



BEFORE THE
COMPETITION COMMISSION OF PAKISTAN

IN THE MATTER OF SHOW CAUSE NOTICES ISSUED TO

M/S AISHA STEEL MILLS LIMITED
M/S INTERNATIONAL STEELS LIMITED

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

(File No.394/FLAT STEEL/C&TA/CCP/2021)

Date(s) of Hearing: 09.07.2025

Bench: Dr. Kabir Ahmed Sidhu,
Chairman

Bushra Naz Malik,
Member

Assisted by:

Barrister Ambreen Abbasi
Senior Legal Advisor
Meher Jamy
Management Executive
Yousaf Naeem
Legal Advisor



Present on behalf of Respondents:

M/s Aisha Steel Mills Limited
M/s International Steels Limited

Mr. Saifullah Khan
Mr. Saeed Hassan Khan
Ms. Sumaira Kanwal
Mr. Ahsan Mahmood

ORDER

1. This Order shall dispose of the proceedings initiated by the Competition Commission of Pakistan (the **Commission**) vide Show Cause Notices (**SCNs**) No. 02/2025 and No. 03/2025, dated 10.03.2025, issued to M/s Aisha Steel Mills Limited and M/s International Steels Limited, respectively under Section 30 of the Competition Act, 2010 (the **Act**) for *prima facie* violation of Section 4(1) of the Act read with Section 4(2)(a) and (c).

FACTUAL BACKGROUND

2. On 02.02.2021, the Industries & Production Division forwarded a letter, written by the Pakistan Agricultural Machinery and Implements Manufacturers Association, to the Commission. The letter alleged that the prices of flat steel products had been continuously rising despite the fact that prices had neither increased in the international market nor any new duties had been imposed by the Government of Pakistan.
3. Subsequently, on 18.03.2021 a complaint was filed on the Commission's complaint portal by an individual who alleged that M/s Aisha Steel Mills Limited (**Respondent No. 1**), M/s International Steels Limited (**Respondent No. 2**) and Hadeed Pakistan Limited (**HPL**) (hereinafter collectively referred to as the **Undertakings**) had raised the prices of flat steel products abnormally, with prices being increased simultaneously and with the same percentage increase. X
4. In this respect, an analysis of the price lists released by the Undertakings between the period of 12.05.2020 and 22.03.2021 showed sixteen instances whereby all three increased their prices on the same dates with the rate of increase also being similar.
5. Further, an examination of the market structure for flat steel products revealed that the flat steel market is highly concentrated in Pakistan, with imports being restricted and the Undertakings being the only three major domestic producers of flat steel products, namely, Cold Rolled Coil (**CRC**), Hot Dipped Galvanized Coil (**GC**) and Colour Coated Coils (**CC**).¹ e

¹ Para 3 of the ER



6. Based on the above, a working paper was prepared by the Cartels & Trade Abuse department (C&TA) to conclude that the complaints raised a valid concern which warranted the initiation of a *suo moto* enquiry under Section 37(1) of the Act.²

ENQUIRY PROCEEDINGS

7. The Commission authorized the enquiry under Section 37(1) of the Act on 27.05.2021.³ In the meantime, the Commission received additional concerns on 21.05.2021, 12.07.2021, 03.08.2021 and 20.08.2021 regarding the flat steel market on the Pakistan Citizen's Portal, mainly by small scale businesses that make use of flat steel products as raw materials. A letter dated 02.09.2021 was also received by the Commission from the Karachi Iron and Steel Merchants Association which noted that the Undertakings had monopolized the flat steel market, created a cartel and had been increasing the prices of CRC, GC and CC since September 2020. The letter also accused the Undertakings of making the imports of flat steel products costly by filing applications which resulted in the imposition of Anti-Dumping Duties on such imports.⁴
8. In conducting its enquiry, the Enquiry Committee undertook a price trend analysis covering the period from July 2020 to December 2023. The Enquiry Committee observed a '*pattern of simultaneous price increases by all three companies [the Undertakings] with price lists issued on the same dates with identical amount of increase*'.⁵ The Enquiry Committee also carried out a market survey at multiple locations in Lahore which verified the above observation.⁶
9. Based on the findings of the Enquiry Committee, the price trend analysis and the market survey, the Enquiry Committee requested the Commission to authorize an enter and search of the premises of Respondent No. 1 and Respondent No. 2, in view of their larger market share, for the purposes of gathering evidence of collusion between them. Permission was granted by the Commission on 20.05.2024 in exercise of its power under Section 34 of the

² Para 4 of the ER
³ Para 1 of the ER
⁴ Paras 5-6 of the ER
⁵ Para 7 of the ER
⁶ Para 8(a) of the ER



Act and the inspection took place on 12.06.2024. Documents and computer stored information were impounded from the premises of Respondent No. 1 and Respondent No. 2, whereas handheld devices were impounded from the premises of Respondent No. 1 and sent to the Federal Investigation Agency (FIA) for forensic analysis.⁷ Information was also sought from the Undertakings, *inter alia*, for the reason behind the parallel movement in the prices of flat steel products. The responses of the Undertakings emphasized the same point, namely, that there exists no price manipulation or intentional price parallelism in the local flat steel market and prices are purely driven by external factors such as the cost of Hot Rolled Coil (HRC) which is a raw material in the production of CRC, GC and CC, the price of imported flat steel products and the variation in the exchange rate.⁸

ENQUIRY REPORT

10. Based on the results of the market survey, the price trend analysis and the evidence collected, the Enquiry Committee found that Respondent No. 1 and Respondent No. 2 had *prima facie* violated Section 4(1) of the Act read with Section 4(2)(a) and (c). However, the Enquiry Committee found that *prima facie* no violation of Section 4 of the Act was made out against HPL. The Enquiry Committee relied on the following factors in reaching these findings:

- (i) **Simultaneous price changes:** between July 2020 and December 2023 prices were changed fifty-five times by the Undertakings, and in all but one instance all three increased/decreased their prices on the same dates. The overall increase in price for each company during this time period was: Respondent No. 1 (Rs. 145,900), Respondent No. 2 (Rs. 146,000) and HPL (Rs. 146,000).
- (ii) **Market structure:** the local flat steel sector only has a small number of local producers owing to the capital intensive nature of the sector. In 2022-2023, Respondent No. 1 had a market share of 20% while Respondent No. 2 had a market share of 39% and HPL had a market share of 10%.
- (iii) **Discussion on prices:** Respondent No. 1 and Respondent No. 2 regularly coordinated with each other before making any price change, with the timing and amount of the price change also jointly decided.

⁷ Paras 9-10 of the ER
⁸ Paras 12-14 of the ER



- (iv) **Discussion on discounts:** Respondent No. 1 and Respondent No. 2 coordinated with each other regarding the provision of discounts.
- (v) **Secondary material:** Respondent No. 1 and Respondent No. 2 have an understanding to not sell secondary material in the market either without the consent of one another or without informing each other.
- (vi) **Sharing of commercially sensitive information:** information on the purchase price of HRC was exchanged between Respondent No. 1 and Respondent No. 2.
- (vii) **Involvement of HPL:** no sufficient direct evidence of Respondent No. 1 and Respondent No. 2's coordination with HPL could be found*.⁹

11. On account of its findings, the Enquiry Committee made the following recommendation:

"101. In light of the above stated findings, the enquiry committee recommends that the Commission may consider initiating proceedings under Section 30 of the Act for prima facie violation of Section 4(1) read with subsection 4(2)(a) and (c) of the Act against the following:

- a. *International Steels Limited; and*
- b. *Aisha Steel Mills Limited.*"¹⁰

SHOW CAUSE NOTICES

12. On 10.03.2025, based on the Enquiry Report's recommendations and in the public interest, the Commission, under Section 30 of the Act, issued SCNs to Respondent No. 1 and Respondent No. 2, for *prima facie* violations of Section 4(1) of the Act read with Section 4(2)(a) and (c). The relevant portions from the SCNs issued to Respondent No. 1 and Respondent No. 2 are reproduced below:

"... 4. WHEREAS, in terms of the Enquiry Report in general and paragraphs 17 to 26 in particular, it has been concluded that the relevant market in terms of Section 2(1)(k) of the Act is that of Cold Rolled Coils (CRC), Hot Dipped Galvanized Coil (GC) and Colour Coated Coils (CC) in whole of Pakistan; and

5. WHEREAS, in terms of the Enquiry Report in general and paragraph 69 in particular, it appears that Respondent No.1 and Respondent No.2 have entered into an agreement/ arrangement as defined under the Act, whereby

In Para 72 of the ER, the Enquiry Committee noted that it could also not discern any 'plus factors' in respect of HPL which would show its involvement in price fixing.
 Para 99 of the ER
 Para 109 of the ER

[Handwritten initials/signature]



they regularly coordinate prior to making any price adjustments, which constitutes price-fixing and prima facie constitutes violation of Section 4 (1) read with Section 4(2)(a) of the Act; and

6. **WHEREAS**, in terms of the Enquiry Report in general and paragraph 71 in particular, it was found that there exists an understanding between the Respondent No.1 and Respondent No.2 with respect to the sale of secondary material that the secondary material will not be sold in the market without the consent of both the Respondents or without informing by one Respondent to the other Respondent regarding such sale, which constitutes prima facie violation of Section 4 (1) read with Section 4(2)(c) of the Act; and

7. **WHEREAS**, in terms of the Enquiry Report in general and paragraphs 90 and 91 in particular, it appears that Respondent No.1 and Respondent No.2 have been involved in the exchange of commercially sensitive information, which enables them to coordinate on pricing of CRC and GC, thus prima facie violating Section 4 (1) read with Section 4(2)(a) of the Act; and

8. **WHEREAS**, in terms of the Enquiry Report in general and paragraph 27 in particular, it appears that the flat-steel products of both Respondents are sold and transported all over Pakistan and used in various industries, therefore, effect of any anti-competitive activity will have a spillover effect beyond provincial boundaries; and..."

SUBMISSIONS OF THE RESPONDENTS

13. Respondent No. 1 and Respondent No. 2 submitted their written responses to the SCNs and appeared before the Commission through their counsel. They denied the allegations against them and asserted that they had not contravened the provisions of Section 4 of the Act.
14. The Respondents also raised near identical objections and grounds. A concise summation of the common procedural and substantive objections taken by them is reproduced hereinbelow for reference:

a. PROCEDURAL OBJECTIONS

- (i) The initiation of enquiry against Respondent No. 1 and Respondent No. 2 is misplaced and erroneous because the complainants do not purchase flat steel products from them. Instead, the complainants purchase flat steel products from independent dealers over whom the Respondents exercise no control.



- (ii) The reliance on Section 34(1) of the Act to carry out an enter and search of the premises of Respondent No. 1 and Respondent No. 2 was legally flawed. Section 4 is a substantive provision of law. It creates no procedural obligations or operational requirements capable of being enforced through enter and search.
- (iii) The Enquiry Committee's reliance on the WhatsApp communications/messages of high-ranking officials of Respondent No. 1 and Respondent No. 2 is legally untenable. These communications/messages are not authenticated and verified and so are inadmissible. Moreover, the information contained in them is neither relevant nor sufficient to substantiate the allegations made against Respondent No. 1 and Respondent No. 2. The communications/messages also lack context and clarity and are comprised of ambiguous statements. Even the process by which these were referred to the FIA, by the Chairman of the Commission, under Section 53(1) of the Act, for forensic analysis was unlawful as the power to seek assistance of any agency under the said Section vests exclusively in the Commission.

b. **SUBSTANTIVE OBJECTIONS**

- (i) The Enquiry Committee has usurped the powers of the Commission by defining the 'relevant market' under Section 2(1)(k) of the Act since determination of the 'relevant market' is a statutory function reserved exclusively for the Commission. Even if this illegality is ignored, the Enquiry Committee has still incorrectly identified the 'relevant market' by undertaking a superficial analysis of the product and geographic markets. It failed to take into account the multiple fragmented sub-categories that exist within flat steel products. It also failed to distinguish between the customer base for flat steel products, which includes both informal dealers and B2B industrial clients.
- (ii) The Enquiry Committee has also erred by including secondary-grade coils within the same market as prime-grade coils. Such inclusion is not supported either by legal or economic rationale, since secondary-grade coils are defective and downgraded and so are not a viable substitute for prime-grade coils.



