

BEFORE THE  
COMPETITION COMMISSION OF PAKISTAN

IN THE MATTER OF  
SHOW CAUSE NOTICES ISSUED TO

M/S. NEWAGE CABLES (PVT) LIMITED  
M/S. GM CABLES & PIPES (PVT) LIMITED

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

F. NO: 471/CABLES/C&TA/CCP/2022

Date(s) of Hearing:

For Newage 20-05-2025, 21-05-2025,  
24-06-2025

For GM Cables 20-05-2025, 21-05-2025  
and 24-07-2025.

Commission:

Mr. Saeed Ahmad Nawaz  
Member

Ms. Bushra Naz Malik  
Member

Present on Behalf of:

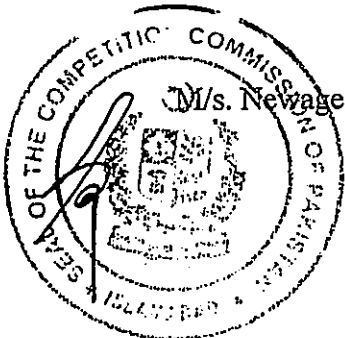
M/s. GM Cables & Pipes (Pvt.) Limited

Mr. Saood Nasrullah Cheema  
*Advocate*

Mr. Azhar Mukhtar  
*Advocate*

M/s. Newage Cables (Pvt.) Limited

M/s Tipu Associates



## ORDER

1. This Order disposes of the proceedings initiated by the Competition Commission of Pakistan (the Commission) through Show Cause Notices No. 16/2024 and 17/2024, both dated 15.08.2024 (the SCNs), issued to M/s. Newage Cables (Pvt.) Ltd. (Newage or the Respondent No. 1) and M/s. GM Cables & Pipes (Pvt.) Limited (GM Cables or the Respondent No. 2), (hereinafter collectively referred to as, the Respondents). The SCNs alleged a *prima facie* violation of Section 4(1) read with Section 4(2)(a) of the Competition Act, 2010 (the Act) in respect of the Respondents' engagement in resale price maintenance (RPM) practices and imposition of coercive discount control policies.

### FACTUAL BACKGROUND

2. The Commission received certain information duly supported by relevant documentary evidence from an informant on 03.06.2022. The documents included the Newage Retail Discount Policy dated 04.08.2021 and the GM Cables' Notice for Rate Control dated 01.08.2021 for the period 2021-2022. The Circulars communicated specific instructions to dealers concerning the resale discounts that could be extended to customers. The policy notices further stipulated punitive measures for non-compliance, extending upto the cancellation of dealership agreements.
3. The Commission considered the said Circulars furnished by the informant in its meeting held on 28.06.2022 and decided that the alleged documents could have the potential to violate Section 4(1) read with Section 4(2)(a) of the Act, hence, authorized the initiation of an enquiry against both the Respondents under Section 37(1) of the Act and constituted an Enquiry Committee (EC) to undertake the assignment.

### ENQUIRY PROCEEDINGS

4. The Enquiry Committee carried out market surveys on 21.09.2022, 23.05.2023 and 29.05.2023 to verify the claims of the informant and also obtained written responses from the Respondents. The Enquiry Committee further received the Dealership Agreement



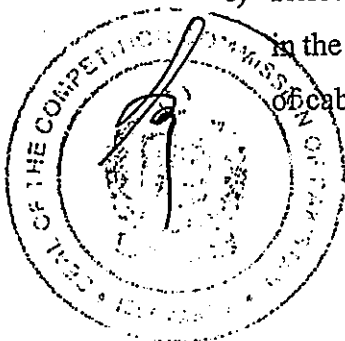
executed by Newage Cables and GM Cables' Dealer Awareness Notice dated 23.11.2022 duly submitted by the Respondents.

5. The Enquiry Committee completed its review and analysis of the evidence available and submitted its final Enquiry Report (ER) dated 15.12.2023 with the conclusion that the afore-mentioned circulars and notifications issued by the Respondents indicated arrangements that restricted price competition among dealers and retailers and recommended that the Commission may consider initiating proceedings against Newage and GM Cables under Section 30 of the Act.

### ENQUIRY REPORT

6. In the light of market survey conducted, documentary evidence collected and analysis of the data available, the Enquiry Report concluded that the Respondents had prima facie violated Section 4(1) read with Section 4(2)(a) of the Act. The Committee relied upon the following evidence to reach its findings:

- a) **Resale Price Maintenance:** Clauses 1 and 2 of Retail Discount Policy of Newage dated 04.08.2021 expressly prohibited the dealers from selling its products at prices lower than the company's notified discount list. The restriction was further reinforced by Clause 9 of the Dealership Agreement which obliged dealers to sell Newage products at the printed and authorized discounts, whether at retail or wholesale level (Para 40 of the ER). Similarly, GM Cables through its Notice for Rate Control dated 01.08.2021 prohibited its dealers from offering its products below the 9% notified discount. This restriction was reinforced through a Dealer Awareness Notice dated 23.11.2022.
- b) **Enforcement Mechanism:** Any breach of Retail Discount Policy of Newage dated 04.08.2021 exposed dealers to fines or even suspension of their dealership contracts effectively compelling them to comply with its pricing directives. Likewise, dealers of GM Cables who failed to comply with the pricing directives faced fines or termination of their dealerships (Para 42 of the ER). Subsequent Notice issued by the company had expressly forbidden undercutting.
- c) **Relevant Market:** Enquiry Report determined that the relevant product market, in the matter at hand was the Cable Industry of Pakistan for sales and distribution of cables and wires with a wide range of products that could be substituted both



in terms of cost and practicality. The relevant geographic market was identified as the entire territory of Pakistan (Para 39 of the ER).

## SHOW CAUSE NOTICES

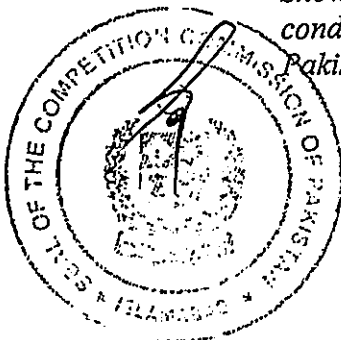
7. The Commission considered the findings of the Enquiry Report and decided to issue the SCNs to the Respondents. The SCNs alleged that the Respondents had entered into vertical agreements, which directly or indirectly established minimum resale price, and thereby restricted intra-brand price competition in violation of Section 4 of the Act.
8. The SCN No. 16/2024 dated 15.08.2024 was issued to M/s. Newage Cables (Pvt.) Ltd. (the Respondent No. 1) in the following terms:

*"2. WHEREAS, the Competition Commission of Pakistan (the "Commission") took suo moto notice of circulars dated August 04, 2021 titled Retail Discount Policy wherein [Newage] restricted its dealers in different territories from selling below the notified discounts/prices and bound the dealers to sell at maximum 23% discount for all credit sales and maximum 25% discount on cash sales. The Undertaking also warned the dealers that not adhering to the discount policy of the company will result in imposition of fines and cancellation of dealership; and*

*3. WHEREAS, the Commission, after reviewing the above-said circulars authorized an enquiry under section 37(1) of the Act; and*

*4. WHEREAS, enquiry has been concluded vide report dated December 15, 2023 (the "Enquiry Report") a copy whereof is appended herewith as "Annex-I" and may be read as an integral part of this Show Cause Notice; and*

*5. WHEREAS, in terms of the Enquiry Report in general and paragraphs 17 to 24 in particular, the relevant product market has been defined as the Cable Industry of Pakistan for sales and distribution of cables and wires with a wide range of products that can be substituted both in terms of cost as well as practicality. The relevant geographic market for the purpose of enquiry and this Show Cause Notice has been defined as the whole of Pakistan as conditions of competition for all market participants across Pakistan are homogenous; and*



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

7. WHEREAS in terms of the Enquiry Report in general and paragraphs 25 to 38 in particular, the Undertaking appears to have entered into an arrangement of Resale Price Maintenance through different clauses of its Retail Discount Policy and Dealership Agreement which imposes restrictions on competition which is, prima facie in violation of subsection (1) of Section 4 read with clause (a) of subsection (2) of Section 4 of the Act; and [...]"

9. The SCN No. 17/2024 dated 15.08.2024 issued to M/s. GM Cables & Pipes (Pvt.) Limited (the Respondent No. 2) included, *inter alia*, the following alleged violations:

"2. WHEREAS, the Competition Commission of Pakistan (the "Commission") took suo moto notice of circulars dated August 01, 2021 titled Notice for Rate Control, wherein the Undertaking restricted its dealers in different territories from selling below the notified discounts/prices and bound the dealers to sell at maximum 9% discount. The Undertaking also warned the dealers that not adhering to discount policy of the company will result in imposition of fines and cancellation of dealerships; and

3. WHEREAS, the Commission, after reviewing the circulars from selling below the notified discounts/prices, authorized an enquiry under section 37(1) of the Act; and

4. WHEREAS, enquiry has been concluded vide report dated December 15, 2013 (the "Enquiry Report") a copy whereof is appended herewith as "Annex-I" and is an integral part of this Show Cause Notice; and

5. WHEREAS, in terms of the Enquiry Report in general and paragraphs 17 to 24 in particular, the relevant product market has been defined as the Cable Industry of Pakistan for sales and distribution of Cables and Wires with a wide range of products that can be substituted both in terms of costs as well as practicality. The relevant geographic market for the purpose of enquiry and this Show Cause Notice has been defined as the whole of Pakistan as conditions of competition for all market participants across Pakistan are homogenous; and

6. WHEREAS, the effect of anticompetitive behaviour of the Undertaking has spillover effect across the territories of other provinces; and

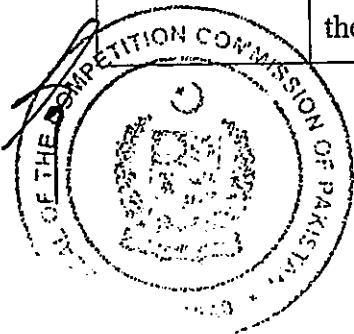
7. WHEREAS, in terms of the Enquiry Report in general and paragraphs 25 to 38 in particular, the Undertaking appears to have entered into an arrangement of Resale Price Maintenance through different clauses of its Notice for Rate Control which is, prima facie violation of subsection (1) of Section 4 read with clause (a) of subsection (2) of Section 4 of the Act; and [...]"

## SUBMISSIONS OF THE RESPONDENTS

10. The perusal of record reveals that that both the respondents challenged the vires of the initiation of enquiry. M/s. Newage Cables changed their counsel during the instant proceedings and M/s. GM Cables repeatedly requested for grant of more time to file reply to the SCN. Similarly, requests for adjournments and delayed or no response to the Commission's directions was repetitively witnessed. Brief timeline of proceedings against M/s. Newage Cables, the Respondent No. 1 is as under:

### Timeline of Proceedings against M/s. Newage Cables

DATE	DESCRIPTION
15-08-2024	Issuance of SCN No. 16/2024 for reply within 14 days
27-08-2024	Objections to the proceedings filed through Khwaja Tariq Rahim & Associates (KTR)
09-05-2025	Notice for Hearing on 20-05-2025 issued
13-05-2025	Objections to the proceedings and reasons for the initiation of the same filed through KTR
19-05-2025	Email for grant of 2 weeks to appear before the Bench
19-05-2025	CCP replied to KTR challenges and directed to appear for hearing on 21-05-2025
20-05-2025	1 <sup>st</sup> Hearing attended by Counsel for GM Cables only and adjourned on his request
20-05-2025	Receipt of 2 <sup>nd</sup> request (letter) for <u>grant of 2 weeks to engage a new lawyer</u> and appear before the Bench
21-05-2025	2 <sup>nd</sup> Hearing held the next day (None appeared). The Bench allowed the request for additional time to engage new Counsel and directed to



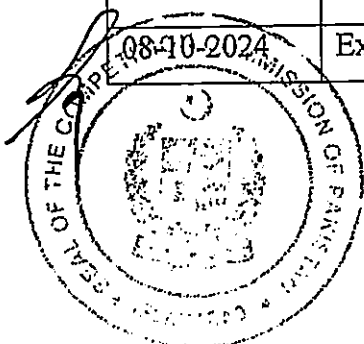
	requisition copies of dealership agreements from both the Respondents
23-05-2025	Dispatch of CCP's letters to Respondents for hearing on 24-25-06-2025 and provision of dealership agreements-no response received*, no reminder issued
14.06.2025	Reply to the SCN received
24-06-2025	3 <sup>rd</sup> Hearing conducted and Counsel for Respondent concluded his arguments
30-06-2025	Notice for Hearing on 24-07-2025 issued
24-07-2025	4 <sup>th</sup> Hearing held and attended by GM Cables only. Proceedings concluded with the direction to requisition financial statements and copies of case law cited
27-11-2025	SECP was also requested to provide financial statements
03-12-2025	Financial statements of only GM Cables for 2022 received from SECP
04-12-2025	Financial statements received from Newage Cables

\*However, EC already received dealership agreement of the Respondent

11. M/s. GM Cables; the Respondent No. 2 filed its reply to the SCN dated 15-08-2024 after a delay of more than 2 months on 23-10-2024. The Respondent denied any linkage with the alleged Notice for Rate Control dated 01.08.2021 and existence of any dealership agreements with their dealers. Brief timelines of proceedings against M/s. GM Cables is as follows:

**Timeline of Proceedings against M/s. GM Cables**

DATE	DESCRIPTION
15-08-2024	Issuance of SCN No. 17/2024 to reply within 14 days
20-09-2024	Receipt of application of 19-09-2024 for 10 days extension to file reply to SCN
24-9-2024	Email for the above purpose received
07-10-2024	Receipt of letter dated 02-10-2024 to provide certified copies of all the relevant documents
08-10-2024	Extension to file reply till 21-10-2024 granted by Chairman



