COMPETITION COMMISSION OF PAKISTAN

Government of Pakistan

Enquiry Report

(*Under Section 37(1) of the Competition Act 2010*)

In the Matter of Alleged Infringement of Section 4 of the Competition Act 2010 by Pharma Bureau and its Member Undertakings

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1. Introduction

1.1 Established under Section 12 of the Competition Act 2010 (the "**Act**"), the Competition Commission of Pakistan (the "**Commission**") is mandated to ensure free competition in all spheres of commercial and economic activities to enhance economic efficiency and to protect consumers from anti-competitive behaviour.

1.2 Chapter II of the Act expressly prohibits practices by undertaking(s) which involve abuse of dominant position, agreements between undertakings or decisions adopted by association of undertakings which have the object or effect of preventing, restricting or reducing competition within the relevant market, deceptive marketing practices, and mergers which substantially lessen competition by creating or strengthening a dominant position in the relevant market.

1.3 Under Section 28(a) of the Act, the Commission is empowered to initiate proceedings in accordance with the procedures of the Act and make orders in cases of contravention of the provisions of the Act. Pursuant to Section 28(c) of the Act, the Commission's functions include conducting enquiries into the affairs of any undertaking(s) as may be necessary for the purposes of the Act.

1.4 During the month of February 2016, the Cartels and Trade Abuses department of the Commission noticed several news items and media journal reports suggesting that a number of Multinational Pharmaceutical Companies (hereinafter, "**MPCs**") engaged in the production and marketing of [essential] medicines in Pakistan have exorbitantly raised the prices of various therapeutic/pharmacological drugs within a short span of time. Relevant extracts of some of the news items and reports are reproduced herein below:

(a) *"Six multinational pharmaceutical companies have increased the price of medicines by 15 percent without approval from the Drug Regulatory Authority of Pakistan (DRAP), triggering a controversy*

over the drug pricing mechanism in the country" (Source: Dawn, published 11th February 2016).

(b) "It was the second raise in medicines' prices in the last two years or so as the multinational firms had earlier increased the drug prices by 15pc in 2013, as well" (Source: MedicalNews.pk).

(c) "The Pakistan Young Pharmacists Association (PYPA) and Patients Rights Forum Pakistan (PRFP) have alleged that a club of 50 has increased the prices of medicines from this year from 15 percent to 300 percent in connivance with Drug Regulatory Authority of Pakistan (DRAP)" (Source: The News" published 25 February 2016).

(d) "Over half a dozen multinational pharmaceutical companies have increased the prices of medicines by up to 50 percent over the last one month without seeking approval from the Drug Regulatory Authority of Pakistan (DRAP)" (Source: The Pakistan State Times", published 22 February 2016).

(e) "*Not a single representative of Pharma Bureau, a conglomerate of 21 multinational pharmaceutical, research and biotechnology companies operating in Pakistan, attended a scheduled meeting with health officials in Islamabad. The agenda focused on recent price hikes on a range of medicines."* (Source: Express Tribune published February 20, 2016, Titled **"**Medicine prices: Pharma Bureau snubs govt").

(f) In addition to the above-cited print media reports, on 8 February 2016, Punjab's Chief Drug Controller, Dr. Zakaur Rehman, issued a notice to all drug controller officers, directing them "*to probe the issue of non-availability/acute shortage of some potentially required medicines in the market and furnish the list of non-available/less available drugs sold at more than MRPs* [Maximum Retail Prices]".

1.5 After an initial probe into the alleged increase in prices of various medicines by MPCs, the Commission in a meeting held on 22 April 2016 decided to conduct an enquiry under Section 37(1) of the Act and appointed an enquiry committee comprising of: Sophia Khan, Aqsa Suleman, Muhammad Qasim Khan, and Muhammad Arshad Javed (the '**Enquiry Committee'**) to investigate into the matter for possible violations of the Act, and to submit a report to the Commission.

1.6 To collect the possible evidence of collusive behaviour and cartelization under the patronage of Pharma Bureau, the Commission deemed it appropriate to instruct the Cartel and Trade Abuse department (hereinafter, "**C&TA**") presented a working paper for conducting a search and inspection under Section 34 of the Act at the Pharma Bureau premises in Karachi.

1.7 Pursuant to the request of C&TA department, the Commission in the exercise of its powers under Section 34 of Act, appointed a team of officers to carry out an inspection at the premises of Pharma Bureau located in Karachi on 27 April 2016. The authorized officers of the Commission conducted the inspection and impounded relevant documents and materials. The documents and material impounded at Pharma Bureau premises were handed over to the Enquiry Committee for examination.

1.8 The Enquiry Committee's factual findings and analysis are contained herein below, which have been concluded after examining objectively all material/documents impounded to determine whether any violation of Section 4 the Act has been committed.

1.9 In addition to the impounded documents, the Enquiry Committee has also taken into consideration the data received by it from the MPCs in response to its Letter dated 8 June 2016 and Reminders dated 21 June 2016 and 02 August 2016. The Pharma Bureau also requested for an opportunity to present before the Commission its contentions on the issues involved in this matter. The presentation by the Pharma Bureau was made at the Commission premises on 20 July 2016. All such information and documentation provided by the MPCs and the Pharma Bureau have been duly considered.

1.10 Furthermore, the Enquiry Committee set up meetings with the Drug Regulatory Authority of Pakistan (hereinafter, "**DRAP**") for the provision of information and documentation which has also been analyzed hereinbelow for the purposes of this Enquiry Report.

Pharmaceutical Industry in Pakistan

1.11 Presently there are approximately 700 registered pharmaceutical companies owned or managed by local or multinational companies operating in Pakistan. The pharmaceutical industry in Pakistan caters to around 70% of the country's demand of finished medicine. The indigenous pharmaceutical manufacturing companies share the market roughly 50% with MPCs in terms of supply, while the rest is imported. It has been reported that the industry is growing at a rate of approximately 15%. Furthermore, it is forecasted that the industry will grow further exponentially in terms of both value and volume, as major drugs come off patent in the coming years.

1.12 Pakistan's pharmaceutical industry is very significant in the world market as it is the 10th largest in Asia Pacific and the 4th fastest growing market after China, India & Vietnam. The total worth of the industry was measured at Rs. 191 Billion (USD 1.8 Billion) in September 2015, most of which is down to private sector investment.

1.13 The pharmaceutical industry which includes local pharmaceutical manufacturers, as well as MPCs, is regulated by DRAP established under the Drug Regulatory Authority of Pakistan Act 2012 to provide for effective coordination and enforcement of the Drugs Act 1976 and to bring harmony in interprovincial trade and commerce of drugs and therapeutic products. In essence, DRAP is responsible for the regulation of the manufacture, import, export, storage, distribution, and sale of pharmaceutical products in Pakistan.

2. Undertaking(s)/Association of Undertakings

2.1 It is pertinent to mention that while evaluating Section 4 infringement(s), the Commission conducts a detailed assessment of the agreement(s) between undertakings or decision(s) by association of undertakings and applies a step-wise approach to assess if s uch agreement(s) and/or a decision(s) have an anti-competitive object or effect in terms of Section 4, which includes but is not limited to:

i. *Identifying the undertaking(s) or association of undertakings;*
ii. *Identifying the agreement(s) and/or decision(s);*
iii. *Identifying the relevant market(s);*
iv. *Assessing whether the undertaking(s) or association of undertakings has entered into an agreement(s) or have made decision(s); and*
v. *Assessing whether such agreement(s) or decision(s) have the object or effect of preventing, restricting, or reducing competition in violation of Section 4.*

2.2 'Undertaking' as defined under Section 2(1)(q) of the Act means:

> *"any natural or legal person, the 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."*

2.3 The key consideration in assessing whether an entity is an undertaking for the purposes of the Act is whether it is engaged in a commercial or economic activity, regardless of the legal status of the entity and the way in which it is financed. Thus the formal structure of the entity is not a factor in the identification of an undertaking for the purposes of the Act.

2.4 According to Section 2(1)(q) of the Act, associations of undertakings are also included in the definition of undertakings. Associations are the most common form of a trade association of undertakings but they may also take other forms. While associations generally carry out valuable functions to foster the competitiveness of the industry such as promoting ethical standards, arranging trade fairs and exhibitions, and benchmarking to enhance industry's efficiency for public benefit. Nevertheless, undertakings and their associations may in certain instances collude and co-ordinate their practices, which could infringe the Section 4 prohibition.

2.5 For the purposes of this Enquiry Report, the relevant undertakings are:

(a) **Pharma Bureau** founded in 1988, is a representative body/ association of MPCs engaged in the business of production, distribution, and marketing of essential medicines in Pakistan. Pharma Bureau is part of the Oversees Investors' Chamber of Commerce and Industry (**OICCI**). According to OICCI's Annual Report of 2015, there are presently 20 companies who are members of Pharma Bureau, which account for 44% of the total pharmaceutical industry in Pakistan. Thus, for the purpose of this Enquiry Report, Pharma Bureau, as an "*association of undertakings*" and its member undertakings (MPCs) squarely fall within the meaning and scope of Section 2(1)(q) of the Act.

(b) The following MPCs, each falling within the scope and meaning of an "*undertaking*" as defined in Section 2(1)(q) of the Act:

Abbot Laboratories (Pakistan) Limited: is a broad-based health care company operating in Pakistan since 1948 with its parent company headquartered in Illinois, United States. Its products range from nutritional items, laboratory diagnostics through medical devices and pharmaceutical products. It started as a private marketing company and later became a publicly-listed company in 1982. In Pakistan, its manufacturing activities began in 1962.

