

# **Inquiry Report**

## **In the matter of Agreement between M/s Takaful Pakistan Limited (TPL) and Travel Agents Association of Pakistan (TAAP) regarding Guarantee and Passenger Takaful Cover.**

1. This Inquiry Report is prepared pursuant to a reference under section 37 of the Competition Ordinance, 2007 (hereinafter the “Ordinance”), filed by Civil Aviation Authority (hereinafter “CAA”) vide letters dated 25 September 2008 and 29 September 2008 with the Competition Commission of Pakistan (hereinafter the “Commission”) for its opinion on the default insurance guarantee for travel agents in Pakistan.
2. The default insurance guarantee (hereinafter “Guarantee”) was introduced through a Memorandum of Agreement dated 10 September 2008 (hereinafter “Agreement”) between Takaful Pakistan Limited (hereinafter “TPL”) and Travel Agents Association of Pakistan (hereinafter “TAAP”).
3. The Agreement provides details for the Guarantee furnished by TPL for each participating member of TAAP as well as another ancillary product, both of which are described below:
  - a. The Guarantee is the liability coverage arranged by TPL for each participating travel agent towards its airline passenger ticket sales to meet the financial security requirements of International Air Transport Association (hereinafter “IATA”) after the introduction of Billing and Settlement Plan (hereinafter “BSP”) in Pakistan, which

seeks individual guarantee from each travel agent<sup>1</sup> rather than the collective or group guarantee.

- b.* The ancillary product, noted in the Agreement, is the health and travel accident coverage of passengers defined as “Passenger Takaful Cover.” This cover ostensibly provides protection to passengers against certain travel-related risks, including medical insurance during the coverage period.<sup>2</sup>

Guarantee and Passenger Takaful Cover are collectively termed as “Takaful Scheme,” which has been in operation since 1 October 2008.

4. Before proceeding further, it is important to determine the status of TAAP and TPL as undertakings and also to define the relevant market for the applicability of the Ordinance and jurisdiction of the Commission.
5. “Undertaking” has been defined in section 2(1)(p) of the Ordinance as given under:

“Undertaking” means any natural or legal person, governmental 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 of services and shall include an association of undertakings.”

TAAP is a trade association registered with Ministry of Commerce, Government of Pakistan under the Trade Associations Act and is an undertaking as per the definition given above. Similarly, TPL is an incorporated company engaged in the business of providing general insurance at retail and corporate level and also clearly falls within the definition of undertaking quoted above.

6. “Relevant Market” is defined under section 2(1)(k) of the Ordinance as under:

“Relevant Market” means the market which shall be determined by the Commission with reference to a product market and a geographic market and product market comprises all those products or services which are regarded as interchangeable or substitutes by the consumer by reason of the products’ characteristics, prices and intended uses. A geographic market comprises the area in which the undertakings concerned are involved in the supply of products or services and in which the conditions of competition are sufficiently homogeneous and which can be

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<sup>1</sup> Article 1 of the Agreement, definition clause 1.1, “Guarantee”

<sup>2</sup> Article 1 of the Agreement, definition clause 1.1, “Passenger Takaful Cover”

distinguished from neighboring geographic areas because, in particular, the conditions of competition are appreciably different in those areas.”

7. For the purposes of this Inquiry Report, the relevant product market from the perspective of travel agents, as consumers, comprises of products including insurance/takaful cover for prospective passengers and guarantee/default insurance to respective airlines availed by them to carry on their business of travel agency. Relevant product market from the perspective of travellers/passengers comprises of products and services provided by the travel agents which includes air ticket and travel insurance etc. The relevant geographic market is the whole of Pakistan.

