BEFORE THE
COMPETITION COMMISSION OF PAKISTAN

IN THE MATTER OF SHOW CAUSE NOTICE ISSUED TO
M/S ALL PAKISTAN EDIBLE OIL TANKER OWNERS ASSOCIATION

(File No.526/APOTOA/C&TA/CCP/2025)

Date of Hearing: **04.08.2026**

Bench:

Farid Ahmad Tarar
Chairman

Bushra Naz Malik
Member

Assisted by:

Hafiz Naeem
Sr. Legal Advisor

Meher Jamy
Assistant Director

SEAL OF THE COMPETITION COMMISSION OF PAKISTAN ISLAMABAD

Present on behalf of Respondent:

M/s All Pakistan Edible Oil Tanker Owners Association

Zafar Khokar
Advocate High Court

ORDER

1. This Order shall dispose of the proceedings initiated by the Competition Commission of Pakistan (the "**Commission**") vide Show Cause Notice No.47/2025 dated 11.12.2025 (the "**SCN**"), issued to M/s All Pakistan Edible Oil Tanker Owners Association under Section 30 of the Competition Act, 2010 (the "**Act**") for *prima facie* violation of Section 4(1) read with Section 4(2)(a) and (b) of the Act.

FACTUAL BACKGROUND

2. Various circulars issued by M/s All Pakistan Edible Oil Tanker Owners Association (the "**Respondent**" or "**Association**") to its members, fixing the transportation charges for edible oil, ghee and fats from Karachi Port Trust and Port Qasim to other cities of Pakistan, were discovered by the Cartels & Trade Abuses Department on social media pages. Moreover, multiple circulars issued by the Pakistan Vanaspati Manufacturers Association (the "**PVMA**") to its member undertakings communicating the updated transport charges were also found. Further, a circular issued by the PVMA to its member undertakings on 16.12.2022 was also detected on social media. This circular referred to an agreement reached between the PVMA and the Respondent, according to which for every Rs.1 increase in the price of diesel, there would be a 0.75% increase in the transport rates and for every Rs.1 decrease in the price of diesel, there would be a 0.5% decrease in the transport rates.

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ENQUIRY PROCEEDINGS

3. On the basis of the available material, the Commission on 15.08.2024 initiated a *suo moto* enquiry against the Respondent for suspected violation of Section 4 of the Act. Thereafter, the duly constituted Enquiry Committee gathered the relevant material, including contacting an individual affiliated with the Association who informed that the transportation rates are determined and fixed by the Association from the ports to different parts of the country. As proof, the said individual provided price circulars dated 01.12.2024, issued by the Respondent, which fixed the transportation charges for

ghee to 81 locations outside Karachi, fat to 53 locations outside Karachi and ghee and fats to 18 locations within Karachi.

4. Since the material on record and the new information all strongly indicated that the Respondent was engaging in price fixing, the Commission on 24.01.2025 authorized certain officers, under Section 34 of the Act, to enter and search the premises of the Respondent to collect additional evidence of its anti-competitive practices. The enter and search was carried out on 10.02.2025 and price circulars, agreements and computer stored data were impounded. It is important to note that the price circulars seized ranged from 01.01.2019 to 01.02.2025, which is approximately a period of six years.

5. Following the enter and search, the Enquiry Committee held a meeting with the representatives of the Respondent on 28.02.2025. In that meeting, the representatives informed the Enquiry Committee that:

   (i) the Respondent was registered under the Societies Registration Act, 1860 on 21.08.2013 and facilitates the transportation of food-grade liquid cargo from ports nationwide. It has around 2,362 registered vehicles and approximately 1,700 vehicle owners;

   (ii) around 250-300 Association vehicles visit ports each day for loading and transportation of edible oil, ghee and fats;

   (iii) mill owners import edible oil based on their needs and then engage contractors from the Edible Oil Carriage Contractors Association (the "**EOCCA**") which then liaises with the Respondent for transportation;

   (iv) the Respondent manages vehicle movement for lifting consignments from ports through a queue system, with the first vehicle in the queue assigned the consignment ensuring efficiency and fair business distribution, particularly for smaller transporters. EOCCA contacts the Respondent for transportation purposes instead of individual transport companies;

   (v) transport service charges are set through an agreement between the Respondent and the PVMA, with the first agreement signed in 2011 which was later updated in 2022; and

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(vi) the Respondent's pricing decisions are made in general body meetings, involving eight committee members and twenty nine caste representatives.

ENQUIRY REPORT

6. The Enquiry Committee after examining all the evidence on the record, including the data gathered from the enter and search and the meeting held with the representatives of the Respondent, finalized the Enquiry Report on 19.03.2025. The Committee concluded that the Respondent has *prima facie* violated Section 4 of the Act and recommended initiation of proceedings under Section 30 of the Act.

SHOW CAUSE NOTICE

7. Pursuant to the Enquiry Report, the Commission issued an SCN to the Respondent on 11.12.2025 for violating Section 4(1) read with Section 4(2)(a) and (b) of the Act in the following terms:

> " ...*6. WHEREAS, in terms of the Enquiry Report in general, and paragraphs 13 to 17 in particular, the relevant market, as defined under clause (k) of sub-section (1) of Section 2 of the Act, appears to be the market for transportation and movement of edible oil, ghee, and fats from the ports to various destinations within Sindh and across Pakistan; and*
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> *7. WHEREAS, as per paragraph 18 of the Enquiry Report, the edible oil, ghee, and fats arriving at ports are distributed across Sindh and the rest of the country, resulting in spillover effects of the anti-competitive conduct beyond a single province, thereby affecting competition on a national scale; and*
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> *8. WHEREAS, in terms of the Enquiry Report in general and paragraphs 25 to 36 in particular, from 2019 to 2025, it appears that the Undertaking has taken decisions to fix transportation charges for movement of edible oil, ghee and fats, which constitutes a prima facie violation of Section 4(1) read with Section 4(2)(a) of the Act; and*
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> *9. WHEREAS, in terms of the Enquiry Report in general and paragraphs 38 to 40 in particular, the Undertaking also appears to have engaged in dividing or sharing the market through the implementation of a queue system, thereby maintaining*

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8. The Respondent was called upon to file its reply to the SCN within fourteen (14) days from the date of receipt of the SCN as well as to avail the opportunity of hearing before the Commission through its duly authorized representative. A copy of the Enquiry Report was enclosed with the SCN.

