

COMPETITION COMMISSION OF PAKISTAN

ENQUIRY REPORT

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

**IN THE MATTER OF ALLEGED VIOLATION OF THE COMPETITION ACT,
2010 BY HAIER & DEL**

Maliha Quddus | Irfan ul Haq | Aqsa Suleman

Dated: 18th September, 2019

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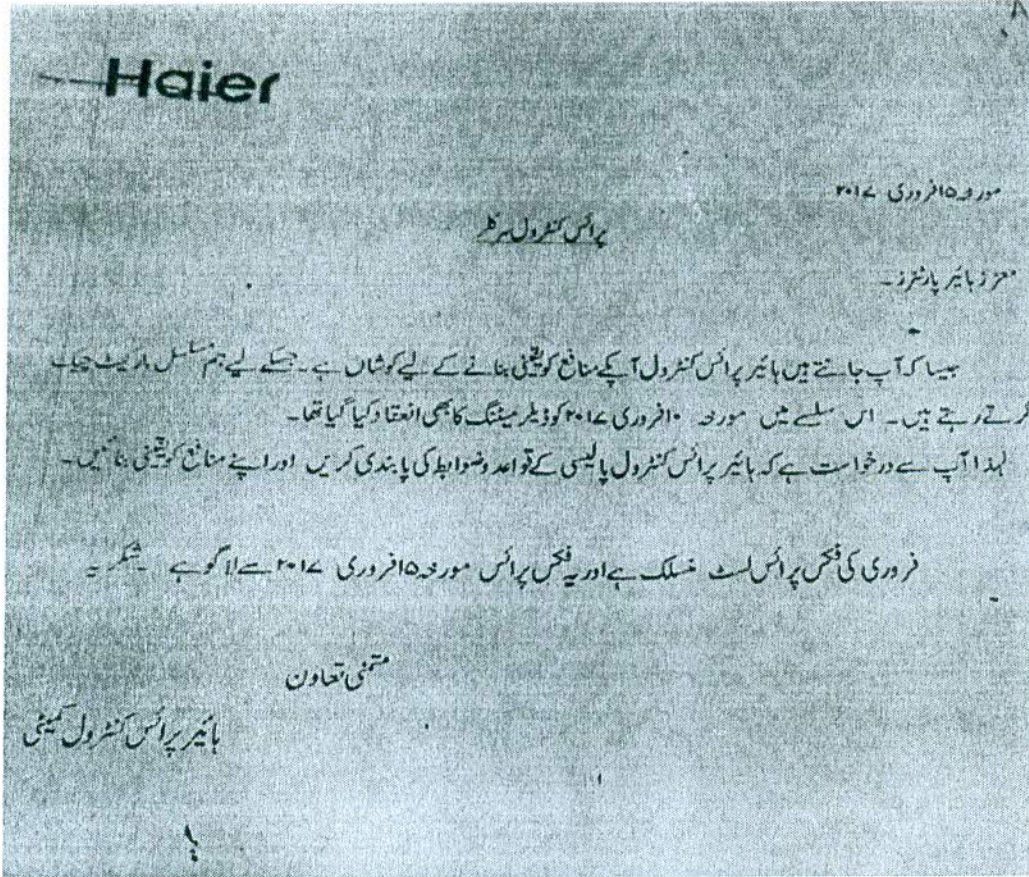
BACKGROUND & FACTS

1. This report has been prepared in pursuance of the enquiry authorized under Section 37 (1) of the Competition Act, 2010 (the "Act") by the Competition Commission of Pakistan (the "Commission") on December 21, 2017 against alleged violation of Section 04 of the Act by Haier Pakistan (Pvt.) Limited ("Haier") and DEL Electronics (Pvt.) Limited ("DEL") formerly Dawlance Electronics (Pvt.) Limited.
2. Prior to the enquiry, a market survey of electric appliance dealers at various locations in Islamabad/ Rawalpindi was undertaken to look into the business practices of electric appliance dealers. During the course of the survey, copies of circulars issued by Haier and DEL to their dealers were obtained. A circular issued by Haier, to its dealers, titled 'Price Control Circular' dated February 15, 2017 is worded as follows and is also reproduced below:

"As you are aware, Haier Price Control is striving to ensure dealers' profitability for the purpose of which the company is constantly checking the market. In this regard a meeting was also convened on February 10, 2017. You are therefore, requested to follow the terms and conditions of the Haier Price Control Policy to ensure your profit. Please find attached the Fixed Price List for February which will be applicable from February 15, 2017".



