

**IN THE COMPETITION APPELLATE TRIBUNAL**2<sup>ND</sup> Floor, Federal Courts Complex, G-11/1, Islamabademail: [registrartribunal@gmail.com](mailto:registrartribunal@gmail.com)

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

No. 342(iv) /Reg./CAT/2025Dated: 24-04-2025

PAKISTAN VANASPATI MANUFACTURER ASSOCIATION

Vs.

Competition Commission of Pakistan

**NOTICE****Appeal No.46/2023**

Take notice that under rule 51 of the Competition Appellate Tribunal Rules, 2015, attested copies of the Judgment dated **24-04-2025** is enclosed for information and record.

2. Given under my hand and stamp of the Tribunal, this 24<sup>th</sup> day of April, 2025.



(MUSTAJAB ALAM KHAN)  
Registrar

**REGISTRAR**Competition Appellate Tribunal  
Government of Pakistan  
Islamabad

1. **Pakistan Vanaspati Manufacturers Association,**  
**Shahid Pervez** (Deputy Secretary General),  
House No. 80, E-Block, Gulberg Residencia,  
Gulberg Green, **Islamabad.**

2. **Malik Qamar Afzal**  
Advocate Supreme Court of Pakistan  
Afzal & Afzal Law Offices  
Suite No. 903, 9th Floor, Silver Oaks, 10th Avenue,  
F-10, **Islamabad.**

3. **Faraz Sheikh, Advocate**  
Bin Faraz Law Chamber,  
Suit # 2, 2<sup>nd</sup> Floor, Dubai Plaza, 6<sup>th</sup> Road Chowk,  
Murree Road, **Rawalpindi.** (0300-8503272)

✓ 4. **Competition Commission of Pakistan**  
ISE Tower, 7<sup>th</sup> Floor, 55-B, Jinnah Avenue,  
**Islamabad.**

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IN THE COMPETITION APPELLATE TRIBUNAL,  
ISLAMABAD

(Appcal No. 46 of 2023)

Pakistan Vanaspati Manufacturers Association (PVMA)  
.....Appellant

Versus

Competition Commission of Pakistan  
.....Respondent

Present: Mr. Justice Sajad Ali Shah, Chairperson.  
Dr. Faiz Illahi Memon, Member Technical-I.  
Mr. Asim Akram Member Technical-II.

For the Appellant: Mr. Faraz Fazal Sheikh, Advocate.  
For Respondent: Mr. Amjad Hameed Ghouri, Advocate  
along with Hafiz Naeem and Haider  
Afzal, legal Advisors for CCP.

Date of hearing: 10.04.2025  
Date of Announcing  
Judgment: 24.04.2025.

**JUDGMENT**

Justice Sajjad Ali Shah, Chairman.

Through the instant appeal (PVMA) an Association of Vanaspati manufacturers has impugned the order of Competition Commission of Pakistan passed on 30.06.2011 whereby, a penalty of Rs.50 million was imposed on Appellant for contravening the provisions of Section 4 of the Competition Act, 2010 (herein after refer to as Act of 2010) by engaging itself in anti-competitive practices. A further penalty in the sum of Rs.1 million for each day of default was imposed for violating



Section 3(3)(b) of the Act of 2010 upon finding the Appellant guilty of charging discriminatory rates from manufacturing units & commercial importers of Ghee and Cooking Oil. However, such penalty was not effective in case the practice was seized within a period of 30 days.

2. The record reflects that a study in the sector of Ghee and Cooking Oil was carried out by the authorized officers of the Commission which indicated that the manufacturers of Ghee and Cooking oil and their Association i.e. the Appellant were acting in a collective and collusive manner in respect of pricing and production of Ghee and Cooking Oil and its transportation in clear violation of Section 4 of the Act, 2010. The study was placed before the Commission and upon perusal of such study the Commission authorized a search under section 34 of the Act 2010 to inspect the offices of Appellant at Islamabad and Karachi and to collect the evidence for violating section 4 of the Act of 2010. The search was carried out and valuable data/material from the offices of the Appellant was impounded.

3. Thereafter a formal inquiry under section 37(1) of the Act was authorized and the Inquiry Committee submitted its report on 25.04.2011, concluding that there was prima facie evidence of violating section 3 & 4 of the Act 2010 by the Appellant and consequently recommended proceedings under section 30 of the Act of 2010. Thereafter, the Appellant on 27.04.2011, were issued a show cause notice under section 30

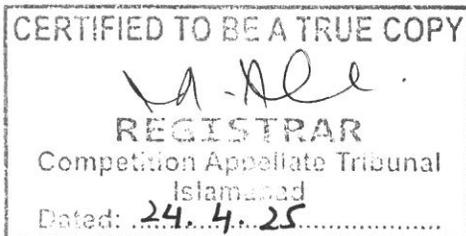
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*M. J. I.*  
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 Islamabad  
 Dated: ...24.4.25.....

of the Act directing submissions of written response and appearance for making oral submissions. The Appellant Association filed its response, oral submissions were also advanced. Beside challenging the competence it was inter alia contends that being an Association of undertaking the appellant was not in a position to create Anti-competitive agreement nor could implement / enforce business decisions. It was further asserted that even if there was any settlement for pricing neither it had any penal consequences nor had any stationary statutory backing for enforcement. As to charging two different rates for verification of import document it was pleaded that lesser rates were charged from the manufacturers as they were its members.

