

IN THE COMPETITION APPELLATE TRIBUNAL

2ND Floor, Federal Courts Complex, G-11/1, Islamabad
email: registrartribunal@gmail.com
Tel No: 051-9320208, Fax No: 051-9320203

No. 1140 /Reg./CAT/2024
Dated: 29-05-2024

M/S GOLD ROYAL CABLE

Vs.

Competition Commission of Pakistan

NOTICE

Appeal No.43/2023

Take notice that under rule 51 of the Competition Appellate Tribunal Rules, 2015, attested copies of the Judgment dated **29-05-2024** is enclosed for information and record.

2. Given under my hand and stamp of the Tribunal, this 29th day of May, 2024.



(SAEED AFZAL)

Registrar

REGISTRAR

Competition Appellate Tribunal
Government of Pakistan
Islamabad

M/S GOLD ROYAL CABLE,

Through Shahid Mehmood S/O Abdul Aziz,
Shahid electric Store, Post office setrah, Pasrore road,
District **Sialkot.**

FAISAL IQBAL KHAN,

Advocate High Court,
Office # 05, 2nd Floor, Satti Mansion Plaza, F-10 Markaz,
Islamabad.

✓ **Competition Commission of Pakistan**

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

Chairman Secretariat
Diary No- 343 Ext-
Date Received- 31-5-24
Date Forwarded 31-5-24

31/5/24
SLA-11

/

BEFORE THE COMPETITION APPELLATE TRIBUNAL
ISLAMABAD

Appeal No. ____/2019

M/s **Gold Royal Cable**, through Shahid Mehmood S/o Abdul Aziz,
Shahid Electric Store, Post Office Setrah, Pasrore Road, District
Sialkot.

... Appellant/Respondent No.8

Versus

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

...Respondent

APPEAL UNDER SECTION 42 READ WITH SECTION 10 (1) &
(2)(a)&(b) OF THE COMPETITION COMMISSION ACT, 2010

Respectfully Sheweth:

1. Jurisdiction of Competition Appellate Tribunal:

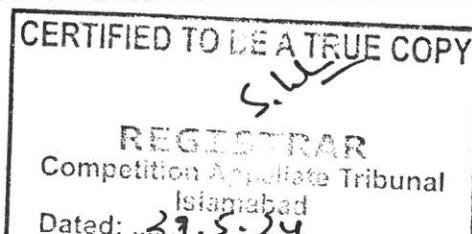
That the subject matter of the instant appeal falls within
the jurisdiction of this Honorable Appellant Tribunal.

2. Limitation:

That the instant appeal is within the limitation period as
prescribed in Section 42 of the Competition Commission
Act, 2010.

FACTS OF THE CASE:

1. That in 2015, the Commission on its *suo-motto* instance
started action against different electrical cable
manufacturers & companies, etc., who have started
practice of inserting cash coupons and other promotional
material in the packing of their electric wire cable bundles
without disclosure of the scheme & presence of coupons
and in the Commission's opinion such practice is a



BEFORE THE COMPETITION APPELLATE TRIBUNAL,
ISLAMABAD

Appeal No: 43 of 2023

Gold Royal Cables **APPELLANT**
VERSUS
Competition Commission of Pakistan **RESPONDENT**

Appeal No: 44 of 2023

M/S Falcon Cables **APPELLANT**
VERSUS
Competition Commission of Pakistan **RESPONDENT**

Appeal No: 04 of 2022

Hero Cables **APPELLANT**
VERSUS
Competition Commission of Pakistan **RESPONDENT**

Appeal No: 05 of 2022

M/S G.M Cables & Pipes (Pvt) Ltd **APPELLANT**
VERSUS
Competition Commission of Pakistan **RESPONDENT**

Appeal No: 06 of 2022

E/Flux Cables **APPELLANT**
VERSUS
Competition Commission of Pakistan **RESPONDENT**

Appeal No: 08 of 2022

M/s Alpha Plus Wires & Cables **APPELLANT**
VERSUS
Competition Commission of Pakistan **RESPONDENT**

Appeal No: 09 of 2022

Fast Cables **APPELLANT**
VERSUS
Competition Commission of Pakistan **RESPONDENT**

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

For the Appellants: Mr. Faisal Iqbal Khan, Mr. Abdul Wahab,
Mr, Saood Nasrullah Cheema,
Mr. Waqas Ahmed Mir, Mr. Hammad
Hussain Shah & Mr. Azhar Mukhtar.

