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PART II

Statutory Notifications (S. R. O.)

GOVERNMENT OF PAKISTAN

COMPETITION COMMISSION OF PAKISTAN

NOTIFICATIONS

Islamabad, the 24th April, 2008

S. R. O. 399 (I)/2008.—In exercise of the powers conferred by section 55 read with sub-section (5) of section 41 of the Competition Ordinance, 2007 (LII of 2007), the Competition Commission of Pakistan, with approval of the Federal Government, hereby makes the following rules, namely:—

The Competition Commission (Appeal) Rules, 2007

PART-I

PRELIMINARY

1. **Short title and commencement.**—(1) These rules may be called the Competition Commission (Appeal) Rules, 2007.

(2) They shall come into force at once.

(1101)

2. **Definitions.**—(1) In these rules, unless there is anything repugnant in the subject or context,—

- (a) “adjudicating authority” means a Member or a authorized officer of the Commission;
- (b) “appeal” means an appeal preferred under section 41;
- (c) “appellant” means a person who prefers an appeal before the Appellate Bench;
- (d) “Appellate Bench” means an Appellate Bench constituted by the Commission under section 41;
- (e) “authorized representative” means,
 - (i) in relation to a company, a person who is either the chief executive or a director or secretary of the company or an advocate entitled to appear before High Court or a member of Institute of Chartered Accountants of Pakistan or Institute of Cost and Management Accountants and is duly authorized by the company to appear, plead and act on its behalf before the Appellate Bench;
 - (ii) in relation to the adjudicating authority or any other officer of the Commission, an officer authorized by the adjudicating authority to appear, plead and act before the Appellate Bench; and
 - (iii) in relation to any other appellant or respondent, a person who is an advocate of High Court, or a member of Institute of Chartered Accountants of Pakistan or Institute of Cost and Management Accountants and is duly authorized by the appellant or respondent to appear, plead and act on his behalf before the Appellate Bench ; or
 - (iv) in relation to a director of the company, in addition to sub-clause (iii) a director representing fellow appellants or respondents and is duly authorized by the appellant or respondent to appear, plead and act on his behalf before the Appellate Bench;
- (f) “bank challan” means an original receipt issued by one of the several bank branches which are for the time being authorized by the

Commission for collection of receipts or other services to the account of the Commission;

- (g) “form” means a form appended to these rules;
- (h) “impugned order” means an order passed by an adjudication authority against which an appeal is preferred under section 41 of the Ordinance.
- (i) “Ordinance” means the Competition Ordinance, 2007 (LII of 2007);
- (j) “Registrar” means an officer of the Commission who is appointed as the Registrar of the Appellate Bench and for the purpose of these rules shall also include a Deputy Registrar performing functions of the Registrar under these rules; and

(2) Words and expressions used in these rules, but not defined herein, shall have the same meanings as are assigned to them in the Ordinance.

PART-II

APPEALS

3. **Commencement of appeals.**—An appellant may prefer an appeal to the Appellate Bench by filing a memorandum of appeal in accordance with rule 7.

4. **Limitation for filing appeal.**—(1) Every appeal shall be preferred within a period of thirty days from the date on which a copy of the impugned order is received by the appellant:

Provided that the Appellate Bench may, upon an application filed in this behalf, entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within the prescribed period.

5. **Presumption of receipt of impugned order.**—(1) Subject to anything contrary on the record a copy of the impugned order shall be presumed to have been received by the appellant if,—

- (a) sent by courier, three days following the day it is dispatched by the receipt and issue department of the Commission;
- (b) sent by registered posts, seven days following the date it is mailed by the receipt and issue department of the Commission; and

(c) sent by hand delivery; on production of the receipt showing the date it is served on the appellant.

6. **Appeal to be in writing.**—Every appeal, application, reply, representation or any document filed before the Appellate Bench shall be type-written or printed neatly and legibly on one side of good quality paper of foolscap size in double space and separate sheets shall be stitched together and every page shall be consecutively numbered and filed accordingly.