WRITTEN REPLY OF THE RESPONDENT

9. The Respondent submitted its reply to the SCN on 26.12.2025, wherein it categorically denied each allegation and submitted as follows:

   (i) the SCN and Enquiry Report violate the principles of natural justice and due process as these rely on presumptions rather than proven contraventions;

   (ii) the SCN has failed to establish a *prima facie* case, as required under Section 30 of the Act, because it does not demonstrate appreciable adverse effect on competition within the relevant market, which is a necessary ingredient of Section 4 of the Act;

   (iii) the Commission has defined the relevant market too narrowly without taking into account the fact that the National Logistics Corporation (the "**NLC**"), another player in the market for transporting edible oil, ghee and fats, also exists and that customers can use rail or alternate logistics if road transport prices rise unreasonably;

   (iv) the allegation that the Respondent's conduct has nationwide spillover effect is speculative;

   (v) the Respondent is not an undertaking as defined in Section 2(1)(q) of the Act because it does not perform an economic activity and is only a non-profit trade association, which does not provide transportation services, fix prices or engage in commercial activities;

   (vi) the price circulars issued by the Respondent neither have the object nor the effect of harming competition as the circulars are advisory and non-binding on members, are based on cost-based calculations and bring transparency and predictability to a volatile market. Further, Section 4(2)(a) refers to price fixing but the Respondent does not fix prices, it merely recommends them and members remain free to negotiate independently. Also the Commission has provided no evidence of enforcement of prices by the Association, collusion among members and consumer harm or market distortion;

(vii) the queue system is an operational and safety measure and not a market sharing arrangement as there is no division of markets by territory, volume or type. Instead, the queue system is first-come-first-served, does not allocate territories or customers and is open to all transporters, including non-members. The system was put in place in coordination with port authorities to reduce congestion and ensure efficient movement which is a pro-competitive outcome;

(viii) even if a prohibited agreement exists, the same must be examined under Section 5 of the Act as the Respondent's activities promote efficiency by reducing waiting time and fuel wastage, encourage economic progress by ensuring timely delivery of essential goods, and grant consumers benefit by stabilizing transport costs and maintaining supply chain reliability; and

(ix) the enter and search under Section 34 of the Act appears to have been conducted without reasonable grounds.

10. In light of its contentions, the Respondent prayed that the Commission should:

(i) withdraw the SCN;

(ii) not initiate proceedings against it under Section 30 of the Act;

(iii) impose no penalty on it under Section 38 *ibid*; and

(iv) acknowledge the legitimate and pro-competitive role of the Association.

HEARING AND SUBMISSIONS

Subsequent to the written reply to the SCN, a hearing was fixed on 04.08.2026 to offer an opportunity to the Respondent to present its stance before the Bench.

12. In his submissions before the Bench, learned counsel for the Respondent primarily agitated the points already noted in the written reply. In particular, he contended that:

(i) the Association exercises no control whatsoever over mill owners, its own members and other tanker owners;

(ii) neither the PVMA and the mill owners nor its members and other tanker owners are bound by any of its price circulars;

(iii) no action can be taken against any person or undertaking if the Association's circulars are not followed;

(iv) the Association is not engaged in any price fixing in respect of the transportation of edible oil, ghee and fats to various parts of the country;

(v) the Enquiry Report does not provide any evidence that a complaint has been filed against the Association before the Commission, which proves that every member of the Association is satisfied with its functioning;

(vi) the queue system is maintained purely for the benefit of tanker owners as without it there would be recurring disputes between them; and

(vii) either the enquiry should be reopened for being one-sided or the reply of the Respondent to the SCN should be accepted as final.

13. On the conclusion of counsel's arguments, the Bench enquired that if the market was in fact competitive and no one was bound by the Respondent's price circulars, then why did the Respondent revise transportation rates on around 89 occasions. In support, the Bench referred to different circulars issued by the Respondent from time to time. The Bench also questioned the fixed formula – linked to fluctuation in diesel prices – adopted by the Respondent for changing its transportation charges. The Bench furthermore emphasized that the evidence suggests that the Respondent has created barriers to entry in the market for edible oil transportation as no person can participate in the said market unless it is affiliated with the Respondent.

14. In response, the counsel for the Respondent stated that the market is open to entry and is also competitive, which is evident from the fact that no proceedings have been initiated or are pending against the Respondent at any forum. It was further submitted that the Respondent only conveys information regarding change in diesel prices without fixing any transportation charges and so the price circulars flagged by the Bench are

merely suggestive. With respect to the queue system, the counsel stated that the same is helpful for tanker owners as the majority of them are not educated and require supervision.

15. The Bench observed in respect of the counsel's statement of the price changes being suggestive only by adverting to the Respondent's circular dated 01.12.2024, in which no qualifying declaration was present that the prices recommended therein are non-binding. The Bench also questioned whether any tanker owner, irrespective of his membership status, could lift edible oil consignments from the ports as the available record suggested that only tanker owners who had an identity card number issued by the Respondent could lift consignments. Responding to this query, the counsel for the Respondent informed that any person could participate in the market.

16. Thereafter, the Bench directed the Respondent to submit the following information:
   - (i) proof that competition exists in the market for edible oil transportation;
   - (ii) proof that the circulars issued by the Respondent Association are suggestive and non-binding on its members;
   - (iii) proof that any person may participate in the market for edible oil transportation without becoming a member of the Respondent Association;
   - (iv) provide rates charged by the other transporters (i.e. NLC etc.) for transportation of edible oil; and
   - (v) tax returns of the Respondent Association for the last three (3) years.

17. On 25.08.2026, the Respondent filed a written synopsis wherein it raised the following points:
   - (i) the allegations contained in the SCN, particularly those relating to price fixing and division/sharing of the market, do not accurately reflect the actual role, functions and activities of the Respondent. The Respondent is neither a regulatory authority nor a commercial contracting entity and has never exercised control over the prices, payments or commercial arrangements between mill owners and transport contractors;
   - (ii) the Respondent itself does not undertake the business of transportation of edible oil, nor does it enter into individual transportation contracts

with mill owners or other customers. When any mill requires transportation of edible oil, the concerned mill deals with the relevant transport contractor/tanker owner in accordance with their own commercial arrangement. Therefore, the Respondent has no direct knowledge of the financial dealings, payments, consideration or other commercial terms mutually agreed between the individual mill owners and transport contractors;

(iii) the principal role of the Respondent is administrative and organizational in nature and it facilitates coordination amongst its members. The Respondent does not possess any statutory or regulatory authority over the transportation market and cannot compel any mill owner or transport contractor to enter into a contract or to pay any particular transportation charge. Moreover, the Respondent has never exercised any authority over the business activities, financial affairs or independent commercial decisions of its members;

(iv) the Respondent has not imposed any binding transportation charges upon its members or upon mill owners as the transportation charges are essentially determined by the commercial circumstances prevailing between the concerned transport contractor and the relevant mill. Where there is an increase in diesel or other operational costs, the Respondent intimates the relevant stakeholders regarding the changed operating ratio of cost and prevailing circumstances; however, such intimation is not a binding fixation of transportation charges. Additionally, the Respondent has no mechanism whereby it can enforce any particular transportation rate against a mill owner or transport contractor;

