

INFOGRAPHICS OF THE ORDER

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

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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**.

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PKR 1.1
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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

