

IN THE COMPETITION APPELLATE TRIBUNAL

2ND Floor, Federal Courts Complex, G-11/1, Islamabad

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Tel No: 051-9320208, Fax No: 051-9320203

No. 1456 /Reg./CAT/2024

Dated: 11-07-2024

Reliance Paints Pakistan

Vs.

Competition Commission of Pakistan & others

NOTICE

Appeal No.16/2018

Take notice that under rule 51 of the Competition Appellate Tribunal Rules, 2015, attested copies of the Judgment dated **11-07-2024** is enclosed for information and record.

2. Given under my hand and stamp of the Tribunal, this 11th day of July, 2024.



(SAEED AFZAL)

Registrar

REGISTRAR

Competition Appellate Tribunal
Government of Pakistan
Islamabad

Reliance Paints Pakistan,

502/1, Sector-5, Korangi Industrial Area,
Karachi.

Ahsan Hameed Lillah,

Advocate Supreme Court of Pakistan,
2nd Floor, Old Unique Bakers building,
Kashmir Road Saddar, **Rawalpindi.**

✓ **Competition Commission of Pakistan,**

7th Floor ISE Towers, 55-B,
Jinnah Avenue, **Islamabad.**

Akzo Nobel Pakistan Ltd, (Complainant)

Through Mr. Jhanzeb Khan, Chief Executive 346,
Ferozepur Road **Lahore.**

Chairman Secretariat
Diary No. 7/13 EXT
Date Received 12-7-24
Date Forwarded 12-7-24

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12/7/24

①

BEFORE THE COMPETITION APPELLATE TRIBUNAL
ISLAMABAD

Reliance Paints Pakistan through its chief executive Officer 320-321, Sec 31A
Korangi Industrial Area, Allahwala Town, Karachi, Pakistan

..... Appellant

Versus

1. Competition Commission of Pakistan, Islamabad through its members, 55-B,
7th Floor, ISE Towers, Jinnah Avenue, Blue Area, Islamabad.

2. Akzo Nobel Pakistan Ltd, (The Complainant) through Mr. Jhanzeb Khan, chief
Executive 346, Ferozepur Road Lahore.

..... Respondents

APPEAL UNDER SECTION 42 OF THE COMPETITION ACT, 2010

1. **JURISDICTION OF THE COMPETITION APPELLATE TRIBUNAL**

1.1 The Appellant above named submits that the order dated 30th March 2018
("Impugned Order") against which this appeal is being filed, was passed in
Show Cause Notice No. 37/2016 dated 08th November 2016 by the
Competition Commission of Pakistan (the "Commission") to M/S Reliance
Paints Pakistan ("Respondent No.01"). Accordingly, this tribunal has the
jurisdiction to hear this Appeal according to Section 42 of the Competition
Act, 2010 ("Act").

COPY OF THE IMPUGNED ORDER DATED 30TH MARCH 2018 IS
ATTACHED HERewith AND MARKED AS ANNEXURE "A-1".

2. **LIMITATION**

2.1 The Appellant declares that as the Impugned Order was passed on 30th
March, 2018 and was received by the Appellant on 09th April 2018, therefore, this
Appeal is within the limitation period of sixty (60) days as prescribed in Section 42
of the Act.

CERTIFIED TO BE A TRUE COPY
S.W.
REGISTRAR
Competition Appellate Tribunal
Islamabad
11-02-2024