### **A. Factual Background**

8. On 24 September 2008, Mr. Ashwaq Ahmad Mirza, Ex-Convener TBC, TAAP, informed Air Commodore Khalid Pervaiz Marwat, Director (Economic Oversight) CAA, vide letter LHE/BC/4092 about the introduction of a new insurance guarantee scheme. According to the said letter, the scheme was to arrange liability and passenger insurance from TPL and charge from passengers an amount of US\$10 on each international ticket and US\$5 on each domestic ticket that would be deposited with TPL. After completing three years, TPL would refund a certain percentage of the first year’s surplus to the participants of the scheme (Takaful Scheme).
9. The Director (Economic Oversight) CAA, taking notice<sup>3</sup> of the insurance guarantee plan, directed to put on hold all further progress on the proposed scheme until the time that CAA Pakistan was satisfied about the transparency of this scheme and the protection of consumer rights. A meeting was also called on 16 October 2008 inviting Chairman EC, Country Manager IATA and others to address the impact of the Scheme.
10. The meeting ended with a unanimous decision by all the participants allowing travel agents to go ahead with the Scheme with the following conditions:

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<sup>3</sup> CAA letter dated 25 September 2008

- a.* TAAP would ensure that no one will be refused the sale of a ticket for travelling by a particular airline (including PIA), if the passenger declines to pay the premium of the Scheme.
  - b.* The information and instruction to this effect would be displayed at a visible place at all sale points of travel agents participating in the Scheme (Takaful Scheme).
  - c.* These instructions would also include a note that in case of any complaint a passenger can lodge a written or an email complaint with the Director Economic Oversight.
  - d.* It was also advised to TAAP to seek opinion of Competition Commission of Pakistan to avoid subsequent adverse consequences as CAA is only an executive body and the matter should be reviewed by some higher forum like Competition Commission.
11. Despite the advice and direction by the CAA, TAAP never approached the Commission to seek its opinion on the scheme (Takaful Scheme). However, exercising its powers under section 37 of the Ordinance read with Regulation 16 of Competition (General Enforcement) Regulations, 2007, the Commission proceeded with the inquiry. An inquiry committee was constituted by the Member (M&TA) and undersigned officers were duly appointed as inquiry officers under section 28 read with notification SRO 999(I)/2008 to investigate and inquire into the matter.
12. TAAP was asked to provide a copy of agreement between TAAP and TPL and its comments thereon. A reply was submitted by Nishtar and Zafar (Advocates and Consultants) on behalf of TAAP on November 20, 2008 along with the Agreement executed between TAAP and TPL.

### **B. Submissions by TAAP**

13. Submissions made by TAAP are summarised as under:
  - a.* The Takaful Scheme is not a default insurance scheme as envisaged in earlier letters and meeting of CAA, in fact it is a combination of three prongs of coverage:

- i. Coverage of the participating travel agents' contractual liability towards their principals(airline) through International Air Transport Association (hereinafter "IATA")
  - ii. Passenger travel health coverage; and
  - iii. Passenger travel accident coverage outside the aeroplane fuselage, which is covered by the airline itself under the Warsaw Convention.
- b. TAAP stated that this is the first liability insurance coverage scheme in Pakistan which is not common in other parts of the world as well.
- c. TAAP submitted that IATA under BSP discontinued the acceptance of existing collective guarantee plan and asked accredited travel agents to furnish individual guarantee from the eligible financial institutions.
- d. TAAP aware of the situation that majority would not individually meet the margin and collateral condition of banks, made an arrangement with TPL for a customized product to provide liability insurance cover and also a passengers' medical and accident cover.
- e. The Takaful Scheme is an addition to the existing products available to travel agents. Therefore, competition has not been compromised in any way. Conversely, the market has become more competitive. The travel agents are free to seek liability cover from the TPL or from more than a dozen banks already providing the guarantee which is fully acceptable to IATA.
- f. In addition to the agents' liability coverage, a passenger will optionally get health insurance cover and accidental cover throughout their travel. Other "much inferior" products covering only health and travel accident cover of the passenger were being sold for Rs 2,500 or more. But after introduction of the TPL product, the improved competition has now forced the existing providers of those insurance cover to reduce their prices drastically to match the TPL product prices.