*Handwritten signature or mark*

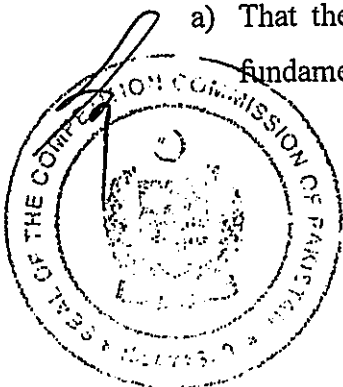
23-10-2024	Reply to SCN Received
09-05-2025	Notice for Hearing on 20-05-2025 issued
20-05-2025	Email of Newage Cables dated 19-05-2025 for grant of 2 weeks to appear before the Bench
20-05-2025	1 <sup>st</sup> Hearing attended by Counsel for GM Cables only and adjourned on his request
21-05-2025	2 <sup>nd</sup> Hearing held the next day (None appeared). The Bench directed to requisition copies of dealership agreements from both the Respondents.
23-05-2025	CCP's letter to Respondents for hearing on 24-25-06-2025 and provision of dealership agreements-no response received*, no reminder issued.
24-06-2025	3 <sup>rd</sup> Hearing held and Counsel for Respondent filed an application for separation of proceedings and submission of an additional reply
30-06-2025	Hearing Notice for 24-07-2025 issued
24-07-2025	4 <sup>th</sup> Hearing held, written additional reply received and arguments heard. Proceedings concluded with the direction to requisition financial statements and copies of case law cited
05-08-2025	Requisitioned copies of case law cited received
27-11-2025	SECP was also requested to provide financial statements
03-12-2025	SECP informed that financial statements for 2023, 2024 and 2025 not filed by the Company
09-12-2025	Financial statements received from GM Cables

\* Respondent denied the existence of any Dealership Agreement

#### Submissions of the Newage Cables (Pvt.) Ltd.

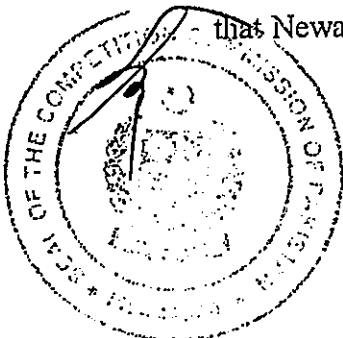
12. Newage filed its objections to the SCN through its counsel Khwaja Tariq Rahim & Associates vide letter dated 27.08.2024 as follows:

- a) That the issuance of the SCN and the accompanying Enquiry Report were fundamentally flawed, both in law and procedure as the enquiry was initiated on



the basis of a complaint from an undisclosed informant with whom the Enquiry Committee purportedly held several meetings;

- b) That the interactions, conducted entirely behind the back of the Respondent constituted a violation of the principles of natural justice and the constitutional right to a fair trial under Article 10-A of the Constitution;
- c) That the entire process amounted to an *ex-parte* proceedings as the identity of the informant was never disclosed and no opportunity was provided to review the original complaint. Hence, the Commission's exercise of its quasi-judicial authority in this matter amounted to misuse of official power;
- d) That every company has the right to determine its own pricing strategy and marketing policies under Article 18 of the Constitution. The Act being a sub-constitutional instrument, cannot override constitutionally protected commercial freedoms;
- e) That Newage holds no dominant position in the relevant market, with its market share in the retail segment during 2021 falling well below 10%, and the overall share remaining under 40%;
- f) That Section 4(2)(a) of the Act was not applicable, as that provision requires a demonstrable effect on market competition through price fixation;
- g) That the Newage sale policy prescribed a maximum discount limit at 23% on *credit sales* and 25% on *cash sales*, which in its view was not excessive or distortive;
- h) That such discount caps were not unusual and were in fact consistent with prevailing practices among major industry players, *such as* Fast Cables and Pakistan Cables. Singling out Newage, therefore, amounted to discriminatory enforcement;
- i) That the circular in question was merely an addendum and clarification of pre-existing contractual terms agreed with dealers. The reference to RPM practices, and particularly to foreign judicial precedents such as those of the Kansas Supreme Court, was rejected as irrelevant to the scheme of the Act;
- j) That the Commission's finding in paragraph 32 of the Enquiry Report stating that Newage's pricing policy affected the commercial behaviour of competing



cable manufacturers was unsupported by evidence on record and was not put to the Respondent during proceedings;

- k) That the entire investigation constituted a “roving inquiry”, which is impermissible under both statutory and constitutional standards, as articulated in binding judicial precedents including PLD 1992 SC 485 and 2012 SCMR 455;
- l) That the enquiry was without lawful basis because the informant was neither an undertaking nor a registered consumer association. Reliance was placed on case law reported as 2016 CLD 1688, 2019 CLD 538 and 2019 CLD 981;
- m) That the Commission is bound to provide all relevant materials to the Respondent prior to concluding any enquiry, with specific reliance placed on the judgment reported as 2022 CLD 10;
- n) Finally, the Counsel concluded that, prior to providing a detailed reply, the Commission must first:
  - i. disclose the identity of the informant;
  - ii. provide a copy of the original complaint;
  - iii. allow it to confront the informant;
  - iv. make a formal determination on whether Newage possesses a dominant position in the relevant market;
  - v. the principles enshrined in Article 10, Article 25 and the right to fair trial must be complied with; and
- o) That the ER fails to meet the standards of legality, fairness and judicial precedent so no case of contravention had been made out.

13. Newage Cables submitted its reply to the SCN on 14.06.2025 in following terms:

- a) That Newage is a technologically advanced cable manufacturing company and its sales through dealers remain almost static 5%, 6% and 5% in the Financial Years 2021, 2022 and 2023, respectively. Hence the market share of sales through dealers is minimal;
- b) That Newage’s overall market share stands at 19.99%, which does not establish dominant position within the meaning of Section 2(1)(e) of Act;
- c) That it is incorrect to allege that Newage’s anti-competitive conduct has spillover effects across the territory of other provinces and submitted the following in support:

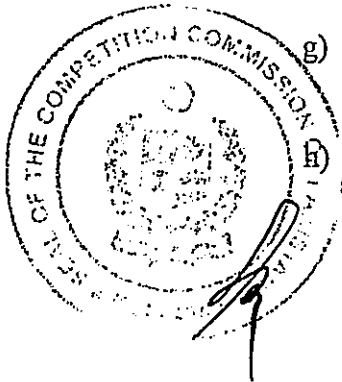


*“A “spillover effect” as understood in Merriam-Webster or Collins Dictionary, is the impact or consequence of something that extends beyond its intended or original scope affecting other areas or entities that were not directly involved. It’s like a ripple effect, where single event or action has wider representations.”*

- d) That the cable industry, therefore, does not exhibit spillover effects, as its demand and supply depends on the projects by the Government and the construction cost/activities by the individual households. While factors such as land prices, cement and steel costs may have spillover effects, the same cannot be said for the cable industry, which remains unaffected by such externalities;
- e) That Section 4(2)(a) of the Act relates to RPM, which refers to an agreement or practice whereby a manufacturer specifies a minimum price that resellers must charge for their products. However, Section 4(1) of the Act provides that *object of RPM or the effect of RPM must be to prevent, restrict or reduce competition within the market*. Accordingly, Newage’s discount policy does not meet the criteria of preventing, restricting or reducing competition;
- f) That prices of Newage are comparatively lower after the discount, hence, the charges as per Paragraph 7 of the SCN are negated on the basis of the comparison below:

Price List Comparison Price List per 90 Mtr Coil			
	Newage	Pakistan	Fast
Size	Effective date 8 <sup>th</sup> Nov. 2021	Effective date 6 <sup>th</sup> Sep. 2021	Effective date 28 <sup>th</sup> May 2021
3/.029	4,364	4,365	4,021
7/.029	9,141	9,210	8,762
4mm (7.036)	11,912	11,995	11,317
6mm (7.044)	17,476	17,575	16,732
10mm (7.052)	30,343	30,415	27,764
10mm 2/c (7.052)	66,847	66,830	61,285
10mm 3/c (7.052)	98,701	104,960	90,441

- g) That the dealers do not incur loss from unsold inventory and, therefore, do not qualify as an “Undertaking” within the meanings of Section 2(1)(q) of the Act; That the discount policy of Newage is primarily designed to cover credit extended to dealers not being “Undertaking” and the same had been withdrawn by the company:



- i) That the Colgate Doctrine (*United States v. Colgate & Co.*, 250 U.S. 300 (1919)) allows manufacturer to unilaterally state retail prices and refuse to deal with dealers who do not adhere to those prices;
- j) That *In the Matter of Show Cause Notice issued to M/s. Pakistan Civil Aviation Authority, M/s. Pakistan State Oil, M/s. Shell Pakistan Limited and M/s. Total Parco Pakistan Limited on Complaint filed by M/s. Hascol Petroleum Limited, reported as 2022 CLD 790*, the Commission held that:

*“a. The parties to the 1961 and 1994 Agreement shall apply to the Commission for retrospective and prospective exemption under Section 5 of the Act as per applicable regulations no later than thirty (30) days from the date of this Order, failing which the exclusivity clauses in the 1994 Agreement shall void as per Section 4(3) of the Act.”*

- k) That in accordance with the above precedence, Newage may be granted an opportunity to apply for an exemption under Section 5 of the Act.

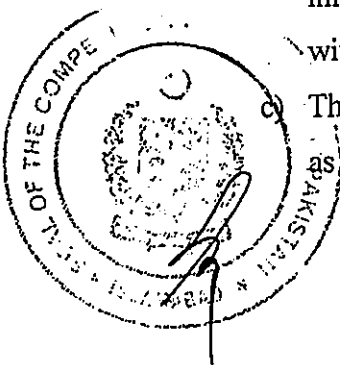
#### **Submissions of the G.M. Cables & Pipes (Pvt.) Ltd.**

14. GM Cables submitted its preliminary objections to the SCN on 23.10.2024 stating that the allegations levelled against it were baseless and unsupported by any valid or admissible evidence. The details are as follows:
  - a) That the “**Notice for Rate Control**” dated 01.08.2021 relied upon by the Enquiry Officers had no nexus with the company;
  - b) That the material purportedly linked to the Respondent could not, by any legal standard, constitute a prohibited agreement within the meaning of Section 4 of the Act;
  - c) That the EC had not been lawfully constituted under Section 37 of the Act as the enquiry had neither been initiated on the basis of a reference from the Federal Government nor upon a complaint from a registered undertaking or association of consumers;
  - d) That the ER submitted by such an unlawfully constituted EC could not be relied upon, let alone be considered conclusive or sacrosanct to be used as an instrument of condemnation against the Respondent;

- e) That if the Circular dated 01.08.2021 had been issued by GM Cables, it would have also been sent to the EC along with the letter dated 13.02.2023;
- f) That the small-scale survey conducted by EC could not be used to represent the entire national market. The Respondent, therefore, reserved the right to challenge paragraphs 17-24 of the ER, questioning the generalization of those findings for the whole Pakistani cable industry as ambiguous and incorrect;
- g) That the Respondent neither entered into nor participated in any agreement or arrangement that could be interpreted as violating Section 4 of the Act and the decision *In the matter of DEL Electronic (Pvt.) Ltd. and Haier Electronic (Pvt.) Ltd.*, reported as 2022 CLD 670 was clearly distinguishable from the present case; and
- h) That the SCN be withdrawn and all proceedings against it be dropped for want of jurisdiction, authenticity, and procedural fairness.

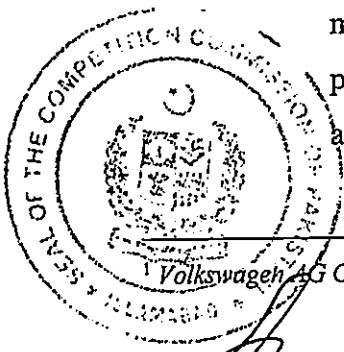
15. Learned Counsel for GM Cables submitted its additional reply to the SCN on 24.07.2025. The Counsel objected to the initiation of proceedings under Section 30 of the Act against the Respondent pursuant to an enquiry authorized by the Commission under Section 37(1) of the Act on the following grounds:

- a) That the authorization of enquiry, calling for information for enquiry through notice dated 01.12.2022 and the subsequent proceedings initiated under Section 37(1) of the Act by the Commission attracted the provisions of Section 37(2) requiring the Commission to form an opinion based on sufficient facts and supported by *prima facie* evidence before initiating an enquiry. The Commission, while acting *on its own motion*, cannot proceed where allegations are not supported by *prima facie* evidence (*Dalda Foods Ltd. v. CCP* reported as 2022 CLD 10; *National Feeds Ltd. v. CCP* reported as 2016 CLD 1688);
- b) That the Commission initiated the enquiry against the Respondent solely on the basis of a *so-called Notice for Rate Control*. The document is unsigned, carries no evidential value in law, and cannot by itself constitute a lawful basis for initiating an enquiry. The Respondent categorically denied any nexus or relation with this paper;
- c) That the Enquiry Report and the accompanying market survey report are silent as to how the alleged notice was procured or how it could be linked to the



Respondent undertaking. Paragraph 6 of the Enquiry Report itself admits that the informant failed to establish any such connection. Even during open-ended market surveys, no independent source confirmed the existence or circulation of the alleged notice dated 01.08.2021;

- d) That the documents attributed to Newage clearly bears signatures and official stamps of its authorized officers, whereas the piece of paper sought to be used against the Respondent is devoid of any such indicia. The Commission's reliance upon such material is therefore misplaced. The EC's notice dated 01.12.2022 was itself deceptively vague;
- e) That the Circular dated 23.11.2022 has been misconstrued. The circular, on its face, does not constitute any agreement, arrangement or understanding prohibited under Section 4 of the Act. It does not fix prices but was intended to prevent the circulation of counterfeit products. The rationale was consumer protection: non-dealers could potentially mix fake products with genuine stock, deceiving buyers;
- f) That jurisprudence recognizes that where a manufacturer issues circulars or warnings urging dealers not to deviate from a non-binding recommended sale price, such conduct does not amount to price-fixing.<sup>1</sup> Therefore, the EC has failed to establish, through corroborative evidence, that any act of the Respondent has prevented, restricted, or reduced competition within the relevant market. The ER contains no such evidence capable of sustaining its conclusions;
- g) That the enquiry initiated under Section 37(1) of the Act was procedurally flawed, as it lacked the *prima facie* evidence required under Section 37(2). The so-called *Notice for Rate Control* is unsigned, unauthenticated, and unconnected to the Respondent, and the ER itself provides no corroborative material to support the allegation. The notice dated 01.12.2022 was vague and incapable of grounding lawful proceedings, while the circular of 23.11.2022 has been misconstrued since it was issued in good faith to curb counterfeit trading practices. It is well-established that non-binding recommended prices do not amount to price-fixing under Section 4, and in any case, the record is devoid of

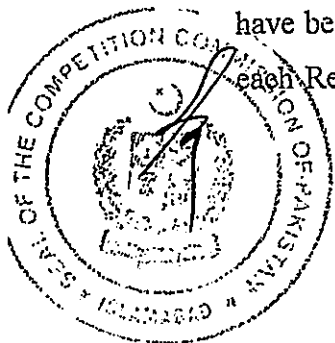


<sup>1</sup> Volkswagen AG Case COMP/36.693, European Commission, 1998; Suiker Unie v Commission Case 40-48/73, ECJ.

evidence showing that the Respondent's conduct had the effect of preventing, restricting, or reducing competition within the relevant market.

