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IN THE COMPETITION APPELLATE TRIBUNAL

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

No. 569
Dated: 18-04-2024

All Pakistan Newspaper Society
Vs.
Competition Commission of Pakistan etc

NOTICE

Appeal No.10/2022

Take notice that under rule 51 of the Competition Appellate Tribunal Rules, 2015, attested copies of the Judgment dated **17-04-2024** is enclosed for information and record.

2. Given under my hand and stamp of the Tribunal, this 18th day of April, 2024.

S. W.

(SAEED AFZAL)
Registrar



M/S All Pakistan Newspaper Society,
ST-1/E, Block-16, KDA Scheme-36, Gulistan-e-Jauhar **Karachi.**

Evacuee Trust Property Board,
9 Court Street, **Lahore,54000**

Qamar Afzal Advocate,
Afzal & Afzal Law Officer,
Suit No. 903, 9th Floor, Silver Oaks, 10th Avenue, F-10 **Islamabad.**

✓ **Competition Commission of Pakistan,**
7th Floor ISE Towers, 55-B,
Jinnah Avenue, **Islamabad.**

BEFORE THE COMPETITION APPELLATE TRIBUNAL ISLAMABAD

Appeal No. of 2019

M/s. All Pakistan Newspapers Society, ST-1/E, Block-16. KDA Scheme – 36,
Gulistan-e-Jauhar, Karachi

.....Appellant

VERSUS

1. **Competition Commission of Pakistan, Through its Chairman, Islamabad**
Stock Exchange Tower, 55-B Jinnah Avenue, F 7/1 Blue Area, Islamabad.

2. **Evacuee Trust Property Board, 9 Court Street, Lahore 54000**

.....Respondents

APPEAL UNDER SECTION 42 READ WITH SECTION 39 OF THE
COMPETITION ACT 2010

Being aggrieved of and dissatisfied with the decision dated 6th December, 2018, (copy filed herewith as Annexure "A") copy served on the Appellant on 8th December, 2018, the above named Appellant respectfully submits as follows:

1. **Jurisdiction of the Competition Appellate Tribunal.**

That the Appellant declares that the subject matter of the appeal falls within the jurisdiction of the Appellate Tribunal.

2. **Limitation.**

The Appellant further declares that the appeal is within the limitation period as prescribed in section 42 of the Competition Act 2010 (hereinafter referred to as "the Act")

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

preferred:
A complaint was filed by the respondent no. 2 alleging anti-competitive behavior on the part of the Appellant. The complaint resulted in an enquiry and

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REGISTRAR
Competition Appellate Tribunal
Islamabad
Dated: 18 APR 2019

**BEFORE THE
COMPETITION APPELLATE TRIBUNAL, ISLAMABAD**

M/S ALL PAKISTAN NEWSPAPERS SOCIETY

.... APPELLANT

VERSUS

- (1) **COMPETITION COMMISSION OF PAKISTAN**
(2) **EVACUE TRUST PROPERTY BOARD, 9 COURT STREET,
LAHORE 54000.**

...RESPONDENTS

Appeal No.10/2022

Present: Justice Mazhar Alam Khan Miankhel, Chairperson
Muhammad Asghar Ch., Member Technical
Raja Saad Sultan, Member Technical.

For the appellant: Mr. Qamar Afzal, Advocate

For the Respondent No.1: Mr. Ahsen Jamal Pirzada, Advocate.

For the Respondent No.2: Syed Najam Ul Hassan Hashmi, Advocate.

Date of hearing: 13.03.2024

JUDGMENT

Muhammad Asghar Ch., Member Technical.

This Judgment of Competition Appellate Tribunal will dispose of the appeal filed by M/s All Pakistan Newspaper Society (APNS), the appellant, under section 42 of Competition Commission of Pakistan Act 2010 (the Act), against the order of Competition Commission of Pakistan (the Commission) dated 06.12.2018. The Commission vide the impugned order imposed a penalty of Rs. 10 Million under section 38 of the Act, for Anti-competitive conduct i.e., contraventions of Section 4(2)(a), 4(2)(b) and 4(2)(c) read with Section 4(1) of the Act. The appellant was further imposed a penalty of Rs. 25 Million and an

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S. W. J.
REGISTRAR
Competition Appellate Tribunal
Islamabad
Dated: 18.4.2024.....