3. Three (03) more circulars issued by Haier, two of them dated February 14, 2017 and one of February 15, 2017, titled - 'Price Control Circular' were obtained wherein dealers of different territories were fined or suspended for not adhering to the price control list. (Copies of circulars issued by Haier are attached as Annex H1)



4. For DEL, 02 similar circulars issued by Rawalpindi Sales Office (Copies of circulars issued by DEL are attached as Annex D1) dated January 23, 2017 and January 30, 2017 were obtained whereby dealers were penalized for selling appliances at less than the price set by DEL. A circular dated January 23, 2017 is worded as follows and is reproduced below for reference:

"Respected dealers: As you are aware that the company, in order to ensure your profitability and to safeguard its products, checks the market under the Price Control Policy from time to time.

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During inspection of the market under the Price Control Policy, Messer Noor Electronics sold Dawlance refrigerator below the cash price which is a violation of the Dawlance Price Control Policy. Therefore, for violation of the company policy they are being fined PKR 30,000 and are directed to deposit price of the unit, with the company within 07 days. In case of repeat violation supplies would be suspended for an indefinite period of time”.

سرکالر

مورخہ: 08 جولائی 2017
معزز ڈیلرز:

جیسا کہ آپ تمام ڈیلرز حضرات کو معلوم ہے کہ کمپنی اب کے منافع کو مستحکم بنانے اور اپنی پروڈکٹ کے تحفظ کے لئے برائس کنٹروول پالیسی کے تحت وقتاً فوقتاً مارکیٹ چیک کرتی رہتی ہے لہذا برائس کنٹروول پالیسی کے تحت مارکیٹ چیکنگ کے دوران

میسرز - اتفاق کارپوریشن - چاندنی چوک مارکیٹ

نے ڈاولینس Refrigerator کو Cash Price سے کم قیمت پر فروخت کیا۔ جو کہ ڈاولینس PRICE CONTROL POLICY کی خلاف ورزی ہے، لہذا انہیں کمپنی پالیسی کی خلاف ورزی کرنے پر

مبلغ -/30,000 روپے

مانہ کیا جاتا ہے جرمانہ اور پونٹ کی رقم کمپنی آفس میں 7 دن کے اندر جمع کرانا ہوگی بصورت
اگر سہلانی غیر معینہ مدت کیلئے معطل کی جائے گی۔

برائے: ڈاولینس الیکٹرونکس لمیٹڈ

5. On the basis of the aforementioned circulars, the Commission in its meeting held on December 21, 2017 decided to authorize an enquiry under Section 37 (1) of the

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Act to ascertain if there was any *prima facie* violation of Section 4 of the Act. Pursuant to the powers contained in Section 28(2) of the Act, the Commission appointed Maliha Quddus (then Deputy Director now Joint Director, C&TA), Irfan ul Haq (Deputy Director, C&TA) and Aqsa Suleman (then Management Executive now Assistant Director, C&TA) as Enquiry Officers (hereinafter collectively the "Enquiry Committee") to conduct an enquiry and submit a report on the matter.

6. To gather further evidence regarding suspected violation of the Act, the Commission exercising its powers under Section 34 of the Act authorized two teams of officers to conduct 'enter and search' inspection of the premises of Haier and DEL. On February 26, 2018 teams of officers duly authorized by the Commission conducted inspection of the office of:
 - a. Haier located at 4-B, Q-Block, Old College Road, M.M. Alam Road Extension, Gulberg-II, Lahore; and
 - b. DEL located at Dawlance Centre, 7/4, Civil Lines-9, Dr. Zia Uddin Road, Karachi.

7. A number of documents including electronic data was impounded during the search and inspections that were handed over to the enquiry committee by the inspection team leads along with a Search & Inspection Report. A copy of the inspection report and inventory list of impounded documents and record is attached as Annex H2 (Haier) and Annex D2 (DEL). The current enquiry relies on the information and documents attained through the Search & Inspection of and correspondence held with Haier and DEL.

