



**Competition
Commission of Pakistan**
Creating a level playing field

CC "all other things being equal" ETERIS PARIBUS

Official Newsletter of the Competition Commission of Pakistan

January - June 2022

TABLE OF CONTENTS

- 03 Enforcement Actions & Initiatives
- 12 Curtailing Deceptive Marketing Practices
- 19 Research Initiatives
- 21 Advocating the Law
- 25 International Affairs

“Show what you sell and say what you mean”

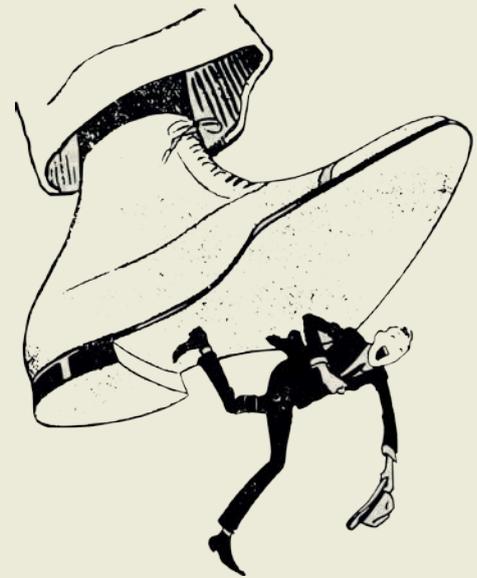
- CCP Chairperson

Enforcement Actions & Initiatives

SECTION 3 Abuse of Dominant Position

SECTION 4 Prohibited Agreements

§ 3 of the Act deals with abuse of dominant position and § 4 prohibits agreements between undertakings and decisions by association of undertakings that can distort competition in a market. The Cartels & Trade Abuse Department investigates potential violations of § 3 & 4 of the Act and recommends relevant actions to the Commission.



KEY FIGURES - JAN TILL JUNE 2022



Electronics Goods Firms Penalised for Resale Price Maintenance



The Commission initiated an enquiry under Section 37(1) of the Competition Act 2010 into the alleged violation of Section 4 of the Act by the manufacturers, distributors/dealers of electronic appliances. To gather the evidence of suspected anti-competitive conduct, the Commission's authorized teams of officers conducted search and inspections at the premises of two major manufacturers, Haier and DEL/Dawlance.

The impounded documents contained price circulars for dealers and price control policies through which both Haier and DEL/Dawlance were restricting their dealers from selling below a certain price and providing any discounts or package deals to consumers. In case the dealers breached these policies/circulars, the companies would impose penalties/sanctions

on them. Such a practice is called Resale Price Maintenance (RPM) and is prohibited under Section 4 of the Act.

Section 5 of the Act empowers the Commission to grant exemption to certain prohibited agreements if the benefits to consumers outweigh the adverse effects on competition. The enquiry committee learnt that the abovementioned companies never approached the Commission for seeking exemption under Section 5.

”

'Agreements substantially contribute to improving production or distribution, promoting technical or economic progress, while allowing consumers fair share of the resulting benefit, or the benefits of the agreements clearly outweigh the adverse effects of absence or lessening of competition.' [SECTION 9 of the Act]

THE ORDER

In its order, the Commission observed that RPM agreements in any form including restricting discounts and imposing minimum/maximum pricing levels are anti-competitive and prohibited under Section 4 of the Act. It observed that since discount and package deals are an important part of the negotiating process, restricting the same and fixing prices eliminates the consumers' bargaining power. Moreover, RPM can also harm consumers interests by resulting in price hike of products. Also, the argued pro-competitive effects could by no means be upheld and justified where the parties imposed penalties/sanctions on its dealers.

The order found Haier and DEL/Dawlance in violation of Section 4 of the Act for entering RPM arrangements with its dealers and imposed the following penalties:

THE PENALTY

➔ *For DEL/Dawlance, considering its change in management, which discontinued the RPM agreement/practice, the fact that it voluntarily committed to refund the penalties to its dealers and had a cooperative and compliance-oriented approach throughout the proceedings, the Commission restricted the penalty amount to PKR 100 million, not exceeding 1% of its annual turnover in FY 2020-21. The Commission, therefore, held that the conduct, circumstances, approach and the duration of the contravention did not justify the same treatment for both parties.*

➔ *The order said that whereas Haier was 'blowing hot and cold' throughout the proceedings, and although its conduct called for a much higher and stricter penalty, considering the violation is a case of first instance for Haier and in order to promote a compliance-oriented approach, with good faith, the Commission restricted the penalty amount to PKR 1 billion, not exceeding 3% of its annual turnover in FY 2020-21.*

Companies Urged to Exercise Caution

Sensing the likelihood of RPM mode of businesses being rampant in the markets, the Commission cautioned all retailers, suppliers, manufacturers, dealers and any other party in all sectors as follows:

- i RPM Agreements are 'by object' anti-competitive in nature and a violation of Section 4(2) (a) of the Act. The Commission considers the same to be a serious violation of competition law. Any party wishing to implement the same must notify such agreements/arrangements and first seek clearance from the Commission through exemption under Section 5 of the Act addressing the efficiencies specified under Section 9 of the Act. In the absence of such exemption, such agreements/arrangements are void.
- ii Forms of RPM include imposing minimum and maximum pricing restrictions and discount restrictions.
- iii If a party has been involved in an RPM arrangement, it may benefit from lenient treatment by coming forward and filing a leniency application.
- iv Parties cannot, directly or indirectly, impose any sanction, monitor compliance and/or coerce other parties.

INFOGRAPHICS

In the matter of Show Cause Notices issued to M/s. DEL Electronics (Pvt) Limited and M/s. Haier Pakistan (Pvt) Limited.



Competition Commission of Pakistan

www.cc.gov.pk



BACKGROUND

- ➔ A general market survey was carried out by a team of the Commission's officers to look into the business practices of electronic appliance dealers, and during the course of the survey, some price control circulars of DEL Electronics (Private) Limited and Haier Pakistan (Private) Limited were found.
- ➔ Four circulars of Haier pertained to the imposition of a fixed price list for products and the imposition of penalties on some dealers for failing to adhere to the fixed price lists.
- ➔ For DEL, two similar circulars were found whereby dealers were penalized for selling appliances below the prices fixed by DEL.



DATE OF ORDER

11 March 2022



BENCH MEMBERS

Ms. Rahat Kaunain Hassan
Mr. Mujtaba Ahmed Lodhi



CONCERNS AND COMPLAINT

- ➔ The Commission had initiated an enquiry under Section 37(1) of the Act into the alleged contravention of Section 4 of the Act by Haier and DEL/Dawlance for entering into Resale Price Maintenance (RPM) arrangements with its dealers, which is a form of price-fixing under Section 4(2)(a) of the Act and by object an anti-competitive practice.



SECTOR/MARKET

Electornic Appliances



ENTER AND SEARCH INSPECTION

- ➔ To gather evidence, search and inspections were also carried out at both Haier's and DEL/Dawlance's premises under Section 34 of the Act.
- ➔ CCP found evidence of price circulars sanctioning dealers and price control policies in place through which both Haier and DEL/Dawlance had restricted its dealers from selling below a certain price, provide any discounts or package deals and imposed penalties/sanctions on their dealers to monitor and implement their respective pricing policies.



NATURE & SECTION VIOLATION

Prohibited Agreement in violation of Section 4 of the Act

FINDINGS OF ENQUIRY REPORT

CONCERNING TO DEL



- ➔ DEL through its Price Control Policy had imposed a restrictive trading condition barring its dealers from selling refrigerators and split ACs below a certain price, which prima facie is violation of sub clause (a) of subsection (2) read with subsection (1) of Section 4 of the Act.
- ➔ DEL found involved in the fixing and imposition of labor rates for fitting of split AC's which is prima facie a restrictive trading condition in terms of sub clause (a) of subsection (2) read with subsection (1) of Section 4 of the Act.
- ➔ DEL found engaged in setting rates for stabilizers and prohibiting the provision of any gift items other than those provided by the company which prima facie restrictive trading condition in terms of sub clause (a) of subsection (2) read with subsection (1) of Section 4 of the Act.



PARTIES

Complainant:
On its own

Respondents:
1. Del Electronics
2. Haier Pakistan



FINDINGS OF ENQUIRY REPORT CONCERNING TO HAIER

- ➔ Haier has prima facie found entered into the practice of resale price maintenance through its Price Control Policy whereby dealers are prohibited from selling Haier products below the company's fixed priced which prima facie violation of sub clause (a) of subsection (2) read with subsection (1) of Section 4 of the Act.
- ➔ Haier found involved in the fixing and imposition of labor rates for fitting of split AC's which is prima facie a restrictive trading condition in terms of sub clause (a) of subsection 2 read with subsection (1) of Section 4 of the Act.
- ➔ Haier appears to be engaged in the practice of restricting its dealers from providing customers giveaways and/or discounts on allied products including: stabilizers, circuit breakers, time delay breakers and stands for fridges which prima facie restrictive trading condition in terms of sub clause (a) of subsection (2) read with subsection (1) of Section 4 of the Act.



ISSUES FRAMED BY THE BENCH

In light of the written submissions, arguments and evidence presented by the Undertakings, and the contents of the SCNS and the Enquiry Report, the following main issues arise in determining whether the Undertakings are in violation of Section 4 of the Act:

Whether the Relevant Market has been correctly defined in the Enquiry Report?

Whether the Respondents have violated the provisions of Section 4 of the Act in terms of price fixing/resale price maintenance?