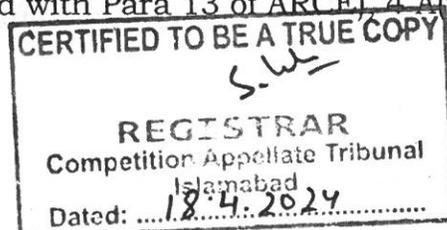
additional penalty of Rs. 100,000/- per day, in the event if APNS fail to comply with the directions within stipulated time period.

2. Brief facts of the case are that on 29.02.2016, the Evacuee Trust Property Board (ETPB), the complainant filed a complaint with the Commission under section 37(2) of the Act, alleging that the APNS (Appellant), Midas Private Limited (Midas) and Press Information Department (PID) colluded to block its advertisement in all of the Newspapers and periodicals over a dispute of recovery payments. The Commission ordered an Enquiry into the matter, which was concluded in a report dated 27th July, 2016. The Enquiry examined the following Rules, Regulations and Circulars issued by the APNS, with a view to analyse them as if they are, prima-facie restrictive and discriminatory in contravention of Section 4 (2)(a) and 4 (2)(f) read with Section 4 (1) of the Act.

- a. ANPS Rules and Regulations Governing Conduct of Advertising Agencies (hereinafter, "APNS Rules" or the Rules")
- b. Special Supplement Rules (hereinafter, "SS Rules"),
- c. Advertising Rules and Code of Ethics (hereinafter, "ARCE" or the "Code of Ethics"),
- d. Rules for the Acceptance of Advertising Business by the Members (schedule B of APNS Memorandum of Association; hereinafter, "APNS-MOU")
- e. APNS Circular No. APNS/2013/200 (the "2013 Circular")
- f. Rule and Regulations of Media Buying Houses (hereinafter, "MBH Rules").
- c. Rules for the Acceptance of Advertising Business by the Members (schedule B

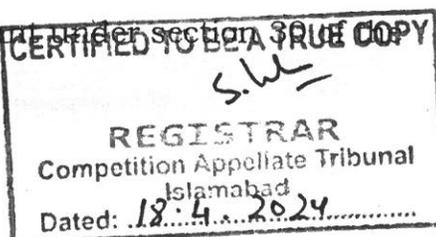
3. Enquiry Report found that clause 1 through 9 of APNS Rules deals with accreditation of advertising agencies by its Executive Committee. Based on the analysis of the documents and evidence gathered in the course of investigation, it was concluded that clause 3(a), 3(b), 3 (c), 3(d), 4, 4A(iii), 7 (read with Para 13 of ARCE), 4 A(v),

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6 and 9, 74A(iv) pertaining to conditions for accreditation of advertising agency, trade discount, credit terms and handling of government business are, prima facie, restrictive and discriminatory and are in contravention of Section 4(2) (a) and 4(2)(f) read with Section 4(1) of the Act. With regards to fixing of the commission of the advertising agencies, the Enquiry Report further highlighted that clause 4A (iii) and 7 of APNS Rules (and paragraph 12 of ARCE) envisage capping of the Commission and clause 10 bars negotiating advertising rates. In the similar vein, the Enquiry Report found that the paragraph 5 of APNS MOU bars member publications from offering lower rates and paragraph 1 of SS Rules also caps trading discount / commission for supplements in contravention of Section 4(2)(a) read with Section 4 (1) of the Act. It was further observed that clause 9 of APNS Rules relates to the clearing of payment mechanism and empowers APNS to operate as a clearing house on behalf of its members in contravention of Section 4(2)(a) read with Section 4 (1) of the Act. If there is any deviation from the aforesaid rules, APNS may impose sanctions and blacklist clients on behalf of its member undertakings and paragraph 12 of ARCE imposes a restriction on direct business between clients and the publication. According to the Enquiry Report, APNS and its member undertakings vide 2003 Circular have attempted to coerce the government clients to purchase more advertising space, which prima facie constitutes the imposition of restrictive trading conditions in contravention of Section 4(2)(a) read with Section 4(1) of the Act. Finally, clause 3(c), 3(e), 4, 7 and 14 of Media Buying Houses (MBH) Rules relating to accreditation, renewal of registration, restriction on business, fixing of the commission of MBHs were also found in contravention of Section 4 of the Act. The aforementioned clauses may hereinafter be referred to as the 'impugned clauses'.