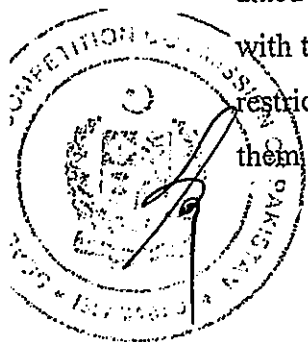
### Hearings

16. First hearing was conducted on 20.05.2025 by the Bench comprising Mr. Saeed Ahmad Nawaz and Mr. Abdul Rashid Sheikh, Members of the Commission. Learned counsel Mr. Azhar Mukhtar appeared on behalf of GM Cables and sought an adjournment. The request was made on the ground that his senior, Mr. Saood Nasrullah, Advocate was engaged before a Division Bench of the Lahore High Court on the same date. A copy of the cause list was produced in support of the request for adjournment. Having considered the request, the Bench accepted the same and adjourned further proceedings to 21.05.2025.
17. Second hearing was held the next day on 21.05.2025. None appeared on behalf of any of the Respondents. The Bench considered the written requests of Newage for grant of 2 weeks to engage new Counsel and appear before the Commission. The Bench allowed the request of Newage and directed the Registrar to requisition copies of dealership agreements from both the Respondents.
18. The matter was heard again in the **third hearing** on 24.06.2025 by a reconstituted Bench comprising Mr. Saeed Ahmad Nawaz and Ms. Bushra Naz Malik, Members of the Commission as Mr. Abdul Rashid Sheikh, Member of the Commission recused himself from the instant proceedings. Mr. Saood Nasrullah Cheema and Mr. Azhar Mukhtar, Advocates, appeared for GM Cables. At the outset, Mr. Cheema; learned counsel for GM Cables submitted that the Respondent should not be jointly impleaded with Newage Cables in these proceedings. He expressed the concerns that material pertaining to Newage, which had not been supplied to his client, might be relied upon against GM Cables. He, therefore, prayed for separate hearings and for leave to place an additional reply on record.
19. The Bench clarified that any documents or evidence relating exclusively to Newage would not be used against GM Cables. It was observed, however, that such objections ought to have been raised earlier. Nevertheless, the Bench allowed to conduct the proceeding for each Respondent during separate hearings to address the concerns of GM Cables. GM



Cables was accordingly granted a final opportunity to submit its written additional reply by the third week of July 2025.

20. Mr. Rana Nadeem Hussain, General Manager (Taxes) and Mr. Tipu Sultan, Consultant appeared on behalf of Newage. They reiterated their submissions already made in their written replies in a compliant mode stressing that the policy had already been withdrawn and sought permission to file for grant of exemption under Section 5 of the Act to the prohibited clauses, if any in their agreements.
21. Mr. Rana Nadeem Hussain, General Manager (Taxes) responded to the Bench that dealers were free to sell products of other manufacturers and that no dealership had ever been terminated for non-compliance with discount limits. The Bench, however, referred to Newage's Retail Discount Policy dated 04.08.2021 containing a warning that dealership agreements would be terminated in the event of breach, and further observed that whether prices were comparatively lower or the company did not hold a dominant position were not relevant and material matters in the instant proceedings. The Bench also noted that Newage's distribution network was not confined to a single province but extended across all federating units.
22. Mr. Saood Nasrullah Cheema and Mr. Azhar Mukhtar, Advocates of the High Court, attended the fourth hearing on behalf of GM Cables held on 24.07.2025. Mr. Cheema, filed written submissions by way of an additional reply to the SCN. He challenged the *legality and vires* of the enquiry proceedings initiated against the Respondent, arguing that the same lacked credible incriminating evidence. He further contended that the SCN issued on the basis of such enquiry was vague and violative of Regulation 26-A of the Competition Commission (General Enforcement) Regulations, 2007 (the 2007 Regulations) which deals with taking of evidence in the proceedings before the Commission.
23. The learned Counsel for GM Cables disowned the Circular dated 01.08.2021 appended as Annex-B to the Enquiry Report, asserting that the Enquiry Committee had formulated its findings without considering the covering letter attached to the subsequent Circular dated 23.11.2022. He categorically denied the existence of any contractual arrangements with the Respondent's dealers that would amount to RPM or the imposition of post-sale restrictions. He explained that GM Cables only appointed authorized dealers requiring them to sell directly to consumers, with the objective of preventing counterfeit trade and



protecting brand reputation. He strongly denied that any penal action had ever been taken for enforcement of the Circular dated 23.11.2022. On the basis of these submissions, he prayed for withdrawal of the SCN.

24. Having heard the learned counsel, the Bench directed the Registrar to requisition either the Annual Reports, Directors' Reports, or Financial Reports (consolidated or unconsolidated) of the Respondents for the past three years, from both the Respondents and the SECP, as available. The Bench also directed that certified copies of the unreported judgments cited be placed on record, which were subsequently provided by the learned Counsel.

### ISSUES

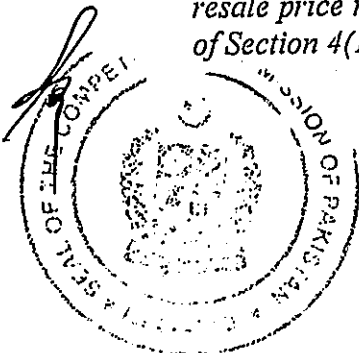
25. The Bench carefully perused the record of Enquiry Report, replies submitted by the Respondents and heard the arguments advanced by their counsels and decided to frame the following issues for adjudication:

#### *Procedural Issues*

- I. *Whether the initiation of the enquiry under Section 37(1) of the Act, on the basis of information supplied by a confidential informant, was in accordance with law?*
- II. *Whether the enquiry and subsequent proceedings were conducted in conformity with the principles of natural justice and procedural fairness?*

#### *Substantive Issues*

- III. *Whether the Enquiry Report and SCNs identify the relevant market correctly?*
- IV. *Whether the dealers appointed by Newage for the resale of its products fall within the definition of "undertakings" under Section 2(1)(q) of the Act?*
- V. *Whether the conduct attributed to the Respondents by its nature or effect, extended beyond localized markets and gave rise to spillover effects across provincial boundaries?*
- VI. *Whether the "Retail Discount Policy" dated 04.08.2021 issued by Newage constitute resale price maintenance, and if so, whether such conduct amounts to a contravention of Section 4(1) read with Section 4(2)(a) of the Act?*

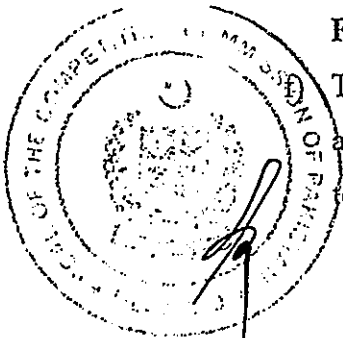


- VII. Whether the "Notice for Rate Control" dated 01.08.2021 allegedly attributable to GM Cables constitute resale price maintenance, and if so, whether such conduct amounts to a contravention of Section 4(1) read with Section 4(2)(a) of the Act?
- VIII. Whether, in light of the protections guaranteed under Article 18 of the Constitution, the fixation of a maximum discount is permissible under the Act?
- IX. Whether dominant position is relevant in the proceedings under Section 4 of the Act?

## DELIBERATIONS AND ANALYSIS

**Issue I:** Whether the initiation of the enquiry under Section 37(1) of the Act, on the basis of information supplied by a confidential informant, was in accordance with law?

26. The Respondents have challenged the legality of initiation and vires of the enquiry in this case on the following grounds:
- That the enquiry was initiated on the basis of a complaint from an undisclosed informant in the absence of any reference from the Federal Government or a complaint lodged by an undertaking or a registered consumer association;
  - That the initiation of an enquiry on complaint falls within the ambit of Section 37(2) of the Act which requires the Commission to form an opinion based on sufficient facts and supported by *prima facie* evidence;
  - That the identity of the informant was never disclosed and no opportunity was provided to review the original complaint;
  - That discount caps were consistent with prevailing practices among major industry players. Singling out a Respondent, therefore, amounted to discriminatory enforcement;
  - That the Commission must not initiate an enquiry on speculative or unverified allegations. Reliance was placed upon the **National Feed judgment** and **Balda Foods order** passed by the Islamabad High Court, Islamabad; and
- That the Commission, by relying on information of an undisclosed informant and without disclosure of the alleged complainant, failed to satisfy the statutory tests envisaged under Section 37(2) of the Act.

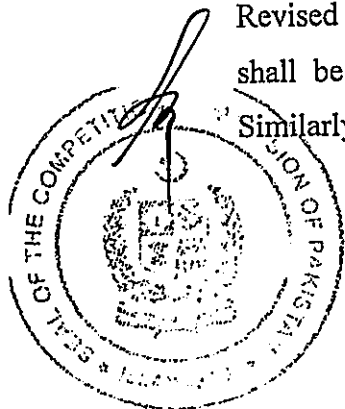


27. According to Regulation 2(1)(h) of the 2007 Regulations "informant" means a person who furnishes information regarding contravention of provisions of the competition law of which cognizance is to be taken by the Commission. Para 2(i)(b) of the Competition Commission of Pakistan---Revised Guidelines on "Reward Payment to Informants Scheme" defined the "Informant" as a person who furnishes information regarding contravention of section 4 of the Ordinance, of which cognizance is to be taken by the Commission and includes a "whistle-blower" i.e. an employee who reports to the Commission, his employer's illegality. The informant, however, is not a party in any enquiry or proceedings as Regulation 2(1)(l) of the 2007 Regulations specifically excludes him from the definition of a party, reproduced hereunder:

*"Regulation 2(1)(l) "party" shall include complainant and an undertaking defined in clause (p) of section, 2 or the officer concerned of the department of the Commission conducting the relevant case, or any statutory authority, as the case may be, and shall include a respondent or respondents against whom any inquiry or proceeding is instituted or relief is sought to be made and shall also include any person permitted to join the proceedings or an intervener but does not include an informant."*

28. PART IX of the 2007 Regulations prescribes the procedure for treatment of information received from anonymous informants in Regulation 58-60. The information received by the Commission from an anonymous informant, which for reasons to be recorded and on the basis of supportive evidence, is believed to be authentic, may be treated as a complaint in terms of section 37 of the Act and necessary fee thereon shall stand waived. Such information, soon upon its receipt, is forwarded to the Member/authorized officer concerned to determine, whether the information received merits a formal enquiry u/s 37(2) and if the Member/ authorized officer decides to proceed with formal enquiry, he is authorized to appoint the Enquiry Officer/Enquiry Committee, as he may deem fit, for conducting the enquiry.

29. Regulation 55 of the 2007 Regulations mandated the Commission to introduce a scheme of "Reward Payment to Informants", aimed at uncovering and taking action against cartel activity. In accordance with Para 3(4) of the Competition Commission of Pakistan--- Revised Guidelines on "Reward Payment to Informants Scheme" identity of the informant shall be kept secret, unless he agrees to give evidence in subsequent proceedings. Similarly, Regulation 7 of Competition (Reward Payment to Informants) Regulations,



2014 obliged the Commission to keep the identity of informants confidential in following terms:

*"7. Confidentiality.- The Commission shall, to the extent that is consistent with its obligations to disclose or exchange information, to keep the identity of the Informants under these regulations confidential."*

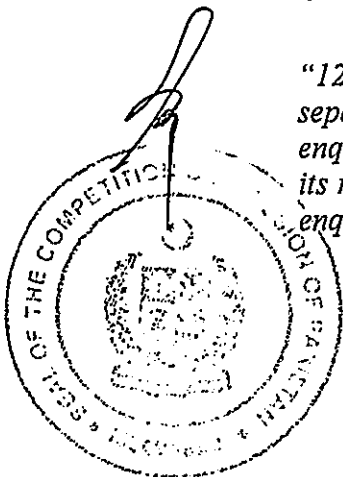
30. According to Section 37 (1) of the Act, the Commission may, on its own, and shall upon a reference made to it by the Federal Government, conduct enquiries into any matter relevant to the purposes of the Act. Section 37(2) of the Act requires that on receipt of a complaint from an undertaking or a registered association of consumers which appears to constitute a contravention the Commission shall conduct an enquiry into the matter to which the complaint relates unless it is of the opinion that:

- a. the application is frivolous or vexatious; or
- b. based on insufficient facts; or
- c. is not substantiated by prima facie evidence.

