



**BEFORE THE
COMPETITION COMMISSION OF PAKISTAN**

**IN THE MATTER OF
SHOW CAUSE NOTICES ISSUED TO**

**M/S UNITED DISTRIBUTORS PAKISTAN LIMITED
M/S INTERNATIONAL BRANDS (PVT) LIMITED**

**FOR PRIMA FACIE VIOLATION OF SECTION 4 OF
THE COMPETITION ACT, 2010**

E. NO: 503/IBL&UDPL/C&TA/CCP/2024

Date of Hearing:

28-01-2025

Commission:

Mr. Salman Amin
Member

Ms. Bushra Naz Malik
Member

Assisted by:

Ms. Ambreen Abbasi
Senior Legal Advisor

Present on Behalf of:

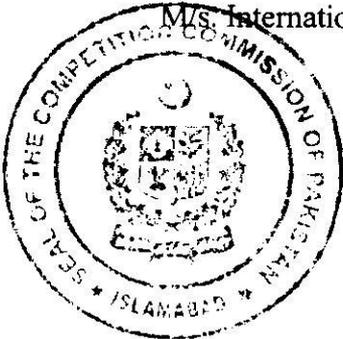
M/s. United Distributors Pakistan Limited
&
M/s. International Brands (Pvt) Limited

Mr. Mikael Azmat Rahim
Partner
Mohsin Tayebaly & Co

Ms. Laraib Saba Turk
Senior Associate
Mohsin Tayebaly & Co

Mr. Sohail Hasnain Ahmed
Chief Financial Officer
M/s. United Distributors Pakistan Limited

Mr. Muhammad Imran
Company Secretary
M/s. United Distributors Pakistan Limited

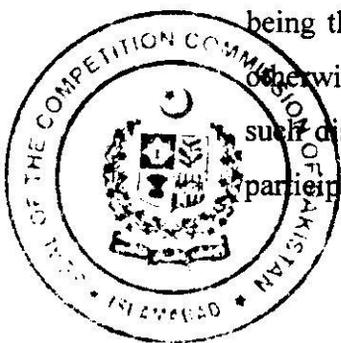


ORDER

1. This Order disposes of proceedings initiated by the Competition Commission of Pakistan (the **Commission**) *vide* Show Cause Notices No. 12/2024 and 13/2024, both dated 12.06.2024 (the **SCNs**), issued to M/s International Brands (Private) Limited (**IBL**) and M/s United Distributors Pakistan Limited (**UDPL**) (collectively referred to as the **Respondents**), for *prima facie* violation of Section 4 of the Competition Act, 2010 (the **Act**).

Brief Facts

2. The brief facts of the case are that UDPL, while making certain disclosures of material information pursuant to Securities Act, 2015 and PSX Rule Book, in its letter dated 15.05.2023 communicated to Pakistan Stock Exchange (**PSX**), that its Board has authorized the company's management to explore the opportunities to expand business to distribution and marketing of pharmaceutical, medical devices, nutraceutical and veterinary products. Later, *vide* its letter dated 28.09.2023, UDPL disclosed to PSX that following their previous disclosure, IBL had proposed that UDPL should consider refraining from competing with IBL and enter into non-compete and non-solicitation of employees and customers covenants (the **NCCs**) in respect of business of distribution, marketing, and sale of human pharmaceutical products. It was also disclosed that in lieu of the **NCCs**, IBL had offered suitable compensation to be discussed and finalized. It was also stated in the referred letter to PSX that UDPL's Board had authorized any two directors to conduct negotiations and formalize the terms of proposal. Subsequently, through its disclosure of material information made to PSX *vide* letter dated 15.05.2024, UDPL confirmed the receipt of the full consideration of PKR 1.131 billion from IBL pursuant to the **NCCs**.
3. Pursuant to Section 4 of the Act, the **NCCs** that were agreed between both the Respondents, raised serious concerns as to the object or effect of such arrangement that is preventing, restricting and reducing competition in relevant market. Besides, UDPL, being the listed company, has made disclosures to the PSX without any approval or otherwise of **NCCs** by the Commission. This became even more concerning because such disclosures by a listed company are generally relied upon by investors, market participants, and the general public in order to make informed investment decisions.



4. Based on the foregoing, the Commission observed that *prima facie* the Respondents, instead of competing independently in the relevant market, had colluded by entering into NCCs that restrained UDPL from participating in the distribution of human pharmaceutical products across Pakistan. Such conduct appeared to contravene Section 4 of the Act in terms of market sharing and foreclosure of market access. Accordingly, the Commission took cognizance of the matter under Section 37(1) of the Act for the NCCs executed between the Respondents.
5. Resultantly, the SCNs were issued to both Respondents on 12.06.2024. These SCNs arise out of the Commission's examination of disclosures made to PSX based on the NCCs agreed between IBL and UDPL.
6. Subsequent to the issuance of the SCNs, the Respondents jointly submitted an application for exemption dated 18.07.2024 (the **Exemption Application**), seeking approval of NCCs under the applicable provisions of the Act and the Competition Commission (Exemption) Regulations, 2020 (the **Exemption Regulations**).

SCNs

7. The SCNs, which are, in content, substantively identical, include, *inter alia*, the following alleged violations:

"2. WHEREAS, the Competition Commission of Pakistan (the "Commission") has found a letter by M/s United Distributors Pakistan Limited (UDPL) dated 28th September 2023 addressed to PSX whereby it has disclosed that the Undertaking offered to M/s UDPL to enter into a non-compete agreement for the distribution, marketing, and sale of human pharmaceutical products for suitable compensation; and

3. WHEREAS, the Commission has found another letter dated 15th May 2024 by M/s UDPL to PSX, whereby it has disclosed that it has received Rs.1.131 billion from the Undertaking as part of the consideration for the non-compete agreement; and

4. WHEREAS, the Undertaking and M/s UDPL instead of competing with each other preferred to collude under a non-compete agreement whereby the Undertaking has paid compensation to M/s UDPL for refraining from entering the relevant market; and



5. WHEREAS, the relevant market in terms of clause (k) of subsection (1) of Section 2 of the Act appears to be the distribution, marketing, and sale of human pharmaceutical products within Pakistan; and

6. WHEREAS, the effect of anti-competitive behavior of the Undertaking has spillover effect across the territories of other provinces; and

7. WHEREAS, by paying Rs.1.131 billion as part of the consideration, the Undertaking has entered into an agreement that prevents entry of a competitor in the relevant market, which constitutes a prohibited agreement in contravention of section 4 of the Act. The non-compete agreement may negatively affect competitive conditions in the relevant market by preventing new business formation and innovation and may also lead to increased market concentration and higher prices for consumers; and

8. WHEREAS, the Undertaking by paying consideration to M/s UDPL has entered into an agreement that prevents, reduces, and restricts competition in the relevant market and which is anti-competitive by object. The decision by the Undertaking to pay the compensation instead of competing with M/s UDPL and consequently preventing the entry of a competitor in the relevant market is a violation of section 4 (1) of the Act; and

9. WHEREAS, the evidence collected by the Commission are the letters of M/s UDPL addressed to PSX whereby receipt of payment of Rs.1.131 billion from the Undertaking as part consideration has formally been declared; and

10. WHEREAS, the above-referred non-compete agreement may cause some or all of the non-exhaustive exclusionary effects in the relevant market, which are as follows:-

- i. Limited choice for all pharmaceutical companies (including those which are presently in agreement with the Undertaking), which could have entered into distribution agreement with M/s UDPL; and
- ii. Foreclose the relevant market for a potential competitor; and
- iii. Obviate innovation which could have been brought about by the entry of a competitor; and
- iv. Prevent and restrict expected benefit of reduced prices, improved distribution, technical development and investment; and
Entail increased market concentration and higher cost for the consumers; and
Suppress new ideas and jobs in the relevant market.

