BEFORE THE
COMPETITION COMMISSION OF PAKISTAN

IN THE MATTER OF SHOW CAUSE NOTICE ISSUED TO

M/S. PAKISTAN POULTRY ASSOCIATION
M/S. SADIQ POULTRY
M/S. HI-TECH GROUP OF COMPANIES
M/S. ISLAMABAD GROUP OF COMPANIES
M/S. OLYMPIA GROUP
M/S. JADEED GROUP OF COMPANIES
M/s. SUPREME FARMS
M/S. BIG BIRD GROUP
M/S. SABIR GROUP

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

(File No. 404/POULTRYSECTOR/C&TA/CCP/2021)

Date(s) of Hearing: 08.05.2024
21.05.2024
27.05.2024
29.05.2024
03.06.2024
04.06.2024
26.02.2025

Bench:

Dr. Kabir Ahmed Sidhu
Chairman

Abdul Rashid Sheikh
Member

Present on behalf of Respondents:

Pakistan Poultry Association **(Respondent No. 1)**	Mr. Ali Chughtai *Advocate High Court*
M/s. Sadiq Poultry **(Respondent No. 2)**	Mr. Khurram Sajjad *Manager Corporate Affairs*
M/s. Hi-Tech Group of Companies **(Respondent No. 3)**	Mr. Sarmad Munir *Advocate High Court* Mr. Tahir Islam *Zonal Sales Manager*
M/s. Islamabad Group of Companies **(Respondent No. 4)**	Mr. Aqif Majeed *Advocate High Court*
M/s. Olympia Group **(Respondent No. 5)**	Mr. Hamid Raza Naqvi *Advocate High Court*
M/s. Jadeed Group of Companies **(Respondent No. 6)**	Ms. Shazya Malik *Advocate High Court*
M/s. Supreme Farms **(Respondent No. 7)**	Mr. Waqas Ahmad Mir *Advocate High Court*
M/s. Big Bird Group **(Respondent No. 8)**	Mr. Mian Asghar Ali *Advocate Supreme Court* Muhammad Riaz *Company Secretary*
M/s. Sabir Group **(Respondent No. 9)**	Barrister Usman G. Rashid Cheema *Advocate Supreme Court*
Dr. Shahid Ali	*Poultry Expert*

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ORDER

1. This Order shall dispose of the proceedings initiated under the Show Cause Notices (**SCNs**) No. 02/2022, No. 03/2022, No. 04/2022, No. 05/2022, No. 06/2022, No. 07/2022, No. 08/2022, No. 09/2022, and No. 10/2022, dated 31.01.2022 issued to M/s Pakistan Poultry Association and its member undertakings under Section 30 of the Competition Act, 2010 (the "**Act**").

BACKGROUND

2. The Competition Commission of Pakistan (the "**Commission**") received multiple complaints through Prime Minister's Performance Delivery Unit, Pakistan Citizen's Portal and through Commission's online complaint portal pertaining to alleged collusion in prices of Day Old Chicks (**DOC**) during the period 2019 - 2021. The Complaints alleged that same / uniform high price is maintained by all the major hatcheries in DOC market.[1]

3. The Commission also received information that companies producing DOCs collectively decide (*Mushtaraka*) rate of DOC. Price sensitive information pertaining to DOC is being shared via text messages on behalf of these companies. The screenshots of text conversations showing the same were provided to the Commission.[2]

4. The screenshots showed that every day in the morning (around 10:00 am – 10:30)[3] between a daily advance rate is communicated by a senior employee of Big Bird Group (**BBG**), a major undertaking in the poultry sector, to the respondents. In case the advance rate is not communicated by 10:00 am, the conversation participants even enquired about the price.

5. The Commission assessed the complaints under Regulation Nos. 17, 18, and 19 of the Competition Commission of Pakistan (General Enforcement) Regulations, 2007 (the "**2007 Regulations**"), to conclude that though the complaints were informal, they raised a valid concern, sufficient for the Commission to initiate a *suo moto* enquiry under Section 37(1) of the Act.

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[1] Paras 2-3 of ER
[2] Para 4 of ER
[3] Para 78 of ER

ENQUIRY REPORT

6. On 21.05.2021, the Commission authorized an enquiry under Section 37(1) of the Act. Subsequently, on the recommendation of the Enquiry Committee, the Commission, on 31.05.2021, authorized two teams of officers to conduct an 'enter and search' inspection of the premises used by the Pakistan Poultry Association Northern Zone, located at Poultry House: 24, Block-R, Johar Town, Lahore, and the Big Bird Group, located at Head Office: 2-A, Ahmed Block, New Garden Town, Lahore (collectively the **'Premises'**). This authorization was granted pursuant to the Commission's power conferred by Section 34 of the Act to gather additional evidence regarding suspected violations of the Act.

7. The search resulted in collection of further evidence, including a letter appointing the Managing Director of BBG as the convener of PPA's Hatcheries Affairs Committee and existence of WhatsApp / SMS groups where price sensitive / advance rate information was being shared among the major competitors in DOC market.

8. On the basis of information and data gathered, the Enquiry Committee concluded that from 2019 to May 2021, the respondent undertakings had collectively discussed, shared and fixed prices which *prima facie* constituted violation of section 4(1) read with 4(2)(a) of the Act.[4]

9. Based on the recommendations in the Enquiry Report, the Commission initiated proceedings under section 30 of the Act.[5]

SHOW CAUSE NOTICES

10. On 24.01.2022 the Commission issued **SCNs** under Section 30 of the Act to the following undertakings:

(a) Pakistan Poultry Association - **Respondent No. 1**
(b) Sadiq Poultry - **Respondent No. 2**
(c) Hi-Tech Group of Companies - **Respondent No. 3**
(d) Islamabad Group of Companies - **Respondent No. 4**

[4] Paras 128, 167-168 of ER
[5] Para 175 of ER

(e)	Olympia Group	**- Respondent No. 5**
(f)	Jadeed Group of Companies	**- Respondent No. 6**
(g)	Supreme Farms	**- Respondent No. 7**
(h)	Big Bird Group	**- Respondent No. 8**
(i)	Sabir Group	**- Respondent No. 9**

(Collectively, referred as "**the Respondents**" or the "**Respondent Undertakings**")

11. The SCNs, based on the detailed enquiry and collected evidence, alleged that the Respondent Undertakings indulged in practices and entered into agreements with an object of preventing, restricting, and/or reducing competition in the relevant markets, which *prima facie*, constituted violation of Section 4(1) read with Section 4(2)(a) of the Act. The relevant portion of the SCN issued to PPA is reproduced below:

> *"7. WHEREAS, in terms of the Enquiry report in general and paragraphs 69-129 in particular, from 2019 to May 2022, it appears that PPA appointed official of BBG as Convener Standing Committee Hatchery Affairs which facilitated coordination amongst undertakings involved in the production and sale of DOC in collective discussion and decision on DOC prices and was also aware of the pricing decisions and announcements made through SMS and WhatsApp group of which its Secretary General is part of, which constitutes a prima facie violation of Section 4(1) read with Section 4(2)(a) of the Act; and*
>
> *8. **WHEREAS**, in view of the foregoing it appears that the Undertaking has entered into an agreement and/or engaged in practices with other undertakings involved in the production and sale of DOC in the relevant market which has the object or effect of preventing, restricting or reducing competition in the relevant market, which prima facie constitutes a violation of Section 4(1) read with Section 4(2(a) of the Act; and"*

The relevant portion of the SCNs issued to all other undertakings (which were identical) is reproduced below:

> *"7. **WHEREAS**, in terms of the Enquiry report in general and paragraphs 69-128 in particular, from 2019 to May 2022, the Undertaking along with other undertakings involved in production and sale of DOC in the relevant market have acted collectively to discuss, share and fix prices, which constitutes a prima facie violation of Section 4(1) read with Section 4(2)(a) of the Act; and*

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*8. **WHEREAS**, in view of the foregoing it appears that the Undertaking has entered into an agreement and/or engaged in practices with other undertakings involved in the production and sale of DOC in the relevant market which has the object or effect of preventing, restricting or reducing competition in the relevant market, which prima facie constitutes a violation of Section 4(1) read with Section 4(2(a) of the Act; and"*

12. The Respondent Undertakings were called upon to file replies to the SCNs as well as avail an opportunity to be heard through their duly authorized representatives at the office of the Commission in Islamabad. A copy of the Enquiry Report with all annexures was also enclosed along with each SCN for the Undertakings.

SUBMISSIONS

13. With similar arguments made in their individual replies and para-wise comments, the Respondents strongly refuted the accusations made in the SCNs. Below is a summary of the submissions made by each of the aforementioned Respondent Undertakings.

(a) Pakistan Poultry Association (PPA) – Respondent No. 1

(i) Referring to para 168 of the Enquiry Report, the PPA's counsel submitted that PPA's appointed official (Convener Standing Committee for Hatchery Affairs, Dr. Abdul Karim) was neither engaged in, nor coordinated with or facilitated the violators in discussions or decisions related to DOC prices. The appointment of the official for Hatchery Affairs was for lawful purposes, having no connection with any anti-competitive practices.

(ii) Even if it is assumed that the appointed official partook in the anti-competition conspiracy that would mean that the appointed official went beyond his mandate / authority.

(ii) There is no evidence of PPA's involvement in the matter.

(i) The official's tenure at PPA did not entirely cover the period of reported violation. The said official was appointed from 14 October 2020 – May 2021, whereas the period of reported violation spans from 2019 to May 2021. Moreover, there is no evidence that he was "aware of the ongoing alleged conspiracy preceding October 14th, 2020 in his individual capacity".

(ii) The majority of text messages (WhatsApp and SMS) among the group of eight undertakings, discussing and deciding the prices of DOC, were exchanged before October 14, 2020, hence their origin is not connected with PPA or its appointed official.

(iii) The evidence to connect PPA and its appointed official to the collusion is circumstantial. Citing Abraham v. Intermountain Health Care Inc., 461 F.3d 1249 (10th Cir. 2006) and Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574 (1986), the counsel argued that ambiguous and speculative evidence do not establish inference of an anti-competitive conspiracy. Similarly, citing Viaziz v. Am. Ass'n of Orthodontists, 314 F.3d 758 (5th Cir. 2002), he argued that insufficient circumstantial evidence does not infer an anti-competition conspiracy.

(iv) PPA was not aware of any anti-competition conspiracy or an independent price and production setting taking place over text messages (SMS and WhatsApp) which commenced from 2019 – 2021 among the eight undertakings. There does not exist any evidence to connect PPA to that SMS / WhatsApp communications. PPA neither held any meetings, nor did it condone any anti-competitive actions, or put its weight in deliberations, negotiations, and finalization of DOC price.

(v) PPA cannot be considered involved in any conspiracy simply because the eight undertakings were members of PPA. Citing In re Text Messaging Antitrust Litig., 46 F. Supp. 3d 788 (N.D. Ill. 2014), the counsel argued that not having knowledge of the on-going anti-competitive practices means PPA is not a violator and that an association cannot be held responsible for the conduct of their members (In Re Citric Acid Litigation, 191 F.3d 1090 (9th Cir. 1999)).