- (iii) The Enquiry Committee has failed to prove that Respondent No. 1 and Respondent No. 2 have entered into any agreement which has the object or effect of preventing, restricting, or reducing competition within the relevant market. Without satisfying this fundamental threshold stipulated in Section 4(1) of the Act, the Enquiry Committee has simply made assertions that Respondent No. 1 and Respondent No. 2 have *prima facie* violated Section 4(2)(a) and (c) of the Act.
- (iv) The Enquiry Committee has failed to appreciate that being major stakeholders in the flat steel sector, Respondent No. 1 and Respondent No. 2 are compelled to interact and coordinate with one another on matters of macroeconomic, commercial and regulatory policy, which include agenda items such as tax exemptions applicable to FATA/PATA, countering dumping in Pakistan and inclusion of locally manufactured goods in Customs General Orders etc.
- (v) Respondent No. 1 and Respondent No. 2 only issue 'reference price lists' which are not binding. The actual prices in the market vary. The Enquiry Committee thus erroneously characterized 'reference price lists' as price fixing. This is not justified since Section 4(2)(a) of the Act expressly refers to the term 'selling price' which cannot be interpreted broadly to include 'reference price lists'. Additionally, the Enquiry Committee has termed discussions on discounts between the Respondents as inherently being part of price-fixing but has ignored the uncertainty created by such discounts in the final selling price of flat steel products, thereby demonstrating its selective approach.
- (vi) The Enquiry Committee has misinterpreted the nature of the information exchanged between Respondent No. 1 and Respondent No. 2. Purchase price of HRC is not commercially sensitive information because HRC is a globally traded product and its international price is widely available. All major market players independently monitor its price. Moreover, the Enquiry Committee's hypothesis on exchange of information in relation to the purchase price of HRC does not explain the losses made by Respondent No. 1 in the year 2022-23 and the nominal profit of 5% made by Respondent No. 2 in the same year. If there was indeed coordination between Respondent No. 1 and Respondent No. 2 on the purchase price of HRC, their



cost structure would converge and their financial outcomes would be similar.

- (vii) The Enquiry Committee has not taken into consideration the structural and competitive dynamics of the flat steel sector in arriving at its findings. In particular, the Committee has not accounted for the volatile global input costs, significant competition from import, diverse market segmentation between B2B customers and informal dealers and the fact that within a span of three years three local producers namely, HPL, AHN Steel and MAB Steel have entered the flat steel sector.
- (viii) The Enquiry Committee's finding that Respondent No. 1 and Respondent No. 2 have *prima facie* violated Section 4(2)(c) of the Act by entering into an understanding that secondary material will not be sold in the market, either without the consent of both the undertakings or without informing one another, is based on a misapplication of that provision. That provision is concerned with '*fixing or setting the quantity of production, distribution or sale*' whereas the WhatsApp conversation relied on by the Enquiry Committee refers only to the price at which secondary material is being sold in the market by Respondent No. 2.
- (ix) The Enquiry Committee's decision to exclude HPL from the scope of the enquiry and absolving it of any wrongdoing under Section 4 of the Act is discriminatory, arbitrary and devoid of any lawful justification. In arriving at this conclusion, the Enquiry Committee has once again usurped the exclusive power of the Commission, which alone can determine whether any undertaking has violated the provisions of the Act. Moreover, the reasoning put forward by the Committee for excluding HPL is either irrelevant for the purposes of the Act or is equally applicable to Respondent No. 1 and Respondent No. 2. Furthermore, the Committee has acknowledged that HPL's pricing of flat steel products moved in tandem with that of Respondent No. 1 and Respondent No. 2.¹¹



15. Respondent No. 1 and Respondent No. 2 also raised the following specific procedural and substantial objections:

¹¹ Para 72 of the ER

c. **PROCEDURAL OBJECTION OF RESPONDENT NO. 1**

- (i) The Commission has violated the privacy rights of Respondent No.1, its Chairman, Chief Executive, Directors and Officers, guaranteed by Article 14 of the Constitution of Islamic Republic of Pakistan, 1973 (**Constitution**), by uploading the Enquiry Report on its website. This is also contrary to the provisions of Right of Access to Information Act, 2017 which excludes '*any intermediary opinion or recommendation*' [Section 7(c)] and '*record relating to the personal privacy of any individual*' [Section 7(g)] from the ambit of public record, thereby exempting the same from disclosure.

d. **SUBSTANTIVE OBJECTION OF RESPONDENT NO. 2**

- (i) The Enquiry Committee has incorrectly classified CC as a relevant product market since Respondent No. 2 is the only domestic producer of this type of flat steel product. As a result, there exists no other undertaking in the local flat steel sector with which Respondent No. 2 can collude to fix prices. The inclusion of CC within the scope of the alleged violation of Section 4 of the Act is factually baseless and legally redundant.

16. A hearing in the matter was subsequently fixed on 09.07.2025. The learned counsel for Respondent No. 1 and Respondent No. 2 primarily reiterated the points already made by him in the written replies. In response to his objections, the Bench extensively questioned the members of the Enquiry Committee and gave the counsel for the Respondents an opportunity to rebut the assertions of the Committee.

ISSUES

17. The objections and grounds raised by the counsel for Respondent No. 1 and Respondent No. 2 are both procedural and substantive in nature. Therefore, the Bench shall first address the procedural objections and grounds, followed by the substantive objections and grounds.

However, before that we consider it appropriate to identify the procedural and substantive issues for ease of reference and analysis:



a. **PROCEDURAL ISSUES**

- (i) Whether the Commission could initiate an enquiry against Respondent No. 1 and Respondent No. 2 on the strength of the grievances raised by persons/associations who are neither the direct consumers nor the purchasers of Respondent No. 1 and Respondent No. 2's flat steel products?
- (ii) Whether the Commission had the power to authorize an enter and search of the premises of Respondent No. 1 and Respondent No. 2 in the absence of any provision of the Act requiring enforcement?
- (iii) Whether uploading the Enquiry Report on the Commission's website is in violation of Article 14 of the Constitution and the provisions of the Right of Access to Information Act, 2017?
- (iv) Whether the Enquiry Committee could rely on the WhatsApp communications/messages extracted from the handheld devices impounded from the premises of Respondent No. 1?

b. **SUBSTANTIVE ISSUES**

- (v) Whether the Enquiry Committee could determine the 'relevant market' under Section 2(1)(k) of the Act?
- (vi) Whether the Enquiry Committee has correctly defined the 'relevant market' in the Enquiry Report?
- (vii) Whether an agreement under Section 4(1) of the Act between Respondent No. 1 and Respondent No. 2 exists, which has the object or effect of preventing, restricting, or reducing competition within the flat steel sector?
- (viii) Whether the Enquiry Committee has wrongly assessed the reference price lists released by Respondent No. 1 and Respondent No. 2 and the impact of discounts on such reference prices?
- (ix) Whether Respondent No. 1 and Respondent No. 2 have exchanged commercially sensitive information for the purposes of Section 4(2)(a) of the Act?
- (x) Whether an understanding between Respondent No. 1 and Respondent No. 2 exists on not selling secondary material in the market without one another's consent or without informing one another in contravention of Section 4(2)(c) of the Act?



- (xi) Whether the Enquiry Committee has incorrectly exercised the Commission's powers by removing HPL from the scope of the enquiry and exonerating it from the charge under Section 4 of the Act?

ANALYSIS

PROCEDURAL ISSUES

ISSUE I: Whether the Commission could initiate an enquiry against Respondent No. 1 and Respondent No. 2 on the strength of the grievances raised by persons/associations who are neither the direct consumers nor the purchasers of Respondent No. 1 and Respondent No. 2's flat steel products?

18. Respondent No. 1 and Respondent No. 2 objected to the Commission initiating an enquiry against them, on the basis of complaints received from persons/associations who are neither direct consumers of their products nor purchasers of their products. He argued that the grievances of the persons/associations relate to the price of flat steel products fixed by the independent dealers of Respondent No. 1 and Respondent No. 2, over whom the latter exercise no control. Therefore, the Commission should pursue proceedings against these independent dealers for violation of Section 4 of the Act.
19. The counsel also submitted that the letter received from the Karachi Iron and Steel Merchants Association on 02.09.2021 pertained to matters of disparity in tax and duty structures, policy critique on concessions and economic impact of exemptions. Nowhere did the letter allege that Respondent No. 1, Respondent No. 2 and HPL had created a cartel. The Enquiry Committee thus either misquoted or misinterpreted the concerns of Karachi Iron and Steel Merchants Association in para 6 of the Enquiry Report.
20. To address this objection of the Respondents, Section 37(1) of the Act first needs to be examined. It reads:

"37. Enquiry and studies. (1) The Commission may, on its own, and shall upon a reference made to it by the Federal Government, conduct enquiries into any matter relevant to the purposes of this Act."

(emphasis supplied)



A perusal of Section 37(1) reveals that the Commission has the power to commence an enquiry into any matter of its own motion. The Commission ordinarily exercises this power when the facts and evidence indicate that an undertaking has *prima facie* contravened the provisions of the Act.¹² There is no requirement that the information come before the Commission from the direct consumers or purchasers of the products. The Commission is fully empowered to take *suo moto* notice of a possible contravention of the provisions of the Act, irrespective of the source of information. The information may come from the media (electronic, print or social), in the form of a complaint from citizens or even as a lead from its own employees.

21. Respondent No. 1 and Respondent No. 2's next contention that the prices determined by their dealers are not within their control is misconceived. It is only logical that dealers will earn their profit on top of the wholesale prices. Consequently, the prices fixed by Respondent No. 1 and Respondent No. 2 for CRC, GC and CC will ultimately influence the prices fixed by their dealers. Respondent No. 1 and Respondent No. 2, therefore, cannot attribute price determination to their dealers.

22. Moreover, between 12.05.2020 and 22.03.2021, there were sixteen instances whereby all three Undertakings increased their prices on the same dates with the rate of increase also being similar. This evidence fortified the Commission's view to initiate a *suo moto* enquiry against Respondent No. 1 and Respondent No. 2 for price manipulation, irrespective of the source of information. Therefore, the stance of Respondent No. 1 and Respondent No. 2 that the Commission had no power to initiate an enquiry against them on the basis of complaints received by persons/associations which have no direct link with them is rejected.

23. The Respondents stance that the letter from the Karachi Iron and Steel Merchants Association referred only to the disparity in tax and duty structures is factually flawed. The record shows that there are two letters from the Karachi Iron and Steel Merchants Association addressed to the Commission. There is one letter dated 02.09.2021 and another dated 09.12.2021. It is the former letter, referred in the Enquiry Report, which accuses Respondent No. 1, Respondent No. 2 and HPL of having 'created a position of

Regulation 6(2) of the Competition (General Enforcement) Regulations, 2007



monopolization and hav[ing] made a cartel in increasing the prices of Cold Rolled, Galvanized and Color Coated Coils & Sheets', and it is the second letter dated 09.12.2021 which actually relates to disparity in tax and duty structures, policy critique on concessions and economic impact of exemptions. Counsel for the Respondents by relying on the second letter has tried to show that the Karachi Iron and Steel Merchants Association has not impugned the Respondents for being complicit in cartelization. However, this assertion of counsel is simply not grounded in the facts. Resultantly, for being factually incorrect the argument is repelled.

ISSUE II: Whether the Commission had the power to authorize an enter and search of the premises of Respondent No. 1 and Respondent No. 2 in the absence of any provision of the Act requiring enforcement?

24. Learned counsel for Respondent No. 1 and Respondent No. 2 contested the Commission's power to invoke Section 34(1) of the Act to carry out an 'enter and search' of the Respondents premises. He submitted that the Commission's reliance on Section 4 of the Act for the purposes of Section 34 was legally erroneous as Section 4 has no procedural obligations or operational requirements capable of being enforced through an 'enter and search'. He further argued that at the relevant time no enforcement action under Section 4 was either pending or required.