31. The Hon'ble Supreme Court of Pakistan in CCP & Others. v. Dalda Foods Ltd cited as 2023 SCMR 1991, has conclusively clarified the scope of Section 37 of the Act. The Court held:

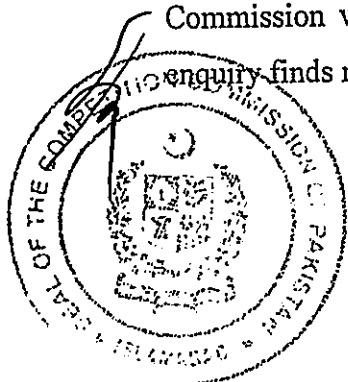
*"11. [...] it is important to draw distinction between Section 30 and Section 37... Section 37 defines a different scope... the CCP has the authority to conduct enquiries either suo motu or based on reference from the Federal Government, into matters related to the objectives of the Act. As mentioned earlier an enquiry under Section 37 can also be initiated based on a complaint...If, upon conducting this enquiry, the CCP is of the opinion that the findings necessitate taking action in public interest, it shall initiate proceedings under Section 30. ... In other words, the enquiry under Section 37 serves as a preliminary step to gather information or evidence, and if it reveals a potential contravention of Chapter II of the Act, the CCP can then proceed. However, such enquiry is not always necessary to proceed against an undertaking, and if the CCP is satisfied on the information that it has available that a contravention of Chapter II of the Act is committed, it may proceed without it."*

*"12. To our minds, the reading of Section 37 of the Act caters to two separate and distinct powers vested in the CCP for initiating an enquiry. Under sub-section (1) of Section 37 of the Act, the CCP on its motion or on reference by the Federal Government, conduct an enquiry into any matter relevant for the purposes of the Act. This*



*essentially is the suo motu power of the CCP to initiate an enquiry which means that the CCP can on its own motion initiate an enquiry, in any matter necessary for the purposes of the Act, provided that it has deliberated on the matter, and has produced its reasoning in writing."*

32. The statutory language of Section 37(1) of the Act is wide and deliberately flexible, empowering the Commission to act on its own motion, irrespective of the form or source of the information. This power includes competence to initiate enquiry on an informal complaint or upon receiving credible information from any other source like an informant, whistle blower or market intelligence gathered institutionally or from media coverage. In this case, the information consisted of circulars of the Respondents confidentially provided to the Commission by the informant. The said circulars conveyed specific directions of the Respondents to their dealers and consequences of non-compliance. Since the alleged information contained in the circulars was specific (not frivolous or vexatious), clear (factually sufficient) and directly linked to the parties (prima facie substantiation), the Commission initiated the enquiry under Section 37 as a preliminary step to gather relevant evidence.
33. Whereas, SRO No. 1097(1)/2020 dated 07.09.2020 delegated the powers to initiate and conduct an enquiry on a formal complaint filed u/s 37(2) of the Act into the affairs of any undertaking for alleged violation of Section 3 and 4 of the Act to Director General (Cartels & Trade Abuse) and according to Regulation 58 of 2007 Regulations the authentic information received by the Commission from an anonymous informant may be treated as a complaint u/s 37 of the Act and the Member/ Authorized Officer is competent to appoint the Enquiry Officer/Enquiry Committee.
34. The Authorized Officer evaluated the authenticity of the information received and determined that it merited a formal enquiry, under Section 37(2) of the Act. He, however, placed the matter before the Commission by way of abundant caution and the Commission in its meeting dated 28.06.2022, formally resolved and authorized the initiation of the enquiry into the matter u/s 37(1) of the Act. This decision was properly recorded in its internal proceedings, thereby satisfying the statutory requirements. The suggestion that the Commission was required to notify the Respondents in advance about authorizing the enquiry finds no basis in the Act or the 2007 Regulations.

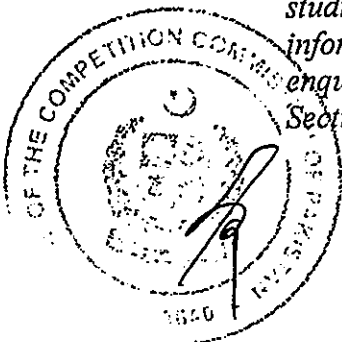


35. We are of the considered view that reliance on the *Dalda Foods* Order is misplaced. Neither the Act nor the 2007 Regulations require disclosure of the identity of an informant. Likewise, the Commission is not legally bound to issue notice or hold a hearing at the stage of initiating an enquiry. What matters is that the substance of the information forming the basis of the enquiry be made available to the Respondents. In this case, the circulars were duly disclosed, and the Respondents were later served with the SCNs outlining the alleged violations and evidence available against them, thereby ensuring fairness and transparency.
36. Similarly, the Honourable Supreme Court has held in the *National Feeds* case in CCP versus National Feed Ltd CP No. 2119 to 2123 of 2016 (unreported) that:

*"A look at the concluding paragraph of the impugned judgment reveals that the hands of the Commission have not been tied. It could proceed under Section 37(1) or (2) of the Act. It could also proceed under Section 36 of the Act, even if no complaint in writing has been filed by an undertaking or registered association of the consumers. When the Commission can proceed under the provisions mentioned above, we don't think the impugned judgment could create any obstacle or impediment in its way either to call for information or to inquire into any matter required to be inquired into under the Act."*

37. The duty to afford a hearing arises only when adverse action is contemplated, such as the issuance of a show cause notice. Reliance can be placed on the case of *M/s Sadiq Poultry (Private) Limited v. FOP etc.* cited as *PLD 2025 LAH 57* at para 9, it was held by the Hon'ble High Court that:

*"[....] However, it is crucial to note that the initiation of an enquiry under Section 37 does not equate to a formal proceeding under Section 30 of the "Act", as latter involves potential penal consequences. Section 37 of the "Act" is particularly pertinent to the CCP's authority to conduct enquiries. Subsection (1) empowers the CCP to initiate enquiries on its own or upon reference from the Federal Government. This provision is significant as it allows the "CCP" to act independently, without waiting for a complaint or external prompting. The Supreme Court of Pakistan, in the case of *Dalda Foods Limited v. Competition Commission of Pakistan* (2023 SCMR 1991) expounded the scope and powers of the "CCP" under Section 37 of the "Act". The Court held that enquiries and studies are independent tools employed by the "CCP" to collect and assess information on market trends. Importantly, the Court emphasized that such enquiries do not constitute an adverse action or formal proceeding under Section 30 of the "Act". The relevant portion of the judgment read as under:-*

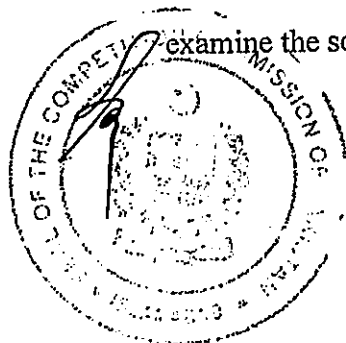


*"--- therefore, in terms of sections 36 and 37 the power to call for information or conducting an enquiry or study do not constitute a proceeding against an undertaking under section 30 of the Act."*

38. For the reasons discussed above, the Bench is of the considered opinion that the initiation of the enquiry in the present case was lawful and in accordance with Section 37(1) of the Act. The enquiry was based on credible information, duly authorized by a formal resolution of the Commission. The enquiry conducted under Section 37 of the Act is not a formal proceeding and is different from proceedings conducted under Section 30 of the Act. It serves as a preliminary step to gather information or evidence, and if it reveals a potential contravention of Chapter II of the Act, the CCP can then proceed against the undertaking(s) held responsible. Initiation of an enquiry is not an adverse action against an undertaking and is, therefore, not violative of Article 10-A of the Constitution if initiated without prior notice or hearing.
39. Moreover, the Respondents' challenge to the constitution of the Enquiry Committee is also devoid of merit. The Enquiry Committee was duly constituted in accordance with the Commission's authorization, and its functions were confined strictly to verifying the circulation and implementation of the circulars and notices in question. The Enquiry Committee examined documents, and prepared its report within the scope of authority conferred upon it. Nothing on record suggests that it exceeded its mandate or acted contrary to law. Accordingly, the Respondent's objection to its constitution is rejected.
40. The Bench holds that the initiation of the enquiry under Section 37(1) of the Act, on the basis of information supplied by a confidential informant, was in accordance with law as the identity of the informant needs not to be disclosed so long as the material relied upon is placed before the undertaking responsible.

**ISSUE II:** *Whether the enquiry and subsequent proceedings were conducted in conformity with the principles of natural justice and procedural fairness?*

41. The Respondents have objected to the Commission's reliance on information provided by a confidential informant, arguing that they were not provided the opportunity to cross-examine the source or the complainant. The Respondents argued as under:



- a) That the Enquiry Committee held multiple meetings with the informant behind the back of the Respondents in violation of the law, constitution and the due process;
- b) That the enquiry was an *ex-parte* proceedings as the identity of the informant was never disclosed and no opportunity was provided to review the original complaint;
- c) That the entire investigation constituted a “*roving inquiry*”, which is impermissible under both statutory and constitutional standards;
- d) That the Commission is bound to provide all relevant materials to the Respondent prior to concluding any enquiry (2022 CLD 10);
- e) That the small-scale survey conducted by the EC could not be used to represent the entire national market. The Respondent reserves the right to challenge paragraphs 17 to 24 of the ER, questioning the generalization of the findings for the whole Pakistani cable industry as ambiguous and incorrect; and
- f) That the Enquiry Report and the accompanying market survey report are silent as to how the alleged notice was procured or how it could be linked to the Respondent undertaking. Paragraph 6 of the Enquiry Report itself admits that the informant failed to establish any such connection. Even during open-ended market surveys, no independent source confirmed the existence or circulation of the alleged notice dated 01.08.2021;

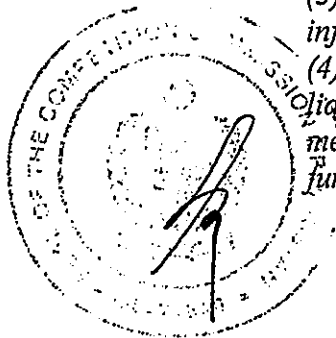
42. Regulation 4 of Competition (Reward Payment to Informants) Regulations, 2014 prescribes the methodology for interactions between the informant and the Commission as follows:

*“4. Approaching the Commission.-(1) The Informant may make initial contact with the Commission either via phone or otherwise, but without necessarily disclosing of his/her name, if the Informant is hesitant to reveal his/her identity at the very start.*

*(2) After initial contact, an officer, not less than the rank of Director, shall be designated by the Chairman to liaise with the Informant.*

*(3) The officers designated to deal with the Informant shall ensure that any information provided is carefully safeguarded and handled.*

*(4) Upon initial assessment of the information provided by the Informant; if the liaison officer finds that the information is likely to assist the Commission, a meeting with the Informant shall be arranged by the liaison officer to seek further details.*



*(5) The Informant shall remain available and continuously cooperate with the Commission unless the Commission issues the Order.*

*(6) It shall be within the discretion of the Commission not to accept the intended information provided by the Informant, and it shall also be within the discretion of the Commission to grant the financial reward claim, based on the veracity and usefulness of the information supplied under these regulations."*

43. The circulars provided by the confidential informant, on their face, contained identities of the Respondents and intended recipients (their distributors), object of circulars and specific pricing restrictions which appeared to be in contravention of Section 4(1) read with Section 4(2)(a) of the Act. Hence, the enquiry in the instant case could not be termed as fishing exercise or a roving enquiry. The EC called for specific information related to alleged circulars and its notice dated 01.12.2022 was neither vague nor incapable of grounding lawful proceedings.
44. The Commission enjoys wide-ranging powers to call for any information or evidence u/s 33 of the Act for the purpose of a proceeding or enquiry including the powers of a civil court. Similarly, in its supervisory and regulatory role whatever information it may consider necessary or useful for the purposes of the Act, it is competent u/s 36 of the Act to call upon an undertaking to furnish such information periodically or as and when required concerning the activities of the undertaking, including information relating to its organization, accounts, business, trade practices, management and connection with any other undertaking.
45. The Bench notes that the Supreme Court of Pakistan in CCP & Others. v. Dalda Foods Ltd cited as 2023 SCMR 1991, has conclusively clarified the scope of Section 36 and Section 37 of the Act. The Court held:

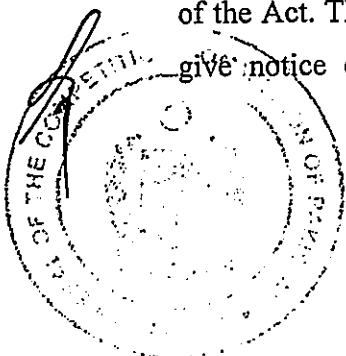
*"8. Section 36 of the Act empowers the CCP to call for information relating to an undertaking...through a general or special order... periodically or as and when required...This is a regulatory power available to CCP aimed to collect and gather information about the undertaking and does not fall under the ambit of a proceeding under Section 30. Hence, merely calling for information does not constitute a proceeding nor does it trigger any penal consequences."*

46. The principles of natural justice at the enquiry stage have been examined both in the Commission's earlier decisions and in Superior Courts judgments. In the matter of

Jamshoro Joint Venture Limited (JJVL) and LPG Association of Pakistan dated 14 December 2009, it was held:

*“96. ... rules of natural justice are not cast in a rigid mold and that depending on the facts and circumstances of each case, there is no mandatory requirement of natural justice that in every case, the other side must be given a notice before preliminary steps are taken. As per the Supreme Court, it might suffice if reasonable opportunity of hearing is granted to a person before an action or decision is taken against him (Commissioner of Income Tax and others v. Messrs Media Network and others 2006 PTD 2502). Similarly, in Parry Jones v. Law Society and others (1969) 1 Ch Division 1 at pp. 8 & 10, the Court of Appeal held that where the only enquiry was as to whether there was prima facie evidence, natural justice did not require that the party should be given notice of it. ...”*

47. In light of the above, the Bench observes that the Supreme Court has affirmed that Section 36 empowers the Commission to call for information periodically or otherwise and it is not dependent on the existence of a complaint. Moreover, the Commission may also receive the information from any source without being restricted to a particular form and the channel. These findings directly address and negate the objections raised by the Respondent.
48. We noticed that both Respondents were provided with the circulars and notifications relied upon by the EC, as well as the complete ER. The SCNs clearly set out the allegations, grounds therefor and the material relied upon appended as Annexure. No additional, undisclosed adverse material has been shown to have been withheld or relied upon. Accordingly, the applicable standards of procedural fairness, due process and natural justice under both constitutional and administrative laws were satisfied in this regard.
49. Section 37(4) provides that if the inquiry initiated under sub-section (1) or sub-section (2) is concluded with the findings that contravention of the Act, appears to have happened, it is placed before the Commission for its decision. The Commission considers the findings of the enquiry and if it decides that it is necessary in the public interest to proceed against the undertaking(s) responsible for the same, it shall initiate proceedings under section 30 of the Act.
50. The procedure for the conduct of proceedings by the Commission is provided in Section 30 of the Act. The Commission before making an order in case of contravention is bound to give notice of its intention stating reasons therefor and offer an opportunity to the



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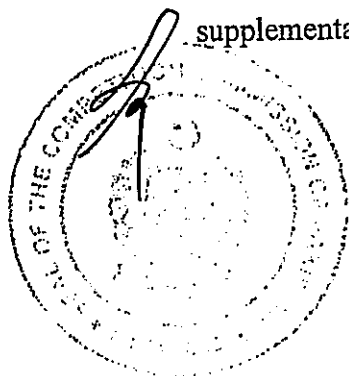
undertaking(s) involved to be heard and to bring before the Commission facts and material in support of its (their) contention. The right to a fair hearing, therefore, includes notice of alleged violations, access to evidence relied upon, and an opportunity to respond, however, it does not extend to confrontation or cross-examination of EC or confidential informants in the administrative and quasi-judicial proceedings.