B. Braun Pakistan (Private) Limited: is part of a worldwide group of companies, headquartered in Melsungen, Germany since 1839. It is one of the

largest manufacturer and suppliers of pharmaceutical products. While the parent company initially introduced its products in Pakistan through local distributors, B. Braun Pakistan (Private) Limited was incorporated in 1995 and restructured in 2006.

Barrett Hodgson Pakistan (Private) Limited: established in Pakistan in 1992, it began its pharmaceutical production, distribution, and marketing in 1996. Its overseas partners include Allergan, USA, AstraZeneca, UK, and Astellas, Japan.

Bayer Pakistan (Private) Limited: is engaged in the research, development, marketing and manufacturing of medicines and therapeutic drugs in Pakistan since 1963. Its parent company Bayer AG is headquartered in Barmen, Germany which was founded in 1863.

Chiesi Pharmaceuticals (Private) Limited: established in 1987, is part of the Chiesi Group which operates in 5 continents with 24 direct branches, 3 manufacturing plants and 4 research centres situated in Italy, France, the United States of America, and the United Kingdom. Its pharmaceutical products in Pakistan range from pharmaceutical categories of respiratory diseases, cardiovascular diseases, central nervous system disorders, musculoskeletal pain to special care areas like Neonatology.

Eli Lilly Pakistan (Private) Limited: established in Pakistan in 1979, its parent company is headquartered in Indiana, United States and is engaged pharmaceutical business since 1876. It manufactures and markets medicines in critical therapeutic/pharmacological drugs for the treatment of diabetes, oncology, neuroscience etc.

GlaxoSmithKline Pakistan Limited: was incorporated in Pakistan in 2001 through the merger of SmithKline and French of Pakistan Limited, Beecham Pakistan (Private) Limited and Glaxo Wellcome (Pakistan) Limited. It is one of the largest research-based pharmaceutical companies in Pakistan. Some of its

leading brands include Augmentin, Seretide, Amoxil, Velosef, Zantac, and Calpol. Its parent company is headquartered in the United Kingdom.

ICI Pakistan Limited: manufactures and trades in a diversified range of products including pharmaceuticals, predating the formation of Pakistan. ICI, a UK-based multinational which established its head office in London in 1928, began its pharmaceutical business in the 1940s and 50s.

Johnson & Johnson Pakistan (Private) Limited: is part of one of the world's largest pharmaceutical companies headquartered in New Jersey, USA. It is engaged in commercial activity ranging from medical devices to pharmaceutical products and consumer packaged goods in Pakistan.

Lundbeck Pakistan (Private) Limited: is engaged in the research, development, production, marketing and sale of pharmaceuticals in Pakistan. Its products are targeted at disorders such as depression and anxiety, psychotic disorders, epilepsy, huntington's, alzheimer's and parkinson's diseases. Its parent company is headquartered in Copenhagen, Denmark.

Merck (Private) Limited: is operating in Pakistan's pharmaceutical industry for over 50 years along with its associated concerns, Merk Pharmaceuticals (Private) Limited and Merk Specialties (Private) Limited. It belongs to the German Merck Group founded in 1668 with its headquarter based in Darmstadt. It specializes in the production and sales of products for diabetes, cancer, fertility, anaemia and cardiovascular diseases.

Novartis Pharma (Pakistan) Limited: is engaged in the business of provision of medicines, eye care products, generic pharmaceuticals, preventive vaccines and diagnostic tools among others. Its parent company is headquartered in Basel, Switzerland.

1. **Novo Nordisk Pakistan Limited:** is engaged primarily in the manufacturing and marketing of products relating to diabetes, haemophilia, growth hormone and

hormone replacement therapy in Pakistan. Its parent company is headquartered in Denmark which manufactures and markets products in approximately 180 countries.

OBS Pakistan (Private) Limited: is engaged in the manufacturing, marketing and sale of pharmaceutical and consumer health products in Pakistan in the specialized fields of cardiology, neuropsychiatry, anti-Infective, gastroenterology, gynaecology, ophthalmology, pulmonology, endocrinology, vaccines and bone disorders etc. OBS group operates in Pakistan via its five sister concerns OBS Pakistan (formerly Merck Sharp & Dohme of Pakistan), Schering-Plough Pakistan, OBS Healthcare (formerly Organon Pakistan), OBS Pharma, and Aklima Clinical Research.

Otsuka Pakistan Limited: was incorporated in 1988 in Pakistan and commenced commercial production of intravenous solutions in September 1989. Its current activities are mainly focused on the manufacturing of I.V. Solutions while therapeutic drugs are its second line of business. Its parent company is headquartered in Tokyo, Osaka, and Naruto, Japan.

Parazelsus Pakistan (Private) Limited: acquired the distributorship of Novartis in Pakistan as of January 2007. Its distribution services include warehousing, inventory management, sales order processing, invoicing, delivery and transportation, collection, credit & risk management, deploying and managing sales forces, repackaging and labelling, sample, gift and literature management and information and data services.

Pfizer Pakistan Limited: an affiliate of Pfizer Inc., the USA, is established in Pakistan since 1959. It is engaged in the manufacture and distribution of medicines and related health care services in various therapeutic areas such as cardiovascular, oncology, central nervous system, anti-infective portfolio, vaccines and biologic products.

Pharmatec Pakistan (Private) Limited: is a pharmaceutical manufacturing and marketing company in Pakistan established in 1973 as a subsidiary of Sterling Winthrop Inc., USA.

Reckitt Benckiser Pakistan Limited: is a subsidiary of Reckitt Benckiser plc the UK, a British multinational consumer goods company headquartered in Slough, England. As a producer of health, hygiene and home products, it was established in Pakistan over half a century ago.

Roche Pakistan Limited: is part of the International F. Hoffmann-La Roche Group that was founded in 1896 in Basel, Switzerland. It began its operations in Pakistan in 1987 and its current focus is on biotechnology medicines for the treatment of cancer, hepatitis, and chronic anaemia. Its business covers both pharmaceuticals and diagnostics with products and services ranging from screening for genetic risk factors to preventing, diagnosing and treating disease and monitoring the treatment response.

Sanofi-Aventis Pakistan Limited is a research-based healthcare and pharmaceutical laboratory with its parent company headquartered in Gentilly, France. In Pakistan, it manufactures and markets life-saving drugs including Amaryl, Clexane, Eloxatin, Epilim, Lantus, Nasacort, Stilnox, Telfast, Taxotere and Tritace.

3. Relevant Market and Prohibited Agreements

Relevant Market

3.1 The definition of a relevant market comprises of two dimensions: *the relevant product market*, and *the relevant geographic market*, which are defined under Section 2(1)(k) of the Act as:

> *"[...] a product market comprises of 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 neighbouring geographic areas because, in particular, the conditions of competition are appreciably different in those areas."

3.2 In terms of the above definition, a relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer by reason of the products' characteristics, their prices, and their intended use. A relevant geographic market comprises the area in which the firms concerned are involved in the supply of products or services and in which the conditions of competition are sufficiently homogeneous.

3.3 There are two major pharmaceutical drugs classification systems which may be taken into account: (i) the Anatomical Therapeutic Chemical Classification System of the World Health Organization; and (ii) the European Pharmaceutical Research Association. Both systems generally classify the pharmaceutical products into four categories by (i) the part of the body treated by a medicine; (ii) the active pharmaceutical ingredient, or molecule; (iii) therapeutic uses; and (iv) therapeutic/ pharmacological indications.

3.4 Based on the documents impounded at Pharma Bureau premises during search and inspection and the information obtained from DRAP, for the purposes of this Enquiry Report, the relevant product market can be narrowed down to the market for manufacturing, distribution and sale of essential medicines for multiple therapeutic uses whether prescribed by a medical practitioner or sold over the counter.

3.5 Since the medicines falling under various pharmaceutical product markets delineated above are being sold throughout Pakistan and being manufactured, distributed and marketed under sufficiently homogenous conditions of competition and regulated by the same regulatory framework, for the purposes of this Enquiry Report the relevant geographic market consists of the whole of Pakistan.

Prohibited Agreements

3.6 Section 4(1) of the Act prohibits undertakings from entering into any agreement(s) and associations of undertakings from making decision(s) 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.

3.7 Section 4(2) of the Act provides a non-exhaustive list of agreement(s) and/or decision(s) which by their *object* or *effect* or both are prohibited *per se*. These agreement(s)/ decision(s), which may include, *inter alia:*

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 provisions of any services;

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;

c. fixing or setting the quantity of production, distribution or sale with regard to any goods or services sold or by any other means;

d. limiting technical development or investment with regard to the production, distribution or sale of any goods or the provisions of any services;

e. collusive tendering or bidding for sale, purchase or procurement of any goods or services;

f. applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a disadvantage; and

g. making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to usage, have no connection with the subject of the contract.

Agreement(s) and/or Decision(s)

3.8 Section 2(1)(b) of the Act defines "**agreements**" to include:

"[...] any arrangements, understandings, or practices, whether or not it is in writing or intended to be legally enforceable."

3.9 In terms of the above definition, the application of Section 4 of the Act is not limited to formal contracts. Rather, it may also apply to cooperation achieved through informal agreement(s) between undertaking(s) or decision(s) adopted by the association of undertakings. The term "agreement" has a wider connotation and includes either legally enforceable or non-enforceable agreements, whether written or oral. An agreement may be reached through a physical meeting, or through the exchange of strategic data or commercially sensitive information (whether through telephonic calls, exchange of emails, or any other mode of communication). All that is required to constitute a *prima facie* infringement of Section 4 of the Act is that the parties appear to have arrived at a consensus on the practice(s) that the undertakings will or will not adopt.

