haider Afzal, Legal Advisor, for CCP/respondent No.1

**Date of hearing:** **21.10.2025**
**Date of Judgment:** **04.12.2025**

## JUDGMENT

***Justice (R) Muhammad Junaid Ghaffar, (Chairperson):*** This Appeal was initially filed before the Honorable Supreme Court under Section 42 of the Competition Ordinance 2007, ("**Ordinance**"); however, during pendency of such Appeal before the Hon'ble Supreme Court, Competition Act, 2010 ("**Act**") was promulgated and Section 42 of the said Act provided a right of appeal to an aggrieved person against an order passed by the Competition Commission of Pakistan ("**Commission**") comprising of two or more members or of the

CERTIFIED TO BE A TRUE COPY
REGISTRAR
Competition Appellate Tribunal
Islamabad
Dated:

Appellate Bench of the Commission before this Tribunal which has been established under section 43 of the Act. It appears that the Appellant as well as the Respondent requested the Hon'ble Supreme Court, that the said Appeal be treated to have been filed under Section 42 of the Act and such request has been accepted and the Appeal has been transmitted to this Tribunal vide order dated 01.6.2017.

2. While hearing the Appeal in question, though this Tribunal has posed a question to both the learned counsel that as to how this Tribunal can be conferred any jurisdiction in the matter, inasmuch as the present cause of action and the proceedings have taken place during subsistence of the Ordinance, which did not provided any appeal to this Tribunal; nor in fact, the Ordinance provided establishment / constitution of this Appellate forum. It only provided an Appeal to the Supreme Court and later to the High Court. However, no substantial assistance was provided, but since the matter has been sent to this Tribunal by orders of the Hon'ble Supreme Court, which are otherwise binding, therefore, we while leaving this question open for an appropriate occasion, have heard this Appeal treating it to be filed under Section 42 of the Act. While doing so, we have considered the then applicable provisions of the Ordinance wherever relevant.

3. This Appeal has impugned an order passed by two members of the Commission, dated 20th November 2009. Record reflects that the Commission took a *suo-moto* notice of media reports that the Appellant was charging exorbitant Hajj fares for 2008 as against the fares charged in preceding years, specially 2007, and accordingly sought information from the Appellant as well as the Ministry of Defence and the Ministry of Religious Affairs. The Commission initiated inquiry under Section 37(1) of the Ordinance which was concluded vide report dated 30.04.2009 and based on such report and the available record, including Hajj Agreement 2008 between the Appellant and Saudi Arabian Airlines, issued a show cause notice on 5.5.2009 wherein, it was precisely alleged that Appellant was found to hold a dominant position in the relevant market in terms of Section 2(1) (e) of the

CERTIFIED TO BE A TRUE COPY
REGISTRAR
Competition Appellate Tribunal
Islamabad
Dated: ....................................

Ordinance, by having exclusive rights to operate special Hajj flights; that the Appellant has abused its dominant position by increasing Hajj fares by more than 80% thereby violating Section 3(3)(a) of the Ordinance; that the Appellant had also violated Section 3(1) read with Section 3(3)(b) ibid by allegedly charging exorbitantly high fare from Hajjis who opted for a short duration Hajj; that based on the response received from Saudi Arabian Airline, the Appellant fixed the price based on a mutual agreement which had the effect of preventing, restricting or reducing competition within the relevant market; hence violated Section 4(1) read with Section 4(2)(a) of the Ordinance; and finally the Appellant was confronted as why an appropriate order under section 31(c) and / or a penalty for the abovementioned violations be not imposed under Section 38 of the Ordinance.

4. The Appellant responded to the show cause notice and denied the allegations with supporting documents and through impugned order, a token penalty of Rs. 10 million has been imposed for having increased the prices of ticket for Hajj 2008, unreasonably, as compared to 2007, and thereby abusing dominant position. As to causing discrimination, the Commission further directed the Appellant to work out the amount of refund to be paid to the Hajis being the difference of fare between regular passengers and Hajis. As to the allegation regarding violation of Section 4(2) (a) of the Ordinance, the proceedings were dropped, and no penalty was imposed.