Reply to SCNs

On 24.06.2024, the Respondents jointly responded to the SCNs stating that no formal or definitive NCCs have been executed. The Counsel submitted that they have filed application for an exemption under the provisions of the Act and Exemption Regulations. The joint response to the SCNs is reproduced hereunder:

"1. As a preliminary matter, it is humbly submitted that the Parties are fully cognizant and aware of the requirements under the applicable laws, including the Competition Act, 2010 (the "Act") and the Competition (Exemption) Regulations, 2020 (the "Regulations"). It is further submitted that the Parties are already in the process of preparing the requisite application for seeking an exemption from the Commission in respect of the NCA; however, there have been delays in collecting the relevant information for the purposes of the said application.

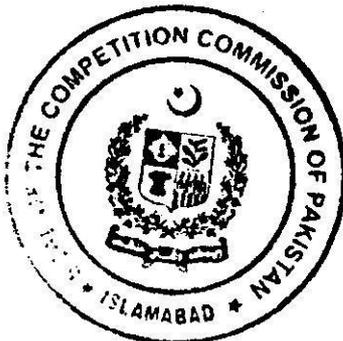
2. Notwithstanding the above, and as will be demonstrated below, the NCA, and the proposed non-compete arrangement envisaged thereunder, are subject to obtaining an exemption from the Commission, as permitted under the Act.

3. With respect to the material information disclosures carried out by UDPL on May 15, 2023 and September 28, 2023, it is submitted that at such time no formal or definitive non-compete agreement/ arrangement existed between the Parties. In fact, as stipulated in the disclosures and the Show Cause Notices, IBL had only offered to UDPL to enter into the same, and that UDPL had been authorized to enter into negotiations to formalize the terms of such arrangement, as well as necessary documents for the consideration of its Board of Directors. It will be appreciated that the Parties have always remained transparent and complied with applicable laws in a bona fide manner, and have no intention to violate any laws, including the provisions of the Act and Regulations.

4. While the NCA shall be shared with the Commission as part of the exemption application, which is in the process of being prepared, reference is made to Clause 2.4 thereof, which states:

5. In light of the above, it is submitted that the Parties have always been aware of the restrictions/ requirements, and intended to apply to the Commission to seek the requisite exemption, under the Act and Regulations with respect to the NCA, and are fully cognizant of the fact that the NCA will not be operative or effective without such exemption.

6. It is further submitted that although consideration has been received by UDPL under the NCA, as disclosed on May 15, 2024, the same is still ultimately subject to the effectiveness and validity of the arrangement under the NCA, which is in-turn subject to the exemption sought to be obtained from the Commission.



7. Accordingly, and in light of the above, it is denied that the Parties have sought to "collude" with each other in any illegal manner, the effect of which would result in any anti-competitive behaviour. Instead, as demonstrated above, the Parties have entered into an agreement, which has been disclosed to the market, and intend to seek an exemption from the Commission (since the same constitutes a 'prohibited agreement'), which is perfectly legal and permissible in accordance with Section 5 of the Act, read with the Regulations. It is emphasized that the effectiveness and validity of such agreement, and the arrangement thereunder, is subject to seeking an exemption from the Commission; hence, the requirement under Clause 2.4 of the NCA.

8. In continuation of the above, and since the Parties intend to seek an exemption from the Commission under Section 5 of the Act, the notion of any violation of Section 4 of the Act does not arise, particularly in light of Clause 2.4 of the NCA (reproduced above).

9. The Parties agree with the Commission that the competition is indeed beneficial for the economy, consumers and efficiency; however, the Act and Regulation enable and permit parties to enter into prohibited agreement, which are effective upon the Commission's exemption. In pursuance of such enabling provisions, the Parties are in process of preparing the application, including to demonstrate to the Commission as to why the NCA is required and how the same would not be detrimental to the market from a competition perspective.

10. In view of the above facts and grounds, it is evident that the Parties have not contravened or violated the provisions of the Act with respect to the NCA; resultantly, no penalty is warranted. The Parties undertake to ensure that the requisite exemption application is filed with the Commission on an urgent basis.

11. Based on the above, we humbly request the Commission to consider the Show Cause Notices to have been satisfactorily responded to, and the same may be withdrawn. We of course expect the Commission to review the exemption application under Section 5 of the Act on merits and in accordance with the law.

12. In the event that further clarification is required by the Commission, we would like an opportunity of further hearing, including through our representative, once the Commission has reviewed the contents of this response."

Hearing and Submissions

9. On 28.01.2025, the hearing was conducted by the Bench, providing the Respondents with the opportunity to present their case. The Counsel for the Respondents reiterated the position outlined in the joint response submitted to the Commission on the SCNs

served upon them. The Counsel submitted that an Exemption Application has been filed with the Commission, seeking exemption under the Act, and the Exemption Regulations. The Counsel contended that delays in preparing the Exemption Application were due to difficulties in gathering the necessary information. However, the Counsel provided no substantive and justifiable explanation or particulars as to the difficulties faced in gathering the information for filing the Exemption Application. The Counsel further stated that NCCs and the related arrangements are contingent upon obtaining the exemption from the Commission, as specified in the Agreement.

10. The Counsel emphasized that no formal agreement existed at the time of the material disclosures to PSX, and negotiations were conducted transparently. However, in view of the disclosures made to PSX, it was acknowledged that the payment was duly received by UDPL as the consideration under the NCCs. Though, it was argued that the validity and effectiveness of the NCCs are subject to the grant of exemption by the Commission. The Counsel denied alleged collusion or anti-competitive behavior, asserting that the Agreement complies with the legal provisions and aligns with competition law principles. The Counsel requested the withdrawal of the SCNs, reiterated commitment to compliance with the Act and also sought an expedited review of their Exemption Application, offering to provide further clarification or attend additional hearings, as deemed necessary.

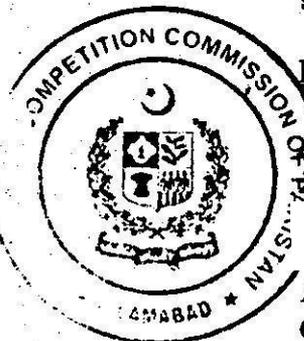
11. During the hearing, the Bench sought clarity on certain matters and directed the Counsel to respond to certain questions, which were later communicated to the Counsel in writing on 31.01.2025. The questions and the Counsel's joint response dated 24.03.2025 are reproduced hereunder:

I. Particulars of common shareholding between UDPL and IBL and/or the shareholding of each other entity, specifying the period of such shareholding.

