



BEFORE THE
COMPETITION COMMISSION OF PAKISTAN
IN THE MATTER OF

COMPLAINT FILED BY

ALL PAKISTAN FRUIT & VEGETABLE EXPORTS, IMPORTERS AND
MERCHANTS ASSOCIATIONS (ACAAP)

AIR CARGO AGENTS ASSOCIATION OF PAKISTAN (PFVA)

Versus

PIA, EMIRATES, QATAR AIRWAYS, OMAN AIR, TURKISH AIRWAYS,
GULF AIR, SAUDI ARABIAN AIRLINES, ETIHAD AIRWAYS

(FILE NO: 138/Air Cargo/CCP/C&TA/CCP/2017)

Date(s) of Hearing:

09-06-2020

Commission:

Ms. Shaista Bano

Chairperson

Ms. Bushra Naz Malik

Member

Assisted By:

Amir Zaman

Deputy Director (Legal)

Present for:

All Pakistan Fruit & Vegetable Exports,
Importers and Merchants Associations (ACAAP)

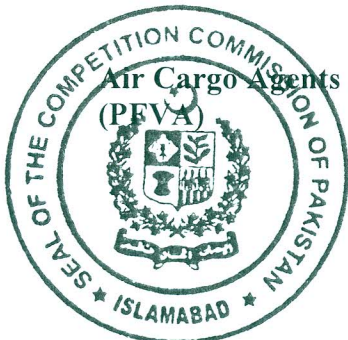
Mr. Mohsin Darsi

Chairman

Air Cargo Agents Association of Pakistan
(PFVA)

Mr. Shujaat Ali

National Convener FDSC ACAAP

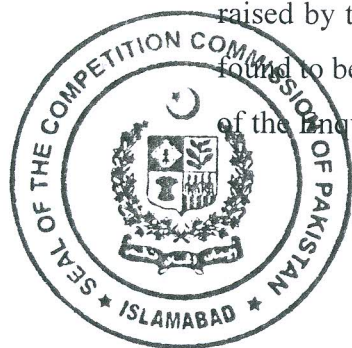


ORDER

1. This Order shall dispose of the Complaint filed under Section 37(2) of the Competition Act, 2010 (hereinafter the 'Act') by **All Pakistan Fruit & Vegetable Exports, Importers and Merchants Association** (hereinafter the 'ACAAP') and **Vegetable Exporters, Importers and Merchants Association and Air Cargo Agents Association of Pakistan** (hereinafter the 'PFVA') (hereinafter collectively referred to as 'the **Complainants**') against foreign airlines operating in Pakistan *inter alia* Emirates Airline, Qatar Airways, Oman Air, Turkish Airways, Gulf Air, Saudi Arabian Airlines and Etihad Airways (hereinafter collectively referred to as 'the **Respondents**') for alleged violation of Section 3 of the Act.

FACTUAL BACKGROUND

2. In the Complaint addressed to the Competition Commission of Pakistan (hereinafter the '**Commission**') it was alleged that the Respondents are charging higher rates on the export of mangoes from Pakistan in comparison to the charges levied for exports from India for the same destinations, despite the fact that the distance from Pakistan is less than the latter. Furthermore, exporters have to give undertaking of no claim or indemnity bond which exempts the Respondents from the loss incurred due to delay or damage caused during transit and handling. It was also alleged that export rates for fruits and vegetables generally remain at the same level throughout the year but during the mango season higher rates are announced by the Respondents which is unfair and against business norms. The Complainants have contended that they are unable to compete in the international markets due to high cost of freight levied on the export of mangoes by the Respondents.
3. Upon receipt of Complaint, the Commission constituted an enquiry committee (hereinafter the '**Enquiry Committee**') under Section 37(2) of the Act. The enquiry in the matter was concluded vide Enquiry Report dated 19th December 2019 (thereinafter the '**Enquiry Report**'). The Enquiry Report examined the concerns raised by the Complainant and concluded that the clauses in the Tender were not found to be *prima facie* anti-competitive in terms of the Act. The detail assessment of the Enquiry Committee is reproduced below:



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“63. In terms of findings of paragraph 28 above it appears that the relevant market is the market for transport of mangoes from Pakistan by air to international destinations.

64. In terms of paragraph 34 above prima facie there is no airline dominant in the relevant market in terms of Section 2(1)(e) of the Act.

65. In terms of Section 3 sub-section 2, from the data presented in Paragraphs 35-39 there is prima facie no evidence that, as compared to the rates for Indian exporters, Pakistani exporters are being charged unreasonable or exorbitant rates for mango exports. Therefore, no case of prima facie violation of sub-section 02 of Section 03 of the Act is made out.