25. We shall first address the second ground taken by counsel, namely, that at the time of invoking Section 34(1) of the Act, no enforcement action under Section 4 was either pending or required. There is no cavil with the stance of Respondent No. 1 and Respondent No. 2 that Section 34(1) only permits the Commission to authorize an enter and search for the purposes of enforcing the provisions of the Act. This is evident from the language of Section 34(1) which reads:

"34. Power to enter and search premises.— (1) Notwithstanding anything contained in any other law for the time being in force, the Commission for reasonable grounds to be recorded in writing shall have the power to authorize any officer to enter and search any premises for the purpose of enforcing any provision of this Act."

(emphasis supplied)



Now the term 'enforce' has not been defined anywhere in the Act, therefore, its dictionary meaning will be looked at to understand what it precisely entails [refer **Chairman, Pakistan Railway, Government of Pakistan, Islamabad Vs. Shah Jehan Shah** (PLD 2016 SC 534) at para 6]. In this regard, the Bench has examined the definition of the term 'enforce' in the following dictionaries:

"Black's Law Dictionary, 11th Edn: enforce... 1. To give force or effect to (a law, etc.); to compel obedience to.

Chambers 21st Century Dictionary: enforce... 1 to cause (a law or decision) to be carried out.

Jowitt's Dictionary of English Law, 6th Edition: Enforce (1) In the civil context, to compel observance (of a legal obligation) by way of legal proceedings; the act or process of such compulsion. There are two stages-before and after judgment-to both of which the term "enforcement" can be applied..."

26. It becomes clear from the aforementioned excerpts that the term 'enforce' essentially means to compel compliance with or give effect to a provision of law. In ordinary circumstances, the term 'enforce' invokes the idea of a court or any other judicial/executive authority taking coercive action against the offending party to secure compliance with its decisions. However, 'enforce' in the context of competition law encompasses both reactive and proactive measures. Reactive measures entail issuing Show Cause Notices against undertakings and making orders in cases of contravention of the provisions of the Act¹³ to ensure compliance. Proactive measures include conducting studies for promoting competition in all sectors of commercial economic activity, conducting enquiries into the affairs of any undertaking, advising undertakings on the potential consistency of their proposed actions with the Act and engaging in competition advocacy¹⁴ to give effect to the provisions of the Act before any violation is committed or established.

27. In the instant case, the Commission authorized an 'enter and search' under Section 34(1) of the Act, whilst the Enquiry Committee was conducting an enquiry under Section 37(1).

There was sufficient information before the Commission that Respondent No. 1 and Respondent No. 2 may have contravened Section 4 of the Act. In this way the 'enter and search' facilitated the Commission in seeking further evidence of collusion between

¹³ Section 28(1)(a) of the Act

¹⁴ Section 28(1)(b)-(e) of the Act



Respondent No. 1 and Respondent No. 2. The mere fact that the Commission did not refer to Section 37(1) of the Act whilst authorizing the 'enter and search' does not render the 'enter and search' illegal because it has been the consistent view of the Hon'ble Supreme Court of Pakistan that if a court/tribunal/authority has power under a statute to exercise a jurisdiction or power, the reference to a wrong or inapplicable provision of law or the failure to refer to the correct provision of law is not fatal. What matters is that the court/tribunal/authority is vested with that jurisdiction or power under the statute. Reliance in this regard is placed on the decisions rendered in Zulfiqar Ali Bhatti Vs. Election Commission of Pakistan (2024 SCMR 997) at para 22 and Olas Khan Vs. Chairman NAB (PLD 2018 SC 40) at para 10.

28. Moreover, learned counsel's argument that the term 'enforce' refers only to the Commission's power to take coercive action against undertakings for committing a violation of the substantive provisions of the Act is completely devoid of merit. Neither the scheme of the Act envisages such a narrow interpretation of the term 'enforce', nor does the Act tie the Commission's hands to only invoke Section 34(1) at the post-decision stage. Thus, if we accept counsel's restrictive interpretation we will destroy the legislative intent behind Section 34(1). Further, such an interpretation will also leave the Commission powerless to invoke the said Section for seeking additional evidence of collusion between undertakings. Therefore, for the above reasons, Respondent No. 1 and Respondent No. 2's objection that the Commission's invocation of Section 34(1) of the Act was legally flawed because no enforcement action was pending or required under Section 4 of the Act at the material time is rejected.

29. The Respondents second objection was that Section 4 has no procedural obligations or operational requirements capable of being enforced through Section 34(1) of the Act. Here it suffices to note that Section 34(1) (reproduced above in para 25) clearly states that the Commission can authorize an 'enter and search' for the purposes of enforcing any provision of the Act. Therefore, with the use of the word 'any', the Legislature has prescribed no limitation in Section 34(1) of the Act in respect of the nature of the provision with regard to which the power under the said Section can be utilized. The provision requiring enforcement can be substantive or procedural or a mix of both. Accordingly, even this assertion of the Respondents is rejected.



ISSUE III: Whether uploading the Enquiry Report on the Commission's website is in violation of Article 14 of the Constitution and the provisions of the Right of Access to Information Act, 2017?

30. Learned counsel argued that uploading the Enquiry Report on the Commission's website was an infringement of the constitutional right of privacy of Respondent No. 1, its Chairman, Chief Executive, Directors and Officers. He contended that the Enquiry Report is merely an intermediary opinion and contains the personal information of individuals working at Respondent No. 1. Even the Right of Access to Information Act, 2017 (2017 Act), which is the primary statute providing citizens the right to access information in a transparent and effective manner, prohibits its disclosure to the public.
31. To address the objection raised by learned counsel, it is essential to first understand on the one hand the scheme of law relating to a person's right to privacy and on the other hand the public's right to seek information.
32. An individual's right to privacy is protected by both the Constitution and the 2017 Act through the following provisions:

“ Constitution

14 Inviolability of dignity of man, etc.

(1) The dignity of man and, subject to law, the privacy of home, shall be inviolable.

2017 Act

7. Exclusion of certain record. —Nothing contained in section 6 shall apply to the following record of all public bodies, namely: —...

(g) record relating to the personal privacy of any individual;

...

16. Information exempt from disclosure. —(1) Subject to the provisions of this Act,

—

...

(c) information is exempt if its disclosure under this Act would involve invasion of privacy of an identifiable individual, including a deceased individual, other than the applicant...

(emphasis supplied)



33. Likewise, the people's right to access information is enshrined in the Constitution and the 2017 Act:

“Constitution

19A. Right to information

Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law.

2017 Act

3. Right to have access to information not to be denied. — (1) Subject to the provisions of this Act, no applicant shall be denied access to information or record held by a public body.

(2) This Act shall be interpreted so as to advance its purposes as set out in the preamble and to—

(a) promote the right of access to information; and

(b) facilitate and encourage promptly the disclosure of the information at the lowest and reasonable cost.”

(emphasis supplied)

In addition to the aforementioned provisions safeguarding the right of the people to access information, Section 29(d) of the Act also empowers the Commission to post enquiry reports on its website as part of its mandate to promote competition advocacy:

“29. Competition advocacy. — The Commission shall promote competition through advocacy which, among others, shall include—

...

(d) posting on its website all decisions made, inquiries under review and completed merger guidelines, educational material and the like.”

(emphasis supplied)



34. A careful reading of the clauses cited above makes the following points clear:

- (i) The constitutional right to privacy protects only an individual's personal life. There is no constitutional right to privacy for either a corporation or for a natural or legal person's business dealings.
- (ii) The right to privacy guaranteed in Article 14 of the Constitution is not an absolute right. Exceptions can be crafted to it in the law.
- (iii) The 2017 Act only exempts such record from falling within the public domain which includes information relating to the personal life of an individual. This exemption has not been extended to corporations.



- (iv) The Constitution, via Article 19A, affords citizens the right to access information of public importance, however, this right is subject to reasonable restrictions imposed by the law.
- (v) The practical manifestation of Article 19A can be found in the 2017 Act which not only affirms the people's right to know but also incorporates certain restrictions to protect the competing interests of other people, institutions and the State.
- (vi) The Act has bound the Commission to promote competition through advocacy which includes, *inter alia*, the posting of enquiry reports on its website.

35. In light of the above, the contention of learned counsel that the uploading of the Enquiry Report on the Commission's website has breached Article 14 of the Constitution along with Section 7(g) of the 2017 Act loses force. It has already been noted in para 34(i) and (iii) that corporations do not have any right to privacy either under the Constitution or the 2017 Act. This view has also been confirmed by the Lahore High Court in its judgment reported as **Waheed Shahzad Butt Vs. Federation of Pakistan** (PLD 2016 Lah 872) in the following terms:

"19. ...Furthermore, the phraseology used in section 8(g) indicates that the legislature had in mind only a natural person as having, for the purposes of the section, personal affairs and not a corporation..."

The aforementioned observation was made in the context of Section 8(g) of the Freedom of Information Ordinance, 2002. However, that provision is *pari materia* to Section 7(g) of the 2017 Act. Therefore, the observation of the Lahore High Court is equally applicable to Section 7(g). Moreover, in respect of the Chairman, Chief Executive, Directors and Officers of Respondent No. 1, learned counsel failed to pinpoint even a single piece of information in the Enquiry Report which pertained to their personal and private lives. In fact, throughout the Enquiry Report personal information of the respective individuals, namely, their mobile phone numbers have been redacted to protect their privacy. Therefore, uploading of the Enquiry Report was in accordance with the Act.

36. Regarding the counsel's objection that the Enquiry Report is only an intermediary opinion and cannot be uploaded, it is the Bench's view that the Commission is expressly empowered by Section 29(d) of the Act to upload all enquiry reports, whether finalized or under review, on its website. Therefore, when the Act has authorized the Commission to



do a particular act, reliance cannot be placed on another statute, having an entirely separate purpose, to curtail the powers of the Commission and to defeat the objectives of the Act.

37. The Bench is also of the opinion that the uploading of the Enquiry Report does not damage the commercial repute of Respondent No. 1 or its Chairman, Chief Executive, Directors and Officers. At the time of the hearing, the Commission was yet to make a final decision on the facts and evidence set out in the Enquiry Report. Moreover, during the hearing it also provided Respondent No.1 ample opportunity to plead its case and refute the allegations leveled against it. In any event, in case the Respondent No. 1 is absolved of the charges against it, the final order will also be uploaded on the Commission's website for all to view and read. Accordingly, the objection of Respondent No. 1 to the uploading of the Enquiry Report on the website of the Commission, having no force, is dismissed.

ISSUE IV: Whether the Enquiry Committee could rely on the WhatsApp communications/messages extracted from the handheld devices impounded from the premises of Respondent No. 1?

38. Learned counsel for Respondent No. 1 and Respondent No. 2 objected vehemently to the reliance placed by the Enquiry Committee on the WhatsApp communications/messages extracted from the handheld devices impounded from the premises of Respondent No. 1. In particular, counsel argued that the communications/messages were unlawfully processed, unverified and inadmissible, and weak evidence of Respondent No. 1 and Respondent No. 2's alleged active participation in a prohibited agreement to fix the price of flat steel products. Learned counsel submitted that since the WhatsApp communications/messages suffered from serious defects, these should be rejected by the Commission and the Respondents should be cleared of all charges.

39. We shall first address the point of counsel that the WhatsApp communications/messages were unlawfully processed because the Chairman of the Commission had no right to forward them to the FIA for forensic analysis under Section 53(1) of the Act as this power vests exclusively in the Commission. It is pertinent to mention here that Section 28(2) of the Act allows the Commission to '*delegate all or any of its functions and powers to any of its Members or officers as it deems fit*'. It, therefore, becomes clear that the Commission's



authority under Section 53(1) to 'seek the assistance of any person, authority or agency for the performance of its functions under this Act', being one of its powers under the Act, can also be delegated to any of its Members or officers. It now needs to be seen whether this power was delegated.

40. On an examination of the Commission's record, the Bench came across two documents of the Commission which relate to the matter at hand, namely:

- (i) Agenda Item 4 of the Fifth Emergent Meeting for the Year 2021 held on 09.02.2021 in which the Commission, in exercise of its power under Section 28(2) of the Act, delegated its power under Section 53 to the Member (C&TA) for the purposes of Section 3 and Section 4 enquiries; and
- (ii) S.R.O. 1097 (I)/2020 dated 07.09.2020, issued under Section 28(2) of the Act, wherein the Commission held that 'The powers delegated to Members, Director Generals and Officers shall also be exercised concurrently by Chairperson or the Commission'.