(v) the queue system was introduced solely for orderly management, record-keeping and coordination of tankers engaged in the transportation of edible oil because it takes approximately thirty to forty five days for a tanker to completes its assigned delivery and return. The queue system does not allocate a particular geographical territory, customer or commercial market to any particular member. It is merely an administrative/logistical mechanism intended to avoid disorder and duplication in the movement of tankers. Therefore, the queue system

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cannot reasonably be equated to an agreement for dividing or sharing the relevant market within the meaning of Section 4(2)(b) of the Act;

(vi) the Respondent has never captured or controlled the relevant market, nor has it ever directed its members to stop providing transportation services or organized/enforced any strike for the purpose of restricting competition. The Respondent does not have the power or authority to determine the volume of business, revenue, profit or individual contractual arrangements of its members;

(vii) the mere fact that the Respondent has a substantial number of members cannot establish that it is engaged in anti-competitive conduct. There must be cogent material demonstrating an actual anti-competitive agreement, decision or concerted practice having the prohibited object or effect. In the present case, the Respondent's organizational and administrative activities have been misconstrued as commercial control over the relevant market;

(viii) the Respondent does not derive transportation revenue from the business of its members. It only collects Rs. 1,500 per tanker once the same returns to Karachi. The said amount is not transportation consideration, commission or profit sharing and is instead used for miscellaneous/administrative expenses, routine maintenance and organizational requirements;

(ix) similar organizational and logistical arrangements are followed by other entities operating in the transportation and logistics sector e.g., the NLC. The existence of an organized queue or scheduling mechanism should therefore be examined in its actual commercial and operational context, rather than being presumed to constitute market division;

(x) there was never any intention on the Respondent's part to restrict, eliminate or distort competition within the relevant market;

(xi) the Respondent's members are only 15% to 20% of the strength of tankers because the NLC, Pakistan Railways and non-members also actively operate in the market;

(xii) no case is registered against the Respondent till date either by the mill owners, transport contractors or drivers;

(xiii) the edible oil transportation market is an open market which is not held by anyone;

(xiv) the intimation of increase in diesel prices does not have any binding effect on mill owners and no action has been taken against them in this regard; and

(xv) the Respondent does not circulate any information through print/social/electronic media and has no channel or group.

18. In view of its submissions, the Respondent prayed that:

(i) the allegations of price fixing under Section 4(2)(a) of the Act and market division/sharing under Section 4(2)(b) of the Act be reconsidered; and

(ii) the Commission appreciate the actual role and limited functions of the Association and the factual circumstances in which the impugned communications and queue system were implemented.

19. Subsequent to the written synopsis, a second hearing was fixed for 02.09.2026. However, on 01.09.2026 the counsel for the Respondent informed the Commission that the Respondent's written synopsis dated 25.08.2026 should be considered as its response in lieu of the scheduled hearing. As a result, no hearing could take place on 02.09.2026. It is important to note that the questions posed to the Respondent by the Bench[1] after the hearing of 04.08.2026 were never responded to and remain unanswered to date.

ISSUES

20. After carefully examining the Enquiry Report, the material on record and the submissions of the Respondent, the Bench has framed the following issues for determination:

I. Whether the Respondent is an undertaking in terms of Section 2(1)(q) of the Act?

[1] Questions are noted in paragraph 16 of this Order.

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II. **Whether the relevant market and spillover effect have been correctly identified?**

III. **Whether the Respondent has violated Section 4(1) read with Section 4(2)(a) of the Act by fixing the transportation charges for the movement of edible oil, ghee and fats?**

IV. **Whether the Respondent has violated Section 4(1) read with Section 4(2)(b) of the Act by allocating business amongst its members based on the queue system?**

ANALYSIS

ISSUE I: Whether the Respondent is an undertaking in terms of Section 2(1)(q) of the Act?

21. The first objection raised by the counsel for the Respondent was that the Respondent is not an undertaking because it does not perform an economic activity. However, the Bench finds this argument of the Respondent to be contrary to the provisions of the Act, particularly Section 2(1)(q) which reads:

> "*2. **Definitions.**__ (1) In this Act, unless there is anything repugnant in the subject or context;__*
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> ...
>
> *(q) **"undertaking"** means any natural or legal person, governmental body including a regulatory authority, body corporate, partnership, association, trust or other entity in any way engaged, directly or indirectly, in the production, supply, distribution of goods or provision or control of services and **shall include an association of undertakings;**"*
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> (***Emphasis supplied***)

22. It may be noticed from the above that an 'association of undertakings' is included in the definition of undertaking provided in the Act. There is no denial on the Respondent's part that it is an association of edible oil tanker owners, all of whom are undertakings in their own capacity. Moreover, there is now a plethora of case-law of the Commission that 'association of undertakings' fall within the ambit of undertaking, as defined in Section 2(1)(q) of the Act. For the sake of brevity, only one such decision

shall be referred to i.e., ***In the Matter of Show Cause Notice issued to Messrs Pakistan Flour Mills Association*** (2020 CLD 433). In that case the Commission observed:

> *"33. **Bare perusal of the definition of 'undertaking' reveals that the legislature has imposed a condition on legal and natural person** mentioned in section 2(1)(q) of the Act which is **that they must be engaged in provision of goods or services in any manner.** Whereas, **for 'association of undertakings' no such condition is imposed by the legislature**...*
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> *34. ...**for an 'association of the undertakings'** the legislature has not prescribed any condition, rather, **the plain and ordinary language** of the afore-referred provision **unambiguously provides that it should be an association of 'undertakings' i.e. where the members are 'undertakings' within the meaning of section 2(1)(q) of the Act, it will be deemed to be an association of undertakings.**"*
>
> (***Emphasis supplied***)

23. In the afore-referred case, the Commission noted that if an association of undertakings is comprised of members, who are themselves engaged in an economic activity, then the association of undertakings automatically becomes an undertaking itself. As stated in paragraph 23 of the Enquiry Report, which was never challenged by the Respondent, the Respondent's '*membership comprises of individual transporters owning tankers [who] are involved in the supply of edible oil, ghee and other liquid cargo from ports in Karachi to cities across Pakistan. Since these transporters are involved in an economic activity they fall within the definition of undertakings within Section 2(1)(q) of the Act.*' Resultantly, in light of the clear command of Section 2(1)(q) of the Act that an 'association of undertakings' shall be treated as an undertaking for the purposes of the Act, and the fact that the Respondent is indirectly engaged in an economic activity on account of its members who are directly engaged in an economic activity i.e., the transport of edible oil, ghee and fats, its objection that it is not an undertaking loses all force. The same is thus declined.

ISSUE II: Whether the relevant market and spillover effect have been correctly identified?