FINDINGS OF THE BENCH

- ➔ The Bench held that the contravention is a hard-core restriction and serious violation of competition law.
- ➔ The bench held that RPM arrangements, in whatever form, i.e., inter alia restricting discounts, fixing the price and/or setting a minimum or maximum price floor/ceiling, clearly fall under Section 4(2)(a) of the Act, amounting to a fixation of the selling price of a product/good, and are to be treated by object as anti-competitive.



PENALTY IMPOSED

For **DEL/Dawlance**, considering its change in management, which discontinued the RPM agreement/practice, the fact that it voluntarily committed to refund the penalties to its dealers and had a cooperative and compliance-oriented approach throughout the proceedings, **CCP restricted the penalty amount to PKR 100 million, not exceeding 1% of its annual turnover in FY 2020-21**. CCP, therefore, held that the conduct, circumstances, approach and the duration of the contravention did not justify the same treatment for both parties.

Whereas, Haier was 'blowing hot and cold' throughout the proceedings. Nevertheless, although its conduct called for a much higher and stricter penalty, considering the violation is a case of first instance for Haier and in order to promote a compliance-oriented approach, with good faith, **CCP restricted the penalty amount to PKR 1 billion, not exceeding 3% of its annual turnover in FY 2020-21**.

★★★
PKR 1.1
BILLION



TO DOWNLOAD
THE ORDER

CONCLUSION AND DIRECTIONS

The Commission directs both DEL and Haier to:

- Deposit the penalty amount for contravention of Section 4(1) of the Act read with section 4(2)(a) thereof on account of RPM practices within thirty (30) days from the date of this Order.
- Refund all penalty amounts imposed by the Respondents to their respective dealers and provide copy of the receipts evidencing the same to the Commission within thirty (30) days from the date of this Order
- To cease and/or not repeat such conduct with immediate effect.

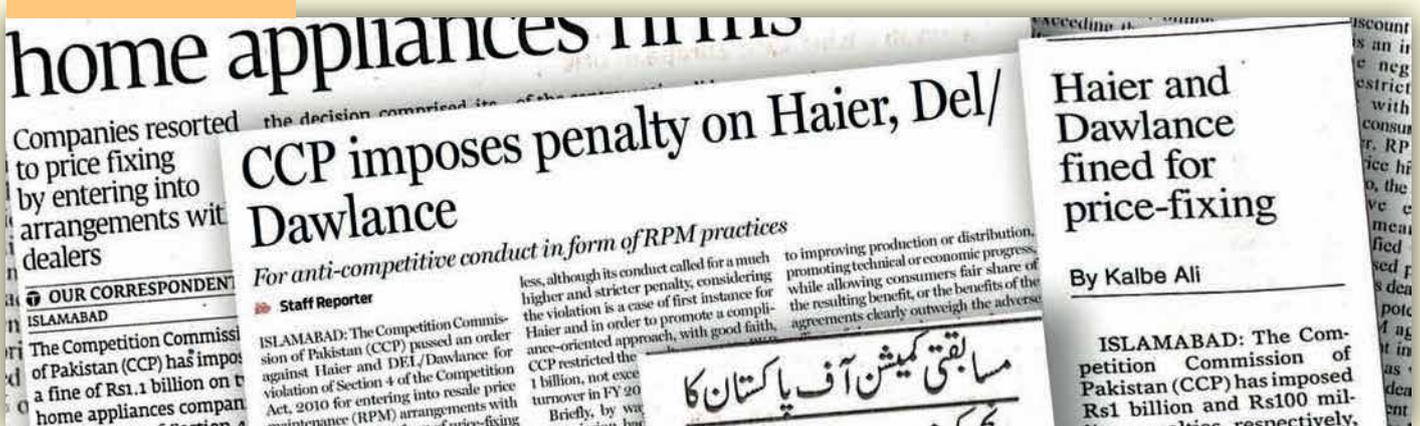


BENCH OBSERVATIONS ON RPM ARRANGEMENTS



- Forms of RPM include imposing minimum and maximum pricing restrictions and discount restrictions. Parties cannot, directly or indirectly, impose any sanction, monitor compliance and/or coerce other parties.
- In several jurisdictions reviewed (UK, Australia, EU, India and China), **RPM arrangements/practices have been heavily penalized** and are considered to be serious violations of competition law. In America, several States still prohibit RPM arrangements.
- The Bench cautioned that **RPM arrangements are by object anti-competitive in nature**, a violation of Section 4 of the Competition Act, and a serious violation of competition law. Any party wishing to implement the same must notify the Commission first and **seek clearance through exemption under Section 5** addressing the efficiencies outlined in Section 9. In the absence of such an exemption, such arrangements would be void.
- If a party has been involved in an RPM arrangement, it may benefit from lenient treatment by coming forward and filing a leniency application.
- The choice to offer forms of discount or package deals is an important part of the negotiating process with consumers, which should be left to dealers as per their own independent commercial decisions. This, coupled with fixed prices, diminishes consumer bargaining power.
- **RPM arrangements may result in price hikes** as dealers can charge a higher price well above the fixed price to consumers. It also may not ensure that dealers are investing their resources and any extra margins gained towards better services.
- **RPM may lead to stabilizing price levels and lowering price competition.** It can also allow competitors to reasonably predict prices of other competing products, hence, impacting inter-brand competition.
- Mere admission that such restrictions are an industry-wide practice does not absolve undertakings from any liability under the Act.

MEDIA COVERAGE



CCP's Order Terms Exclusivity Clauses in Concession Agreement as Anti-Competitive

Hascol Petroleum complained that the Civil Aviation Authority (CAA) had denied its request for allotment of land at the Jinnah International Airport (JIAP) Karachi for developing dedicated aircraft refueling services. In its complaint, Hascol mentioning a 'Sale of Fuel Hydrant System Agreement' that the CAA had entered with Shell Pakistan, Pakistan State Oil, and Total Parco Pakistan Limited in April 1994 under which no other party was allowed to use the current system or establish a new facility at JIAP.

The enquiry report observed that the 1994 agreement had granted exclusive rights to PSO, Shell and Total as operators for use of the Hydrant Fuel System for 30 years, apparently restricting competition in the relevant market. Before 1994 agreement, these three OMCs had also done an agreement in 1961 known as Eastern Joint Hydrant Agreement which was also, prima facie, a prohibited agreement and appear to give exclusive rights to Shell, PSO and Total to own, control and maintain the fuel tank forms for an indefinite period of time and apparently had closed the market to other potential competitors. Even though in 1961 agreement, third parties were allowed to access the system. But in the aftermath of 1994 agreement, that provision of allowing third parties had been rendered redundant.

The enquiry report established that both the 1994 and 1961 agreements were prohibited and were in violation of Section 4 of the Act. On the enquiry's recommendation, the Commission

issued Show Cause Notices issued to CAA and three OMCs.

The Commission's Order established that the exclusivity clauses in the abovementioned agreements were in contravention of the Act. It recognized the necessity of concession agreements in terms of mega-projects of national importance such as the airport fueling facilities and observed that the parties concerned must apply for Exemption under Section 5 & 8 of the Act at the agreement and execution stages.

Regarding the Complainant's request for allotment of land at JIAP, the Order established that the lease of land to any entity is a matter solely under the purview of CAA as the national aviation regulator. The Commission's mandate is to ensure and protect competition in the market and it will not step beyond the role assigned to it to benefit a particular competitor over another. Moreover, establishing parallel fuel farms or fuel delivery systems (hydrant or browser) at airports may not be feasible commercially. Hence, it is important for business entities to aggressively compete whenever opportunities present themselves.



Parties Required to Comply with CCP's Directions

- A. Parties that are signatories to the 1961 and 1994 Agreements shall apply for retrospective and prospective Exemption under Section 5 of the Act not later than thirty days from the date of this Order, failing which the exclusivity clauses in the 1994 & 1961 Agreements shall stand void as per Section 4(3) of the Act.
- B. CAA shall ensure that upon expiry of the 1994 Agreement on 20 May 2022, operation and management of both fuel farm and the fuel hydrant system, is opened for competition under a transparent, open, and inclusive process so that any market player willing to manage and operate these facilities is able to compete for it.
- C. The compliance reports must reach the Registrar of the Commission not later than 10 days after undertaking necessary actions required above.



The underlying principle justifying the grant of an exemption to an agreement containing restrictive clauses is that pro-competitive effects which the agreement results in will outweigh any distortion to competition law brought about by the same and in turn the public at large will benefit

INFOGRAPHICS

In the matter of show cause notice issued to M/s. Pakistan Civil Aviation Authority, M/s. Pakistan State Oil, M/s. Shell Pakistan limited and M/s. Total Parco Pakistan limited on complaint filed by M/s. Hascol Petroleum limited.



Competition Commission of Pakistan

www.cc.gov.pk

BACKGROUND



- In April, 1994 Civil Aviation Authority (CAA) entered into an **Agreement of Sale** (as the seller) with Respondent No 2, 3 and 4 (as the purchasers) for supply of fuel to aircrafts through a Hydrant System installed by it at Jinnah International Airport (JIAP) for a period of 30 years.
- Prior to 1994 Agreement, fuel was supplied under an agreement known as Eastern Joint Hydrant Agreement ('the 1961 Agreement') which allowed third parties access to the system upon payment of a throughput charge.
- Hascol Petroleum Limited file a formal complaint with the Commission against CAA for not allowing it to set and operate fueling facility for refueling aircrafts at JIAP, Karachi.