The two documents cited above completely discredit the claim of the Respondents that the Chairman of the Commission had no authority to refer the WhatsApp communications/messages to the FIA for forensic analysis under Section 53(1) of the Act because they reveal that this power was in fact lawfully and validly delegated to the Member (C&TA) and the Chairman under Section 28(2) of the Act. Consequently, the learned counsel's objection to the referral of the WhatsApp communications/messages to the FIA by the Chairman of the Commission, instead of by the Commission itself, is declined for being without substance.

41. The second ground raised by learned counsel for the Respondents was that the WhatsApp communications/messages are unverified and hence inadmissible. However, this contention of counsel has no weight for the following reasons:

- (i) Respondent No. 1 has not denied that the handheld devices collected from its premises belonged to its employees, including its CEO.

There has been no assertion either by Respondent No. 1 or Respondent No. 2 that any of the communications/messages reproduced in the Enquiry Report are doctored or fake.



- (iii) The messages extracted from the handheld device belonging to the CEO of Respondent No. 1 have been duly verified by the FIA, which used international best practices in conducting the forensic analysis.

Moreover, it is by now settled practice in many countries to accept WhatsApp messages as proof of collusive behaviour amongst undertakings. For instance, the Turkish Competition Authority has taken notice of WhatsApp messages in the cases of 18-09/157-77 (**Orthodontics Decision**), 18-20/356-176 (**MOSAS Decision**), and 20-01/3-2 (**Container Carriers Decision**) to ascertain whether anti-competitive activities have taken place. Likewise, in **USA v. Azim Makanojiva**, Case No: 4:17-cr-00478, the Antitrust Division of the US Department of Justice filed a complaint against multiple undertakings for entering into a prohibited agreement to fix the prices of customized promotional products sold online. The complaint was heavily based on WhatsApp messages and other online communications exchanged between the undertakings. The Spanish Competition Authority has also relied on WhatsApp communications to find six nougat producers guilty of entering into prohibited agreements, which decision was upheld by the Spanish National Court in the Decision of **Audiencia Nacional, D. Claudio, Almendra y Miel SA y Confectionary Holding SL v. CNMC**, Appeal No. 136/2014. In such circumstances, the submission of counsel, for being against the established facts and law, cannot be accepted.

42. Lastly, learned counsel averred that the WhatsApp communications/messages do not establish conclusively that the Respondents entered into a prohibited agreement, in contravention of Section 4(1) of the Act. However, this objection, being substantive in nature, is dealt with later on in the Order (under Issue VII).

SUBSTANTIVE ISSUES

ISSUE V: Whether the Enquiry Committee could determine the 'relevant market' under Section 2(1)(k) of the Act?

43. After concluding his procedural submissions, counsel for Respondent No. 1 and Respondent No. 2 moved on to his substantive objections. He firstly challenged the Enquiry Committee's determination of the relevant market on the ground that this determination can only be made by the Commission. In support of his view, he relied on Section 2(1)(k) of the Act which reads:



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

...

(k) *"relevant market" means the market which shall be determined by the Commission with reference to a product market and a geographic market and a product market comprises all those products or services which are regarded as interchangeable or Substitutable by the consumers by reason of the products' characteristics, prices and intended uses. A geographic market comprises the area in which the undertakings concerned are involved in the supply of products or services and in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighboring geographic areas because, in particular, the conditions of competition are appreciably different in those areas;"*
(emphasis supplied)

According to counsel, since only the Commission is empowered under Section 2(1)(k) of the Act to define what the 'relevant market' is for any specific case, the Enquiry Committee by defining the 'relevant market' in the present case has exceeded its mandate.

44. Having examined counsel's contention, we find ourselves unable to agree with what he has stated. The Enquiry Committee by determining the 'relevant market' has not acted beyond its mandate. The power to conduct an enquiry into the alleged contraventions of Sections 3 and 4 of the Act was expressly delegated to it by the Commission vide Agenda Item I of the 12th Emergent Meeting of the Commission, held on 27.05.2021:

"IT WAS RESOLVED THAT pursuant to the provisions of Section 37(1) of the Competition Act, 2010 (the 'Act'), enquiry be conducted into the alleged contraventions of Section 3 and 4 of the Act by flat steel manufacturers.

...

IT WAS ALSO RESOLVED THAT powers of the Commission under Section 33 and 36 of the Act be delegated to the Enquiry Committee for the purpose of aforesaid enquiry."

45. Thereafter, the Enquiry Committee completed its enquiry and finalized the Enquiry Report on 09.12.2024. In that Report, the Committee was of the view that the relevant product market was that of CRC, GC and CC, whereas the relevant geographic market was that of the whole of Pakistan. The Report of the Committee, and its findings in relation to the relevant market, were endorsed by the Commission in its Second Meeting for the Year 2025 held on 17.02.2025. Therefore, all the findings in the Enquiry Report were approved by the Commission.



46. It is also pertinent to mention here that the Enquiry Committee's reports are scrutinized in quasi-judicial proceedings as well, with a Bench of the Commission presiding over the matter, giving the parties before it a full opportunity of hearing to present their stance. At this stage the Commission has complete power to agree and disagree with any or all parts of the Committee's report. Consequently, the view taken by the Respondents that the Enquiry Committee has determined the relevant market, to the exclusion of the Commission, is rejected for being legally untenable.

ISSUE VI: Whether the Enquiry Committee has correctly defined the 'relevant market' in the Enquiry Report?

47. Learned counsel for Respondent No. 1 and Respondent No. 2 also argued, without prejudice to his above submission, that even if the Enquiry Committee had the power to define the 'relevant market,' it did so wrongly in the instant case. This is because it has committed the following mistakes:

- (i) Failed to appreciate that within the flat steel products of CRC, GC, and CC there exist various sub-categories due to differences in thickness, surface finish and mechanical tolerances etc.
- (ii) Did not distinguish between the customer base that exists for flat steel products, which comprises of informal dealers and B2B industrial clients, with the latter requiring customized options which has an influence on the assessment to be conducted under Section 4 of the Act.
- (iii) Included secondary-grade coils within the same market as prime-grade coils, despite the fact that the former are not a viable substitute for prime-grade coils because they are defective and downgraded.
- (iv) Specific to Respondent No. 2, incorrectly classified CC as a relevant product market even though Respondent No. 2 is the only domestic producer of this type of flat steel product. This excludes the possibility of collusion to fix prices since there exists no other undertaking in the local flat steel sector which manufactures CC with which Respondent No. 2 can enter into an agreement.

48. The Bench notes that it is not important to identify the relevant market in cases of collusion, as opposed to abuse of dominant position. The instant case is one where two undertakings



have colluded with one another to manipulate the prices of flat steel products. Hence, delineating the relevant market is not a necessary requirement. Reliance is placed on the decision of the Commission In the Matter of Amin Brothers Engineering et al. (File No. 13/PESCO/CMTA/CCP/2010) wherein it was held:

"18. ... Before coming to the hasty conclusion that the Commission is mandated by Section 4(1) to determine a relevant market in all cases, the rationale behind having a relevant market when dealing with competition issues must be kept in mind. In competition law, distinction must be made between unilateral anti-competitive conduct (abuse of dominance in Section 3 cases) and multilateral anti-competitive conduct (collusion in Section 4 cases). In the first instance, the issue is to determine whether a dominant undertaking has abused its market power in a particular market. Before an abuse of dominance can be established, dominance in a particular market has to be established which, in turn, warrants a definition of a relevant market. Therefore in cases regarding abuse of dominance, it is an essential requirement that a relevant market is identified in order to establish dominance, and thus its abuse, if any.

19. The same is not true in cases of collusive behavior prohibited under Section 4. It is an underlying presumption that all the undertakings involved are operating in the same market, whether horizontal or vertical. Clearly, if they were not, then the need or question of collusion would not have arisen in the first place. Moreover, in cases of collusion, market power is irrelevant. What is relevant is the agreement to collude. Therefore, the identification of a relevant market in cases of collusion is merely for the purposes of reference, and is not a requirement for establishing an anti-competitive action.

20. This principle must be kept in mind while reading Section 4(1). Thus it is not mandatory on the Commission to define a relevant market in cases of collusion, nor does the wording of Section 4 mandates it.

21. This interpretation finds support in jurisprudence developed in the E.U. In SPO v Commission, a case used by the counsel of the Respondents, the court held in paragraph 74:

The approach to defining the relevant market differs according to whether Article 85 or Article 86 of the Treaty [establishing the European Economic Community] is to be applied. For the purposes of Article 86, the proper definition of the relevant market is a necessary precondition for any judgment as to allegedly anti-competitive behavior (judgment of the Court of First Instance in Joined Cases T68/69, T-77/89 and T-78/89 SIV and Others v Commission, cited above, paragraph 159), since, before an abuse of a dominant position is ascertained, it is necessary to establish the existence of a dominant position in a given market, which presupposes that



such a market has already been defined. For the purposes of applying Article 85, the reason for defining the relevant market is to determine whether the agreement, the decision by an association of undertakings or the concerted practice at issue is liable to affect trade between Member States and has as its object or effect the prevention, restriction or distortion of competition within the Common Market.”

(emphasis supplied)

The above view has subsequently been reiterated by the Commission.¹⁵ Therefore, since what is relevant for the purposes of establishing a violation of Section 4 of the Act is the agreement to collude and not the relevant market, the objection of the Respondents is rejected.

49. Be that as it may, the issue at hand is not so much the fact that the ‘relevant market’ has not been defined but the fact that it has been wrongly defined. In this respect, it is important to note that Respondent No. 1 and Respondent No. 2 have not objected to the ‘geographic market’ defined by the Enquiry Committee i.e., the whole of Pakistan.¹⁶ Instead, their objection pertains only to the manner in which the ‘product market’ has been defined and the finding that anti-competitive activities by Respondent No. 1 and Respondent No. 2 have a spillover effect beyond provincial boundaries.¹⁷

50. Regarding the ‘product market,’ the learned counsel argued that the Enquiry Committee has not appreciated that within the flat steel products of CRC, GC and CC there exist various sub-categories, with each constituting distinct ‘product markets’. To deal with this contention of counsel, it is important to specify at the outset the ingredients that are relevant for determining the ‘product market’ in a particular case. Reliance is placed on the Commission’s decision **In the Matter of Implementation Agreement Entered into between Port Qasim Authority & S/S Engro Vopak Terminal Limited** (File No. 6/LP/CMTA/CCP/2010) & (File No. 2/(192)/AGR/Exm/Reg/CCP/2010) wherein it was

held:

“27. Primarily three competitive constraints are important in defining the relevant market: (i) demand substitutability, (ii) supply substitutability and (iii) potential competition. From an economic point of view the most important among all of these

15. In the Matter of Show Cause Notices issued to Del Electronics (Pvt.) Limited and another (2022 CLD 670) at paras 44-45

¹⁶ Para 25 of the ER

¹⁷ Paras 96-97 of the ER

is the demand substitutability. If customers are in a position to switch easily to available substitute services or suppliers located elsewhere, no supplier can have a significant impact on the prevailing conditions of sale such as price. Therefore, definition of market consists in identifying the effective alternative sources of supply for the customers of the undertaking involved, both in terms of services and geographical location of suppliers. This requires that suppliers be able to switch to relevant services and market them in the short term without incurring significant additional costs. For customers it is equally important to assess switching costs for diverting its order to other supplier or area in terms of impact of transport costs and restrictions depending on the nature of the relevant services.

(emphasis supplied)

51. The European Commission (EC) has also arrived at the same conclusion in its 'Commission Notice on the definition of the relevant market for the purposes of Union competition law' (Commission Notice)¹⁸ wherein it has observed:

"23. Undertakings are subject to three main sources of competitive constraints, namely demand substitution, supply substitution and potential competition:

(a) Demand substitution constitutes the most effective and immediate disciplinary force on the suppliers of a given product. An undertaking's influence over prevailing conditions of sale – such as prices, the level of innovation or the quality offered – depends on the extent to which its customers can easily switch to available products that the customers consider as substitutes. Demand substitution is therefore the main consideration when defining the relevant product market.