(vi) The presence of the PPA Secretary General in the WhatsApp group of the eight undertakings was for a legitimate reason. The Counsel admitted that PPA was only aware of the announcement of the daily DOC rates to be executed on each day without knowing the coordination, deliberation, and decision making to fix the rate. Citing In re Chocolate Confectionary Antitrust Litig., 999 F. Supp. 2d 777 (M.D. Pa. 2014) he argued that mere knowledge of anti-competitive activities do not constitute a violation of competition law.

(vii) Citing Toshiba Corp. v European Commission, ECLI: EU: T:2015:610, PPA submitted that just having awareness of existence of a cartel does not constitute a violation unless an undertaking contributes to the cartel common objective through its conduct and therefore, the mere presence of PPA Secretary General in the WhatsApp group does

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not mean PPA's involvement in the conspiracy since the Secretary General did not author any messages himself.

(viii) PPA was only collecting the publicly available price data. It was added that PPA does not sell DOCs. Citing Citric Acid case and In re Automobile Antitrust Cases I and II, 1 Cal.App.5th 127, 204 Cal. Rptr. 3d 330 (Cal. Ct. App. 2016), PPA argued that mere collection and providing of price and industry information does not constitute a violation. Citing Biljac Associates v. First Interstate Bank, 218 Cal.App.3d 1410, 267 Cal. Rptr. 819 (Cal. Ct. App. 1990), they argued that mere price fixing discussion in a trade association meeting does not constitute a violation unless a proof of an actual conspiracy or agreement is provided.

(ix) Citing In re Cal. Bail Bond Antitrust Litig., 511 F. Supp. 3d 1031 (N.D. Cal. 2021), the counsel submitted that trade associations take part in collective actions and PPA's mere existence as an association does not make it a co-conspirator. Relying on In re Graphics Processing Units Antitrust Litigation, 527 F. Supp. 2d 1011 (N.D. Cal. 2007), he added that even if some undertakings meet to fix prices at a trade show or a conference, it does not mean that other participants of the same show or conference had done likewise unless facts indicate of an anti-competition conspiracy among all. Similarly, citing Resco Prods., Inc. v. Bosai Minerals Grp. Co., 158 F. Supp. 3d 406 (W.D. Pa. 2016), it was argued that just having the opportunity to conspire does not constitute a violation or allows drawing an inference that an anti-competition conspiracy actually took place.

(x) PPA also raised objection that the Registrar is not authorized to issue the SCN, which should rather have been issued by the Commission since there is no evidence of delegation of such an authority to the Registrar to issue a SCN. Citing Mansab Ali v. Amir and 3 others PLD 1971 SC 124, the counsel argued that since the SCN was not issued in the manner prescribed, the entire proceedings are invalid.

(xi) Relying on LPG Association of Pakistan v. Federation of Pakistan 221 CLD 214, PPA submitted that the SCN did not specify any inter-provincial impact and citing Pakistan Telecommunication Company Ltd., 2019 CLD 116, it submitted that the SCN failed to mention how the matter is in public interest.

(xii) PPA submitted that the Commission failed to satisfy the test for initiating enquiries, as established by the Islamabad High Court in National Feeds Ltd. v. Competition Commission of Pakistan 2016 CLD 1688. The test required the Commission to initiate enquiry after establishing that the complaint is not frivolous or vexatious, is based on sufficient facts, and is substantiated by prima facie evidence. PPA argued that the

Commission initiated enquiry based on insufficient evidence in contravention of the test established in the above-said case.

(xiii) The Enquiry Officers exercised unlawful powers to enter and search the premises of PPA to seize and impound records therefrom. PPA added that the use of indirect evidence against PPA is unlawful under Section 24A of the General Clauses Act, 1897. The counsel argued that whenever circumstantial evidence is used, any inference should be drawn with "minute care and caution" and after a careful examination of the evidence as established under Naveed Asghar and two others v. The State, PLD 2021 SC 600.

(xiv) PPA quoted para 161 of the Enquiry Report which read that "no conclusive evidence is available on record which shows that the rates are being fixed in prima facie contravention of Section 4 of the Act" and alleged that yet the Enquiry Report tried to illegally establish a narrative against PPA and its involvement in anti-competitive activities in para 130 – 139 of the Report. Pointing to evidence used, PPA's counsel also mentioned that social media posts of an independent organization, i.e. Pakistan Layer Farmer Association (PLFA), attribute nothing to PPA since both are separate organizations.

(xv) On the hearing dated 08.05.2024, the counsel concluded his arguments. He reiterated the assertions already made in the reply to the SCN and in addition, made the submissions summarized in paragraphs below.

(xvi) He submitted that PPA was only aware of the price fixation activities but was not part of it and had no role in it; it was the other eight PPA member undertakings that acted on their own and took active part in price fixing activities. He said that there is no tangible evidence that there existed a nexus between PPA and eight other member undertakings.

(xvii) He added that PPA never authored any SMS or WhatsApp texts, nor did it create the WhatsApp or SMS group for price fixation, and the Secretary General of PPA was merely present there in the group.

(xviii) He further submitted that his client was only gathering pre-fixed price information which is not illegal and that mere awareness of price information does not allow inferring a participation in the conspiracy.

(xix) On the question about what PPA does with the pre-fixed price information gathered through WhatsApp / SMS groups, he said that PPA compiles this data for academic studies, observing trends, and government negotiations however when asked if he could mention any academic study or academic institution utilizing the price information

provided by his client as he claims, he said that he is not aware of any such studies or academic use.

(xx) He submitted that PPA's letter appointing Dr. Abdul Karim should not be stretched to mean anything more than a mere appointment as Convener of the Hatcheries Affairs Committee. Dr. Karim's role was only to look after quality of hatcheries, and government regulations etc.

(xxi) On a question by the Bench about what the PPA Hatcheries Affairs Committee does, and did it provide the undertakings with the platform to fix the DOC prices, he said that the Hatcheries Affairs Committee works on quality improvement, government relations, and negotiations with the government.

(xxii) PPA's counsel emphasized that PPA simply collected "advance rates" but did not fix them on which the Bench asked him why the advance rate was collected. If PPA required any price information, it should have independently collected and compiled it from all over different markets through surveys in which case it would have been the historical price data different for all different sources / markets / undertakings however here in this case, the PPA was found collecting uniform future price information only from the owners / single collective source at the start of the day. The counsel for the Respondent No. 1 said that the advance rate allowed his Client to know in advance what the price for the day would be.

(xxiii) The Bench asked PPA's counsel that since it was advance / future price information from a single collective source and that PPA has already been penalized in the past hence it should have been well aware of what anti-competitive practices are. Rather than being a silent spectator, why the Respondent No. 1 did not blow the whistle or distanced itself from the price fixing / anti-competitive activities? The counsel responded that his Client did not distance itself; it was only collecting price information which is a legal right of a trade association; and it did not participate beyond that. The discussion on what price to be fixed was among the member undertakings had nothing to do with his client.

(b) M/s. Sadiq Poultry - Respondent No. 2

14. Respondent No. 2 submitted its reply to the SCN on 03.03.2022 and alleged that the SCN makes "sweeping statements" and "unsubstantiated claims". It was also submitted that the response to the SCN is supplemental to its letter dated 23.02.2022 in Writ Petition 498 of

2022 (*M/s. Sadiq Poultry (Pvt.) Ltd. v. Federation of Pakistan & Others*). Respondent No. 2 made the following submissions:

(i) The SCN in paragraph no. 2 states that the Commission initiated the enquiry under Section 37 (1) of the Act whereas it was supposed to initiate the enquiry under Section 37 (2) of the Act since the Commission acted upon the complaints from Prime Minister's Complaint Portal and its own complaint portal.

(ii) The Commission did not take Sadiq Poultry (Pvt.) Ltd. on board during the enquiry and did not hear its stance rather the Commission sought information and collected data only from two undertakings which amounts to "selective witch hunt" and "tunnel vision approach".

(iii) The Commission "harbors misconceptions" and miserably failed to understand the dynamics of Day-Old Chicks (DOC) business.

(iv) The substantial part of the Enquiry Report talks about the egg and broiler chicken rather than the DOC. It was submitted that the Commission should first conduct a study under Section 37(3) of the Act so that Sadiq Poultry (Pvt.) Ltd. can participate and educate the Commission on DOC business that there is no cartelization at play.

(v) In the hearing dated 29.05.2024, the Representative for Respondent No. 2 submitted that they have already obtained an injunctive order from the Lahore High Court (Rawalpindi Bench) barring the Commission from issuing a final order.

(vi) Counsel concluded by submitting that in addition to his own submissions, the Respondent No. 2 is adopting the arguments made by other Respondents as well.

(c) Hi-Tech Group of Companies - Respondent No. 3

15. Hi-Tech Group submitted their reply to the SCN on 20.05.2024. It made the following submissions:

(i) There appears to be a misreporting since there never existed a cartel among the farmers engaged in DOC production.

(ii) Poultry business has a high research, maintenance, and specialized workforce cost; besides, the import of fertile grandparent eggs by a limited number of authorized international agencies / undertakings makes the business inherently competitive.

(iii) There is even a higher level of competition at the level of poultry feed and supplements since every producer has their own feed manufacturing units and procurers striving to outdo their competitors.

(iv) Raising DOCs require advance planning of at least six months which means the farmers cannot hold or halt production even on a three to four weeks' notice because they do not have storage capacity. This tilts the market in buyers' favor since the sellers must sell their production even at "throw away price".

(d) M/s. Islamabad Group of Companies - Respondent No. 4

16. Respondent No. 4 submitted its reply to the SCN on 04.06.2024. It made the following submissions:

(i) Existence of a cartel among farmers producing DOCs is a misreporting.

(ii) Due to extensive specialized research and huge investment involved, there are only a few brands of poultry in the world.

(iii) Pakistan only gets to import fertilized eggs of grandparent after due authorization which has limited the number of market players and they would have competitive feelings towards one another.

(iv) There is fierce competition even for chicken feed and supplements since every producer of DOCs is maintaining their own feed manufacturing units.

(v) Raising DOCs requires six months' advance planning and action; production cannot be halted since there is no storage capacity and sometimes farmers are forced to sale the DOCs at throw away prices, hence cartel creation is not possible.

(vi) The Enquiry was initiated without fulfilling legal pre-requisites and the SCN was issued based on an ex-parte Enquiry Report. Respondent No. 4 was not given any opportunity of hearing during the Enquiry.

(vii) The Enquiry Report recommends that the pricing of broiler chicken and eggs may be addressed through policy interventions whereas the matter of DOCs is singled out on behest of Broiler Farmers Association.

(viii) Broiler chicken and egg price is regulated by the Provincial Government whereas DOC is neither regulated nor does there exists any price mechanism for it.

(ix) In the hearing dated 04.06.2024, the Counsel for Respondent No. 4 stated that they have submitted a written reply to the SCN with the Registrar of the Commission, have obtained an injunctive order from Lahore High Court (Rawalpindi Bench) barring the Commission from issuing a final order, and said that he is adopting the arguments submitted by other respondents through their counsels.

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(e) M/s. Olympia Group - Respondent No. 5

17. Olympia Group submitted its reply to the SCN on 03.03.2022. The following submissions were made:

(i) The Commission acted upon fake and frivolous, informal complaints i.e., complaints not submitted in accordance with Regulation No. 17, 18, and 19 of the 2007 Regulations.