IBL's Shareholding of UDPL

As per IBL's unconsolidated Financial Statements for the year ended June 30, 2020 ("IBL's Annual Report 2020"), IBL held _____ % (_____) shareholdings of UDPL, equivalent to _____ (i) _____ ordinary shares of PKR

10/- (Pak Rupees Ten each). This information is reflected under point '1-The Company and its Operations', _____ - Subsidiary Companies' and _____ - _____



Subsidiary Companies – United Distributors Private Limited) at pages 1, 15, and 17 respectively, of IBL's Annual Report 2020

Subsequently, as per IBL's Unconsolidated Financial Statement for the year ended June 30, 2021 ("IBL's Annual Report, 2021") and with effect from June 18, 2021, UDPL ceased to be a subsidiary of IBL. This information is reflected under point '1.3 – The Company and its Operations' on pages 1 and 2 of IBL's Annual Report, 2021

Following IBL's divestment of its shareholding in UDPL, and as of June 23, the shareholding of UDPL was as follows (which continued to be the shareholding of UDPL) as of the date of execution of the NCA, till date):

Shareholders of UDPL	
Shareholder	Shareholding (Percentage %)
Genesis Holdings (Private) Limited (Parent Company)	
Mr. Asad Abdulla	
Mr. Ayaz Abdulla	
Mr. Muhammad Salman Husain Chawla	
Others	

(The above pattern of shareholding for UDPL is reflected on page 63 of UDPL's Annual Report, 2023...).

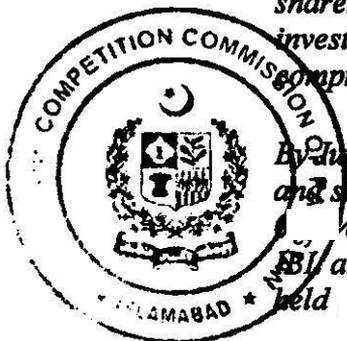
Of the UDPL shareholders, Mr. Asad Abdulla and Mr. Ayaz Abdulla held shares in UDPL both independently, and as part of Genesis Holdings (Private) Limited. The Commission should note that the forms the current shareholding of Genesis Holdings (Private) Limited:

Shareholders of Genesis Holdings (Private) Limited	
Shareholder	Shareholding (percentage %)
Mr. Asad Adbulla	
Mr. Ayaz Abdulla	
Ms. Aisa Zaid Zakaria	
Mr. Shahid Abdulla	

UDPL's Shareholding of IBL

It is critical to note, that not only did IBL own a significant percentage of shareholding in UDPL, but UDPL also owned shareholding in IBL, holding an investment of Rs. _____ in IBL carried at fair value through other comprehensive income.

By June 2023, UDPL held _____ (and sixty five) fully paid ordinary shares of PKR 10/0 (Pak Rupees Ten) holding _____ % (zero point five nine) of IBL's shareholding which was the shareholding of IBL at the time of execution of the NCA, whereas in 2022, UDPL has previously held _____



ordinary shares, constituting a % shareholding in IBL. This information is reflected under point – Investment held at fair value through OCI' at pages 25, 43, and 44 respectively. Of UDPL's Annual Report, 2023....

II. To date particulars and tenures of common Directors on the Board of both the Respondents specifying the period(s) during which they remained as Directors of both the Respondents and the overlap period of both directorship.

The following individuals have held directorship at both UDPL and IBL at different times (the "Common Directors"):

Common Directors			
Name	Directorship at UDPL	Directorship of IBL	Overlapping period
Mr. Asad Abdulla	2008-Present	August 2007-December 202	2008-2018
Mr. Ayaz Abdulla	2008-Present	September 2010-February 2018	2010-2018
Mr. Shahid Abdulla	2002-2006	August 2016-December 2017; November 2019-December 2020	N/A
Mr. Rashid Abdulla	July 1981 (Incorporation of UDPL – November 2020 (deceased))	January 1981 (incorporation of IBL – November 2020 (deceased))	1981-2020
Mr. Zubair Palwala	2007-July 2020	October 2013-December 2017; November 2020-Present	2013-2017
Mr. Syed Nadeem Ahmed	2011-June 2021	October 2013-December 2017; April 2020-Present	2013-2017; 2020-2021

The Commission will note that of the Common Directors, Mr. Asad Abdulla, Mr. Ayaz Abdulla, and Mr. Shahid Abdulla, in particular, held shareholding in UDPL, both – independently, and through Genesis Holdings (Private) Limited, as per the details provided above.

It is submitted to the Commission that due to his common directorship, each of the Common Directors, had insights into the distribution of IBL's human product portfolio.

Therefore, in order to protect competition within the market, the Respondents agreed to enter into the [NCCs].

III. Particulars of products and services portfolio of UDPL and IBL since 2023 to date, and the geographical area for supply of those products and/or rendering of services. Also specify the product/services out of that whole portfolio for which Non-compete agreement has been signed by the Respondents.

The products and services portfolio of both Respondents have evolved overtime, with the Respondents operating primarily within the human product industry. Below is outline of each of the Respondent's portfolio since 2023, along with the geographical regions in Pakistan where they operate and the specific products/services covered under the [NCCs].

Products & Services Portfolio (2023-Present)

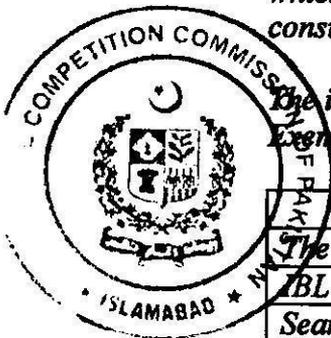
- IBL-Through its subsidiaries is engaged in the business of manufacturing, marketing, distribution, selling, importing, and exporting of human products in Pakistan
- UDPL-Whilst the companies does not directly hold human products in its portfolio, it does engage with nationwide sales and distribution of pesticides (crop protection medicines), specialty fertilizers, and other allied products, providing agricultural solutions and services to farmers across Pakistan.

Geographical Areas of Supply & Services Rendering

The Respondents operate throughout Pakistan, and as per the terms of the [NCCs], the restriction intended to be imposed on UDPL was limited to the territory of Pakistan.

Additionally, as per the exemption application, dated July 18, 2024 (the "Exemption Application") it is submitted that IBL belongs to a group of companies that operates in the product market for drugs for human consumption which includes development, production, and marketing of drugs for human consumption.

The individual market share of each of the Respondents has been specified in the Exemption Application and has been reproduced hereto for reference:



Name of Company	Market Share
The Searle Company Limited	The market share of the Applicant and its group of each of pharmaceutical companies are presented as a single item in the IMS Health database, which is % (percent) in terms of value, and %
IBL HealthCare Limited	
Searle Pharmaceuticals (Private) Limited	
Searle BioSciences (Private) Limited	
Searle Pakistan Limited	

	<p>in terms of unites.</p> <p>It will be appreciated that even collectively, the entities do not significant market presence in the relevant market and are far from being in a potentially dominant position.</p>
<p><i>IBL Operations (Private) Limited</i></p>	<p>IBL Operations (Private) Limited is involved in the business of distribution and marketing of goods and commodities in Pakistan, which is not formally documented market in Pakistan. Due to the tremendous size and saturation of the distribution industry in Pakistan, it is not possible to estimate the total size of the relevant market.</p> <p>However, based on public information, the management has estimated the market share of IBL Operations (Private) Limited to be % (</p>
<p><i>United Brands Limited</i></p>	<p>United Brands Limited is involved in the business of distribution and marketing of goods and commodities in Pakistan, which is not formally documented market in Pakistan. Due to tremendous size and saturation of the distribution and marketing industry in Pakistan, it is not possible to estimate the total size of the relevant market.</p> <p>However, based on public information, the management has estimated the market share of United Brands Limited to be % (<i>approximately.</i></p>



The phases/steps as agreed between both the parties to implement the non-compete agreement signed between both the parties on 19 October 2023.