DATE OF ORDER

17 March 2022



BENCH MEMBERS

Ms. Shaista Bano
Mr. Mujtaba Ahmed Lodhi

CONCERNS AND COMPLAINTS



- It was alleged that the Respondents were not allowing the Complainant to operate a fueling facility at JIAP which is **restricting trading condition** in violation of Competition Law.
- **Respondent No 1 allegedly has granted exclusive rights**, in respect to the use of the fueling facility, to a consortium comprising of Respondent No 2, 3 and 4 through Agreement of Sale.
- The **Consortium enjoys a favorable position at the cost of healthy competition** within the industry.
- The **Agreement of Sale prohibits** 3rd parties from engaging in the supply of fuel through the fuel hydrant system at JIAP.



SECTOR/MARKET

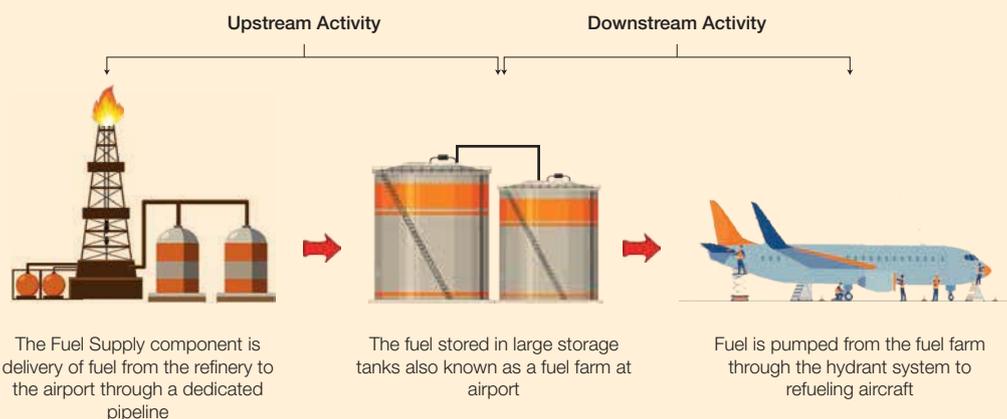
Airport Fuel Infrastructure



NATURE & SECTION VIOLATION

Prohibited Agreement in violation of **Section 4** of the Act

OVERVIEW OF SECTOR & SUPPLY CHAIN



PARTIES

Complainant:
Hascol Petroleum Limited

- Respondents:
1. Pakistan Civil Aviation Authority
 2. Pakistan State Oil
 3. Shell Pakistan Limited
 4. Total Parco Pakistan Limited

FINDINGS OF ENQUIRY REPORT

- The Enquiry Committee concluded that the 1994 **Agreement of Sale** ostensibly restricting competition in the relevant market and therefore, is prima facie a prohibited agreement in terms of Section 4(1) read with 4(2)(a) of the Act.
- It further concluded that the **1961 Agreement appears to confer exclusive rights on** Respondents 2, 3 and 4 to own, control and maintain the fuel tank farm for an indefinite period of time, **thus ostensibly closing this market to other aspirants or potential competitors** in prima facie contravention of Section 4(1) read with 4(2)(a) of the Act.
- The Enquiry Committee, in light of the findings, recommended the Commission to initiate proceedings against Respondents 1, 2, 3 and 4 for the 1994 Agreement and against Respondents 2, 3 and 4 for the 1961 Agreement under Section 30 of the Act.

FINDINGS OF THE BENCH

- The Bench held that the 1961 Agreement conferred exclusive rights on the Consortium for ownership, operation and maintenance of fuel farms facilities for an indefinite period of time, hence preventing other Oil Marketing Companies (OMCs) to compete for the same.
- Whereas, the 1994 Agreement conferred exclusive rights on the Consortium as operators for use of the fuel Hydrant System at JIAP Karachi, hence preventing competition for other OMC's that were willing to supply jet fuels to airlines at JIAP.
- Therefore, both agreements had the effect of excluding competitors for entering into the relevant market therefore prohibited under section 4(2)(a) read with Section 4(1) of the Act.
- The Bench observed that parallel fuel farms or fuel delivery systems at airports may not be feasible commercially and it is important for business entities to aggressively compete whenever opportunities present themselves.

ISSUES FRAMED BY THE BENCH

- Whether the Relevant Market has wrongly been defined by Enquiry Committee by not taking into account the fuelling system as a substitute of Hydrant System at JIAP Karachi?
- Whether the 1961 Agreement and 1994 Agreement are in violation of the provisions of Section 4 of Competition Act?



PENALTY IMPOSED

No penalty was imposed on any Respondents, as the Bench granted time to the Respondents and the Respondents committed to submitting an exemption application for the impugned agreements under Section 5 read with Section 9 of the Competition Act.



TO DOWNLOAD
THE ORDER

CONCLUSION AND DIRECTIONS



- 1 The parties to the 1961 and 1994 Agreement shall apply to the Commission for retrospective and prospective exemption under Section 5 of the Act as per applicable regulations no later than thirty (30) days from the date of this Order.
- 2 Failing which the exclusivity clauses in the 1994 Agreement and the 1961 Agreement shall stand void as per Section 4(3) of the Act.
- 3 CAA shall ensure that upon expiry of the 1994 Agreement on 20 May, 2022, operation and management of both the fuel farm and the fuel hydrant system at JIAP, is opened for competition under a transparent, open, and inclusive process.
- 4 All Respondents shall file compliance reports in the matter with the Registrar to the Commission not later than ten (10) days after undertaking necessary actions required above.

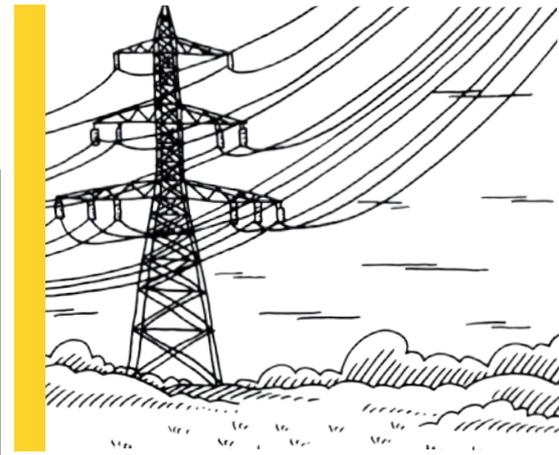
PESCO on the Hook for Abusing Dominance

The Commission conducted an enquiry against the Peshawar Electric Supply Company (PESCO) for, *prima facie*, applying discriminatory conditions, price discrimination, and unfair trading terms in granting the Right of Way (ROW) to different cable service providers.

Cyber Internet Services and Nayatel Private Limited alleged that that PESCO increased rent for the Right of Way (ROW) service, through its electric poles, and imposed discriminatory conditions within the geographic boundaries of Peshawar. While referring to the new renting policy approved by PESCO in the 145th meeting of its BoD, it was mentioned that the rental charge was increased from PKR. 10/pole/month to PKR. 100/pole/month only for aerial optical fiber cable operators (AOFC) along with some ancillary conditions. The enquiry committee found PESCO to be dominant as it held 100% shares in the relevant market. Thus, by imposing ancillary conditions on top of charging a rent for

use of the relevant service, PESCO has done so unilaterally because of its seemingly absolute control over the facility. The said imposition being unrelated to the nature of the contract, was neither necessary nor proportional in terms of securing the PESCO's commercial interest and was therefore ostensibly an unfair trading condition in terms of Clause (a) of subsection (3) when read with Sections 3(2) and 3(1) of the Act

The enquiry further established that PESCO discriminated between the combo triple service providers and cable providers by charging the former a different rent for a common transaction i.e. right to passage through its owned facility. Although, PESCO provided various reasons for carrying out such price Policy, yet it was unable to satisfy the enquiry committee on the anti-competitive effects. Therefore, in the absence of an objective justification, PESCO appeared to be in, *prima facie*, contravention of Section 3(3)(a) and 3(3)(b) each read with Sections 3(2)&(1) of



the Act. The enquiry also held that the PESCO's charging of different rate to the combo service providers may serve as a precedent for other DISCOs that might follow the same practice.

As per the recommendations of the Enquiry Committee, the Commission initiated proceedings against PESCO under Section 30 of the Act.



Search & Inspections

Suspected Cartel in the Power Sector Being Probed

As part of an ongoing investigation, the Commission carried out search and inspection of three companies engaged in the supply of steel structures to power distribution companies (DISCOs) across Pakistan on the suspicion of facilitating the possible bid-rigging/cartelisation in the procurement of steel structures by various DISCOs.

The Commission's, three different teams of officers entered and searched the premises of the respective undertakings under section 34 of the Act and seized pertinent record. The undertakings fully cooperated by handing over the documents and computer-stored information relating to the suspected role in the alleged anti-competitive activities.

During the investigation, the enquiry analyzed the five years (2015 – 2020) tender documents provided by the DISCOs which revealed that only a few companies participated in the bidding process of steel structures floated by DISCOs apparently in a collusive manner, which may constitute, *prima facie*, contravention of Section 4(2)(e) of the Act. Data available with the enquiry also indicated that the companies quoted almost identical rates with other parties in the bidding and in some instances purchased the bidding document but did not participate in the respective tenders thus raising suspicion of collusion. Upon conclusion of the enquiry report, the Commission may initiate action against the said undertakings.

Two Undertakings Face CCP's Enquiry for Freight Rate Fixing

As part of an enquiry against two undertakings for the fixing and circulating freight charges at the country's two leading seaports, the Commission carried out search and inspection of the offices for their alleged involvement in the suspected anti-competitive activity.