4. The Commission after perusal of response and the oral submissions advanced, summarized the controversy in the following four points for its determination: -

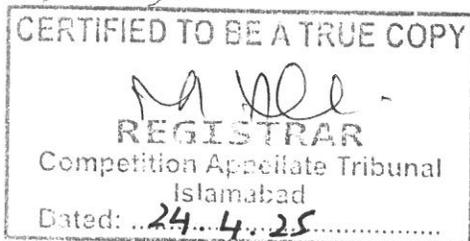
- a. Whether there has been any violation of Regulation 45(2) of the Competition (General Enforcement) Regulations, 2007?
- b. Whether a decision of an association with respect to price fixing notwithstanding its recommendatory/advisory nature and its implementation by the members constitutes violation under section 4 of the Act?
- c. Whether the arrangement entered into by PVMA with respect to fixing rate of transportation is in violation of Section 4 of the Act?
- d. Whether PVMA in discharging the services of invoice verification is discriminating between its customers by charging two different rates for the same service in contravention of Section 3(3) (b) of the Act?



5. The finding of the Commission on point "a" went against the Appellant and the proceedings were found competently initiated and maintained. As to point "b" the Appellant was found guilty and was imposed penalty of Rs.50 Million. The charge "c" on account of insufficient evidence was dropped and on charge "d" the Appellant Association was directed to take corrective measures within a period of 30 days failing penalty in the sum of Rs. 1 million on each day of default would follow.

6. In this backdrop we heard the learned counsel for the parties and with their assistance were able to go through the record.

7. The learned Counsel for the Appellant reiterated his submission on point "a" by asserting that rule 45(2) of the Competition Commission (General Enforcement) Regulations 2007 (herein after referred to as Regulation 2007) required that the Commission cannot serve notice to an association of undertaking with less than 20 members alleging collusion and cartelization and or where an association had less than 20 members the proceedings were incompetent and since the Commission has failed to lay hand on 20 Members of the Appellant, suspected of cartelization, therefore, the proceedings were incompetent. We repeatedly asked the learned Counsel for the Appellant to kindly take us to the provision of Rule 45(2) of the (Regulation 2007) to support his submissions but all in vain. However, we upon perusal of Regulation 45(2) have found that it only provides the mode of issuing notices to an Association of undertakings and secondly where the Regulation



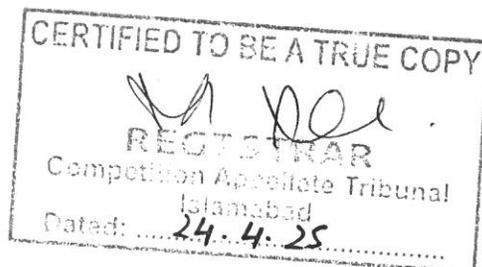
requires, the Commission to give notice of any matter to each of more than 20 Members of an Association or undertaking. In order to understand the submissions, we at our own have perused the definition of term undertaking as provided in Section 2 (q) of the Act, 2010 but were not able to find anything to support the submission of the learned Counsel for the Appellant even otherwise the Secretary of the Appellant states that the Appellant has more than 200 Members. In the circumstances, we see no reason to take a different view than the one taken by the Commission.

8. As to point "b" learned Counsel for the appellant contended that the Appellant had a meeting with Government of Punjab and on account of Ramadan Package on the insistence of Government of Punjab the Appellant Association agreed to reduce the price of Ghee and Oil by Rs. 5 per Kg and in case the Appellant is penalized for such decrease the Government of Punjab should have been made a party and proceeded against. It was next contended that even if the appellant had fix the price it had no mechanism to enforce its decision either by imposing penalty or through statutory backing. We repeatedly requested the learned counsel to kindly render his assistance on the documents impounded from the office of Appellant Association, the extract whereof were reproduced in Para-32 of the Impugned order but without any success. On the other hand, the learned Counsel for the respondent referred to para 32 of the impugned order wherein the extract of various documents impounded from the Appellant office has been reproduced. A perusal of the extract from these documents