(b) Supply substitution can also be relevant for the definition of the relevant market in some cases, namely when it is as effective and immediate as demand substitution and when it leads to similar competitive conditions across the products concerned. In the Commission's experience, supply substitution is only relevant for market definition in specific cases.

(c) Potential competition, by contrast, comprises more remote and contingent competitive constraints that do not meet the criteria of effectiveness and immediacy of substitution. Therefore, potential competition is not relevant for the definition of the relevant market and it is not appropriate to include in the relevant product market current sales by a potential competitor of products that are not substitutable with the product(s) of the undertaking(s) involved from the perspective of the customers, or to expand the geographic market to include the areas where the potential competitor is already active with its products. The existence of potential competition requires an analysis of additional factors, including the likelihood, timeframe and magnitude of any market entry. The assessment of the impact of



potential competition requires analysing how this affects or could affect the behaviour of the undertaking(s) involved. This is analysed in the competitive assessment."

(emphasis supplied)

It becomes clear from the aforementioned excerpts that demand substitutability and supply substitutability are the most relevant for defining the product market, with the former taking precedence over the latter. Before us, the learned counsel for Respondent No. 1 and Respondent No. 2 has relied on this test laid down by the Commission and the EC to vehemently contend that since the flat steel products of CRC, GC and CC come in different ranges of thickness, surface finish and mechanical tolerances etc., and that B2B customers require customized options, demand substitutability is virtually non-existent within the broad framework of CRC, GC and CC products. Therefore, for each general flat steel product (CRC, GC and CC), the Commission must further divide these products into sub-products based on their differences and determine whether Respondent No. 1 and Respondent No. 2 have entered into an agreement which has the object or effect of preventing, restricting, or reducing competition within that specific sub-product market. Whilst in most cases of prohibited agreements such an objection may have force, in the matter before us this objection is completely devoid of merit because as noted above, the EC has stated that in specific cases supply substitution assumes relevance. What those specific cases are has also been explained by the EC in its Commission Notice:

"32. The substitutability of products from the perspective of suppliers (supply substitution) can be relevant for market definition where suppliers use the same assets and processes to produce related products that are not substitutes for customers, and where this leads to similar conditions of competition across the range of such related products. In such cases, it may be appropriate to include such related products in the relevant product market, provided the constraining effect of supply substitution across the range of products is equivalent to that of demand substitution in terms of effectiveness and immediacy.

33. The necessary conditions for the market to be broadened based on supply substitution are that most, if not all, suppliers are able to switch production between products in the range of related products; that suppliers incur only insignificant additional sunk costs or risks when they switch production; that suppliers have the incentive to and would do so when relative prices or demand conditions change; and that they can offer all products in the range effectively in the short term



34. Situations of sufficiently strong supply substitution may typically arise when undertakings market a range of qualities or grades of a particular product. For example, in a case relating to the production of stainless steel, the Commission found that, from a demand point of view, customers could not use different grades of stainless steel or families of grades for the same purpose. However, it was possible for manufacturers to switch from the production of one grade to another in the short term and using the same equipment, with limited additional costs. In the absence of particular difficulties in distribution, stainless steel manufacturers were therefore able to compete for orders of the various grades. The Commission therefore included the various grades of stainless steel in the same relevant market."

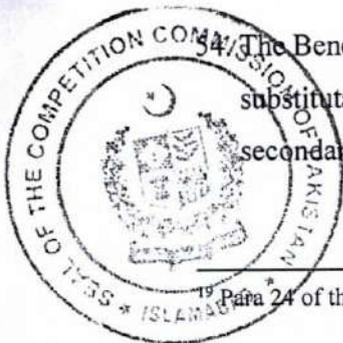
(emphasis supplied)

52. In the above Notice, the EC also referred to para 120 of its merger order passed in M.6471 **Outokumpu/INOXUM**, wherein it held that 'the markets for stainless steel, including slabs, should not be further divided according to the different grades or grade families (austenitic, ferritic, duplex, and martensitic). The Commission has also stated that all grades of stainless steel can be produced by the same plant, which can switch easily and quickly from one type of grade to the other and that there is sufficient supply-side substitutability between the different grades for them to be included in the same relevant product market.'

53. It is an admitted fact that all three Undertakings produce different grades of CRC whilst Respondent No. 1 and Respondent No. 2 produce different grades of GC. Insofar as the product of CC is concerned, it is an established fact that CC is imported into Pakistan and is substitutable with the CC locally produced by Respondent No. 2. This fact has also been accepted by Respondent No. 2 itself in para 4.23 of its response to the Enquiry Report and the SCN. Resultantly, we find ourselves in concurrence with the findings and rationale of the EC. The Bench, therefore, concludes that the Enquiry Committee has not erred by holding that the relevant product market in the present case comprises of CRC, GC and CC.

54. The Bench, however, disagrees with the Enquiry Committee that secondary-grade coils are substitutable for prime-grade coils because the Committee has already recognized that secondary-grade coils are defective material.¹⁹ Moreover, the share of secondary-grade

¹⁹ Para 24 of the ER



coils in the market is relatively small (constituting only about 3% to 3.5% of the total flat steel products sold).²⁰

55. Now, the issue of spillover effect shall be considered. Respondent No. 1 and Respondent No. 2 argued that the presumption that any anti-competitive effect will automatically have a spillover effect beyond provincial boundaries reflects an incorrect understanding of how flat steel products are priced and transacted. According to them, the price of flat steel products depends on several factors such as purchase volume, long-term or spot contracts, customer relationship and grade/specification of steel ordered.

56. In order to understand the contention of the Respondents, it is important to first examine the meaning of the term 'spillover effect.' The same has been aptly explained by the Lahore High Court in LPG Association of Pakistan Vs. Federation of Pakistan (2021 CLD 214) as follows:

"1.7 Spillover Effect' is an economic term, used for positive or negative effect of an economic activity, causing benefit without paying or suffer[ing] without compensation. It is also termed as externality or neighbourhood effect. In law; Spillover Effect may be referred to a situation where laws, regulations or policies of one governing unit effects the people outside its territorial limits..."

57. The above cited passage clarifies that spillover effect is established once an activity within one governing unit (province) affects the people of another governing unit (province). There has been no denial by the Respondents that their flat steel products are transported all across Pakistan. Thus, even though their premises may be located in Karachi, their products are utilized by people residing all over Pakistan. Therefore, if they reach an agreement on the pricing of flat steel products, the same will automatically affect prices in the entire country. The factors identified by the Respondents, namely, purchase volume, long-term or spot contracts, customer relationship and grade/specification of steel ordered may also be relevant in influencing the ultimate price of flat steel products. However, their effect will only occur on top of the wholesale price set by the Respondents. As a result, these factors are not the primary contributors to the rising prices of flat steel products in the country. For these reasons, the objection of the Respondents is rejected.



ISSUE VII: Whether an agreement under Section 4(1) of the Act between Respondent No. 1 and Respondent No. 2 exists, which has the object or effect of preventing, restricting, or reducing competition within the flat steel sector?

58. The learned counsel for Respondent No. 1 and Respondent No. 2 argued that the Enquiry Committee has neither alleged nor established that the Respondents have entered into an agreement which has the object or effect of preventing, restricting, or reducing competition within the flat steel sector. As per counsel, it is mandatory to satisfy this essential component of Section 4(1) of the Act for establishing violation of either Section 4(2)(a) or Section 4(2)(c).

59. The Bench agrees with the contention of learned counsel to the extent that to find a violation of Section 4(2)(a) and (c) of the Act, there has to be an agreement between the parties with the object or effect of preventing, restricting, or reducing competition within the relevant market. It is therefore important to understand what an agreement under the Act actually entails. In this regard, reference is made to Section 2(1)(b) of the Act which reads:

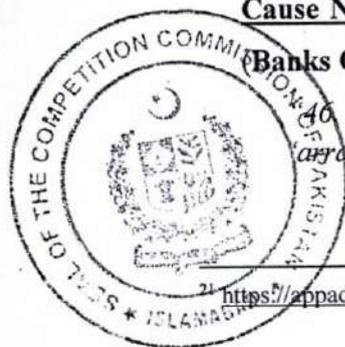
"2. Definitions.— (1) In this Act unless there is anything repugnant in the subject or context; —

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

A close examination of the definition is sufficient to dismantle the objection raised by Respondent No. 1 and Respondent No. 2 that the Enquiry Committee failed to establish that they entered into an agreement with one another. The said Section clearly reveals that an agreement can take multiple forms: it can be written or oral, it can be legally enforceable or unenforceable, and it can simply even be an understanding or practice between undertakings to engage in anti-competitive behaviour. This broad interpretation of the term 'agreement' finds support in the Commission's previous decision **In the Matter of Show Cause Notice Dated 24 December 2007 for Violation of Section 4 of the Ordinance (Banks Order)**²¹:

... The ordinary dictionary meaning of the terms 'understanding' 'arrangement' and 'practice' is as follows:

²¹ https://appadmincecp.cc.gov.pk/ccporders/e801c0bc-0f14-490e-b242-066685f0f504_Order_of_Banks.pdf



'understanding' means an agreement, of an implied or tacit nature,

'arrangement' means 'the act or process of arranging', the manner in which a thing is arranged or something arranged,

'practice' connotes repetition of certain events.

Hence, the scope of the definition of the term "agreement" is very wide..."

The Commission has further elaborated on the term 'agreement' in its Guidelines on Prohibited Agreements:

"2.8 The application of Section 4 is not limited to formal contracts. Rather, it applies also to cooperation achieved through informal agreements, understandings, concerted practices or decisions of an association of undertakings. 'Agreement' has a wide meaning and includes both legally enforceable and non-enforceable agreements, whether written or oral and includes so-called gentlemen's agreements. An agreement may be reached via a physical meeting of the parties or through an exchange of letters, circulars or telephone calls or any other means of communication. All that is required is that the parties arrive at a consensus on the actions each party will or will not take."

(emphasis supplied)

60. The view expounded by the Commission is also shared by the US Supreme Court which held in the case of American Tobacco Co v. United States 328 US 781 (1946) that:

"...No formal agreement is necessary to constitute an unlawful conspiracy... The essential combination or conspiracy in violation of the Sherman Act may be found in a course of dealings or other circumstances as well as in any exchange of words... Where the circumstances are such as to warrant a jury in finding that the conspirators had a unity of purpose or a common design and understanding, or a meeting of minds in an unlawful arrangement, the conclusion that a conspiracy is established is justified."

(emphasis supplied)

Likewise, in Bayer v. Commission [2000] ECR II-3383, the Court of First Instance²² observed:

"69 It follows that the concept of an agreement within the meaning of Article 85(1) of the Treaty [establishing the European Economic Community], as interpreted by the case-law, centres around the existence of a concurrence of wills between at

Since renamed the 'General Court'.



least two parties, the form in which it is manifested being unimportant so long as it constitutes the faithful expression of the parties' intention."

(emphasis supplied)

The reference to the case-law and guidelines of the Commission and of foreign courts establishes that under the principles of competition law, an agreement may not be a written formal contract. It suffices that the evidence suggests that the undertakings have an understanding or have entered into an arrangement or are part of a practice that shows their common intention or consensus to engage in anti-competitive practices.

61. These anti-competitive practices can take many forms and include (but are not limited to) price-fixing, market allocation and bid-rigging amongst competitors. In the case before us, the primary allegation against the Respondents is that they have entered into a price-fixing agreement by coordinating on price changes in the flat steel sector and by regulating the provision of discounts, which is covered under Section 4(2)(a) of the Act. The said provision provides:

"4. Prohibited agreements. —

...

(2) Such agreements include, but are not limited to —

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

(emphasis supplied)

The term price-fixing has been interpreted broadly by the Commission. For instance, in the Commission's decision In the Matter of Karachi Stock Exchange, Lahore Stock Exchange and Islamabad Stock Exchange (2010 CLD 1410) it was held:

"46. The term "price fixing" is defined broadly in the case of horizontal agreements, than it is for buyer-reseller agreement between vertically related undertakings. In horizontal agreements, the term price fixing includes not only fixing "explicit price" but also agreements to fix a "price element," which "may include such things as (a) terms of financing; (b) the 'grace period' between delivery and payment due date (which is simply a form of financing); (c) discounts, including acceptance of discount coupons; (d) rebates; (e) formula to be used for determining the price, such as relative value scales, and similar arrangements; and (f) a willingness to entertain competitive bids. In sum, 'price element' is defined broadly to include any term of sale that can be regarded as affecting the price that the customer must pay, or any mechanism such as a formula by which the price may be computed."