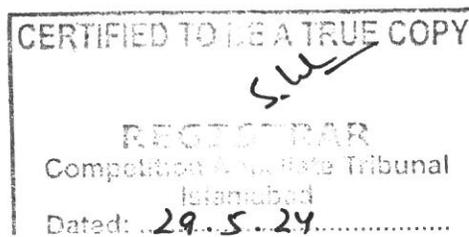
For Respondents: Mr. Daniyal Hassan & Mr. Hassan Ahsan
Mian, Law Officer.

Dates of hearing: 12.12.2023, 13.12.2023, 10.01.2023,
16.01.2024 & 30.01.2024.

JUDGMENT

Raja Saad Sultan, Member Technical: -

This judgment decides the instant appeal as well as the connected appeals arising out of the common order dated 26-03-2019 passed by the Competition Commission of Pakistan (“Commission”).



2. The appellants are in the electric cable manufacturing industry. They have been including cash coupons inside their electric cable bundles without disclosing this promotional offer on their packaging. The concern of the Commission was that these tokens are intended to benefit the electricians rather than consumers. The Competition Commission of Pakistan ("**Commission**") took Suo-moto action pursuant to **Section 37(1) of the Competition Act,2010** and initiated an enquiry under **Section 37(2) of the Competition Act,2010** to investigate the contravention of the provisions of **Chapter II of the Act**.

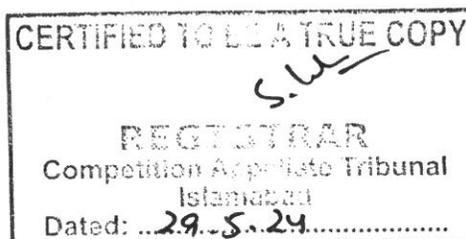
3. The enquiry report concluded that this practice of inserting cash coupons not only mislead the consumers but also provides an unfair advantage to the undertakings by omitting essential information. Therefore, this will attract the provisions of **Section 10 of the Competition Act,2010**.

4. On the recommendations of enquiry committee, the Commission initiated proceedings against the appellants under **Section 30 of the Competition Act,2010**, and issued show cause notices dated 18-11-2016. The Commission held that this practice of omission of material information with regard to tokens in the packaging of cables amounts to misleading consumers and is therefore deceptive and in contravention of **Section 10 of the Act**. The Commission thereby imposed a penalty of Five million (Rs. 50,00,000) on the Appellants **M/S Fast Cables and M/s G.M Cables & Pipes (Pvt) Ltd** each, and on the rest of the Appellants a penalty of Rs.500,000 was imposed.

5. The Appellants have challenged the Commission's order by filing separate appeals.

6. Learned Counsel for the Appellants **Gold Royal Cables, M/S Falcon Cables, E-Flux Cables and Alpha Plus**, submitted that there is no evidence against the Appellants and the Commission's case is purely based on presumptions. He Submits that in Appeal No.43/2023, the enquiry report was finalised on 20-05-2016, however the letter for the provision of information was sent to the Appellant on 26-05-2016, after the finalisation of the enquiry report. Learned Counsel for the Appellant further submitted that proper disclosure had been made and it was clearly mentioned on the packaging of the Cables that cash coupon was included inside the cable bundle. He further contended that the promotional schemes are not prohibited under the law. The Commission in its impugned order has acknowledged that when proper disclosure is made, it is not within the Commission's authority to stop any particular practice. He referred to Section 10 of the Act and argued that it relates to the distribution of false or misleading information in relation to the price and contends that the promotional scheme is different from price. Therefore, submits that **Section 10 of the Act** does not apply to the Appellants, hence the impugned order is liable to be set aside.

7. Learned Counsel for the Appellant **Hero Cables/Ali Electric Store**, submitted that the impugned order has been passed without

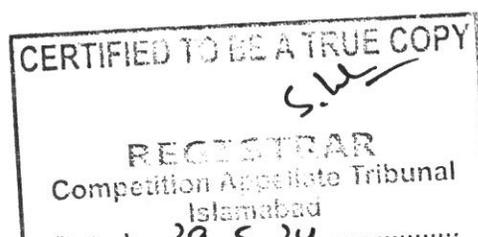


affording an opportunity of hearing to the Appellant. He contends that the appellant has not received any notice from the Commission, and further submits that all the correspondence with the Appellant occurred at the Rawalpindi address, whereas, the Appellant is based in Lahore. Learned Counsel therefore prayed for the appeal to be allowed.