(ii) The Competition Commission Enquiry (Conduct of Investigating Officer) Rules, 2007, were not followed.

(iii) The Enquiry Officer did not communicate charges or provide the accused with a statement of allegations thus violated Rule 4(2)(a).

(iv) The accused were not given the opportunity to submit a written defense in seven days as required under Rule 4(2)(b).

(v) The accused were not given the opportunity to defend themselves, made aware of the charges, or cross examine the witnesses as required under Rule 4 (2) (c).

(vi) It is the mandate of the Commission to determine a relevant market not the Enquiry Committee however, the Enquiry Committee went beyond its mandate and assumed the role of the Commission itself in determining DOC as relevant market.

(vii) The Enquiry Committee acted in contravention of Section 34 of the Act and the Commission's authorization letter dated 31.05.2021 in seizing the mobile phones / personal devices of a person and retrieving data from such devices since neither the Section 34 nor the authorization letter gave the Committee any such authorization. Therefore data collection from the said devices is illegal, unauthorized, malafide, and unlawful and the Enquiry Committee shall therefore be penalized under Section 3 of the Competition Commission Enquiry (Conduct of Investigating Officer) Rules, 2007. Further, any data thus collected cannot be used as evidence under the law.

(viii) The Enquiry Committee failed to bring on record any evidence of fixed rates being actually implemented or that the persons accused actually sold the DOC on the fixed rates as alleged.

(ix) The Enquiry Committee assumed the role of Price Controller / Regulator while making allegations of fixing "exorbitant" prices of DOC against the undertakings. By doing so, the Committee acted against purpose of Section 4 (especially Section 4(2)(a)) of the Act which aims to prevent fixation of prices in a way that reduces competition in the market. If the findings of the Enquiry Report are accepted then it would mean that the

hatcheries all over Pakistan were making extra-ordinary profit which was the most favorable situation for new entrants and did not discourage competition in the market.

(x) The poultry industry is unregulated with thousands of producers producing substitutable products i.e., DOCs and the hatcheries market is highly saturated hence a few producers cannot decide and enforce a single price on the whole market. Besides, the perishable nature of DOCs makes it impossible for the hatcheries to manipulate the market.

(xi) In the hearing dated 21.05.2024, Counsel for Respondents No. 5 seconded by Counsel for Respondent No. 8, at the very outset, objected that there is an injunctive order issued by the Lahore High Court (Rawalpindi Bench) in the matter of Respondent No. 2 whereby the honorable Court has barred the Commission from issuing a final order. However, it was observed that the Court has not barred the proceedings from continuing. The Bench, therefore, after hearing the Counsels, decided to proceed with the hearing. The Counsel reiterated the assertions already made in the reply to the SCN and in addition, submitted the following.

(xii) The Enquiry Committee did not have the mandate to make recommendations to the Commission in the Enquiry Report, rather it was only authorized to conduct search and inspection.

(xiii) Paragraph 50 of the Enquiry Report says that 80% of the (Day Old Chick) DOC supply is carried out by 10 – 12 companies. However, the SCN was issued only to 8 undertakings and the other 2 – 4 undertakings were spared. The question was put to the Enquiry Officers who submitted that there was no evidence against the other undertakings and that they were not part of any WhatsApp / SMS communication groups where price sensitive information was being regularly exchanged.

(xiv) That the actual rate at which the Olympia Group sold DOCs was different from what was shared in the WhatsApp / SMS groups and posted online by the website (www.agbro.com). In this connection, the counsel sought the Bench's permission to submit supporting evidence such as bank statements, vouchers etc. to substantiate their claim and the Bench granted the permission.

(b) M/s. Jadeed Group of Companies - Respondent No. 6

18. Respondent No. 6 submitted its reply to the SCN on 17.02.2022 through their counsel. The following submissions were made:

(i) The Commission initiated a unilateral, arbitrary, and ex-parte inquiry based on third party record and Jadeed Group was never summoned during the enquiry.

(ii) The twenty-four days' time given for the submission of reply to the SCN is insufficient and the respondent reserves the right to submit a more detailed response at a later stage.

(iii) The SCN erred in law and facts; no element of mens rea is brought on record to deduce that the increase in price was a conscious effort by the respondent to create a cartel.

(iv) There is no data provided to support the allegation that the fixed price was followed.

(v) The formula for fixing the price of broiler and chicken varies from district to district therefore Section 4 of the Act is not violated.

(vi) There is no evidence of Jadeed Group communicating in the WhatsApp Group etc. hence they should not be jointly charged with the others.

(vii) The increase in price of DOC was due to certain factors such as placement of breeding stock, increased rate of poultry feed, poultry diseases, seasonal / environmental stress, depreciation of Pakistani rupee, custom duties, taxes, inflation, limited supply / production, national holidays, and marriage seasons. Therefore, the increase in price of DOCs was a normal phenomenon and Jadeed Group increased the price in good faith.

(viii) The Enquiry Report has not provided details of attendance of any special meeting for price fixing or production limiting wherein Jadeed Group participated.

(ix) The Jadeed Group is not aware of any anti-competitive activities referred to in the Report and there is no document, fact, material, or evidence that connects Jadeed Group with the alleged behavior.

(x) The enquiry was supposed to be confined to the issue of increase in the DOC price, but the scope was enlarged, and the mind of the enquiry officers was influenced by the prejudice of poultry and allied industry.

(xi) The issue of "excessive price increase" is not a competition concern; competition authorities are not price control authorities; the same should be dealt with under the Price Control and Prevention of Profiteering and Hoarding Act 1977. The Commission may look into the cases where two or more undertakings fix prices to distort competition but not just a price increase.

(xii) The Report has not alleged or established that there was an agreement to fix or increase the price of poultry feed.

(xiii) In the hearing dated 03.06.2024, The Counsel for Respondent No. 6 concluded her arguments. She reiterated the assertions already made in the reply to the SCN and in

addition, submitted that she is adopting the arguments submitted by other respondents through their counsels.

(xiv) Counsel submitted that Jadeed Group of Companies is not a legal entity, but it is a name for two separate corporate entities, Jadeed Oil Extraction (Pvt.) Ltd. and Jadeed Feeds Industries (Pvt.) Ltd. She argued that the Commission issued SCN to Jadeed Group of Companies that includes Jadeed Oil Extraction (Pvt.) Ltd. as well, which has nothing to do with poultry business.

(xv) Counsel mentioned that the Enquiry Report para 59 defines the Jadeed Group and identifies Jadeed Oil Extraction (Pvt.) Ltd. as one of the group companies. The SCN therefore should have been sent to the relevant undertaking so that an unrelated entity (Jadeed Oil Extraction (Pvt.) Ltd.) is not wrongly implicated. Additionally, she sought the Bench's permission to submit the organizational / corporate structure of her client to clarify the distinction between Jadeed Oil Extraction (Pvt.) Ltd. and Jadeed Feeds Industries (Pvt.) Ltd. The Bench granted her request.

(xvi) Counsel further submitted that the Enquiry Report was limited to price fixation only and did not investigate the production process. She submitted that no information was sought from her client who is one of the major players in the poultry market. She added that her client was not even asked about the actual rate at which they sold the DOCs and said that her client should have been given the opportunity to at least submit their data during the conduct of the enquiry.

(xvii) Counsel argued that none of the executives of Respondent No. 6 were part of the WhatsApp group. The Bench put the question to the Enquiry Officers who clarified that Mr. Atif and Mr. Shakir from Respondent No. 6 received the price information messages but did not respond to them.

(xviii) The Counsel submitted that while she is not aware of Mr. Shakir, Dr. Atif works with her client as Sales Manager and looks after sales and production.

(xix) The Bench asked the Enquiry Officers as to why no one from the Respondent No. 6 was interviewed during the Enquiry and the Officers submitted that they already had collected enough evidence and statements and did not need to interview anyone further for more information.

(xx) On a question by the Bench about their client's market share, the Counsel submitted that her client along with Hi-Tech Group has a 50% share of the DOC market and that the last CEO of Respondent No. 6 was also a Board Member of PPA.

(xxi) She sought Bench's permission to submit a study on perishability of DOCs that her client has done. The Bench granted her permission.

(xxii) She also submitted that her client takes advance orders after which farms are prepared for production and that the farmers are their regular customers, to whom they provide technical assistance and credit terms as well. She added that the tentative rate of DOC is fixed at the advance booking.

(g) M/s. Supreme Farms (Pvt.) Ltd. - Respondent No. 7

19. Supreme Farms submitted its reply to the SCN on 24.02.2022. The following submissions were made:

(i) The enquiry is based on frivolous and vexatious complaints and the data during the enquiry has been compiled using inauthentic sources of information, vague statements, and lacks any thorough research, credibility, or verification. They added that the enquiry officers collected data from unnamed individuals (who were not informed of the purpose of the information collection or warned against self-incrimination and are often the market defaulters) and a website (www.agbro.com) which is not a credible source of actual market price and is not run by someone operating in the poultry industry but a journalist; it appears that the enquiry officers did not conduct any on-ground survey or actual market visits hence, the evidence collected is inadmissible.

(ii) Supreme Farms will invoke its right to cross-examine those who provided the data for the enquiry.

(iii) The Commission does not have jurisdiction over the matter since the business of the respondent is only limited to one province (Punjab) with an overall market share of only 4% therefore it does not cross the "inter-provincial activities" threshold and hence, provincial authorities may deal with it not the Commission. They added that the SCN has failed to establish that the Respondent operates a business across the provincial lines and that the Commission erred in establishing jurisdiction simply based on the assumptions that DOCs can move easily across provinces and that DOCs produced in one province are substitutable with those in other provinces.

(iv) The Commission does not have the authority to access data stored on a mobile phone without obtaining permission from a court of law; this is also violative of the fundamental right to privacy. The Commission only has authority over computers, neither the Commission nor the FIA has any authority to hack into mobile devices

without a court order; such an action can only be taken while investigating under the Prevention of Electronic Crimes Act, 2016 that too with a court order; hence the evidence thus collected is illegal and inadmissible and therefore cannot be relied upon.

(v) They denied being part of a collusive agreement or practice and highlighted that since there is no collusion, a major market player (Hi-Tech Group) even had to shut down operations due to DOC market financial crisis.

(vi) They submitted that the life cycle of DOC sale is spread over one and a half years; the price of the DOCs is affected by demand and supply, production issues, weather, and capacity which are all the factors that the enquiry report ignored. They argued that the market price announced [in the WhatsApp / SMS groups] differs from the actual market price and submitted a list mentioning that their actual price was different from the SMS / WhatsApp group price on 209 days in the period from April 2019 till April 2021.

(vii) In the hearings dated 21.05.2024 and 27.05.2024, the counsel for Respondent No. 7, in addition to the assertions already made in the reply to the SCN, made further submissions which are noted below.

(viii) The enquiry was conducted over informal complaints however when the question was put to the Enquiry Officers, they clarified that the SCN and Enquiry Report both clearly mentioned that the enquiry was initiated by the Commission under Section 37 (1) of the Act, using its suo moto powers rather than Section 37(2) which relates to Complaints, referred by the counsel.