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reveals that on various occasions, the Appellant had a meeting with relevant Government Ministries with the sole agenda of price fixation and after negotiating the price on behalf of its Members, circulars were issued advising its Members to reduce the price of Ghee/Oil. It leaves no doubt in our minds that the Appellant was not only representing the business interest of its members but was negotiating price of the commodity refined by its members and upon settlement of price the Appellant informed its members accordingly for compliance and such price fixation for the Appellant on behalf of its members was in violation of Section 4 of the Act of 2010. As to the contention of the learned Counsel for the appellant that the Association had neither the power to enforce its decision by imposing penalty on its members nor its decision to reduce the price had any statutory backing, but could neither deny that such decisions were accepted by its members across the board, nor could refer to any documentary evidence in support of any non-compliance. On the contrary the learned Counsel accepted the implementation by the members of appellants on account of Ramadan Package. Though Section 4 of the Act 2010 per se prohibits the Association from entering into any agreement inter alia fixing the purchase or selling price, notwithstanding in case the appellant wanted to take non implementation of Associations decision by its members as defense then it ought to have produced sufficient evidence to this effect.

9. Much stress was laid by counsel for the Appellant by asserting that since the proceedings were initiated against the Appellant for fixing rate of transportation in violation of Section 4 of

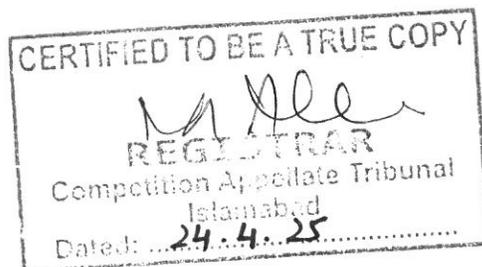


the Competition Act, 2010, therefore, the Commission could not have adjudicated the issue of price fixation in respect of Ghee & Oil Counsel and has referred to Para 1 of the impugned order and stressed on the opening part of the order to show that the proceedings were initiated on single point, which read as

“the principal issue in this case is whether PVMA has taken any decision to fix the price of Ghee & Cooking Oil and has entered into an arrangement with transporter to fix the rates of transportation of Edible Oil in contravention of Section 4(2)(a) of the Act, 2010”. and whether PVMA designated for invoice verification is discriminating before manufacturing units and commercial imports by changing two different rates in contravention of Section 3(3)(b) of the Act 2010”.

It was contended that the reproduced portion of the order does not show that the Appellant was charged with price fixation of Ghee & Oil. However, with utmost respect to the learned Counsel we were not able to understand his submission because mere reading of the opening part of the order shows that the first question was the price fixation of Ghee & Cooking Oil, the second was with regard to fixing the rate of transportation and third was charging of different price from manufacturing units and commercial importers for invoice verification. In these circumstances we are not inclined to take a different view and dismiss the appeal on this point.

10. As to Point “c” regarding price fixation with transporters, since this point was dropped by the Commission for want of necessary evidence, therefore, needs no further deliberation.



11. Coming to the last point i.e. "d", on our query the learned Secretary of the Appellant informed us that in order to curb the under invoicing, the appellant has been designated by the Custom Authorities to verify the import documents/invoices. The appellant for such verification charges a sum of Rs.4 per metric ton from its members and Rs.10 per metric ton from commercial importers. The justification for charging concessionary rate from manufacturing unit was firstly because they are members of the appellant Association and have obtained membership of the appellant against payment of Rs.50,000/- as membership fee beside payment of annual membership and secondly the Commercial Importers ultimately sell the Oil etc., to these very Manufacturing units, as such practice of charging different price would fall within the ambit of "objective justification" in terms of Section 3 (3) (b) of the Act, 2010. However, when asked as to whether the verification of import documents / invoices fell within the preview of activities or services normally rendered by the appellant as association to its members or that such service were rendered on the basis of a delegated authority for oil importers across the Board. None was able to respond. In our opinion such authority / function was delegated / assigned to the appellant Association by the Custom authorities for providing services of verification of documents to all the importers of the Oil / Ghee across the Board and, therefore, the distinction made by appellant between Members and nonmember in our opinion cannot be justified under the umbrella of objective justification. Additionally, no explanation was offered, that in case the non-

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member/importers ultimately sell the imported Oil to the manufacturers who are Members of appellant then why charging them extra when ultimately the burden is to be carried by the Members of the appellant. In these circumstances such discriminatory service fees charged by appellant from manufacturers / members and commercial importers / non-members cannot be justified on the touch stone of "objective justification". However, in order to provide opportunity to rectify its discriminatory practice, we would modify the Impugned order to the extent that we would allow appellant a period of fifteen days from the date of instant order to rectify its discriminatory behavior, failing Para-69 of order impugned imposing penalty of Rs. One Million for each date of default shall stand revived.

12. The appeal in the circumstances and in above terms stand dismissed.

Chairman

Member Technical-I

Member Technical-II

Announced in open court:

24.04.2025.