UNDERTAKINGS

8. Section 2(1) (q) of the Act defines an undertaking as follows:



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“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 or undertaking”.

9. **Haier:** Haier is a private limited home appliance and consumer electronics company. Its main products include refrigerators, deep freezers, washing machines, microwave ovens, split air conditioners, LED TVs, laptops and other small domestic appliances. Since, Haier is a company involved in the production and sale of various electronic appliances it is therefore, an undertaking in terms of Section 2(1)(q) of the Act.

a. **Dealers:** Haier’s dealers purchase inventory of home appliances from the company for onward sale/resale to the final consumer. These dealers provide services such as distribution, maintenance of show rooms/display, delivery and installation etc. They also bear the risk of loss for example, in terms of unsold inventory. Dealers are therefore, separate entities from Haier and can be considered as undertakings in terms of Section 2(1)(q) of the Act.

10. **DEL:** DEL is a private limited home appliance and consumer electronics company. Its main products include refrigerators, deep freezers, washing machines, microwave ovens, split air conditioners and other small domestic appliances. Since, DEL is a company involved in the production and sale of various electronic appliances it is therefore, an undertaking in terms of Section 2(1)(q) of the Act.

a. **Dealers:** DEL’s dealers purchase inventory of home appliances from the company for onward sale/resale to the final consumer. These dealers provide services such as distribution, maintenance of show



rooms/display, delivery and installation etc. They also bear the risk of loss for example, in terms of unsold inventory. Dealers are therefore, separate entities from Haier and can be considered as undertakings in terms of Section 2(1)(q) of the Act.

ISSUES:

11. Based on the preliminary information, provided above, the Enquiry Committee has considered the following issues for analysis:
 - a. Whether Haier by issuing a Price Control Policy for its dealers has *prima facie* violated provisions of Section 4 the Act;
 - b. Whether DEL by issuing a Price Control Policy for its dealers has *prima facie* violated provisions of Section 4 of the Act.

ANALYSIS

Resale Price Maintenance

12. Before proceeding further into the analysis of issues, it is important to first explain the concept of Resale Price Maintenance (RPM). RPM is a concept different than typical price fixing arrangement commonly known as cartels or horizontal price fixing that occurs between competitors at the same level of production to restrain price competition. RPM occurs between businesses operating at different levels of the supply chain and arises if a supplier puts a mandatory condition on dealers to not sell products below a certain price or on an agreed discounts or at no discount at all¹. Competition authorities normally consider that resale price maintenance

¹ Resale Price Maintenance Notification Guidelines
<https://www.accc.gov.au/system/files/Resale%20Price%20Maintenance%20Notification%20Guidelines.pdf>



adversely impacts intra-brand competition and forces customers to pay more for the product being purchased² or in other words deprives customers of the possibility of getting discounts. One of the characteristic of a typical RPM includes fixation of minimum price at which the reseller can sell the product/service and an element of coercion to ensure its implementation.

13. Section 4 of the Act, prohibits buyers/resellers including dealers, or distributors, or retailers from the determination of resale price³. Under the provisions of Section 4 of the Act, agreements entered into between the undertakings, or association of undertakings regarding the imposition of restrictive trading conditions with regard to the sale or distribution of any goods or provision of services is a violation of the Act. Relevant parts of Section 4 are reproduced below:

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 their object or effect of preventing, restricting or reducing competition within the relevant market unless exempted under section 5 of this Ordinance.

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

² Standpoint on Resale Price Maintenance

https://www.bwb.gov.at/fileadmin/user_upload/PDFs/PDFs3/BWB_Standpoint_on_Resale_Price_Maintenance_english.pdf

³ Paragraph 34 In the matter of show cause notice issued to M/s. Reliance Paints Pakistan
http://cc.gov.pk/images/reliance_paints_30_mar_2018.pdf.