### **C. Examination of Agreement between TAAP and TPL**

14. The following observations can be made on the Agreement:

- a.* In its recital part, the Agreement describes the objective as to meet the financial security requirement of IATA, after the introduction of the BSP, TAAP has arranged individual guarantee for its members and also seeks to introduce appropriate medical and travel takaful coverage for the passengers.
- b.* The Agreement deals with two covers. One is called “Guarantee” which will be furnished by TPL to IATA on behalf of travel agents against collective cash margin and collaterals provided by travel agents or TAAP.<sup>4</sup> The other coverage is an optional “Passenger Takaful Cover” which is provided to passengers against travel related risks including medical insurance cover.<sup>5</sup>
- c.* The Agreement provides for a collective guarantee of all participating travel agents under Article 2.1 which states that “the agreement shall cover the furnishing of Guarantee by the Company to IATA/BSP Management in favour of the individual Agents against the collective cash margin and other valuable collateral by the Agents and/or TAAP.”
- d.* Articles 2.5 to 2.9 of the Agreement deal with statutory reserve and its functioning. 75% of the reserve for the 1<sup>st</sup> year shall be returned to the surplus in the pool on completion of three years. Same pattern shall follow in the following years. Remaining amount *i.e.* net of reserve shall be put into a special pool for paying claims on account of call of Guarantees or Passenger Takaful Cover. In the event of surplus in the aforesaid TAAP pool, such surplus together with any income earned on it shall be paid to the participants of TAAP pool in a manner that surplus for the first year shall be payable on conclusion of

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<sup>4</sup> Article 2.1 of the Agreement

<sup>5</sup> Article 2.3 of the Agreement

forth year and so on.<sup>6</sup> Moreover, TPL shall invest the funds in the pool into safe remunerative instruments.<sup>7</sup>

*e.* Agreement binds the parties for five years. If any agent wishes to leave this arrangement after two years, his surplus share for further six months, if due, shall be withheld. No agent shall be allowed to discontinue before two years otherwise he shall pay penalty of 20% of the average of monthly contribution for the last three months by way of lost profit for the remaining period of three years.<sup>8</sup>

*f.* Passenger Takaful Cover provided in the Takaful Scheme is optional and travel agents may offer optionally to the passenger buying ticket from them.<sup>9</sup>

*g.* Each agent shall pay to BSP management along with bill settlement, Rs.600/- for international and Rs.300/- for domestic tickets issued by him which shall be remitted to TPL by IATA/BSP.<sup>10</sup> TPL shall build a collateral reserve from contribution received from BSP on behalf of respective travel agents so that at no time the total cash collateral would be less than 12% of the total collective amount of Guarantee issued by TPL. Such reserve shall be kept to offset and payout if any Guarantee is called by IATA.<sup>11</sup>

#### **D. Comments by CAA and SECP**

15. The CAA's comments on the Takaful Scheme were received in their letter of 12 February 2009, which pointed out the following concerns, namely:

*a.* All the travel agents participating in the Takaful Scheme would have to sell the said insurance policy at a fixed price.

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<sup>6</sup> Article 2.5, 2.6, 2.7 & 2.9 of the Agreement

<sup>7</sup> Article 2.9 of the Agreement

<sup>8</sup> Article 4.1, 4.2 & 4.4 of the Agreement

<sup>9</sup> Article 2.3 of the Agreement

<sup>10</sup> Article 6.1 & 6.2 of the Agreement

<sup>11</sup> Article 2.2 of the Agreement

- b.* There would be an incentive for a travel agent to refuse sale of a ticket to a customer unwilling or refusing to pay the cost of insurance in favour of the one willing to pay the same, particularly in a high demand and low supply situation.
  - c.* The choice of purchasing a ticket directly from an airline office will generally not be available to a small cities and town.
  - d.* The number of travel agents and ability to purchase online air ticket in small cities and town would also be limited. Uneducated class of air travelers on domestic and international routes may thus be vulnerable to exploitation.
16. A letter was sent to Advisor Insurance, Insurance Division, SECP on 17 February 2009 to seek comments on the Takaful Scheme which were received vide his letter dated 20 March 2009. He has raised concern on the very legality of the Takaful Scheme under Insurance law and particularly stated that insurance interest “as a legal right to insure arising out of a financial relationship recognized at law between the insured and subject matter of insurance” is lacking in the impugned takaful arrangement. He also specified the statutory provisions under Insurance Ordinance, 2000, Insurance Rules, 2002 and Takaful Rules, 2005 which are being looked into in inquiry by SCEP against TPL.