51. In this context, reliance is placed upon the following unanimous opinion of Honourable Lahore High Court, Lahore in the LPG Association of Pakistan vs. Federation of Pakistan etc. cited as 2021 CLD 214 (LPG Case):

*"The CCP is a regulatory authority, with a regulatory objective and its purpose is not to exercise judicial powers (Para 51).*

*CCP was not established as a part of the judicial hierarchy of courts nor are its function to exercise judicial power. It is established to carry out the administrative functions of the executive to ensure economic efficiency and promote consumer welfare and in doing so it discharges quasi-judicial functions with the sole objective to regulate anti-competitive behaviour. Although the process followed by the CCP while hearing cases must follow due process, they are not bound by formal law of evidence and procedure. Furthermore, the members of CCP are not necessarily trained in law, as they require expertise in economic, commerce, finance and industry. The CCP was established under the Act, with the intent to ensure free competition and economic efficiency, so the function of hearing and deciding issues only occurs where the prohibitions have been violated, that to the intent to restore competition in the relevant market. Hence, while exercising its functions under the Act, the CCP is not a 'court' under Article 175 of the Constitution (Para 54)".*

52. The Bench is also of the considered opinion that the non-disclosure of the identity of the informant in the instant matter is well in accord with the competition law of the land and did not impair the fairness of the proceedings. The Respondents have not demonstrated specific prejudice arising from the informant's anonymity. By virtue of their engagement with the Enquiry Committee and subsequent SCN proceedings, the Respondents were afforded a meaningful opportunity to respond to the allegations and challenge the documentary evidence relied upon. The Respondents filed detailed replies, including supplemental replies, and were heard at length. Even additional material submitted by the

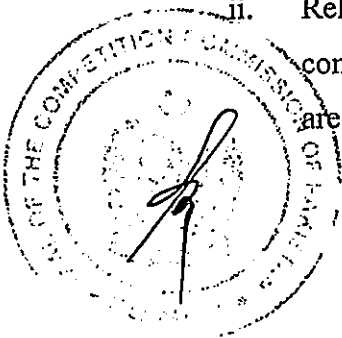


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- Respondents after the conclusion of hearings was allowed to be placed on record. In these circumstances, the applicable standards of procedural fairness and natural justice were met.
53. We further opine that it is fair to preserve confidentiality of sources where the substantive basis of the decision rests on disclosed documents showing a possible violation of the provisions of Chapter II of the Act. GM Cables' objection to the authenticity of the circular is a contention that goes to weight and merits, not procedural fairness. The proper course is to assess authenticity and probative value when deciding the substantive issues. In instant case, the Respondents had access to the circulars and notices, were able to contest the same, and were heard accordingly.
54. For these reasons, the Bench concludes that the enquiry as conducted and subsequent proceedings, complied with the principles of natural justice and procedural fairness. The objections based on the identity of the informant and alleged undisclosed meetings do not reveal any denial of due process, nor does the authenticity challenge translate into a procedural infirmity.
55. Having addressed the procedural objections, the Bench now proceeds to examine the substantive issues arising in the matter, including, *inter alia*, whether the conduct of the Respondents amounts to RPM in contravention of Section 4 of the Act.

**ISSUE III:** *Whether the enquiry report and SCNs identify the relevant market correctly?*

56. At the outset, the Bench considers whether the "relevant market" has been properly identified in the ER and the SCNs.
57. Under Section 2(1)(k) of the Act, a "relevant market" is determined with reference to two components:
- i. Relevant Product Market – This comprises all products or services that are regarded as interchangeable or substitutable by consumers on the basis of their characteristics, prices, and intended use.
  - ii. Relevant Geographic Market – This refers to the area in which the undertakings concerned supply products or services and where the conditions of competition are sufficiently homogeneous. Such an area must be distinguishable from



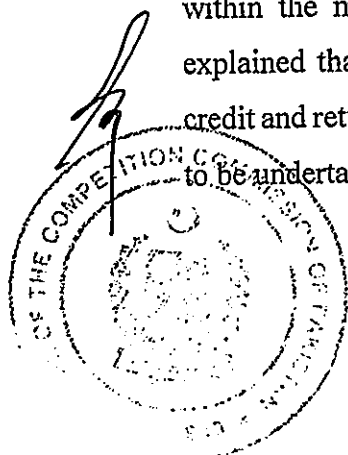
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neighboring geographic areas due to appreciable differences in competitive conditions.

58. Accordingly, determining the relevant product market requires identifying products or services that consumers consider interchangeable or substitutable. Determining the relevant geographic market involves identifying the geographic area within which such products or services are supplied under similar competitive conditions.
59. In the present case, the ER, particularly paragraphs 17–23, and the SCNs define the relevant market as *“the cable industry of Pakistan for sales and distribution of cables and wires with a wide range of products that can be substituted both in terms of cost and practicality.”*
60. The ER further observes that entities operating within the cable and allied sectors maintain branches across the country and generally operate nationwide. Specifically, the undertakings, Newage Cables and GM Cables, conduct business throughout Pakistan through established dealer networks. They also sell products via online platforms and participate in public procurement tenders. On this basis, the ER concludes that competitive conditions for the provision of relevant services are largely homogeneous across the country. Consequently, it determines the relevant geographic market to be the entire territory of Pakistan.
61. After reviewing the contents of the ER and the SCNs, the Bench is of the view that the relevant market has been correctly defined and that its application in the SCNs is consistent with the law. The Bench concurs with the assessment that the relevant product market is the cable industry of Pakistan and as the dealers of both Respondents operate nationwide through extensive distribution networks, and competitive conditions appear uniform across regions, the relevant geographic market is determined to be the whole of Pakistan.

**ISSUE IV: *Whether the dealers appointed by Newage for the resale of its products fall within the definition of “undertakings” under Section 2(1)(q) of the Act?***

62. M/s Newage submitted that the dealers engaged by it did not qualify as “undertakings” within the meaning of Section 2(1)(q) of the Act. The learned Counsel for Newage explained that because such dealers did not bear any inventory risk and operated under credit and return arrangements, they were not independent market actors or economic agents to be undertakings under the Act.



63. In order to address this issue, the Bench finds it necessary to refer to the definition of “undertaking” as provided in Section 2(1)(q) of the Act, which is reproduced below for ease of reference:

*“Undertaking means any natural or legal person, governmental body, including a regulatory authority, body corporate, partnership, association or trust, or other entity in any way engaged, directly or indirectly, in the production, supply, distribution of goods, or provision or control of services and shall include an association of undertakings.”*

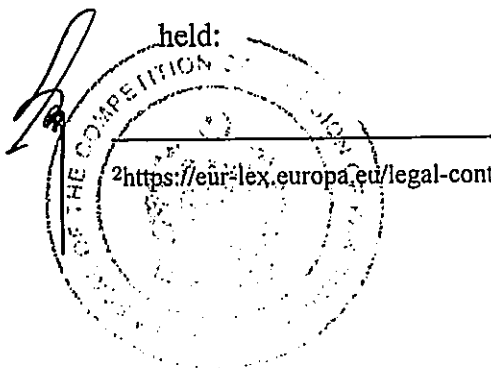
64. The definition of “undertaking” has been interpreted in multiple earlier decisions of the Commission. In its Order dated 15.12.2017, *In the Matter of Show Cause Notice issued to Utility Stores Corporation of Pakistan (Pvt.) Limited* reported as 2018 CLD 292, the Commission held:

*29. A bare perusal of the definition of an ‘undertaking’ leaves no doubt that it is divided into two parts. The first part of the definition takes within its folds the type of entities that can possibly exist i.e., an individual, a company, a firm, an association of undertakings, governmental entities, sector-regulators, a body corporate established under the Provincial or the Federal laws of Pakistan, a cooperative society and any other entity regardless of its legal status and the way in which it is financed. Whereas, the second part focuses on the nature of activity which is performed by them be it directly or indirectly i.e. production, supply or distribution of goods or provision or control of services. The most important part of the second limb of the definition is that the legislature within its wisdom by using the words in any way (emphasis added) has made it clear that there is no condition on the legal entity to engage in commercial or economic activity to fall within the purview of ‘undertaking’ for the purposes of the Act. If any legal entity or natural person is engaged in any way in the production, supply, or distribution of goods or provision or control of services, the said undertaking would fall within the purview of the term ‘undertaking’”.*

65. This approach aligns with international competition law standards. In the landmark case, *Höfner and Elser v. Macrotron GmbH (Case C-41/90)*<sup>2</sup>, the European Court of Justice

held:

<sup>2</sup><https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61990CJ0041>



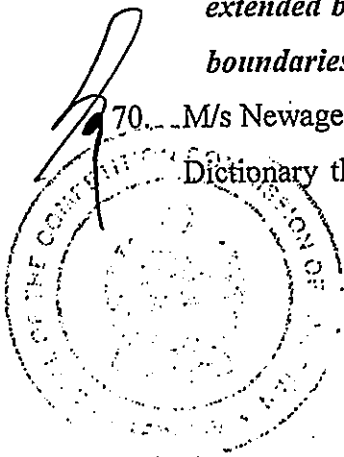
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*"21. It must be observed, in the context of competition law, first that the concept of an undertaking encompasses every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed..."*

66. Guided by the statutory language and the jurisprudence discussed above, the Bench is of the considered opinion that definition of "undertaking" under the Act is functional and activity-based. It does not depend on ownership structure, risk allocation, or commercial autonomy. The only criterion is whether the entity is engaged in an economic or commercial activity, including the production, supply, or distribution of goods or the provision of services. The phrase "*in any way*" makes it abundantly clear that even a limited scale or dependent commercial activity is sufficient.
67. In the present case, Newage's dealers actively participate in the resale and distribution of its products in the market. They purchase, market, and supply cables to end consumers, thereby engaging in the distribution of goods within the meaning of Section 2(1)(q) of the Act. Whether they operate under credit, return, or fixed-price arrangements does not remove them from the statutory definition. Any kind of commercial or financial dependency does not negate their role as entities engaged in economic activity.
68. Accordingly, the Bench is of the opinion that the argument advanced by Newage that its dealers are not "undertakings" merely because they do not bear inventory risk or enjoy full autonomy in pricing is untenable. Such a restrictive reading would contradict the plain wording of Section 2(1)(q) and the settled principle that the definition is to be applied broadly in order to capture all entities engaged in economic activity.
69. For these reasons, the Bench concludes that the dealers engaged by Newage qualify as "undertakings" within the meaning of Section 2(1)(q) of the Act. Their role in the distribution and resale of Newage's or any other undertaking's products places them within the scheme of the Act. They are, therefore, capable of entering into agreements with Newage which may fall in the ambit of Section 4 of the Act.

**ISSUE IV:** *Whether the conduct attributed to the Respondents by its nature or effect, extended beyond localized markets and gave rise to spillover effects across provincial boundaries?*

70. M/s Newage relied upon the definition of spillover effect in Merriam-Webster and Collins Dictionary that it was the impact or consequence of something that extends beyond its



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intended or original scope affecting other areas or entities that were not directly involved. The learned Counsel argued that demand for electrical cables and wires was tied to specific local construction projects, whether governmental, private or household, and therefore its supplies remained confined to localized markets. While factors such as land prices, cement and steel costs might have spillover effects, the same could not be said for the cable industry, which remained unaffected by such externalities. Accordingly, it was asserted that, unlike cement or steel sectors, the Respondent's conduct did not distort competition in broader inter-provincial markets.

71. Spillover Effect in the competition law for the purpose of the applicability of the Act was explained by the Lahore High Court in the LPG Case at Para 1.7 that:

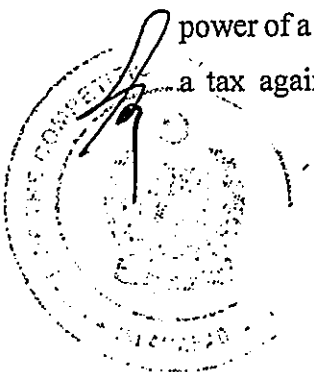
*"..... if an anticompetitive behaviour is not affecting the trade and commerce of another Province, it does not come with the phrase 'interprovincial trade and commerce', as used in Entry 27 and discernible in Article 151. Conversely, if any act or omission, between anticompetitive behaviour, committed within geographical boundaries of a Province, has its effect beyond such territorial limits, would be subject of a Federal legislation and within its executive competence...."*

The Court held in Para 16 that

*"...competition law [the Act] by its very nature and scope is national in character as the geographic stretch of the market extends beyond territorial limits of any particular area or Province."*

72. Article 18 of the Constitution guarantees that every citizen has the right to enter upon any lawful profession or occupation and to conduct any lawful trade or business subject to such qualifications as may be prescribed by law. This constitutionally guaranteed fundamental right, however, does not prevent the regulation of any trade or profession by a licensing system or the regulation of trade, commerce or industry in the interest of free competition therein or complete or partial exclusion of other persons from any trade, business, industry or service carried on by the Federal Government or a Provincial Government or by a corporation controlled by any such Government.

73. Article 151 of the Constitution provides that trade, commerce and intercourse throughout Pakistan between one Province and another or within any part of Pakistan is free subject to such restrictions as may be imposed by law by Parliament in the public interest. Even the power of a Provincial Assembly or a Provincial Government to prohibit or restrict or impose a tax against interprovincial trade and commerce is limited to legislating an Act by a

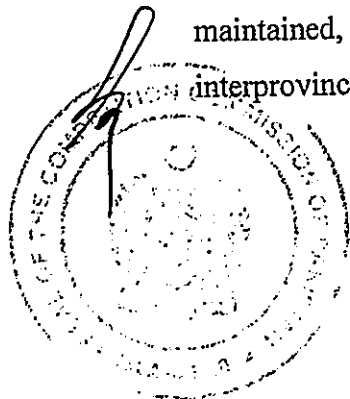


Provincial Assembly imposing reasonable restriction in the interest of public made with the consent of the President.