7. **Memorandum of appeal, deposit of fee and penalty etc.**—(1) The memorandum of appeal shall,—

(a) state,—

- (i) the name and address of the appellant;
- (ii) the name and address of the appellant's authorised representative; and
- (iii) an address in Pakistan for the service of documents;

(b) be in the form provided in Schedule II and shall contain, —

- (i) a concise statement of the facts;
- (ii) a summary of the grounds for appealing against or with respect to the impugned order, identifying, in particular—
 - (a) the statutory provision under which the appeal is brought;
 - (b) the extent to which the appellant contends that the impugned order was based on an error of fact or was wrong in law; and
 - (c) the extent to which the appellant is appealing against the Commission's exercise of discretion in making the impugned order;
- (iii) a succinct presentation of the arguments of fact or law supporting each ground of appeal; and
- (iv) the relief or directions sought by the appellant;

- (c) be signed and dated by the appellant, or on his behalf by his authorised representative; and
- (d) be accompanied by,—
 - (i) a certified copy of the impugned order;
 - (ii) where an appellant or respondent is represented by an authorized representative, the written authorization in his favour signed by the appellant or the respondent as the case may be;
 - (iii) a copy of bank challan evidencing payment of deposit as provided under sub-rule (2) and fee as provided under Schedule I to these rules; and
 - (iv) all documents and evidence as attachments upon which the appellant/respondent has relied upon in his pleadings.

(2) Where any appeal is filed under these rules and the impugned order relates to any penalty imposed under the Ordinance or rules and regulations made thereunder, the person desirous of filing such an appeal, shall at the time of filing the appeal, deposit in the account of the Commission twenty five per cent of the penalty imposed.

(3) No appeal in respect of the impugned order shall be entertained or admitted to hearing unless the percentage of penalty envisaged in sub-rule (2) is deposited with the Commission.

(4) Unless the Appellate Bench otherwise directs, the appellant shall file the duly signed original of the memorandum of appeal and its accompanying documents with the Appellate Bench together with five copies thereof, each certified by the appellant, or his authorised representative, to be in conformity with the original.

(5) The appellant shall not rely on any ground of appeal which is not stated in the notice of appeal during the hearing of the appeal except with the permission of the Appellate Bench.

8. Defective memorandum of appeal.—(1) If the Appellate Bench considers that memorandum of appeal is not filed in accordance with rule 7, is materially incomplete, unduly prolix or lacking in clarity, the Appellate Bench may give such directions to the appellant as may be necessary to remedy the memorandum of appeal.

(2) The Appellate Bench may, if it considers that the efficient conduct of the appeal proceedings so requires, instruct the Registrar to defer forwarding a copy of the notice of appeal to the other parties concerned until after the directions given under sub-rule (1) have been complied with.

9. **Power to reject.**—The Appellate Bench may, after giving the parties an opportunity of being heard, reject an appeal in whole or in part at any stage in the appeal proceedings if,—

- (a) it considers that the memorandum of appeal discloses no valid ground of appeal;
- (b) it considers that the appellant is not an aggrieved party or person under section 41;
- (c) it is satisfied that the appellant has habitually and persistently, and without any reasonable ground,—
 - (i) instituted vexatious proceedings before the Appellate Bench; or
 - (ii) made vexatious applications in any proceedings before the Appellate Bench; or
- (d) the appellant fails to comply with any provision of these rules, or any direction, or order of the Appellate Bench.

10. **Withdrawal of appeal.**—(1) The appellant may, with the permission of the Appellate Bench, withdraw his appeal.

(2) Where the Appellate Bench grants permission under sub-rule (1), it may,—

- (a) order the appellant to pay the costs of the Commission and the Appellate Bench incurred up to the time his appeal is withdrawn; and
- (b) do so on such other terms or conditions as it thinks fit to impose, including requiring the Registrar to publish a notice of the withdrawal of the appeal on the Commission's website or in such other manner as the Appellate Bench may direct.

11. **Appeal number, etc.**—On receiving the memorandum of appeal, the Registrar shall,—

- (a) affix to the memorandum of appeal an official stamp showing the date on which it was received;

- (b) enter the appeal in a list and assign a number thereto, which shall constitute the title of the appeal;
- (c) inform the appellant of the title of the appeal; and
- (d) subject to rules 9 and 8, forward a copy of the memorandum of appeal to the Commission.

12. Filing of reply to the appeal and other documents by the respondent.—(1) The respondent may file such number of copies of reply statement as is required under sub-rule (2) of rule 7 along with similar number of documents in a paper-book form with the Registrar within such time normally not exceeding fifteen days or as the Registrar may specify.

(2) Every reply, application or written representation filed before the Appellate Bench shall be verified in the manner provided for in the Form B of the Schedule II to these rules.

(3) A copy of every application, reply, document or written material filed by the respondent before the Appellate Bench shall be forthwith served on the appellant by the respondent.

(4) The Appellate Bench may, in its discretion, on application by the respondent or other interested party allow the filing of reply referred to in sub-rule (1) after the expiry of the period originally allowed.

(5) Notwithstanding anything contained in this rule, it shall not be mandatory for the Commission to file a reply to the memorandum of appeal filed under these rules. In the absence of any such reply, the impugned order shall be treated as the defense for and on behalf of the Commission.