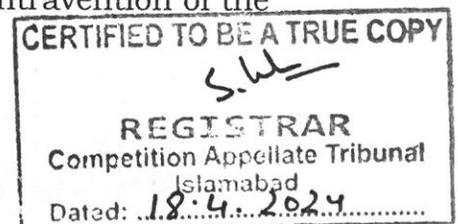
4. On the findings of Enquiry Report, the Commission initiated proceedings against the appellants under section 37 of the Act.



Act through issuing a Show cause Notice alleging that the Rules, Regulations, codes and circulars of APNS, having been adopted through internal procedures have created an environment that amounts to price fixing and / or restrictive trading conditions in prima-facie violation of Section 4(1) read with Section 4(2)(a) of the Act. The appellant in its various instances of APNS decisions committed for applying dissimilar conditions in prima-facie violation of Section 4(1) read with Section 4(2)(f) of the Act.

5. The appellant in its written reply to the show cause notice stated that APNS is a law abiding organization and is willing to address the concerns raised in the Enquiry Report or as it may be advised by the Commission. During the hearing held on 28th November 2016, in the Commission, the Secretary APNS reiterated that APNS having a compliance-oriented approach proposed to amend the impugned clauses to the satisfaction of the Commission. In addition, the Secretary APNS submitted draft amendments and rationale to a few of the impugned clauses. On 27th March, 2018 the representative for APNS submitted that they have amended the impugned clause for the Commission's perusal. If there were any reservations, they are willing to comply with as their Board Meeting was scheduled for 31st March 2018.

6. The Commission through Mail advised the appellant to convey the latest approvals of their impugned clauses by APNS Board but no reply was received by the Commission, hence proceedings continued and thereafter finalized by the Commission. In view of considering all the facts and material available on record, the Commission held that impugned clauses are anti-competitive in contravention of Section 4(2)(a)(b)(c) read with section 4(1) of the Act and therefore, declared the rules, regulations and circular for accreditation of advertising agencies accreditation renewal of registration for Media Buying Houses (MBH) as contravention of the Act and should be annulled with immediate effect.



7. The learned counsel for the appellant during the hearing before Tribunal only presses for leniency in the penalties. He submits that in the era of dominance of Electronic Media, the income of APNS and that of the Print Media has declined and its earnings remarkably depend on the Advertisements as the Newspapers Sale may not sufficiently cover the paper, printing and over head costs. The appellant did not touch upon the merits of the impugned order and simply prayed for leniency in the penalty which he based on the compliant behaviour of APNS. He submits that during the Enquiry proceedings the appellant amended its accreditation Rules, advertisement regulations, circulars and registration of MBH and presented draft to Commission. However, final approved version of the Rules could not be provided as it required approval of Executive Board of APNS. He further contends that in the meanwhile due to Covid-19 during the year 2019 and 2020, all the functions were halted however APNS applied for Exemptions to the Commission u/s 5 read with Section 9 of CCP Act, 2010 and the exemption was granted of section 4 of the Act w.e.f 26.01.2019 un till 30.05.2023. The learned counsel for the appellant submits that there is no penalty if it infringes the statutory status of undertaking. He cited the principle of Mens Rea, in the law that is the intention to do crime or mental element to cause a crime. He also cited the order of the CCP, 2019 CLD 1285 and Indian Supreme Court Judgment AIR 1986 Supreme Court 515 and submitted that the Oil Companies Advisory Council (OCAC) violated the Section 4 of the Act, but it was not financially penalized. Similarly, the Indian Supreme Court made it a primary duty of the national courts to uphold the freedom of press and invalidate all laws or administrative actions which interfere with it contrary to the constitutional mandate. The appellant showed a compliant behaviour, made amendments in Rules, circulars as per directions of the Commission and thereafter obtained Exemption Certificate. However, the Commission has not taken this into account and imposed a penalty of Rs. 10 Million.

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8. The learned counsel for the CCP assisted by learned counsel for Respondent No-2 vehemently opposed any leniency in the penalty of Rs. 10 Million imposed by the Commission. He referred to Competition leniency Regulations 2019 and submitted that in view of Regulations 3 and 4 of the above Regulations, the appellant's penalty cannot be reduced, as the appellant have failed to comply with any provision of the above mentioned Regulations.