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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;

14. Under the Act, the term “agreement” is defined as “*agreement*” includes any arrangement, understanding or practice, whether or not it is in writing or intended to be legally enforceable. The application of Section 4 of the Act is not limited to formal legal contracts. It includes agreements cooperation and/or arrangements achieved through informal agreements, understandings, circulars or practices, including decision by association of undertakings. Under the Act all those practices are prohibited which may restrict, distort or prevent competition.
15. The Commission has recently deliberated upon the issue of RPM in its **Order In the Matter of Show Cause Notice Issued to Reliance Paints Pakistan** wherein it held that the Respondent (Reliance Paints) had:

“...evidently imposed upon its dealers or distributor/retailers a minimum resale price to sell its products which constitutes a violation of clause (a) of subsection (2) of Section 4 of the Act as such arrangements are considered to be restrictive of intra-brand competition and price fixation by their object”⁴

16. The Order goes on to cite the European Commission’s Notice on Vertical Restraints of 2010 which: “...encapsulate the impact of, direct or indirect, imposition of minimum, fixed, maximum and recommended resale price as hardcore violation of Article 101 of the Treaty of the Functioning of the European Union. It is further noted in the EC Notice that RPM could facilitate cartel-like behavior among suppliers or dealers; reduction in intra-brand competition as certain distributors will be prevented from lowering their sale prices, which is likely to result in direct

⁴ Paragraph 32 http://cc.gov.pk/images/reliance_paints_30_mar_2018.pdf

increase in price; soften competition by way of interlocking relationship whereby suppliers use the same retailers for distribution of their products; cause prices to inflate as the immediate effect of any such restraint is increase; lower the price for subsequent distributors and to reduce the pressure on its margin; in case of a manufacturer with a dominant position to foreclose smaller rivals as well as lowering of dynamism and innovation in the distribution chain or in the downstream market among other things”⁵. Therefore, through the foregoing Order the Commission has categorized RPM agreements as restriction by object.

Relevant Market

17. For the purpose of defining relevant market under this enquiry, we refer to the relevant market as defined under Section 2(1)(k) of the Act.

“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 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 homogenous and which can be distinguished from neighbouring geographic areas because, in particular, the conditions of the Competition are appreciably different in those areas;

⁵ Paragraph 35 Ibid.



18. This definition has two components: a product market and a geographic market. Haier and DEL sell electronic appliances mainly through their network of dealers present all over Pakistan. To reach a wider segment of customers, appliances of these companies are also offered through banks on leasing and through online portals as well. Haier's product portfolio includes: refrigerators, deep freezers, washing machines, microwave ovens, split air conditioners, LED TVs, laptops and other small domestic appliances. Whereas, DEL sells: refrigerators, deep freezers, washing machines, microwave ovens, split air conditioners and other small domestic appliances.
19. Haier and DEL operate in the 'upstream market' i.e. the market for manufacturing, distribution and marketing of home appliances which are then sold to the end consumer via dealers who operate in the 'downstream market'. Dealers perform many important functions along the distribution chain which includes establishment of showroom, hiring of knowledgeable sales staff and provision of services such as delivery and installation. Haier and DEL use the traditional dealership model as well as other distribution channels for sale of their products. Haier's dealership network for home appliances includes the following:
- a. Regular Dealer;
 - b. Key Dealer;
 - c. Haier Store;

DEL's distribution network comprises the following:

- a. Super Exclusive Dealers;
- b. Exclusive Dealers;
- c. Normal Dealers;

Although both companies sell to industrial and corporate clients, online stores and large hypermarket chains such as Metro; however, these channels are excluded



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from the scope of this enquiry. Haier and DELs traditional dealership network primarily caters to end consumers. Vertical agreements between the manufacturers and their respective dealers impose certain conditions/rules on the latter designed to increase sales and maintain a certain brand image. In terms of usage consumers regard different brands of home appliances as interchangeable. However, a consumer desirous of purchasing Haier or DELs brand will visit one of the dealerships engaged in selling the respective company's products. Since the current enquiry pertains to arrangements between Haier and its dealers and DEL and its dealers, the relevant product market appears to be that the market for distribution of home appliances between: Haier and its dealers and (ii). DEL and its dealers.

20. Electrical appliances of Haier and DEL are supplied to dealers located all across Pakistan. The respective price control policies of Haier and DEL are the same irrespective of where dealerships are located. Since the conditions of competition are homogeneous across the country, for the purpose of this enquiry the relevant geographic market is considered as the whole of Pakistan.

Whether Haier's Price Control Policy is a *prima facie* violation of Section 4 of the Act.