Pursuant to the Disclosure of Material Information dated May 15, 2023 ..., UDPL intimated / disclosed to the [PSX] its decision to expand its business of distribution, marketing, and sale of products for human consumption. Subsequently, as per the Disclosure of Material Information dated September 28,

2023 ..., IBL approached UDPL, inter alia, to conduct negotiations in respect of its expansion of business as conveyed by UDPL in their earlier notice.

Furthermore, as per the Disclosure of Material Information issued by UDPL to PSX dated October 19, 2023 ..., it was submitted by UDPL that the Respondents would enter into a non-compete agreement and the restriction imposed on UDPL as agreed between the Respondents for the consideration was "subject further to execution of a formal agreement to this effect and compliance with any regulatory requirements." Accordingly, the Respondent entered into the NCA on October 19, 2023.

It is highlighted that as per Clause 3.2 of the NCA, "the Agreement [NCCs] is valid for a period of 3 (three) years from the date of the Agreement (the "Restricted Period")". As such, the Respondents sought for the NCA to commence on October 19, 2023. However, this was mutually understood to only take effect following regulatory approvals.

It is therefore submitted to the Commission no restriction under the [NCCs] was intended to take effect without the prior approval of the Commission.

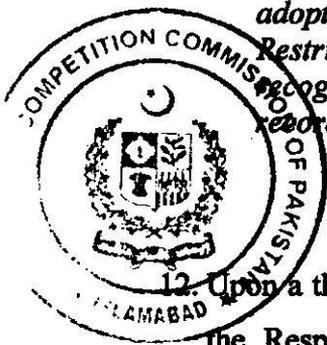
- V. The grounds on which the payment for compensation has been recognized as income in the annual accounts of UDPL, despite of approval not sought from CCP, against the notices issued on May 15, 2024 to PSX.**

It is submitted that the compensation received by UDPL was mutually agreed upon and received prior to filing of the application with the Commission. This mutual understanding of the compensation as agreed between the Respondents was disclosed in their Disclosure of Material Information to PSX dated October 19, 2023, and May 15, 2024, respectively... The compensation was accounted for in accordance with the applicable accounting standards and the principles of 'revenue recognition'.

The compensation was received by UDPL as consideration for UDPL's commitment to refrain from engaging in competitive activities, due to Common Directorship held between the Respondents, thereby creating an obligation on UDPL's part. Consequently, it is submitted to the Commission that UDPL adopted a prudent approach by amortizing the compensation over the agreed Restricted Period of 3 (three) years. A portion of the compensation was recognized as income during this time, while the unamortized balance was recorded as deferred liability in accordance with the matching principle.

ISSUES AND ANALYSIS

12. Upon a thorough review of the matters referred in the SCNs, the disclosures made by the Respondents to PSX, the submissions made during the subject proceedings, information provided post-hearing and the accounting treatment of the amount received



as a result of the referred NCCs in the annual accounts, following are the key issues for analysis and deliberation:

- A. *Whether the agreement between the Respondents, where UDPL has agreed to refrain from entering the market in exchange for PKR 1.131 billion has violated Section 4 of the Act due to the object or effect of the NCCs in preventing, restricting or reducing competition in the relevant market?*
- B. *Whether the Respondents' actions in preparing and seeking an exemption after the issuance of the SCNs constitute compliance under the Act?*

ISSUE A

13. To address the question of whether the arrangement between the Respondents, wherein UDPL has agreed to refrain from entering the market in exchange for PKR 1.131 billion is in violation of Section 4 of the Act, the Bench will first examine the relevant provisions of the Act, which deals with anti-competitive agreements.

"4. Prohibited Agreements. — (1) No undertaking or association of undertakings shall enter into an agreement or, in 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 of this Act.

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

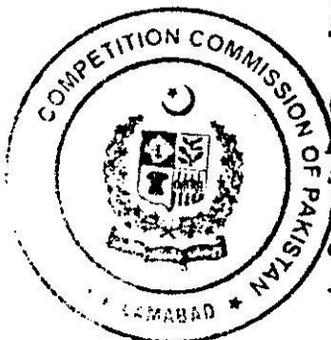
(a) fixing the purchase or selling price or imposing any other restrictive trading conditions with regards to the sale or distribution of any good or the provision of any service;

(b) dividing or sharing of markets for the goods or services, whether by territories, by volume of sales or purchases, by type of goods or services sold or by any other means;

(c) fixing or setting the quantity of production, distribution or sale with regard to any goods or the manner or means of providing any services;

(d) limiting technical development or investment with regard to the production, distribution or sale of any goods or the provision of any service; or

(e) collusive tendering or bidding for sale, purchase or procurement of any goods or service.



(3) Any agreement entered into in contravention of the provision in sub-section (1) shall be void."

14. It is pertinent to highlight here that the term "agreement" used in Section 4 of the Act has a broad scope. As per the definition given in Section 2(1)(b) of the Act, the term "agreement" refers to any arrangement, understanding, or practice. The section is reproduced here for ease of reference.

"2. **Definitions.** — (1) In this Act, unless there is anything repugnant in the subject or context; -

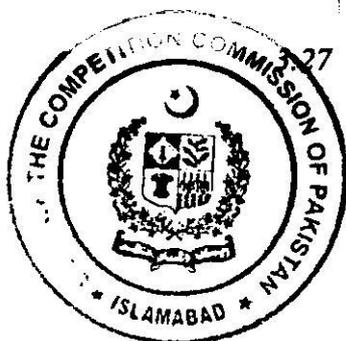
...
(b) "agreement" includes any arrangement, understanding or practice whether or not it is in writing or intended to be legally enforceable;"

15. Section 4 of the Act is *pari materia* with Article 101 of the Treaty on the Functioning of the European Union (TFEU), which proscribes anti-competitive conduct in the form of an "agreement" or a "concerted practice". The UK Competition and Markets Authority (CMA), in its decision in the Tobacco Manufacturers Case No. CA98/01/2010/Case CE/2596-03,¹ effectively summarized the principles established by the European Commission, the General Court, and the European Court of Justice as follows:

"3.23 The ECJ has confirmed that it is not necessary for the purposes of finding an infringement, to characterize conduct exclusively as an agreement or as a concerted practice. The concept of agreement or concerted practice are not mutually exclusive and there is no rigid dividing line between the two. They are intended:

'to catch forms of collusion having the same nature and are only distinguishable from each other by their intensity and the forms in which they manifest themselves.'