24. The second objection of the Respondent was that the relevant market has not been correctly defined and the assessment of spillover effect is speculative. Specifically, it

was the Respondent's case that the Commission has failed to take into consideration that alternative routes are available to customers for transporting edible oil, ghee and fats, including the NLC, other independent transporters and the railway system. Further, the Commission did not substantiate how the Respondent's conduct has spillover effect as it did not define the geographic market precisely.

25. Before delving into the contention of the Respondent, it is necessary to reproduce Section 2(1)(k) of the Act which explains the term 'relevant market':

> *"2. **Definitions.**__ (1) In this Act, unless there is anything repugnant in the subject or context;__*
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> ...
>
> *"relevant market" means the market which shall be determined by the Commission with reference to a product market and a geographic market and a product market comprises all those products or services which are regarded as interchangeable or Substitutable by the consumers by reason of the products' characteristics, prices and intended uses. A geographic market comprises the area in which the undertakings concerned are involved in the supply of products or services and in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighboring geographic areas because, in particular, the conditions of competition are appreciably different in those areas;"*

It is important to note that the Enquiry Report, relying on this definition, defined the relevant product market as '*edible oil, ghee and fats etc., transportation services via road*' and the relevant geographic market as '*the province of Sindh and across the country*'. The SCN issued by the Commission to the Respondent also includes the same relevant market. Now, the main grievance of the Respondent with this definition of relevant market is that the Commission did not treat the NLC, other independent transporters and the railway system as substitutes for the services provided by the Respondent. However, the Respondent's argument is misconceived. The Enquiry Report did consider the NLC and held it to be a substitute to the Respondent but also highlighted that the NLC has nowhere near the fleet of food grade tankers as are available with the Respondent. The railway system was not considered by the Enquiry Report as it was observed that the only medium of transport currently available for carrying edible oil, ghee and fats to various destinations is via road. Insofar as independent transporters are concerned, the Enquiry Report explained that at present there are only two major players in the market for transport of edible oil, ghee and fats so independent transporters, being a minute fraction of the market, could not be a meaningful substitute to the services offered by the Respondent. Reference is made to paragraph 15 of the Enquiry Report:

> *"15. Since these products are in liquid form their carriage requires food grade tankers. __At present the only medium of transportation from ports to up country is by road through tankers__. There are __two major players currently operating in the market for the transportation of edible oil/ fats__ via road from ports to various destinations across the country; __APEOTOA and National Logistics Corporation__ (NLC). __APEOTOA's members have the larger market share with daily deployment of around 250-300 vehicles as compared to NLC's 50-60 vehicles approximately__. The services provided by APEOTOA members and NLC are of a similar nature, as both transport edible oil/ fats from ports to respective mills across the country. __Given that, both the entities fulfill the same functional need and operate within the same market, they can be considered substitutes in terms of their characteristics and intended use__."*
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> (***__Emphasis supplied__***)

In view of the above, the Bench concludes that the relevant product market in the instant matter is the provision of transport services by the tanker owners for the movement of edible oil, ghee and fats via road, and the geographic market is the whole of Pakistan as the transport services originate from the ports in Karachi and terminate in different cities across the country.

26. Moving to the issue of spillover effect, the only point raised by the Respondent was that the geographic market had not been properly defined. Yet before us, the counsel for the Respondent did not elaborate as to precisely what error had been committed in the description of the geographic market. It has never been the case of the Respondent that its tankers do not travel within Sindh and to cities across Pakistan. In fact, the price circulars discovered on social media and impounded from the Respondent's premises corroborate that its tankers transport edible oil, ghee and fats all over the country, including but not limited to Lahore, Multan, Bahawalpur, Quetta, Gwadar, Peshawar, Abbottabad and Mardan etc. In such circumstances, there is no merit in the

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Respondent's objection as its conduct most certainly has implications for consumers throughout the country. Accordingly, the Bench rejects the Respondent's challenge to the Commission's determination of the relevant market and spillover effect.

ISSUE III: Whether the Respondent has violated Section 4(1) read with Section 4(2)(a) of the Act by fixing the transportation charges for the movement of edible oil, ghee and fats?

27. The primary allegation against the Respondent is that it has acted in contravention of Section 4(1) read with Section 4(2)(a) of the Act. The said provisions read:

> "*4. **Prohibited agreements.** __ (1) No undertaking or association of undertakings shall enter into any agreement or, in the case of an association of undertakings, shall make a decision in respect of the production, supply, distribution, acquisition or control of goods or the provision of services which have the object or effect of preventing, restricting, or reducing competition within the relevant market unless exempted under section 5.*
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> *(2) Such agreements include, but are not limited to___*
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> *(a) fixing the purchase or selling price or imposing any other restrictive trading conditions with regard to the sale or distribution of any goods or the provision of any service;*"

28. The case against the Respondent is that from 2019 to 2025 it regularly fixed the transportation charges for moving edible oil, ghee and fats within Karachi and across the country. As per the price circulars impounded from its premises, the Respondent revised transportation rates 89 times during the six year period, with 52 changes corresponding to an increase in the rates and 37 changes relating to a decrease in the rates. The Respondent countered the allegation against it by submitting that the circulars issued by it are advisory and non-binding with no action taken against any member or mill owner for not complying with the rates. The Respondent also stated that it exercises no control whatsoever over its members or mill owners and prices are determined by these two parties on their own terms and conditions, keeping in view the prevailing commercial circumstances. Further, the Respondent questioned the initiation of proceedings against it under Section 30 of the Act as the SCN did not demonstrate appreciable adverse effect on competition within the relevant market and because there was no intention on its end to restrict, eliminate or distort competition within the

relevant market. Moreover, the Respondent questioned the lack of proof demonstrating the existence of an anti-competitive agreement, decision or concerted practice having the object or effect of preventing, restricting, or reducing competition within the relevant market.

29. The Bench has thoroughly perused the submissions of the Respondent along with the available material. However, after due consideration it finds itself in complete disagreement with the Respondent. To begin with, the assertion of the Respondent that its price circulars have no binding effect is belied by the record, particularly in light of the circulars issued by the PVMA and the statements of its own representatives who held a meeting with the Enquiry Committee on 28.02.2025.