4. Documents Impounded at Pharma Bureau Premises

4.1 After sifting through the documents impounded from the Pharma Bureau premises, the Enquiry Officers found certain documents, emails, and information pointing out the possible incidences of infringement of Section 4 of the Act, which are categorized as follows:

i. Sharing of Strategic Data and Commercially Sensitive Information

Annex "A": Minutes of the Meeting of Pharma Bureau and its Member Undertakings (MPCs) dated **16.082012** (reflecting sharing of strategic data and commercially sensitive information, in particular, pertaining to pricing and market):

"(1) All those drugs whose Maximum Retail Price (MRP) is below the threshold prices listed below, be exempted from price control:

Threshold: *These are very outdated thresholds, new values suggested*

Rs.2.00 per Tablet/Capsule **(Rs.3.50)**

Rs.2.00 per one gram of cream, ointment, and gel **(Rs.3.50)**

Rs.2.00 per 5ml of syrup/suspension or drops **(Rs.3.50)**

Rs.4.00 per sachet or specialized dosage form **(Rs.3.50)**

Rs.10.00 per injection **(Rs.20.00)**

Rs.10.00 per piece of medical device **(Rs.20.00)**

It is proposed that the prices of decontrolled drugs may be revised by up to 70% of the CPI with a limit of 10% in a calendar year. Companies would have to submit price lists to the Pricing Section, Drug Regulatory Agency of Pakistan on 1st January of each calendar year."

Annex "B": Letter from Ayesha T Haq to DRAP dated **18.06.2012 captioned "Price Increase of TB Range asking for 40% increase in MRPs of TB Products"**:

"Our member companies, including Pfizer and Novartis, manufacture a Anti-TB range of products in different combinations and strengths according to the need and requirement of doctors and patients as well as in line with WHO guidelines. Local production of these [...] products has become economically unviable due to following reasons:

i. *Rupee depreciation versus USD*
ii. *Increase in international prices of all APIs*
iii. *Significant increase in cost of production due to increase in utility cost*

Continuing production of these [...] products has become extremely challenging at current level of authorized prices

We therefore request you to kindly grant 40% increase in MRPs of TB products, so that these quality manufacturers are able to continue uninterrupted supply of these important medicines."

Annex "C": Minutes of the Pharma Bureau Meeting held dated **16 April 2010 at Sanofi-Aventis Head Office, Karachi:**

"Mr. Wajid informed the members that PB is in the process of validation of the data by the member companies. It was agreed that the data point would be of January 2010.

It was decided to do a comparison of gross margin and net margin with other industries. Mr. Burney has offered to speak to BMA and Invest Corp, and Mr. Jooma will speak for IJI for the data."

Annex "D": Minutes of Pharma Bureau Meeting at the **OICCI Council Hall, Karachi** dated **24 December 2008:**

"It was agreed that Pharma Bureau would do an assessment of the impact on profits following increase in hardship cases over the past several PAC meetings in 2008.Mr.Riaz Hussain will write to the member companies asking for number of SKUs on which the increase was given and the % impact on total sales."

Annex "E": Letter from Ayesha T Haq to CEO-DRAP (Arshad Khan)

"We have examined the draft policy and state for record that we do not agree with the concept and practicability of cost plus formula.

"Opting for a cost plus pricing mechanism is not practical as it involves setting of the prices of each product individually. The DRAP does not have the capacity to do so."

Annex "F": Letter from Ayesha T Haq to [redacted] Law Associates dated **30 December 2013 (**On behalf of Pharma Bureau and its member undertakings (MPCs), Ayesha T Haq writes relating to the price increase of 15% notified by the DRA through SRO 1002(1)/13)). The factual part of the letter indicating intention of the parties is reproduced below:

"You will appreciate that in many cases the DRA notified increase of 15% after a period of 12 years is insufficient and many of our members are keen to increase the prices of these products (which are legally decontrolled by more than 15%."

Annex "G": Hand Written Notes on recorded Minutes of Meeting of Pharma Bureau held at Sanofi-Aventis, Karachi dated **25 March 2009:**

"PB suggests 25% for products before 2002, 18% before 2007 and 7.5% after 2007."

Annex "H": Minutes of the Pharma Bureau meeting dated **26 December 2007:**

"Mr. Burney informed the members that a working team comprising of Adil Zaman, Erum Rahim, and Riaz Hussain guided by the Task Force members put together recommendations for pricing formula. He gave highlights of the presentation that the Pharma Bureau delegation will make to the Secretary Health on December 27, 2007. The presentation covered topics such as

- *SRO 1038*
- *Annual adjustments based on CPI*
- *Threshold Based*
- *Progressive de-control of selected categories*

Recommendations for fixation of prices of NCEs
Hardship cases
The members took active part in the discussions and gave their views on the topics. In the end, the members agreed with the presentation and the strategy behind it."

Analysis of the Impounded Documents

4.2 The above extracts from the documents impounded at Pharma Bureau premises suggest that since at least 2007, strategic data and commercially sensitive information between and among Pharma Bureau and its member undertakings (MPCs) have been exchanged, providing continuous updates and a comprehensive overview of prices (price levels, price increases, percentages, etc), costs, profits, demand and the industry.

4.3 The aggregated information exchange appears to have been used to prepare recommendations, suggestions, direction and agreements on increase in prices of various pharmaceutical products by MPCs through the medium of the Pharma Bureau. Such practices are condemned under Section 4 of the Act as they are characterized as

collusive practices culminating in common results and future commercial behaviour of the participants. Moreover, such practices appear to be sufficiently effective in reducing or eliminating the degree of uncertainty as to the operation of the market in question, by consistently revealing the current and expected trends in the pharmaceutical industry of Pakistan. This has resulted in the fixing and increasing of prices and the imposition of anti-completive trading conditions with regard to the sale and distribution of various medicines.

ii. Discussions and Agreements/Decisions on Pricing and Market

a. Discussions and Agreements on Pricing

Annex "I": Letter by Pharma Bureau to NHSRC regarding Draft Drug Pricing Policy dated 02 March 2015 (wherein Pharma Bureau has commented on the policy and recommended various ranges of increases in price of various scheduled and non-scheduled drugs): The relevant extracts are reproduced below:

> *"We note with concern that the latest draft being circulated does not accurately reflect the understanding reached between the government and the industry at the meeting in Islamabad on February 4, 2015. In this regard, I set out below, for your action, revised Section 4(5), Section 6 and Section 8 of the Draft Pricing Policy."*
>
> *"8. Annual increase in prices of drugs.- Effective 1st July 2016 annual increase shall be linked with CPI of the immediately preceding financial year. Manufacturers and importers may increase their existing maximum retail prices of scheduled drugs up to 50% of CPI (with a cap of 4%), maximum retail prices of non scheduled drugs up to 70% of CPI (with cap of 6%) and maximum retail prices of lowered priced drugs shall be allowed an initial increase of 25 paisa per tablet/caplet/capsule/patch/5ml of syrup, suspension and elixir and thereafter maximum equal to CPI once*

in any financial year till maximum retail price/ cap of threshold as prescribed in para 11 is achieved."

Annex "J": Minutes of the Members Meeting of the Pharma Bureau held on 15 July 2014 at OICCI Annex, Karachi (wherein Pharma Bureau and its member undertakings (MPCs) have decided to force DRAP to make them part of the pricing policy):

"The PB has taken serious notice of the fact that both the PB and PPMA were not taken into consideration during the formulation of the latest draft Pricing Policy. Being key stakeholders, it was agreed amongst members that a strong worded letter be sent to the DRAP to ensure PB are part of the formulation process."

Annex "K": Minutes of the Meeting of Pharma Bureau dated 30 April 2014 (wherein Pharma Bureau member undertakings (MPCs) agreed to adopt a common policy with regard to pricing policy). The relevant extract is reproduced below:

"Members agreed that the industry should push for a transparent pricing policy and continue its efforts over from 2013."

Annex "L": Comments by Pharma Bureau on Draft Pricing Policy dated **14 November 2014:**

"At the moment there is no price adjustment formula which is clearly irrational, unfair and unsustainable. A price adjustment mechanism which is based on a transparent set formula must be put in place. Rather than take on authority to "grant" increases on an ad-hoc basis, government should issue clear cut guidelines in which the industry can plan and compete with the ability to reasonably adjust prices."

Annex "M": Letter addressed to CEO DRAP by Ayesha T. Haq dated **06 May 2013** (wherein Pharma Bureau has communicated price raise of up to 25% on behalf of its members):

"The Policy Board in its meeting on April 10, 2013 had recommended that in view of the depreciating rupee, rising input costs and the inordinate delay in announcing a Pricing Policy, the pharma industry be given an across the board interim price relief of 1% per annum on products that have not received any (or lower) price adjustments since 2001.

In view of the fact that prices of nearly 70% of products have not been reviewed and adjusted since 2001 (as confirmed by the DRA in the Policy Board) our members had asked for a minimum interim across the board relief of 25% in order to ensure continuing viability and availability of quality drugs to the market."

