

DISCLAIMER

The views given in the FAQ's are general in nature. It neither binds the Commission nor is any warranty expressed or implied made regarding adequacy or completeness of any information. This disclaimer applies to both isolated and aggregate use of the information.

FREQUENTLY ASKED QUESTIONS
ON THE ICAP MATTER SCN NO.105/2012

1. What prompted Competition Commission of Pakistan (CCP) to take note of ICAP's Directive dated 4 July, 2012 (the 'Directive')?

- CCP took notice of the Directive on its own after receiving numerous informal complaints from accountancy students regarding the Directive issued by ICAP.

2. What in effect was ICAP's July Directive?

- The July Directive placed a bar on ICAP members and their accountancy firms from providing training to non-ICAP accountancy students.

3. How does this issue fall within the purview of CCP?

- ICAP's decision to foreclose access to non-ICAP students to such a large segment of the market comprising approved chartered accountancy firms offering professional trainings, was of concern to CCP as it appeared to be preventing and restricting competition in the relevant market, *prima facie* violating Section 4 of the Competition Act, 2010 (the "Act").¹

4. What is the October Circular?

- After the issuance of Show Cause Notice (SCN) in this matter, ICAP issued a circular on 24 October 2012 to all ICAP members clarifying that the July Directive only applied to 'approved training organizations' of ICAP and that the rest of the members and firms could train non-ICAP accountancy students.

5. Did the October Circular alter the situation created by the July Directive?

- The CCP Order held that the October Circular did not materially change the situation created by the July Directive. This Circular permitted in-house training with commercial organizations, however, such option did not offer the same level of exposure and rigour as the accountancy firms. Therefore, the October Circular still forecloses a large segment of the market for non-ICAP students for the purposes of getting training.

6. How competition rules are applicable to professional bodies like ICAP?

- 'Undertaking' under the Act is defined to include associations of undertaking. When dealing with professional bodies, in order to distinguish whether such body acted as an association taking an economic decision rather than as a public body, taking a regulatory measure; the following two aspects need to be established:
 - That an overwhelming majority of the members of such a body taking the decision consists of undertakings; and
 - That the decision taken by such a body pertains to the sphere of economic activity.

In terms of the Order, since all members of the general body and the overwhelming majority of the council members are primarily undertakings engaged in economic

¹ Section 4 of the Competition Act, 2010 (the 'Act') prohibits an association of undertakings from taking decisions that have the object or effect of preventing, restricting or reducing competition in the relevant market.

activity of providing accountancy training services, there is no doubt that ICAP clearly comes out as an association of undertakings.

7. What is an undertaking and an association of undertakings?

- **According to Section 2(1) (q) of the Act.**
 - Any person engaged, directly or indirectly, in the production, supply or distribution of goods or the provision or control of services is an undertaking;
 - Any formal or informal grouping of undertakings is known as an association of undertakings.

8. Under what provisions of the Chartered Accountants Ordinance, 1961 (CA Ordinance) did ICAP issue the Directive?

- ICAP relied on Section 22 of the CA Ordinance, while issuing the Directive claiming ‘Section 22 of the Ordinance prohibits any person to encroach in the mandate of the Institute’.

9. What is CCP’s finding on the application of Section 22 of the CA Ordinance?

- The Order holds that ICAP’s decision of prohibiting training for non-ICAP students does not pertain to the aspects falling within the purview of Section 22 of the CA Ordinance. *Section 22(1)(i) prohibits the use of the name or the common seal belonging to ICAP. Section 22(1)(ii) prohibits the award of any qualification or designation which may indicate that a person is a member of ICAP. Section 22(1)(iii) prohibits any person other than ICAP from seeking to regulate the profession of chartered accountants.* Even otherwise, if there were such provisions, the same had to be read subject to Section 59 of the Act which confers an overriding effect to the provisions of the Act notwithstanding anything to the contrary contained in any other law.