BEFORE THE COMPETITION APPELLATE TRIBUNAL,
ISLAMABAD

RELiance PAINTS PAKISTAN

..., APPELLANT

VERSUS

COMPETITION COMMISSION OF PAKISTAN

... RESPONDENT

Appeal No: 18/2018

- Present:** Justice Mazhar Alam Khan Miankhel, Chairperson.
Muhammad Asghar Ch., Member Technical.
Raja Saad Sultan, Member Technical.
- For the Appellant:** Mr. Ahsan Hameed Lillah, Advocate & Mr. Imtiaz Zubairi, Advocate.
- For Respondents:** M/s. Muhammad Yahya, Nouman Ameen Farooqi, Aitzaz ul Haq, Musadiq Islam, Advocates, Haider Imtiaz & Hassan Ahsan Mian, Law Officers.
- Dates of hearing:** 13.06.2018, 10.07.2018, 03.10.2018, 24.10.2018, 28.11.2018, 12.12.2018, 20.12.2021, 19.04.2022, 14.06.2022, 13.12.2022, 01.02.2023, 05.04.2023, 24.05.2023, 27.06.2023, 13.12.2023, 09.01.2024.

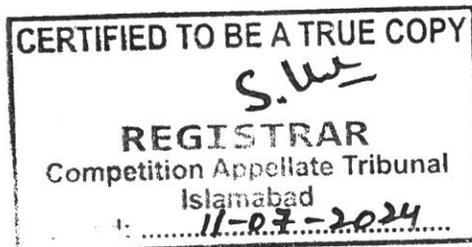
JUDGMENT

Raja Saad Sultan, Member Technical.

Through the instant appeal under **Section 42 of Competition Act, 2010** the appellant has impugned an order dated 30-03-2018, passed by the Competition Commission of Pakistan ("**Commission**"), whereby, a penalty of PKR 5 million was imposed on the appellant.

2. Brief facts of the case are that the complaint against the appellant was filed by Mr. Jehanzeb Khan, Chief Executive, Akzo Nobel Pakistan Ltd ("**Complainant**"). The Complainant alleged that M/S Reliance Paints Pakistan ("**Appellant**") has circulated a circular to all its dealers requiring them to sell their products only at fixed retail price, which is a contravention of **Section 4 of the Competition Act, 2010**.

3. The Competition Commission of Pakistan ("**Commission**") initiated an enquiry to investigate a prima facie



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contravention of Section 4 of the Competition Act, 2010. The enquiry report concluded that *“the Respondent is prima facie involved in imposing a vertical restraint on its dealers by maintaining a minimum resale price that appears to be in contravention of Section 4(2)(a) of the Act”*.

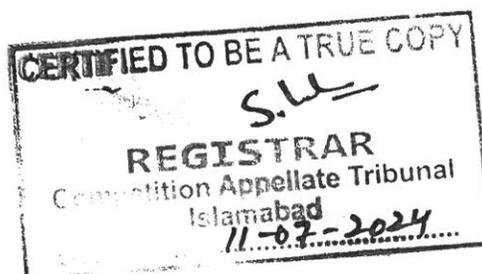
4. On the basis of enquiry report, proceedings were initiated against the appellant under **Section 30 of the Competition Act, 2010** and a show cause notice dated 8-11-2016 was issued to the appellants in the following terms;

“AND WHEREAS, in terms of the Enquiry Report in general and paragraphs 14-24 in particular the Respondent is prima facie involved in imposing a vertical restraint on its dealers by maintaining a minimum resale price that appears to be in contravention of Section 4(2)(a) of the Act;”

5. The appellant adopted a compliance oriented approach before the Commission and showed their willingness to adhere to the directions of the Commission.

6. Learned Counsel for the appellant submitted that we have not stopped our dealers from selling the product of other competing brands and also were never engaged in any malpractice. In order to substantiate this, he referred to a flyer issued to the dealers and clarified that nothing is mentioned in this flyer, which indicates that the dealers were stopped. He contends that in the enquiry report, it was mentioned that the query of enquiry committee was responded by one of the dealers and he provided the information that there was a condition from the appellant to not to sell below the fixed price. He further submits that a commitment was also filed before the Commission, however, lenient view was not taken and an excessive penalty of Rs. 5 million was imposed. Learned Counsel for the appellant therefore prayed for the appeal to be allowed.