Annex "N": Letter by Pharma Bureau to Ministry of Industries & Services dated **30 August 2012** (discussing pricing policy and Pharma Bureau member undertaking (MPCs) agreement on a range of increase in prices of across the board). The relevant extract is reproduced below:

"...We understand that there is an effort in place to come up with a comprehensive pricing policy; however our members fear that, given past experience, the policy will not be finalized and implemented in the foreseeable future. They are being squeezed financially and there is a very real possibility that the production of many non-commercially viable drugs will cease. Companies are looking for a reasonable across the board increase, something in the range of 15%-20%, to tide them over the interim period."

Annex "O": Minutes of the Pharma Bureau Meeting dated **31 July 2012 at OICCI, Karachi** (The meeting suggests Pharma Bureau and its member undertakings (MPCs) consensus to lobby in respect of formula for pricing of drugs):

"A draft Pricing Policy prepared by the NRSD with annotated comments by SA was circulated among the members. After much discussion the members agreed on a formula for pricing and it was

agreed that the Policy as amended by the PB be discussed with the Secretary NRSD and the Cost Accountant."

Annex "P": Minutes of Pharma Bureau Meeting dated **01 March 2010 in the Conference Room of Sanofi-Aventis, Karachi.** The meeting pertaining to the discussion on government's pricing policy and Pharma Bureau member undertakings consensus to oppose the same.

"Dr. Farid khan, Mr. Tariq Wajid and Mr. Salman Burney, who attended the pricing policy board meeting on February 22, 2010, briefed the members on the discussion and proceedings. Contrary to expectation no significant progress was made from the last policy board meeting. The government is again looking at controlled and de-controlled category would be capped at 7%: the industry has asked for 8%."

Annex "Q": Minutes of Pharma Bureau Meeting dated **30 September 2009 in the Conference Room of OICCI Karachi** (The minutes provide an update on Pricing Policy Board meeting dated 15 September 2009). The relevant extract is reproduced below:

"Dr. Farid Khan who attended the meeting briefed the members on the proceedings. The meeting considered some new proposals and discarded the previous proposal named 'Jooma Score', which was a formula for scoring a product on certain criteria and deciding on the candidates for price increase. This was termed too complicated to be implemented, and some 70% drugs would have been excluded from price increase formula. <u>This was not acceptable to PB</u>. The new proposal categorizes the drugs under ' controlled and de-controlled. The 'De-controlled' category would get price increase up to 70% of CPI published by the State Bank of Pakistan, whilst the 'Controlled' category will get 60%, subject to a yearly cap of 7%. This is still under consideration, though there was unanimity on this proposal. ..... <u>However, both the PB and PPMA are</u>

unanimous that there should be upfront across the board increase first followed by a pricing policy."

Annex "R": Minutes of **Pharma Bureau Meeting** dated **10 July 2009 at Sanofi-Aventis Head Office Karachi:**

"With regard to the pricing issue that topped the list of issues, we managed to show our serious concerns to the government and the adverse effect this is having on the industry. So far, we have not had any success as far as either an across the board increase or a pricing policy."

Annex "S": One of the several emails by Pharma Bureau to Outsuka Pakistan Private Limited and other member undertakings (MPCs) requiring them to submit the annual subscription fee. An extract is reproduced below:

"The second instalment of your subscription amount is Rs.50,000 /- for 2013. The working for each member company as agreed at a meeting of Pharma Bureau is attached.

Please let us have your crossed cheque for the amount in the name of

"OICCI A/C # 000000906014"

Dispatch your cheque to our office address as under:

Pharma Bureau
Overseas Chamber of Commerce Building,
Talpur Road, P. O. Box 4833,
Karachi.74000
Telephone # 32410814-15
Fax # 32477503

Please do not deduct any tax as we are not providing any goods or services. Kindly send us your payment latest by Wednesday, July 31, 2013."

Annex "T": One of the emails by Pharma Bureau to Chiesi Pakistan Private Limited and other member undertakings (MPCs) requiring them to pay for the cost of the legal fee. The relevant extract is reproduced below:

> *"As agreed in Pharma Bureau meeting held on Tuesday, 29th Dec, 2009 at the Sanofi-Aventis Head Office, we are sending you the invoice, which has been worked out on the basis of the %age share of sales turnover as reported by the IMS PKPI for MAT-12/2008. The working for each member company is attached. Based on this you are invoiced amount works out at Rs. 53,683 (Rupees fifty three thousand six hundred and eighty only).*
>
> *Please let us have your cross cheque for the amount in the name of*
>
> ***OICCI A/C # 0100450003***
>
> *Please send your cheque to our office address as under:*
>
> *Executive Director*
> *Pharma Bureau of Information & Statistics*
> *Chamber of Commerce Building*
> *Talpur Road, P.O. Box 4833*
> *Karachi.74000*
> *Telephone # 32410814-15*
> *Fax # 32477503*
>
> *Please do not deduct any tax as we are not providing any goods or services."*

Analysis of the Impounded Documents

4.4 From a practical perspective, the demand for an across the board increase in prices of medicines on the part of Pharma Bureau and its member undertakings (MPCs) appears to have been carried out on a joint basis of deliberations in contrast to an individual undertaking setting out its prices based on commercial realities, market dynamics, financial health, manufacturing efficiency, costs, economies of scale and scope and innovation, among other things. Pharma Bureau and its member undertakings (MPCs) appear to have been operating in a cooperative manner and conspiring on pricing at various forums to the detriment of the overall state of competition in the industry and consumer welfare.

4.5 It is pertinent to mention that information exchange between competitors may take place in a variety of contexts. The above excerpts from the documents impounded at the Pharma Bureau premises suggest that the Pharma Bureau and its member undertakings (MPCs), at various meetings held in Karachi and at the offices of the MPCs each year on multiple occasions, regularly exchanged strategic data and commercially sensitive information on prices and markets in order to monitor and achieve intended coordination of its participants' commercial strategies and have been involved in practices in the form of prohibited agreements and decisions which are likely to constitute serious infringement of Section 4 of the Act.

4.6 The above extracts from the documents impounded at Pharma Bureau premises reflect that the association has organized numerous meetings of its member undertakings (MPCs) to discuss prices, thereby facilitating collusive practices, which *prima facie* are anticompetitive under Section 4 of the Act. It also collected costs and sales data of its member undertakings and produced statistics on the relevant market which it then used to influence governmental pricing policies that extended beyond the legitimate bounds of acceptable trade association activities including communication with the government. It is pertinent to mention that Pharma Bureau is regularly remunerated for these services by its member undertakings.

b. Discussions and Decisions on Pricing and Market

Annex "U": Pharma Bureau's Letter to DRAP regarding Drug Pricing Policy dated **06.04.2015:**

> *"We hope you will take the necessary steps to rectify these anomalies so as to ensure that the DPP is in line with the understanding reached at the meeting of February 4, 2015."*

Annex "V": Pricing - (Pharma Bureau's Internal Memo) [undated]:

> *"The industry wants increase in prices being affected on those medicines which have become unviable to maintain accessible to patients.*

On an average the increase will range from less than ONE Rupee to less than TEN Rupees per dose.

The assurances given by government to the industry were not reflected in policy notified in March 2015.

It is crucial that the government honours its agreements with the industry and ensure that the Pricing Policy reflects the same accurately."

Annex "W": Handwritten Notes on Papers bearing the Stamp of OICCI of whom Pharma Bureau is a sub-committee in what appears to be period immediately preceding the recent price increases by the multi-national pharmaceutical companies:

"a) Bayer : Increase prices on Dec 5

only way

December 18, 2015

Challenge whole policy aspects.

Does PB want to challange?

b) Nadeem: Challenge policy then raise prices

c) Hardships

Increases

Backlash

Drap

Media

d) Date: 1-3-15

Notes of a meeting

DRAP now fixing minimum retail price policy - price of generic should be 70% of originator

- How to prevent DRAP from taking arbitrary action at DPC?
- Someone will have to make a call as to how to price drugs
  - Negotiation with DRAP?
  - Can we trust Party?
  - Not on Negotiating table?

Problem - Complete mistrust

e) PB dynamic: Secure 15% increase

want lower price products

want some automatic mechanism for hardships

f) Legal Strategy

5th - HS Cases

yes or no

Deemed accepted 1st come 1st serve

Suffered for 4 years

Increased prices

g) Need for Extraordinary Increase

8% doesn't cut it over 3yrs, less than

price increase given by DPP"

Annex "X": STANDBY STATEMENT by **Ayesha T Haq** captioned **"Increase in the prices of registered medicines under 'Hardship' cases submitted to [DRAP]** during **2013-15 and inflationary price adjustment on medicines classified as de-controlled (non-scheduled)".** The document amounts to a decision adopted by Pharma Bureau and its member undertakings (MPCs) containing key messages for external communication to increase prices of registered medicines and price adjustment on all de-controlled medicines. Following questions and answers (*referred to as unilateral statements*) for external communication was made by Pharma Bureau:

> Q. ***What is the background /reasons of the above-mentioned price increase on registered medicines? (page 2)***
>
> *Ans: "Price increase of 30% of the registered medicines have remained frozen in Pakistan since 2001(14 years), while during the same period the cost of production, utility services, transport and other expenses have risen by 300%. The DRAP itself, in a brief to the ECC during 2012 conceded that the pharmaceutical industry in Pakistan requires an adjustment of 94% in selling prices, in order to remain viable. Given the above, it is no longer possible for the*

Pharma Industry in Pakistan to continue to ensure uninterrupted supplies/availability of quality lifesaving medicines to patients in Pakistan."