The search and inspections were carried out under Section 34 of the Act during which the office bearers of the undertakings fully cooperated with the Commission's search teams by handing over the documents and computer-stored information. Two different teams of authorized officers entered and searched the premises of the respective undertakings and seized pertinent information. During the initial fact finding and information gathering, the Commission observed that the respective undertakings float the freight lists (self-issued) containing freight rates for different locations in Karachi, which could be, *prima facie*, violation of the Act.

Data available with the Commission also indicated that the undertakings circulated the 'rate lists' among their member and revised these charges because of increase/decrease in the prices of correlated economic variables. Such deliberations at the level of the said undertakings appear to be, *prima facie*, contravention of Section 4 of the Act.

The Commission's enquiry will analyze the data and submit its recommendations to the Commission. The Commission in its different orders has directed trade associations to refrain from indulging in anti-competitive activities, particularly cartelization and offering their platforms for exchanging and discussing commercially sensitive information of their members.



Curtailing Deceptive Marketing Practices

§ 10 of the Act addresses deceptive marketing practices. The Commission's Office of Fair Trade investigates potential violations of the § 10 of the Act. In several orders, companies were asked to avoid advertising deceptive claims about their products.



Companies Cautioned to Avoid Fake Weight Loss Claims

The Commission took notice of the prima facie deceptive marketing practices by 14 manufacturers of weight loss products for dissemination of false and misleading information to the consumers through exaggerated claims in their marketing strategies. After reviewing the marketing content, the Commission's enquiry recommended initiating proceedings against the undertakings for prima facie violation of Section 10 of the Act.

Citing health related data, the enquiry report observed that obesity has become a prominent cause of death the world over, especially in some developed countries. Being overweight may increase the chances of developing various diseases such as, type2 diabetes, high cholesterol, high blood pressure, coronary heart disease and certain types of cancer etc. In this situation, in order to earn profits, companies tend to publicize their weight loss products promising miraculous outcomes of their use within a short time period. Moreover, such products are often advertised without stating the potential side effects of a regular consumption or in case of any existing medical condition.

The Commission's order stated that market was rife with such products and companies usually followed identical practices and claims to publicize them without being regulated. . Therefore, the Commission thought it appropriate to issue guidelines instead of penalising specific companies. Taking inspiration from the guidelines issued by the Competition Bureau of Canada, the

Commission directed the undertakings engaged in the business of weight loss products to follow below guidelines:

- i** While substantiating weight loss claims, undertaking must possess and rely upon competent and reliable scientific evidence (test, analyses, research, or studies) that have been conducted and evaluated in an objective manner by qualified persons.
- ii** Testing must be adequate, proper and rigorous.
- iii** To ensure reliable results, the undertaking use the services of reputable laboratories to design and conduct testing of the products.
- iv** Not to include false or misleading representations for the public.
- v** If marketed through the use of testimonials or endorsed by an influencer, that should be true, accurately conveyed and provided by actual customers who have no material connection with the undertaking or disclosed their connection, otherwise.
- vi** Appropriate disclaimer must be included even about the possible side effects.

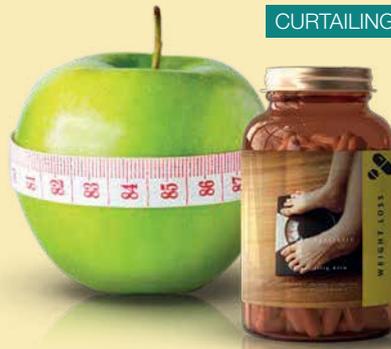
The Commission further directed all undertakings to modify their electronic, print or other advertising material to disclose and display: i) truthful claims ii) omit untrue claims iii) the presence of disclaimer within a period of 120 days from the date of this Order. Later on, a compliance report must also be filed not later than 180 days from the date of this Order.

”

For decades, through advertisements a fictitious impression about the weight loss products is created and the public is persuaded about the miraculous outcomes within a short time period but these products are advertised without mentioning the potential side effects due to regular consumption or in case of any existing medical condition.

INFORGRAPHICS

Deceptive marketing practices by Weight loss Product Manufacturing Companies



Competition Commission
of Pakistan

www.cc.gov.pk

BACKGROUND



- The Commission took suo-motto notice against Weight Loss Products Manufacturers for their alleged deceptive marketing practices.
- The Commission initiated proceeding under Section 37(1) of the Act against several Companies (14 in total) pertaining to their alleged deceptive behaviour in violation of Section 10 of the Act.

CONCERNS AND COMPLAINTS



- Respondents were allegedly involved in dissemination of false and misleading information to consumers about their weight loss products.
- Respondents made absolute and exaggerated claims regarding their product qualities and properties.
- The products were advertised without mentioning the potential side effects that may occur.

FINDINGS OF ENQUIRY REPORT

- The Enquiry Report concluded that the high sounding and absolute claims by all 14 Respondents had not been substantiated and hence, appeared to be false.
- The Respondents failed to provide reasonable basis or scientific evidence for its high sounding claims.
- Furthermore, the conduct of the Respondents was also capable of harming the business interest of others in the relevant market.
- The Enquiry Committee, based on the findings, recommended initiation of proceedings against the Respondents under Section 30 of the Act.

SHOW CAUSE NOTICE

- In light of the findings and recommendation of the Enquiry Committee, the Commission issued a show cause notices to all 14 respondents in accordance with the law.



DATE OF ORDER

18 March 2022



BENCH MEMBERS

Shaista Bano
Bushra Naz Malik



SECTOR/MARKET

Pharmaceutical



NATURE AND SECTION VIOLATION

Deceptive Marketing Practices, Section 10 of the Competition Act



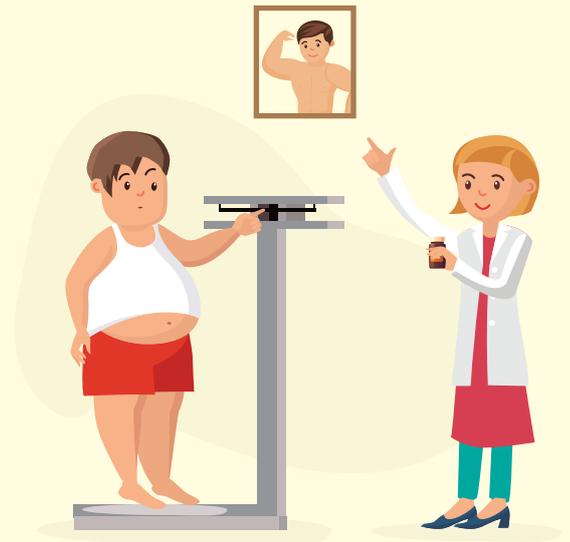
PARTIES

MPC Health and Foods
Herb Health Club
Hemani International
Al-Mughni Herbs
Herbs Man Laboratories
Royal Leaf International
Awami Laboratories
The Vitamin Company
British Slimming Clinic
Herbo Natural
Lasani Pharma
Qarshi Industries
Herbal Medicine Pk
Babar Herbal & Homeo Clinic

ANALYSIS OF THE BENCH

After hearing all the parties, the Commission concluded that;

- For decades, through advertisements, a fictitious impression about the weight loss products was created and the public was deceptively believed about miraculous outcomes of these products.
- All 14 Respondents were engaged in deceptive marketing practices by making false and misleading claims that had no reasonable basis.
- The Respondents also failed to disclose the potential impact their product can have on people having different medical conditions, such as diabetes, hypertension, allergies etc.
- Moreover, the Bench reached the conclusion that the market of weight loss products and dietary supplements had remained unregulated for a long time.



PENALTY

Since, the market of weight loss products and dietary supplements had remained unregulated for a long time, therefore, the Commission inclined towards corrective behavior in this matter, and has decided not to impose penalties on any of the Respondents



TO DOWNLOAD
THE ORDER

DIRECTIONS

While taking inspiration from the guidelines provided by the Competition Bureau Canada for weight loss products, the Commission issued the following guidelines for the undertakings:

MISLEADING REPRESENTATIONS

No false or misleading representations to the public should be made regarding any endorsement by a reputable body or governmental agency etc.

TESTIMONIALS

Testimonials should be true and from actual customers who have no material connection with the undertaking unless it is properly disclosed.

DISCLAIMERS

Appropriate disclaimers regarding the side effects and its effect on people with special conditions or specific characteristics should be included.

TESTING FROM REPUTABLE LABORATORIES

For weight loss claims, testing must be rigorous, adequate and proper, and it is recommended that the service of reputable laboratories be procured for design and conduct of the testing.

RELIABLE EVIDENCE

The undertaking advertising a weight loss products must possess and rely upon competent and reliable scientific evidence.



Deceptive Claim of “No.1” Costs Dearly to Paint Firm

Diamond Paint Industries complained that Berger Paints Pakistan Limited was publicizing its product ‘Berger Super Emulsion’ with an unsubstantiated claim of ‘No.1 Super Emulsion’. After a preliminary probe, the Commission started an enquiry under Section 37(2) of the Act.

As per the enquiry’s findings, Emulsion paint is a water-based paint containing pigmented polymer particles suspended in water. As water dries, the particles combine producing a film of paint on the wall. There are about 20 organized (formal) and 110 unorganized (informal) producers in Pakistani paint industry including multinational paint producers.

The enquiry observed that the representation of the number ‘1’ in largest and boldest font, on both the paint bucket, shade card and brochure, became very catchy as compared to the rest of the elements of the packaging. Moreover, the number ‘1’ was displayed in red in the background of all elements in blue, making its impact long lasting in the eye of an observing consumer.