7. Learned Counsel for the Commission, inter-alia, argued that this is a case of admission. The appellant has already filed a commitment before the Commission. He further submits that the appellant had fixed their retail sale price and also restricted their



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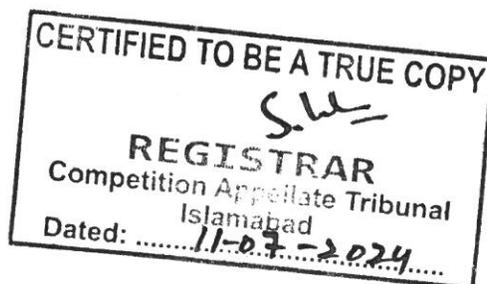
dealers to not to sell below that fixed price. This practice effects the intra brand competition between the appellants dealers. He contends that the appellant was also penalizing the dealers, who offered discounts to consumers. The appellants this practice was in clear violation of **Section 4 of the Competition Act, 2010**. Learned Counsel for the appellant therefore, prayed for the appeal to be dismissed.

8. Arguments advanced by the learned Counsel for the parties have been heard and the documents placed on record perused.

9. Perusal of record indicates that both the appellant and the complainant are engaged in the manufacturing and supply of paints and its allied products. The Complainant before the Commission alleged that that the appellant has fixed their products minimum resale price and requires its dealers to sell at a fixed retail price. The enquiry was initiated by the Commission in accordance with **Section 37(2) of the Competition Act, 2010**. Perusal of enquiry report indicates that the appellant was asked to provide information of its dealers, their pricing policy and the dealership agreements. This information was provided and the appellant denied the existence of any dealership agreement, however admitted that they have certain oral arrangements with its shopkeepers.

10. On the recommendation of the enquiry Committee proceedings under **Section 30 of the Competition Act, 2010** were initiated against the appellant and a show cause notice dated 08-11-2016 was issued to the appellant. Where the Commission is satisfied that there has been a contravention of the provisions of **Chapter II of the Competition Act, 2010**, the Commission may initiate proceedings against the Undertaking. The appellants were alleged to be involved in contravention of **Section 4 of the Competition Act, 2010**.

11. Record indicates that the appellant had issued a circular to its dealers in which certain conditions were imposed on the



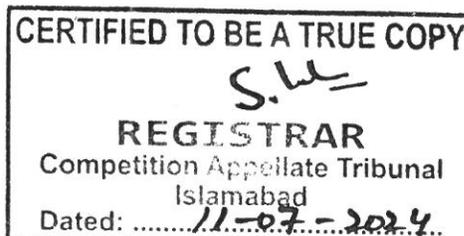
them. Perusal of this circular reveals that the appellant had restricted its dealers from selling its product below the fixed price and also from selling the appellants product to the other unauthorized dealers. It is also evident from this Circular that the appellant had warned their dealers to withdraw their discounts and also to cancel their dealership, if they failed to comply with the conditions contained in the Circular. In the enquiry report, it is mentioned that the information was provided by one of the dealers on the query of the enquiry committee. However, no name of the dealer was mentioned in the enquiry report and it is not confirmed that, even if he was the appellants dealer or not.

12. The appellants did not file their reply to show cause notice, however, their counsel appeared before the Commission and submitted that they are willing to comply with any direction of the Commission and also showed their willingness to submit Commitment pursuant to **Part IV of Competition Commission (General Enforcement) Regulations, 2007**. It is further noted that the appellant had filed its first commitment on 22-12-2016, which was considered as insufficient and thereafter an amended commitment dated 19-02-2018 was submitted by the appellant, which was accepted by the Commission. Record further indicates that the Tax Returns for the Year 2013-2014 and copies of annual audited accounts for the Year ended 30th June 2015, 2016 and 2017 were also submitted by the appellant before the Commission.

13. The appellants were held liable by the Commission for imposing a vertical restraint on its dealers by maintaining a minimum resale price in contravention of **Section 4 (2) (a) of the Competition Act, 2010**.