(ix) The counsel reiterated that the website (www.agbro.com) relied upon by the Committee, is run by a journalist having no poultry operation however when asked by the Commission as to which journalist he is referring to or what is the source of his claim, he submitted that he was not aware of him.

(x) The Commission is not complete in the eye of the law when it has only four members since a minimum of five members are required to complete the Commission. In relation to section 14 (7) of the Act whereby the acts and proceedings of the Commission are to be valid despite the absence or vacancy among members is not a free pass / license, he argued that Section 19 (4) of the Act defines vacancy as a vacancy created by death, resignation, or removal of a member only.

(xi) Citing the Commission's decision in the matter of Show Cause Notice issued to Pharma Bureau, 2019 CLD 115 para 69, the Counsel argued that mere price parallelism is not enough when relying on economic circumstantial evidence. The Commission will need to consider the price parallelism, "plus factors" as well. There may be price parallelism

in the instant matter since the price information was shared but there are no "plus factors". The discussed price was never actually implemented, which is a mitigating factor.

(xii) The instant case is that of an "incomplete scheme" since the individuals were not authorized by their respective companies, and they only communicated price.

(xiii) Respondent No. 1, as a trade association, may arrange training etc. for its members to change the culture of informal sensitive discussions.

(xiv) The Commission may issue recommendations rather than imposing fines; such a regulatory approach will yield more compliance from the industry.

(xv) In this matter, a fine is not merited due to the way evidence was collected and the enquiry was conducted. Evidence should have been authenticated and statements should have been taken by oath commissioners.

(xvi) The Enquiry Report only shows that there was price sharing and there might be price fixation discussion, but the report does not show any assessment that there was actual harm done.

(xvii) In an in-person meeting, distancing from a discussion is possible however in a WhatsApp conversation, it is not the same.

(xviii) Respondent No. 1 might be involved in anti-competitive activities, but Respondent No. 7 has nothing to do with it, therefore, the Commission should not impose a heavy fine.

(h) M/s. Big Bird Group - Respondent No. 8

20. Big Bird Group submitted its reply to the SCN through the counsel on 24.02.2022. The following submissions were made:

(i) Big Bird Group is not a legal entity hence a SCN cannot be issued to them and that the SCN contains baseless and false allegations which amount to "libel" and has harmed the business of the Respondent.

(ii) The PPA appointed convener of PPA Hatcheries Affairs Committee had the role of communication of issues faced by the members of PPA to the government authorities.

(iii) The Respondent is not involved in any anti-competitive activities, nor has it supervised or penalized anyone for not complying with any anti-competitive arrangement. Further, the search and inspection of the Respondent's office was illegal since the search authorization did not meet the criteria of Section 24 of the General Clauses Act and also failed to disclose adequate reasons.

(iv) The Respondent has not authorized, approved, or signed any arrangement which amounts to price fixing or cartelization and there is no primary evidence to prove otherwise. Further, there is not a single instance of the Respondent disclosing its price or cost data to the competitors.

(v) Citing Eastern R. Conference v. Noerr Motors, 365 U.S. 127 (1961), the Respondent argued that an interaction among the competitors and a communication of any collective proposals regarding demand in the market is not violative of competition laws.

(vi) In the hearings dated 21.05.2024 and 27.05.2024, the Counsel for Respondent No. 8 reiterated the assertions already made in the reply to the SCN and in addition, submitted the following:

(vii) The DOCs have to be sold within 24 hours; the stock cannot be held since their client does not produce DOCs based on prior booking / pre-booked orders. If the stock is not sold on the same day, it must be destroyed, hence, no cartelization is possible.

(viii) The primary and secondary evidence collected by the Enquiry Committee does not fulfil the criteria provided in Sections 73, 74, and 75 of the Qanoon-e-Shahadat Order, 1984.

(ix) The actual rate at which the DOCs were sold by Big Birds Group was different from the rate announced in the WhatsApp / SMS group and posted online on the website (www.agbro.com). With the permission of the Bench, the counsel submitted an unauthentic list of the rates at which his client, Respondent No. 8, has supposedly sold DOCs.

(x) Section 14 (1) of the Act says that the Commission shall consist of not less than five and not more than seven members. However, at present the Commission has less than five members and hence, the composition of the Commission is not complete.

(xi) No rules of procedure of the Commission are in place and it is not clear how the Commission conducts its proceedings.

(xii) The Enquiry Report is based on assumptions and has no proof or evidence.

(xiii) The Counsel referred to a complaint by Mr. Asim Chaudhry (page no. 14 of annexures to the Enquiry Report) wherein the complainant alleged that the DOC producers have created a shortage in the market to manipulate the demand and supply; the Counsel said that this is not possible since DOC is a perishable item.

(xiv) He referred to the Annexure – A1 to the Enquiry Report containing the screenshot of messages of Dr. Shahid from Respondent No. 8 and said that this evidence may be

enough to initiate an enquiry, but it is inadmissible unless substantiated under Qanoon-e-Shahadat Order.

(xv) He argued that the rates discussed in the WhatsApp / SMS conversations were "asking rates" i.e., different from actual rate. The Bench noted that trade associations should work for the welfare of their member undertakings and questioned whether, knowing that rate discussions were occurring, they should have distanced themselves from price-sensitive discussions. The Counsel replied that the rate discussion was Dr. Shahid's personal action, done without authorization from his employer, Respondent No. 8, and that the discussed rates were never implemented.

(xvi) He submitted that Respondent No. 8 sold DOC at their twelve different stations and referred to Respondent No. 8's ledger entries to point out that the rates at each station were different from their other stations. He elaborated that Respondent No. 8 has three hatcheries, twelve to thirteen farms, and four companies however, there is no cartelization / same rates even within their group at their own different stations.

(xvii) He also submitted that the market is getting squeezed, since there were ten major companies / market players and now only five are left. In case there was a cartel, the market would have flourished for the major companies rather than them suffering losses.

(i) M/s. Sabir Group - Respondent No.9

21. Sabir Group submitted its reply to the SCN through its counsel on 02.03.2022. It denied the allegations, made several submissions materially similar to other Respondents, and stated the following:

(i) The Commission lacks jurisdiction, there is no inter-provincial commerce / transport, and the matter falls within the ambit of provincial authorities.

(ii) The enquiry relies on unverified data, statistics, price / cost information obtained from unnamed individuals, social media pages, and websites which is then compared with price shared in a WhatsApp group by someone not belonging to the Respondent, which is not any evidence of an anti-competitive collusion.

(iii) The Respondent submitted their data of 447 days from 2019 – 2021 where they claimed that their actual rate of DOCs was different from PPA, Big Birds, and the website (www.agbro.com) therefore the Enquiry Report fails to establish that the Respondent complied with the rates shared in the WhatsApp or SMS groups.

(iv) The Respondent never authorized any individual to send, receive, share, accept, acknowledge, communicate, or implement collusive prices for DOC; there is no involvement or representation of the Respondent in fixing prices or output. There is only one SMS by an employee (General Manager, Technical Services) of the Respondent who merely says "Ok" in one of the SMSs; the said employee acted in his personal capacity outside the sphere of his professional duties for the Respondent.

(v) The Respondent even suffered a loss of PKR. 617 million in financial year 2019-20 which shows that the respondent did not benefit from any cartelization besides, it only has a market share of 5.4% hence it is not in any position to cartelize or influence the market; the Respondent makes its own independent pricing and output decisions.

(vi) The Respondent reserves the right to cross-examine the data providers / collectors.

(vii) Annexure E-3 of the Enquiry Report (provided with the SCN) was a blank page, the Respondent reserves the right to modify their reply once they are provided with the contents of Annexure E-3.

(viii) In the hearing dated 03.06.2024, the Counsel for Respondent No. 9 concluded his arguments and submitted that he is adopting the arguments submitted by other respondents through their counsels and representatives. He reiterated the assertions made in the reply to the SCN.

(ix) In addition, he submitted that the Commission authorized the Enquiry Officers to enter and search the offices of Respondent No. 1 and Respondent No. 8. During the search, three mobile phones belonging to persons related to Respondent No. 1 and Respondent No. 8 were impounded to collect incriminatory evidence. It is pertinent to note that under Section 34 of the Competition Act, 2010, the Commission is only specifically empowered to impound computers or computer stored information, not mobile phones. Invoking casuss omissus, the Counsel argued that impounding mobile phones was beyond the powers of the Commission and hence, illegal. Therefore, any evidence thus collected, under the Doctrine of Fruit of Poisonous Tree, is illegal, inadmissible, and cannot be relied upon.

(x) Counsel further asserted that when the Commission is fixing the liability and if it decides to impose a penalty, the Commission should be mindful of the fact that there is no agreement for anti-competitive practices that his client was part of nor his client was part of the WhatsApp group; his client was simply receiving SMS.

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(xi) The Bench put the question to the Enquiry Officers as to who was receiving SMSs on behalf of Respondent No. 9. The Enquiry Officers submitted that it was one Mr. Mazhar, Manager, Sabir Group.

(xii) Counsel denied involvement of his client in anticompetitive practices. He submitted that the Commission has already established in its past decisions that in order to prove collusion, the existence of vertical and horizontal collusion has to be proven. The Enquiry Report, however, does not prove any vertical or horizontal collusion and does not show that Mr. Mazhar was acting on the directions of his client.

(xiii) The Counsel referred to the statement submitted by Dr. Syed Shahid Ali (placed as Annexure - E2 to the Enquiry Report) and said that a confessional statement only incriminates the one making it. He added that at no point did Dr Shahid mention that he had coordinated or shared rates with Respondent No. 9 or Mr. Mazhar.

(xiv) He cited the Commission's decision in the matter of Show Cause Notices issued to M/s. Diamond Paints (Pvt.) Limited and its Dealers 2020 and where an agreement of collusive practice was signed by the Regional Manager of Diamond Paints on stamp paper. He argued that the Commission did not penalize M/s. Diamond Paints (Pvt.) Ltd. because the Regional Manager was found to be acting on his own without any authorization from the employer i.e. Diamond Paints. He added that in the instant matter, the Enquiry Report did not prove any vertical agreement or any authorization for Mr. Mazhar from Respondent No. 9 to be a part of any anti-competitive activity.

(xv) The Bench asked the Counsel whether Respondent No. 9 produces DOCs based on pre-booking orders and he said that there is no pre-booking. The whole production cycle extends over 18 months and there is no way that price collusion is done 18 months or s0 in advance.

(xvi) The Counsel submitted that his client sold DOCs at a rate different from that shared in the WhatsApp / SMS groups and that his client would have clarified the same had the Enquiry Committee summoned any official or Mr. Mazhar himself.

(xvii) Furthermore, he submitted that Mr. Mazhar (identified as General Manager, Technical Services in the reply to the SCN) had only sent one text message saying "Okay". The Enquiry Officers were asked to clarify, and they submitted that Mr. Mazhar replied "Okay" in an ongoing SMS conversation where he had asked Dr. Shahid from PPA about the rates of DOCs.

(xviii) The Counsel also submitted that his client, as an employer, is not responsible for the private conduct of their employee, Mr. Mazhar. There existed no express or implied agency between the two and his client cannot be implicated based on just one SMS.