21. Scrutiny of documents impounded from Haier's premises indicate that Haier through agreements with dealers has implemented a mechanism of resale price maintenance by way of which no dealer is allowed to sell Haier products below a certain price. Retrieved documents highlight that Haier has entered into two types of agreements with dealers: "Full Exclusive Agreement" (Full EDN) and "Haier Store Agreement". Full EDN is an agreement signed between Haier and dealers under which dealers can sell products of other brands that are not supplied by Haier however, they have certain obligations towards Haier in terms of display. Whereas, Haier Store Agreement is an agreement signed between Haier and dealers under which dealers are only allowed to sell Haier products.



22. Although dealer agreements with what Haier terms as 'Regular dealers' were not impounded during the Enter & Search of Haier's premises; in its reply to the Enquiry Committee, Haier has stated that the Price Control Policy is implemented across the board on all dealer categories and products: "*To provide standardize shopping experience to consumer and best quality and standardize price cross the board for consumer all over Pakistan, there is implemented one standardize price control policy across the board for all categories of dealers to provide best shopping experience to customers on standard price*". (Haier reply Para 2 Annex 'H3').
23. A file containing Full EDN contracts was impounded during the raid and contained a number of contracts executed with dealers from all over Pakistan. An agreement between M/s Sameer Electronics is attached as Annex 'H4'. Clause 5 titled 'Termination of Full EDN Contract' ('*Full EDN Contract ka Khatma*') states the different conditions under which the contract between the two parties would stand terminated. Among one of the conditions as stated in Sub Clause 2 reads 'Sale at below fix price/wholesaling' ('*Fix price say neechay baichna/wholesaling*'). On page 12 and 13 of the agreement is 'Haier Price Control Policy' the contents of which will be discussed in detail below.
24. Similarly, a file containing Haier Store Agreement contracts was impounded during the raid and contained a number of contracts executed with dealers from all over Pakistan. An agreement between M/s Butt Electronics is attached as Annex 'H5'. Clause 5 titled 'Termination of Haier Store Contract' ('*Haier Store Contract ka Khatma*') states the different conditions under which the contract between the two parties would stand terminated. Among one of the conditions as stated in Sub Clause 2 reads 'Sale at below fix price/wholesaling' ('*Fix price say neechay baichna/wholesaling*'). On page 12 and 13 of the agreement is 'Haier Price Control Policy'.

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25. It is reiterated that Haier applies the same Price Control Policy across all dealer categories i.e. Full EDN, Haier Store and Regular dealers and for its all its home appliances (including refrigerators, split ACs, washing machines etc). Scrutiny of Price Control Policy at pages 12 and 13 of Full EDN and Haier Store Agreement are identical.

26. We now proceed to discuss, in detail Haier's Price Control Policy which is reproduced below:



- 3.1.1 ڈیٹر براؤننگ کی پراسس ہاؤس (مکمل یعنی موزنٹ کے مطابق) سے کم زبانی یا تقریری کو پیش خفی پراکچینڈ میں شمار ہوگا۔
- 3.1.2 ڈیٹر براؤننگ کی برائی کرنا مضمیر اچینڈ میں شمار ہوگا۔
- 3.1.3 ڈیٹر کٹر کو سر سے براؤن پراڈر Convert کرنے کی کوشش کرنا خفی پراکچینڈ میں شمار ہوگا۔
- 3.1.4 گاجب کو پراسس ہاؤس سے کیا کرنا کہ آپ براؤننگ چیک کر کے واپس آ جائیں پھر کٹس کے خفی پراکچینڈ میں شمار ہوگا۔
- 3.2 پراسس ہاؤس سے کم قیمت پر پٹی لگی براؤننگ بکڑے جانے کی صورت میں متعلقہ ڈیٹر (سب ڈیٹر کی صورت میں میں ڈیٹری اس کا ذمہ دار ہوگا) کو مطلع کئے جانے والی تاریخ سے 2 دن کے اندر براؤننگ (پارچ کی قیمت پر) واپس لینا ہونی کی صورت دیگر اضافی جرمانہ عائد کیا جائے گا جس کی تفصیل آگے درج کی گئی ہے۔
- 3.3 کٹس یا ڈیٹس پر مکمل وارنٹی کا ذمہ دار ہونا کسی تو اعداد و احوال کی خلاف ورزی ہوگی۔
- 3.4 کسی کی ڈیٹر کی طرف سے پراسس ہاؤس کی خلاف ورزی کی اطلاع اپنے متعلقہ ڈیٹر یا بیکر کو فوری طور پر دیں تاکہ اس ڈیٹر کے خلاف تحقیق کی جاسکے آپ کسی بھی وقت مارے پراسس کٹرول کنٹی انچارج سے متعلقہ ڈیٹر سے رابطہ کر سکتے ہیں۔