...
An agreement does not have to be formal or written agreement to be covered by Chapter I prohibition. It may be constituted simply by way of an 'understanding' even where there is nothing to prevent either party going back on, or disregarding the understanding. The Chapter I prohibition is intended to catch a wide range of agreements, including oral agreements and 'gentlemen's agreement' as, by their nature, anticompetitive agreements are rarely in written form.



¹ <https://assets.publishing.service.gov.uk/media/555de4b7e5274a7084000154/tobacco.pdf>

3.28 *There is no requirement for an agreement to be legally binding, or for it to contain any enforcement action. An agreement may be express or inferred from the conduct of the parties, including the conduct that appears to be unilateral. An agreement may consist not only in isolated act, but a series of acts or a course of conduct. As held by the General Court, for an agreement to exist:*

'[I]t is sufficient if the undertaking has expressed their intention to conduct themselves on the market in a specific way'.

3.29 *An agreement within the meaning of Chapter I Prohibition exists in circumstances in which there is concurrence of wills, in that a group of undertakings intend to adhere a common plan that limits, or is likely to limit, their commercial freedom by determining the lines of their mutual action, or abstention from action.*

3.30 *Although it is essential to show the existence of a joint intention to act on the market in a specific way in accordance with the terms of the agreement, it is not necessary to establish a joint intention to pursue an anticompetitive aim as such. The form in which the parties' intention to behave on the market is irrelevant.*

3.31 *An agreement can also come into existence through tacit acquiescence. Tacit acquiescence requires an express or implied 'invitation' from one party to the other party to fulfill an anticompetitive goal 'jointly', which may be inferred from conduct [...].*

3.32 *The fact that a party does not abide by an agreement which is anticompetitive, does not relieve that party from responsibility for it [...].*

3.33 *A concerted practice does not require an actual agreement (whether express or implied) to have been reached ... Rather as the ECJ held ... the object is to bring within the prohibition of Article [101] a form of coordination between undertakings which, without having reached the stage where an agreement properly so called have been concluded, knowingly substitutes practical co-operation between them for the risks of competition.*

[...] The concept of a concerted practice must be understood in light of the principle that each economic operator must determine independently the policy it intends to adopt on the market [...]."



16. In view of Section 4 of the Act, the Commission has held in its previous orders, in particular, the Pakistan Jute Mills Association and its Member Mills, order dated 3 February 2011² that:

"24. [...] the term agreement used in Section 4 of the Act has a variety of scope. As per the definition given in Section 2(1)(b) of the Act, the term Agreement can refer to any arrangement, understanding or practice."

17. In para 25 of the said order, the Commission held that:

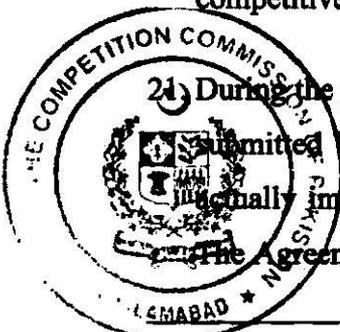
"25. [...] an agreement can take a variety of forms and does not have to conform to the usual notion of a standardized written, binding or legally enforceable instrument."

18. Accordingly, any arrangement that will persist over time within a specific market or industry may be considered as an "agreement" and is subject to examination by the Commission pursuant to the relevant provisions of the Act. This principle has been affirmed by the Commission in its previous orders, including the order in APCMA and Cement Manufacturers 2010 CLD 1586.

19. To summarize, the term "agreement" under Section 2(1)(b) and Section 4 of the Act includes any type of contract, understanding, or arrangement, whether formal or informal, that results in any form of cooperation or coordination between parties in a way that could hinder competition. This can include both horizontal (between competitors) and vertical (between different levels of the supply chain) agreements.

20. Accordingly, at the outset, the Bench notes that the Agreement imposes a **Restrictive Period of three years** (Clause 1.1), commencing from 19.10.2023 and ending on 19.10.2026, during which the UDPL is prohibited from engaging in activities deemed competitive with IBL. Over half of this period has already elapsed.

21) During the proceedings and in response to the SCNs, no evidence or confirmation was submitted by the Respondents to demonstrate that the NCCs agreed have not been actually implemented till the necessary approvals from the Commission are in place. The Agreement contains no provision indicating that the effectiveness of the restriction



² https://appadminccp.cc.gov.pk/cc/orders/2011a5a4-861d-4d8f-a9bb-2c6b55cdd2f8_pjma_order_3%20feb_2011.pdf

is subject to a condition precedent or that its operation is deferred until approval is obtained from the Commission. On the contrary, the Agreement confirms that the consideration for the NCCs has been paid through post-dated cheques. This was later disclosed also by UDPL in its submission to PSX on 15.05.2024 without any mention of approval in place from the Commission, despite of several months lapsed since the NCCs were executed under the agreement, which stipulated the approval to be sought from the Commission.

22. Accordingly, it is evident that NCCs became effective on the stated commencement date and have remained operative since then, regardless of the Exemption Application that has been filed much later, and only after the issuance of SCNs to the Respondents.

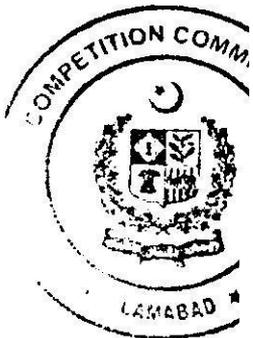
23. Clause 2 of the Agreement specifies the following restrictive obligations:

Non-Compete Clause (Clause 2.1)

Non-Solicitation of Employees (Clause 2.2)

Non-Solicitation of Customers (Clause 2.3)

Regulatory Approval Requirement (Clause 2.4)



The Restricted Business is defined as:

24. In consideration, the Respondents paid PKR 1.131 billion, notwithstanding the omission of compliance under Section 9(2) of the Act with respect to the submission of the

Exemption Application to the Commission. Furthermore, following disclosures were also made by UDPL to PSX for further dissemination to its members:

May 15, 2023

**The General Manager
Pakistan Stock Exchange Limited
Stock Exchange Building, Stock Exchange Road
Karachi
Dear Sir,**

Disclosure of Material Information

In accordance with Section 96 and 131 of the Securities Act, 2015 and Clause 5.6.1(a) of Rule Book of Pakistan Stock Exchange Limited ("PSX") we hereby convey the following:

At a meeting of the Board of Directors ("Board") of United Distributors Pakistan Limited (the "Company") held at registered office, Karachi on May 15, 2023 at 15:30, the Board of Directors (the "Board") have decided that the Company may consider expanding its business to distribution and marketing of pharmaceutical, medical devices, nutraceutical and veterinary products. Accordingly, the Board authorized the management to explore the opportunities for the said purpose.

You may please inform the members of the Exchange, accordingly.