#### **E. Inspection by Inquiry Team**

17. An inspection was conducted on 10 & 12 February 2009. Several travel agents in Islamabad were visited to ascertain how the Takaful Scheme is being implemented. During inspection, it emerged that collateral and cash margin requirement under the Takaful Scheme is much flexible as compared to individual guarantee arranged with a bank. Takaful Scheme operates similarly to the previous collective guarantee system, the only difference is that it will be arranged by TPL instead of TAAP. Further, Takaful Scheme entitles participating travel agents after years to a refund of Rs 170 out of each Rs 600 premium deposited by them. This will account for their cash margin deposited and, in this way, they will secure their amount paid as cash margin by the end of Takaful Scheme.



18. Inspection team could not find the “Notice for Travelers” informing customers about the Passenger Takaful Cover that, as assured by TAAP, should have been visibly displayed at the sale points of travel agents participating in the Takaful Scheme. On inquiring about the mode of charging the premium from customers, it was learned that the premium amount is included under the head of service charges and as there was no separate Passenger Takaful Cover handed over to customers, they are not even informed about the said takaful premium. It was also confirmed that premium is being charged as a matter of course and not optionally.
19. Inspection indicates that the Takaful Scheme will have repercussions on the price of tickets regardless of whether a travel agent is participating in the Takaful Scheme or not. It will give an opportunity to those travel agents who are individual guarantee holders to increase ticket prices along the trend of the Takaful Scheme. In short, the participants of the Takaful Scheme will charge 7% service charges + Rs 300 or 600 and the individual guarantee holders will charge 7% service charges + \_\_% for administrative cost of guarantee.

#### **F. Submissions by TPL**

20. A letter was written on 16 February 2009 to TPL seeking its clarification on the Takaful Scheme in respect of issues which emerged upon examination of the Agreement as well as from the inspection. The submissions of TPL, received on 27 February 2009, are summarised hereunder:
- a.* TPL referred to an agreement that replaced the Agreement (Memorandum of Agreement dated 10 September 2008) provided to Commission by TAAP along with its written submissions. TPL is of the view that the Agreement was subsequently revoked and replaced with another agreement and a copy of that (another) agreement may be obtained from TAAP.
- b.* TPL has denied the fact mentioned by the inquiry officer that was quoted from TAAP’s written submission that the third prong of the Takaful Scheme is “Passenger travel

accident coverage outside the aeroplane fuselage, which part is covered by the airline itself under Warsaw Convention.”<sup>12</sup> TPL further goes on to state that “Amaan Travel Takaful” *i.e.*, Passenger Takaful Cover is the primary product while the others (Guarantee) are “additional covers.” “TPL is primarily offering travel protection for the fare-paying clients of the desirous travel agents and only in consideration of them introducing quality business for TPL, TPL offers to provide them the requisite guarantees somewhat on a complementary basis.”

- c. TPL denies that premium is charged from customers. It contends that agents pay their due share of contribution, on their own, on the benchmark basis of “per ticket sold” by the individual travel agent. However, if any customer opts for the travel coverage, premium is collected from the customer on behalf of TPL and all such cases invariably receipt is duly issued and provided to the said customer.
- d. TPL does not address the issues relating to statutory reserve build by TPL for participants and moves on to next issue denying that Takaful Scheme is binding. Reasons mentioned for the stipulation of five years’ continuity from participants are that number of international agreements had to be concluded for this scheme and a considerable amount has been spent in developing the supporting infrastructure. Hence it would not be financially feasible for a shorter duration, though, it is reiterated, clear provisions do exist for premature exit by any individual participant.
- e. TPL states that Takaful Scheme will not limit the ability of travel agents to explore other options as they are free to choose whether to join the scheme or not and those who have opted for the scheme have done so only because they felt it gave them a competitive advantage of being able to provide their passengers with incremental values on their tickets. As far as choice of customers is concerned it is not limited by this scheme as they have several options to purchase tickets *i.e.* directly through email, airline offices, non IATA members and TAAP members who are not participating the Takaful Scheme.