74. Federal Legislative List Part-I vide Entry No. 25 empowered the Federation to regulate the matters related to copyright, inventions, designs, trademarks and merchandise marks. Entry No. 27 authorized the Federal Government to deal with import and export across customs frontiers, inter-provincial trade and commerce, trade and commerce with foreign countries and standard of quality of goods to be exported out of Pakistan. Entry No. 30 included in its fold the control of stock exchanges and future markets with objects and business not confined to one Province. Similarly, Entry No. 31 deals with the incorporation, regulation and winding-up of trading corporations, including banking, insurance and financial corporations, but not including corporations owned or controlled by a Province and carrying on business only within that Province, or cooperative societies, and of corporations, whether trading or not, with objects not confined to a Province, but not including universities. Likewise, Entry No. 43 mandated the Federal Government to levy duties of customs, including export duties and Entry No. 44 provided for duties of excise, including duties on salt, but not including duties on alcoholic liquors, opium and other narcotics.

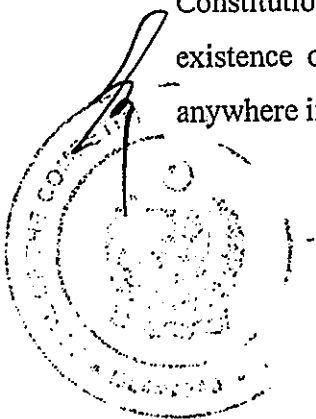
75. The Constitutional framework above makes it abundantly clear that if an activity, organization, trade or commerce is confined within the territorial limits of a Province it does not fall within the ambit of legislative powers of Parliament. However, the nature, usage and performance of products and services is diametrically different. The lifespan of products and services stretches from point of production or manufacturing to point(s) of sale and point of consumption. In a regime of free interprovincial trade, a product may be manufactured in Karachi, resold in Rawalpindi and consumed in Gilgit. Restricting the commerce and trade of even the smallest of products and services like use of a match box or sale of cigarettes to the territorial limits of a single Province is practically impossible on the following grounds:

- a. Interprovincial points of entry and exit or customs frontiers neither exist nor controlled or manned by any Province especially for the regulation of trade in goods and services;
- b. Sub-national accounts like GDP, GNP, balance of trade and balance of payment are not maintained, calculated or reported by any of the Provinces to keep account of interprovincial trade;



- c. Most of the undertakings including the Respondents are employing the following devices to reach out their customers all over Pakistan:
- i. Advertisements, promotions and marketing via national dailies, electronic media, official websites or social networks go worldwide; well beyond the territory of a single Province;
  - ii. Online sales by the undertakings happening in the virtual world have a widespread adoption to reach the remotest areas of Pakistan. Hence, consumers are no longer constrained by geographical boundaries when making purchases;
  - iii. Undertakings enter into contractual arrangements with a network of dealers spread all over Pakistan for distribution and sale of their products or services; and
  - iv. Sales of goods and services conducted through third party e-commerce platforms is rapidly gaining traction in Pakistan conveniently targeting the customers at home and abroad. Customers may place orders online through various digital platforms, regardless of their physical location.
- d. Skilled and semi-skilled labour migrates from all the Provinces and Areas to provide their services in the industrial clusters, manufacturing hubs and centers of business and commerce and invariably bring their products alongwith them on their way back home;
- e. Markets in twin-cities of Islamabad-Rawalpindi constitute a melting pot/mixing bowl for interprovincial marketing, sales and trade across multiple federating units including Punjab, ICT, KP, Azad Kashmir and Gilgit- Baltistan; and
- f. Cantonments are federally administered areas established within the Provincial limits and controlled under the Cantonments Act, 1924 and rules framed thereunder. Similarly, airports, seaports and customs frontiers although situated in Provincial jurisdictions are controlled by the Federation of Pakistan. All these establishments employ the services of manpower gathered from entire Pakistan. Likewise, the undertakings located in such federal areas, therefore, conduct their business with two or more federating units.

76. In view of the factual evidence examined above, a spillover effect does not require a strict physical linkage between various geographic markets or Provinces. Moreover, the Constitution does not define inter-provincial commerce in narrow terms. Consequent upon existence of dealership networks, online sales and e-commerce a consumer stationed anywhere in Pakistan or abroad is equally able to procure goods or services from any dealer

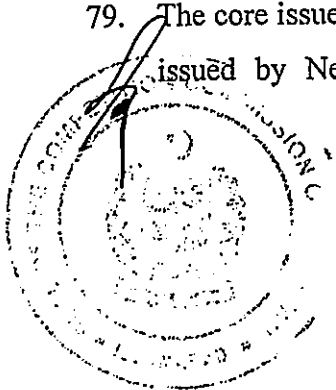


or agent operating anywhere in the country. This unrestricted access and cross-territorial commercial interaction clearly demonstrate the existence and operation of a spill-over effect. It is accordingly concluded that spillover of the business, trade or commerce of any undertaking beyond the territorial limits of a Province or federating unit is a norm and any exception have to be established with the help of credible evidence.

77. In the instant case, electrical cables are critical input for communications, energy, housing and infrastructure projects distributed through networks of contractors, dealers and suppliers frequently operating across multiple Provinces. A massive consignment originating from the manufacturing Province is capable of influencing procurement and supply arrangements in distant markets of Karachi, Lahore, Peshawar and Quetta. Such an impact of goods movement clearly demonstrates that the market for electrical cables functions on a national scale with sale and supplies in one region having a direct and material bearing on demand and pricing in others. None of the Respondents had produced any evidence to the contrary to show that the supply of electrical cables and its impact was confined to a single Province.
78. For the reasons discussed above, the Bench concludes that there is no force or persuasion in the stance of Newage as it lacks legal authority or economic reasoning. The nature of cable industry, where dealers and contractors routinely operate across multiple cities and Provinces and supply projects at the national scale, renders the Respondent's argument unsustainable. Therefore, the conduct attributed to the Respondents by its nature (sales via e-commerce, online orders and nationwide network of dealers) and effect (wider impact on demand, supply and prices), as implemented through their dealership arrangements, extended beyond localized markets and gave rise to spillover effects across provincial boundaries.

***ISSUE V: Whether the "Retail Discount Policy" dated 04.08.2021 issued by Newage constitute resale price maintenance, and if so, whether such conduct amounts to a contravention of Section 4(1) read with Section 4(2)(a) of the Act?***

79. The core issue before the Bench is whether the "Retail Discount Policy" dated 04.08.2021 issued by Newage constitutes RPM arrangements, thereby amounting to prohibited



agreement within the meaning of Section 4(1) read with Section 4(2)(a) of the Act. Section 4(1) read with Section 4(2)(a) of the Act are reproduced hereunder:

*“(1) No undertaking or association of undertakings shall enter into any agreement or, in the case of an association of undertakings, shall make a decision in respect of the production, supply, distribution, acquisition or control of goods or the provision of services which have the object or effect of preventing, restricting, or reducing competition within the relevant market unless exempted under section 5.”*

*“(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;*

80. The entire scheme of Section 4 of the Act revolves around the term “*agreement*” as defined under Section 2(1)(b) in the following terms:

*“agreement” includes any arrangement, understanding or practice, whether or not it is in writing or intended to be legally enforceable.”*

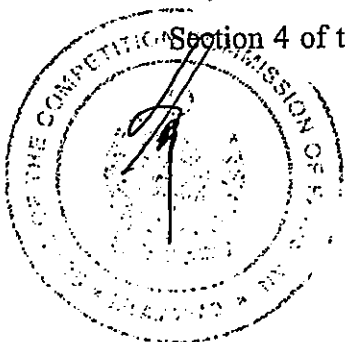
81. In view of Section 4 of the Act, the Commission has in its previous orders, most notably in the matter of *Pakistan Jute Mills Association and its Member Mills (Order dated 3 February 2011)*, observed as follows:

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

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

82. It follows from the above that any practice or arrangement that persists within a given market or industry, whether or not it is embodied in a formal or legally binding instrument, may fall within the meaning of an “*agreement*” and is therefore subject to scrutiny under

Section 4 of the Act. This principle has been reaffirmed by the Commission in its earlier



decisions, including APCMA and Cement Manufacturers case, reported as 2010 CLD 1586.

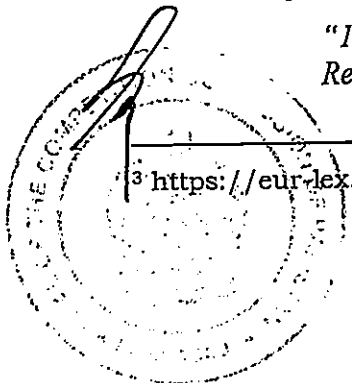
83. Applying these settled principles to the instant matter, the Bench observes that the *Retail Discount Policy* issued by Newage taken together with the relevant dealership arrangements, clearly amount to “agreements” for the purposes of Section 2(1)(b) of the Act. Such arrangements need not be legally enforceable contracts in the strict sense; it is sufficient that they set out rules of conduct, pricing limits, or obligations binding dealers to a uniform course of action. As such, the practices of Newage, whether formalized in dealership agreements or conveyed through circulars, irrespective of the form, fall squarely within the definition of “agreement” under Section 2(1)(b) of the Act.
84. The principle is further reflected in the DEL/Haier Order, where the Commission explained that vertical arrangements imposing resale price floors, minimum price requirements, or discount restrictions are classic RPM practices falling within Section 4(2)(a) of the Act. At paragraph 52 of the decision, the Commission explained:

*“Such arrangements are commonly known as RPM arrangement, which generally occurs at different levels of the supply chain and consist of characteristics such as mandatory condition imposed by suppliers to not sell a product below a certain price, sell the goods at a certain price, agreed discount, or at no discount at all. This may be done either by means of a threat, promise or agreement or due to a refusal to supply or any other means of discrimination against consumers/retailers because of the supplier’s pricing policy.”*

85. This reasoning is consistent with established international jurisprudence where RPM is treated as a vertical restriction because it diminishes intra-brand and even inter-dealers (outlets) competition. In Volkswagen AG (Case COMP/F-2/36.693-Volkswagen dated June 29, 2001), the European Commission condemned contractual policies preventing dealers from independently determining resale prices.
86. The **EU Guidelines on Vertical Restraints (2022/C 248/01)**, paragraphs 186–187<sup>3</sup>, including the illustrative list of RPM mechanisms, provide that:

*“185. The hardcore restriction set out in Article 4, point (a) of Regulation (EU) 2022/720 concerns resale price maintenance*

<sup>3</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022XC0630\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022XC0630(01))



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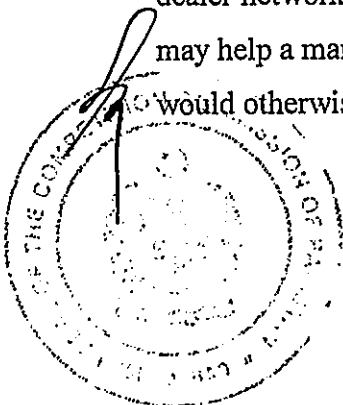
*('RPM'), that is, agreements which, directly or indirectly, have the object of restricting the buyer's ability to determine its sale price, including those which establish a fixed or minimum sale price to be observed by the buyer (103). A requirement for the buyer to set its sale price within a certain range is RPM within the meaning of Article 4, point (a) of the Regulation."*

*"186. RPM can be applied through direct means. This is the case for contractual provisions or concerted practices that directly set the price that the buyer must charge to its customers (104), or which allow the supplier to set the resale price, or which prohibit the buyer from selling below a certain price level. The restriction is also clear-cut where the supplier requests a price increase and the buyer complies with the request."*

*"187. RPM can also be applied through indirect means, including incentives to observe a minimum price or disincentives to deviate from a minimum price. The following examples provide a non-exhaustive list of such indirect means:*

- (a) fixing the resale margin;*
- (b) fixing the maximum level of discount that the distributor can grant from a prescribed price level;*
- (c) making the grant of rebates or the reimbursement of promotional costs by the supplier subject to the observance of a given price level;*
- (d) imposing minimum advertised prices ('MAPs'), which prohibit the distributor from advertising prices below a level set by the supplier;*
- (e) linking the prescribed resale price to the resale prices of competitors;*
- (f) threats, intimidations, warnings, penalties, delay or suspension of deliveries or contract terminations in relation to the observance of a given price level."*

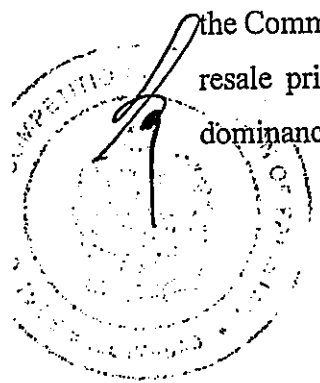
87. Furthermore, Para 196 of the referred Guidelines provides that RPM can weaken competition in several ways. It may make it easier for suppliers in concentrated markets to keep prices aligned by increasing transparency and helping detect any deviation from an agreed price. It can also support collusion among retailers, especially where powerful or organized distributors press suppliers to hold resale prices above competitive levels, using RPM as a practical tool to stop discounting. When several manufacturers rely on the same dealer networks, RPM can also soften competition between both suppliers and retailers. It may help a manufacturer protect its own margins by preventing downstream price cuts that would otherwise force reductions in wholesale prices. By suppressing price competition at



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the retail level, RPM can make it harder for more efficient or innovative distributors to enter or grow. It can also be used by a supplier with market power to edge out smaller rivals by giving dealers higher margins on its own brand, prompting them to give its products preferential treatment. Most directly, RPM removes intra-brand price competition and pushes prices upward precisely the type of harm reflected in the discount-control notice, sanctions and monitoring practices attributed to the Respondent in the instant case.