(emphasis supplied)



62. It becomes clear from the afore quoted passage that price-fixing as prohibited in Section 4(2)(a) of the Act is a wide-ranging term and encompasses within it agreements on any element of price: be it the explicit fixing of the price of products or the fixing of discounts offered on those products. Therefore, there can be no doubt that the allegations levelled against the Respondents of fixing the price of flat steel products and controlling the provision of discounts fall wholly and squarely within the ambit of price-fixing and resultantly Section 4(2)(a).

63. To substantiate the above allegations, the Enquiry Committee has cited multiple WhatsApp communications between Respondent No. 1 and Respondent No. 2 in the Enquiry Report as proof of their collusive behaviour. Some of the notable and most relevant communications are reproduced below:

“Communications on Price Fixing

31.03.2021

Director ASML: Are you have intention increase in next week.

*CEO ASML: Yes I have asked ISL for increase. They will come back today.*²³

04.06.2021

CEO ASML: Our recommendation is to increase 0.25 to 0.5 Gi by Rs.5000.
(addition two rupees with the three rupees increase).

COO ISL: ok.

COO ISL: Sir my request is not to touch above 0.4 as 5 and 6 is very sensitive to price as mainly rural [Pakistan] size.

*CEO ASML: Ok agreed.*²⁴

18.10.2022-20.10.2022

CEO ISL: Please text me.

CEO ASML: Price decision?

CEO ISL: Please call.

CEO ISL: Please call.

CEO ISL: Sir will call in five minutes.

*CEO ASML: Ok.*²⁵

27.02.2023

Director ASML: It's too stress ful no sale.

²³ Para 43 of the ER

²⁴ Paras 44-45 of the ER

²⁵ Para 48 of the ER

CEO ASML: Yes. The dealers have started selling in panic at prices lower by about 10,000 to 15000 lower than our rate. Will offer discounts to move our material. Also discussing with ISL for price adjustment.²⁶

04.09.2023

Director ASML: Need to increased price from today.

Director ASML: To maintain volume momentum.

CEO ASML: Talking to Yousaf.²⁷

08.09.2023

Director ASML: What's our plan upon increase in rate 5000.

CEO ASML: Increased from today.

Director ASML voice note: Acha mera yay mashwara hai kay yay 5000 hee barhaye ga kyunkay dollar abhi neechay ki taraf hai tau bakya 5000 nai barhaye ga muje tau yay lagta hai.

CEO ASML: I have same opinion. Will discuss with Yousuf.²⁸

10.10.2023

Director ASML voice note: Aoa, acha Dr. sb muje yay lag raha hai jaisay rupaye (Rs.) ka haal hai aur agay humari pricing behtar hoti ja rai hai HRC ki. Apko 12 Rs. tak tau girana hee ho ga. Apki price girani ho gi discount kay ilawa. Werna yay import kay sath itna bara margin hai kay yay humain barbad ker day ga. Daikhain HRC itna mustakil aa raha hai yay issi wajah say aa raha hai kay hum nay margin khulla rakha hai khailnay kay liye. Hum apnay paon pay kulhari maar rahay hain. ISL ko kaho yar agar yay nai kerta 12 Rs. kum tau hum ker dain gay phir hum kya kerain. Hum tau bol rahay hain unko. Jitna late ker raha hai utni meri quantity effect ho rai hai. Muje aj mein 12 keron ga behtar hai. 4 din baad mein keronn ga muje 20 Rs. kernay parhain gay mein aur nuqsan mein jaon ga.

CEO ASML: Already discussed and agreed with Yousaf to reduce price by rupees 15 tomorrow morning.

Director ASML: Ok.²⁹

Communications on Discounts

20.10.2023

CEO ASML: I am in Saudi Arabia to perform Umra. Will be returning on 27th October. InshahAllah.

CEO ISL: Kindly remember us in your prayers. ASL is giving discounts please ask them to stop the practice. Shall I talk to Khawar [Director Marketing & Sales ASML].³⁰

²⁶ Para 49 of the ER

²⁷ Para 53 of the ER

²⁸ Para 53 of the ER

²⁹ Para 54 of the ER

³⁰ Para 55 of the ER

29.10.2023

Director ASML: *Up Rupee depreciate.*

CEO ASML: *Already had discussion with Yousuf. Will take back discount in phases.*

Director ASML: *Hopefully sale should also increase.*

CEO ASML: *InshahAllah.*³¹

(emphasis supplied)

64. The above stated clear and constant communications between the CEOs of Respondent No. 1 and Respondent No. 2, along with references by the CEO of Respondent No. 1 to discussing price decisions with the CEO of Respondent No. 2, show the active involvement of both Respondents in colluding to fix the prices of flat steel products and to control the provision of discounts. Thus, the contention of counsel that the Enquiry Committee did not conclusively establish that the Respondents have entered into an agreement which has the object or effect of preventing, restricting, or reducing competition within the flat steel sector is misconceived. Moreover, when the Enquiry Committee has noted in the Enquiry Report that *'[t]he paragraphs below [referring to the communications between the Respondents on prices and discounts] detail the evidence of an arrangement between ASML and ISL.'*³²

65. As noted above in paras 61-62, price-fixing is a comprehensive term which includes both price changes and discount fixing. During the hearing, when learned counsel was confronted with the evidence against the Respondents, he did not deny the communications that took place between the CEOs of Respondent No. 1 and Respondent No. 2. Instead, he merely defended the communications on the grounds that there was no actual adverse effect on competition in the flat steel sector, neither undertaking had the requisite intention to defeat the ends of free competition, both had different cost structures and profit/loss margins and none was in a position to manipulate prices as per its whims owing to the wide availability of imports at cheaper rates in the market. Accepting the communications and making an attempt to justify the same amounts to an admission on part of the Respondents that they indeed engage in discussions on price and discount fixing. Such an admission is corroborative evidence and strengthens the direct evidence contained in the WhatsApp communications collected by the Enquiry Committee and verified by the FIA.



³¹ Para 57 of the ER

³² Para 38 of the ER

66. Be that as it may, even if the cogent evidence on record is left aside and the explanation of the learned counsel regarding coordination between the CEOs of Respondent No. 1 and Respondent No. 2 is considered, we are not persuaded that such explanation exempts the Respondents from liability. The counsel's contention that there was no real time adverse effect on competition, or that the Respondents lacked any subjective intent, is irrelevant. Section 4(1) prohibits agreements having the object or effect of restricting competition, and once the object is established, the infringement is complete regardless of actual effects or subjective intention. Reliance in this regard is placed on the decision of the Commission **In the Matter of Pakistan Automobile Manufacturers Authorized Dealers Association (PAMADA) and its Member Undertakings** (2016 CLD 289):

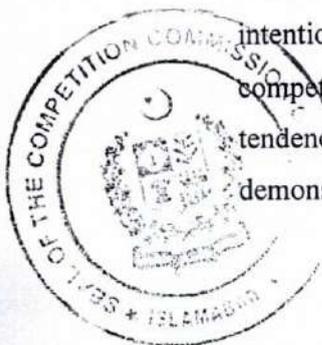
"36. Perhaps the most important consideration in a matter brought under section 4 of the Act is that of intention and effect. The Banks Order has discussed the history and development of both and succinctly provided that:

"The term 'object' in section 4 does not refer to the subjective intention of the parties but to the objective meaning and purpose of the agreement. The words object or effect do not have a cumulative impact and are to be read as importing distinct meanings. Under the Competition Law regime adopted by the Ordinance, certain agreements are deemed to have the 'object' of restricting competition without having to establish their effects".

37. What the order is referring to above is in practice the per se doctrine which in the realm of competition law stipulates that certain anti-competitive practices are so egregious as to be deemed illegal outright. This is to say that they are illegal 'without elaborate inquiry as to the precise harm they have caused or the business excuse for their use'. The doctrine has been developed extensively through case-law from both the USA and the EU. Furthermore, their applicability to Pakistan has already been demonstrated through the various orders passed by the Commission since 2003. Price fixing, market allocation and bid rigging are the forms of collusion that have commonly been agreed to warrant treatment under the per se doctrine in most jurisdictions."

(emphasis supplied)

67. It is not only domestic jurisprudence that supports the abovementioned interpretation of Section 4. Foreign jurisprudence equally affirms that price-fixing agreements are a *per se* violation of competition law, wherein the actual effects on competition and the subjective intentions of the parties are immaterial, as their very object is inherently to restrict competition. The consequences of such agreements are presumed to be harmful. Their tendency to produce anti-competitive effects dispenses with the requirement of demonstrating their actual impact. Reference is made to the decision of the Court of Justice



of the European Union in Groupement des cartes bancaire (CB) v. European

Commission ECLI:EU:C:2014:2204 wherein it was observed:

“48 It must be recalled that, to come within the prohibition laid down in Article 81(1) EC [currently Article 101 TFEU], an agreement, a decision by an association of undertakings or a concerted practice must have ‘as [its] object or effect’ the prevention, restriction or distortion of competition in the internal market.

49 In that regard, it is apparent from the Court’s case-law that certain types of coordination between undertakings reveal a sufficient degree of harm to competition that it may be found that there is no need to examine their effects...

50 That case-law arises from the fact that certain types of coordination between undertakings can be regarded, by their very nature, as being harmful to the proper functioning of normal competition...

51 Consequently, it is established that certain collusive behaviour, such as that leading to horizontal price-fixing by cartels, may be considered so likely to have negative effects, in particular on the price, quantity or quality of the goods and services, that it may be considered redundant, for the purposes of applying Article 81(1) EC, to prove that they have actual effects on the market... Experience shows that such behaviour leads to falls in production and price increases, resulting in poor allocation of resources to the detriment, in particular, of consumers.

...
54 In addition, although the parties’ intention is not a necessary factor in determining whether an agreement between undertakings is restrictive, there is nothing prohibiting the competition authorities, the national courts or the Courts of the European Union from taking that factor into account... ”

(emphasis supplied)

Likewise, the Competition Law Dictionary³³ defines and elaborates price-fixing as follows:

“Definition

Price-fixing is an anticompetitive agreement between competitors to fix prices. In the United States this type of agreement is classified as “illegal per se.” Agreements that are illegal per se are not subject to a rule of reason. Under the rule of reason an investigation is undertaken to determine whether the procompetitive aspects of the agreement offset its anticompetitive aspects. In the European Union price-fixing is restrictive by object. An agreement is deemed restrictive by object where it is presumed to have a net negative impact on competition making it unnecessary to assess its effects. This presumption can be rebutted if certain requirements for justification are met.

³³ Edited by Deborah Healey, Richard Whish, Bill Kovacic and Pablo Trevisan.



Commentary

In the United States... Price-fixing agreements, also known as “naked agreements.” are considered to deserve immediate censure as their consequences are presumed to be harmful. The per se illegality of price-fixing agreements makes irrelevant rule of reason analysis. Under rule of reason analysis, it is possible to assess efficiency claims.

In the European Union... [a] price-fixing agreement is deemed anticompetitive as its object reveals itself to have a sufficient degree of harm to competition. The European Court of Justice has indicated that whether an agreement has the object of restricting competition must be established by studying its content, purpose, and the economic context in which it is to be applied. The content and purpose of a price-fixing agreement will often be to eliminate the competition between the parties with the aim of increasing prices. The likelihood that a price-fixing agreement brings negative effects on competition makes it unnecessary to prove their actual effects.”

(emphasis supplied)

68. In light of the above discussion, the Bench concludes that the absence of an adverse effect on competition in the market and the absence of subjective intention of the Respondents in preventing, reducing or restricting competition within the market are not material considerations for deciding whether a contravention of Section 4(1) of the Act read with Section 4(2)(a) is made out.