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<sup>12</sup> Part B, para 13 (a) (iii) of the inquiry report

- f.* Responding on the issue of passing the premium payment to customers (as established in the inspection), TPL states that “at least this is not what we have agreed with TAAP on behalf of their participating member travel agents. What we know for sure that each travel agent submits the said amount on the agreed benchmark of per ticket sold by him.”
- g.* TPL states that it provides Takaful coverage to each passenger buying tickets from the participant travel agent. For that purpose TPL arranged a web portal, which can be accessed by travel agents round the clock, to instantly draw up a certificate of coverage clearly mentioning the name of passenger, ticket, passport number, and other relevant details as well as the extent and scope of coverage provided.
- h.* TPL states that Takaful Rules, 2005 allow Takaful companies in Pakistan to invest the amount contributed by the individual participant, return the investment income back into the Fund and to distribute the surplus at the end of scheme to participants. However, TPL has not identified the particular provision that allows Takaful companies to have stipulation of investment in its agreement with the insured.
- i.* TPL, in its reply as well as the details on the Takaful Scheme enclosed with the reply, has not submitted any document showing the approval of Takaful Scheme from SECP.
21. Written submissions made by TPL raise an interesting issue as to pricing of its product at a nadir point as compared to other comparable products in the relevant market. TPL states that “this very coverage that we have been providing to the participating member travel agents just for Rs 600 is found incredibly low in cost compared to what the travel agents had been earlier procuring from certain insurance companies in Pakistan, ranging from around Rs 3,000.” The price differential between the Takaful Scheme and other comparable options available in the market raises an important question with respect to its viability under the Ordinance.

## G. Issues

22. Following issues have arisen in the matter under inquiry:

- a.* Whether TPL has abused its dominant position within the relevant market under section 3 of the Ordinance in particular (3) (c) by tying two distinct products i.e. Guarantee and Passenger Takaful Cover?
- b.* Whether TPL has contravened sub-section (3)(d) by making the contract subject to supplementary obligation of selling Passenger Takaful Cover which has no connection with the Guarantee according to its commercial usage?
- c.* Whether the additional benefit offered by TPL in form of an investment plan through Takaful Scheme amounts to a tie-in and at the same time also makes the principal arrangement of Guarantee subject to supplementary obligation attracting section 3(3)(c) & (d) of the Ordinance?
- d.* Whether TAAP has abused its dominant position within the relevant market under section 3 of the Ordinance in particular (3)(d) by making the contract subject to supplementary obligations of Passenger Takaful Cover and the investment plan which have no connection with the Guarantee as subject of the Agreement, according to their commercial usage?
- e.* Whether the Takaful Scheme extortionately passes on the premium to the customers in violation of section 4 generally and has also fixed the amount of premium to be charged from the customers in contravention of section 4 (2)(a) in particular ?
- f.* Whether TAAP and TPL have violated section 4 of the Ordinance particularly 4 (2)(g) by imposing supplementary obligations in the form of Passenger Takaful Cover and the investment plan which have no connection with the main subject (Guarantee) of the Agreement, according to their commercial usage?
- g.* Whether the Takaful Scheme constitutes deceptive marketing practices violating section 10(2)(a) & (b) of the Ordinance?

## H. Analysis

23. In the light of foregoing, the Takaful Scheme is analysed as under:

### Abuse of dominance by TPL

24. Takaful Scheme is the liability insurance scheme which has introduced by TPL first time in the history of Pakistan<sup>13</sup>. Nearly 253 travel agents out of 536 (47%) are participating in the Takaful Scheme with TPL while the remainder have made guarantee arrangements from different banks and financial institutions<sup>14</sup>, giving TPL a dominant position in the relevant market.
25. Takaful Scheme includes two covers: (i) cover for Guarantee of travel agents towards airlines for the payment of air tickets sold and (ii) cover for risk of passenger's health and accident while travelling. First cover is a mandatory requirement from IATA under the BSP to meet the obligation to pay by the travel agents. The other cover, though, is a novelty introduced by TAAP in the business of travel agencies.
26. The primary concern of travel agents is to furnish the Guarantee to be able to meet the financial security requirement of IATA through the BSP. This requirement can be fulfilled through a range of products available in the market in the form of guarantee or default insurance from banks or insurance/takaful companies. None of them has offered a customised product as has been introduced by TPL i.e Takaful Scheme that ties two covers together namely, a "Guarantee" for the agents and "Passenger Takaful Cover," which is sold through the participating travel agents. In its letter to SECP dated 5 November 2008 TPL itself has admitted that liability coverage *i.e.*, Guarantee of travel agents is bunched with some other substantial business as a "bouquet"<sup>15</sup>. Such practice by TPL, *prima facie*,

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<sup>13</sup> Reiterated by TAAP and TPL in their written submission

<sup>14</sup>TAAP views, minutes of meeting dated 29 September 2008 held by CAA.