It was further established that in case of considering ‘Berger Super Emulsion No. 1’ as an adopted trademark, the same was displayed in such a broken manner where the number ‘1’ was majorly highlighted. Therefore, the marketing strategy possessed the tendency to change the buying behavior of its consumers by giving the fake impression of ‘being No 1’ in the paint market. This served as a potential to change or influence the buying behavior of a consumer through the dissemination of misleading information. Consequently, the conduct was also capable of harming the business interest of Diamond Paint and other competitors.

The enquiry report, while considering the overall impression of the marketing material concluded that Berger had, prima facie, violated Section 10 (1)(2)(a)(b) of the Act. Therefore, as per the enquiry’s recommendations proceedings were initiated under Section 30 of the Act and Show Cause Notice was served to Berger Paints

”

The enquiry observed that the representation of the number ‘1’ in largest and boldest font, on both the paint bucket, shade card and brochure, became very catchy as compared to the rest of the elements of the packaging



Dairy Firm Stops Misleading Claims on CCP’s Intervention

Parents Pakistan (SMC-Private) filed a complaint that Nestlé Pakistan was distributing misleading information regarding three of its products, i.e., Nido FortiGrow, Nido 3+ and Bunyad. It said that in the absence of reliable scientific data, the products were publicized as milk thus deceiving consumers and prima facie violating Section 10 of the Act.

The Commission’s enquiry established that considering the overall marketing campaign of Nestlé Pakistan, along with the technicality of the issue concerning the various categories of milk and dairy products, the general public was misled by Nestlé Pakistan into believing that the products were milk. The same has also been held by the Honorable Supreme Court in the case “Watan Party versus Government of Punjab, etc.,” that the product is not natural Milk.

Additionally, Nestlé Pakistan also portrayed these products to be a better alternative of milk without a reasonable basis as the deliberation on efficacy and necessity compared to natural/regular/loose milk was still being studied and under debate. Whereas, till a final opinion is endorsed by all relevant expert from national and international organizations, making any such claims that imply the superiority of these

formulae over milk for a child’s health appears to be unsubstantiated and hence, false and misleading.

An analysis of the evidence obtained during the enquiry established that Nestlé Pakistan Limited was distributing false and misleading information in prima facie violation of section 10(1)(2)(b)(c) of the Act. The Commission issued show cause notice to Nestle Pakistan upon the enquiry’s recommendations.

During the hearings, Nestle Pakistan demonstrated a compliant-oriented approach and rectified all its absolute claims, incorporated due disclosures, discontinued the impugned advertising material and made a commitment to refrain from following such practices in the future. Taking a lenient view, the Commission disposed of the matter without imposing any penalty.

”

During the hearings, Nestle Pakistan demonstrated a compliant-oriented approach and rectified all its absolute claims, incorporated due disclosures, discontinued the impugned advertising material and made a commitment to refrain from following such practices in the future



INFOGRAPHIC

In the matter of show cause notice issued to M/S. Nestle Pakistan Ltd on complaint filed by M/S. Parent Pakistan (SMC-PVT) limited



**Competition Commission
of Pakistan**

www.cc.gov.pk

BACKGROUND & COMPLAINT



- ➔ The Complainant filed a formal complaint with the Commission against the Respondent for allegedly disseminating false and misleading information to consumers about its three products i.e., Nestle Nido Fortigrow, Nestle Nido 3+ and Nestle Bunyad, through television commercials, packaging, labelling, social media platforms, official websites, etc.
- ➔ It was further alleged that there was no scientific and/or reasonable basis for such false/misleading information and the Respondent was also misleadingly comparing its products to actual milk.



DATE OF ORDER

21 February 2022



BENCH MEMBERS

Ms. Rahat Kaunain Hassan
Ms. Bushra Naz Malik

FINDINGS OF ENQUIRY REPORT



The Enquiry Committee concluded that:

- ➔ The Respondent, prima facie, was found involved in distribution of false and misleading information to the consumers through the portrayal that its products are dairy based/actual milk.
- ➔ The Respondent has, prima facie, deceptively portrayed its products through advertisements to be a better alternative of milk without any scientific and reasonable basis.
- ➔ The Respondent also, prima facie, was found involved in the false and misleading comparison of goods in the process of advertising its products in violation of section 10 of the Competition Act



SECTOR/MARKET

Powdered Milk/Milk
Formula Industry/Sector



NATURE & SECTION VIOLATION

Deceptive Marketing Practices in violation of **Section 10** of the Act

After considering the findings and recommendations of the Enquiry Report, the Commission issued a show-cause notice to the Respondent.

SCN ISSUANCE DATE:
24 March 2021

ISSUES FRAMED BY THE BENCH



- ➔ Whether the Complainant is an undertaking within the meaning of Section 2(1)(q) of the Act and whether the complaint is validly filed by it?
- ➔ Whether the Respondent has violated Section 10(2)(b) of the Act by disseminating false and misleading information to the consumers related to character, suitability of use and quality of the Products i.e. Nido 3+ Nido fortigrow and Nido Bunyad in terms of its packaging?
- ➔ Whether the Respondent has violated Section 10(2)(c) of the Act by making false and misleading comparison of goods in process of advertising?



PARTIES

Complainant:
1. Parents Pakistan (SMC-Private) Limited

Respondent:
1. Nestle Pakistan Limited

FINDINGS OF THE BENCH

1.

The Complainant was an undertaking in accordance with the provisions of the Act as it provided educational services, being a form of economic activity.

2.

As far as the Nestle Nido 3+'s nature as milk is concerned, the Respondent had itself admitted before the Commission that Nestle Nido 3+ is not milk. Moreover, the Supreme Court Order cited therein also clarified that the Respondent's products are 'not natural milk'. Hence, disclosures were made to this effect on the packaging.

3.

With respect to Nestle Nido Bunyad, the current packaging contained due disclosures of the fact that it was a form of milk powder. Moreover, it is not for the Commission to verify the exact quantum and requirements of individual ingredients in the formula and the same falls within the ambit of other authorities.

4.

Section 10(2)(c) alleged violation the Bench found that the same was not established as mere use of the word 'best' in the Respondent's claim that its product (Nestle Nido Fortigrow) are 'Best for School Kids' did not create any express specific statement, warranty or guarantee and can be considered to be mere puffery considering its exaggerated use.

5.

However, concerning the general advertisement and marketing material, the content did give an overall net general impression that the Respondent's products were milk or like milk.

6.

Moreover, the 'Mission Nutrition' campaign did indicate that the products are a good substitute for milk. However, there was no credible evidence supporting the said statement on record

7.

The '#More than Milk' campaign was also found deceptive considering that the same also implied that the Respondent's product is better than milk.

8.

For Nestle Nido Fortigrow, it was also found that the current product packaging contained the actual disclosures and nomenclature of the milk formula.

CONCLUSION



NIDO 3+

Alleged Contraventions

Previous packaging - violation of Section 10(2)(b) of the Act.

Comments of the Respondent

The packaging at issue was subsequently approved by Punjab Food Authority (PFA) and also changed to include due disclosures in light of the Watan Party case.



FLYER

Alleged Contraventions

Nestle Pakistan Flyer - Misleading information was being circulated.

Comments of the Respondent

This was a one-time instance. The said flyer was distributed to the retailers for that purpose.



CAMPAIGN

Alleged Contraventions

Nestle Pakistan Mission Nutrition Campaign - Misleading information was being circulated.

Comments of the Respondent

The campaign has been removed from website.



NIDO FORTIGROW

Alleged Contraventions

Packaging, labelling and claims were in violation Section 10 of the Act.

Comments of the Respondent

The Respondent in its defense submitted that the current product packaging and labeling contain the due disclosure, whereas previous unapproved labeling, nutritional facts, and claims have been removed.



DIGITAL MEDIA

Alleged Contraventions

Website and social media pages- Misleading information was being circulated.

Comments of the Respondent

The advertisement has been removed.



FALSE CLAIM

Alleged Contraventions

Claim of #more than milk - Misleading information was being circulated.

Comments of the Respondent

The Respondent has directed the concerned representative of twitter to remove the said posts immediately from their platform.



NIDO BUNYAD

Alleged Contraventions

Previous packaging - violation of Section 10(2)(b) of the Act.

Comments of the Respondent

The packaging at issue was subsequently approved by Punjab Food Authority (PFA) and also changed to include due disclosures in light of the Watan Party case.



TVC

Alleged Contraventions

Television commercials - Misleading information was being circulated.

Comments of the Respondent

The TVCs have been discontinued.

All these claims were verified by the Commission



PENALTY IMPOSED

The Bench noted that since, with respect to enforcement under Section 10 of the Competition Act, a compliance-oriented approach has been appreciated and that the Respondent had removed and stopped the impugned advertising/marketing material as well as provided due disclosures on its packaging, in the given facts and circumstances, it took a lenient view and did not impose any penalty.



TO DOWNLOAD
THE ORDER



DIRECTIONS

- 1 The Respondent was strongly cautioned not to repeat any such conduct in the future.
- 2 The Bench encourages undertakings towards compliance and corrective behavior.

Competition Ensures
that Businesses are **Held
Accountable** to Consumers,
Leading to Better Quality, Lower
Prices, and Greater Choice.

WILLIAM E. KOVACIC





Research Initiatives

Section 28(b)

To conduct studies for promoting competition in all sectors of commercial economic activity

Reviewing the Supply Chain of Ten Essential Commodities

Agriculture sector contributes 22.7% to the GDP, and employs 37.4% of the labour force in the country. During the 50's when Pakistan was predominantly an agricultural economy, the contribution of this sector was over 50% which declined to 30% during the 80's and in the past decade it as further declined to 20% on average. Where the country is endowed with fertile land, an extensive irrigation system and agriculture support policies however over the decades the performance of agriculture sector has declined.