88. Turning specifically to Newage, the record demonstrates the existence of a binding RPM scheme. The Retail Discount Policy dated 04.08.2021, reproduced in the Enquiry Report, restricted discounts to a maximum of 23% on credit sales and 25% on cash sales, with effect from 10.08.2021. The circular announced that a Retail Audit Team would start market survey from 15.08.2021 onwards in order to identify the violators involved in business activities against the company policy. The policy further stipulated that any dealer found in violation of its terms could be subjected to severe measures, including termination of the dealership agreement, and therefore all dealers must ensure strict compliance with the said policy.
89. The dealership agreement further confirmed that as per retail distribution policy all dealerships were bound to retail/wholesale company products according to printed & permitted discounts. These measures were not merely nominal in nature but real and enforceable. The Enquiry Report concluded that through the imposition of various penalties, the Respondent had not only coerced dealers to ensure compliance to its policies but also placed consumers at a disadvantage by taking away the opportunity to bargain beyond a certain range.
90. Based on these facts, the Bench finds that Newage's conduct fulfils all the attributes of RPM. The imposition of discount ceilings deprived dealers of the ability to determine resale prices independently. The policies created a uniform pricing ceiling which was restrictive of intra-brand competition. Moreover, the policies and enforcement through audits and warning of termination of their contracts, left the dealers with no commercial freedom to operate and compete on prices in the market.
91. The defense that discount ceilings are distinct from fixing resale prices is misconceived. As the Commission held in the *DEL/Haier Order*, limitations on discounts, even short of fixed resale prices, are restrictions "by object." Similarly, the argument that Newage lacked dominance or that such practices were common in the sector is irrelevant. While, "everyone



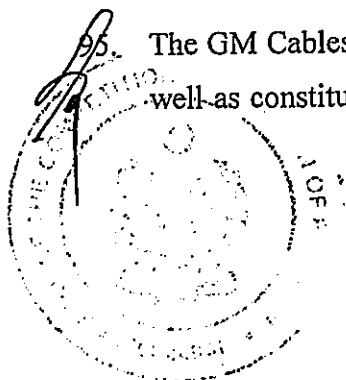
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else is doing it" or industry custom defence is no legal justification for any illegal act but an admission of guilt rather than a protection against liability. Moreover, the Respondent failed to produce any evidence to the effect that other players in the industry were also employing discount restrictions upon their dealers. Likewise, Newage utterly failed to establish that it was being singled out and discriminated against in any manner. Section 4 applies irrespective of market share, and established principles of competition law, both domestic and the European, have long recognized RPM as a restriction "by object," requiring no detailed analysis of effects.

92. In the case of Newage; the evidence reveals a deliberate and structured policy of RPM. The Retail Discount Policy dated 04.08.2021, by prescribing a maximum discount ceiling of 23% on credit sales and 25% on cash sales, and by threatening cancellation of dealership through a Retail Audit Team, created a binding and enforceable scheme of price control. This was not an isolated instruction but part of a broader arrangement memorialized in dealership agreements, which explicitly bound dealers to adhere to "printed and permitted discounts."
93. The Bench finds that prescribing a maximum discount ceiling of 23% on credit sales and 25% on cash sales, incorporation discount policy in dealership agreements and enforcement mechanism for the same deprived dealers of their commercial autonomy, eliminated intra-brand and even its inter-dealer (outlet) competition, and constrained consumer choices, thereby satisfying all elements of RPM under Section 4(2)(a) of the Act. The defense that the policy merely capped discounts rather than fixing resale prices is legally untenable, as jurisprudence from both domestic and international fora recognizes that discount ceilings constitute RPM.
94. Accordingly, the Bench holds that Newage Cables implemented RPM, amounting to a contravention of Section 4(1) read with Section 4(2)(a) of the Act.

**ISSUE VI:** *Whether the "Notice for Rate Control" dated 01.08.2021 allegedly attributable to GM Cables constitute resale price maintenance, and if so, whether such conduct amounts to a contravention of Section 4(1) read with Section 4(2)(a) of the Act?*

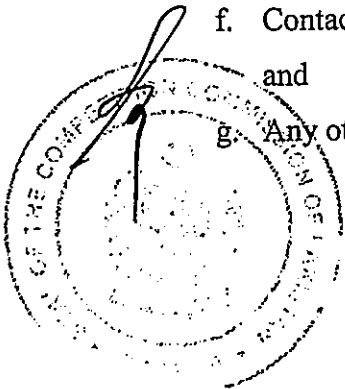
95. The GM Cables in its defence challenged the legality of initiation of the enquiry u/s 37 as well as constitution of the EC. It denied of having any linkage with the "Notice for Rate



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Control” dated 01.08.2021; an unsigned document having no evidential value in law. While, the documents attributed to Newage clearly had signatures and official stamps of its authorized officers, the piece of paper sought to be used against the Respondent was devoid of any such indicia. The Counsel for the Respondent asserted that the Circular dated 23.11.2022 did not constitute any agreement, arrangement or understanding prohibited under Section 4 of the Act as it did not fix prices but was intended to prevent the circulation of counterfeit products and jurisprudence recognizes that circulars or warnings urging dealers not to deviate from a non-binding recommended sale price did not amount to price-fixing.

96. The case against GM Cables is factually more complex and nuanced. The alleged Notice for Rate Control dated 01.08.2021 limited discounts to 9% and warned that getting caught on first instance of undercutting or supplying to non-dealers would result in deduction of an amount equivalent to cost of stocks purchased and associated expenses from its discount and repeating the same could lead to imposition of fine along-with cancellation of the dealerships. The notice further stated that the company had formed inspection teams with authority to visit dealers at any time. The alleged practice by an undertaking to manipulate the pricing of a product amounts to violation of Section 4(2)(a) of the Act especially when such practice is coupled with a warning of penalties.
97. The EC informed the GM Cables vide its letter dated 01-12-2022 that the Commission had initiated an enquiry u/s 37(1) of the Act to probe into issues concerning terms and conditions of its arrangements with its dealers which could have ramifications on the competition in the industry and requested to provide the following information:
- a. A brief supply chain of its products;
  - b. Copies of its dealership agreements;
  - c. Copies of all circulars/notices issued to dealers during 2021-22;
  - d. List of names and addresses of its authorized dealers across Pakistan and Retail Discount Policy 2021-22;
  - e. Details of any exclusive agreements signed with dealers currently or previously in recent years;
  - f. Contact details of focal person nominated for communication with the Respondent;
- and
- g. Any other information that it deems persistent and wish to add.



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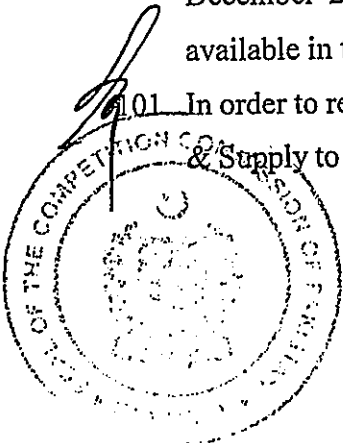
98. M/s GM Cables; Respondent No. 2 replied to the EC vide letter dated 13.02.2023 that most of the information required by it was available on the undertaking's official website, however, for the assistance of the Commission it furnished the information as follows:

- a. Its products are directly supplied to the dealers without involving any middleman;
- b. There are no specific agreements with dealers but dealership certificates are issued to the dealers (some copies attached);
- c. It issued circulars and notices to the dealers during 2021-22 (copies attached);
- d. The list of names and addresses of dealers already shared with the Commission and M/s GM Cables offered certain percentage of discounts at Price List of the company during 2021-22;
- e. It has not executed any exclusive agreements with the dealers either currently or in the previous years; and
- f. Mr. Javed Iqbal, Accounts Manager is nominated as focal person to communicate with the EC.

99. The Respondent provided dealership certificates issued on its letterhead to M/s Shafiq Electric Store (155) for Chowk Begum Kot, Jaranwala Road and M/s Sadiq Brothers Electric Store (037) for Bhattah Chowk, Lahore having validity till December 31, 2016. Both the certificate had already expired and did not bear any number, date, stamp or signature and were issued for specific areas (territorial exclusivity). Similarly, GM Cables appended an undated Urdu Circular for Loyal Friends (Electricians) issued on its letterhead but bearing no number, stamp or signature except 2 x WhatsApp Nos. for reporting and also attached a Dealer Information Notice in Urdu dated 23-11-2022. The said Notice too is issued on company letterhead but bears no number, stamp or signature.

100. In response to a requisition of EC dated 12.07.2023 GM Cables in its letter dated 19-07-2023 informed that its price lists rapidly change from time to time due to the prevalent economic situation of the country and, therefore, the company did not keep the record of its previous price lists. However, in response to the EC Letter dated 24.07.2023 GM Cables provided its price lists for the period of June 2021 to December 2021 and June 2022 to December 2022. Nothing about percentage of discounts offered at the Price Lists was available in the Price Lists shared with the EC.

101. In order to reach a fair conclusion the comparison of Notice for Rate Control, Undercutting & Supply to Non-Dealers dated 01-8-2021 and Dealer Awareness Notice dated 23-11-2022

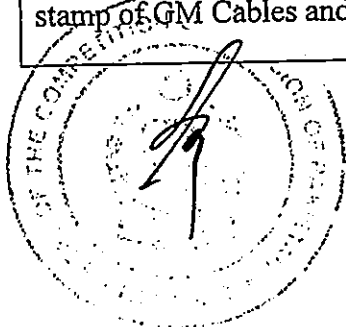


and analysis of the documents submitted by the Respondent No. 2 is critically important.

The details of the 2 circulars are tabulated below:

**Comparison of 2 Circulars by GM Cable**

<b>Notice for Rate Control, Undercutting &amp; Supply to Non-Dealers dated 01-8-2021</b>	<b>Dealer Awareness Notice dated 23-11-2022</b>
<p>i. It is a notice to address the complaints of <b><u>undercutting and supplies to non-dealers</u></b>;</p> <p>ii. The Company offers a discount of 9% to dealers so they must not offer discount beyond 9%;</p> <p>iii. Special discount above 9% shall only be allowed to the dealer observing the following conditions:</p> <ol style="list-style-type: none"> <li>Not involved in undercutting;</li> <li>Not supplying to non-dealers;</li> <li>Having significant sales; and</li> <li>Displaying logo of GM Cables.</li> </ol>	<p>i. The Company has again started receiving complaints of <b><u>undercutting and supplies to non-dealers</u></b>. These actions lead to curtailing the rights of other dealers and are in violation of the Company Policy.</p>
<p>iv. The Company notified the dealers that in case of non-compliance:</p> <ol style="list-style-type: none"> <li>On first violation the company will deduct an amount equivalent to cost of stocks purchased and associated expenses from its discount;</li> <li>Second violation will be fined along-with the cancellation of the dealerships.</li> </ol> <p>v. Teams constituted by the company may check the dealers anytime.</p> <p>vi. All the disputes will be settled through the Courts in Lahore</p>	<p>ii. The Company has constituted teams to inspect various dealers in different cities. Dealers are warned that following actions will be taken against the ones found involved in either <b><u>undercutting or supply to non-dealers</u></b>:</p> <ol style="list-style-type: none"> <li>Supply of all products of G.M. Cables will be stopped;</li> <li>Violators will be heavily fined; and</li> <li>Company may also cancel their dealership.</li> </ol>
<p>Signature of Dealer: ----- Stamp of Dealer: -----</p>	<p>Company hoped of a great cooperation from the dealers and thanked them for complying with Company Policies.</p>
<p>Dated: 01-08-2021</p>	<p>Dated above with the subject of Notice</p>
<p><b>Company:</b> <b>GM Cables and Pipes at the bottom of Notice</b></p>	<p>Company Name as Letterhead</p>
<p>Printed in Urdu on plain paper and bearing no signature or stamp of GM Cables and Pipes.</p>	<p>Printed in Urdu on the Letterhead of the Company and bearing no signature or stamp.</p>



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102. On its face, the alleged Notice for Rate Control, Undercutting & Supply to Non-Dealers dated 01-8-2021 carried all the elements of RPM such as discount ceilings, penalties for non-compliance and monitoring powers. GM Cables, however, denied issuing the notice, arguing that it was unsigned and had no connection to the company. However, subsequent Dealer Awareness Notice dated 23-11-2022, printed on the company's letterhead and placed on record, was declared by GM Cables to be part of a counterfeit-prevention campaign rather than an agreement or price-control measure. The Bench observes that both the circulars included penalties for non-compliance so none of the two qualified as a non-binding recommended sale price or advice about discount policy.
103. The opening narrative in Dealer Awareness Notice dated 23-11-2022 states that the Company has again started receiving complaints of undercutting and supplies to non-dealers. These actions lead to curtailing the rights of other dealers and are in violation of the Company Policy. The core message informs that the Company has constituted teams to inspect various dealers in different cities. Dealers are warned that notified penalties will be imposed upon the ones found involved in either undercutting or supply to non-dealers. The Notice hoped of a great cooperation from the dealers and thanked them for complying with Company Policies.
104. The undercutting by its dealers has not been explained by the Respondent in any of its replies or submissions. In sales the term primarily means selling the products at prices lower than those notified by the company as dealers have no reason to sell below their purchase price. Such pricing parameters (floor or ceiling) are apparently communicated to dealers through written and/or verbal arrangements. Dealer Awareness Notice dated 23-11-2022 is an evidence of the existence of benchmark prices determined through company policy and consequences of deviation from such benchmark prices. Such arrangements appear to place a restriction on the dealers' independent ability to determine resale prices.
105. The restriction related to the sale of products to un-authorized dealers appears to be governed through exclusivity-based arrangements. This indicates that multiple forms of sales by the dealers are deemed to be inconsistent with the company's policy and, hence, liable to penal action. The ban on supplying products to non-dealers may amount to an exclusive distribution arrangement within the meaning of Section 4(2)(c) of the Act, if found to have the object or effect of preventing, restricting, or reducing competition.



106. M/s GM Cables; the Respondent No. 2 vehemently denied the existence of dealership agreements with its dealers or any policy circulars/notices except the dealership certificates and an undated Urdu Circular for Loyal Friends (Electricians) and Dealer Information Notice dated 23-11-2022. Neither any of these documents nor Price Lists for the period of June 2021 to December 2021 and June 2022 to December 2022 provided to EC furnish any information about percentage of discounts offered at the Price Lists or pricing policy of the undertaking being followed by its dealers. However, the learned counsel for the undertaking categorically denied of having taken any punitive action against the non-compliant dealers meaning thereby that the understanding was working well between the Respondent and its dealers.

