BEFORE THE
COMPETITION COMMISSION OF PAKISTAN

APPEAL FILED BY MR. NAEEM AFZAL AGAINST THE IMPUGNED LETTER DATED 28.01.2026 UNDER SECTION 41 OF THE COMPETITION ACT, 2010

(Appeal No.2/2026)

Date of Hearing: **03.08.2026**

Bench: **Mr. Farid Ahmad Tarar**
Chairman

Ms. Bushra Naz Malik
Member

Assisted by: **Ms. Meher Jamy**
Assistant Director

Present on behalf of Appellant:

Mr. Naeem Afzal

Mr. Muhammad Saqib Qadeer
Advocate High Court

ORDER

1. This Order shall dispose of the appeal filed by Mr. Naeem Afzal (the **Appellant**) under Section 41 of the Competition Act, 2010 (the **Act**) against the Letter dated 28.01.2026 (the **Impugned Letter**), issued by the Registrar of the Competition Commission of Pakistan (the **Commission**).

FACTUAL BACKGROUND

2. The facts of the case are that on 26.07.2024, the Appellant informally approached the Commission against M/s Premier Systems (Private) Limited for alleged deceptive conduct. The Appellant submitted that M/s Premier Systems was representing itself as the direct official subsidiary of Audi AG by using the brand name Audi Pakistan, when in fact it was only a non-exclusive importer of the products manufactured by Audi AG. Thereafter, on 17.01.2025, the Appellant filed a formal complaint with the Commission under Section 37(2) of the Act, accusing M/s Premier Systems of violating Section 10(2)(b) and (d) of the Act. It is relevant to note here that prior to the Appellant's complaint, he had entered into an agreement with M/s Premier Systems on 16.05.2022 for the purchase of the vehicle, Audi e-tron 50 q, which to date has not been received by him.

IMPUGNED LETTER

3. On 28.01.2026, the Registrar issued the Impugned Letter to the Appellant wherein he informed him as follows:

> " *Please refer to letter of nil reference no. dated 17-01-25 regarding the subject complaint against M/s Premier Systems (Private) Limited for alleged deceptively marketing in respect of **"Audi Pakistan."***
>
> *2. It is informed that the **"Commission"** had received an informal complaint vide email on 26-07-2024 from subject complainant against the same respondent. By virtue of this being informal complaint, the commission opened an online complaint no. 2557 dated 01-08-2024 considering it as a suo moto matter under Section 37(1) of the Competition Act, 2010 (the "Act").*
>
> *3. In view of the foregoing, the fee of the formal complaint amounting to Rs. 50,000/-, earlier deposited in accordance with Regulation 19 of the Competition Commission (General*

Enforcement) Regulations, 2007, read with Section 37(2) of the Act is hereby returned..."

APPEAL UNDER SECTION 41

4. Feeling aggrieved by the Impugned Letter, the Appellant preferred an appeal before the Appellate Bench (the **Bench**) of the Commission under Section 41 of the Act. In his appeal, he raised, *inter alia*, the following grounds:
   (i) the Registrar has assumed adjudicatory powers not vested in him by law as the authority to determine the maintainability, infructuousness or closure of a complaint lies exclusively with the Commission;
   (ii) the Impugned Letter is in flagrant violation of the principles of natural justice and due process as the Appellant is in possession of the primary evidence including transactional documents, misleading letterheads and official correspondence with Audi AG. Conducting an enquiry while excluding the Appellant amounts to a procedurally hollow and legally flawed exercise; and
   (iii) Section 37(2) of the Act expressly confers a statutory and independent right upon any person to file a complaint and there exists no provision in the Act which authorizes the rejection or return of a duly filed formal complaint merely because a suo moto enquiry is pending under Section 37(1).

5. As the appeal was not fixed for hearing by the Commission, the Appellant on 07.07.2026 filed Writ Petition No.3312/2026 before the Hon'ble Islamabad High Court, which on 09.07.2026 accepted the writ and directed the Commission to decide the pending appeal within a period of thirty days through a speaking order, after providing an adequate opportunity of hearing to the Appellant. Pursuant to the direction of the Hon'ble Islamabad High Court, the Commission fixed the appeal for hearing on 03.08.2026.

HEARING

6. On the scheduled date of hearing, the Appellant appeared in person along with his counsel. In his submissions, counsel primarily agitated the grounds taken in the appeal, whilst also commenting extensively on the merits of the formal complaint filed by the Appellant before the Commission.