8. Learned Counsel for the Appellant **M/S G.M Cables & Pipes (Pvt) Ltd**, submitted that the impugned order was passed on the basis of false assumption that the Appellant has admitted this practice of inserting cash coupons. He contends that the Appellant had categorically denied this allegation in its reply filed before the Commission. He further submits that in the impugned order the Commission has failed to give their finding on the allegations made in the show cause notice. The Commission has misconstrued the design and trademark printed on the packaging of wire cable bundle. He submits that the moon and stars printed on the packaging of the wire cable bundles are their trademark and the digits printed on the packaging are their dealer reference code issued to the dealers, which could be verified from the dealership certificates. He finally submits that there is no evidence against the Appellant and the Commissions case is based on presumptions. Therefore, he prayed for the acceptance of the appeal by setting aside the impugned order.

9. Learned Counsel for the Appellant **Fast Cables**, submitted that previously they were selling their product through direct sales in selected areas. However, later on the dealership network was established and the direct sales were stopped since 01-08-2015. He contends that all these facts were conveyed to the Commission vide letter dated 26-08-2015. However, despite that, show cause notice was issued on 18-11-2016. He referred to their Standard Operating Procedure ("**SOP**") which governs the business relations between the Appellant and its dealers, which clearly says "*No coupons will be placed in packing boxes*". He contends that this "**SOP**" was already in field and also shared with the dealers much before the enquiry report. He argued that the Commission has failed to show as to when and how the market survey was conducted and what was the outcome of that survey. He also referred to the enquiry report, wherein, it was mentioned that the quality of the Appellants product is being compromised as a result of such deceptive marketing practice. He contends that there is no evidence, which indicates that the Appellants product quality got substandard due to cash coupons. He also contends that the omission is not mentioned in **Section 10 of the Competition Act, 2010**. Learned Counsel therefore, prayed for the appeal to be allowed.

10. Learned Counsel for the Competition Commission of Pakistan ("**Commission**") inter alia, argued, that the proceedings were initiated against the Appellants on the recommendation of enquiry committee. He contends that according to the enquiry report, the Appellants were engaged in the practice of placing cash coupons inside the packaging of wire cable bundles without due disclosure. He submits that the representatives of the Appellants **M/S Gold Royal**



Cable and **M/S E-Flux Cables** had appeared before the Commission and conceded this issue and also showed their willingness to comply with the directions of the Commission. He further argued that the Appellant **M/S Falcon Cables** had also admitted before the Commission that this coupon scheme was launched for a short period of time and was later discontinued. He relied on an earlier decision of this Tribunal passed in **Appeal No.03/2022** titled as **Rana Electric Store Vs. Competition Commission of Pakistan**.

11. Learned Counsel for the Commission further argued that the Appellant **M/S Alpha Plus** had filed Commitment before the Commission pursuant to **Part IV of Competition Commission (General Enforcement) Regulations, 2007** and also confirmed that they have changed their product packaging with a new one, which discloses the presence of coupons.

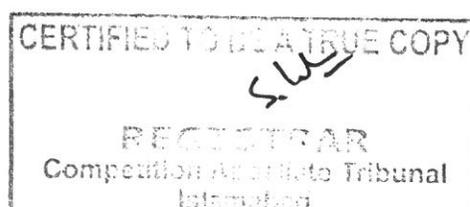
12. Learned Counsel for the Commission submitted that in the matter of **Hero cables**, show cause notice and hearing notices were sent to the address available to the Commission. He submits that the Appellant is operating with two different names and they have only provided information to this tribunal pertaining to Ali Electric Store, whereas the impugned order was passed against Hero Cables, which is also the business of the Appellant and that they have not provided any information relating to the Hero cables. Learned Counsel for the Commission therefore prayed for the appeal to be dismissed.

13. Learned Counsel for the Commission submitted that on the packaging of **M/S G.M Cables & Pipes** moon and stars are printed with a code. He contends that the stars are removeable, and electricians remove the star bearing the code from the packaging and use it to get cash. Therefore, their failure to disclose this material information contravenes **Section 10 of the Act**.