PART-III

CONSOLIDATION, SUMMONING OF WITNESSES AND EVIDENCE

13. Consolidation, etc.—(1) Where two or more appeal proceedings are pending in relation to the same decision of the Commission, or involve the same or similar issues, the Appellate Bench may at any time, on the request of a party or of its own initiative, order that the proceedings or any particular issue or matter raised in the proceedings be consolidated or heard together.

(2) Before making an order under sub-rule (1), the Appellate Bench shall invite all the parties to the relevant proceedings to make their submissions thereon.

14. **Evidence.**—(1) The Appellate Bench, —
- (a) shall appraise the evidence at the hearing of an appeal; and
 - (b) may give directions as to, —
 - (i) the issues on which it requires evidence;
 - (ii) the nature of the evidence which it requires to decide those issues; and
 - (iii) the manner in which the evidence is to be placed before the Appellate Bench.
 - (2) The Appellate Bench may admit or exclude evidence, whether or not the evidence was available when the contested decision was made.
 - (3) The Appellate Bench may require any witness to give evidence on oath or affirmation, or by way of affidavit.
 - (4) The Appellate Bench may dispense with the need to call a witness to give oral evidence if a witness statement has been submitted in respect of that witness.
 - (5) The Appellate Bench may, at any time before notifying the appellant of its decision, call for such further evidence or explanation from all or any of the parties to be given, in the presence of the other party or parties, as it may consider necessary.
15. **Summoning of witnesses.**—(1) Without prejudice to section 32 and subject to sub-rules (2) and (3) of this rule, the Appellate Bench may at any time, on the request of a party or of its own initiative, issue summons requiring any person in Pakistan to do either or both of the following, namely:—
- (a) attend as a witness before the Appellate Bench, at the time and place set out in the summons;
 - (b) answer any question, or produce any document or other material in his possession or under his control, which relate to any issue or matter in question in the appeal proceedings.

(2) A request by a party for the issue of summons under this rule shall be made to the Registrar with the appropriate fee specified in the Schedule-I, and shall state,—

- (a) the name and address of the witness to be called; and
- (b) the facts upon which the witness is to be examined and the reasons for the examination, the documents required to be produced by the witness and the reasons for their production, or both.

(3) Subject to sub-rules (2) and (3) of rule 31, no person may be required to attend in compliance with summons under these rules unless he has been served personally with the summons issued by the Registrar of the Appellate Bench.

PART - IV

HEARING OF APPEALS AND DECISIONS

16. **Seat of the Appellate Bench.**—The Appellate Bench shall hold its seat either at Islamabad or at any other place as may be deemed fit by the Appellate Bench.

17. **Date of hearing to be notified.**—The Registrar shall notify the date, time and venue of hearing of the appeal to all the parties in such manner as the Appellate Bench may direct.

18. **Adjournments.**—(1) If on the day fixed or any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Appellate Bench may make an order that the appeal be dismissed:

Provided that the Appellate Bench may, upon an application submitted by the appellant giving sufficient cause for his non-appearance, make an order setting aside *ex-parte* order and restore the appeal on payment of such costs as it may, in the circumstances of the case, deem necessary.

(2) The dismissal of an appeal under sub-rule (1) shall be notified to the appellant, the adjudicating authority against whose order the appeal is preferred and other respondents, if any.

(3) The appellant or respondent seeking adjournment for a fixed date of hearing shall be required to give reasons alongwith evidence of his non-appearance or his authorized representative before the Appellate Bench.

19. **Hearing of appeal.**—(1) On the day fixed for hearing or on any other day to which the hearing may be adjourned, the appellant shall be heard personally or through his authorized representative, in support of the appeal. The Appellate Bench shall then hear the respondent or his authorized representative against the appeal and in such a case the appellant shall be entitled to reply.

(2) All parties appearing before the Appellate Bench may be required to submit a summary of their arguments in writing at the conclusion of the hearing; provided that the Appellate Bench shall not be bound to entertain such arguments which are included in the summary but not pressed before the Appellate Bench during the course of hearing.

(3) The appeal shall, as far as possible, be decided within forty-five days of its filing.

(4) The hearing of appeals under these rules shall normally be in private. But in exceptional circumstances and that too after having the views of the parties to the case, the Commission may decide to conduct hearing in public.

20. **Power to make interim orders and directions.**—(1) If the Appellate Bench considers that it is necessary as a matter of urgency for the purpose of,—

- (a) preventing serious, irreparable damage to a particular person or class of persons; or
- (b) protecting the public interest, the Appellate Bench may give such directions as it considers appropriate for that purpose.