Q. ***By how much would the prices of medicines likely to increase as a result of these actions? (page 3)***

Ans: "The increase in prices is NOT being affected on all medicines, but only on those which have become unviable to maintain accessible to patients. On an average, the increase will range from less than ***ONE Rupee to less than TEN Rupee per dose."***

Q. ***Will the new prices be effective immediately?***

Ans: "By and large the new prices will become effective by March/April 2016 however, for a few products the new prices will become effective during February 2016."

Q. ***What therapeutic areas will be affected as a result of these actions?***

Ans: "Vitamins and minerals supplements, products used for blood pressure, cholesterol lowering agents, etc. and some products used infrequently for pain management. However prices of products critical diseases such as cancer, immunosuppressant's used for organ transplant and vaccines are NOT being increased and will remain at the level of 2001 in the interest of public health."

Q. ***Why did MNC's approach the courts instead of re-arranging with the DRAP before taking these actions?***

Ans: "Pharma Bureau and its Member Companies have submitted several representations to the DRAP before and after the new Drug Pricing Policy was notified on March 05, 2015 both in person as well as in writing. However, since DRAP has chosen not to respond

to any of these representations, our member companies were left with no option but to petition the court for intervention."

Annex "Y": Request by Pharma Bureau to DRAP for across the Board Price Increase dated **16 August 2012**

"We would urge you to address this matter on an immediate basis and would propose that you urgently allow an interim general price adjustment, transparently across the board as per the following:

1. Allow all products below the threshold price levels (as per the draft policy) an increase of Rs.0.50 paisas per tablet/5ml, Rs. 5.00 per injection and Rs.5 per tube of cream/ ointment/gel. This is clearly bearable in cost terms and will immediately allow relief to the low priced drugs which are at risk of discontinuity.

2. Allow a minimum of 25% increase across the board to all other drugs which have not had their price adjusted since 2001.

3. Allow an increase of 10% on all other drugs.

4. Allow hardship cases after detailed review, if increase above this level are justified, as per policy after due consideration by DPC."

Annex "Z": Pricing Policy Vision - (Internal Memo) [undated]:

"4) At least 20 percent profit on each product shall be ensured.

9) Price reduction concept as in current pricing policy shall be done away with. Instead price reduction scheme be introduce with incentive like additional registrations on fast track or price increase in products having low profit margins."

Annex "AA": are **Minutes of the Meeting of Pharma Bureau** dated **23 January 2013,** wherein, in the context of pricing policy it is stated that:

"As DRA has no appetite for pricing policy and solely focus on hardship cases, the members were in agreement with the proposed 3-staged strategy that the PB is looking to adopt".

Annex ""BB": Minutes of the Meeting of Pharma Bureau dated **06 June 2012** in the context of pricing policy, it is stated that:

"CEO (Arshad Farooq Faheem) was clear that there is an election coming up, there is no question of there being price increases that do not have across the board support from all stakeholders:

- *wants PB to build a campaign around pricing. Create hype so the Ministry can defend it in Parliament and at the Cabinet.*
- *devised a media strategy for the PB to implement which would include seminars, TV Talk Shows and Newspaper Articles."*

Annex "CC": Presentation by Pharma Bureau and OICCI dated **23 January 2013**. The presentation provides for a pricing strategy to be adopted by Pharma Bureau and its member undertakings (MPCs) and OICCI. The pricing strategy is reproduced below:

"a 3-prong strategy be devised to deal with the issue of pricing...supported by on-going media campaign showing need for effecting pricing mechanism"

3 Prong Approach is described as under

"Phase-1: Pre-Election (Now-March 2013)

- ***Seminar to be arranged** at the PMA (Pakistan Medical Association House in the presence of industry and healthcare professionals, etc.*
- *Students Economic Debates (business schools) for supply of quality medicines etc.*

- ***Direct lobbying:*** *communication with Pricing & Policy Board members on key issues via letters and presentations.*

Phase-2: Caretaker Setup (March-May 2013)

- ***Interim across the Board Price Increase (10-15%):*** *continue to lobby for an immediate increase in the absence of pricing policy.*
- ***Advocate for Pricing Policy Implementation:*** *messages around the importance of a pricing policy and its immediate implementation to be communicated to the caretaker setup.*

Phase-3: New Setup (May 2013 Onward)

- ***Pricing Policy Implementation:*** *Lobbying for implementation (subject to non-implementation)*
- ***Direct lobbying:*** *Continued communication with Pricing & Policy Board members on key issues via meetings.*

Annex-DD: Pharma Bureau's Letter to Ministry of Industries & Services dated **30.08.2012:**

"We understand that there is an effort in place to come up with a comprehensive pricing policy, however our members fear that, given past experience, the policy will not be finalized and implemented in the foreseeable future...Companies are looking for a reasonable across the board increase, something in the range of 15%-20%, to tide them over the interim period."

Annex "EE": briefing on the 9th Drugs Pricing Committee meeting dated **24 February 2010:**

"Mr. Riaz Hussain briefed the members on the meeting...I made the request to secretary health to take up the vitamin pricing as this was deferred in the last meeting held on 8th july 2009. The PPMA supported my request. We put forward our rationale for asking at least 35% increase. Consequently, the committee approved 25%

increase on all vitamins (including B-complex), vitamins with minerals and vitamin C preparation."

Analysis of the Impounded Documents

4.7 The above extract from the documents impounded suggests that the member undertakings of the Pharma Bureau have discussed and adopted decisions taken by the association in relation to pricing of pharmaceutical products during the 2013 General Elections. Furthermore, regardless of the exact form, the above documents reproduced suggest that Pharma Bureau and its members have adopted a decision in early 2016 to implement a price increase and unilateral statements on behalf of its member undertakings to respond to the media, which *prima facie* constitutes an infringement of Section 4 of the Act.

5. Correspondence with DRAP and MPCs

Correspondence with DRAP

5.1 On 31 May 2016, the Director General (Cartels & Trade Abuses) wrote to the Secretary, Ministry of National Health Services, Government of Pakistan, requesting that DRAP may be directed to provide the Commission with the following further data for the purposes of corroboration and completeness of information already in the custody of the Commission:

a. Price increase information and notifications showing the range of percentage price increase of medicines being sold by competing MPCs;
b. Classification of molecules of medicines sold by competing brands that treat similar symptoms to allow for a useful comparative analysis in terms of percentage price increase;
c. Correspondence between DRAP and the Pharma Bureau including any minutes of meetings in matters concerning pricing of new medicines, existing medicines and any hardship cases from 2011 to date;

d. DRAP's rationale for having the Pharma Bureau represent multinational companies as observer in meetings of Drug Pricing Committee (DPC) as against individual companies; and
e. Any other information that DRAP deems to be relevant in the foregoing context.

5.2 Furthermore, for the purpose of corroboration and clarification, the Enquiry Committee set up meetings with DRAP for the provision of information and documentation which has been analyzed hereinbelow for the purposes of this Enquiry Report.

Response received from DRAP

5.3 In response to the above letter, the Commission received a Reply dated 14 June 2016 from the Deputy Director of DRAP along with the following information :

a. Summary table of increased prices (without approval) by MPCs/ member companies of the Pharma Bureau;
b. Table of classification of molecules/ formulations by competing brands that treat similar symptoms;
c. Copies of letters issued to the Pharma Bureau member [undertakings] (MPCs) to provide documents for consideration of their applications for price increase;
d. Copy of Order dated 6 April 2016 passed by the High Court of Sindh in pending Civil Suits pertaining to disputes between MPCs and DRAP;
e. Copies of DRAP's Letters dated 19 October 2015 to MPCs in respect of a reduction in prices of originator brands in accordance with the Drug Pricing Policy of 2015.
f. Copies of Pharma Bureau Letter dated 22 October 2015 and Letters of MPCs sent to DRAP in response to its Letter of 19 October 2015;
g. Copy of DRAP Letter dated 9 November 2015 to Pharma Bureau and MPCs in respect of reduction of maximum retail prices (MRP) of drugs under the Drug Pricing Policy of 2015;
h. Copy of Pharma Bureau Letter of 11 November 2015 to DRAP;
i. Copy of DRAP's Letter of 16 November 2015 to Pharma Bureau;
j. Copies of Letters from MPCs in respect of unauthorized price increases;

k. Copies of DRAP's letters to MPCs informing them that they are not authorized to increase drug prices without the approval of the Federal Government;
l. Copies of price lists submitted by some MPCs.

Correspondence with MPCs

5.4 On 08 June 2016, the Enquiry Officers *vide* Letter No. 68/PB/C&TA/CCP/2016 wrote to all member undertakings of Pharma Bureau to provide the following information:

"

a. *For the period of last one year, provide information regarding increase in price of each of your medicines; and*
b. *For each medicine please also give percentage increase in price and the date the price change became effective."*

5.5 At the outset, it is pertinent to mention that the above letter(s) were captioned "Enquiry under section 37(2) of Section 37(2) of the Competition Act 2010" which was inadvertently referred to. On 02 August 2016, the Enquiry Officer *vide* Letter No. 68/PB/C&TA/CCP wrote to all member undertakings of Pharma Bureau that in the letter for the provision of information dated 08 June 2016, "Section 37(1) was inadvertently referred to as Section 37(2) of the Act" and advised them to the earlier correspondence, therefore be read and responded accordingly.

Responses Received from MPCs:

Eli lily Pakistan Private Limited (El lily)

5.6 On 09 June 2016, Eli lily responded, stating that the matter concerning price raise in medicines is pending litigation before the Honourable High Court of Sindh, Karachi. The Honourable Court has passed an *ad-interim* order on 21.01.2016 restraining DRAP ha from taking any *coercive actions* against the Company.