Yours faithfully,
Muhammad Imran
Company Secretary

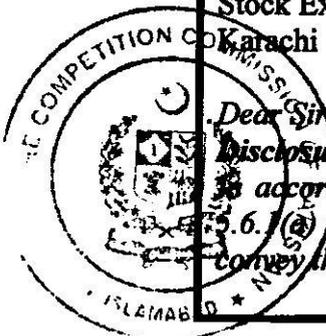
Cc:
Director/ HOD
Surveillance, Supervision and Enforcement Department
Securities and Exchange Commission of Pakistan
NIC Building, 63 Jinnah Avenue
Blue Area, Islamabad

**Dated: September 28, 2023
The General Manager
Pakistan Stock Exchange Limited
Stock Exchange Building
Stock Exchange Road
Karachi**

Dear Sir,

Disclosure of Material Information

In accordance with Section 96 and 131 of the Securities Act, 2015 and Clause 5.6.1(a) of Rule Book of Pakistan Stock Exchange Limited ("PSX") we hereby convey the following:



Following our previous announcement/ disclosure on May 15, 2023, International Brands Private Limited (IBL) has approached United Distributors Pakistan Limited (UDPL) and proposed that UDPL should consider refraining from competing with IBL in the business of distribution, marketing, and sale of human pharmaceutical products. For this restriction, IBL has offered to provide suitable compensation to be discussed and finalized with UDPL.

The Board has granted authorization to any two directors of the Company, to conduct negotiations and formalize the terms of this proposal and prepare necessary documents for the consideration of the Board.

*You may please inform the members of the Exchange, accordingly.
Yours faithfully,*

Muhammad Imran
Company Secretary

Cc:
Director/ HOD
Surveillance, Supervision and Enforcement Department
Securities and Exchange Commission of Pakistan
NIC Building, 63 Jinnah Avenue
Blue Area, Islamabad

Dated: May 15, 2024
The General Manager
Pakistan Stock Exchange Limited
Stock Exchange Building
Stock Exchange Road
Karachi

Dear Sirs,

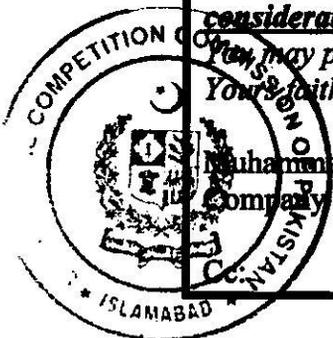
Disclosure of Material Information

In accordance with Section 96 and 131 of the Securities Act, 2015, and Clause 5.6.1(a) of Rule Book of Pakistan Stock Exchange Limited ("PSX") we hereby convey the following:

Following our earlier announcement/ disclosure on September 28, 2023 and October 19, 2023, the Company has received the full amount of Rs. 1.131 billion from M/s International Brands Private Limited ("IBL") as part of the consideration for the non-compete agreement (NCA).

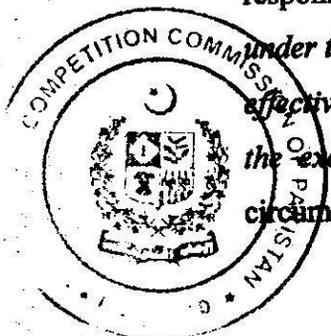
*You may please inform the members of the Exchange, accordingly.
Yours faithfully,*

Muhammad Imran
Company Secretary



Director/ HOD
Surveillance, Supervision and Enforcement Department
Securities and Exchange Commission of Pakistan
NIC Building, 63 Jinnah Avenue
Blue Area, Islamabad.

25. A plain reading of the above communications sent by UDPL to PSX reveals a clear sequence of corporate decisions relating to UDPL's contemplated expansion into the human pharmaceutical sector, followed by a strategic withdrawal from market entry. UDPL had clearly consented not to engage in the restricted business for the agreed period of three (03) years. This pattern culminating in the execution of NCCs with IBL reflects a deliberate restraint on potential entry in the relevant market. Such entry avenues are critical to maintain a competitive environment in the market, and the preclusion of a potential competitor through contractual arrangement raises concerns pursuant to Section 4 of the Act, particularly where the object or effect is to limit market access and reduce competition.
26. The Bench also notes that the payment of PKR 1.131 billion was solely made in lieu of the NCCs. The Directors' report of UDPL for the year ended 30.06.2024 explicitly confirms that it has entered into the NCCs with IBL in exchange of referred consideration duly received. The annual audited accounts of UDPL for the referred financial year also recognized this consideration as '*deferred income*' with PKR out of it recognized as '*other income*' for that particular financial year.
27. The Bench has also considered the Respondents' contention that the "*...compensation was accounted for in accordance with the applicable accounting standards and the principles of 'revenue recognition'*". However, it is important to note that this amount could not have been recognized as '*income*' as it was contingent upon the Commission's approval of the NCCs. There was no additional disclosure made either in the annual accounts in this regard while recognizing this amount as '*other income*'. Whilst the response to the SCNs stated that "*... although consideration has been received by UDPL under the NCA, as disclosed on May 15, 2024, the same is still ultimately subject to the effectiveness and validity of the arrangement under the NCA, which is in-turn subject to the exemption sought to be obtained from the Commission*", however the factual circumstances suggest otherwise.

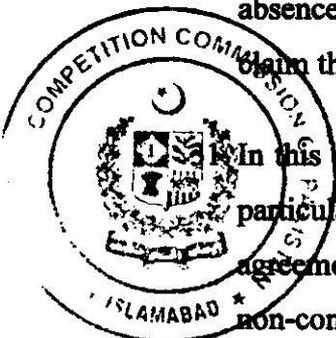


28. Accordingly, the entire sequence of corporate decisions in this regard that include acknowledgement of receipt of compensation in the Directors' report, the classification of non-compete consideration in annual accounts as 'other income' and the subsequent declaration of cash dividend on the same financial statement, provides a clear evidence of fact that the agreement between the Respondents regarding the NCCs remained effective throughout this period. Therefore, the justification later submitted to the Commission that "...no restriction under the [NCCs] was intended to take effect without the prior approval of the Commission" lacks merit in light of the factual circumstances outlined above.

29. In view of Section 2(1)(b) of Act and the domestic and foreign jurisprudence discussed above, the Respondents' assertion that "no definitive arrangement existed" at the time of disclosure to PSX is factually and legally untenable. It is established that the Respondents did have an arrangement which was disclosed to PSX through formal letters and consideration was paid for the arrangement agreed. Furthermore, the execution of the NCC and receipt of compensation against non-compete agreement was also communicated to PSX. Besides PSX was also asked to disseminate the referred arrangement to its members. Nonetheless, under Section 2(1)(b) of the Act, such arrangement need not be a formal, executed contract; it suffices that there has been an arrangement influencing the conduct that has reduced the competition in relevant market.

30. Here, the Respondents' conduct clearly demonstrate the existence of a mutual operative understanding: (i) the payment under the non-compete arrangement was made; (ii) the recipient recorded the amount as "other income"; and (iii) the joint response dated 24.06.2025 explicitly states that "this mutual understanding of the compensation as agreed... was disclosed...to PSX..." Such conduct could not have occurred in the absence of a clear operative understanding, and it evidently contradicts the Respondents' claim that the arrangement was merely an "offer".