(2) The Appellate Bench may, subject to sub-rule (1) above on the application of a party or of its own initiative, make an order on an interim basis,—

- (a) suspending in whole or part the effect of any decision which is the subject matter of the appeal proceedings before it; or
- (b) granting any remedy which the Appellate Bench would have the power to grant in its final decision.

(3) The Appellate Bench shall exercise its power under these rules taking into account all the relevant circumstances, including, —

- (a) the urgency of the matter;
- (b) the effect on the party making the request if the relief sought is not granted; and

(c) the effect on competition if the relief is granted.

(4) Any order or direction under these rules is subject to the further order, direction or final decision by the Appellate Bench.

21. Application for interim relief.—(1) A party shall apply for an order under sub-rule (2) of rule 20 or a direction under sub-rule (1) of rule 20 by lodging an application for interim relief in accordance with sub-rule (2) with the Appellate Bench together with the appropriate fee specified in the Schedule I.

(2) An application for interim relief shall state, —

(a) the subject matter of the relevant proceedings;

(b) the circumstances giving rise to the urgency;

(c) the factual and legal grounds establishing a preliminary case for the grant of interim relief by the Appellate Bench; and

(d) the relief sought.

(3) On receiving an application for interim relief, the Registrar shall send a copy thereof to each of the other parties to the proceedings and inform them of the date by which they may submit written or oral submissions to the Appellate Bench.

(4) The Appellate Bench shall fix a date for hearing of the application for interim relief and give such directions as may be necessary for dealing with the application for interim relief.

(5) The Appellate Bench may, for the purposes of these rules, join any third party to the proceedings.

(6) Subject to sub-rule (7), the Appellate Bench shall, before making an order or direction for interim relief against a person who is not a party to the proceedings, invite that person to make his submissions thereon.

(7) If the urgency of the case so requires, the Appellate Bench may grant the application for interim relief before receiving the submissions of all the parties concerned, including the person referred to in sub-rule (6).

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 decisions of the Appellate Bench shall be made unanimously or by majority of votes if the Appellate Bench comprises of 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.

23. **Consent orders.**—(1) If all the parties to an appeal agree on terms which settle all or any part of the proceedings, they may request the Appellate Bench to make a consent order.

(2) A request for a consent order shall be made by sending to the Registrar,—

- (a) a draft consent order;
- (b) a consent order impact statement which is in accordance with sub-rule (3); and
- (c) a statement signed by all the parties to the proceedings, or their authorised representatives or legal representatives, requesting that an order be made in terms of the draft consent order.

(3) A consent order impact statement shall provide an explanation of the draft consent order, including,—

- (a) an explanation of the circumstances giving rise to the draft consent order;
- (b) the relief to be obtained if the order is made; and
- (c) the anticipated effects on competition of that relief.

(4) In respect of any request for a consent order, the Appellate Bench may, as it thinks fit, after hearing the parties,—

- (a) make the order in the terms requested;
- (b) invite the parties to vary the terms and make the order in the terms as varied; or
- (c) refuse to make any order.

24. **Issue of directions by Appellate Bench.**—An Appellate Bench may make such orders, or give such directions, as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.

PART- V

REGISTRAR

25. **Functions of the Registrar.**—(1) The Registrar of the Bench shall discharge his functions under general superintendence of the Appellate Bench and shall discharge such other functions as are assigned to him under these rules or by a separate order in writing by the Appellate Bench. The Registrar shall have the custody of the records of the Appellate Bench.

(2) The official stamp of the Appellate Bench shall be kept in the custody of the Registrar.

(3) Subject to any general or special direction by the Appellate Bench, the official stamp of the Appellate Bench shall not be affixed to any order, summons or other process save under the authority in writing from the Appellate Bench.

26. **Additional functions and duties of Registrar.**—In addition to the functions and duties assigned in the preceding rule, the Registrar shall also have, subject to any general or special orders of the Appellate Bench, the following functions and duties, namely:—

- (a) to receive all appeals, replies and other documents;
- (b) to decide all questions arising out of the scrutiny of the appeals before they are registered;
- (c) to require any appeal presented to the Appellate Bench to be amended in accordance with these rules or the relevant law;
- (d) subject to the directions of the Bench to fix the date of hearing of the appeals or other proceedings and issue notices thereof;
- (e) to order grant of copies of documents or proceedings to parties;
- (f) to grant leave to inspect the record of the Appellate Bench in a particular appeal case;
- (g) to dispose of all matters relating to the service of notices or other processes, application for the issue of fresh notice or for extending the time for or ordering a particular method of service on a respondent including a substituted service by publication of the notice by way of advertisement in the newspapers;

- (h) to requisition records from the custody of any adjudicating authority;
- (i) to maintain record of appeal cases received by the Appellate Bench in good order for a period of at least ten years;
- (j) to maintain a proper record of the appeals filed; and
- (k) to maintain a proper record of the documents which are destroyed after completion of a period of ten years from the date of decision on an appeal.