Pfizer Pakistan Limited (Pfizer)

5.7 On 14 June 2016, Pfizer responded, stating that company has not increased prices of its products in last one (1) year. However, in 2013, the company demanded DRAP to allow it increase in the price of various drugs ranging between 32.48% and 200%,

whereas, DRAP allowed it a raise ranging between 0.12% to 200% between 11 March 2013 and 13 September 2013. Moreover, it stated that in May 2016, it has approached the Honourable High Court of Sindh to allow it further raise in a certain category of drugs. On 4 May 2016, the Honourable Court has passed an ad-interim order in this regard directing *"DRAP and/or its agents, officers and representatives from taking any coercive or adverse action against the Plaintiff on the basis of revision of MRP's of its Products, till the final disposal of the suit under reference".*

Merck (Private) Limited (Merck)

5.8 On 09 June 2016, Merck responded, stating that the company has not increased prices of any of its medicines during the last one (1) year.

GSK Pakistan Limited (GSK)

5.9 On 10 June 2016, GSK responded, stating that the company has not increased prices of its medicines other than the price increases of few medicines recently permitted by the Honourable High Court of Sindh, Karachi, which ranges between 8.33% and 80% of 23 different medicines on 11 February 2016.

Parazelsus Pakistan Private Limited (Parazelsus)

5.10 On 23 June 2016, Parazelsus responded, stating that the company works as a distributor of pharmaceutical products and do not have their own medicines. Being distributors, it only follows the prices of medicines as advised by their principals from time to time.

Roche Pakistan Limited (Roche)

5.11 On 10 June 2016, Roche responded, stating that the company has not increased prices of any of its medicine during the last one (1) year.

OBS Pakistan Private Limited (OBS)

5.12 On 24 June 2016, OBS responded, stating that the company has not increased prices of any of its medicines during the last one (1) year.

Novo Nordisk Pharma Private Limited (Novo Nordisk)

5.13 On 14 June 2016, Novo Nordisk responded, stating that the company has increased the price of one medicine, namely, Mixtard® HM 100 IU/ml from PKR 498 to PKR 540 (8.54%) on 17 November 2015 after approval under SRO 1002 (1) 2013 by DRAP.

Chiesi Pharmaceuticals Private Limited (Chiesi)

5.14 On 13 June 2016, Chiesi responded, stating that during the period of last one (1) year, the company has increased the price of only one of its products, namely, *Clenil Compositum Aerosol Nebuliser Suspension* from PRK 387.50 to PKR 394.45 (1.8%) *vide* Registration No. 021199.

B.Braun Pakistan Private Limited (B Braun)

5.15 On 13 June 2016, B Braun responded, stating that during the period of last one (1) year, the company has not increased prices of any of its medicines.

Abbott Laboratories Pakistan Limited (Abbot)

5.16 On 14 June 2016, Abbot responded, stating that they did not increase prices of their medicines during the last one (1) year except for products under hardship price review against the Stay Order granted by the Honourable High Court of Sindh, Karachi. According to the data submitted by the company, an increase in the prices of its medicines from 18 April 2016 to 29 April 2016 ranged between 8.1% and 122.4%.

Reckitt Benckiser Pakistan Limited (RBPL)

5.17 On 13 June 2016, RBPL through its legal counsels, Fazleghani Advocates responded, asked to provide the copy of the Complaint if the enquiry is being conducted under Section 37(2) of the Act. Moreover, they stated that the "*prices of medicines sold by RBPL are regulated by the [DRAP] under Drug Regulatory Authority of Pakistan Act 2012. Thus, the prices of all medicines sold by RBPL and any increase in such prices is strictly in accordance with the directions of the DRAFT and the provisions of the DRAP Act*". As noted above, the company was informed on 02 August that the enquiry is being conducted under Section 37(1) of the Act, however, it did not respond any further.

Lundbeck Pakistan Private Limited (Lunbeck)

5.18 On 23 June 2016, Lundbeck in response to Enquiry Officer's reminder dated 21 June 2016 responded, stating that the company has not received the original request for information letter dated 08 June 2016, hence it may be provided with the original letter. On 14 July 2013, Lundbeck responded while referring to Enquiry Officer's earlier correspondence that they have spoken to one of the Enquiry Officers, and have been advised the information sought from them is no longer required. However, after receiving Enquiry Officer's letter dated 02 August 2014, Lundbeck responded on 04 August 2016, stating that there has been no increase in the prices of the company's products during the period of last one (1) year.

Barret Hodgson Pakistan (Private) Limited (Barret)

5.19 On 14 June 2016, Barret responded, stating that increases in prices of their 21 medicines from 01 July 2015 to 27 May 2016 ranged between 4.35% and 15%.

Sanofi Aventis Pakistan Limited (Sanofi)

5.20 On 09 June 2016, Sanofi responded, stating that the matter concerning price raise in medicines is pending litigation before the Honourable High Court of Sindh, Karachi. The Honourable Court has passed an *ad*-interim order on 27 January 2016, wherein the Honourable Court has passed an ad-interim order in this regard directing *"DRAP and/or its agents, officers and representatives from taking any coercive or adverse action against the Plaintiff on the basis of revision of MRP's of its Products, till the final disposal of the suit under reference".*

Bayer Pakistan Private Limited (Bayer)

5.21 On 14 June 2016, Bayer responded, stating that that the Honourable High Court of Sindh, Karachi has passed an *ad-interim* order on 17 February 2016, wherein the Honourable Court has passed an ad-interim order in this regard directing *"DRAP and/or its agents, officers and representatives from taking any coercive or adverse action against the Plaintiff on the basis of revision of MRP's of its Products, till the final disposal of the suit under reference".*

ICI Pakistan Limited (ICI)

5.22 On 21 June 2016, ICI responded, stating that the Honourable High Court of Sindh, Karachi has passed an *ad-interim* order on 30 May 2016, wherein the Honourable Court has passed an ad-interim order in this regard directing *"DRAP and/or its agents, officers and representatives from taking any coercive or adverse action against the Plaintiff on the basis of revision of MRP's of its Products, till the final disposal of the suit under reference".*

Novartis Pharma Pakistan Limited (Novartis)

5.23 On 14 June 2016 and 20 July 2016, Novartis responded, stating that the Honourable High Court of Sindh, Karachi by an order dated 29 December 2015 has restrained DRAP from prohibiting the company from increase the prices of its hardship products. The price increase in its medicines from 09 February 2016 to 10 June 2016 ranged between 9.1% and 97.84%

Pfizer Pakistan Limited (Pfizer)

5.24 On 14 June 2016, Pfizer responded, stating that the Honourable High Court of Sindh, Karachi has passed an *ad-interim* order on 30 May 2016, wherein the Honourable Court has passed an ad-interim order in this regard directing *"DRAP and/or its agents, officers and representatives from taking any coercive or adverse action against the Plaintiff on the basis of revision of MRP's of its Products, till the final disposal of the suit under reference".*

Pharmatec Pakistan Private Limited (Pharmatec)

5.25 On 4 August 2016, Pharmatec responded, stating that the company has *increased* its prices in November 2015 for two its medicines ranging between 6.06% and 6.89%. Moreover, it has stated Pharmatec has not entered into any agreement in violation of Section 4 of the Act.

***Johnson* & Johnson Pakistan Private Limited (Johnson)**

5.26 Despite numerous attempts by the Enquiry Officer via Couriers, Facsimiles and Telephonic call to contact Johnson, to date no response has been received. Therefore, this Enquiry Report to the extent of Johnson has taken into account data either provided DRAP or the documents impounded and provided to the Enquiry Officer.

6. FINDINGS

6.1 The following table represents the price increase by MPCs as has been notified to DRAP until the month of July 2016:

Therapeutic Use	Product	MPCs	Previous MPR	New MPR	Increase	%
Cough & Cold	Actifed P Elixir	GSK	35	50	15	42.86%
	Tixylix cough syrup 120 ml	Sanofi	34	40.75	6.75	19.85%
	Actifed DM	GSK	38	60	22	57.89%
	Cofcol Elixir 120 ml	Abbot	55	69.98	14.98	27.24%
	Corex-D 60ml	Pfizer	26.86	42.31	15.45	57.52%
	Corex-D 120ml	Pfizer	43.19	72.17	28.98	67.10%
	Cosome 120ml	Merck	39	80	41	105.13%
	Cosome-E 120ml	Merck	33	52	19	57.58%
	Baydal 120ml	Bayer	31.05	36	4.95	15.94%
Therapeutic Use	**Product**	**MPCs**	**Previous MPR**	**New MPR**	**Increase**	**%**
Fever, Pain, Cold	Panadol CF Tabs 100	GSK	175	250	75	42.86%
	Panadol Extra Tabs 100	GSK	119.35	159	39.65	33.22%
	Actifed DM Cough Tab 500	GSK	465	750	285	61.29%
	Disprol Tab 100	Reckitt	180	230	50	27.78%
	Panadol Tabs 100	GSK	180	230	50	27.78%
	Disprin Tab (Acetyisaliccylic) 100	Reckitt	100	124	24	24.00%
	Disprin CV tab 30	Reckitt	24.3	31.5	7.2	29.63%
	Disprol Susp 60ml	Reckitt	28	30.75	2.75	9.82%
	Disprol Susp 90ml	Reckitt	42	46.25	4.25	10.12%
	Ponstan Susp 60ml	Pfizer	20	60	40	200.00%
	Ponstan Forte 500mg Tab 200s’	Pfizer	432.12	457.08	24.96	5.78%
Therapeutic Use	**Product**	**MPCs**	**Previous MPR**	**New MPR**	**Increase**	**%**
Malaria Fever	Basoquin 150mg Tab 600s’	Pfizer	900	1304.13	404.13	44.90%
	Resochin Tabs 300’s	Bayer	358	450	92	25.70%