(xix) On a question from the Bench on why Respondent No. 9 did not leave the group where price sensitive information was being shared, he submitted that it was unsolicited direct SMS messages which, unlike WhatsApp groups, did not have the option of leaving.

Submissions of Dr. Shahid

22. In addition to hearing the arguments of above Respondents, the Bench also summoned Dr. Syed Shahid Ali (Marketing Manager) of Big Bird Group (Respondent No. 8) who appeared before the Bench on 26.02.2025 accompanied by Mr. Muhammad Riaz Advocate (Company Secretary) and appeared to represent the Big Bird Group.

23. The Bench questioned Dr. Shahid Ali regarding the SMS and WhatsApp messages he sent to BBG's rival undertakings concerning the price of the DOC. In response, he confirmed that these messages were indeed sent from his phone. Dr. Shahid further stated that the aforementioned messages were shared within an internal group of BBG employees. When the Bench questioned why he shared DOC prices daily, he explained that PPA (Respondent No. 1) regularly collects pricing data. However, he was unable to provide any evidence indicating that PPA had requested the dissemination of DOC pricing information.

24. In response to the Bench's question about why he shared pricing information with competitors, he stated that the entities in the SMS and WhatsApp group were market competitors in the same industry, which is why they inquired about prices. He further added that he is accountable to his company for the quantity of sales made.

25. In response to the Bench's inquiry about his awareness of PPA's previous penalties for price fixing and other collusive practices, Dr. Shahid claimed he was unaware of these actions.

26. The Bench observed that there was a contradiction in the statements of the representatives of the Respondent. The Company Secretary stated that the Dr. Shahid was not acting on any direction of the Company, whereas, Dr. Shahid stated that that it was a part of his job description to report to the company the prices of the competitors.

Issues and Analysis

27. The Bench shall firstly address legal and technical objections raised by the respondents, and secondly, the substantive arguments on the merits, focusing on whether the Section 4, especially Section 4(2)(a), have been infringed by the respondents. This approach ensures a thorough evaluation of both procedural and substantive matters.

PROCEDURAL ISSUES

I. Whether the Commission is authorized to conduct the instant proceedings as per Section 14 of the Act, which requires a minimum of five members to constitute the Commission?

II. Whether it was mandatory for the enquiry committee to involve all the Respondents during the enquiry stage?

III. Whether the inspection team could have impounded mobile phones from the officials of the Respondents under the provisions of the 2010 Act and 2007 Regulations?

IV. Whether the enquiry committee's reliance on the evidence extracted in the form of SMS and WhatsApp communication was tenable under the law?

SUBSTANTIVE ISSUES

V. Whether the communication of pricing information for DOC via SMS and WhatsApp groups constitutes a contravention of Section 4 of the Act.

VI. Whether the role of PPA and the Respondent Undertakings is in compliance with the provisions of the Act.

VII. Whether an Undertaking can be held liable for the acts of its employee?

ISSUE I: Whether the Commission is authorized to conduct the instant proceedings as per Section 14 of the Act, which requires a minimum of five members to constitute the Commission?

28. One of the contentions of the Respondents was that the Commission was not in quorum to conduct the instant proceedings. The Commission should have minimum of five members in this Bench in order to conduct proceedings

29. In this respect, the Bench notes Section 14 of the Act which outlines the composition of the Commission and addresses the issue of absence or vacancy of the members as follows:

> *"**14. Composition of Commission.**__ (1) The Commission shall consist of not less than five members and not more than seven members:*
>
> *Provided that the Federal Government may increase or decrease the number of members from time to time as it may consider appropriate."*

30. In addition to the above, it has been specifically provided in sub-section (7) of Section 14 of the Act that no proceedings shall be invalid because of a vacancy or defect in the constitution of the Commission. For ease of reference, the provision is reproduced herein below:

> *"(7) No act or proceedings of the Commission shall be invalid by reason of the absence of a member or existence of any vacancy among its members or defect in constitution thereof."*

31. Furthermore, under the provisions of Section 24(3) of the Act, the statutory quorum for meetings of the Commission is of three members. Sub-Section (3) of Section 24 is reproduced here: -

> *"(3) At any meeting of the Commission the quorum shall be three Members."*

32. It is also relevant to highlight that the Parliament has, in its wisdom, authorized the Commission to delegate any or all of its powers and functions to its members and officers. Sub-section (2) of Section 28 in relevant here and is reproduced herein below:

> *"(2) The Commission may, subject to such conditions as it may think fit to impose, delegate all or any of its functions and powers to any of its members or officers as it deems fit."*

33. The above referred provisions of the Act ensure the Commission's effective and continuous functioning by providing flexibility in its composition and safeguarding its decisions from invalidation due to technical or procedural issues.

34. It is a settled principle of law that statutory bodies' functions aren't hindered by technical defects. In ***Central Provinces Manganese Ore Co. Ltd. v. Union of India*** **1977 AIR**

2257, 1977 SCR (3) 441, the Supreme Court of India has held that procedural defects did not invalidate acts unless explicitly stated by the statute.

35. The following conclusions emerge from the foregoing passages:

(a) By virtue of Section 14(7) of the Act, the Parliament has intended to maintain the Commission's functional continuity and stability, preventing challenges based on procedural technicalities which could otherwise be used to obstruct its functioning.

(b) Contrary to the Respondents' claims, the legislative scheme clearly allows the Commission's decisions to remain valid during periods of a member's absence or vacancy, ensuring uninterrupted regulatory or oversight activities.

36. In view of the above, the Respondents' arguments with respect to the quorum and legality of the instant proceedings cannot be accepted. The instant proceedings are, in pith and substance, in consonance with the provisions of the Act.

ISSUE II: Whether it was mandatory for the enquiry committee to involve all the Respondents during the enquiry stage?

37. The Respondents have argued that they were not included in the enquiry proceedings. The question before the Commission is whether it is mandatory for the enquiry committee to require information from all the respondents and/or engage them at the enquiry stage.

38. The critical issue at hand is whether not involving the Respondents, at the enquiry stage prior to issuance of SCN, is in contravention of the provisions of the Act and the principles of natural justice. Linked with this is the question whether the steps preceding the issuance of a Show Cause Notice i.e., the conduct of Enquiry in the subject proceedings was an adverse action and required compliance with principles of natural justice. As stated above, it has been argued that since the Respondents were not contacted during the conduct of Enquiry, therefore, principles of natural justice have been violated. We deal with this question now.

39. It is important to note that an enquiry under Section 37 of the Act is a fact-finding exercise that enables the Commission to gather evidence to either rule out a contravention, or if a contravention is found, to proceed to the show cause notice stage and provide an opportunity of hearing to the alleged violators. Mere non-engagement of one or more Respondents at the enquiry stage does not constitute a violation of natural justice since neither an adverse order has been passed nor any penalty has been imposed on the Respondents. The

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principle comes into play once the Commission has considered the Enquiry Report and issued a SCN alleging the contravention of one or more provisions of the Act.

40. It is also noted that the scope of proceedings before the Commission under the Act are inquisitorial in nature. The legislature in all its wisdom has provided for various powers to the Commission, which may be used during the proceedings under section 30 of the Act. Moreover, even during adjudication, the Commission can exercise the powers under section 33 as well as section 34 of the Act, if the situation so requires. Reliance is placed on Commission's order ***In the matter of Complaint filed by OLX Classifieds Pakistan Against Pak Wheels (Pvt.) Limited*** **2021 CLD 804, pg. 814**.

41. Regarding what is the difference between an inquisitorial and adversarial system, judgment is ***Wattan Party and another v. Federation of Pakistan and others*** **PLD 2011 SC 997** is also instructive.

> *"42. [...] The adversarial system (or adversary system) is a legal system where two advocates represent their parties' positions before an impartial person or group of people, usually a jury or judge, who attempt to determine the truth of the case, whereas, the inquisitorial system has a judge (or a group of judges who work together) whose task is to investigate the case.*
> *43. The adversarial system is a two-sided structure under which criminal trial courts operate that pits the prosecution against the defence. Justice is done when the most effective and rightful adversary is able to convince the judge or jury that his or her perspective on the case is the correct one.*
> *[...]*
> *46. An inquisitorial system is a legal system where the court or a part of the court is actively involved in investigating the facts of the case, as opposed to an adversarial system where the role of the court is primarily that of an impartial referee between the prosecution and the defense. Inquisitorial systems are used in some countries with civil legal systems as opposed to common law systems. Also countries using common law, including the United States, may use an inquisitorial system for summary hearings in the case of misdemeanors such as minor traffic violations. In fact, the distinction between an adversarial and inquisitorial system is theoretically unrelated to the distinction between a civil legal and common law system. Some legal scholars consider the term "inquisitorial" misleading, and prefer the word "non-adversarial".*"

42. On 06.12.2021, the Enquiry Officers submitted their Enquiry Report. The Enquiry Report concluded that there was *prima facie* evidence of violation of Section 4 of the Act by PPA and its member undertakings. The Enquiry Report recommended that proceedings under Section 30 of the Act be initiated against PPA and its member undertakings. The Commission

considered the evidence submitted by the Enquiry Report, and issued SCN to PPA and its member undertakings under Section 30 of the Act. The SCN directed the undertakings to submit written replies within fifteen days of the notice and to appear before the Commission for oral arguments.

43. It has been held by the Supreme Court of Pakistan that 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. In the ***Commissioner of Income Tax and others*** ***v. Messrs Media Network and others*** **2006 PTD 2502** the Supreme Court at **para 26** held that it might suffice if reasonable opportunity of hearing is granted to a person before an adverse action or decision is taken against him Similarly, in ***Parry Jones v Law Society and others (1969)*** **1 Ch Division 1 at pp. 8 & 10**, it was held by the Court of Appeal 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.

44. In this context, Regulation 22(2) of the 2007 Regulations is also relevant which provides that:

> *"If the information available on the record is sufficient to satisfy the Commission that the contravention of any provision of Chapter II has been committed or is likely to be committed, the Commission may proceed under sub-regulation (1) above without conducting inquiry under these regulations."*

45. Putting things in context, a reading of the Act and the 2007 Regulations makes it clear that there is no mandatory requirement on the Commission to issue a notice/hold a hearing at the enquiry stage. Regulation 16 allows the Commission to commence an enquiry, *inter alia*, *suo moto* or in the case of a complaint. The standard to be satisfied in the latter case is if facts before it appear to constitute a contravention of Sections 3, 4, 10, 11, and/or provisions of Chapter II of the Act. Thus, there is no requirement of notice [calling for information] or hearing at the stage of enquiry. Therefore, it is our considered view that the requirement of natural justice [opportunity of a hearing] does not apply at the initiation of and during an enquiry by the Commission. Hence, in light of clear local and foreign precedents, the Bench concludes that the Commission's issuance of the SCNs was valid and in accordance with the provisions of the Act. It provided an opportunity to the Respondents to appear before the Commission. During the proceedings, the Respondents were heard at length. Hence, no

principle of natural justice and due process has been violated. The Respondents' contentions hold no merit.

ISSUE III: Whether the inspection team could have impounded mobile phones from the officials of the respondents under the provisions of the 2010 Act and 2007 Regulations?

46. The Respondents have argued that the Commission's authorized officers were not entitled to impound mobile phones and other hand-held devices during the inspection of the Respondents' premises.