In this context, it is important to note that non-compliance with Section 4 of the Act, particularly the omission to seek prior approval for potentially anti-competitive agreement before its execution creates a violation. Besides, for a listed company such non-compliance has further ramifications including the disclosures made to PSX and the



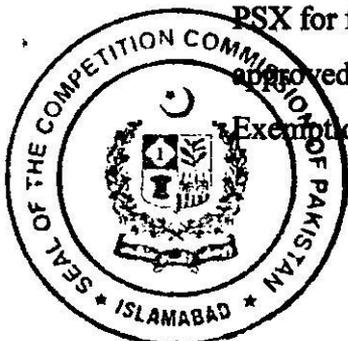
non-compete compensation amount recognized as income without necessary approvals in place with cash dividend also announced on those annual accounts.

32. Against this backdrop, the Bench's review has *inter alia* focused on whether the NCCs are in contravention of the prohibitions on anti-competitive agreements, with specific reference to their potential impact on market competition and consumer welfare, as assessed in accordance with the applicable legal framework and established principles under the Act. Accordingly, if UDPL intended to have any non-compete arrangement it was its obligation under Section 5 read with Section 9 of Act to seek exemption from the Commission as it is explicitly restraining competition in the relevant market.

33. The Bench, pursuant to Section 4 of the Act, not only considers the object or effect of preventing, restricting, or reducing the competition in the relevant market as a result of NCCs, but also considers non-compliance by the Respondents with the Act throughout this process that started with signing of the NCCs in violation of Section 4, making disclosure of material information to PSX without necessary approval in place, acknowledging the referred arrangement between the Respondents in the Directors' report and recognizing the non-compete compensation amount as '*other income*' in annual accounts, without necessary approvals and without any disclosure of its contingent nature.

34. It is also pertinent to consider that such Agreement between the Respondents was a clear violation of Section 4(2)(b) that prohibits the agreements that allocate markets among competitors. Such an arrangements also serve as an entry barrier for any new market player. By agreeing to stay out of the market, UDPL effectively ceded market space to IBL, resulting in market allocation arrangement. Such conduct restricts competition, limits market access and violates Section 4(1) read with Section 4(2)(b) of the Act.

35. Clause 2.4 of the Agreement explicitly required the parties to promptly seek the exemption from the Commission in respect of the NCCs. However, no such application was submitted while receiving the agreed consideration, or notifying the arrangement to PSX for further dissemination to its members. Moreover, the annual accounts were also approved with the non-compete consideration recorded as '*other income*'. Notably, the Exemption Application was received by the Commission much later after the issuance



of SCNs by the Commission. The referred sequence of events raises serious concerns on NCCs agreed and already put in execution relating to market sharing, foreclosure and anti-competitive conduct before seeking exemption.

36. By excluding UDPL from the market by virtue of the NCCs, the number of active competitors will be reduced in relevant market. Reduced competition tends to make the relevant market prone to higher prices, lack of choices, and stifles innovation. These outcomes are thus contrary to the objectives of the Act.

37. It is also important to consider that Clause 2.1 of the Agreement imposes a

This

provision directly limits competition in the pharmaceutical and associated distribution sectors and constitutes a restriction "by object", as prohibited by Section 4 of the Act. Additionally, Clauses 2.2 and 2.3 include non-solicitation obligations that prevent UDPL from engaging with IBL's employees and customers, which is also prohibited under Section 4 of the Act. The cumulative impact of these non-compete obligations is the effective allocation of the relevant market to IBL prohibited under the Act.

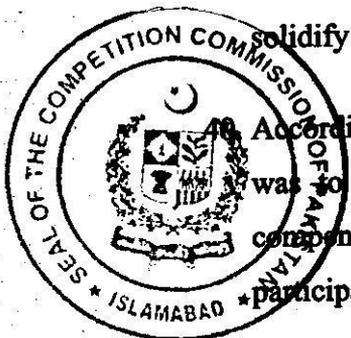
38. In this matter, NCCs restricted competition between UDPL and IBL, thereby reducing incentives for efficiency, quality improvement, and price competition. Such arrangements not only distort market dynamics but also result in market foreclosure by impeding new entry and insulating IBL from competitive pressure. This outcome is contrary to the fundamental objectives of the competition law and constitutes a direct contravention of Section 4 of the Act.

39. Likewise, the non-solicitation clauses as agreed between the Respondents further entrench anti-competitive conduct "by object".

Outcome of non-solicitation clauses thus

solidify the Respondents' anti-competitive conduct in the relevant market.

Accordingly, the structure and language of the NCCs make it obvious that the intention was to establish a protective barrier around IBL's operations, secured through a compensation of PKR 1.131 billion, in exchange for UDPL to abstain from market participation and incentivize inactivity in the relevant market. Such arrangements thus



undermine competitive dynamics and distorts the market structure in favour of IBL to the detriment of the economy, competitors and consumers.

41. The Bench observes that UDPL's recognition of PKR 1.31 billion in its financial statements and disclosure to PSX without obtaining an exemption from the Commission constitutes a breach of the legal requirements. Such recognition is also inconsistent with the Clause 2.4 of the Agreement, which expressly envisaged that the Respondents shall seek an exemption prior to the enforcement. The Respondents did not comply with the Act and the Agreement which materially aggravates the anti-competitive conduct against their obligations.

42. In light of the above, the Bench concludes that the arrangement between the Respondents, both in its object and implementation constitutes a violation of Section 4(1) read with Section 4(2)(b) of the Act. The existence of an anti-competitive object is sufficient to establish contravention, regardless of the timing or completion of any consideration payment. By excluding a potential competitor from the market, the Respondents have engaged in conduct that prevents and restricts competition, thereby breaching the prohibitions set out under Section 4 of the Act. Further, the justification submitted that "*...no restriction under the [NCCs] was intended to take effect without the prior approval of the Commission*" lacks merit in light of the factual circumstances outlined above.

ISSUE B

43. Section 5 read with Section 9 of the Act provides a mechanism for parties to seek exemption from potentially anti-competitive agreements under Section 4 of the Act. Though the Agreement required the parties to seek exemption from the Commission, however, no such exemption was sought by the Respondents and material consideration against the NCCs was paid. This deliberate omission is critical, as it raises serious concerns on the legitimacy of such agreement pursuant to section 4(3) of the Act.

44. Clause 2.4 of the Agreement required the parties to promptly seek the Commission's approval prior to enforcing the Agreement. However, in practice, this requirement was put in abeyance, whilst all other corporate decisions and disclosures continued to be made in relation to the NCCs, thereby perpetuating ongoing violation of the Act.



45. The Bench also notes that the Respondents were actively performing all other material obligations under the Agreement, despite both procedural and substantive deficiencies in violation to the Act. The Respondents have failed to demonstrate actual compliance in place with the legal requirements under the Act. Exemption was never sought prior to and during the enforcement of the Agreement until after the issuance of the SCNs by the Commission. Accordingly, the Bench does not consider the *post-facto* filing of an exemption sufficient to constitute compliance with the applicable legal requirements. The Bench further notes that Agreements which exclude or deter potential competitors from entering a relevant market without substantiated justification and prior approval by the Commission under the Act, are incompatible with the objectives and substantive provisions of the Act and fall within the purview of Section 4(3) of the Act.
46. This failure of Respondents to seek approval until after regulatory proceedings had already commenced, does not absolve from them from the violation that exists. As noted by the European Commission in the Case COMP/39125 – Carglass decision, the failure to obtain prior approval for anticompetitive arrangements undermine the effective competition oversight and facilitates potentially harmful market distortions as follow:

(494) The term agreement applies not only to the overall scheme, but also to the implementation of what had been agreed in pursuance of the same common purpose of controlling the market. As such, one of the actions taken to ensure the implementation of the overall plan was the sharing of market information which made it possible to review implementation of the customer allocation agreement as well as the adoption of a compensation scheme in order to make adjustments where there were divergences from what had been agreed.