PART - VI

GENERAL PROVISIONS

27. **Language of Appellate Bench.**—(1) The proceedings of the Appellate Bench shall be conducted in English or Urdu.

(2) Appeal, application, representation, document or other matters contained in any language other than English or Urdu shall only be admissible where a true copy of translation thereof in English or Urdu accompanies the same and in the manner as deemed appropriate by the Appellate Bench.

28. **Fee.**—(1) Unless otherwise directed by the Commission, the fee specified in the Schedule I shall be paid to the Commission, in the form of bank challan or a bank draft in favour of the Commission, at the time the relevant document, request or application is lodged or made.

29. **Plural remedies.**—A memorandum of appeal shall not seek relief or reliefs therein against more than one order unless the reliefs prayed for are consequential.

30. **Order to be signed and dated.**— (1) Every order of the Appellate Bench shall be signed and dated by the Members comprising the Bench who may, subject to recording of reasons in writing, pass interim orders or injunctions in the interest of justice.

(2) The order shall be pronounced in the sitting of the Appellate Bench or at any time as the Appellate Bench may deem fit.

31. **Service of documents.**— (1) Personal service of a document may be effected—

- (a) by leaving with the person to be served a copy of the document; or

- (b) in such other manner as may be agreed between the party serving and the party to be served.

(2) Where, by virtue of any provision of these rules, a document is required to be served personally on any person and is unable to be so served, the party serving may make an application to the Appellate Bench for an order for substituted service of the document.

(3) The Appellate Bench may, if it appears that it is impracticable for any reason to serve that document personally on that person, make an order for substituted service of that document and direct the steps to be taken to bring the document to the notice of the person to be served.

(4) Any document required to be sent to or served on any person for the purpose of any proceedings under these rules, other than by personal service, may be,—

- (a) delivered personally at his appropriate address;
- (b) sent to him at his appropriate address by ordinary post or through courier service; or
- (c) sent to him by facsimile or electronic mail or other similar means.

(5) Where —

- (a) a document is to be served by the Appellate Bench; and
- (b) the Appellate Bench is unable to serve it, the Appellate Bench shall send a notice of non-service, stating the attempted method of service, to the other parties to the proceedings.

(6) Where it appears to the Appellate Bench that there is a good reason to authorise service by a method not permitted by these rules, the Appellate Bench may, on the request of a party or of its own initiative, make an order permitting and specifying an alternative method of service, and specifying when the document is deemed to be served.

(7) The Appellate Bench may dispense with service of a document if the interests of justice so require.

(8) A document which is sent or served in accordance with these rules shall, except where express provision has been made, be treated as if it had been received by or served on that person, —

- (a) in the case of personal delivery, on the day of delivery;
- (b) when sent by ordinary post, on the second working day after it was posted;
- (c) in the case of a facsimile transmitted on a working day before 4 p.m. on that day, or in any other case, on the working day after the day on which it is transmitted; or
- (d) in the case of electronic mail or similar means, on the second working day after the day on which it is transmitted.

(9) If a document (other than a facsimile) is served after 5 p.m. on a working day or on any day other than a working day, the document shall be treated as having been served on the next working day.

(10) For the purposes of sub-rule (4) and subject to sub-rules (11) and (12), the appropriate address of a person shall be, —

- (a) in the case of an appellant, the address for service stated in his notice of appeal;
- (b) in the case of the Commission, the address for service stated in its defence;
- (c) in any other case, the usual or last known address of the place of residence or business of the person, or such other address as may be subsequently notified to the Appellate Bench.

(11) Anything required to be sent to or served on a body corporate is duly sent or served if it is sent to or served on the chairman or president of the body or the secretary, treasurer or other similar officer thereof at its registered or principal office for the time being.

(12) Anything required to be sent or delivered to or served on a partnership is duly sent, delivered or served if it is sent or delivered to or served on any one of the partners for the time being.

(13) The Registrar, —

- (a) shall, at the request of the Appellate Bench; or
- (b) may, at the request of any party,

certify the steps taken to serve a document pursuant to these rules, including the date and manner of service.

32. **Communication of orders.**—A copy of the duly signed order passed by the Appellate Bench shall be communicated to all the parties.