47. In this context, the Bench finds is relevant to mention Section 34 of the Act which provides the Commission with the power to authorize its officers to enter and search premises, inspect documents, and collect information. The relevant provision is reproduced below:

> *"**34.Power to enter and search premises.**__(1) Notwithstanding anything contained in any other law for the time being in force, the Commission, for reasonable grounds to be recorded in writing shall have the power to authorize any officer to enter and search any premises for the purposes of enforcing any provision of this Act.*
>
> *(2) For the purposes of sub-section (1), the Commission—*
>
> *(a) shall have full and free access to any premises, place, accounts, documents or computer;*
> *(b) may stamp, or make an extra copy of any account, documents or computer-stored information to which access is obtained under clause (a);*
> *(c) may impound any accounts or documents and retain them for as long as may be necessary for the purposes of the Act;*
> *(d) may where a hard copy or computer disk of information stored on a computer is not made available, impound and retain the computer for as long as is necessary to copy the information required; and*
> *(e) may make an inventory of <u>any article found in any premises or place</u> to which access is obtained under clause (a)."*

48. The above provision makes it clear that the authorized officer may search the premises and inspect books, papers, accounts, receipts, vouchers, documentation, files, computer-stored information, computerized accounting data and recordings or any other data which may be found in the premises, make copies of, or take extracts from, any book, paper, accounts, documentation and files or other material which may be found in the premises and make a note or record of such inspection.

49. On 31.05.2021, the Commission, based on the information presented by the Enquiry Committee, authorized two teams of officers to 'enter and search' premises of the PPA and BBG under Section 34 of the Act. The 'enter and search' inspections of premises were conducted to collect further evidence regarding the suspected violations of the Act. The authorized teams impounded all the pertinent material information including handheld devices (smart phones), documents and other computer stored data.

50. The Commission sought assistance from the Federal Investigating Agency (**FIA**), under the provisions of Section 53 of the Act, for digital forensic analysis to retrieve the digital evidence and to authenticate its veracity. The scope of the digital forensic analysis was to analyze evidentiary items relating to phone calls made and received, SMS messages, messages/conversations including media on app based communication, and email accounts.

51. Moreover, the Commission also sought assistance from the Pakistan Telecommunication Authority, under Section 53 of the Act, for verification of the ownership details of mobile numbers of various participants involved in the exchange of information related to the poultry products.

52. The Respondents, in response to the SCN and during the hearing, contended that the Commission can impound accounts, documents and computer, however it cannot impound mobile phones because computers are distinct from mobile phones and the two cannot be treated as the one or the same thing.

53. The Bench has heard the Respondents' contention. It is noted that the Act does not define 'computer'. The question for determination is whether smart phones fall under the category computers or not. In this connection, Regulation 26A(2)(a) of the Competition (General Enforcement) Regulations, 2007 (the "**General Enforcement Regulations**") is instructive which specifies that:

"2. [...] the Commission may for the purpose of inquiry or investigation, as the case may be,

*(a) admit evidence taken in the form of verifiable transcripts of tape recordings, unedited versions of video recording, electronic mail, **telephone records including authenticated mobile telephone records**..."*

54. Moreover, the term *'document'* has been defined in Regulation 2(1)(g) of the General Enforcement Regulation as *"any matter expressed or described upon any substance by means*

of letters, figures or marks, or by any other means, used or intended to be used for the purpose of recording that matter." This definition is of wide import and refers to any material used to record any matter, hence, would also include digital forms of documentation such as e-mail, text messages, etc. It is also emphasized that only the material and documents related to the instant matter were obtained from the mobile devices with no leakage of any potential information. No such allegation is on record despite the passage of significant time and conclusion of arguments by the undertakings.

55. The Bench notes that there has been rapid evolution of technology and integration of advanced computing capabilities in mobile phones. Mobile phones, tablets, and other handheld devices, equipped with processors have similar functions, features, characteristics and facilities as computers. Mobile phones also have storage and memory for documents, videos and texts messages. It is therefore concluded, that in interpreting the legislative intent, it becomes evident that the scope of 'computers' is meant to be broad and encompassing, allowing for the inclusion of various modern electronic devices used for data storage and communication.

56. Moreover, the regulatory bodies while interpreting the relevant laws should not be strict and rigid in their approach but should be accessible, intelligible and must change with times responding to realities of modern life. The system should be alive and alert, and responsive, to technological advances and changes that can enhance transparency and openness of the proceedings. Technological developments should be monitored and appreciated, to ensure that law is not stagnant or archaic. It was held in the case of ***Syed Farukh Mazhar*** *v.* ***SGS Heasquarters and others*** cited as **PLD 2018 Sindh 327** at **para 12**:

> *"12. [.....] The law must not become stagnant or archaic while society moves forward. It must be accessible, intelligible and must change with times responding to the realities of modern life"*

57. In the case of ***Application by Hussain Nawaz Sharif: In the matter of C.M.A No. 3986 in C.M.A. No. 2939 of 2017*** cited as **PLD 2019 SC 196** at **para 7** it was held that:

> *"7. [.....].. in the age of computer where almost everything is communicated and even business of every type is transacted online, emphasis on the form of doing a thing as it used to be done in 1898 would amount to putting at naught the dynamics of scientific and technological advancements which have not only liberated man from exhausting labour but also made things easier."*

58. It is a settled principle of statutory interpretation that when certain expression is not defined in the statute, a court has to look to the ordinary dictionary meaning of the words.

Reliance is placed on ***Abdul Hameed v Nek Muhammad*** **1994 SCMR 2255**. In this respect, we also considered the ordinary dictionary meaning of a 'mobile device' as follows:

(a) **Black's Law Dictionary**: "*A mobile phone with many features of a computer included in its functions*".
(b) **Oxford English Dictionary**: "*A mobile phone that performs many of the functions of a computer, typically having a touch screen interface, internet access, and an operating system capable of running downloaded apps.*"
(c) **Cambridge Dictionary**: "*A mobile phone that can be used as a small computer and that connects to the internet.*"
(d) **Collins English Dictionary**: "*A mobile phone with computer features that may enable to interact with computerized systems, send e-mails, and access the web.*"

59. Considering the above definition of a mobile phone, we do not find any reason as to why the tablets, smartphones, and other personal digital assistants (PDAs) cannot be regarded as personal computers as they are powered by microprocessors, they are programmable, they are electronic devices, they process information, they can store and transmit information and have a central processing unit (CPU).

60. The primary goal of impounding devices is to gather relevant information that can assist in the investigation. Excluding smartphones, which are essentially communication as well as computing devices, from this process can result in the omission of significant data, thereby undermining the comprehensiveness of the inquiry.

61. Internationally as well, many competition agencies in other jurisdictions have also evolved their digital forensics and have used even WhatsApp communication as evidence. In this regard, the Turkish Competition Authority has employed the practice of examining personal devices and data. In *Kocak Petrol* decision of the Board, dated 05.08.2009 and numbered 09-34/837-M, the on-site inspection was hindered by an executive of the undertaking under scrutiny on grounds that the laptop subject to the examination were allocated for personal use and warrant issued by the Board did not cover such inspection. The Board decided to impose an administrative fine against the relevant undertaking, since the executive was seen to delete certain documents from the laptop, which he alleged had been personal documents, and case handlers could not commence the on-site inspection at the time intended.

62. The Explanatory Note on the European Commission Inspection dated 11 September 2015 (revised in March 2024) further explains that inspectors are entitled to examine any books and records related to the business, irrespective of the medium on which they are stored, and

to take or obtain in any form copies or extracts from such books or records. This includes the examination of electronic information and the taking of electronic or paper copies of such information. Clause 10 of the Explanatory Note further states that the inspectors may search the IT-environment, e.g. servers, desktop computers, laptops, tablets, and other mobile devices and all such storage media of the undertaking and that this applies to private devices and media.

63. Accordingly, the standard applied to mobile devices during inspections should be equivalent to that applied to traditional computers, recognizing the relevance and significance of the information stored in them. Given the comprehensive deliberations above, mobile phones and similar devices, used by officials for business communications, are justifiably subjected to inspection and data extraction.

64. In light of the above, the Bench holds that the impounding of mobile phones and other similar devices was in accordance with the provisions of the Act. All documents, record and material obtained and attached with the Enquiry Report are admissible in evidence. The objections raised by the Respondents in this regard are dismissed, as the inspection and impounding of mobile devices was carried out in accordance with the provisions of the Act and in alignment with the evolving technological landscape.

ISSUE IV: Whether the Enquiry Committee's reliance on the evidence extracted in the form of SMS and WhatsApp communication was tenable under the law?

65. The Respondents have contended that the reliance on evidence extracted from the Respondents' devices is not legally tenable. This issue requires a careful examination of the legality and admissibility of the evidence obtained during the search and inspection.

66. The standard for admissibility of evidence in regulatory and quasi-judicial proceedings, such as those conducted by the Commission, often differs from that in criminal or civil court proceedings. The focus in such regulatory contexts is generally on whether the evidence is relevant, sufficient and probative, rather than strictly adhering to formal rules of evidence. Reliance is placed on ***LPG Association of Pakistan Vs Federation of Pakistan etc.*** reported as **2021 CLD 214** wherein in para 54 of the judgment, the honorable Lahore High Court made similar observations – per Justice Ayesha Malik:

> *"As per the dicta of the august Supreme Court of Pakistan we find that the CCP was not established as part of the judicial hierarchy of courts nor are its function to exercise judicial power. It is established to carry out the administrative function*

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 the formal laws of evidence and procedure.*** *"[Emphasis added]*

67. The Counsels have argued that SMS communication cannot be treated as a direct evidence. In this regard, the Bench notes that the digital evidence, including SMS and WhatsApp messages, is increasingly recognized as admissible in legal proceedings, provided that it is relevant, authentic, and has been obtained lawfully. In competition law enforcement, the emphasis is on obtaining evidence to uncover anticompetitive practices and there is no bar on the Commission to take into account the SMS messages if they include agreements, decisions, or discussions related to the facts in question. Reliance is placed on ***Shafqat Masih v. State*** **2021 MLD 1415** wherein the honorable Lahore High Court observed that SMS was covered by Art. 164 of of Qanun-e-Shahadat Order 1984 and was admissible to prove a fact subject to the conditions that fact sought to be proved was relevant (meaning that it must be of consequence to determination of a case); that text was not a hearsay; and that its authenticity was duly established at trial.

68. Courts worldwide have accepted digital evidence in various cases. For instance, in cartel cases, email correspondences and digital messages have been pivotal in proving the existence of illegal agreements. A notable case is ***R v. Boucher (2009)***, where the Canadian Supreme Court ruled on the admissibility of digital evidence, emphasizing its growing importance in legal proceedings.

69. The key factor in admissibility of digital evidence is ensuring the integrity of the process through which the evidence is collected, preserved, and presented is crucial. The evidence obtained from mobile phones or handheld devices must follow strict procedural guidelines to maintain the chain of custody. This involves documenting the collection process, securing the devices, and ensuring no tampering occurs. The Enquiry Committee has strictly adhered to the process to ensure integrity and authenticity of the evidence in question.