30. The PVMA circulars being relied upon were impounded from the premises of the Respondent during the enter and search conducted under Section 34 of the Act. It is noteworthy that for each and every price change notified by the Respondent, the PVMA also issued a circular to its members on the same (or next) day informing them of the change in transportation charges which aligned precisely with the change proposed by the Respondent. For reference, a few examples are provided below to show that the price changes set by the Respondent were followed verbatim by the PVMA:

Date of Change in Transport Charges	Respondent's Proposed Change in Transport Charges	PVMA's Revised Transport Charges
16.01.2025	1.95%	1.95%
01.10.2024	-1.70%	-1.70%
16.02.2024	6.27%	6.27%
01.08.2023	14.92%	14.92%
29.01.2023	26.25%	26.25%
15.07.2022	-30.40%	-30.40%
16.06.2021	1.34%	1.34%
01.02.2021	2.16%	2.16%
01.12.2020	3.00%	3.00%

25.03.2020	-11.25%	-11.25%
01.08.2019	4.23%	4.23%
01.01.2019	-3.20%	-3.20%

31. Moreover, in the meeting of 28.02.2025, the representatives of the Respondent, which included the Office Secretary and PS to the Chairman, confirmed that transport rates are set through an agreement between the Respondent and the PVMA, with the latest agreement entered into in 2022. Therefore, in the face of such compelling evidence, the claim of the Respondent that its price circulars are mere suggestions and discretion is available to members and mill owners to negotiate their own rates cannot be accepted. More so, when the representatives of the Respondent also acknowledged before the Enquiry Committee that EOCCA contacts the Respondent on behalf of mill owners for transportation purposes instead of individual transport companies. When mill owners cannot directly approach individual transporters to arrange for the transport of edible oil, ghee and fats, it begs the question how both parties will be able to set transportation prices independently, free from the influence of the Respondent.

32. Be that as it may, even if for the sake of argument, the contention of the Respondent is accepted as correct, the fact of the matter is that the mere issuance of price circulars by the Respondent, irrespective of their status as binding or non-binding, is sufficient to attract the clutches of Section 4 of the Act. Reliance in this regard is placed on the recent decision of the Hon'ble Supreme Court of Pakistan rendered in ***Pakistan Vanaspati Manufacturers Association*** *vs.* ***Competition Commission of Pakistan*** (CA No. 367 of 2025) (the "**PVMA Order**"), wherein the Court held:

> "*9. ...The Court of Justice of the European Union in the case of IAZ International Belgium has held that <u>a recommendation issued by a trade association, even if formally non-binding, constitutes a "decision" where it is capable of influencing the commercial conduct of its members</u>. In the present case, admittedly, after reducing and fixing the prices at a particular level upon the recommendation of the association, none of the undertakings reduced its prices further...*"
>
> (***<u>Emphasis supplied</u>***)

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Consequently, even if no enforcement mechanism exists with the Respondent to ensure that its proposed transportation rates are followed by its members and mill owners, the same is of no significance because it is a settled principle in competition law that even recommendations of an association have the capacity to influence the decision-making powers of its members, thereby negatively harming competition within the relevant market.

33. The PVMA Order also answers another objection of the Respondent, namely, that there is no proof that any anti-competitive decision was taken by it to prevent, restrict, or reduce competition within the relevant market. The Hon'ble Supreme Court in that case has clearly held that recommendations, issued in the form of circulars[2], fall within the ambit of 'decision' as required by Section 4 of the Act, rendering the Respondent's point moot. At this stage, it is necessary to clarify that whether the issuance of price circulars by the Respondent is characterized as a 'decision' or an 'agreement', nothing much turns on this distinction because the Commission has already held ***In the Matter of Show Cause Notices issued to Fertilizer Manufacturers of Pakistan Advisory Council and its Member Undertakings for Violation of Section 4 of the Competition Act, 2010*** (2025 CLD 1570) that '*in the instant case whether the advertisement published by FMPAC is characterized as a 'decision' or an 'agreement' it would fundamentally remain and fall in the prohibited category so far as it has the object or effect of preventing, restricting or reducing competition within the relevant market in terms of Section 4(1) of the 2010 Act*' (para 63).

34. However, the discussion above is not the end of the matter. The Bench notes with concern that despite the Respondent's assertion that it cannot enforce any of its price decisions or take action against a member or mill owner, a sentiment which was echoed by the counsel for the Respondent during the hearing, a recently issued circular by the Respondent shows that it is explicitly and aggressively implementing its price decisions by threatening to blacklist tanker owners who offer discounts to mill owners and closing the supply of edible oil to any mill owner who seeks a discount from a tanker owner. The relevant circular dated 03.10.2025 is reproduced below for ready perusal:

[2] In the factual matrix before the Hon'ble Supreme Court of Pakistan in the PVMA Order, the PVMA was also charged with, *inter alia*, issuing circulars to members directing them to adhere to the fixed rates.

All Pakistan Edible Oil Tanker Owners Association (Regd).

Ref. # ________ Date: 2025ء اکتوبر 03

سرکلر برائے

تمام ملکی ٹھیکیداران بابت ڈسکاؤنٹ

السلام علیکم!

لکھا جاتا ہے کہ آپ تمام ایڈیبل آئل ٹھیکیداران کو بذریعہ اس سرکلر پابند کیا جاتا ہے کہ کوئی بھی ٹھیکیدار یونین ہذا کے اجازت کے بغیر اگر کسی بھی ٹھیکیدار نے مل والے کو ڈسکاؤنٹ دینے کی کوشش کی یا کسی مل والے نے کسی ٹھیکیدار سے ڈسکاؤنٹ لینے کی کوشش کی تو مذکورہ ٹھیکیدار کا ٹھیکہ ایڈیبل آئل سے بلیک لسٹ کیا جائیگا اور مذکورہ مل کی سپلائی مکمل طور پر بند کی جائیگی۔

آل پاکستان آئل ٹینکرز اونرز ایسوسی ایشن کا (NLC) کے ساتھ معاہدہ ہوا ہے لہذا کسی بھی قسم کا ڈسکاؤنٹ دینا سختی سے منع ہے۔

چیئرمین

ڈاکٹر جان وزیر

Chairman
All Pakistan Edible Oil
Tanker Owners Association
(Regd)

CC
جنرل سیکرٹری PVMA
چیئرمین PVMA

Registered Head Office: Plot No. C-52, 1st Floor, Block 1, Shireen Jinnah Colony,

35. Lastly, the Respondent submitted that competition was not adversely affected on account of the price circulars and no intention existed on its part to prevent, restrict or reduce competition within the relevant market. Therefore, no violation of Section 4 of the Act could be made out against it. The Commission has already extensively dealt with these issues in its order passed ***In the Matter of Show Cause Notices issued to M/s Aisha Steel Mills Limited, M/s International Steels Limited for Prima Facie Violation of Section 4 of the Competition Act, 2010***[3], wherein it was observed:

> "*66. ...The counsel's contention that there was no real time adverse effect on competition, or that the Respondents lacked any subjective intent, is irrelevant. Section 4(1) prohibits agreements having the object or effect of restricting competition, and once the object is established, the infringement is complete regardless of actual effects or subjective intention. Reliance in this regard is placed on the decision of the Commission In the Matter of Pakistan Automobile Manufacturers Authorized Dealers Association (PAMADA) and its Member Undertakings (2016 CLD 289):*

[3] https://appadminccp.cc.gov.pk/ccporders/0ef719eafc3f7f66672aa37632e37257.pdf

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

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

37. __What the order is referring to above is in practice the per se doctrine which in the realm of competition law stipulates that certain anti-competitive practices are so egregious as to be deemed illegal outright. This is to say that they are illegal 'without elaborate inquiry as to the precise harm they have caused or the business excuse for their use'__. The doctrine has been developed extensively through case-law from both the USA and the EU. Furthermore, their applicability to Pakistan has already been demonstrated through the various orders passed by the Commission since 2008. __Price fixing__, market allocation and bid rigging are the forms of collusion that __have commonly been agreed to warrant treatment under the per se doctrine in most jurisdictions__."