SCHEDULE I
[rule 28]

TABLE OF FEES

1.	For filing of memorandum of appeal	Rs. 50,000/-
2.	For each issue of summons	Rs. 500/-
3.	For filling an application for interim relief	Rs. 25,000/-
4.	For inspection of record relating to the pleadings	Rs. 500/-
5.	For copies per page of the record pending before the Appellate bench	Rs. 100/-
6.	For certified copy of the order passed by the Appellate Bench	Rs. 1000/-

SCHEDULE II
[rule 7]

Form – A

Form-A shall be appended to the appeal by the appellant giving the following particulars:

(1) Title : A .B .— Appellant

versus

CD...and others Respondent(s)

(2) Particulars of the appellant:

- (a) Name of the appellant;
 - (b) In case of a company, address of registered office, in other cases mailing address for service of all notices;
 - (c) Telephone/Fax number and E-mail address, if any.
- (3) Particulars of the respondent(s)
- (a) Name of the respondent(s)
 - (b) In case of a company, address of registered office, in other cases mailing address for service of all notices;
 - (c) Telephone/Fax number and E-mail address, if any.

Signatures of the Appellant or his authorized representative

(Name in Block Letters)

2. For use in the Appellate Bench's office:
- (a) Date of presentation before the Registrar
 - (b) Date of receipt by post
 - (c) Registration number
 - (d) Signature of the Registrar

FORM-B

**BEFORE THE APPELLATE BENCH NO. _____ COMPETITION
COMMISSION OF PAKISTAN**

A .B.—Appellant(s)

versus

CD...and other Respondent(s)

Appeal under section 41 read with section(s) (specify the relevant provisions invoked in the appeal).

1. Jurisdiction of the Appellate Bench

The appellant declares that the subject matter of the appeal falls within the jurisdiction of the Appellate Bench.

2. Limitation

The appellant further declares that the appeal is within the limitation period as prescribed in section 41.

3. Facts of the case and the details of the orders against which appeal is preferred:

The facts of the case are given below:

(give a concise statement of facts and grounds of appeal against the specific order in a chronological order, each paragraph containing as nearly as possible, a separate issue or fact).

4. Relevant provisions of law

(Reference must be made to all the relevant provisions invoked and to be relied upon in the appeal).

5. Legal grounds

(Give all the legal grounds with reference to the law they are based upon).

6. Interim order, if prayed for

(Give here the nature of the interim order prayed for and reference to the application No. _____ attached with the appeal in this regard).

7. Relief sought

In view of the facts mentioned in paragraphs 3, 4 and 5 above, the appellant prays for the following relief: (Specify the relief(s) sought, explain the grounds for relief(s) and the legal provisions, if any, relied upon).

8. Matter not pending with any other court etc.

The appellant further declares that the matter regarding which this appeal has been made is not pending before any court of law or any other authority or any other Tribunal.

(3) Where the Inquiry Officer is satisfied that the accused is hampering, or attempting to hamper, the progress of such enquiry, he shall record his finding to that effect and proceed to complete the same in such manner as may be deemed proper in the interest of justice.

(4) Upon completion of the aforementioned steps the Inquiry Officer shall submit a report in writing to the Commission stating the findings against or in favour of accused within thirty days from the date of his appointment under sub rule (1).

5. **Powers of the Inquiry Officer.**—The Inquiry Officer shall have power to,—

- (a) summon and enforce attendance of concerned persons and examine them on oath;
- (b) require the discovery and production of any document;
- (c) receive evidence on affidavit; and
- (d) record evidence.

6. **Place of the enquiry.**—The Inquiry Officer shall conduct enquiry at such place as may be deemed fit by the Commission.

7. **Order to be passed upon a finding.**—Every finding recorded by the Inquiry Officer under sub-rule (4) of rule 4 shall be submitted to the Commission and if the Commission, after giving him an opportunity of being heard on such date as may be specified in the notice finds that the exercise of power was vexatious, excessive or with *mala fide* intent, the accused shall be dismissed from service and shall also be liable to prosecution as provided for in sub-section (3) of section 35 of the Ordinance.

[No. 10 (1) SY/CCP/RULES-CONT. INQUIRY/07.]

S. R. O. 401(I)/2008.—In exercise of the powers conferred by section 55 read with sub-section (5) of section 5 of the Competition Ordinance, 2007 (LII of 2007), the Competition Commission of Pakistan, with approval of the Federal Government, hereby makes the following rules, namely:—

The Competition Commission (Extension in Exemption) Rules, 2007

1. **Short title, commencement and application.**—(1) These rules may be called the Competition Commission (Extension in Exemption) Rules, 2007.

(2) They shall come into force at once.

(3) These rules shall apply to all the undertakings which are party to a prohibited agreement and have been granted an exemption under section 5 of the Ordinance.