5. While passing the impugned order, the Commission formulated the following issues for determination.

> i) Whether the increase in Hajj fares by Pakistan International Airline (PIA) for the year 2008 amounted to an unreasonable increase in price under Section 3(I) read with Section 3(3)(a) of the Competition Ordinance, 2007 (the "Ordinance");
>
> ii) Whether the fare charged on pilgrims traveling on short duration scheduled flights amounts to unjustifiable price discrimination between pilgrims and regular passengers under Section 3 (I) read with Section 3(1) read with Section 3(3)(b) of the Ordinance; and

CERTIFIED TO BE A TRUE COPY
REGISTRAR
Competition Appellate Tribunal
Islamabad
Dated: ......

iii) Whether the fixation of price by mutual consultation between PIA and Saudi Arab an Airlines (SV) constitutes a violation of Section 4(1) read with Section 4(2)(a) of the Ordinance.

6. Insofar as Issue No.(iii) is concerned, the Commission came to the conclusion that since the Appellant and Saudi Arabian Airlines have fixed prices under the behest of their respective Governments, which are not an *"undertaking"* in terms of Section 2 (p) of the Ordinance, the charge of price fixing under Section 4 of the Ordinance has not been made out. This Tribunal while hearing the Appeal confronted the Respondents counsel as to how, in view of these findings, the allegation against the Appellant for having violated Section 3 (1) read with Section 3 (3) (a) & (b) of the Ordinance in respect of any alleged unreasonable increase in the prices of tickets and with further allegation of charging a higher fare from pilgrims travelling on short duration flights and the discrimination meted out to them as against regular passengers, can be sustained. Despite his best efforts, learned Counsel for the Commission could not satisfy us, except the argument that the finding in respect of the allegation regarding violation of Section 4 of the Ordinance has no nexus as to the allegations for violating Section 3 ibid. Before proceeding further, it would be advantageous to refer to the relevant provisions of Section 3(1) &(2) read with (3)(a) & (b) and 4(1) and 4(2)(a) of the Ordinance as alleged in the show cause notice which reads as under;

> 3. Abuse of dominant position.-
>
> (1) No Person shall abuse dominant position.
>
> (2) An abuse of dominant position shall be deemed to have been brought about, maintained or continued if it consists of practices which ***prevent***, ***restrict***, ***reduce*** or ***distort competition*** in the relevant market.
>
> (3) The expression "practices" referred to in sub-section (2) shall include, but are not limited to.
>
> (a) limiting production, sales and unreasonable increase in price or other unfair trading conditions;
>
> (b) price discrimination by charging different prices for the same goods or services from different customers in the absence of objective justifications that may justify different prices;
>
> 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,

CERTIFIED TO BE A TRUE COPY
REGISTRAR
Competition Appellate Tribunal
Islamabad
Dated:

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.
(2) Such agreements include, but are not limited to-
(a) fixing the purchase or selling price or imposing any other restrictive trading conditions with regard to the sale or distribution of any goods or the provision of any services;
(b) dividing or sharing of markets for goods or services, whether by territories, by volume of sales or purchases, by type of goods or services sold or by and other means;

7. Perusal of Section 3(1) & (2) read with (3)(a) & (b) as above reflects that no person shall abuse its dominant position and such abuse shall be deemed to have been brought about it if consists of practices which ***prevent, restrict, reduce*** or ***distort competition*** in the relevant market, whereas, such practice includes but not limited to unreasonable increases in price or price discrimination by charging different prices for the same services from different customers without any objective justification. Therefore, in essence, what section 3 contemplates is to halt use of dominant position and use of any such practice to ***prevent, restrict, reduce*** or ***distort competition*** in the market by means of an unreasonable increase in price or causing discrimination amongst customers. Similarly when the provision of Section 4 of the Ordinance is looked into, it reflects that no undertaking shall enter into any agreement which has the object or effect of ***preventing, restricting or reducing competition*** within the relevant market and such agreements include, but are not limited to, fixing the purchase or selling price or imposing any other restrictive trading conditions with regard to sale or distribution of any goods or the provision of any service. When both these provisions i.e. Section 3 and Section 4 ibid are read in juxtaposition, it clearly reflects that the intent and purpose of both these provisions is to restrict the undertakings from manipulating the prices of goods or provision of services which have the object of ***preventing, restricting or reducing*** competition. Section 3 and Section 4 are more or less similar to this effect that the competition in the relevant market should remain open and even, whereas no one shall be permitted to ***prevent, restrict, reduce or***