67. It is not only domestic jurisprudence that supports the abovementioned interpretation of Section 4. __Foreign jurisprudence equally affirms that price-fixing agreements are a per se violation of competition law, wherein the actual effects on competition and the subjective intentions of the parties are immaterial, as their very object is inherently to restrict competition. The consequences of such agreements are presumed to be harmful. Their tendency to produce anti-competitive effects dispenses with the requirement of demonstrating their actual impact__. Reference is made to the decision of the Court of Justice of the European Union in Groupement des cartes bancaire (CB) v. European Commission ECLI:EU:C:2014:2204 wherein it was observed:

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

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

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

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

...

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

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

Definition

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

Commentary

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

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

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

(*Emphasis supplied*)

It may be noticed from the above-cited dicta that price fixing is classified as a *per se* violation of competition law by both domestic and foreign jurisprudence. Resultantly, the adverse effects of such a violation on competition within the relevant market, if any, are immaterial. Further, the subjective intention of the parties is also not relevant while assessing the said violation. The Bench sees no reason to disagree with and disturb the settled case-law of the Commission and of the relevant courts functioning in the USA and the European Union.

36. Having addressed the Respondent's objections and submissions, the Bench arrives at the conclusion that the Respondent's revision of the transport rates 89 times over a period of six years squarely falls within the prohibition contained in Section 4(2)(a) of the Act regarding the fixing of purchase or selling price. By influencing transport rates, the Respondent impacts the selling price of edible oil, ghee and fats as transport charges paid by the mill owners are ultimately passed on to consumers in the final price of these goods. Here the Bench would like to elaborate on an important point. Whilst not argued by the Respondent, we have noticed that of the 89 price changes proposed by the Respondent, 37 such changes resulted in the reduction of transport rates owing to a decrease in the price of diesel. This reduction in prices may be perceived by some as being beneficial to consumers and, therefore, a finding by the Bench that such conduct

of the Respondent has contravened Section 4 of the Act may appear contradictory to the scheme of the Act. However, the Bench notes that the purpose of the Act in general and Section 4(2)(a) in particular is to bolster competition in the commercial and economic spheres and to prevent collusion amongst market players. If such collusion sometimes leads to a benefit to the consumers, that benefit becomes irrelevant as ultimately it is competition that loses. The Hon'ble Supreme Court of Pakistan in the PVMA Order has fittingly explained this aspect:

> "*9. ...In the present case, admittedly, after reducing and fixing the prices at a particular level upon the recommendation of the association, none of the undertakings reduced its prices further.* ***Even though the prices fell and consumers benefited for the time being, this establishes that the result was a collective understanding among the competitors, which resulted in anti-competitive conduct. Irrespective of any short-term benefit to consumers, such a collective understanding is prohibited under Section 4 of the Act.***
>
> *10. The appellant's other contention is that the prices were reduced upon the request of the Government, for the public good, therefore the decision does not contravene the provision of section 4 of the Act. The Government's concern to secure relief for consumers cannot be questioned merely because it sought a reduction in the prices of essential commodities. This, however, does not answer the question before us.* ***The relevant consideration is not whether the ultimate price was beneficial to consumers, but whether competing undertakings remained free to determine their prices independently.*** *The mere reduction of prices is not, in itself, anti-competitive. Lower prices are ordinarily a manifestation of competition and may benefit consumers.* ***The vice in the present case lies in the collective determination of the price by an association representing competing undertakings, thereby substituting a common price for the independent pricing decisions which each undertaking was required to make.*** *Even if the objective of the appellant was public good, the resulting impairment of independent price rivalry cannot be disregarded merely because the agreed price was lower than the prevailing price. Thus, the plea of the appellant that the decision was taken for the public good does not absolve it of the obligation to refrain from making any decision, the object or effect of which is to restrict or reduce competition.* ***Courts across the globe have held on a number of occasions that any agreement or fixing of prices on the pretext of public good, even if based on good intention, remains fundamentally unlawful, if it results in anti-competitive behaviour.*** *The act of the association of issuing collective pricing recommendation, which was unanimously accepted by the undertakings, amounts to restricting the members from making independent commercial choices.*

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Irrespective of the fact that as a result of consultation between the appellant and the Government, the prices of commodities were reduced, in effect, the decision prevented, restricted and reduced competition within the relevant market, in violation of section 4 of the Act."

(*Emphasis supplied*)

37. Accordingly, for what has been discussed above, the Bench finds the Respondent to have violated Section 4(1) read with Section 4(2)(a) of the Act by fixing the transportation charges for the movement of edible oil, ghee and fats.

ISSUE IV: Whether the Respondent has violated Section 4(1) read with Section 4(2)(b) of the Act by allocating business amongst its members based on the queue system?

38. The second allegation against the Respondent is of infringing Section 4(1) read with Section 4(2)(b) of the Act. This latter provision provides:

"***4. Prohibited agreements.***__

...

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

...

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

39. The Enquiry Report explains in detail how the Respondent has divided or shared the market amongst its members:

"*38. Based on meeting with APEOTOA's representative it appears that the association has instituted a system whereby it controls the movement of vehicles to lift consignments from the ports. Once edible oil is offloaded at the port, EOCCA contacts APEOTOA for lifting of the consignment rather than individual transportation companies. APEOTOA which maintains a queue system then assigns the vehicle to lift that consignment which will be the one first in the queue. According to APEOTOA, the queue system brings efficiency and ensures all transporters, especially smaller ones, receives a guaranteed share of business. In a competitive market, the transporters would be approached by the contractors to lift the cargo. This practice of APEOTOA limits this element of choice. Secondly, in a competitive market, transporters would compete with each other for business based a number of factors including, price, quality of vehicle (for example, well maintained, 22 wheelers etc.) and reliability of services. In the instant matter it is observed that APEOTOA is controlling the market by allocating* *vehicles based on the queue system. APEOTOA issues 'parchis' (permits) to vehicles and only vehicles that are issued the permits can lift the assigned cargo. Any vehicle that does not adhere to this system and lifts a cargo without APEOTOA's permit is fined.*"