2. **Definitions.**—(1) In these rules, unless there is anything repugnant in the subject or context,—

- (a) “applicant” means a party to a prohibited agreement who have filed an application under sub-section (5) of section 5;
- (b) “concerned undertaking” means the undertaking seeking extension in exemption under these rules;
- (c) “confidential information” means commercial or technical information the disclosure of which would, or might, in the opinion of the Commission, significantly harm the legitimate business interests of the undertaking to which it relates;
- (d) “order” means the order passed under rule 6 for grant of extension in terms of sub-rule (2) of rule 5; and
- (e) “Ordinance” means the Competition Ordinance, 2007 (LII of 2007).

(2) Words and expressions used but not defined herein, shall have the same meanings as are assigned to them in the Ordinance.

3. **Who can apply.**—(1) An application for extension in the exemption granted with respect to a prohibited agreement under sub-section (5) of section 5 of the Ordinance, shall be made (jointly or otherwise) by the following, namely:—

- (a) where the applicant is an individual, by the individual;
- (b) where the applicant is a company or other body corporate, by a duly authorized officer of that company or body corporate;
- (c) where the applicant is a partnership firm, by a partner of that firm; and
- (d) in any other case, by the concerned undertaking.

(2) If a joint application is made, the application shall be regarded as being made to the Commission by or on behalf of all the applicants. A joint

6. **Orders of the Commission.**—(1) The Commission may.—
- (a) issue an order of extension in terms of sub-rule (2) of the rule 5, and if so deemed necessary or expedient under the circumstances, impose in its discretion, appropriate conditions or obligations subject to which an extension is to have an effect; or
 - (b) refuse to grant the extension applied for.
- (2) An order may provide.—
- (a) that breach of a condition imposed by the order has the effect of canceling the extension granted;
 - (b) that if there is a failure to comply with an obligation imposed by the order, the Commission may, by notice in writing, cancel the extension granted; or
 - (c) that the Commission may cancel the extension in respect of exemption if it considers that a particular agreement is not the one to which section 9 of the Ordinance or sub-rule (2) of rule 5 applies.
- (3) An order may provide the facts and reasons for grant of the extension and the period of extension.
- (4) The Commission shall give its decision on an application made under these rules within forty five days of receipt of such application.

7. **Appeals.**—A person aggrieved by any decision or order of a Member or authorized officer of the Commission in respect of an extension application may prefer an appeal to the Appellate Bench of the Commission in accordance with the Competition Commission (Appeal) Rules, 2008.

(2) The Appellate Bench, while deciding an appeal may also grant the extension requested in the exemption from a prohibited agreement if it can be conclusively demonstrated that a refusal to grant the exemption requested would result in the failure of an undertaking or undertakings and the economic loss arising from the failure or failures far outweigh the benefits of increased competition consequent upon such refusal.

SCHEDULE

[See sub-rule (1) of rule 4]

PART-1

1. Information about the applicant and the other parties to the agreement

- 1.1. Full name, address (registered office, where appropriate, and principal place of business, if different), telephone and fax numbers and e-mail address (where available) of the applicant and a brief description of the nature of its business. If the applicant is a partnership, sole proprietor or other unincorporated body trading under a business name, give the name and address of the partners or proprietor. Quote any reference which should be used.
- 1.2. Full name, address, telephone and fax numbers and e-mail address (where available) of any representative who has been authorised to act for the applicant, indicating whom they represent and in what capacity (*e.g.* a solicitor).
- 1.3. Where the declaration to be made in the form set out in Part 2A is signed by an advocate or other representative of the applicant, provides written proof of that representative's authority to act on the applicant's behalf.
- 1.4. If a joint application is being submitted, state the full name of the joint representative, his address (registered office, where appropriate, and principal place of business, if different), telephone and fax numbers and e-mail address (where available). Where the joint applicants have appointed separate representatives, an explanation must be included as to why a joint representative could not be appointed. The particulars listed in this paragraph must then be furnished for each representative.
- 1.5. Provide details of the steps taken or to be taken to notify all the other parties to the agreement or conduct which is the subject of the application of whom the applicant is aware that the application is being submitted. Indicate whether those parties have received a copy of the application and if so, whether confidential information was included in the copy of the application. If the applicant considers that

it is not practicable to notify the other parties of the application, give the reasons why it is not practicable.

- 1.6. Identify the groups to which each party to the agreement or conduct which is the subject of the application belongs. For the purposes of the information required by this Form, group relationship exists where one undertaking—
 - 1.6.1. owns more than half the capital or business assets of another undertaking;
 - 1.6.2. has the power to exercise more than half the voting rights in another undertaking,
 - 1.6.3. has the power to appoint more than half the members of the supervisory board, board of directors or bodies legally representing the undertaking; or
 - 1.6.4. has the right to manage the affairs of another undertaking.
- 1.7. An undertaking which is jointly controlled by several other undertakings (e.g. a joint venture) should be treated for the purpose of this application as being part of the group of each of these undertakings.