7. On being apprised by the Bench that the Commission is only entrusted with adjudicating cases of a public nature, counsel submitted that the Appellant's case pertains to deception and protecting the wider consumer interest, instead of being a simple matter of breach of contract. Further, on a question by the Bench, counsel acknowledged that the Appellant did not approach the Consumer Court for redressal of his grievance rather he filed a suit for specific performance in the civil court. Moreover, on the Bench enquiring about the Appellant's status as either an undertaking or registered association of consumers, counsel submitted that the definition of undertaking provided in Section 2(1)(q) of the Act includes a 'natural person', but he did not elaborate how the Appellant is directly or indirectly engaged in an economic activity. Lastly, the Bench asked counsel to explain how the appeal is maintainable under Section 41 of the Act. In response, counsel stated that Section 41 allows any person aggrieved by an order of an authorized officer of the Commission to submit an appeal. On being confronted that the Impugned Letter is not an order of the Commission, a term which is defined in Section 31 of the Act, counsel did not have any further substantiation to prove the point.

ISSUES

8. The Bench, after carefully examining the material on record and hearing the submissions of the Appellant, has framed the following issues for determination:

   I. Is the appeal maintainable under Section 41 of the Act?

   II. Is the Impugned Letter contrary to the provisions of the Act and liable to be set aside?

ANALYSIS

ISSUE I: Is the appeal maintainable under Section 41 of the Act?

9. The question which needs to be decided at the outset is whether the instant appeal is maintainable under Section 41 of the Act. To answer it, the language of Section 41 needs to be examined first:

> *"41. Appeal to the Appellate Bench of the Commission.__ (1) <u>An appeal shall lie</u> to an Appellate Bench of the Commission <u>in respect of an order made by any</u> Member or <u>authorized officer of the Commission</u>. The person aggrieved by such order may, within thirty*

days of the passing of the order submit an appeal, to the Appellate Bench of the Commission."

(***Emphasis supplied***)

10. A perusal of Section 41 reveals that two important elements need to be satisfied by any person wishing to file an appeal under the said Section, namely, the existence of an order and the issuance of that order by an authorized officer of the Commission. In the present matter, it is not in dispute that the Registrar of the Commission is an authorized officer of the Commission. However, it needs to be seen whether the Impugned Letter can be categorized as an order for the purposes of Section 41.

11. In this respect, guidance is sought from Section 31 of the Act which lists the various types of orders that the Commission can pass. These are as follows:

> *"**31. Orders of the Commission.**__ The Commission may in the case of__*
>
> *(a) an abuse of dominant position, require the undertaking concerned to take such actions specified in the order as may be necessary to restore competition and not to repeat the prohibitions specified in Chapter II or to engage in any other practice with similar effect; and*
>
> *(b) prohibited agreements, annul the agreement or require the undertaking concerned to amend the agreement or related practice and not to repeat the prohibitions specified in section 4 or to enter into any other agreement or engage in any other practice with a similar object or effect; or*
>
> *(c) a deceptive marketing practice, require__*
>
> *(i) the undertaking concerned to take such actions specified in the order as may be necessary to restore the previous market conditions and not to repeat the prohibitions specified in section 10; or*
>
> *(ii) confiscation, forfeiture or destruction of any goods having hazardous or harmful effect.*
>
> *(d) A merger, in addition to the provisions contained in section 11__*
>
> *(i) authorize the merger, possibly setting forth the conditions to which the acquisition is subject, as prescribed in regulations;*
>
> *(ii) decide that it has doubts as to the compatibility of the merger with Chapter II, thereby opening a second phase review; or*

COMPETITION COMMISSION

(iii) undo or prohibit the merger, but only as a conclusion of the second phase review."

12. It may be noticed from the above-quoted provision that only those decisions of the Commission are treated as orders by the Act which finally dispose of a matter raising concerns of either abuse of dominant position, prohibited agreements, deceptive marketing or mergers.[1] This is also evident from Section 30 of the Act which provides:

> "*30. Proceedings in cases of contravention.__ (1) **Where the Commission is satisfied that there has been or is likely to be, a contravention of any provision of Chapter II, it may make one or more of such orders specified in section 31** as it may deem appropriate. The Commission may also impose a penalty at rates prescribed in section 38, in all cases of contravention of the provisions of Chapter II.*"
>
> (***Emphasis supplied***)

Any other decision or directive issued by a Member or authorized officer of the Commission, irrespective of its content and substance, does not qualify as an order if it does not finally dispose of a case on the merits. Reliance in this regard is placed on a recent decision of the Hon'ble Islamabad High Court passed in ***Strawberry Sports Management (Private Limited)* vs. *Federation of Pakistan*** (2025 CLD 15), wherein the Court held:

> "*8. It is the petitioner's contention that the opinion formed by CCP that no contravention of Section 3 of the Act has been made out by the petitioner in its complaint filed against respondent No.8 constitutes an order for purposes of Section 41 of the Act. **It has further been argued that it is not only the orders passed under Section 31 of the Act that are appealable, but also any orders passed by CCP or a member or authorized officer of CCP**...*
>
> *9. **The understanding of the petitioner with regard to the scheme of the Act appears to be misconceived**. Section 37 of the Act regulates the manner in which CCP is to conduct inquiries either in its own motion or on a reference made by the Federal Government or on the basis of a complaint made by an undertaking. Where an undertaking files a complaint, CCP is to ensure that the complaint is not frivolous or vexatious or based on insufficient facts, and further that the facts as stated appear to constitute a contravention of provisions of Chapter II. Once such negative and positive requirements, as stated in Section 37(2) stand satisfied, CCP is to further determine whether initiating regulatory proceedings under Section 30 are necessary in public interest in terms of Section 30(4) of the Act. Once these requirements are met, proceedings can be*

[1] All these anti-competitive practices are listed in Chapter II of the Act.

initiated under Section 30 while issuing a notice and affording the undertaking in relation to whose conduct proceedings are being initiated a right to be heard before any regulatory or penal action is taken.

...

11. ...<u>During the stage of ascertaining the content of the complaint, CCP is forming a prima facie regulatory opinion and not exercising quasi-judicial or adjudicatory functions. The latter kicks in once proceedings in terms of section 30 are initiated</u>, at which stage an appropriate notice is issued to the undertaking whose conduct is being scrutinized. <u>It, therefore, cannot be argued that the opinion formed on the basis of an inquiry in terms of section 37 of the Act culminates in an order for purposes of Section 4[1] of the Act</u>.

12. <u>The submission by the petitioner that its rights under Article 10A have been violated is also without merit</u>. It is not the petitioner's civil rights or liabilities that are in question in proceedings where its complaint against another undertaking is being looked into. <u>The scope of Article 10A where right of hearing must lie was enumerated by the Supreme Court in Justice Khurshid Anwar Bhinder v. Federation of Pakistan (PLD 2010 Supreme Court 483)</u>. After summarizing the case law on the question as has developed in Pakistan and while relying on the law from other jurisdiction, <u>it was held by the Supreme Court that, "the audi alteram partem rule would be excluded, if importing the right to be heard has the effect of paralyzing the administrative process</u> or the need for promptitude or the urgency of the situation so demands." ... <u>In a matter where before taking any administrative or regulatory action, a regulator is under an obligation to form a preliminary opinion that some illegality has transpired requiring administrative or regulatory action, such opinion forming cannot be subjected to the requirements of a formal adjudicatory process. Doing so could very well result in paralyzing the regulator, which receives umpteen complaints against other parties</u>."

(*<u>Emphasis supplied</u>*)

13. Although the afore-referred judgment of the Hon'ble Islamabad High Court was issued in the context of a decision taken by the Commission not to initiate proceedings against an undertaking after having conducted an enquiry under Section 37(2) of the Act, the same is extremely pertinent to the present matter as the Appellant's case stands on a much weaker footing. In ***<u>Strawberry Sports</u>*** (*supra*), the Hon'ble Islamabad High Court held that an opinion formed under Section 37(2) is not appealable under Section 41; however, before us is a situation where Section 37(2) of the Act has not even been pressed into service as the Appellant's informal complaint was converted into a suo moto enquiry by the Commission to probe into the alleged deceptive conduct of M/s

Premier Systems. This decision of the Commission, communicated to the Appellant via the Impugned Letter, was the exercise of a regulatory opinion and not the exercise of quasi-judicial or adjudicatory functions. Therefore, in no manner or form can the Impugned Letter be considered an order for the purposes of Section 41 of the Act. Accordingly, the appeal filed by the Appellant under Section 41 is declared to be not maintainable.

ISSUE II: Is the Impugned Letter contrary to the provisions of the Act and liable to be set aside?

14. The Bench has already held the appeal of the Appellant not maintainable. In these circumstances, Issue II has become infructuous.

DECISION

15. In light of the above discussion, the Bench rejects the appeal filed by the Appellant under Section 41 of the Act for not being maintainable. However, in the interests of justice and keeping in view the peculiar circumstances of the case in which the Appellant has been pursuing his remedy for the last two years before various fora, the Bench directs the Enquiry Committee, conducting the enquiry in the suo moto taken by the Commission, to associate both the Appellant and M/s Premier Systems in the enquiry proceedings to enable each of them to present their stance for a just, proper and fair resolution of the matter.

Mr. Farid Ahmad Tarar
Chairman

Ms. Bushra Naz Malik
Member

SEAL OF THE COMPETITION COMMISSION OF PAKISTAN

ISLAMABAD, THE 07th DAY OF AUGUST, 2026