(495)...

(496) The behaviour of the addressees of this Decision can therefore be characterized as a complex infringement consisting of various actions which can be classified either as an agreement or concerted practice, within which the competitors knowingly substituted practical co-operation between them for the risks of competition....”

47. In the present case, the Respondents’ conduct exhibits the same hallmarks of a coordinated scheme, whereby compensation arrangements were not structured for a legitimate commercial purpose but rather functioned as mechanism to implement and



reinforce an anti-competitive objective. The Respondents' failure to seek timely exemption renders the NCCs legally deficient.

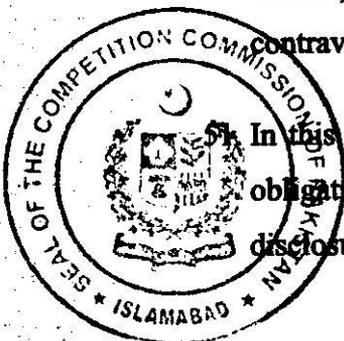
48. In conclusion, the NCCs, as executed, are anticompetitive and violative of Section 4 of the Act. The Respondents' *post facto* intention to seek exemption does not remedy the said violation. The signing of the NCCs in violation of Section 4, making disclosure of material information to PSX without necessary approval in place, asking PSX to disseminate the arrangement between the parties to its members, acknowledging the referred arrangement in Directors' report and recognizing non-compete compensation amount as '*other income*' in annual accounts, all has been without any approval sought from the Commission. Accordingly, an exemption application submitted post issuance of SCNs is not a remedy to violation that has persisted through-out this period along with the decisions being taken by the Respondents consistent to those NCCs.

REMEDIES & PENALTIES

49. The Act provides the primary legal framework for preventing practices that undermine competition and consumer welfare. Section 4(1) prohibits any agreements or decisions by undertakings that have the object or effect of preventing, restricting, or reducing competition in a relevant market, unless specifically exempted by the Commission. Section 4(2)(b) of the Act addresses market sharing agreements, including those dividing markets by geography, volume, or types of goods or services. Such agreements distort competition by insulating undertakings from competitive pressure, raising entry barriers, and reducing consumers' choices.

50. The Bench finds that the NCCs, in question, being a horizontal agreement, are the most common form of restricting competition in the market, regardless of their content, form, or execution status. When not justified by legitimate business reasons, as required under section 9 of the Act, such clauses prevent one party from competing within a defined market, thereby facilitating collusive behaviour and impeding market entry, which contravene Section 4(1) and Section 4(2)(b) of the Act.

In this case, the NCCs were implemented. Compensation in respect of non-compete obligations was paid and the amount was recognized as '*other income*' by UDPL, disclosures were made to PSX, disclosures of the arrangement was made in Directors'



report, all without required approval of the Commission on the NCCs. The Respondents' subsequent intent to seek exemption does not remedy this breach, as the anti-competitive conduct had already occurred.

52. The Bench concludes that the NCCs executed between UDPL and IBL constitute a serious infringement, forming a horizontal market allocation arrangement that restricted the distribution of human pharmaceutical products across Pakistan. The Exemption Application was submitted several months after the execution of the Agreement. The Respondents' conduct, therefore, amounts to a clear violation of Section 4 of the Act.

53. This Order is limited to the finding on contravention in respect of the NCCs under Section 4 of the Act, without prejudice to any future determination of the Exemption Application submitted by the Respondents.

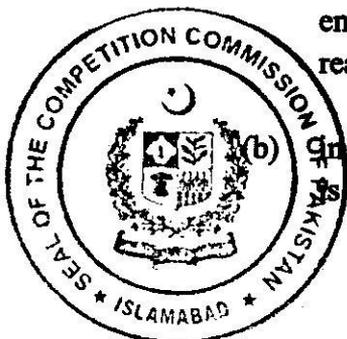
54. In determining the appropriate remedies and financial penalty under Section 31 read with Section 38 of the Act, the Bench has considered the Guidelines on Imposition of Financial Penalties (the "Guidelines").

55. In this case, the Bench notes the presence of multiple aggravating factors including deliberate implementation of the NCCs without obtaining prior exemption, the receipt and recognition of PKR 1.131 billion as consideration, and its disclosure to PSX, all carried out without Commission's approval of the NCCs. While the Respondents eventually filed an Exemption Application, which was done only after the issuance of the SCNs by the Commission.

56. Upon due consideration of the facts, submissions, and applicable law, the Bench hereby orders as follows:

- (a) in accordance with Section 38(1) and 38(2) of the Act, a penalty of PKR 20,000,000/- (Rupees Twenty Million only) is hereby imposed on each of the Respondents for being engaged in activities prohibited under the Act by not only entering into but also giving effect to the NCCs prohibited under Section 4(1) read with Section 4(2)(b), of the Act;

- (b) In addition to the above, a penalty of PKR 1,000,000 (Rupees One Million only) is imposed on UDPL under Section 38(1)(d) read with Section 38(2) for making



the disclosure to the PSX and its members without any approval in place pursuant to Section 5 of the Act; and

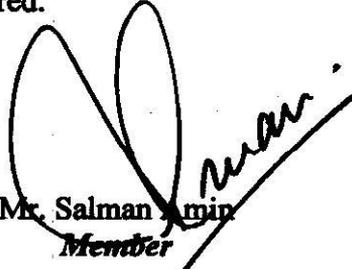
- (c) the Respondents shall submit a comprehensive compliance report detailing the implementation of the aforementioned directions to the Office of the Registrar of the Commission within 30 days of this Order.

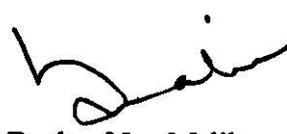
57. In the event of non-compliance with any part of this Order within the stipulated timeframe, or continued violation of the Act, each Respondent shall be held further liable under Section 38(3) of the Act. Accordingly, a penalty of PKR 1,000,000/- (Rupees One Million only) shall be payable by each Respondent, in addition to a daily penalty of PKR 50,000/- (Rupees Fifty Thousand only) effective from the date of this Order, until such time as full compliance is achieved to the satisfaction of the Commission.

58. The Bench has also noticed the disclosures made by UDPL to the PSX, inclusion of non-compete compensation in Directors' report, accounting treatment of non-compete compensation in annual accounts for the financial year ended 30.06.2024, whilst no approvals existed from the Commission on the NCCs. Therefore, the Bench directs Registrar that a copy of this Order be sent to SECP and PSX for their information and necessary actions, if any, under relevant legal framework, as applicable in this regard.

59. In the terms of the above, the SCNs are hereby disposed of.

60. It is so ordered.


Mr. Salman Amin
Member


Ms. Bushra Naz Malik
Member



JULY 2ND, 2025.