14. Learned Counsel for the Commission lastly argued that the Appellant **M/S Fast Cables** have submitted their undertaking before the Commission under **Part IV of Competition Commission (General Enforcement) Regulations, 2007**. The letter for the provision of information was written to the Appellant on 30-07-2015 and they had stopped this practice of inserting cash coupons after receiving this letter from the Commission. The Learned Counsel therefore, prayed for the dismissal of all these appeals.

15. Arguments advanced by the learned Counsels for the parties have been heard and also perused the record with their able assistance.

16. The Competition Commission of Pakistan ("**Commission**") took suo-moto action under **Section 37(1) of the Competition Act, 2010** and initiated enquiry against different electric cable manufacturing companies for the alleged contravention of **Section 10 of the Competition Act, 2010**. In view of **Section 36 of the Competition Act, 2010**, read with **Rule 23 of Competition Commission (General Enforcement) Regulations, 2007** all the Appellants were asked to provide the requisite information.



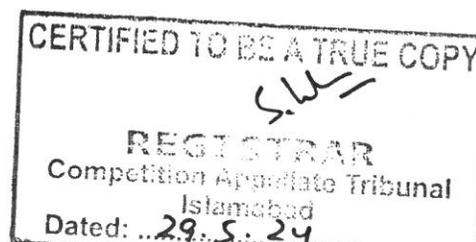
17. On the recommendations of enquiry committee, the proceedings were initiated by the Commission under **Section 30 of the Competition Act, 2010** and show cause notices were issued to the Appellants for the alleged contravention of **Section 10 of the Act**.

18. Perusal of record indicates that all the Appellants were asked vide letters dated, 30-07-2015, 05-04-2016 and 26-04-2016, to provide relevant information to the enquiry committee. All the Appellants except M/S Gold Royal Cables and M/S Falcon, cables had provided the requisite information to the enquiry committee. Perusal of the impugned order reveals that the representatives of Appellants **M/S Gold Royal Cables, M/S Falcon Cables and M/S E-Flux Cables** had appeared before the commission and expressed their willingness to adhere to the Commission's direction. There is no evidence available on record, which indicates that the above named Appellants had categorically denied this practice. Moreover, **M/S Gold Royal Cables** have also filed commitment dated 30-07-2018, before the Commission pursuant to **Part IV of Competition Commission (General Enforcement) Regulations, 2007**.

19. The Appellant **M/S Falcon Cables** had submitted their reply to the show cause notice vide letter dated 21-01-2017. In their reply before the Commission, the Appellant has categorically accepted that this scheme was launched for a very short period. However, later on this practice was discontinued and now they have changed their label design.

20. The Appellant **M/S Alpha Plus** have also filed their commitment dated 03-08-2018, before the Commission pursuant to **Part IV of Competition Commission (General Enforcement) Regulations, 2007**. Perusal of their undertaking reveals, that they have committed that their existing stock in the market will exhaust within three months, and even if their stock remains unsold, they will gather the unsold stock accordingly.

21. Record indicates that the show cause notice dated 18-11-2019 was issued to the appellant (**Hero Cables**). However, the Appellant has neither filed their reply nor appeared before the Commission. Notices for the hearing before the Commission were also sent on the same address of the Appellant, and the appellant failed to respond to any of these letters/notices issued by the Commission. However, when the record is perused, we have noticed that a letter dated **08-10-2019** was sent to the Appellant for compliance of the order dated 26-03-2019, on the same address on which the show cause notice and hearing notices were sent. According to the TCS tracking slip, this letter was received on **09-10-2019** and the same letter was replied by an Advocate on behalf of the Appellant vide letter dated **11-10-2019**. The Appellant operates under the name of Hero Cables, however, when they were asked to submit their business documents, they provided only those related to their business named Ali Electric Store. Although the appellants have not denied owning the brand name Hero Cables, they have attempted to obscure this information and mislead the tribunal by submitting only the documents for Ali Electric Store.