Section 4(1) & (2) (a) of the Competition Act, 2010 reads as follows;

“Prohibited Agreements: (1) No Undertaking or association of undertakings shall enter into any agreement or, in the case of an association of undertakings, shall make a decision in respect of the production, supply, distribution, acquisition or control of goods or the provision of services which have the object or effect of



preventing, restricting or reducing competition within the relevant market unless exempted under Section 5.

(2) Such agreements include but are not limited to,

(a) fixing the purchase or selling price or imposing any other restrictive trading conditions with regard to the sale or distribution of any goods or the provision of any service;”

14. In view of above, the issues for determination before the Commission were as follows;

(a). *“What is the relevant market, in the instant matter, in terms of clause (k) of subsection (1) of Section 2 of the Act?”*

(b). *“Whether the Respondent’s practice to request its dealers to not sell its product to other dealers who are not authorised dealers of the Respondent’s products amounts to exclusive dealing and as such is a violation of Section 4 of the Act?”*

(c). *“Whether the Respondent’s practice to force its dealers, not sell its product below a certain price amount to minimum resale price maintenance and as such is a violation of Section 4 of the Act?”*

15. Perusal of the impugned order indicates that, in determining Issue (b), the appellant was not held liable for exclusive dealing due to lack of supporting evidence for this allegation.

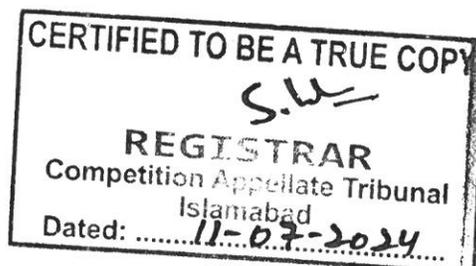
16. In view of **Section 4 of the Act**, the agreements entered in contravention of Section 4 of the Act would be considered as void. There is no evidence which indicates that there was an agreement between the appellant and its dealers, however a Circular issued by the appellant to its dealers is available on record, which clearly reflects their arrangement of restraining their dealers from selling their product below the fixed price.

Section 2 (1) (b) of the Competition Act, 2010 defines the agreement as follows;

* (b) “agreement includes any arrangement, understanding or practice, whether or not it is in writing or intended to be legally enforceable;”

Thus, a formal agreement between the appellant and its dealers is not necessary. It suffices if there is evidence of any arrangement or

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understanding that imposes strict restrictions on the dealers regarding minimum resale price fixation.

17. Minimum resale price fixation which is also known as resale price maintenance (RPM) is a violation of Competition law because this prohibition can lead to a higher price for consumers and also reduce intra brand competition among the dealers. In EU and other jurisdictions, the Competition laws also aim to prevent practices such as retail price maintenance (RPM) to protect the market and the consumer.

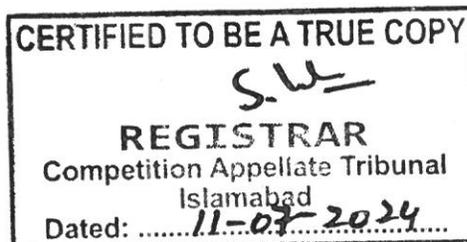
18. The appellants in their Circular issued to dealers, imposed restrictions that prohibits the sale of products less than a price fixed by the appellant. This Circular indicates an express invitation from the appellant to its distributors to comply with the minimum resale price. Such practice distorts the competition in the market and, therefore, violates **Section 4 (2) (a) of the Competition Act**. In latest judgment of European Court of Justice in the case of *Super Bock Bebidas, S.A, AN, BQ Vs. Autoridade da Concorrenca (Case-C-211/22)*, the Court ruled that;

“that a vertical agreement fixing minimum resale prices entails a ‘restriction of competition by object’ may only be made after having determined that agreement presents a sufficient degree of harm to competition, taking into account the nature of its terms, the objectives that it seeks to attain and all of the factors that characterize the economic and legal context of which it forms part”.