2. Purpose of the application

- 2.1 Specify that the application is being made in relation to the extension of an exemption order earlier granted by the Commission.
- 2.2 State the date of expiry of the existing exemption and the reasons why an extension is sought. Also give details of any changes that have occurred in the relevant market and in the agreement itself since the grant of the exemption. Specify how any changes impact on the fulfillment by the agreement of the conditions set out in section 9 of the Ordinance. Also enclose a certified copy of the decision granting the exemption.

3. Details of the agreement or conduct

- 3.1. A brief description of the agreement or conduct which is the subject of the application (including the nature, content, purpose, date and duration).

- 3.2. If the application is made in relation to a written agreement, attach either an original of the most recent text of that agreement, or a copy certified by the Applicant to be a true copy of the original. If the application is made in relation to an agreement which is not written, applicants are to provide a full description of the agreement. If the application is made in relation to conduct, provide a full description of that conduct.
- 3.3. Identify any provisions in the agreement or aspects of the conduct which may restrict the parties in their freedom to take independent commercial decisions or to act on those decisions.
- 3.4. If the application relates to standard form terms and conditions, indicate the number of agreements expected to be entered into on those terms and conditions.

4. Information on the parties to the agreement or conduct and the groups to which they belong

- 4.1. The turnover in the last business year, of each party to the agreement or conduct which is the subject of the application and the consolidated turnover for the group (within the meaning of 1.6) to which each party belongs. Indicate what proportion of the turnover figures are attributable to the relevant product or geographic market.
- 4.2. Attach the most recent annual report and accounts (or equivalent for unincorporated bodies) for each party to the agreement or conduct and the most recent annual report and accounts for the ultimate parent company of these undertakings.
- 4.3. List the product or service market in which each party to the agreement or conduct and each member of the groups (within the meaning of 1.6) to which they belong are active. Where there are a large number of products and services, please pay particular attention to any markets in which the combined undertakings have significant markets shares, or the largest proportions of the turnover.

5. Other information

- 5.1. Any other information which the applicant considers helpful. In particular, if you believe that the impugned agreement:
 - (a) does not have an appreciable adverse effect on competition in Pakistan please state your reasons and provide evidence. Note,

however, that certain agreements, such as those relating to price-fixing, will be very nearly always regarded as having an appreciable adverse effect;

- (b) has net economic benefits that would not be achieved except for the agreement. In determining whether net economic benefits exist, the Commission will consider whether the agreement contributes to improving production or distribution or promoting technical or economic progress in a way which does not impose restrictions which are not indispensable to the attainment of those objectives and which would not afford the possibility of eliminating competition substantially. Applicants should provide studies or documents which demonstrate the feasibility of operation of the agreement and the benefits likely to result from continued operation of the agreement and the adverse effects arising from its non-operation.

5.2. Attach evidence of the payment of fees.

6. Supporting documents

Ensure that the applicant has attached the following documents (where relevant) to the application:

- 6.1. if 1.3 of this Form applies, written proof of the representative's authority to act on the applicant's behalf;
- 6.2 a copy of the decision granting the exemption;
- 6.3. if 3.2 of this Form applies with regard to a written agreement, either an original or certified copy, of the most recent version of the text of the agreement which is the subject of the application;
- 6.4. the most recent annual report and accounts (or equivalent for unincorporated bodies) for each party to the agreement or conduct and the most recent annual report and accounts for the ultimate parent company of these undertakings (see 4.1 of this Form); and
- 6.5. any feasibility studies, documents or other evidence as per para 5.1 of this Form.

PART-2

Under clauses (c) and (d) of sub-section (1) of section 38 of the Ordinance, it is an offence, punishable with fine to provide information which is false if the undertaking or person providing it knows that it is false. If the undertaking or person is a body corporate, its officers may be guilty of an offence punishable under section 38 of the Ordinance.

DECLARATION

The undersigned declare and confirm that all information given in the Form and all pages annexed hereto are correct to the best of his knowledge and belief, and that all estimates are identified as such and are their best estimates based on the underlying facts and the undersigned is fully aware of the consequences as stipulated in Para 1 of Part-2.

Signature

Name (in block capitals):

Designation:

Date:

[No. 10(1)SY/CCP/RULES-EXEMPTION/07.]

MOHAMMED HAYAT JASRA,
Secretary.