	Nivaquin p tabs 500	Sanofi	596	705.86	109.86	18.43%
	Exafal Tab 20/120 mg 24's	Novartis	625.32	719.12	93.8	15.00%
Therapeutic Use	**Product**	**MPCs**	**Previous MPR**	**New MPR**	**Increase**	**%**
Skin infection/ minor cuts	Advantan cream 5 mg	Bayer	107.26	170	62.74	58.49%
	Advantan cream 10 mg	Bayer	203.32	317	113.68	55.91%
	Advantan Oinment 10 gm	Bayer	203.32	317	113.68	55.91%
	Advantan Fatty Ointment 10gm	Bayer	203.32	317	113.68	55.91%
	Nerison cream	Bayer	39.12	83	43.88	112.17%
	Nerison c cream	Bayer	46.65	91	44.35	95.07%
	Nerison fort ointment	Bayer	139.33	217	77.67	55.75%
	Nerison fortfati ointment	Bayer	139.33	217	77.67	55.75%
	Travogin cream	Bayer	59.31	91	31.69	53.43%
	Skinoren cream	Bayer	195.37	304	108.63	55.60%
	Travocort cream	Bayer	76.26	160	83.74	109.81%
	Kenacomb ointmnt 10 gm	GSK	42.58	59	16.42	38.56%
	Bepanthan ointment	Bayer	63.38	77	13.62	21.49%
	Bepanthan plus ointment	Bayer	63.38	77	13.62	21.49%
	Mycitracin ointment	Pfizer	83.03	110	26.97	32.48%
Therapeutic Use	**Product**	**MPCs**	**Previous MRP (after 15% price increase 2013)**	**MRP (increased price in 2016)**	**Increase**	**%**
Heartburn/ ulcer	Mucaine Suspension	Pfizer	34	50	16	47.06%
	Gaviscon liquid (sodium alginate) 120ml	Reckitt	57	63	6	10.53%
	Gaviscon liquid (sodium alginate) 240ml	Reckitt	105	117.5	12.5	11.90%
	Gaviscon Advance 120ml	Reckitt	95	102	7	7.37%
Therapeutic Use	**Product**	**MPCs**	**Previous MRP (after 15% price increase 2013)**	**MRP (increased price in 2016)**	**Increase**	**%**
ul ti vi ta m .	Toni syrup 120 ml	AGP	125.24	165	39.76	31.75%

	Lederplex syrup	Wyeth	35	52.74	17.74	50.69%
	Mosegor syp 120 ml	Novartis	86.42	110.81	24.39	28.22%
	Vidaylin syrup 120ml	Abbott	50	60.54	10.54	21.08%
	Vidaylin m syrup 120ml	Abbott	54	83.35	29.35	54.35%
	Vidaylin drops 10 ml	Abbott	26	41.6	15.6	60.00%
	Incremin syrup	Wyeth	39	66.14	27.14	69.59%
	Multi bio nata M Syrup	Merck	52	80	28	53.85%
	Polybion forte syrup 120ml	Merck	29	40	11	37.93%
	Bejectal injection 10ml	Abbott	32	71.16	39.16	122.38%
	Bejectal T injection 10ml	Abbott	41	81.06	40.06	97.71%
	Multibionta for infusion 5*10ml	Merck	94	201	107	113.83%
	Neurobion injection 25's	Merck	300	555	255	85.00%
	Polybion injection	Merck	138	200	62	44.93%
	Neurobion tablets 100's	Merck	247	535	288	116.60%
	Polybion Z Capsule	Merck	75	112	37	49.33%
Therapeutic Use	**Product**	**MPCs**	**Previous MRP (after 15% price increase 2013)**	**MRP (increased price in 2016)**	**Increase**	**%**
Gesto Intestinal Pain	No-Spa Injection	Sonafi	375	744	369	98.40%
	Buscopan	Merck	300	390	90	30%
	No-Spa Tabs	Sonafi	53.63	144	90.37	168.51%
	No-Spa Fort Tabs	Sonafi	87.59	277	189.41	216.25%
Therapeutic Use	**Product**	**MPCs**	**Previous MRP (after 15% price increase 2013)**	**MRP (increased price in 2016)**	**Increase**	**%**
Anti-biotic	Penbritin drops	GSK	39	47	8	20.51%
	Penbritin syp 125 mg	GSK	33	39	6	18.18%
	Septran DS Susp	GSK	30	39	9	30.00%
	Septran Susp 50ml	GSK	21	29	8	38.10%

	Ampicolx oral drops 20ml	GSK	62	75	13	20.97%
	Ampicolx syp 250ml	GSK	70	84	14	20.00%
	Augmentin BD 457	GSK	142	170	28	19.72%
	Augmentin BD 5ml dry syp	GSK	75	90	15	20.00%
	Augmentin susp 156.25mg	GSK	70	84	14	20.00%
	Augmentin susp 312.5mg	GSK	109	131	22	20.18%
	Pebirin Caps 250mg	GSK	246.3	296	49.7	20.18%
	Pebirin caps 500mg	GSK	482.49	579	96.51	20.00%
	Augmintin tabs 375 mg	GSK	82	98	16	19.51%
	Augmintin tabs 625 mg	GSK	120	130	10	8.33%
	WYMOX capsule 250mg	Wyeth	356.5	310	-46.5	-13.04%
	WYMOX capsule 500mg	Wyeth	304.79	370	65.21	21.40%
	WYMOX sys 125mg	Wyeth	43.44	44	0.56	1.29%
	WYMOX sys 250mg	Wyeth	56.97	57.56	0.59	1.04%
	Septran tabs	GSK	644	772	128	19.88%
	Septran DS tabs	GSK	291	393	102	35.05%
	Ampiclox caps 250mg	GSK	310	362	52	16.77%
	Ampiclox caps 500mg	GSK	517	588	71	13.73%
	Wymox injection 250mg	GSK	27.7	33.84	6.14	22.17%
	Wymox injection 500mg	GSK	35.67	53.33	17.66	49.51%
	Klarcid injection	Abbott	160	203.43	43.43	27.14%
	Velosef inj	GSK	107	161	54	50.47%
	Velosef inj 250mg	GSK	45	67	22	48.89%
	Velosef inj 500mg	GSK	58	88	30	51.72%
	Velosef sys 125mg	GSK	124	140	16	12.90%
Therapeutic Use	**Product**	**MPCs**	**Previous MRP (after 15% price increase 2013)**	**MRP (increased price in 2016)**	**Increase**	**%**
Diabetes	Daonil 500mg	Sonafi	70	120	50	71.43%
	Glucophage 750mg	Merck	55	195	140	254.55%

	Neophage 500 mg	Abbott	55.64	85.35	29.71	53.40%
	Neophage 850 mg	Abbott	48.76	92.44	43.68	89.58%
	Galvus 50mg	Novartis	1279.2	1471.08	191.88	15.00%
	Humalog 100iu/ml cartridge	Eli Lilly	2983	3700	717	24%
	Humalog mix 25 100iu/ml cartridge	Eli Lilly	2718	3700	982	36%
	Humalog mix 50 iu/ml cartridge	Eli Lilly	2718	3700	982	36%
	Humalog mix 50 100iu/ml cartridge	Eli Lilly	4302.15	4626	323.85	7.53%
	Humalog 100iu/ml kwikpen	Eli Lilly	4302.15	4626	323.85	7.53%
	Humulin mix 25 100iu/ml kwikpen	Eli Lilly	4302.15	4626	323.85	7.53%
	Humulin regular 100iu/ml vial	Eli Lilly	609.50	645	35.5	5.82%
	Humulin NPH 100iu/ml vial	Eli Lilly	609.50	645	35.5	5.82%
	Humulin 70/30 100iu/ml vial	Eli Lilly	542.80	645	35.5	5.82%
Therapeutic Use	**Product**	**MPCs**	**Previous MRP (after 15% price increase 2013)**	**MRP (increased price in 2016)**	**Increase**	**%**
Gynecological Diseases	Duphaston tabs	Abbott	430	540	110	25.58%
	Primolut N	Bayer	90	245	155	172.22%
	Primolut deport inj	Bayer	149	390	241	161.74%
	Gravibnan 1ml	Bayer	90	109	19	21.11%
	Gravibnan 2ml	Bayer	135	183	48	35.56%
	Proviron tabs	Bayer	165	333	168	101.82%
Therapeutic Use	Product	MPCs	Previous MRP (after 15% price increase 2013)	MRP (increasing price on 2016)	Increase	%
Eye Infection	Maxidex 10ml	AG & Co (Alcon)	78.19	108.76	30.57	39.10%
	Mybriacyl eye drops	AG & Co (Alcon)	115	160.9	45.9	39.91%
	Alcaine	AG & Co (Alcon)	87	121.8	34.8	40.00%