Rule-3. **Grant of immunity from financial penalties:**____(1) The Commission shall grant an undertaking the benefit of total immunity from financial penalties which would otherwise have been imposed if the Undertaking satisfies the following conditions:

- (a) the Undertaking is the first to submit Evidence which in the Commission's view, at the time of evaluating the application, enables the Commission to carry out the investigation in connection with the alleged prohibited agreement and the Commission does not already have sufficient information to establish the existence of the Prohibited Agreement ; and
- (b) the Undertaking:
 - (i) provides the Commission with all the Evidence available regarding the alleged prohibited agreement in a timely manner;
 - (ii) does not conceal, destroy, manipulate or remove any Evidence that may be crucial for the investigation;
 - (iii) makes current and if possible former persons associated with the participants and parties to the alleged Prohibited Agreement available for interviews with the Commission;
 - (iv) maintains continuous and complete cooperation throughout the proceedings until the conclusion of the proceedings in connection with the alleged Prohibited Agreement as initiated by the Commission;
 - (v) refrains from further participation in the alleged Prohibited Agreement from the time of its disclosure to the Commission or as otherwise required by the Commission; and
 - (vi) has not taken any steps to coerce another Undertaking to take part in the alleged Prohibited Agreement.

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(2) If an Undertaking does not qualify for total immunity from financial penalty under this regulation, it may still be entitled to the benefit from a reduction in the financial penalty under regulation 4 or regulation 5 of these Regulations.

4. **Grant of reduction in the amount of financial penalty**—(1) An Undertaking may benefit from a reduction in the financial penalty if ____

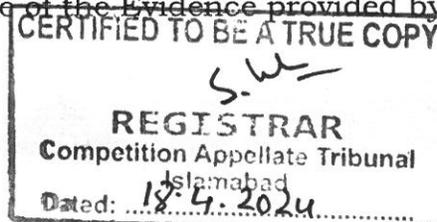
- (a) the Undertaking seeking reduction provides the Commission with material, additional, contemporaneous Evidence of the alleged Prohibited Agreement; and
- (b) this information is given to the Commission:
 - (i) prior to issuance of Show Cause Notice under Section 30 of the Act ; or
 - (ii) after initiation of proceedings under section 30 of the Act but before the Commission has passed an Order under section 31 of the Act.
- (c) the Undertaking submits additional Evidence, which is previously unknown to the Commission, and it represents Significant Added Value with respect to the Evidence already in the Commission's possession, thus further substantiating the alleged Prohibited Agreement.

(2) Any application under this regulation shall be entertained subject to the conditions imposed by the Commission including that the applicant:

- (a) admits the infringement of the provisions of Section 4 of the Act unconditionally;
- (b) abandons its participation in the alleged Prohibited Agreement forthwith unless otherwise required by the Commission ; and
- (c) makes a full and true disclosure of all the facts within its knowledge relating to the alleged Prohibited Agreement.

(3) Any reduction in the amount of financial penalty under these circumstances is discretionary and in exercising this discretion, the Commission will take into account.

- (a) the stage at which the Undertaking comes forward;
- (b) the Evidence already in the Commission's possession; and
- (c) the quality and nature of the Evidence provided by the Undertaking:



Provided that the Undertaking cooperates genuinely, fully and on a continuous basis from the time it submits its application and throughout the proceedings before the Commission and must not have coerced another Undertaking to take part in any Prohibited Agreement, in order to benefit from reduction in the amount of financial penalties as prescribed above.

9. The learned counsel for the original complainant 'Evacuee Trust Property Board' adopted the arguments of the learned counsel for the CCP.

10. Arguments of counsel for the appellant and counsel for Respondent No-1 & 2 were heard and record including written submissions of CCP were perused.

11. The Competition Commission of Pakistan in its impugned order dated 06.12.2018 although declared most of the rules, regulations and circulars issued by APNS (Appellant), restrictive and discriminatory, contravening Section 4 of the Act, however, in the meanwhile it also allowed exemption from Section 4, under section 5 and 9 of the Act w.e.f 26.01.2019 un till 30.05.2023. This exemption included the grace period of 60 days, during which the impugned order was to be implemented. The Enquiry proceedings of the Commission against the appellant indicate that APNS has been compliant throughout and showed its readiness to amend its contravening provisions of their rules, regulations, circulars and sections. During the proceedings different contravening sections were also examined by the Commission highlighting the specific violative behaviour / content. In the meanwhile, the APNS submitted an unapproved draft of revised regulations, rules and circulars relating to accreditation of advertising agencies, advertising costs etc. We also kept in mind the view point of the counsel for the appellant that advertisement cost varies from time to time depending on circulation of newspaper as well as printing and overhead costs. Due

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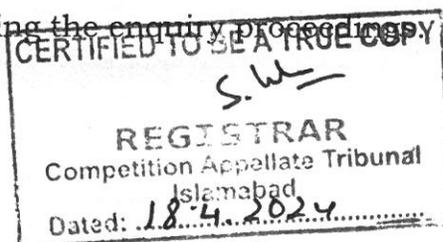
to Covid-19, they were unable to get the approval of their Executive Board for revised rules, regulations and circulars. We noted the following facts from the Tribunal proceedings and perusal of case files.