69. The Bench now proceeds to consider the submission of learned counsel that the distinct cost structures and profit/loss margins of the Respondents negate the possibility of collusion. We are unable to accord weight to this contention. The record before us contains direct and compelling evidence of a prohibited agreement between the Respondents to fix the price of flat steel products to their mutual advantage. The WhatsApp communications in particular reveal sustained coordination between the CEO of ASML, Director of ASML, and CEO of ISL³⁴ with respect to maintaining uniform or similar prices and regulating discounts with a view to increasing sales. In the face of such compelling evidence, the variance in cost structures and profit/loss margins is of no consequence, as such differences may arise from numerous other factors and do not negate the existence of a prohibited agreement. Indeed, Respondent No. 1 reported losses in the financial year 2022–2023

³⁴ WhatsApp communications/messages of other employees are also available on the record.



primarily due to loan repayments undertaken during a period of high interest rates, which significantly eroded its profitability. It is noteworthy that, once the effect of loan repayments is excluded, Respondent No. 1 recorded a net profit. This is material because, first, it rebuts the contention of learned counsel that the differing financial outcomes of the Respondents establish the absence of a prohibited agreement; and second, it shows that the loss incurred by Respondent No. 1 in the financial year 2022–2023 was an anomaly, arising from its earlier borrowing decisions rather than from market conditions.

70. The final submission of learned counsel is that the presence of imported flat steel products in the market acted as a constraint on the Respondents, thereby limiting their ability to engage in price-fixing. In support, counsel relied on extensive data to suggest that the significant market share and comparatively lower prices of imports compelled the Respondents to reduce their own prices in order to remain viable. Having scrutinized this material in detail, the Bench finds the following discrepancies:

- (i) Most of the data relied upon by the Respondents to demonstrate the dominance of imports in terms of market share relates to financial years falling outside the relevant period under investigation by the Enquiry Committee.³⁵ On the other hand, the more recent data shows that it is the Respondents who have the greater market share as compared to imports,³⁶ a trend which persisted throughout the period under enquiry.
- (ii) The latest data furnished by the Respondents for the period 2018 to 2023 in respect of CRC shows that the local industry had a price advantage over imports, owing to the imposition of anti-dumping duties which significantly increased the landed cost of imported CRC. The same is the case for the average ex-factory price of like products during 2018 to 2021. For instance, from October 2021 till September 2022, the price of local CRC stood at Rs.223 compared to Rs.256 for imported CRC whereas between October 2022 and September 2023, the price of local CRC was Rs.265 as against Rs.288 for imports. Likewise, between October 2020 and September 2021 the price of domestic like products was Rs.82 compared to Rs.100 for the landed dumped imports. The numbers cast a serious doubt on the Respondents argument that imports acted as a disciplining force on the prices of

³⁵ The data corresponds to the period 2012-2018 whereas the Enquiry Committee investigated the period of July 2020 to December 2023.

³⁶ The data from 2018-2020 shows that the domestic flat steel industry's share in CRC was well above 65%.



local flat steel products. On the contrary, the data establishes that after the imposition of anti-dumping duties a significant price gap existed between the local and imported flat steel products. This was sufficient to enable the Respondents to increase the prices of their products at their will, so long as they remained below the prices of imported products, resulting in clear detriment to the consumers.³⁷

71. In view of the foregoing discussion, it stands established that the Respondents entered into an agreement to fix the prices of flat steel products and to regulate the provision of discounts, an arrangement having the object of preventing, restricting, or reducing competition within the local flat steel market. Accordingly, all objections raised and justifications advanced by learned counsel in an attempt to exempt or excuse the collusive conduct of the Respondents are hereby rejected.

ISSUE VIII: Whether the Enquiry Committee has wrongly assessed the reference price lists released by Respondent No. 1 and Respondent No. 2 and the impact of discounts on such reference prices?

72. The counsel submitted that the Enquiry Committee's reliance on the reference price lists was misconceived. According to the Enquiry Committee, these lists showed that all three Undertakings increased their prices on fifty-five occasions between July 2020 and December 2023. Counsel, however, argued that the reference price lists did not accurately reflect the actual prices prevailing in the flat steel market. He further submitted that during the relevant period, the Respondents sold many of their products at prices differing from those prescribed in the reference price list, which, according to him, showed that there was no agreement to fix prices. In addition, he contended that the price lists were irrelevant to the B2B segment of the market, as that segment involves customized products, the terms and details of which are negotiated through individualized and confidential contracts. Counsel thus argued that the price lists functioned merely as indicative benchmarks for the informal dealer sector, where discounts routinely led to different rates. On this basis, he contended that the price lists were of little evidentiary value and effectively meaningless.

³⁷ This upper ceiling fixed by imported products in terms of cost was necessary to follow because the costlier local flat steel products would have become, the greater their market share would have fallen.

73. The Bench has carefully considered the submissions of learned counsel and assessed them in light of the criteria laid down in the Act as well as relevant domestic and foreign jurisprudence. The arguments advanced are, in substance, a repetition of the justifications noted in para 65 above, namely, that the communications between the Respondents had no adverse effect on competition in the flat steel sector. In essence, counsel's position is that even if an agreement existed between the Respondents, and the price lists reflected such agreement, its effect was negligible since products were sold at varying rates and subject to different discounts. However, as already noted above in paras 66-67, the Act in particular and competition law in general are not concerned with the effects of an agreement which is restrictive of competition by object. Once such an agreement is established, it is immaterial whether the agreement was fully executed or not. The Respondents intent was to fix the price of flat steel products and for that purpose they entered into extensive discussions (excerpts of the WhatsApp messages have been reproduced in para 63 above). The fact that some of these discussions may not have materialized into practice is of no consequence. In line with the reasoning set out in paras 66-67, this contention of learned counsel is accordingly rejected.

ISSUE IX: Whether Respondent No. 1 and Respondent No. 2 have exchanged commercially sensitive information for the purposes of Section 4(2)(a) of the Act?

74. Counsel for Respondent No. 1 and Respondent No. 2 argued that the Enquiry Committee erred by treating the purchase price of HRC as commercially sensitive information. He submitted that HRC is a globally traded input and its international price is widely available and publicly known. On this basis, he argued that the Enquiry Committee's recommendation and finding regarding the exchange of commercially sensitive information is liable to be set aside.

75. Counsel's contention is correct to the limited extent that HRC is a globally traded input and its international price is publicly known. However, counsel has erred in conflating the published international price of HRC with the specific purchase prices individually negotiated by different buyers at the time of sale. While all market participants may be aware of international price trends and fluctuations, no independent player can know the precise purchase price at which its competitor acquires HRC. It is precisely this variation



in purchase prices which differentiates competitors and influences the final pricing of the finished product. This aspect assumes greater significance in view of the information provided by the Respondents that HRC accounts for nearly 85% to 92% of the total cost of manufacturing flat steel products. When a single input represents such a substantial share of total costs, knowledge of a competitor's purchase price of HRC inevitably confers a competitive advantage. It enables an undertaking to negotiate more favorable terms, produce flat steel products at a lower cost, capture a greater market share, and thereby enhance its revenues at the expense of its rival.

76. Moreover, in its reply to the SCN, Respondent No. 1 submitted that the public price of HRC is not the same as the price negotiated by the purchasers at the time of sale. It consistently took the stance that the figures quoted regarding Respondent No. 2's HRC purchases were merely hypothetical and aimed at securing more favourable terms with an HRC supplier.³⁸ In the context of HRC, 'favourable terms' can only mean obtaining the cheapest rate. If, as per the contention of the Respondents, the publicly known price of HRC was indeed the actual price at which it is sold, then there would have been no commercial reason for Respondent No. 1 to negotiate lower rates for itself. The very fact that such negotiations were undertaken confirms that commercial dealings take place in a different realm distinct from internationally published prices. Therefore, the Respondents' contention that the purchase price of HRC is not commercially sensitive information is without merit.

77. Be that as it may, the evidence on record does not establish that Respondent No. 1 and Respondent No. 2 were involved in the direct exchange of commercially sensitive information, namely, the purchase price of HRC. There is no direct evidence of any communication between the CEOs of Respondent No. 1 and Respondent No. 2. The fact that the CEO of Respondent No. 1 claimed to have knowledge of Respondent No. 2's purchase price of HRC before representatives of a third party does not necessarily prove that he got knowledge of the same from the CEO of Respondent No. 2 directly. In the absence of any evidence, either direct or circumstantial, that Respondent No. 2 shared its purchase price of HRC with Respondent No. 1, the recommendation of the Enquiry Committee on this issue cannot be sustained. Accordingly, we do not find that Respondent

³⁸ Sr. Nos. 25-28 and 34 of Table-2 in Chapter 3



No. 1 and Respondent No. 2 have exchanged commercially sensitive information with one another.

ISSUE X: Whether an understanding between Respondent No. 1 and Respondent No. 2 exists on not selling secondary material in the market without one another's consent or without informing one another in contravention of Section 4(2)(c) of the Act?

78. Regarding the alleged contravention in terms of Section 4(1) of the Act read with Section 4(2)(c) of the Act, learned counsel contended that the Enquiry Committee has misconstrued and misapplied the provision. He submitted that Section 4(2)(c) concerns '*fixing or setting the quantity of production, distribution or sale with regard to any goods or the manner or means of providing any services*'. However, the Enquiry Committee relied on a single conversation between the Director Marketing & Sales of Respondent No. 1 and CEO of Respondent No. 1, wherein the price at which Respondent No. 2 was selling secondary material was discussed. He stated that on the basis of this single misinterpreted communication, the Enquiry Committee came to the conclusion that '*the two companies also have an understanding with regards to sale of secondary material in the market*'.³⁹ He, therefore, prayed that the charge under Section 4(2)(c) be quashed.

79. Before examining the culpability, if any, of the Respondents under Section 4(2)(c) of the Act, it is necessary to first reproduce the WhatsApp communication relied upon by the Enquiry Committee in support of its finding that the Respondents infringed Section 4(2)(c):

"13/05/2024

Director Marketing & Sales ASML: ISL sec. list.

Director Marketing & Sales ASML: 32k on invoice.

CEO ASML: Send this message to Yousuf [CEO ISL].

CEO ASML: See what he says.

CEO ASML: If true we would also start giving secondary prime grade. But need to confirm from them.

Director Marketing & Sales ASML: ISL.

Director Marketing & Sales ASML: Sent.

Director Marketing & Sales ASML: [Forwarded] According to the team this was done to counter ASML but I don't think anything was actually sold.

³⁹ Para 67 of the ER

80. Upon perusal of the messages reproduced above, it appears that Respondent No. 1 was predicating the sale of secondary material in the market on the decision of Respondent No. 2. Accordingly, learned counsel's argument that the WhatsApp communication pertains only to a discussion between Director Marketing & Sales of Respondent No. 1 and the CEO of Respondent No. 1 on the price at which Respondent No. 2 is selling secondary material in the market is factually incorrect.

81. Notwithstanding the above, whilst the WhatsApp communication does reveal a tendency on the part of Respondent No. 1 to rely on Respondent No. 2 in relation to the sale of secondary material, the communication completely lacks the essential element of concurrence by Respondent No. 2 in this scheme. In fact, the response of the CEO of Respondent No. 2 shows that his company sought to sell secondary material in the market for the purposes of competing with Respondent No. 1. This runs counter to the very foundation of a prohibited agreement which requires concerted action to prevent, restrict or reduce competition within the relevant market. Accordingly, we find that in the absence of either direct or circumstantial evidence which establishes the consensus of both the Respondents in controlling the sale of secondary material in the market, no blame can be attributed to either of them under Section 4(2)(c) of the Act. The charge under Section 4(2)(c) is thus quashed.

ISSUE XI: Whether the Enquiry Committee has incorrectly exercised the Commission's powers by removing HPL from the scope of the enquiry and exonerating it from the charge under Section 4 of the Act?