70. Thus the Respondent's argument that evidence from SMS and WhatsApp messages is untenable under the law is weak in the context of modern legal standards and competition law enforcement. Digital evidence is widely recognized as admissible, provided it meets criteria for relevance, authenticity, and procedural integrity. By following established guidelines and

precedents, the Commission can effectively utilize such evidence to uphold competition laws and protect market integrity.

71. Thus the focus on accuracy, completeness, and confidentiality underscores the importance of handling evidence meticulously and responsibly. The procedural framework employed by the Commission ensures that the evidence obtained is reliable and can be used effectively in subsequent proceedings.

72. The evidence extracted from the mobile phones and other devices of the Respondents was obtained following the prescribed procedures and standards outlined in the Act and the General Enforcement Regulations. The inspection team ensured that the information was accurately and completely recorded, and measures were taken to maintain the confidentiality of the data.

73. The Respondents were provided with opportunities to review and challenge the evidence presented against them during the proceedings. This adherence to due process and procedural safeguards further supports the tenability of the evidence obtained.

74. In conclusion, the Bench finds that the reliance on the evidence extracted from the Respondents' devices is legally tenable and in accordance with the provisions of the Act and the General Enforcement Regulations. The objections raised by the Respondents in this regard are dismissed.

SUBSTANTIVE ISSUES

ISSUE V: Whether the communication of pricing information for DOC via SMS and WhatsApp groups constitutes a contravention of Section 4 of the Act.

75. The Respondents have argued that the exchange of pricing information for DOC through SMS and WhatsApp groups does not violate Section 4 of the Act. This argument requires a closer examination under the legal framework, keeping in view the nature of the communications in question.

76. Section 4(1) of the Act expressly prohibits undertakings from engaging in agreements, decisions, or concerted practices that have the object or effect of preventing, restricting, or distorting competition. Specifically, the provision states:

*"**4. Prohibited agreements.** __ (l) 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) directly or indirectly fixing the purchase or selling price or any other trading conditions...."

77. The exchange of pricing information among competitors, whether through direct meetings, digital communications, or other means, constitutes an anti-competitive agreement if it facilitates price-fixing or other forms of collusion. By sharing commercially sensitive information such as 'price' the undertakings tacitly agree to distort the market mechanism. The context of such communications play a critical role in determining whether they fall within the scope of Section 4.

78. The European Court of Justice (ECJ) has consistently held that information exchange among competitors, where it reduces market *uncertainty*, may constitute a concerted practice. In ***T-Mobile Netherlands BV*** **v.** ***Raad van bestuur van de Nederlandse Mededingingsautoriteit (C-8/08)***, the ECJ held that:

"59. Depending on the structure of the market, the possibility cannot be ruled out that a meeting on a single occasion between competitors, such as that in question in the main proceedings, may, in principle, constitute a sufficient basis for the participating undertakings to concert their market conduct and thus successfully substitute practical cooperation between them for competition and the risks that that entails."

79. Similarly, in ***John Deere Ltd*** **v.** ***Commission of the European Communities-Case T-35/92***, the ECJ reaffirmed that:

"3. [...] between the major suppliers, of exchanges of precise information at short intervals is, on a highly concentrated oligopolistic market on which competition is already greatly reduced and exchange of information facilitated, likely to impair considerably the competition which exists between traders. In such circumstances, the sharing, on a regular and frequent basis, of information concerning the operation of the market has the effect of periodically revealing to all competitors the market positions and strategies of the various individual competitors."

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80. These precedents establish that coordinated discussions among competitors regarding pricing, whether in person or through digital means, constitute a restriction of competition. The Enquiry Report provides extensive evidence of pricing information exchanges among PPA members via SMS and WhatsApp, demonstrating a consistent pattern of communication aimed at coordinating prices rather than merely sharing independent market observations. The frequency and specificity of these communications confirm that they were not incidental exchanges but deliberate actions intended to align pricing strategies across the DOC market.

81. The impact of such practices is significant, as the exchange of commercially sensitive pricing information eliminates competitive uncertainty and enables coordinated decision-making among competitors. In the ***T-Mobile Netherlands BV and Others Raad van bestuur van de Nederlandse Mededingingsautoriteit (Case C-808)***, the European Court of Justice has observed that

> *"44. ...An exchange of information between competitors is tainted with an anti-competitive object if the exchange is capable of removing uncertainties concerning the intended conduct of the participating undertakings."*

82. The Commission's prior decisions reinforce this legal position. In the matter *of* ***Show Cause Notice issued to Pakistan Poultry Association*** **2016 CLD 976** , the Commission firmly established that:

> *"9. The subjective intention of the parties is not a requisite consideration for the determination of liability under [section 4]. Any form of conduct between undertakings which assists the coordination of commercial behavior, especially related to pricing, production, or sales is treated as importing the object of preventing, restricting, or reducing competition."*

83. Similarly, in the judgment of the Court of Justice of the European Union in ***Dole Food and Dole Fresh Fruit Europe*** *vs* ***Commission***, the court held that:

> *"... each economic operator must determine independently the policy which he intends to adopt on the common market [...]*
> *While it is correct to say that this requirement of independence does not deprive economic operators of the right to adapt themselves intelligently to the existing or anticipated conduct of their competitors,* ***it does****, none the less,* ***strictly preclude any direct or indirect contact between such operators by which an undertaking may influence the conduct on the market of its actual or potential competitors or disclose to them its decisions or intentions concerning its own conduct on the market where the object or effect of such contact is to create conditions of***

***competition which do not correspond to the normal conditions of the market in question**, [...]*
the exchange of information between competitors is liable to be incompatible with the competition rules if it reduces or removes the degree of uncertainty as to the operation of the market in question, with the result that competition between undertakings is restricted [...]
*a concerted practice may have an anticompetitive object **even though there is no direct connection between that practice and consumer prices**. Indeed, it is not possible on the basis of the wording of Article 81(1) EC to conclude that only concerted practices which have a direct effect on the prices paid by end users are prohibited [...]*
concerted practices may have an anticompetitive object if they 'directly or indirectly fix purchase or selling prices or any other trading conditions' [...]".
[Emphasis added]

84. These decisions underscore that the exchange of pricing information among competitors is a violation by object under competition law. Once such an agreement is established, proving price parallelism or plus factors becomes unnecessary. The exchange of the information itself is deemed anti-competitive, without requiring further analysis of its actual effects on pricing.

85. The Respondents have contended that in order to establish collusion, the Bench must also consider price parallelism and plus factors as evidence of anti-competitive behavior. They argue that merely demonstrating an exchange of pricing information is insufficient and that the Commission must show additional indicators, such as firms acting against their independent economic interests, to substantiate the existence of a collusive agreement.

86. Price parallelism is a recognized characteristic of oligopolistic markets, where competitors may independently set similar prices in response to market conditions. In such cases, firms may adjust their pricing strategies based on external economic factors rather than engaging in explicit coordination. The Commission observes that although it has generally been held that price coordination alone does not constitute a violation unless additional plus factors such as evidence of intentional alignment beyond natural market responses are present. However, when competitors actively exchange sensitive commercial information, particularly regarding future pricing intentions, the legal and economic analysis shifts.

87. The evidence in the Enquiry Report confirms that the Respondents were actively exchanging pricing information with the intent of coordinating their commercial strategies.

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PPA played a central role in facilitating these discussions, ensuring that its members remained aligned on pricing. Such conduct is explicitly prohibited under Section 4 of the Act and directly undermines competition by preventing independent pricing decisions.

88. The Bench observes that the manner in which information is exchanged is the key factor in competition assessments. Companies may share information directly, through third parties, or via public information-sharing schemes. Additionally, the Bench noted that information exchange through a third party, such as a trade association, does not diminish its potential to facilitate anti-competitive coordination.

89. The Respondents' claim that their communications do not violate the Act is untenable given the legal precedents affirming that the exchange of future pricing information constitutes an anti-competitive agreement. The evidence shows a clear pattern of reciprocal pricing discussions among competitors, reinforcing the presence of a collusive arrangement. Given that this is a violation by object, any argument regarding price parallelism or plus factors is irrelevant, as the mere exchange of commercially sensitive information is sufficient to establish liability.

90. Based on the extensive evidence and established legal principles, it is evident that the actions of PPA and the Respondent Undertakings' communication of pricing information as noted above amounts to collusive practices which had the object of preventing, restricting, and distorting competition in the DOC market. Accordingly, their conduct constitutes a clear contravention of Section 4 of the Act.

ISSUE VI: Whether the role of PPA and the Respondent Undertakings is in compliance with the provisions of the Act.

91. The Respondents have raised the issue of the role of trade associations and their members under the provisions of the Act. This issue requires an examination of the permissible activities of trade associations and their member undertakings.

92. Trade associations play an important role in representing the interests of their members, providing a platform for information exchange, and promoting industry standards and best practices. However, their activities must comply with competition law and should not facilitate anti-competitive behavior.

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93. As noted above, Section 4 of the Act explicitly prohibits trade associations from engaging in activities that have the object or effect of preventing, restricting, or distorting competition.

94. Trade associations and their members must ensure that their activities are in compliance with the provisions of the Act. This includes avoiding any form of coordination or agreement that may result in anti-competitive practices.

95. With regard to legitimate functions of an association of undertakings, the Bench notes the Commission's observations ***In the Matter of Show Cause Notice issued to M/s. Pakistan Poultry Association,*** *reported as* **2011 CLD 42,** wherein the Commission has stated that:

> *"95. We believe that trade associations can play an important role in the development of the sector they represent. The Commission has already observed in its ICAP final order that most important aim of association is to develop consensus amongst its members regarding public policies that affect the sector. Associations also engage in activities that increase awareness of standards and technologies in the industry. At other times, associations may also serve as a platform to share useful information about the sector such as historical pricing data. Such activities are beneficial since they promote competition and competitiveness.*
>
> *96. However, associations must also be extremely careful about what sort of activities may violate competition law.* ***Discussion, deliberation, and decisions regarding purely business concerns like current and future pricing, production and marketing are anti-competitive and should be avoided at all costs by the associations.*** *Associations have a responsibility to ensure that their forum is not used as a platform for collusive activities. The rule of thumb is not to allow discussion, deliberations or sharing of sensitive commercial information that may allow members, who are competitors, to co-ordinate business policy. Ensuring that every, or even one, member has a profitable business is not the job of an association."*

96. Regardless of their social, welfare, or economic character, associations play a crucial role in various domains. They contribute significantly to the standardization of industry practices, ensuring consistency and quality across the sector. Associations also promote self-regulation among their members, establishing codes of conduct and best practices that foster trust and reliability within the market. Additionally, they engage in market research, providing valuable insights and data that can drive innovation and growth.

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97. However, to maintain their credibility and effectiveness, it is imperative that associations operate with utmost transparency. They must conduct their activities within the legal boundaries established by competition laws, ensuring that they do not engage in or facilitate anti-competitive practices. Transparency in their operations not only reinforces their integrity but also builds confidence among stakeholders, including consumers, regulatory bodies, and the industry at large. By adhering to legal standards and promoting fair competition, associations can effectively fulfill their roles and contribute positively to the market.