The sustainability of agriculture sector is not just critical for food security and to provide for an ever growing population but equally important is the availability of essential commodities (food) at reasonable prices to the end consumers.

The Commission has been given the observer status for essential commodities in the National Price Monitoring Committee (NPMC).

During the NPMC meetings concerns have been raised regarding the erratic price increases of essential commodities.

The Commission is of the considered view that certain policy measures can contribute towards enhancing economic efficiency and eliminating distortions in the supply chain of essential commodities. Given the foregoing, the Commission is conducting a research study to better understand supply chain distortions, availability and pricing of inputs, issues at farm gate, output pricing mechanism, potential anticompetitive practices, and other factors influencing prices and availability of these essential commodities throughout the supply chain.

List of 10 Essential Commodities

-  Tomato
-  Potato
-  Onion
-  Rice
-  Edible Oil & Ghee
-  Poultry
-  Milk
-  Sugar/Sugarcane
-  Pulses
-  Wheat

A COMPREHENSIVE DRAFT REPORT ON

IMPROVING ECONOMIC EFFICIENCY OF SMEs

Small-and-medium-sized enterprises (SMEs) play an important and (perhaps an) outsized role in most economies. They are employers, producers, service providers, and innovators. Placed at key points on integrated supply chains, SMEs contribute to economic growth and help in job creation. Globally, SMEs comprise some 90 percent of businesses and employ more than half the world's workers.

Most businesses in Pakistan are found in the informal sector and estimates of this informality show that 25 percent to 35 percent of economic activity is undocumented. Evidence of the size of Pakistan's small-and-medium enterprise sector is gleaned from the estimates of their accounting for almost 90 percent of all businesses in the country and providing employment to roughly 80 percent of the non-agricultural labour force.

The Competition Commission of Pakistan (CCP) under its mandate of reviewing policy frameworks to foster competition deemed it necessary to review the policy document - National SME Policy 2021.

The objective of this report is two folds, i. to investigate and present the challenges of the SME sector, in light of recent developments including the after effects of COVID-19, ii. to provide recommendations based on extensive field work for improving credit access and developing enabling environments to improve economic efficiency of the SME's.

Survey methodology is adopted to gather primary data from SBP and 50 financial institutions (supply side). On the demand side, a consultative process was undertaken to deepen insights into the SME sector, this includes conducting surveys to gather primary data from

18 sessions held with 21 trade and commerce bodies. These sessions were held with the trade associations and chambers of small businesses and industries representing SMEs in the trading, manufacturing and services sectors in 11 cities of Pakistan.

The key findings of the report include issues in accessing finance. Data from FIs shows tilt towards ME lending and small and micro enterprises are neglected. Policy distortions impede competition in the sector. There is over regulation and vigorous adoption of the regulatory guillotine under the SME Policy, 2021 directive needs to be adopted. Access to land by SMEs is limited as land is expensive hindering their growth. The interests of SMEs need to be safeguarded in existing SEZs and industrial parks developed by the federal/provincial governments. To enhance SME lending, banks' willingness and capacity building of their staff is needed. The banks' staff should be well aware of the SBP's financing products, the financing needs of SMEs, and the skill set to assess SMEs financials. For the implementation of SME development instruments in Pakistan, it is paramount to have SME specific legislation that sets parameters to do business and to govern the sector. Keeping in view the barriers faced by women entrepreneurs it is recommended to have women representation at all forums, such as inclusion of National Commission on the Status of Women in the NCC on SME development along with representation of provincial women departments, and women led SMEs.

Advocating The Law



§ 29 of the Act addresses Competition Advocacy. The Commission shall promote competition through advocacy which, among others, shall include creating awareness and imparting training about competition issues and taking such other actions as may be necessary for the promotion of competition culture.



Karachi Chamber to Assist CCP in Promoting Competition Compliance

The Karachi Chamber of Commerce & Industry (KCCI) held an advocacy session with the Commission where the representatives of the chamber apprised the Commission of different competition issues and sought its help in removing entry barriers in the different sectors.

From KCCI, the advocacy session was attended by President Muhammad Idrees, Vice President Qazi Zahid Hussain, Managing Committee Members, and from CCP by the Chairperson Ms. Rahat Kaunain Hassan, Member Mr. Mujtaba Ahmad Lodhi, and Director Generals Mr. Noman Laiq and Asfandyar Khattak.

Briefing the participants on the Commission's work, Ms. Rahat Kaunain Hassan, Chairperson of the Commission, said that the Commission has imposed penalties of up to PKR. 70 billion for different violations of the Act on various sectors. However, the recovery remains paltry due to the fact that most of the undertakings have challenged the Commission's Orders in the higher courts where the due process of judicial review is underway. She further said that as against the general impression, the Commission is not a price regulator, but it only intervenes where the prices of goods and services are affected by anti-competitive practices such as abuse of dominance and cartelization. The main job of the Commission is to make sure that markets are functioning in compliance with the competition rules and regulations. The Commission is not against businesses; rather the Competition Law is pro-business and pro-growth, however, without strict enforcement of the law, a competition culture cannot prevail. She informed that as per OECD reports/estimates,

prices can go down 25-30 percent if cartels are busted.

During the session, members of KCCI brought several issues and competition related matters into the Commission's notice. The Chairperson offered that the Commission can change its regulations to exempt the Chambers of Commerce from charging of fee for filing formal complaints in endeavoring to address concern in resolving competition issues. She informed that the informant reward scheme and leniency provisions are available which the business community can benefit from and help the Commission in identifying the anti-competitive issues. She assured the Commission's full support in resolving the competition issues and creating a level playing field.

Earlier, President KCCI Muhammad Idrees, while welcoming the Chairperson, stated that the Commission undoubtedly plays an important role in providing equal opportunities and a level playing field to the business and industrial community and the efforts being made by the Commission have led to not only improving the business climate to a certain extent but also ensured that public is saved from unlawful profiteering, counterfeiting and sub-standard products. He also lauded the effort of launching two draft studies in the Small and Medium Enterprises (SMEs) and E-commerce sectors and opined that the activities undertaken by the Commission not only save the business and industrial community from anti-competitive practices but also protect consumers from being exploited.

CCP, PICG Sign MOU for Strengthening Corporate Governance and Compliance



The Commission signed an MoU with the Pakistan Institute of Corporate Governance (PICG) on cooperation, collaboration, and capacity development for strengthening corporate governance and competition compliance in Pakistan. The Chairperson Ms. Rahat Kaunain Hassan and PICG Chief Executive Officer Mr. Ahsan Jamil signed the MoU at the Commission's head office in Islamabad. Chairperson PICG Board of Directors Dr. Shamshad Akhtar, the Commission's Members Ms. Shaista Bano, Ms. Bushra Naz Malik, Mr. Mujtaba Ahmad Lodhi, and other senior officers attended the ceremony.

Addressing on the occasion, the Chairperson welcomed the support of PICG in joining hands with the Commission through signing of the MoU. She stated that corporate governance and competition principles are intertwined. There is commonality of objective in that both regulate human behaviour and promote fair play. She further stated that the collaboration aims to promote good governance, ensure corrective behaviour and sustainable compliance through advocacy measures and trainings for the corporate sector. Dr. Shamshad Akhtar, in her remarks, said that the PICG board has envisioned to bring a new dynamism in the PICG with the aim to improve corporate governance in Pakistan. She welcomed the signing of MoU between PICG and Commission, saying that the prevailing conditions in public and private sectors require more of such partnerships.

Mr. Ahsan Jamil in his remarks said that the importance of free and fair competition for productivity, exports growth and global competitiveness cannot be overstated. Similarly, good corporate governance is beneficial for businesses as it reduces cost, ensures fair play and protects businesses from undesirable outcomes. PICG is looking forward to working with Commission in promoting good corporate governance and competition law compliance. The MoU will not only allow both parties to exchange information on pertinent issues, but also work together in undertaking advocacy, research, and training initiatives to promote public awareness of the Competition Act and the Listed Companies (Corporate Governance) Regulations, 2019.

Rawalpindi Chamber of Commerce & Industry Appreciates CCP's Achievements



The Rawalpindi Chamber of Commerce & Industry hosted an advocacy session on Competition Law, which was attended by President RCCI Chaudhry Nadeem A. Rauf, Vice President Tallat Mahmood Awan, Former Senior Vice President Saqib Rafiq, Senior Vice President Asim Mehmood Malik, executive committee members and representatives of the business community attended the session.

While addressing the session, the Chairperson Ms. Rahat Kaunain Hassan said that deceptive marketing practices have a direct impact on consumers and the competitors of the businesses and therefore while marketing their products, businesses must be truthful. She recommended businesses to, "Show what you sell and say what you mean," which can make them fully compliant and truthful to the

consumers and not allow businesses to take any undue competitive advantage.

She also said that businesses are free to make profits as long as they are not violating the competition principles. Nothing bars businesses under the law from growing; per se dominance is not prohibited, it is the abuse of dominance that triggers competition law enforcement, she maintained. She added that enforcement creates a better understanding of the law and contributes to developing a competition culture therefore, the Commission will continue to enforce the law in letter and spirit without fear and favour as it has been doing across all sectors of the economy. She briefed that the Commission is also playing its part in the policy reform by offering recommendations that would enhance economic efficiencies and create a level playing field.