(*Emphasis supplied*)

40. It, therefore, appears that the Respondent by maintaining a queue system is dividing the market by controlling which customer is assigned to which member and by preventing members from competing with one another on quality of services by guaranteeing each member a share in the business. However, the practice of allocating markets is highly deprecated, often regarded as more egregious than even price fixing, and is ordinarily treated as a *per se* violation of competition law. Reliance in this regard is placed on the decision of the Commission *In the Matter of Complaint filed by Pakistan Overseas Employment Promoters Association against G.C.C. Approved Medical Centers Administrative Office and GCC Approved Medical Centers* (2013 CLD 748), wherein it was held:

> "*100. ...The division of market and equal allocation of GCC Customers (quota system) has allowed the Respondents to operate in their comfort zones by ensuring guaranteed revenues. We must recognize that in any given market when competitors compete it is either on 'price' aspect or 'range or quality' of services. As mentioned in Global Antitrust Law and Economics by Eliner Elhague and Damien Geradin, Foundation Press 2007, it is stated that "Horizontal Market divisions can be even more anticompetitive than price-fixing or output restrictions. They allow cartels to avoid the difficulties of fixing and monitoring prices and output, and allocating market share among the cartel members. The cartel need simply monitor where or to whom firms are selling. Further, market divisions end all forms of competition between the firms, including on quality and service. Thus, unlike price and output restraints, market divisions cannot be undermined by non-price competition."... This principle was followed by U.S. Courts in United States v. Topco Assocs. Inc., 405 U.S. 596, Palmer v. BRG of Georgia, Inc., 498 U.S. 46, Columbia Steel v Portland GE, 103 F.3d 1446 (U.S. Court of Appeals 9th Circuit), wherein division of market and equal allocation of customers (market allocation/division of market) was considered as an agreement falling in the category which are considered per se illegal and are always deemed to have the object of preventing, restricting or reducing competition.*
>
> *101. Robert Pitofsky et al in his book Trade Regulation noted that: "Though price fixing, of course, suppresses competition, such agreements do not of themselves guarantee that each competitor*

will receive a satisfactory share of the business. Especially when products are not fungible, as when they are built to specifications or possess brand names of different attractiveness, price control alone may be insufficient and market division may be the only practicable means of "regulating" competition. Whether or not prices are fixed, each competitor will then receive his share of the business and no more. The policy is essentially one of 'live and let live'. The effects of any agreement for sharing the markets is manifestly to eliminate competition." Therefore, in this particular market, by implementing the division of market and equal allocation of GCC Customers (quota system), the competition is prevented and restricted; leaving no incentive to bring any innovation or efficiency."

(*Emphasis supplied*)

The above-referred order of the Commission was upheld by the Competition Appellate Tribunal (the "**Tribunal**") vide its judgment dated 11.08.2025. Thus, the Tribunal endorsed the Commission's findings that allocation of markets is not only a *per se* violation of the Act but is also a practice which needs to be more strictly monitored and guarded against as compared to price fixing.

41. In the same vein, the European Commission in its '*Notice on agreements of minor importance which do not appreciably restrict competition under Article 101(1) of the Treaty on the Functioning of the European Union (De Minimis Notice)*' has observed that while Article 101 of the Treaty on Functioning of European Union (similar to Section 4 of the Act) does not apply to prohibited agreements entered into between undertakings whose aggregate market share does not exceed 10% on any of the relevant markets affected by the agreement, this exemption is not available to:

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

(*Emphasis supplied*)

42. Before us, the Respondent did not deny that a queue system is operated by it. In fact, the same was admitted by its representatives before the Enquiry Committee in the meeting of 28.02.2025. Nonetheless, the Respondent attempted to defend the queue system by arguing that the same is merely an administrative and safety measure to make sure that there is no chaos in the market; reduce congestion; ensure the efficient movement of edible oil, ghee and fats; and secure fair business distribution, particularly for smaller transporters. It also highlighted that a similar practice is followed by the NLC, therefore, the same cannot be regarded as an anti-competitive measure and must be viewed through the lens of the commercial and operational context existing in the relevant market.

43. With respect, the Bench finds itself unable to agree with either of the justifications put forth by the Respondent. The rationale that the queue system creates efficiencies in the market for transport of edible oil, ghee and fats is one that should have been taken up by the Respondent by filing an exemption application before the Commission under Section 5 of the Act. However, no such application, either before the initiation of the instant proceedings or after, has been submitted by the Respondent. As a result, the Bench is only competent to take cognizance of the alleged violation of Section 4 of the Act and cannot conduct an enquiry into the claimed efficiencies of the queue system. If the Respondent is of the view that the queue system should be exempt from the rigours of the Act, the onus is on it to seek an exemption from the Commission and it cannot take cover under the guise of claimed efficiencies to escape liability in these proceedings. In any event, the Commission has previously held ***In the Matter of Show Cause Notices issued to Messrs United Distributors Pakistan Limited, Messrs International Brands (Pvt.) Limited for Prima Facie Violation of Section 4 of the Competition Act, 2010*** (2025 CLD 1673) that failure to seek an exemption until regulatory proceedings have commenced does not absolve an undertaking of the violation that already exists (para 46). Resultantly, when the Commission in the past has not condoned the actions of undertakings that filed an exemption application subsequent to the initiation of proceedings under Section 30 of the Act, it cannot treat the Respondent – who has not filed an exemption application to date – more leniently.

44. Insofar as the second ground is concerned, suffice to say that the Commission in numerous orders has held that industry-wide anti-competitive practices do not relieve an undertaking from its obligation to comply with the provisions of the Act.[4]

45. Before parting with our discussion on the present issue, the Bench thinks it proper to express its serious concern on a matter of critical importance. The facts of the instant case strongly indicate that only members of the Respondent can participate in the queue system and lift consignments. Tanker owners who are not affiliated with the Respondent are excluded from the market for transport of edible oil, ghee and fats. Whilst the Respondent denied this fact, it never produced any evidence to rebut the same. Further, the material on record, namely, the circular dated 29.09.2023 reinforces the allegation against the Respondent that it strictly monitors the queue system and prevents any member/tanker owner from lifting consignments if they do not abide by the terms and conditions of the queue system. In the said circular, members are warned that tankers issued local parchis can only pick up local consignments and if any tanker on a local parchi picks up a load destined for transport across the country, then both the tanker and the tanker owner will be fined PKR 500,000/- each. The circular then goes on to state that all local tanker owners are directed to sign the decision of the Association by 30.09.2023 and if they fail to do so they will not be issued local parchis from 02.10.2023. If the Respondent monitors with such exactitude the conduct of its members on the queue system and does not allow any intermingling between local and national loads, it does not appeal to logic that it would permit non-members to join the queue system, thereby blocking of the market to tanker owners who wish to operate independently of the Association.