ہاierpcp@haier.com.pk ای میل

3.5 جرمانہ کی عدم ادائیگی کی صورت میں ڈیٹر (سب ڈیٹر کی صورت میں میں ڈیٹری اس کا ذمہ دار ہوگا) دیگر شرٹوں کے علاوہ متعلقہ سٹیل مارکٹ کے اسٹیک لائن واریٹس۔

4) 1.2 کے تحت تیار شدہ براؤننگ ڈیٹر۔

4.1) پراسس ہاؤس سے کم قیمت پر زبانی یا تقریری کو پیش یا فروخت کی صورت میں جرمانے کی تفصیل درج ذیل ہیں (میں ڈیٹر اپنے سب ڈیٹر کا ذمہ دار ہوگا)۔

جرمانہ	تفصیل
15,000/- روپے	پراسس ہاؤس سے کم قیمت کی زبانی یا تقریری کو پیش
50,000/- روپے	پراسس ہاؤس سے کم قیمت پر فروخت
80,000/- روپے	پراسس ہاؤس سے کم قیمت کی ایڈورٹائزمنٹ ایکٹ پراسس
50,000/- روپے	ڈیٹری وارنٹی کارڈ
30,000/- روپے	ڈیٹر کے بارے میں خفی پراکچینڈ
80,000/- روپے	ہول سٹیل

4.2) جرمانہ کی عدم ادائیگی تک ڈیٹر کو پلائی سٹیل ہے۔ جرمانے کی رقم ڈیٹر کے گھبر میں ارجح کر دی جائے گی۔ پراسس ہاؤس سے کم قیمت پر فروخت پر جرمانے کی رقم جوت موٹ ڈیٹر ہے۔

جوت کے بعد جرمانہ

25,000	نہلی رنڈ
35,000	دوسری رنڈ
50,000	تیسری رنڈ

3. ایڈیٹرز یا دیگر ایڈیٹرز کو پیش کو جس دن کے اندر ادائیگی ہوگا اس دن سے جس دن میں کو مطلع کیا جائے اور ڈیٹر کو ایڈیٹرز میں سے ہر ایک کی قیمت سے ڈیٹر ڈیٹری ہے۔

4.3.1) مقررہ تاریخ تک برائے ڈیٹر نے روڈ ٹیکر 5,000/- روپے اضافی جرمانہ ادا کرے گا۔

4.3.2) مقررہ تاریخ کے بعد ڈیٹر کو روپے 200/- روپے اضافی جرمانہ ادا کرے گا۔

5) جرمانے کی عدم ادائیگی کی صورت میں ڈیٹر کے مارکٹ ٹائم منسوخ کر دئے جائیں گے پلائی رنڈ کی جائے گی اور اس کے ساتھ ڈیٹر منسوخ کر دی جائے۔

5.1) جرمانہ ڈیٹر گھر مارکٹ میں پیش کیا جائے گا۔

5.2) وصول شدہ جرمانہ (منہا فروغ) ڈیٹر کے سٹور میں کیڑا لگا دیا جائے اور پھر فروغ کیا جائے گا۔

جرمانے کی رقم اور اعداد و احوال ڈیٹر کی طرف سے بروقت ضرورت تبدیل کئے جاسکتے ہیں مگر کوئی ایڈیٹرز اس کا ذمہ دار نہیں ہے۔ ڈیٹر اس کے خلاف قانونی چارہ جوئی کرنے کا پابند ہوگا۔ ڈیٹر کٹس نے پراسس کٹرول یا ڈیٹر ڈیٹری کے ساتھ اس بات کی تہ اور ہمدردی کرتے ہیں کہ آپ اس کو کامیاب بنائیں گے تاکہ وہوں برقی کی خبریں ملے کر سکیں۔

تحقیق و تدارک ڈیٹر پراسس کٹرول سٹیل

Signature and Stamp

Signature

Signature

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27. The main features of the aforesaid policy are as follows:

The purported objective of the Price Control Policy as stated in the agreement is to ensure dealers' profit.