President RCCI acknowledged the good work done by the Commission and emphasized the need to create more awareness of the Competition Law. He offered RCCI's platform for educating the businessmen on the Dos and don'ts of the law. He also welcomed the Chairperson's suggestion of exempting the chambers from fees for filing formal complaints with the Commission.

The RCCI's representatives took an active part in the discussion by asking numerous questions and highlighting many issues. The Chairperson said that the Commission's doors are open for all, and businessmen must feel free to approach through the Chambers of Commerce or in an individual capacity.

Chairperson CCP appears on PTV News Morning Show 'Subah-E-Pakistan'



The national television, PTV, invited the Chairperson Ms. Rahat Kaunain Hassan for its news-based live morning show, Subh-e-Pakistan, to speak about the role and performance of the Commission and her personal professional journey. The Chairperson articulated her views in plain and interesting manner and explained the CCPs' role to the viewers in the simplest terms possible. While discussing CCP's performance, she briefly touched upon the Commission's enforcement work and other achievements.

While answering different questions from the show hosts, Ms. Rahat said that the Commission's 40 percent work force comprise of females who, side by side with their male colleagues, participate in the difficult enforcement functions such as search and inspections. She said that the Commission has also provided them an enabling environment by establishing a Creche facility, allowing them flexi timing when needed, and granting them maternal leave etc.

Discussing her personal achievements, Ms. Rahat said she was lucky to have the support from her family, particularly her husband, which enabled her to come a long way in her professional life.



CCP celebrates Women's Day 2022 with "Women in Regulation"

The Commission marked the International Women's Day by holding a seminar on 'Policy and Regulation through a Gender Lens – for Creating a Level Playing Field'. The seminar discussed the importance of policy and regulation in the context of gender issues and to deliberate ways and means to bridge the existing gaps. Over a hundred female participants from different regulatory bodies including SBP, FBR, SECP, NEPRA, OGRA, PTA, PEC, PEPPRA attended the seminar.

Along with CCP team including Ms. Rahat Kaunain Hassan, Chairperson, Ms. Shaista Bano, Member, Ms. Bushra Naz Malik, Member, the other speakers/panelists included Ms. Shahera Shahid, Secretary Ministry of Information and Broadcasting (MoIB) & Member PEMRA, Ms. Sima Kamil, Deputy Governor SBP, Ms. Ambreen Iftikhar, Member FBR, Ms. Sadia Khan, Commissioner SECP, Ms. Jahanara Sajjad, Ex-member Audit Oversight Board, Ms. Nighat Amir, Director General Ministry of Information and Broadcasting, and Ms. Mussarat Jabeen, Executive Director SECP.

In her opening remarks, the Chairperson stated that the objective of selecting the topic 'Policy & Regulation - through a gender lens' is to recognize share and pursue the seriousness of purpose that is entrusted to the regulators in their respective domains. While policy making is not our domain yet by virtue of our regulatory role we can act as a catalyst in helping Government to make it effective.

She added that for ensuring and enhancing economic participation of women on a level

playing field, prioritized policy areas with the gender focus may include, education, health, trade & labour policy, SMEs, and promoting women in leadership roles. She stated that such prioritisation resonates with the gender gap index established by the World Economic Forum which includes as its subindexes: 1) Educational Attainment, 2) Health and Survival, 3) Economic Participation & Opportunity and Political Empowerment. To this end, she emphasized need for gender-disaggregated data and documentation for informed policy making.

She also proposed that the National Commission on Status of Women may consider building a sectoral data bank of all working/professional women, be that women in regulation, law, accountancy, engineering, media, judiciary, IT, medicine, art, architecture or any other field; to break the myth that there are not many qualified women.

Addressing the panel on **"Government Policies and Initiatives towards Gender Equality"**, Ms. Shahera Shahid, Secretary, Ministry of Information and Broadcasting (MoIB) said that despite the social and economic difficulties, women are excelling in every field with honesty and dignity, where the number of women in key leadership positions in Pakistan has gradually increased. Addressing the same panel, Ms. Ambreen Iftikhar said that women empowerment can be achieved through their participation in the formal economy. She said that women are more ethical and more committed, and we just need to facilitate and inform them.

The second panel discussion was on

"At the Regulator Level – Adopt Board Reform Programs with Clear objectives and implementation Framework to Ensure Gender Equality." Addressing on the occasion, Ms. Sadia Khan said that the SECP has taken various initiatives to promote gender diversity at the workplace by issuing circulars to various sectors to develop gender diversity policy at board levels. Addressing the second panel, Ms. Bushra Naz Malik said that women in a leadership role in the public sector can help bridge gender disparity gap. Ms. Jahanara Sajjad, Ex Member Audit Oversight Board emphasised better female membership on public and private organisation boards.

Ms. Sima Kamil, Deputy Governor of State Bank of Pakistan (SBP), highlighted the 'Banking on Equality' policy, which focuses on increasing the number of women in the banking workforce, moving from gender-neutral to gender intentional policies, ensuring women's champions at all access points, and overcoming women related data challenges.

The panel discussion on **"Improving Advocacy by ensuring Transparency and Non-discrimination in the Organization Processes"**, was addressed by Ms. Shaista Bano, Member CCP, who said that the importance of effective advocacy cannot be denied advocating for gender equality. Mussarat Jabeen, said that we need to develop a gender-responsive recruitment policies in organisations. Ms. Nighat Amir said that her ministry has more gender diversity and more women on a leadership role in different departments, which is playing a very productive role in their capacities.



Ms. Rahat Kaunain Hassan

Chairperson, Competition Commission of Pakistan



Ms. Shahera Shahid

Secretary Ministry of Information and Broadcasting (MoIB)



Ms. Sima Kamil

Deputy Governor SBP





“Pakistan’s Competition Regime Stands on Solid Foundation”

CCP Chairperson gives interview to the Anti-trust magazine online at the ABA spring meeting 2022

The Chairperson was also interviewed for “Our Curious Amalgam,” the weekly podcast of Anti-trust law section of the American Bar Association (ABA). The interview is available on CCP’s website.

The Chairperson participated in the American Bar Association (ABA)’s spring meeting ‘2022. On this occasion, she also gave an interview to Mr. Russel Damtoft for the Antitrust Magazine Online on April 7, 2022. The full text of the interview can be downloaded from the Commission’s website. Here is a summary of the interview.

The Chairperson talked about Pakistan’s competition regime, the Commission’s most newsworthy accomplishments under her leadership, and her own professional journey.

Touching upon the history of the Commission, Ms. Rahat Kaunain Hassan explained that in 2007, the Competition Ordinance was promulgated to replace the Monopolies and Restrictive Trade Practices Ordinance (MRTPO). It is a state of the art law having some new striking features such as search and inspection, forcible entry, enhanced penalties, leniency, application of law to all undertakings including governmental and regulatory bodies and most importantly the administrative and functional autonomy of the Commission.

While discussing the initial challenges, the Chairperson said that from 2007 to 2010, the Commission had to struggle for establishing its writ, striving to secure permanence for the law while enforcing the same against powerful lobbies. She said the debate on the constitutional vires of the Competition Law had been pending since 2008–2009 before the Courts, and it is only in her second term as Chair that the Commission finally received the endorsement with respect to the federal legislative competence from three High Courts: the first being the Lahore High Court in October 2020, followed by the Islamabad High Court in 2021 and from the Sindh High Court in 2022. This was so critical and much awaited. However, the question needs to be finally settled by the Supreme Court of Pakistan in pending appeals.

Commission paced up the enforcement by passing some landmark decisions including the International Clearing House (ICG) Order in the telecom sector, the Urea Order in the fertilizer sector and the first ever and the only Leniency decision in the matter of cartelization in the power sector, she added.

On the role of the Commission and applicability of the Competition Act, 2010, the Chairperson said that there is a general misunderstanding that the Commission is a price regulator, which is the indeed antithesis of competition. We cannot and do not regulate prices; we regulate the anti-competitive behavior. At certain times, we have had this conversation with the governmental agencies where we were asked as to how CCP can help control pricing issues. While the government may have its own rationale and objective; repeatedly, we have maintained that fixing and controlling prices do not help markets. It has a distortionary effect on the supply demand equation.

On question of cartel enforcement, the Chairperson said that since 2007, the Commission has targeted several cartels. Out of around 70 billion Pakistani rupees in penalties imposed by the Commission since its inception, the highest and the larger sums have been imposed against cartels during her terms as Chair. She said that to name a few, the Commission has unveiled cartels in the telecom, poultry, milk, cement, sugar, banking, automobile, tractors, chartered accountancy, and stock exchanges. These are extremely important segments. She mentioned that the highest ever cartel penalty has been imposed in the sugar sector, where the Commission imposed a fine of PKR 44 billion on the Pakistan Sugar Mills Association and 82 member sugar mills. Moreover, over a dozen investigations are currently in progress. These include bid-rigging in the power sector, essential commodities—edible oil and ghee and wheat, the construction sector, such as glass and steel,

the financial sector (T-Bills auction), the media industry, e-commerce (food aggregators) and the automobile sector (cars), she added.

Responding to a question on deceptive marketing practices and advertisement, the Chairperson said that she recalled a slogan that she had coined in the past: “show what you sell and say what you mean.” This is what we are trying to achieve through the enforcement of Section 10, she remarked. On merger regime progress, the Chairperson said that the Commission has improved its online merger filing facility, and further improvement is underway. She said that in 2021, the Commission has processed ninety-four mergers, including a Phase II review.