10. What are some of the grounds taken by ICAP during the proceedings and CCP’s findings in respect thereof?

Among others, these include the following:

	ICAP	CCP Order
i	Due to the issuance of the October Circular, the SCN has lost its basis	Please refer to answers 4 & 5 above.
ii	ICAP is not an association but a statutory body and has the lawful right to regulate its ‘training organizations’	Please refer to answers 6 & 7 above
iii	Moreover, ICAP as a professional body, has the right to determine the content, quality and manner of training to be received by students pursuing qualification and membership	ICAP has the right to regulate its training organizations only to the extent of their own students. In this regard, ICAP can set any standards and demand any level of resources. The regulation, however,

	of such bodies.	cannot be extended to the training of non-ICAP students.
iv	The SCN does not define the relevant market;	The paragraph 4 of the SCN clearly defines the relevant market.
v	The SCN wrongly treats trainee students as providers of accounting services and decision with respect to acquisition of service, by under training accountancy students is beyond the scope of the Act;	It is the accounting firms and commercial organizations that offer training services to accountancy students. The matter under consideration was the foreclosure of a major component of this service i.e. the training at accountancy firms for non-ICAP students. The application of the Act cannot be avoided simply by terming the student-accounting firm relationship as acquisition of services.
vi	Those non-ICAP students who fulfill the criteria under law and bye laws can still register with ICAP and be eligible for training.	The ICAP cannot compel non-ICAP students to register with them and accept their jurisdiction. Requiring non-ICAP students to register increases the economic and academic burden on them and may unfairly persuade them to choose alternate qualifications as a result of 'rent seeking' behavior.

11. Why has CCP held ICAP's July Directive in violation of competition principles under the Act?

The Order *inter alia* observes:

- *Prohibiting a trainer from providing training to a competitive bodies' member is not a regulatory matter but rather an economic one.*
- *ICAP is free to set stringent quality standards for its own students and their trainers insofar as it relates to their own students, but cannot forcefully apply the same to the students of other accountancy bodies in the garb of regulating, quality, content or manner of training.*
- *[Such prohibition] apart from being in violation of the Act also appears to be beyond the scope of ICAP's jurisdiction.*
- *It was not denied by ICAP that most of these 147 ACCA approved employers are also approved training organizations of ICAP. Thus, there is direct*

foreclosure of a large number of ACCA approved trainers in addition to those of ICAP.

- *Accountancy firms offer a greater exposure and experience to students on a broader range of subjects which is not substitutable to any training or experience offered by other approved employers of ACCA.*
- *[The Directive] deprives the non-ICAP students, both quantitatively and qualitatively, from gaining such experience practically from the most prestigious segment of the training market. This adversely impacts the accountancy firms as well as the value of the qualification offered by direct competitors of ICAP. Thereby restricting, preventing and reducing competition in the relevant market.*
- *The July Directive is also creating a barrier for these students seeking entry in the market for provision of accountancy services in Pakistan.*
- *ICAP already enjoys monopoly vis-à-vis statutory audits under the Companies Ordinance, 1984. Additionally, not being able to get trainings at approved accountancy firms, the non-ICAP students would be placed at a competitive disadvantage vis-à-vis their ICAP counterparts ... ICAP seems to be unlawfully leveraging its statutory monopoly to other related fields of accountancy.*
- *Competitors who have legitimately established themselves in global market should not be subjected to such barriers.*
- *ICAP ought not to discourage, discriminate or otherwise unequally treat growing number of a human resource essential for a vibrant economy.*

12. What remedy has CCP provided under the Competition Act, 2010?

- Through its order, after taking into consideration all the facts and circumstances, CCP has:
 - declared the July Directive and October Circular to be in violation of Section 4 of the Act and to be without any legal force;
 - imposed a penalty of PKR 25 Million on ICAP; and
 - restrained ICAP, from issuing similar directives/circulars in future, having the effect of barring its approved training organizations from engaging non-ICAP students for training.

13. What remedy is offered for the loss of business or career opportunities to the accountancy firms, accountancy bodies, students or any other affectee?

- The Order holds that the proper course of action for such persons is to pursue compensation before the courts of competent jurisdiction.

14. Is the July Directive in line with global best practices?

- The Order holds that July Directive is contrary to international best practices. All around the world, accountancy firms run parallel training programs for students of various professional accountancy bodies. It has been observed that *ICAP should act in sync with global best practices rather than carving out an exception or creating hegemony for itself.*