22. The Appellant **M/S Fast Cables** took stance that they had stopped direct sales since 01-08-2015 and after that dealership network was established. The Appellant was sent a letter dated 30-07-2015 from the Commission to provide the requisite information to the enquiry committee. They were issued show cause notice on 18-11-2016 and the reply to show cause was submitted on 18-07-2018. Perusal of their reply to show cause notice indicates that they have categorically accepted that previously they had placed cash coupons inside the packaging of wire cable bundles, however, this practice was discontinued and now the product is being sold without cash coupons since 01-08-2015. Learned Counsel for the Appellant has referred to their Standard Operating Procedure ("**SOP**") for their dealers and also asserted that these SOPs were shared with dealers on 05-03-2015, much before the enquiry report and show cause notice. However, the record indicates that although these Sops were prepared earlier but the Appellant in their reply has admitted that they had stopped this practice since 01-08-2015. Therefore the Appellants this statement reflects that the SOPs were implemented on 01-08-2015. Moreover, The Appellant has also file commitment dated 20-07-2018, before the Commission pursuant to **Part IV of Competition Commission (General Enforcement) Regulations, 2007**.

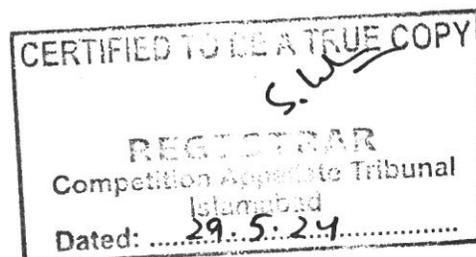
23. Perusal of impugned order indicates that the Commission had placed the Appellant **M/S G.M Cables & Pipes (Pvt) Ltd** in **Category IV**, based on their conduct before the Commission. The Appellant had contested this matter and denied the practice of inserting cash coupons and also did not file any commitment before the Commission. The penalty of Rs. 5 million was imposed on them by the Commission. In the impugned order, it was categorically mentioned that the Appellants sale had been increased due to their deceptive marketing practice and therefore a penalty of Rs. 5 million was imposed on them. However, there is nothing on the record, which indicates that the Commission had any documentary evidence in support of this assertion. Moreover, the other Appellants placed in same **Category- IV** were awarded lesser penalty amount, while only **M/S G.M Cables and Fast cables** were penalised with Rs. 5 million. The Commission has not provided any cogent reasons for imposing such a higher penalty as compared to the other appellants in the same category.

24. When the Commission impose penalties based on the market share of the Appellants and increased sales resulting from deceptive marketing practice, it is imperative for the Commission to consider the Appellants annual return. This ensures a fair and proportional decision, taking into account the Appellant's financial standing and also the profits generated from such deceptive marketing practices.

25. **Section 10 of the Competition Act, 2010** deals with deceptive marketing practices and reads as follows.

"Deceptive marketing practices. (1) No undertaking shall enter into deceptive marketing practices.

(2) The deceptive marketing practices shall be deemed to have been resorted to or continued if an undertaking resorts to;



(a) the distribution of false or misleading information that is capable of harming the business interests of another undertaking;

(b) the distribution of false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method or place of production, properties, suitability for use or quality of goods;"

(c).....

(d).....

26. In view of the above provision, disseminating a false or misleading information to the consumers is considered to be a deceptive marketing practice. Misleading information can be in both oral and written forms and it also includes the omission of a material information. The distribution of such information is also aimed at to mislead an ordinary consumer. If the undertaking has failed to disclose an important information about the product, which could influence the consumers purchase decision is to be considered as deceptive marketing practice. The complete and accurate information must be provided to the consumer to ensure transparency and fairness in the marketing practices. In order to prove false or misleading information, the key elements include, **firstly** the representation or practice, which is likely to mislead the consumer, **Secondly**, consumer must be acting reasonable under the circumstances and **thirdly**, the representation or omission must be a material one.¹ Therefore, the details regarding the price, features and quality of a product are to be considered as material information for making an informed purchase decision.