“that there is an ‘agreement’, within the meaning of that article, where a supplier imposes on its distributor’s minimum resale prices of the products that it markets, if the imposition of those prices by the supplier and compliance with them by the distributors reflects the expression of the concurrence of wills of those parties. That concurrence of wills may be shown from the terms of the distribution contract at issue, where it contains an express invitation to comply with minimum resale prices or authorizes, at the very least, the supplier to impose those prices, as well as from the conduct of the parties and, in particular, from any explicit or tacit acquiescence on the part of the distributors to an invitation to comply with minimum resale prices”.

“existence of an ‘agreement’, within the meaning of that article, between a supplier and its distributors, may be established not only by means of direct evidence, but also on the basis of objective

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and consistent indicia from which the existence of such an agreement may be inferred.”

19. Furthermore, record indicates that the appellant had filed Commitment dated 19-02-2018 before the Commission pursuant to the **Competition Commission (General Enforcement) Regulations, 2007**. The appellant in their commitment filed before the Commission admitted the practice of fixing minimum resale price and also showed their willingness to comply with the directions of the Commission.

Regulation 30 of Competition Commission (General Enforcement) Regulations, 2007 provides;

(1) The Commission may, at any time after initiating proceedings under Section 30 but before the conclusion thereof may, at its discretion, accept commitments from the concerned undertakings that remedy violations of the provision of Chapter II of the Act.

(2) Before accepting any commitments, the Commission may ensure that the commitments are sufficient to clearly address

Regulation 33 & 37 of Competition Commission (General Enforcement Regulations) 2007 are reproduced herein below;

Regulation 33. Favourable Decisions:

(1) “The Commission may, at its discretion, issue a favourable decision where commitments have been accepted”.

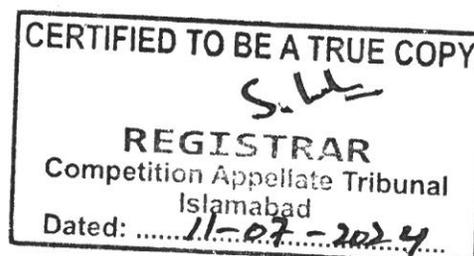
(2) “The Commission may revoke the favourable decision, if any of the commitments accepted have been breached”.

Regulation 37. Favourable Decisions of the Commission:

(1) “Where the Commission makes a favourable decision, it shall limit itself to imposing a penalty of upto PKR 7,500,000 or 1% of annual turnover of the undertaking for each violation on the concerned undertaking.”

20. The penalty was imposed by the Commission on the pretext of submission of commitment by the appellant pursuant to **Part IV of the Competition Commission (General Enforcement) Regulations, 2007**. The impugned order also

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clearly states that on the direction of the bench Income Tax returns for the Year 2013-2014 and copies of annual audited accounts for the Year end 30th June, 2016 and Year ended 30th June, 2017 were also submitted by the appellant before the Commission. **Regulation 37(1) of the Competition Commission (General Enforcement) Regulations, 2007** sets a limit of penalty amount up to Rs. 75,00,000 or 1% of annual turnover. In the present case, the appellant was asked by the Commission during the proceedings before the Commission to submit their annual turnover. Therefore, the Commission should have reviewed the appellants financial statements and annual turnover. Instead, a penalty of Rs. 5 million was imposed, which amounted to almost 20 % of the appellants annual turnover.

21. Furthermore, the appellant was also exonerated by the Commission from the allegation of exclusive dealing. In these circumstances, we are not persuaded by the Commission's stance that a lenient view was taken by the Commission.

22. In view of above, the instant appeal is partially allowed and the penalty amount is reduced to Rs. 25,00,000.

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Chairperson

-s-d-

Member Technical-I

-s-d-

Member Technical-II

Announced in open court
11.07.2024

Approved For Reporting

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Member Technical-II