<sup>15</sup> See section "Turn of events", page 3 of TPL's communication of 5 November 2008 to SECP.

amounts to tie-in under section 3(3)(c) of the Ordinance where issuance of Guarantee is made conditional on Passenger Takaful Cover.

27. As submitted by TAAP and also discussed in the meeting held by the CAA with Chairman EC, Country Manager IATA, representative of TAAP and PIA, most of the travel agents do not have capacity to meet margin and collateral conditions of the banks or financial institution to arrange their individual guarantee. That is one of the reasons that 253 travel agents out of 536 are participating in the Scheme.<sup>16</sup> It appears that the figure of 253 includes those travel agents also who had no choice but to opt for the scheme regardless of whether they find the arrangement satisfactory or not. Therefore, TPL by using its dominant position, has, *prima facie*, violated section 3(3)(d) and made the Agreement subject to the acceptance by the participating travel agents of the supplementary obligation *i.e.*, of passing on Passenger Takaful Cover to customers without its demand, which also by nature or according to commercial usage have no connection with the subject of the Memorandum of Agreement – to arrange the guarantee as per the requirement of BSP.
28. As appears from the Agreement itself, another objective of the Scheme is to invest the money of customers for the benefits of participating travel agents. Premium will be charged from the customers as Rs 300 for domestic and Rs 600 for international air tickets. This amount will be re-ploughed in remunerative instruments by TPL to make profits out of it. It is clear from the Agreement that after completion of three years of the Scheme, 75% of the first year shall be returned to the surplus in the pool and so on in the following years. Such surplus together with any income earned on it shall be paid to the participants of TAAP pool on conclusion of fourth year and so on.
29. From the above, it emerges that the Takaful Scheme provides additional benefits to the participants *i.e.*, charging premium from customers and getting a refund of 75% of the surplus accrued in the first year along with any profit made on it. No one is offering a comparable product in the market. This additional benefit offered by TPL comes with the whole package and cannot be bifurcated from the Guarantee. This amounts to a tie-in and, at

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<sup>16</sup> Minutes of the meeting dated 29 September 2008 held by CAA

the same time, makes the principal arrangement subject to supplementary obligation attracting the mischief of section 3(3)(c) & (d) of the Ordinance.

#### Abuse of Dominance by TAAP

30. TAAP is an association of travel agents in Pakistan. Total number of IATA-accredited travel agents in Pakistan stands at around 500 and majority of them are also members of TAAP thereby giving it the status of collective dominance in the travel agency market. Travel agents cannot directly avail the guarantee from TPL as basically, the arrangement of Takaful Scheme is only possible through TAAP.
31. Most of the travel agents are availing the Takaful Scheme through TAAP for the simple reason that they do not have the ability to meet the margin and collateral conditions of the banks or financial institution to arrange individual guarantees for themselves. By using its dominant position, TAAP has, *prima facie*, violated section 3(3)(d) and has made the Agreement subject to the acceptance by the participating travel agents of the supplementary obligation of passing on Passenger Takaful Cover to the customer without its demand, which by nature or according to commercial usage have no connection with the subject of the Memorandum of Agreement *i.e.*, to arrange the guarantee as per the requirement of BSP.
32. TAAP provides additional benefits of investment to its participants through the Takaful Scheme. This additional benefit comes with the whole package and cannot be bifurcated from the Guarantee. Such a practice by TAAP, *prima facie*, attracts the mischief of section 3(3)(d) of the Ordinance and makes the principal arrangement subject to supplementary obligation..

#### Prohibited Agreement

33. The Agreement between TAAP and TPL fixes the price/premium to be charged from the customers for Passenger Takaful Cover *i.e.*, Rs 300 for domestic and Rs 600 for international air tickets. This may in turn prevent, restrict, or reduce the competition in contravention of section 4(2)(a) of the Ordinance as customers will pay the same amount of premium to all the travel agents participating in the Takaful Scheme.