	Tobradex drops	AG & Co (Alcon)	279.95	335.83	55.88	19.96%
	Tobradex Ointment	AG & Co (Alcon)	279.95	335.83	55.88	19.96%
	Tobrex drops	AG & Co (Alcon)	186.35	223.62	37.27	20.00%
	Tobrex Ointment	AG & Co (Alcon)	186.35	223.62	37.27	20.00%
	Nephcon forte	AG & Co (Alcon)	100	120	20	20.00%
	Cyclogpl eye drops	AG & Co (Alcon)	230.26	276.3	46.04	19.99%
	Betoptics-b eye drops	AG & Co (Alcon)	272.29	326.75	54.46	20.00%
	Vigamox eye drops	AG & Co (Alcon)	425	510	85	20.00%
	Birmonidine tartrate	AG & Co (Alcon)	380	456	76	20.00%
	Systaneeye drops	AG & Co (Alcon)	428	513.6	85.6	20.00%
	Tears natural 2 eye drops	AG & Co (Alcon)	137.47	164.97	27.5	20.00%
	A zopt eye drops	AG & Co (Alcon)	819.61	984.63	165.02	20.13%
	Emadine eye drops	AG & Co (Alcon)	381.52	457.81	76.29	20.00%
	Tarvatan eye drops	AG & Co (Alcon)	950	1140	190	20.00%
	Nevanac eye drops	AG & Co (Alcon)	400	480	80	20.00%
	Maxidex 10ml	AG & Co (Alcon)	78.19	108.76	30.57	39.10%
Therapeutic Use	Product	MPCs	Previous MRP (after 15% price increase 2013)	MRP (increasing Price in 2016)	Increase	%
Miscellaneous	Decadurabolin 50 mg/ML inj	OBS	92	167	75	81.52%
	Decadurabolin 100 mg/ML inj	OBS	112	200	88	78.57%

	sustanon 250mg inj	OBS	57	100	43	75.44%
	Pregnyl 5000 iu Inj	OBS	700	1100	400	57.14%
	Sodium Chloride 25ml	Outsuka	12.65	17.86	5.21	41.19%
	Potassium chloride 25 ml	Outsuka	12.65	19.1	6.45	50.99%
	Dextrose 25% 25 ml	Outsuka	12.65	19.44	6.79	53.68%
	Plasaline 100ml	Outsuka	52.08	67.5	15.42	29.61%
	Padex-5 100 ml	Outsuka	56.42	69.1	12.68	22.47%
	Plan amin SG 500ML	Outsuka	343.2	645	301.8	87.94%
	Plan amin SG 500ML	Outsuka	230	377.82	147.82	64.27%
	Aminovel 500 ml	Outsuka	375	541.39	166.39	44.37%
	Aminoleban 500 mg	Outsuka	555	642.5	87.5	15.77%
	Palsaline 500 ml	Outsuka	36	77.81	41.81	116.14%
	Pladexal 500ml	Outsuka	39	86.24	47.24	121.13%
	Pladex 5 500ml	Outsuka	38	84.57	46.57	122.55%
	Plabolyte m 500 ml	Outsuka	59	87.7	28.7	48.64%
	Ringolact D 500ml	Outsuka	59	88.07	29.07	49.27%
	Ringolact 500ml	Outsuka	56	80.01	24.01	42.88%
	Nevidoxin Tablets	AGP	147.3	195	47.7	32.38%
	Toni syrup	AGP	125.24	165	39.76	31.75%
	Posterisan ointment	AGP	182	220	38	20.88%
	Posterisan fort ointment	AGP	193	242	49	25.39%
	Lederplex syrup	Wyeth Pakistan	35	52.74	17.74	50.69%
	Mucaine suspension	Wyeth Pakistan	34	50	16	47.06%
	Myambutol-INH Tab	Wyeth Pakistan	147.75	400	252.25	170.73%
	Myrin tab 80's	Wyeth Pakistan	629	693.29	64.29	10.22%
	Lederrif 300 mg tab 30's	Wyeth Pakistan	264	299.47	35.47	13.44%
	Lederrif 450 mg tab 30's	Wyeth Pakistan	306	388.88	82.88	27.08%
	Lederrif 600 mg tab 30's	Wyeth Pakistan	439	525.93	86.93	19.80%

	Pyrazinamide 500 mg tab 500's	Wyeth Pakistan	1875	2293	418	22.29%
	Wymox Capsule 500 mg 50's	Wyeth Pakistan	304.79	370	65.21	21.40%
	Wymox injection 250 mg vial	Wyeth Pakistan	27.7	33.84	6.14	22.17%
	Wymox injection 500 mg vial	Wyeth Pakistan	35.67	53.33	17.66	49.51%
	Wymox suspension 125 mg 5ml	Wyeth Pakistan	43.44	44	0.56	1.29%
	Wymox injection 250 mg 5ml	Wyeth Pakistan	56.97	57.56	0.59	1.04%
	Incremin syrup	Wyeth Pakistan	39	66.14	27.14	69.59%
	Entox-P 500 mg Tabs	Wyeth Pakistan	100	150.18	50.18	50.18%
	Nilstat Drops	Wyeth Pakistan	48	57.79	9.79	20.40%

Analysis of Price Increase

6.2 According to DRAP a total of 15 MPCs (list attached) out of 20 registered with the Pharma Bureau have increased their prices. The maximum increase in prices of drugs within competing brands of similar molecules has been observed as follows:

a. For the medicine of cough and cold, the increase in MRPs is ranging between 15% and 105%;

b. For the medicine of fever and pain, the increase in MRPs is ranging between 5.78% and 200%;

c. For the medicine of malaria fever, the increase in MRPs is ranging between 15% and 44.90%;

d. For the medicine of skin infection/ minor cuts, the increase in MRPs is ranging between 21.49% and 109.81%;

e. For the medicine of heartburn and ulcer, the increase in MRPs is ranging between 7.37% and 47.06%;

f. For multi-vitamins, the increase in MRPs is ranging between 21.06% and 122.38%;

g. For gastrointestinal pain, the increase in MRPs is ranging between 30% and 216.25%;

h. For antibiotics, the increase in MRPs is ranging between -13.04%1 and 51.72%;

i. For diabetics, the increase in MRPs is ranging between 15% and 254%;

j. For gynaecological disease, the increase in MRPs is ranging between 21% to 172%.

7. CONCLUSIONS

7.1 In view of the above, it appears that the issue of pricing has been among the most important agendas of the Pharma Bureau and its member undertakings (MPCs) in all of its meeting going as far back as 2007.

7.2 The role that 'associations of undertakings' may play in cartels is explicitly recognized under Section 4(1) of the Act by the adoption of the decision by an association of undertakings that have the object or effect of preventing, restricting, or reducing competition within the relevant market. A decision by an 'association of undertakings' may take various forms. An agreement entered into by an association's members might also be a decision. Moreover, a recommendation made by an association in respect of pricing, among other things, might amount to a decision. The fact that the recommendation is not binding upon its members does not prevent the application of Section 4(1), nor that is it not unanimously accepted by all the members.

7.3 To steer clear of engaging in practices that are prohibited under Section 4 of the Act, an association of undertakings must not be used as a forum for the systematic exchange of confidential information and strategic data, in particular, involving price, market trends, outputs and customers to whom sales have been or ought to have been made. The analysis of documents impounded and further correspondence with DRAP and MPCs evidences that Pharma Bureau and the MPCs have consistently been exchanging

commercially sensitive information and strategic data. Such practice appears to have led to transparency in the market facilitating collusion, influencing individual pricing decisions, sales, profits and costs as against the legitimate trade association functions of information exchange on the general overview of the sector, standard-setting and ethical considerations, conducting research and common training programs, which in fact lead to efficiency enhancing benefits for the industry and ultimate consumer welfare.

7.4 The above analysis in general and part 5 of the Enquiry Report in specific suggests that there has been regular information exchange resulting in common policies in the form of discussions, agreements and decisions adopted by Pharma Bureau and its member undertakings pertaining to the market and prices, cost structures and profitability thresholds, production and sale volume forecasts, among other things, constituting a prima facie violation of Section 4 of the Act. It further appears that such practices continue to exist in the relevant pharmaceutical market and prima facie amount to an act of cartelization.

7.5 It is also apparent from the documents reproduced above that on several occasions, Pharma Bureau and its member undertakings (MPCs) increased their prices (effective by or before March/April 2015 and onwards) as a pre-set arrangement.

7.6 In view of the foregoing, Pharma Bureau and its member undertakings (MPCs) have *prima facie* infringed Section 4 of the Act. Broadly speaking, it appears that the anticompetitive practices adopted by Pharma Bureau and endorsed by its member undertakings (MPCs) led to a reduction in strategic uncertainty, relating to information that is usually treated as confidential and/or likely to affect significantly each participant's future market conduct. This must be viewed in the backdrop and context of competition law, which contemplates that even a single exchange of strategically significant commercial information, is likely to be sufficient to constitute a violation of Section 4 of the Act.

8. RECOMMENDATIONS

8.1 Based on the above-stated legal reasoning and factual position, it appear that since at least 2007, Pharma Bureau and its member undertakings (MPCs) have been sharing strategic data and commercially sensitive information, in particular, concerning pricing and market and have agreed upon and adopted common policies and decisions, which have been unanimously accepted by all of them. Such practices have apparently facilitated coordination and resulted in collusion between and amongst the member undertakings (MPCs) of Pharma Bureau in the form of recent price increases of various therapeutic drugs in Pakistan, which is a *prima facie* violation of Section 4 of the Act.

8.2 It is, therefore proposed that the Commission may consider initiating proceedings against Pharma Bureau and its member undertakings (MPCs) for *prima facie* infringement of Section 4 of the Act.

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