Terms & Conditions:

Clause 1--Wholesales and supply: No dealer is allowed to supply to other dealers.

Clause 2-- Promise Price:

Clause 2.1-- No dealer/sub-dealer is allowed to sell below the promise price (i.e. the promise price as per the effective price list).

Clause 2.2-- Selling below the company fixed price would be considered as undercutting and the respective dealer will be fined.

Clause 2.3-- Giving any customer a quotation below the fix price (whether verbally or in writing) would be considered as undercutting and the respective dealer will be fined.

Clause 2.4-- Quoting the promise price to a potential customer and then asking him/her to check the market and then we will settle ('*phir kar lain gay*') would be considered as undercutting.

Clause 2.5—Selling to a customer after taking an oath would be considered as undercutting.⁶

Clause 2.6-- Inner city free delivery is allowed at the fix price.

Clause 2.7-- Providing the customer free installation and associated products (such as stand for fridge, circuit breaker, time delay breaker and stabilizer) with the purchase of Haier products would be considered as undercutting and the respective dealer will be fined.

⁶ "*Halaf par amada kerna*". This implies that in situations where a dealer sells to a customer below the company's fixed price and asks the customer not to disclose the fact to anyone.



Clause 2.8-- Fix price/promise price would be applicable on 'package' deals⁷.

Clause 2.9-- Selling by a dealer to a friend/acquaintance or installer at below the promise price is not permitted.

Clause 2.10-- Haier AC's should be installed by the company's designated installers only with the rates fixed (rates are circled on page 14 above).

Clause 2.11-- Apart from Haier gift scheme a dealer can give customers only calendar and/or key chains at the promise price.

Clause 2.12-- All new or old quotations (whether verbal or oral) which are below the promise price (as per the effective price list) will be cancelled.

Clause 2.13-- Change in price list/promise price would be effective from the date mentioned in the new price list.

Clause 3-- Any 'propaganda' about Haier products/services would be considered as a violation of conduct by dealers.

Clause 3.1-- 'propaganda' is defined as follows:

3.1.1 Giving a quotation (whether verbal or oral) below the promise price;

3.1.2 Bad mouthing Haier products;

3.1.3 Trying to convert a 'Haier customer' to another brand;

3.1.4 Telling a potential customer the promise price and then asking him/her to survey the market would be considered as negative propaganda;

Clause 3.2 If a dealer (or in case of a sub-dealer the liability would rest with the main dealer) is caught selling a product below the promise price then, two (02) days after receiving the notice, he would, have to ask the customer to return the product (on the price

⁷ A package deal is when a customer purchases multiple Haier products.



charged to the customer). Failure to do so would result in additional fines;

Clause 3.3-- Issuance of an incomplete warranty card in case of sale on cash or installment would be considered as a violation of conduct by the dealer;

Clause 3.4-- Information regarding any deviation from the promise price by a dealer may be provided in writing to the concerned Haier executive so that an investigation may be undertaken against the said dealer. The Haier Price Control Committee in-charge can be contacted via email at: haierpcp@haier.com.pk

Clause 3.5-- Failure to pay the fine would result in forfeiture of the dealer's sales target incentive.

Clause 4-- The fines charged are circled on page 15 of the document.

Clause 5-- Failure to pay the fines would result in suspension of the dealer's target incentives, suspension of supplies and the possibility that the dealership will be cancelled.

Clause 5.1-- Circular of imposition of fines will be circulated in the market.

Clause 5.2-- Fines collected would be used on the training of dealers' salesmen etc.

The last clause of the contract states that Haier has the right to change the decision on fines and terms and conditions and the company's decision in this regard would be final. Dealers will not have recourse to legal action against fines and these terms and conditions. Haier has introduced price control for the benefit of dealers and hopes that dealers would help make it a success. The contract is authored by the Haier Price Control Committee bearing the date of 01.01.2018. All EDN Contracts in the impounded file bear the same date.