34. Though it has been assured by TAAP and is also provided in the Agreement that if any customer is not willing to pay for Passenger Takaful Cover, the travel agent selling the ticket will pay the premium himself. However, the inspection by inquiry team has confirmed that premium is being charged routinely and not optionally. Furthermore, it is very difficult to monitor and regulate the conduct of travel agents participating in the Takaful Scheme. CAA has also shared its reservations that a travel agent can easily refuse sale of ticket on the pretext of unavailability and sell it to a customer who is willing to pay the premium. Choice to purchase a ticket directly from an airline office will generally be not available to a passenger given their limited number and locations. Similarly, the number of travel agents and ability to purchase online ticket in small cities and town would also be limited. People unfamiliar with the process of ticketing and air travel may thus be vulnerable to exploitation.
35. The premium amount charged from customers is both for the Guarantee and the Passenger Takaful Cover. Article 6.2 of the Agreement provides that “IATA/BSP shall remit the money received in Contribution as per clause 6.1 above (*i.e.* Rs 300 for domestic and Rs 600 for international tickets from customers), from the respective Agents to the Company regularly on fortnightly basis ” and Article 2.2 further explains the contention as “in addition to the cash and other collaterals provided at the time of executing the Agreement, the Company shall build, over time, a collateral reserve from Contributions received from BSP on behalf of respective Agents so that at no time, the total cash collateral would be less than 12% of the total collective amount of guarantees issued by TPL. Such reserve shall be kept to offset and payout if any Guarantee is called by IATA”. It is clear from the foregoing that the premium payable by the travel agents towards their Guarantee will be passed on to customers. In this scenario the Takaful Scheme, *prima facie*, proves to be extortionate for the consumers and is in violation of section 3 and 4 in general.

#### Deceptive Marketing Practices

36. The Takaful Scheme, as has been narrated in the recital part of the Agreement, provides for individual guarantee of each participating travel agent but in practice it operates as collective guarantee. The Agreement and inspection also confirms that each participating travel agent will have to pay cash margin and collaterals that will be put into a joint pool. Further



premium will be charged from customers by all participating travel agents which will again accumulate into a joint pool (collateral reserve) arranged by TPL. The Takaful Scheme is actually a new variation of an old collective guarantee scheme. TPL supposedly is to furnish an individual guarantee to IATA on behalf of travel agents, but in nature and character, the individual guarantee operates as a group guarantee on the basis of common pool, something that IATA has specifically prohibited in the BSP. In this scenario, the Takaful Scheme, *prima facie*, amounts to misleading information harming the business interest of airlines and contravenes section 10(2)(a) of the Ordinance.

37. TPL by signing the Agreement and travel agents (members of TAAP) by implementing the Takaful Scheme, shall be, *prima facie*, misleading the customers as to the price and character of the product sold to them. While a premium will be charged from the customers for their Passenger Takaful Cover, this premium in fact will be utilised in a collateral reserve to meet the Guarantee requirement of travel agents under the BSP. Moreover, ticket purchasers remain unaware of their right to avail the Passenger Takaful Cover despite payment of the premium. Lacking information about the product, customers will be deceived for not having capability to identify the additional charges of pertaining to the Passenger Takaful Cover. Therefore, by incorporating the charges relating to the Passenger Takaful Cover within the ticket without the necessary disclosure of the same to the customer, travel agents participating in the Takaful Scheme are, *prima facie*, violating section 10(2)(b) of the Ordinance. TPL has also, *prima facie*, violated section 10(2)(b) of the Ordinance, in that while it is collecting the charges for Passenger Takaful Cover, it has not issued the takaful cover which would confirm that a product has been sold to a customer. No data on such sales has been provided by TPL.

#### Other Issues

38. The Takaful Scheme can also prove to be risky to the BSP, which is focused on accepting Guarantee from institutions having a sound financial position. TPL envisions the collection of premium from customers through travel agents/participants. However, according to TAAP, customers will have the option of whether to take the Passenger Takaful Cover or not and, as assured by TAAP in CAA meeting, they will not be forced to pay for it. If customers

refuse to make the payment, it becomes the responsibility of the travel agent. Whether or not travel agents would make this payment cannot be assured by TAAP. Keeping in view the rare chances of willingness of the customers to pay for Passenger Takaful Cover, should a travel agent default, it could have repercussions on the whole Takaful Scheme, including the Guarantee.