CERTIFIED TO BE A TRUE COPY
REGISTRAR
Competition Appellate Tribunal
Islamabad

***distort competition***, either by way of using its dominant position or by way of mutual agreement in the relevant market. The focus primarily is on providing an open competition for the benefit of the ordinary consumer and to stop manipulation by anyone. This Tribunal is of the considered view that once the Commission came to the conclusion that insofar as the agreement between the Appellant and the Saudi Arabian Airlines in respect of fixation of ticket fares is concerned, the same was at the behest of their respective Governments which are not undertakings in terms of Section 2 (p) of the Ordinance, the allegation for having violated Section 3 (1) read with Section 3(3) (a) & (b) ibid cannot be sustained. The simple reason being that these provisions, notwithstanding some minor dissimilarity and applicability, cannot be construed or applied in isolation when the entire case is based on some agreed higher fares based on an Agreement which has been found to be in order and beyond the mandate of the Commission in terms of sections 4 of the Ordinance. One must appreciate that the entire basis for initiating these proceedings was the said Agreement. Admittedly, the fare for Hajis on direct scheduled and charter flights from Pakistan to Saudi Arabia have been agreed upon by the Appellant and Saudi Arabian Airline on directions of their respective Governments and once it is held that the Agreement in question is valid and does not offend Section 4 of the Ordinance, then at the same time there is no question of any overpricing or fixation of prices in violation of any other provision of the Ordinance including Section 3 ibid. Similarly, in the peculiar facts and circumstances in hand, there is little force in the argument that the appellant had exercised any dominant position in the relevant market as all these allegations are dependent on the fares determined and agreed upon by the Appellant and Saudi Arabian Airline on certain directions of the respective Governments in respect of which the Commission has decided the issue in favor of the Appellant.

8. The core test to determine dominance in terms of Section 3 of the Ordinance, is to first define the relevant market; establish dominance and then show abusive conduct, such as predatory pricing, meting out discriminatory treatment etc. As to prohibited Agreements

CERTIFIED TO BE A TRUE COPY
REGISTRAR
Competition Appellate Tribunal
Islamabad

same argument could be ... Commission



within the contemplation of Section 4 of the Ordinance, coordination between two or more undertakings must be established and by conduct, price-fixing and market allocations is to be proved, whereas such prohibited Agreements can be established without needing to prove dominance. Once it is held that the Agreement in question was entered into pursuant to inter-governmental arrangements involving non-undertakings, and does not constitute a prohibited Agreement in terms of Section 4 of the Ordinance, then how come the same prices (agreement prices) be held as use of a dominant position and fixing of higher prices under Section 3 of the Ordinance. If the Appellant was bound to follow the agreed prices entered by it with Saudi Arabian Airlines on the directives of Government of Pakistan, then alleging violation of Section 3 ibid cannot be justified. It would, in fact amount to a very harsh action. At the same time, no further probe was to be made as to use of any dominant position as the said exercise would be a futile effort since ultimately, the alleged use of dominant position and fixation of higher prices, which is the entire basis of the *suo-moto* action and show cause notice, is an outcome of an Agreement which is held not to be a prohibited Agreement under section 4 ibid. Therefore, no allegation can be attributed on the same cause in terms of Section 3 of the Ordinance in the present facts and circumstances, being exceptional in nature. It is not a case wherein the Appellant allegedly, with a dominant market position entered into an agreement with another undertaking restricting competition. Once it is held that the Agreement does not violate Section 4 ibid, (for whatever reasons) then the Appellants (alleged dominance) and participation in that agreement for using its market power to lock in anti-competitive behavior will not constitute an abuse of dominance under Section 3 of the Ordinance.

(1) Ground that sect 4 is not applicable then how sec 3
(3) failed to establish dominance.
(4) why not proceeded against both while they have equal share in transaction

9. Lastly, for invoking Section 3 ibid, it requires the Appellant to hold a **dominant position** in the relevant market before any abusive conduct can be investigated, whereas, the Commission ~~has failed to~~ establish by its own reasoning that the Appellant has any dominant position when admittedly, the other counterpart i.e. Saudi Arabian

CERTIFIED TO BE A TRUE COPY
REGISTRAR
Competition Appellate Tribunal
Islamabad
Dated: ........................................