On Competition Advocacy, the Chairperson said that advocacy is our statutory obligation and I also believe that enforcement is the best advocacy. The Commission engages in advocacy through media, press releases, issuing policy notes and holding public hearings. All our decisions, enquiries and policy notes are required by law to be placed on the website. After a gap of seven years, the Commission has resumed holding the Competition Consultative Group (CCG) meetings, which is an informal ‘think-tank’ with stakeholders from public and private sectors and governmental bodies as members. We have recently taken a new initiative, whereby we intend to maximize dissemination of our work through infographics. We have started doing it for all our decisions, all our policy notes, and we will gradually do the enquiries as well, she said.

On a question of gender and acceptability of women leadership, the Chairperson said that she always had a gender-blind vision. “I think it is because of that I have reached where I am. I believe I do not hold this office simply because I am a woman,” she said adding, “but to me, the more important question is what can I do in this position?” Interestingly, until recently, three out of four Members were females, and we have 50% females in the Cartel and Trade Abuse Department, who actively participate in search and inspections or forcible entries. She said that we have a female-empowered Commission. I believe, if one wants to break stereo-types about Pakistani women, CCP is a great place to start, she remarked.

INTERNATIONAL AFFAIRS

The Commission's Officers Participated in the Following International Activities

January - June 2022

| Sr. | DATE | DESCRIPTION |
|-----|------------------------|---|
| 01. | 31st January, 2022 | UNCTAD Webinar on Consumer Perceptions Regarding Environmental Claims |
| 02. | 22nd February, 2022 | ICN MERGERS WG WEBINAR on "EXPOST MERGER REVIEW" |
| 03. | 23rd February, 2022 | OECD Open Competition Day 2022 |
| 04. | 2nd March, 2022 | ICN CWG, SG1 organizes a webinar on 'A Trustbuster Toolbox for Managing Complex Cartel Cases' |
| 05. | 15th March, 2022 | ICN AEWG Webinar "Shaping agency digital transformation: the role of digital experts" |
| 06. | 15th March, 2022 | UNCTAD's webinar on 'Empowering Consumers for sustainable consumption' |
| 07. | 17th March, 2022 | ICN's webinar on Confidentiality, Transparency, and Cooperation: Agency Approaches to Handling Confidential Information |
| 08. | 31st March, 2022 | Virtual Technical Assistance (Interactive session) with FTC on Consumer Protection related to E-Commerce and Environmental Claims |
| 09. | 31st March, 2022 | ICC & OECD Competition Webinar - Competition Policy and Sustainability Cooperation Agreements |
| 10. | 6th April, 2022 | ICN CWG Asia Pacific Webinar on "Implementing Effective Leniency Programs: Lessons Learnt and Challenges Ahead" |
| 11. | 7th April, 2022 | ICN AEWG's webinar on " Agency Effectiveness Post-Covid-19: Lessons learned by competition agencies" |
| 12. | 19th April , 2022 | ICN CWG Webinar on Assessing Crisis Cartels at Times of Covid-19: Lessons learnt from Past Crises |
| 13. | 4th - 6th May, 2022 | ICN Annual Conference |
| 14. | 8th June , 2022 | ICC & OECD Webinar on Mergers Policy & Sustainability |
| 15. | 15th June, 2022 | ICN CWG Webinar on 'Criminalization of Cartel and Bid-rigging Conducts: How to Ensure Effective Enforcement' part 1 |
| 16. | 30th June, 2022 | JFTC Webinar on 'Criminalization of Cartel and Bid-rigging Conducts: How to Ensure Effective Enforcement' - Part 2 |
| 17. | Jul, 2022 to Jun, 2023 | ICN- Kickoff Call for new ICN Year |



The chairperson CCP attended "17th Annual Spring Meeting" of American Bar Association (ABA) in Washington D.C, U.S.A from

April 5th-8th, 2022



70th Antitrust Law
SPRING MEETING
April 6-8, 2022
Washington, DC
ABA
AMERICAN BAR ASSOCIATION
Antitrust Law Section

WEDNESDAY- Noon-130pm
SPRING MEETING LUNCHEON: WOMEN AT THE TOP
Ticketed Event

The glass ceiling on the global competition world is breaking. Leadership of the world's 140-plus competition agencies used to be an exclusive men's club. Today, a growing number of women have led competition agencies on every continent. Hear from those who did: how they got there, how they promote diversity within their agencies, and what they see coming down the pike in terms of diversity for the field.

SESSION CHAIR/MODERATOR
Gabrielle KOHLMEIER, Managing Associate General Counsel, Verizon, Washington, DC

SPEAKERS

- Cati FERNANDEZ, President, National Commission of Markets & Competition, Barcelona
- Michal HALPERIN, Harvard Kennedy School, Boston, MA
- Rahat KAUNAIN HASSAN, Chairperson, Competition Commission of Pakistan, Islamabad
- Alejandra PALACIOS PRIETO, Immediate Past Chairwoman, COFECE, Mexico City

CAPACITY BUILDING

The Commission embarked on a series of interactive sessions inviting experts from different fields as guest speakers to share their knowledge and insight into the areas of their expertise as well as on leadership. The first two speakers were the chairmen of two key regulatory bodies, i.e. SECP and NEPRA.

Training was held on Search and Inspection techniques, evidence gathering, and evaluation by the Federal Investigation Agency (FIA).



An interactive session with Chairman National Electric Power Regulatory Authority (NEPRA)



↑ An interactive session was held with **Chairman National Electric Power Regulatory Authority (NEPRA), Mr. Tauseef H. Farooqi**, on 'Effective Leadership and Overview of the Power Sector'. The session was attended by the senior management and officers of the Commission. In the session, Mr. Farooqi also shared his experiences and efforts in overcoming the challenges in the power sector.

An interactive session with Chairman Securities & Exchange Commission of Pakistan (SECP)



↑ Another session was held with the **Chairman Securities & Exchange Commission of Pakistan (SECP), Mr. Aamir Khan**. In his address, Mr. Khan touched upon various areas where the SECP was playing its role in regulating and developing the corporate sector. He also shared his views on the leadership, teamwork, work ethics and institution building.

CCP CELEBRATES

SPORTS

WEEK-2022

The Commission held a sports week from 1st March to 6th March 2022. The fun-filled sports saw everyone, from Chairperson to the grade-1 employee, participating in different sports such as cricket, carrom, ludo, chess, table tennis and dumb charades. The games were held after office hours to keep the work going.

In the closing ceremony, the Chairperson Ms. Rahat Kaunain Hassan distributed prizes amongst the winners of all the games. Addressing on the occasion, she said sports play an important role in developing team work, better coordination and understanding among colleagues, and a healthy work environment.



CCP slaps Rs1.1b fine on home appliances firms

Companies resorted to price fixing... The decision comprised its Chairperson Rahat Kaunain Hassan and Member Mujtaba Ahmad Lodhi. In the judgement, the CCP of the contravention did not justify the same treatment for both parties. On the flip side, Haier was 'blowing hot and cold' throughout the proceedings, it said.

CCP imposes penalties on two leading makers of electronic appliances

ISLAMABAD: The Competition Commission of Pakistan (CCP) Monday imposed penalties on two leading makers of electronic appliances. The CCP restricted the penalty amount to Rs1 billion, not exceeding three percent of its annual turnover in FY 2020-21.

CCP investigating price fixing of freight charges at Karachi Port, Port Qasim

ISLAMABAD: The Competition Commission of Pakistan (CCP) is investigating an investigation into the prima facie violations of its members at the country's two leading seaports. The search and inspection carried out under Section 34 of the Act during which the office

CCP conducts search, inspection of two undertakings

ISLAMABAD: As part of an investigation into the prima facie violations of its members at the country's two leading seaports. The search and inspection carried out under Section 34 of the Act during which the office

CCP investigates price fixing of freight charges at Karachi Port, Port Qasim

ISLAMABAD: The Competition Commission of Pakistan (CCP) is investigating an investigation into the prima facie violations of its members at the country's two leading seaports. The search and inspection carried out under Section 34 of the Act during which the office

CCP carries out search, inspection of offices of 3 companies

ISLAMABAD: The Competition Commission of Pakistan (CCP) is investigating an investigation into the prima facie violations of its members at the country's two leading seaports. The search and inspection carried out under Section 34 of the Act during which the office

ISLAMABAD: The Competition Commission of Pakistan (CCP) is investigating an investigation into the prima facie violations of its members at the country's two leading seaports. The search and inspection carried out under Section 34 of the Act during which the office

Businesses must be truthful while marketing products: CCP chief

ISLAMABAD: Competition Commission of Pakistan (CCP) chairperson Rahat Kaunain Hassan on Tuesday said deceptive marketing practices had a direct impact on consumers and the competitors of the businesses and therefore, while marketing their products, businesses must be truthful. She was speaking at an advocacy session on competition law jointly organised by Rawalpindi Chamber of Commerce & Industry (RCCI) and Competition Commission of Pakistan (CCP). She recommended to businesses to "show what you sell and say what you mean" which can make them fully compliant and

EDITORIAL TEAM

Chief Editor:
Asfandyar Khattak

Editor:
Ayesha Nayab

Editorial Team:
Raja Taimur Hassan
Maham Ahmad

CONTACT

7th,8th,9th, Floors South, ISE Towers,
55-B, Jinnah Avenue, Islamabad
Ph: (+92) 51-9100260-3
Fax: (+92) 51-9100251
Email: advocacy@cc.gov.pk
web: www.cc.gov.pk

DISCLAIMER

The contents of this publication are only informative in nature and not meant to substitute for professional advice. Information and views in the newsletter are fact based and incorporate necessary editing. For details about CCP's enforcement orders, please log on to the website at www.cc.gov.pk