27. The electric cable industry has been continuously following this practice of placing cash coupons inside the wire cable bundles. The Appellants being part of this industry, also place cash coupons inside their packaging without proper disclosure. The learned Commission in the impugned order concluded, "that without the knowledge of any rebate price, an ordinary consumer would not be able to distinguish between the various cables at the time of purchase". This omission of material information would be deemed as deceptive marketing practice. Reliance is placed **on Appeal No: 02/2022 titled as M/S Nation Cables Vs Competition Commission of Pakistan**, wherein this tribunal has held that,

*"The presence of material information which has a beneficial value for the consumer, must be communicated. The onus is on the undertakings to disseminate all material information in relation to a product to the consumer. Therefore, we are of the view, that this omission on the part of the Appellant, by not disclosing the presence of cash coupons, is to be considered as a distribution of misleading information. In view of above, this omission would constitute deceptive marketing practice and therefore violates **Section, 10(1),10(2)(b) of the Competition Act,2010**".*

-sd-

1. US Federal Trade Commission (FTC) Guidelines

CERTIFIED TO BE A TRUE COPY
S.W.
REGISTRAR
Competition Appellate Tribunal
Islamabad
Dated:29.5.24

28. Part IV of Competition Commission (General Enforcement) Regulations, 2007 deals with the commitments filed by the Undertakings before the Commission.

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

- (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 the adverse effects to competition which may have been identified".

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".

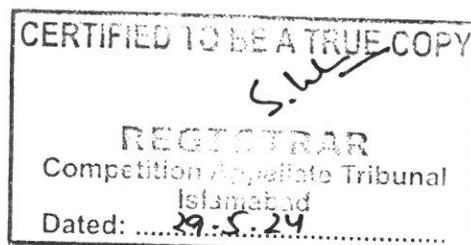
Regulation 37(1) provides, "Where the Commission makes a favourable decision, it shall limit itself to imposing a penalty of up to PKR 75,00,000 or 1% of annual turnover of the undertaking, for each violation on the concerned undertaking".

29. In view of the above referred Regulations the Appellants may submit their commitments before the Commission to remedy the violations of **Chapter II of the Competition Act, 2010**. Once these commitments filed by the Appellants are accepted, and the Commission determines that the Appellants have fully disclosed any alleged violation of Chapter II of the Act, then the Commission may at its discretion issue a favourable decision pursuant to **Regulation 33 & 37 of Part IV of Competition Commission (General Enforcement) Regulations, 2007**.

30. Record indicates that the Appellant **Gold Royal Cables, Alpha Plus Cables and Fast Cables** have submitted their commitment before the Commission pursuant to **Part IV of Competition Commission (General Enforcement) Regulations, 2007**. The Appellant **M/S Falcon Cables and E-Flux Cables** have not filed commitment nor denied this practice. They have conceded this practice of inserting cash coupons in their reply before the commission and also expressed their willingness to comply with the directions of the Commission. The learned Counsel for the Appellants has also failed to distinguish these above appeals from the earlier decision of this Tribunal in **Appeal No: 02/2022 titled as M/S Nation Cables Vs Competition Commission of Pakistan**.

31. The Appellant **Fast Cables** have submitted their commitment before the Commission pursuant to **Part IV of Competition**

-sd-



Commission (General Enforcement) Regulations, 2007. However, while imposing the penalty they were single out from the other Appellants who had filed the same commitment before the Commission and were penalised with a lesser penalty of Rs.500,000. The Appellant Fast Cables received a penalty of Rs. 5 million. However, the Commission has failed to provide adequate reasons in the impugned order for imposing this higher penalty.

32. In the matter of **Gold Royal Cables, M/S Falcon Cables, E-Flux Cables and Alpha Plus Cables**, we are of the view that the learned Commission has rightly considered the Appellants Commitment before the Commission and imposed a minimum penalty in accordance with **Regulation 37 of Part IV of Competition Commission (General Enforcement) Regulations, 2007.** Therefore, these above appeals are accordingly dismissed.

33. In the matter of **Hero Cables**, in view of above discussion, the instant appeal is dismissed.

34. In the matter of **Fast Cables**, we are of the view that the learned Commission has not appropriately considered the Appellant's Commitment filed before the Commission. Therefore, the instant appeal is allowed and a penalty amount is reduced to a sum of Rs.500,000.

35. In the matter of **M/S G.M Cables & Pipes (Pvt) Ltd**, we are of the view that the Appellant was single out from the other Appellants of **Category-IV.** Moreover, the Commission has not provided any valid reasons for imposing such higher penalty in the instant matter. Therefore, the instant appeal is allowed and a penalty amount is reduced to a sum of Rs. 500,000.

—sd—

Chairperson

—sd—

Member Technical-II

—sd—

Member Technical-I

Announced in open Court

29.05.2024

Approved For Reporting

—sd—

Raja Saad Sultan
Member Technical