82. Learned counsel for Respondent No. 1 and Respondent No. 2 argued that the Enquiry Committee exceeded its jurisdiction by unilaterally excluding HPL from the enter and search under Section 34 of the Act and absolving it of liability under Section 4. According to counsel, these exclusions were discriminatory and arbitrary, particularly as the Enquiry Committee itself acknowledged in its report that '*HPL's prices are moving in tandem with*



Para 67 of the ER

ISL and ASML'.⁴¹ The counsel also submitted that the Enquiry Committee's reasoning that HPL was a smaller concern was irrelevant for the purposes of liability under Section 4. He contended that HPL's unlawful exclusion tainted the entire enquiry process and the proceedings ought to be set aside.

83. In view of counsel's objection, the Bench sought an explanation from the Enquiry Committee regarding HPL's exclusion from the enter and search as well as subsequent proceedings. One of the enquiry members clarified that the enter and search was confined to Respondent No. 1 and Respondent No. 2 because they were the two largest market players. It was explained that owing to resource constraints and in order to streamline the process, the Committee decided to limit enter and search to the premises of Respondent No. 1 and Respondent No. 2. The member further stated that no action under Section 4 was recommended against HPL since no direct evidence of its involvement in any prohibited agreement could be established.

84. The Bench has carefully considered the submissions of learned counsel as well as the explanation furnished by the Enquiry Committee and concludes that the exclusion of HPL from both the enter and search and the proceedings is not justified on the basis of the available material.⁴² The Bench agrees with counsel that the size of an undertaking is not a relevant consideration for establishing liability under Section 4 of the Act. Reference is made to the Commission's Banks Order wherein it was held:

"48. ... However, in EU and as well as in the US, competition authorities have taken the view that certain types of agreements (hardcore horizontal cartel agreements) – direct or indirect price fixing (as in the present case), limiting or controlling production, markets, or agreeing levels of output or dividing markets – by their very nature always restrict competition and so are prohibited per se regardless of effect, impact or the fact that very small undertakings are involved..."

(emphasis supplied)

85. The competition law regimes in other jurisdictions also adopt the same approach. For instance, the EC has issued the 'Notice on agreements of minor importance which do not appreciably restrict competition under Article 101(1) of the Treaty on the Functioning of

⁴¹ Para 72 of the ER

⁴² The data for Market Shares in the product market of CRC, provided by both Respondent No. 1 and Respondent No. 2, shows that in the financial years 2023-2025, HPL had a larger market share than Respondent No. 1.

the European Union (*De Minimis Notice*)'.⁴³ Paragraph 8(a) of this Notice provides that 'if the aggregate market share held by the parties to the agreement does not exceed 10% on any of the relevant markets affected by the agreement, where the agreement is made between undertakings which are actual or potential competitors on any of those markets (agreements between competitors)' then Article 101 of the Treaty on the Functioning of European Union (analogous to Section 4 of the Act) will not be attracted. However, in the same Notice, the EC expressly acknowledges that:

"13. In view of the clarification of the Court of Justice referred to in point 2, this Notice does not cover agreements which have as their object the prevention, restriction or distortion of competition within the internal market. The Commission will thus not apply the safe harbour created by the market share thresholds set out in points 8, 9, 10 and 11 to such agreements. For instance, as regards agreements between competitors, the Commission will not apply the principles set out in this Notice to, in particular, agreements containing restrictions which, directly or indirectly, have as their object: a) the fixing of prices when selling products to third parties; b) the limitation of output or sales; or c) the allocation of markets or customers..."

(emphasis supplied)

Therefore, it is evident that even under the EC regime, the size of an undertaking is immaterial when assessing prohibited agreements involving price-fixing. Accordingly, the Enquiry Committee's reliance on HPL's comparatively smaller market share as a basis for its exclusion from the proceedings is without merit.

86. The Enquiry Committee also recommended the removal of HPL from the proceedings on the ground that it had not found sufficient direct evidence of coordination against it.⁴⁴ The Bench, however, is of the view that that the absence of such evidence may be attributed to the failure to conduct an enter and search of HPL's premises at the relevant time. This omission likely deprived the Committee access to documents or devices that could have provided the necessary evidence. Accordingly, in the peculiar circumstances of this case, the Committee's observation regarding lack of direct evidence against HPL carries limited weight.



⁴³ 2014/C 291/01
⁴⁴ Para 72 of the ER

87. Accordingly, for what has been discussed above, we remand the matter, to the extent of HPL only, to the Enquiry Committee for ascertaining afresh whether it is or was involved in a prohibited agreement to fix the prices of flat steel products. In reaching this decision, the Bench has considered the Commission's past precedents where matters have been remanded to the relevant authorities for appropriate action in accordance with law.⁴⁵ Upon completion of enquiry, the Enquiry Committee shall submit its report to the Commission for further proceedings.

88. Notwithstanding the above, the Enquiry Committee's failure to proceed against HPL cannot be invoked by the Respondents as a ground to claim immunity for their own wrongdoing. The Commission has already held **In the Matter of Show Cause Notice issued to M/s Hyundai Nishat Motor Private Limited for Violation of Section 10 of the Competition Act, 2010**⁴⁶ that industry-wide deceptive marketing practices do not absolve an undertaking from liability under Section 10.⁴⁷ Although issued in the context of deceptive marketing, the reasoning is equally applicable to proceedings under Section 4 of the Act. Accordingly, the Respondents cannot rely on HPL's exclusion to shield themselves from liability. The findings against Respondent No. 1 and Respondent No. 2 therefore remain intact.

DECISION

89. In light of the above, the Bench finds that the record contains sufficient direct and circumstantial evidence to establish that Respondent No. 1 and Respondent No. 2 have contravened Section 4(1) of the Act read with Section 4(2)(a). This finding is supported by WhatsApp communications demonstrating continuous contact between the CEOs of both Respondents regarding the fixing of price for flat steel products and the control of discounts. In addition, price data for the period from July 2020 to December 2023 indicates that the Respondents altered the price of flat steel products on fifty-five occasions, with all changes, except one, being made on the same date. The overall price increases were also comparable, with an average rise of 111%.⁴⁸

⁴⁵ **In the Matter of Messrs The New York Pizza against Messrs New Yorker Pizza** (2020 CLD 1398); **In the Matter of Kaymu.Pk** (2018 CLD 919)

⁴⁶ <https://appadminccp.ec.gov.pk/ccporders/59810258e408c58d5115c1cf2a311dde.pdf>

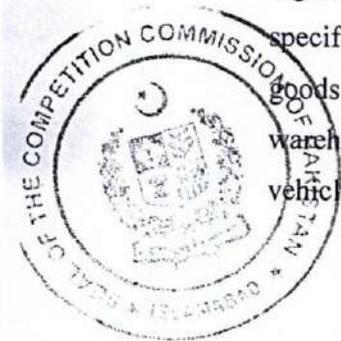
⁴⁷ Paras 24-25 *ibid*

⁴⁸ Para 99(a) of the ER

90. Conversely, the Bench finds that the charge under Section 4(1) of the Act read with Section 4(2)(c) has not been established against the Respondents. There is no evidence to show that both Respondents entered into an agreement to refrain from selling secondary material in the market without the consent or knowledge of one another. Similarly, no evidence has been found indicating that the Respondents exchanged commercially sensitive information with one another.
91. The Bench further finds that the procedural objections raised by the Respondents lack merit and do not affect the validity of the proceedings.
92. Finally, in respect of HPL, the Bench remands the matter to the Enquiry Committee for the purposes of conducting a fresh enquiry to determine whether a *prima facie* case exists against HPL for entering into a prohibited agreement to fix the price of flat steel products.

PENALTIES

93. The Bench in determining the quantum of penalty to be imposed on the Respondents has duly considered the Guidelines on Imposition of Financial Penalties (**Penalty Guidelines**). These Guidelines state that the twin policy objectives of any fine is '*to deter undertakings from engaging in anti-competitive practices*' and '*to reflect the seriousness of the infringement*'. Moreover, the factors relevant to calculating the quantum of penalty have been identified as: '*seriousness of the infringement*', '*duration of the infringement*', and '*aggravating or mitigating factors*'.
94. Accordingly, the Bench shall now consider each factor in turn to arrive at the appropriate penalty. We shall first look at the '*seriousness of the infringement*'. As per Para 5.2 of the Penalty Guidelines the Commission can consider the '*nature of the product*' when determining seriousness. In this regard, the Bench observes that flat steel is of significant importance in Pakistan, having a variety of applications in various sectors e.g., flat steel is regularly used for construction purposes such as in bridges and high-rise buildings. More specifically, CRC is widely used in automotive components, domestic appliances, electrical goods and furniture and fixtures, whereas GC is used in industrial and agricultural warehouses, roofing sheets and silos. Likewise, CC is needed for temperature-controlled vehicles, sheds and false ceilings. Flat steel products are thus an integral part of the



country's economy and are used in routine by the general populace in different aspects of their life, whether it be agriculture, industries or even residential projects. Any unfair meddling with the price of flat steel products by undertakings can, therefore, not be ignored by the Commission as any change has an impact on the common people who are made to bear the increasing costs through no fault of their own. The damaging repercussions of price changes are further compounded by the fact that the steel sector in Pakistan remains largely unregulated, giving undertakings the opportunity to manipulate this critical sector without any fear of legal consequences. However, in leaving its steel sector unsupervised, Pakistan finds itself as one of the few countries in the world who have not framed regulations to check the behaviour of undertakings operating in this sector. In developed jurisdictions such as the USA, the steel industry is actively monitored by the US Securities and Exchange Commission; in the EU, by the European Commission; and in the UK, by the Secretary of State, ensuring accountability, transparency and market discipline in the sector. In such circumstances, the Commission must protect competition and consumer interest in the steel sector, especially given its vital role in the everyday workings of the country's economy. It is also noted that where the undertakings do not receive any profits, the price cartel would still be considered a very serious offence. We have already held in this Order that Respondent No. 1 and Respondent No. 2 have fixed the price of flat steel products in clear contravention of Section 4(1) of the Act read with Section 4(2)(a). Such conduct clearly falls in the realm of a price cartel and so automatically becomes a serious offence for the purposes of the Act.

95. Secondly, we have the '*duration of the infringement*'. In the instant case, it is evident from the Enquiry Report that the violation of Section 4 continued for a period of more than three years, from July 2020 to December 2023.⁴⁹

96. Lastly, '*aggravating and mitigating factors*' need to be examined. Para 7.2 of the Penalty Guidelines identifies the '*involvement of directors or senior management*' as an aggravating factor. It has already been established in the Enquiry Report and this Order that high-ranking officials of Respondent No. 1 and Respondent No. 2, including their CEOs, were actively participating in the price cartel. This leaves no room for doubt that the infringement of Section 4(1) of the Act read with Section 4(2)(a) was intentional and very

⁴⁹ Para 99(a) of the ER

much in the knowledge of the senior officials at Respondent No. 1 and Respondent No. 2. It is also relevant to state here that in the present set of facts and circumstances, no mitigating factor exists which can reduce the culpability of the Respondents.

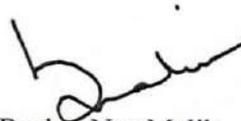
97. Consequently, the Bench having scrutinized the findings of the Enquiry Report, the submissions of the Respondents, and the factors set out in the Penalty Guidelines holds that the Respondents have committed a deliberate and prolonged violation of Section 4 of the Act. They have engaged in the most egregious form of cartelization, namely, price fixing and so are not entitled to any leniency under the Act. As a result, the Bench finds it appropriate to impose a penalty to the tune of 1% of the annual turnover of each Respondent for the financial year 2021-2022. Therefore, a penalty of PKR 648,304,180/- (Rupees Six Hundred Forty-Eight Million Three Hundred Four Thousand One Hundred Eighty only) is imposed on Respondent No. 1, and a penalty of PKR 914,236,980/- (Rupees Nine Hundred Fourteen Million Two Hundred Thirty-Six Thousand Nine Hundred Eighty only) is imposed on Respondent No. 2.

98. The Respondents shall deposit the penalty amount within sixty (60) days from the date of this Order. Failure to comply shall render each Respondent liable to a further penalty of PKR 100,000/- (Rupees One Hundred Thousand only) per day from the date of issuance of this Order and the initiation of criminal proceedings pursuant to Section 38 of the Act.

99. It is so ordered.



Dr. Kabir Ahmed Sidhu
Chairman



Ms. Bushra Naz Malik
Member

Islamabad, October 07, 2025.