98. PPA is no stranger to competition law. It has been the subject of enforcement actions in the past for anti-competitive behavior. The Bench finds it hard to believe that PPA would not have known the implications of its official/office bearer participating in, or for that matter even observing, SMS and WhatsApp communication regarding pricing of DOCs. As discussed above, trade associations must take all precautions to ensure that they do not become part of or facilitate collusive activities. PPA contends that it was not aware of any lead up to the alleged price-fixing decisions, let alone deliberations, communications and coordination regarding the same between2019-2020. Unfortunately, the facts show that this was not the case in the matter at hand. PPA's contentions in this regard are therefore not tenable and cannot be accepted. PPA's argument is weak and at this stage, PPA cannot be relieved of liability. Due to previous penalties imposed by the Commission against PPA, the association was well versed with the nuances of the competition law; PPA was fully aware of the repercussions of discussing current and future prices. Assuming, arguendo, that the planning and collusion took place prior to PPA joining the communication groups, PPA should have avoided such discussions after learning of them. PPA should be held to a higher standard since, as an association, it is in charge of raising awareness of policies. This is because the person in charge of raising awareness cannot claim ignorance. PPA was unable to demonstrate that it took any action to halt these conversations beyond 2020. We expect that PPA will learn from this experience, abstain from anti-competitive behavior, and regularly counsel its officials and members regarding competition law compliance.

ISSUE VII Whether an Undertaking can be held liable for the acts of its employee?

99. Some of the Respondents contend that there was no authorization or instructions to the employees to send, receive, share, accept, acknowledge, communicate, or implement collusive prices for DOC and that their respective employee acted in his personal capacity outside the

sphere of his professional duties. Therefore the undertakings cannot be held accountable for the actions of employee carried out without authorization.

100. The Bench has considered this argument and it is of the view that every employee working in an undertaking is a part of that undertaking. An undertaking is an economic unit based on different separate entities, legal and natural combined. In accordance with the competition law, if an employee's acts violate any of the law's provisions, the undertaking will be held accountable. Example can be taken from the ECJ's decision in ***SIA 'Ausma grupa', v. Konkurences padome*** cited as **ECLI:EU:C:2016:578**[6] whereby it was held that:

> *"21. [...]..a preliminary point to note is that this question does not concern the rules relating to the assessment of evidence and the requisite standard of proof which, in the absence of EU rules on the matter, are covered, in principle, by the procedural autonomy of the Member States (see judgment of 21 January 2016 in Eturas and Others, C 74/14, EU:C:2016:42, paragraphs 29 to 37). Rather, it concerns the constituent elements of the infringement that must be present if an undertaking is to be found liable for a concerted practice.*
>
> *"22. Next, it should be borne in mind that, under EU competition law, an undertaking must be understood as designating an economic unit even if in law that economic unit consists of several persons, natural or legal (judgments of 12 July 1984 in Hydrotherm Gerätebau, 170/83, EU:C:1984:271, paragraph 11, and 10 September 2009 in Akzo Nobel and Others v Commission, C 97/08 P, EU:C:2009:536, paragraph 55)."*
>
> *"23. Nevertheless, it must be stated, first, that the judgments of 7 June 1983 in Musique Diffusion française and Others v Commission (100/80 to 103/80, EU:C:1983:158), and 7 February 2013 in Slovenská sporiteľňa (C 68/12, EU:C:2013:71) were given by the Court in cases in which undertakings were implicated on the basis of the acts of their employees. **An employee performs his duties for and under the direction of the undertaking for which he works and, thus, is considered to be incorporated into the economic unit comprised by that undertaking** (see, to that effect, judgment of 16 September 1999 in Becu and Others, C 22/98, EU:C:1999:419, paragraph 26)."*
>
> *"24. **For the purposes of a finding of infringement of EU competition law any anti-competitive conduct on the part of an employee is thus attributable to the undertaking to which he belongs and that undertaking is, as a matter of principle, held liable for that conduct."***
>
> ***(Emphasis added)***

101. It is also interesting to note that Dr. Shahid of Respondent No. 8 was summoned both in the enquiry and at the hearing stage. On both occasions he was accompanied by the

[6] https://curia.europa.eu/juris/document/document.jsf?text=&docid=181950&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=530279

undertaking's representative which implies that his actions were owned by the undertaking. He is still working for the BBG despite his anti-competitive conduct. Moreover, the alleged anti-competitive activity of the employees could benefit the undertakings business only rather than any personal gain to the employee.

102. Given the aforementioned, the Bench is of the view that the Respondents are accountable for the conduct of their employees and that their argument lacks merit and is therefore dismissed.

103. Some of the Respondents have contended that DOCs, being perishable in nature, are not amenable to market manipulation through price fixing or supply control. However, the Bench finds this argument untenable. As a majority of DOC producers are vertically integrated, extending up to broiler chicken production. In cases of surplus production, these producers divert the excess DOCs to their own controlled farms or sheds. The Bench therefore, dismissed this argument of the Respondents.

DECISION

104. Based on the analysis of the issues and the evidence presented, we find that the impounding of mobile phones and other devices was in accordance with the provisions of the Act. The reliance on the evidence extracted from the Respondents' devices is legally tenable. The communication of pricing information for DOC via SMS and WhatsApp groups constitutes a contravention of Section 4 of the Act. The role of the PPA, its member undertakings and their employees, in the exchange of pricing information and coordinated pricing decisions constitutes a breach of the provisions of the Act.

105. The Bench hereby holds that the sharing of commercially sensitive information by PPA and the Respondents is anti-competitive in contravention of Section 4(2)(a) read with Section 4(1) of the Act.

PENALTIES/REMEDIES

106. In case of a violation of Section 4 of the Act, the Commission is empowered, *inter alia*, to impose a fine under Section 38 of the Act.

107. Whilst imposing the penalty, the Bench considered the seriousness of the infringement, particularly effect of price-fixing on third parties and consumers. Price cartel would be considered a very serious offence even if the undertakings do not receive cartel profits. The quantum of the penalty has been determined after taking into account all the relevant factors as enumerated in the Fining Guidelines. In particular, the duration of the infringement is taken account of because the violation started in 2019 and continued until it was noticed by the Commission in 2021. In penalizing the individual undertaking, role of the undertaking as a leader in, being an instigator of the infringement and involvement of its directors or senior management is also taken account of.

108. It is pertinent to mention that at no point did any of the Respondent Undertakings exhibit conduct indicative of disengagement or dissociation from the ongoing anti-competitive arrangement. On the contrary, their continued participation and existence in the SMS and WhatsApp groups reflects a conscious and sustained alignment with the object and implementation of the collusive practice i.e., sharing of commercially sensitive information with regard to the pricing of DOC.

109. In view of the foregoing, we hereby issue the following orders:

(i) The Respondents are directed to cease and desist from engaging in any activity that violates the provisions of Section 4 of the Act.

(ii) PPA is directed to issue comprehensive guidance to its officials and members periodically regarding compliance with the competition regime in Pakistan.

(iii) With respect to the imposition of penalty under Section 38 of the Act, the Bench is of the view that the gravity and nature of the anti-competitive conduct in question warrants the imposition of sanction which should deter the undertakings. The Respondents have not demonstrated any *bonafide* commitment to compliance, nor have they adopted any compliance oriented approach throughout the proceedings. In the absence of any mitigating conduct indicative of a compliance-oriented approach, the Bench accordingly imposes the following penalties to ensure future deterrence and reinforce adherence to the provisions of the Act:

(a) Big Bird Group:

Dr. Syed Shahid Ali is the Marketing Manager of BBG. He has been employed with the company for almost 19 years. He was the focal person for communicating and sharing of commercially sensitive price information. Dr. Abdul Kareem, the owner of BBG, was also part

of the Chick Rate Announcement WhatsApp group. In addition, he was also appointed by PPA as convener of its Standing Committee for Hatcheries Affairs, for the year 2020-2021.

From 2019-2021, a total of 198 text messages and 86 WhatsApp messages were sent by Dr. Shahid Ali conveying the price of DOC, at around 10 am -10:30am each business day.

By colluding to share commercially sensitive price information, through its senior management, and playing an active role, BBG was the key player in facilitating the cartel activity. In view of its conduct, the Bench imposes a penalty of PKR 25 million (Pak Rupees Twenty Five Million Only) on BBG.

(b) Hi-Tech Group of Companies:

Dr. Hafeez who was the manager of Hi-Tech Group responded to/engaged with Dr. Shahid 17 times via text messages. Bearing in mind the extent of his involvement the Bench imposes a penalty of PKR 15 million (Pak Rupees Fifteen Million Only) on Hi-Tech Group.

(c) Sadiq Poultry

Mr. Asif who was representing Sadiq Poultry responded to/engaged with Dr. Shahid 10 times via text messages. In view of its conduct and level of engagement, the Bench imposes a penalty of PKR 15 million (Pak Rupees Fifteen Million Only) on Sadiq Poultry.

(d) Supreme Farms:

Supreme Farm's representatives engaged with Dr. Shahid twice via text messages. In view of its conduct and level of engagement, the Bench imposes a penalty of PKR 15 million (Pak Rupees Fifteen Million Only) on Supreme Farms.

(e) Sabir Group

Dr. Mazhar Iqbal was the representative of Sabir Group and was regularly receiving price sensitive messages through text messages (198 times). On one occasion he actively engaged with Dr. Shahid. In view of its conduct and level of engagement, the Bench imposes a penalty of PKR 15 million (Pak Rupees Fifteen Million Only) on Sabir Group.

(f) Olympia Group:

Dr. Khursheed Muslim was representative of Olympia Group in the WhatsApp group and was regularly receiving price sensitive messages through text messages (198 times) and via

WhatsApp group (86 times). In view of its conduct and level of engagement, the Bench imposes a penalty of PKR 15 million (Pak Rupees Fifteen Million Only) on Olympia Group.

(g) Islamabad Group of Companies

Dr. Hussain was representative of Islamabad Group in the WhatsApp group and was regularly receiving price sensitive messages through text messages (198 times) and via WhatsApp group (86 times). In view of its conduct and level of engagement, the Bench imposes a penalty of PKR 15 million (Pak Rupees Fifteen Million Only) on Islamabad Group.

(h) Jadeed Group of Companies:

Dr. Akif was the representative of Jadeed Group. He received text messages (198 time) only and was not part of the WhatsApp group. In view of its conduct, the Bench imposes a penalty of PKR 15 million (Pak Rupees Fifteen Million Only) on Jadeed Group.

(i) Pakistan Poultry Association (PPA):

Major Retired Syed Javaid Hussain Bukhari was the Secretary General of PPA at the time of infringement. He was part of the WhatsApp group and also received text messages. Given its past conduct and current involvement in the cartel activity, the Bench imposes a penalty of PKR 25 million (Pak Rupees Twenty Five Million Only) on PPA.

110. The Respondents are directed to deposit the penalty amount within thirty (30) days from the date of this Order. Failure to comply shall render the Respondents liable to a further penalty of PKR 100,000/- (Pak Rupees One Hundred Thousand Only) per day from the date of issuance of this Order.

(Dr. Kabir Ahmed Siddhu)
Chairman

25/4/25
(Abdul Rashid Sheikh)
Member

SEAL OF THE COMPETITION COMMISSION OF PAKISTAN ★ ISLAMABAD ★

ISLAMABAD THE 25TH DAY OF APRIL 2025