- (i) The appellant, never during enquiry or commission proceedings contested the Commission's findings, suggestions etc and showed their readiness for amendments. The Appellant also does not contests the impugned order in the Tribunal. In the prayer he has requested the Tribunal to revisit the penalty levied under Para-56 and 58 of the impugned order. Section 39 of the Competition Act, 2010 deals with Leniency, and Section 39 (1) of the Act, provides,

“S. 39 (1)___ The Commission may, if it is satisfied that any undertaking which is a party to a prohibited agreement and is alleged to have violated Chapter-II prohibitions, has made a full and true disclosure in respect of the alleged violation, impose on such Undertaking a lesser penalty as it may deem fit, than that provided in Section 38.”

- (ii) The appellant remained fully compliant and showed readiness to amend all its Rules, Accreditation, Regulations, Commission Circulars and Media House Buying instructions. The APNS in coordination with the Commission developed drafts of such rules / regulations removing / amending all the restrictive clauses.
- (iii) Furthermore, Regulation 4 of the Competition (leniency) Regulations, 2019 allows for leniency for those undertakings which provide evidence of alleged prohibited agreements prior to issuance of show cause notice under section 30 of the Act and before passing the order. The APNS in the instant case provided all such information, their restrictive agreements / circulars, regulations, during the enquiry proceedings,

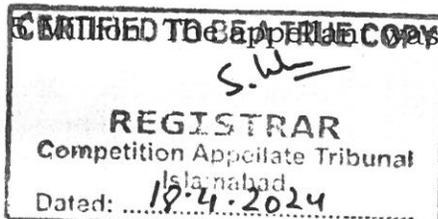
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However, a final approved version of such regulations could not be provided because of the non-approval by the APNS Executive Board, on the plea that due to 'Covid' it could not be held during that period. However, through formal proceedings in December 2018, the penalty was imposed by Commission in its impugned Orders.

- (iv) The Commission just after a month of the issuance of impugned order allowed exception from section 4 of the Act, which remained in field from January 2019 to May 2023. The leniency regulations were also notified in 2019. The Commission while imposing the penalty of Rs. 10 Million recognised the APNS Cooperation and compliance oriented approach as mitigating factor. We have gone through Section 39 of the Act and Regulation 4 of the Competition (Leniency) Regulations 2019, and observed that the appellants approach before the Commission throughout the proceedings was compliance oriented and furthermore the appellant's actions fully complied with all the pre-requisites for leniency as described in Section 39 of the Act and Regulation 4 of Leniency Regulations, 2019. We have also considered the Commission's Fining Guidelines to seek guidance on the issue. We have noted that the most of the mitigating factors as described in these Guidelines were adopted by the appellant during the proceedings before the Commission. Accordingly, the undertaking deserved the leniency, especially under Regulation 4 of the leniency regulations, because its compliant behaviour, however it was never requested by him during Enquiry / Commission proceedings, nor it was discussed in the impugned order.

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12. In view of above discussion, the appeal is allowed to the extent that the penalty of Rs. 10 Million under Para 56 of the impugned order is reduced to Rs.



provided ample time to amend its regulations, rules, circular accreditive criteria for advertising agencies from January, 2019 to May 2023, but the needful so far has not been complied / fulfilled to date. He is, therefore, directed to provide copies of its amended Rules/Regulations, Circulars approved by the Executive Board as agreed with the Commission in one month period. The other two penalties imposed under Para 58 of the impugned order shall not be applicable if the said amended rules / regulations are endorsed by the Commission in 60 days. In case of non-compliance, the penalties referred to in Paragraph 58 of impugned order will come into force by considering 31st of May, 2023 to be the first day of such violation. The Commission is also directed to initiate an Enquiry as to why the recovery proceedings has not been initiated since expiry of exemption period w.e.f 31.05.2023.

Announced in open court on

17.04.2024

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Justice Mazhar Alam Khan/Miankhel,
Chairman

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Muhammad Asghar Ch.,
Member Technical

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Raja Saad Sultan,
Member Technical