Airlines has equal share in the alleged transaction. If at all, any dominant position exists in the transaction in question, then it was incumbent upon the Commission to proceed against both the entities who had entered into the alleged Agreement, and perhaps, then invoking section 3 of the Ordinance could have been justified independently for holding a dominant position and abuse thereof. Here the dominance, if at all, is of two different entities and only one cannot be penalized independently. The Appellant cannot be singled out in the present set of facts. Here, the Appellants dominance cannot be established when the entire transaction is an outcome of an arrangement / agreement on equal terms with another Airline against whom no proceedings have been initiated by the Commission. In that case, section 3 cannot be applied; however, if the price-fixing agreement could have been a clear "by object" infringement of Section 4 of the Ordinance, then even without establishing any market dominance the proceedings could have continued. As noted, this is not the case of the Commission; rather it is the inverse. Therefore, on this count we do not agree with the findings of the Commission. It is not denied that no action was initiated against the second contracting party i.e. the Saudi Arabian Airline and when confronted, the Respondents counsel contended that Saudi Arabian Airline in question was not subject to the Ordinance. This again does not appear to be a correct approach. Section 2 (p)[1] of the Ordinance apparently does not provide for any exclusion as apparently the second party to the agreement was subject to the relevant provisions of the Ordinance and the action, if at all, ought to have been jointly initiated against both the Airlines without drawing any exception.

10. Even otherwise on merits as to the applicability of Section 3 of the Ordinance and the alleged use of dominant position including a discriminatory treatment to passengers performing Hajj as against ordinary passengers, enough material has been placed on record to

[1] "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;

CERTIFIED TO BE A TRUE COPY
REGISTRAR
Competition Appellate Tribunal

the effect that insofar as the Appellant is concerned, it never had a final say or authority in fixing the prices. The Appellant's case is that whatever prices were determined by it, the same were subject to final approval of the Ministry of Religious Affairs and thereafter notified under the Hajj policy of 2008 by the Government of Pakistan. The record including the minutes of the meeting clearly establish that even the suggestive prices (allegedly on the higher side) were not approved by the Ministry and were in fact slashed to Rs 70,000/- and 85,000/- for South and North stations respectively from the initial proposed price of Rs. 75,000/- and 89,900/-. These directions and minutes of the meeting dated 29.4.2008 & 16.5.2008 are a matter of record and have not been considered by the Commission. This clearly reflects that it was never within the ambit and authority of the Appellant to fix any price by itself. It could only suggest the prices based on its own working and subject to approval. Secondly it is also the case of the Appellant that while determining the suggested prices, they had taken into consideration the prices of oil which they had hedged expecting it to rise further, whereas on the contrary, the price of Oil did not increase; rather were same or even less at the time of actual transaction. However, in any case they had hedged the fuel prices. These factors when looked into by this Tribunal, also suggest that the Appellant was never in a dominant position to ***restrict***, ***prevent*** or ***distort*** competition within the contemplation of Section 3 of the Ordinance as alleged. The entire case of the Commission as already noted is premised on the prices fixed by the Appellant and Saudi Arabian Airlines in respect of which it has been held by it that the same was not an outcome of a prohibited Agreement under Section 4 ibid. Therefore, the impugned order does not seem to be valid and justified in facts and law. At the same time, we are mindful of the fact that it is not mandatory in all cases that if an offence is not made out under Section 4 of the Ordinance, no proceedings can take place independently under Section 3 ibid. For the present purposes, we are of the considered view that this case is an exception, and therefore, we have come to the conclusion that in the peculiar facts as are available with us, the

CERTIFIED TO BE A TRUE COPY
REGISTRAR
Competition Appellate Tribunal
Islamabad

provisions of Section 3 of the Ordinance are not attracted in the instant matter based on the findings of the Commission in respect of the alleged violation of Section 4 ibid.

11. Since we have concluded that in view of the finding of the Commission in respect of Issue No.(iii), the remaining Issues (i) & (ii) must also be decided in favor of the Appellant, we have not recorded the detailed arguments of the Appellants Counsel, who otherwise has eloquently made his submissions on merits of the case regarding Issues (i) & (ii). The same are appreciated by this Tribunal.

12. In view of hereinabove facts and circumstances of the case as well as the finding of the Commission in respect of Issue No.(iii) in favour of the Appellant, this Tribunal is of the considered view that the Commission cannot blow hot and cold at the same time and once it is held that the Agreement in question was valid and not subject to any violation under Section 4 of the Ordinance, then the other allegations including any alleged violation of Section 3 of the Ordinance cannot be sustained. Consequently, thereof, this Appeal merits consideration and is hereby allowed by setting aside the impugned order in question.

13. Appeal is hereby *allowed.*

**Chairman**
4-12-2025

**Member Technical-I**

**Member Technical-II**

**Announced in open court:**

**Approved for Reporting**

CERTIFIED TO BE A TRUE COPY
REGISTRAR
Competition Appellate Tribunal
Islamabad
Dated: ..........