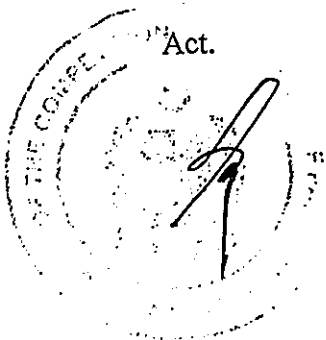
107. The comparison of Notice for Rate Control, Undercutting & Supply to Non-Dealers dated 01-8-2021 with Dealer Awareness Notice dated 23-11-2022 reveals that the later one is a continuation of the earlier notice in substance, tone and tenor except for a 9% cap on the discounts to be offered. Hence, the Respondent is not justified to simultaneously take two contradictory positions about non-existence of dealership agreements or any understanding or practice to that effect and disown Notice for Rate Control, Undercutting & Supply to Non-Dealers dated 01-8-2021 as no other document sets forth the discount policy, rate control restrictions and benchmarks for undercutting.

108. The Commission has explained in its Guidelines on Prohibited Agreements that:

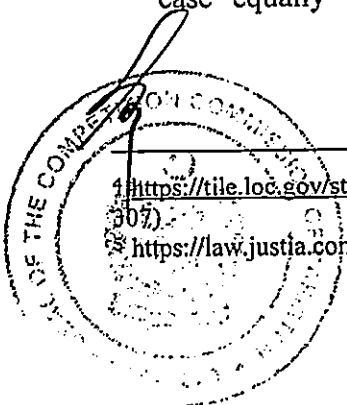
"The application of Section 4 is not limited to formal contracts. Rather, it applies also to cooperation achieved through informal agreements, understandings, concerted practices or decisions of an association of undertakings. 'Agreement' has a wide meaning and includes both legally enforceable and non-enforceable 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)*

109. Accordingly, in view of the expansive interpretation given to the term agreement, a circular, notice or message on plain paper, if attributable to the Respondent, will qualify as an understanding or arrangement or practice constituting an agreement for the purposes of the



110. The Bench has also examined whether GM Cables conduct is protected under the Colgate doctrine. In Colgate case, the U.S. Supreme Court observed that *“In the absence of any purpose to create or maintain a monopoly, the act does not restrict the long recognized right of trader or manufacturer engaged in an entirely private business, freely to exercise his own independent discretion as to parties with whom he will deal. And, of course, he may announce in advance the circumstances under which he will refuse to sell”*<sup>4</sup> The principle underlying Colgate doctrine is narrow. A manufacturer or supplier may unilaterally announce resale prices and refuse to deal with non-compliant resellers provided that no agreement, coercion, concerted practice, or enforcement mechanism accompanies such announcement. Thus, the Colgate doctrine tolerates unilateral conduct only.
111. In the present matter, however, the facts before the Bench are materially different. Unlike Colgate, the Respondent’s conduct involved discount restrictions, penalties, and enforcement through inspection teams, audits and termination threats, which went beyond mere unilateral announcements and constituted enforceable arrangements. These elements constitute enforceable agreement. Accordingly, the Respondents’ practices go beyond mere announcement and refusal to deal and fall within the scope of Section 4(2)(a) read with Section 4(1) of the Act. The Colgate doctrine, therefore, provides no protection to the Respondents.
112. This position is reinforced by the reasoning of the Kansas Supreme Court in *O’Brien v. Leegin Creative Leather Products, Inc.*, 294 Kan. 318, 277 P.3d 1062 (2012). The Court held that *“[t]he language of Brighton’s pricing policy certainly is subject to an inference that it was for the purpose of fixing prices and was designed to and tended to control the prices of Brighton’s goods.”*<sup>5</sup> The principle affirmed in *O’Brien* demonstrates that policies which deprive dealers of independent pricing discretion are not mere unilateral acts but amount to concerted restraints. Hence, the Colgate doctrine is not applicable in the cases of RPM arrangements between manufacturers, distributors, and retailers.
113. Applying this rationale, the discount ceilings and enforcement mechanisms in the present case equally warrant the inference of Resale Price Maintenance (RPM), and the



<sup>4</sup> <https://tile.loc.gov/storage-services/service/l1/usrep/usrep250/usrep250300/usrep250300.pdf> (Page. 250 U.S. 307).

<sup>5</sup> <https://law.justia.com/cases/kansas/supreme-court/2012/101000.html>

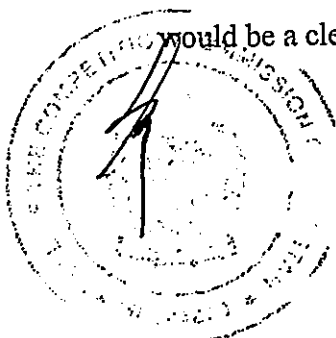
Respondent's conduct, therefore, appears to be in contravention of Section 4(1) read with Section 4(2)(a) of the Act.

114. Although GM Cables denied issuing the "Notice for Rate Control" dated 01.08.2021, the accompanying "Dealer Awareness Notice dated 23.11.2022" confirms its involvement in discount control and RMP practices. The document bore GM Cables internal branding and was distributed to dealers, who subsequently altered their pricing practices out of fear of supply disruptions. The notice limited discounts to a maximum of 9% alongwith an elaborate enforcement mechanism clearly constitute the essentials of RPM. The issuance of a subsequent "Dealer Awareness Circular" on 23.11.2022 styled as a measure against counterfeit products, contained clear message capable of being construed as discount control. This repetition undermines GM Cables defense and suggests a consistent strategy to influence downstream pricing. In Competition Law, it is well settled that attribution does not require formal execution or signature; what matters is whether the undertaking's conduct, taken as a whole, is capable of influencing the independent pricing decisions of dealers. The combination of documentary evidence and the consistent strategy of GM Cables as identified above, leads the Bench to conclude that GM Cables too, engaged in a policy of RPM.

115. The Bench is guided by the Commission's Order *In the Matter of Show Cause Notices issued to DEL Electronics (Pvt.) Limited* cited as 2022 CLD 670 that '*...no jurisdiction recognizes the use of any coercive device in the form of penalties/threats/sanctions as a measure applicable in a valid RPM arrangement...*'. Consequently, G.M. Cables's mandatory prohibition against undercutting coupled with warning of penalties in case of violation does constitute an RPM. Accordingly, we conclude that GM Cables implemented RPM, amounting to a contravention of Section 4(1) read with Section 4(2)(a) of the Act.

**ISSUE VII:** *Whether, in light of the protections guaranteed under Article 18 of the Constitution, the fixation of a maximum discount is permissible under the Act?*

116. The counsel for the Newage Cables argued that every company has its own market strategy and price structure, which is dependent on different factors and any interference in this would be a clear violation of Article 18 of the Constitution of Pakistan, 1973.



117. Article 18 of the Constitution grants every citizen the fundamental right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business subject to such qualifications as may be prescribed by law. However, this right is made subject to the regulation of trade, commerce or industry in the interest of free competition. Therefore, whilst every citizen is free to conduct any lawful business, he cannot in the guise of conducting a business engage in anti-competitive activities in contravention of the provisions of the Act.

118. The Bench takes guidance from a previous decision of the Commission, *In the Matter of Show Cause Notices issued to DEL Electronics (Pvt.) Limited* cited as 2022 CLD 670, it was held that:

*'...RPM arrangements, in whatever form, i.e., inter alia restricting discounts, fixing the price and/or setting a minimum or maximum price floor/ceiling, clearly fall under Section 4(2)(a) of the Act, amounting to a fixation of the selling price of a product/good, and are to be treated 'by object' as anti-competitive as it ultimately impacts both intra-brand and inter-brand competition, in whatever form...'*

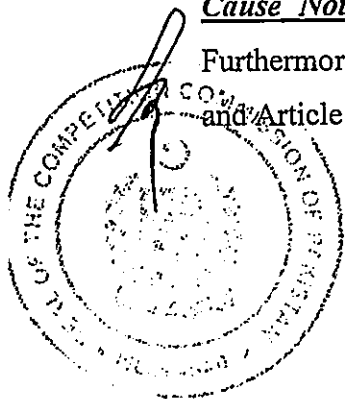
(emphasis supplied).

119. Therefore, the Bench is of the considered view that if any undertaking fixes a maximum discount which can be offered on its products, it violates Section 4(2)(a) of the Act, thereby harming free competition. Such a practice is not in accordance with Article 18 of the Constitution and in fact goes against its explicit command that businesses be regulated to ensure free competition amongst market players.

**ISSUE VIII: Whether dominant position is relevant in the proceedings under Section 4 of the Act?**

120. The Counsel for Newage argued that they did not hold dominant position within the relevant market and, therefore, proceedings under Section 4 of the Act could not be initiated against them. The Bench is of the view that the contention raised by the Respondents lacks merit as dominant position of an undertaking is irrelevant in proceedings initiated under Section 4 of the Act. This view has already been taken by the Commission *In the Matter of Show Cause Notices issued to DEL Electronics (Pvt.) Limited* cited as 2022 CLD 670.

Furthermore, para 185 of the 'European Commission's Guidelines on Vertical Restraints' and Article 4(a) of the 'Commission Regulation (EU) 2022/720' also list resale price

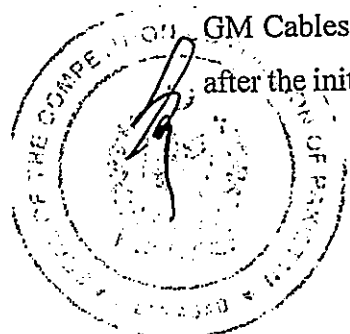


maintenance as a hardcore restriction which is not exempt from the provisions of Article 101 of the Treaty on the Functioning of the European Union (similar to Section 4 of the Competition Act, 2010).

121. Since resale price maintenance is treated as an agreement which is restrictive of competition by object, the size of the undertakings involved in such kind of an agreement is accordingly irrelevant.

## REMEDIES AND PENALTIES

122. Under Section 38 of the Act, the Commission is empowered to impose penalties on any undertaking found in contravention of the provisions of Chapter II. Such penalties may extend to an amount not exceeding PKR 75 million or ten percent of the undertaking's annual turnover. In determining the appropriate quantum, the Bench is guided by its Fining Guidelines, which require consideration of the nature, gravity, and duration of the infringement, together with any aggravating or mitigating circumstances.
123. Both Newage and GM Cables engaged in RPM in violation of Section 4(1) read with Section 4(2)(a) of the Act. Through internal policies and formal circulars, they imposed minimum resale price obligations on their dealers, thereby eliminating intra-brand price competition and reducing consumer choice. Such conduct constitutes a restriction "by object" within the meaning of Section 4.
124. In assessing the appropriate penalty, the Bench has taken into account several aggravating factors. First, the RPM arrangements were intentional and formalized, as evidenced by circulars bearing official branding. Second, the policies were widely disseminated across dealer networks and reinforced through explicit threats of suspension or termination, creating a coercive compliance environment. Third, the conduct was continuous rather than isolated, persisting over an extended period. The Bench observes that Newage Cables acted in a compliant and cooperative manner: it furnished the requested documents promptly and, on its own initiative, voluntarily offered to seek exemption under Section 5 of the Act for any potentially prohibited clauses in its agreements. However, in contrast, the conduct of GM Cables reflects a markedly different approach. Its infringing practices persisted even after the initiation of the enquiry, a circumstance the Bench regards as a serious aggravating



factor. Furthermore, GM Cables' denial of having issued its Notice for Rate Control, despite the presence of corroborating evidence, amounts to a deliberate attempt to withhold material information and obstruct the proceedings.

125. In light of the foregoing, the Commission imposes the following:

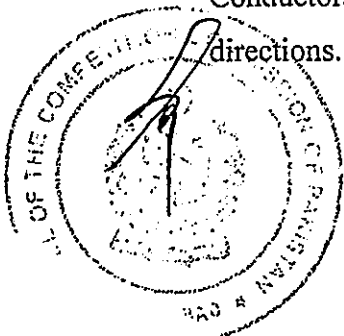
- (a) A penalty of PKR 75,000,000/- (Seventy Five Million Rupees), is imposed upon Newage for violation of Section 4(1) read with Section 4(2)(a) of the Act;
- (b) A penalty of 5% (Five) of its annual turnover for the financial year 2023-2024, which amounts to PKR 190,223,838/- (Rupees One Hundred Ninety Million Two Hundred Twenty Three Thousand Eight Hundred Thirty Eight Only) is imposed upon GM Cables for violation of Section 4(1) read with Section 4(2)(a) of the Act.

126. The Respondents are directed to deposit the penalties within sixty (60) days of the date of this Order. In case of default, an additional penalty of PKR 500,000/- (Rupees Five Hundred Thousand only) per day shall accrue under Section 38 of the Act until compliance is achieved.

127. The Respondents are further directed to:

- (a) Cease and desist immediately from issuing any future policies, circulars, or contractual clauses that impose minimum resale prices or otherwise restrict price competition;
- (b) Within thirty (30) days, issue a written clarification to all dealers and distributors, expressly withdrawing the pricing instructions identified in these proceedings, and confirming that resale prices are to be determined independently by dealers;
- (c) Submit to the Commission, within forty-five (45) days, a compliance report along with evidence of circulation of the above clarification;
- (d) Newage is directed to remove the provisions related to discount caps from its dealership agreements;


128. The Registrar of the Commission is directed to circulate this Order to all major Chambers of Commerce and Industry, as well as to the All Pakistan Cables and Conductors Association, to ensure wider awareness of the Commission's findings and directions.

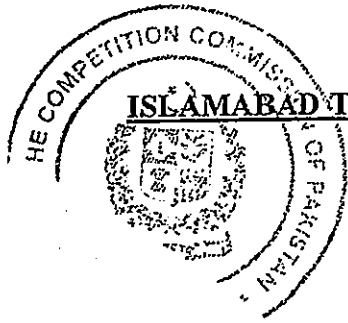


129. In view of the above, the Show Cause Notices stand disposed of.

130. Ordered accordingly.

  
Mr. Saeed Ahmad Nawaz  
*Member*

  
Ms. Bushra Naz Malik  
*Member*



**ISLAMABAD THE 18 DAY OF MARCH, 2026**