46. Accordingly, keeping in view the factual matrix and evidentiary material before us, we hold that the Respondent has violated Section 4(1) read with Section 4(2)(b) of the Act by allocating business amongst its members based on the queue system.

[4] *In the Matter of Show Cause Notices issued to M/s Aisha Steel Mills Limited, M/s International Steels Limited for Prima Facie Violation of Section 4 of the Competition Act, 2010* at para 88 <https://appadmineccp.cc.gov.pk/ccporders/0ef719eafc3f7f66672aa37632e37257.pdf >; *In the Matter of Show Cause Notice issued to M/s Hyundai Nishat Motor Private Limited for Violation of Section 10 of the Competition Act, 2010* (2025 CLD 1276) at paras 24-25

DECISION AND PENALTY

47. The liability of the Respondent under Section 4(2)(a) and (b) of the Act has been clearly established and so the quantum of penalty now needs to be determined. The Bench in arriving at the appropriate figure has duly considered the Guidelines on Imposition of Financial Penalties (Fining Guidelines). These Guidelines state that the twin policy objectives of any fine are '*to deter undertakings from engaging in anti-competitive practices*' and '*to reflect the seriousness of the infringement*', whilst the factors relevant to calculating the quantum of penalty are '*seriousness of the infringement*', '*duration of the infringement*', and '*aggravating or mitigating factors*'.

48. The Bench shall evaluate each factor in turn. First, we have '*seriousness of the infringement*'. As per Para 5.2 of the Fining Guidelines the Commission '*may consider a number of factors, including the nature of the product... market share(s) of the undertaking(s) involved in the infringement*' when assessing seriousness. In this regard, the Bench observes that the Respondent holds a significant share in the market for transport of edible oil, ghee and fats. As per the Respondent's own admission, around 250-300 of its vehicles visit the ports daily compared to the NLC's 50-60 vehicles. Even if we take the minimum values of 250 (for the Respondent) and 50 (for the NLC), the Respondent's market share comes to approximately 83%[5], as presently only the Respondent and the NLC are the main players in the relevant market. Moreover, edible oil, ghee and fats are essential commodities as they are used by the populace in their day to day lives for cooking purposes. Therefore, any increase in the price of these products due to rise in transport costs will have a detrimental effect on the people as these products will be pushed further and further out of their reach, more so when the country is already grappling with high levels of inflation and poverty. Additionally, Para 5.3 of the Fining Guidelines states that '*Price cartel would be considered a very serious offence even if the undertakings do not receive cartel profits*'. The Bench has already found the Respondent in breach of Section 4(2)(a) of the Act which is directly concerned with price fixing and price cartels. Consequently, owing to the Respondent's dominant position in the relevant market, the importance of edible oil, ghee and fats in

[5] The total number of daily vehicles visiting the ports comes out to 300, therefore, 250/300 = 83.33%.

the lives of the public and the fact that price cartels are treated by the Fining Guidelines as a very serious offence, the gravity of the Respondent's conduct naturally becomes more severe.

49. Secondly, we have the '*duration of the infringement*'. In the instant case, it is evident from the Enquiry Report, SCN and price circulars impounded from the Respondent's premises that the violation of Section 4(2)(a) continued for an extended period of nearly six years, from 2019 to 2025.

50. Lastly, '*aggravating and mitigating factors*' need to be examined. Para 7.2 of the Fining Guidelines treats the '*involvement of directors or senior management*' and the '*continuance of the infringement after the start of investigation*' as aggravating factors. In the meeting of 28.02.2025 with the Enquiry Committee, the representatives of the Respondent acknowledged that the Respondent's pricing decisions are made in general body meetings, which is comprised of eight members, namely:

(i) the Chairman;
(ii) the Vice Chairman,
(iii) the President,
(iv) the General Secretary;
(v) the Joint Secretary;
(vi) the Finance Secretary; and
(vii) the Office Secretary.

Moreover, all the price circulars impounded from the premises of the Respondent reveal that the same were issued either with the approval/signature of the Chairman or the General Secretary. Thus, it is obvious that prices are being fixed by the senior management of the Respondent and they are fully involved in anti-competitive practices. It has also come to the knowledge of the Bench that despite being issued the SCN on 11.12.2025, the Respondent is continuing to fix transport rates. Evidence of this can be found in the price circular dated 18.08.2026, in which charges for ghee have been revised for 81 locations outside Karachi. It appears that the initiation of the present proceedings has had no deterring effect on the Respondent, which persists with its anti-competitive activities despite being put on notice by the Commission. Needless to say, no mitigating factor which can reduce the culpability of the Respondent exists in the instant case.

51. Accordingly, the Bench having scrutinized the findings of the Enquiry Report, the evidence on record, the submissions of the Respondent and the factors set out in the Fining Guidelines, is of the considered view that the Respondent has committed a deliberate and prolonged violation of Section 4 of the Act. As a result, it imposes the following penalties on the Respondent:

(i) PKR 30,000,000/- (Rupees Thirty Million only) for violation of Section 4(1) read with Section 4(2)(a) of the Act; and

(ii) PKR 30,000,000/- (Rupees Thirty Million only) for violation of Section 4(1) read with Section 4(2)(b) of the Act.

The Chairman of the Respondent's General Body, presently Mr. Bakhtawar Jan, and the General Secretary of the Respondent's General Body, presently Mr. Mohammad Ibrahim, are directed to deposit the penalty amount within sixty (60) days from the date of this Order. Further, the Respondent is directed to:

(i) immediately cease its anti-competitive practices, including taking any decision, even if merely suggestive in nature, regarding the fixing of transport rates and maintaining a queue system which has the effect of dividing the market;

(ii) recall forthwith any existing price circulars fixing the transportation rates for the movement of edible oil, ghee and fats within the city of Karachi and across the country;

(iii) publish notices in two (2) Urdu and two (2) English daily newspapers of national circulation clarifying that its member undertakings are free to fix their own transportation rates and that all tanker owners, irrespective of their membership status with the Respondent, are at liberty to visit ports for the lifting of consignments; and

(iv) file a Compliance Report with the Registrar Office, in respect of the penalty amount and the directions of the Bench, within sixty (60) days from the date of this Order, failing which it shall be liable to pay an additional penalty of PKR 50,000/- (Rupees Fifty Thousand only) per day from the date of this Order and may be subject to initiation of criminal proceedings pursuant to Section 38 of the Act before the court of competent jurisdiction.

52. SCN No. 47/2025 dated 11.12.2025 is disposed of in the above terms.

Farid Ahmad Tarar
(Chairman)

Bushra Naz Malik
(Member)

<u>ISLAMABAD, THE 11 th DAY OF SEPTEMBER, 2026</u>