39. TPL and TAAP have stated that the Takaful Scheme is a new product in Pakistan and that is also not common in other parts of the world. It was also highlighted by representative of PIA in the meeting held by CAA that the scheme has been implemented in only three countries (including Malaysia) but it has not proved to be a success in any of them.

### **I. Conclusions**

40. In light of the foregoing, it is concluded that:

- a. TPL holds dominant position in the relevant market and by using its dominant position it has developed a scheme which ties Passenger Takaful cover with the Guarantee. Such practice prevents, restricts, reduce or distort competition in the relevant market and therefore TPL has, *prima facie*, violated section 3(3)(c) of the Ordinance.
- b. TPL is, *prima facie*, abusing its dominant position and has prevented, restricted, reduced or distorted the competition by making participants of Takaful Scheme to accept the supplemental obligation, of passing on Passenger Takaful Cover, which has no connection with the Guarantee, a primary subject of the Agreement, therefore it has contravened section 3(3)(d) of the Ordinance.
- c. TPL has linked an investment plan with the Guarantee through Takaful Scheme and made the principal arrangement of Guarantee subject to a supplementary obligation which, *prima facie*, attracts section 3(3)(c) and (d) of the Ordinance.
- d. TAAP is, *prima facie*, abusing its dominant position and has prevented, restricted, reduced or distorted the competition by making participants of Takaful Scheme to accept

the supplemental obligation, of passing on Passenger Takaful Cover, which has no connection with the Guarantee, a primary subject of the Agreement, therefore it has contravened section 3(3)(d) of the Ordinance.

- e. TAAP has linked an investment plan with the Guarantee through Takaful Scheme and made the principal arrangement of Guarantee subject to supplementary obligation attracting the mischief of section 3(3)(d) of the Ordinance.
- f. Agreement between TAAP and TPL has the object or effect of preventing, restricting, or reducing competition within the relevant market by fixing a premium to be charged from the customers through all the participants/travel agents. Such arrangement between the undertakings, *prima facie*, constitutes contravention of section 4(2)(a) of the Ordinance.
- g. Agreement between TAAP and TPL imposes supplementary obligations in form of Passenger Takaful Cover and investment plan which have no connection with the subject of the Agreement (*i.e.* Guarantee). Such Arrangement, *prima facie*, amounts to violation of section 4(2)(g) of the Ordinance by both TAAP and TPL.
- h. To adhere to the conditions of the Takaful Scheme, the participating travel agents pass on the cost of the premium to customers without informing them, which, *prima facie*, is extortionate in violation of section 3 and 4 generally and also deceptive in contravention of section 10(2)(b) of the Ordinance.
- i. Takaful Scheme does not fulfil the requirement of BSP by IATA and remains a collective guarantee in its character under the garb of a customised product, *prima facie*, amounting to contravention of section 10(2)(a) of the Ordinance.

### **J. Recommendations**

41. In view of the foregoing, the Takaful Scheme, *prima facie*, is a trade restrictive agreement between TAAP and TPL and amounts to abuse of dominance by TPL as well as TAAP preventing, restricting, reducing or distorting competition within the relevant market in

violation of sections 3 and 4 generally and section 3(3)(c), (d) and section 4(2)(a), and (g) in particular and that Takaful Scheme also, *prima facie*, constitutes deceptive marketing practices by TPL, TAAP and its participants members in contravention of section 10(2)(a) and (b) of the Ordinance. Therefore, it is necessary in the public interest to initiate proceedings against the undertakings under section 30 of the Ordinance.

Safia Alam  
Inquiry Officer  
30April 2009

Nadia Nabi  
Inquiry Officer  
30 April 2009

### Abbreviations used in the Inquiry Report:

CAA	Civil Aviation Authority
PIA	Pakistan International Airlines
TAAP	Travel agents Association of Pakistan
TPL	Takaful Pakistan Limited
IATA	International Air Transport Association
BSP	Billing & Settlement Plan
SECP	Securities and Exchange Commission of Pakistan
Commission	Competition Commission of Pakistan
Ordinance	Competition Ordinance, 2007
Agreement	Memorandum of agreement dated 10 September 2008
Takaful Scheme	Guarantee and Passenger Takaful Cover