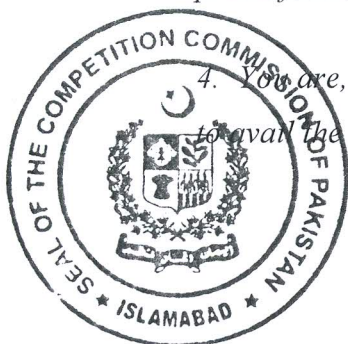
66. In terms of findings of Paragraphs 36-62 above it appears that contrary to international conventions and prevalent practice in other jurisdictions, Pakistani mango exporters were required to furnish an indemnity bond by all airlines (except Turkish) which absolves the airline of all responsibility of loss. However, this practice has been discontinued by two major airlines i.e. Emirates and Qatar. Since there is no prima facie evidence of any airline(s) being dominant in the relevant market therefore, no violation of Section 03 of the Act is made out.”

SUBMISSIONS AND HEARINGS

4. Based on the findings of the Enquiry Report, the Member concerned in concurrence with the recommendations directed for issuance of Hearing Notice to the Complainants for closure of the Complaint. Accordingly, Hearing Notice was served to the Complainants on 8th May 2020, and the matter was fixed for hearing on 09th June 2020. Due to COVID-19 health advisory, the hearing was held *via* video conferencing. The hearing notice in its relevant parts is reproduced below:

“3. In terms of the Enquiry Report in general and paragraphs 29 to 62 in particular it was concluded that the allegations against M/s. Pakistan International Airlines and various foreign airlines for, prima facie, violation of Section 3 of the Act could not be made out.

4. You are, therefore, advised to appear before the Commission, and to avail the opportunity of being heard through a duly authorized



representative on June 9, 2020 at the Office of the Commission i.e. 8th Floor South, ISE Towers, 55-B, Jinnah Avenue, Islamabad at 11:30 a.m. or as soon thereafter convenient to the Commission”.

**REPLY TO THE SHOW CAUSE NOTICE,
WRITTEN SUBMISSIONS AND HEARINGS**

5. On 9th June 2020 the authorized representative of the Complainants informed the Bench that subsequent to initiation of the enquiry by the Commission, the Respondents i.e. foreign airlines waived the requirement of filing of Indemnity bond /no claim, which exempts the Respondents from the loss incurred due to delay or damage caused during transit and handling. Subsequent to the removal of the said condition, the airlines are now responsible for catering the lose(s) or damage(s), if incurred, during the air carriage as this issue was pending for the last fifteen (15) years and many exporters had left the export business due to this condition.
6. The Representatives of the Complainants highly appreciated the efforts of the Commission during the enquiry proceedings and also acknowledged the Commission for their support and efforts in fizzling out the aforesaid condition of indemnity bond, which has boosted the business of exporters. They further submitted that the air freight charges are on the higher side for Pakistan as compared to India. The United Kingdom is a big market for air freight for Pakistan as United States is also growing as a big market. They referred to Para 41 of the Enquiry Report wherein it was stated that the Pakistani exporters were charged 22 cents higher than the Indian Exporters, wherein the Enquiry Report concluded that there is no violation of Section 3 has been made out. The Complainants were informed that in order to establish a violation of Section 3 of the Act, the Complainants have to establish that the Respondents hold a dominant position i.e. the Respondents have 40% of the market share in the relevant market of mango exports and that the Respondents are in a position to influence the decisions of the Consumers and competitors and they can behave independently. Since, no substantiating material was provided by the



Complainants to support the submissions of dominance, hence, the conclusions of the enquiry report highlighted in Para 3 above cannot be reversed.

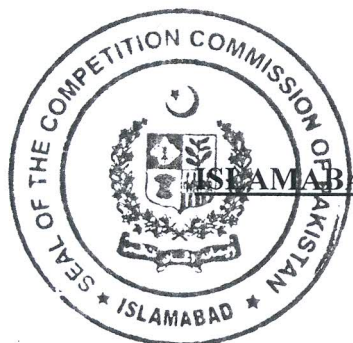
7. In view of the above, we are of the considered view that in the instant Enquiry Report, the conclusions are well founded and cannot be overturned. It is also acknowledged that one of the grievance of the Complainants also stands addressed during the conduct of enquiry, hence, it does not require any further emphasis.
8. Without prejudice to the above, the Complainants are at liberty to file a fresh complaint duly supported with the prima facie evidence substantiating their stance and allegations from 2017 onwards, which was not the subject matter of the Enquiry Report.
9. Before parting with the Order, we would like to emphasis that competition law is a subset of principles stimulating innovation, productivity and competitiveness, contributing to an effective business environment in the Country. This generates economic growth and employment. It also creates possibilities for small and medium sized enterprises, removes barriers that protect entrenched elites and reduces opportunities for corruption. Foregoing in view, it can conveniently be said that competition increases a country's attractiveness as a business location, triggering national and foreign investments. Competition also delivers benefits for consumers through lower prices, improved services and greater choice. In this sense, Competition generates total consumer welfare. It also contributes to creating a level playing field for businesses which have to apply a common set of standards, supporting competition.
10. In terms of what has been stated above, the case is hereby disposed of.



(Shaista Bano)
Chairperson



(Bushra Naz Malik)
Member



ISLAMABAD THE 19th DAY OF JUNE 2020