28. Based on the contents of Haier's Price Control Policy, it appears that:
- a. Haier has fixed the minimum price at which dealers can sell Haier products to consumers following which is mandatory for all dealers. There is an element of coercion in the said policy which is constantly reinforced with clauses that warn of punitive measures in case of any deviation from the company fixed price which include fines, suspension of incentives and termination of dealership.
 - b. Haier has barred its dealers to not offer associated products, such as stand for fridge, circuit breakers, time delay breakers and stabilizers, free of cost with the sale of its appliances and a violation of which would be considered as undercutting. Furthermore, no dealer is allowed to give complementary products to consumers apart from calendar and key chain. These conditions mean that in lieu of a cash discount the dealer cannot offer any other incentives to the customer. It is also noted that customers buying multiple higher products together are also denied any discount via package deals.
 - c. Installation of air-conditioners is made mandatory through company designated technicians at minimum rates fixed by Haier.
 - d. From the foregoing it appears that Haier's Price Control Policy has all the elements of a Resale Price Maintenance agreement.
29. That the Price Control Policy was actively implemented is apparent from the circulars issued by Haier (Annex 'H1') which read as follows:

"14th February 2017

Respected Haier Partners,

As you are aware, Haier Price Control is striving to guarantee your profits for which purpose it is constantly checking the market.

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[Signature]

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You are being informed through the circular that during checking Haier Dealer Omar Electronics (Chandni Chowk) has violated the Haier Price Control Policy by selling below the promise price for which it is being fined PKR 30,000.

The amount of the fine has to be deposited with the company within 03 days (from the date of intimation). Failure to do so would result in additional charges.

Haier Price Control Policy is to ensure your profit and we are constantly checking the market. You are requested to follow the terms of the Price Control Policy and ensure your profits.

Thank you

Haier Price Control Committee”

30. From the foregoing it is observed that Haier constantly monitors the market to check implementation of its Price Control Policy and has also imposed fines on dealers for violations. Also, the circulars fining dealers for violations were widely circulated apparently to serve as a deterrent for other dealers. On a query by the Enquiry Committee as to the fines imposed, by Haier to date, on dealers for violation of the Price Control Policy, the company submitted that to date 40 dealers have been fined a total sum of PKR 2.1 million for violation of the Price Control⁸. However, it appears that the list provided by Haier is incomplete since names of dealers fined as per the circulars available with the Enquiry Committee (Annex H1) are not included in it. Furthermore, it appears that Haier continues to implement its Price Control Policy as evidenced by Circulars available with the Enquiry Committee with the latest one dated July 03, 2018 (Annex H6).

⁸ List attached with Annex H3



31. The Enquiry Committee deemed it prudent to inquire Haier of the rationale behind the Price Control Policy and its resultant efficiencies. (In this regard two letters were sent to Haier dated May 30, 2018 and September 05, 2018 (Annex H7)).
32. Haier in its response (Annex H3) has stated that:

“Following are purposes of implementing price control

- 1. to protect the rights of consumer i.e. to ensure that product is supplied to all consumers at a uniform (advertised price);*
- 2. to avoid any chance of overcharging from consumers;*
- 3. to save consumers from deception on product price and features;*
- 4. to provide equal opportunity for each dealer all across Pakistan to sell company's products at its announced price; and*
- 5. to ensure dealers margin at uniform rate”.*

It further states:

“The main purpose of implementing price control is consumer protection i.e. to ensure that the product is supplied to all consumers at a uniform (advertised price), to avoid overcharging from consumers, to save consumers from deception on product price and features.

The other purpose of price control is that dealers get their expected margin on sale and the incentive to cut on product display at stores, maintenance and after sale service/warranty is not compromised on part of dealers/distributors.

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*In our view price controls protect consumer's standardized shopping experience and prevent malicious competition from other industry players*⁹

33. Regarding the question on the prohibition of complementary allied products on the purchase of electric appliances to consumers, Haier in its response stated that purpose of not offering complementary products is to ensure that consumers are not deceived by dealers on quality and after sale services of products. Complementary products as part of package are not authorized by the company. Therefore any such practice by dealers can harm customers' interest and reputation of company¹⁰.
34. Reason behind the fixation of installation charges is to ensure that dealers do not manipulate prices on product quality/after sale service or charge excessively. The company has not included any provision in its policy for the provision of stabilizers to customers as the products offered by company are not guaranteed by the company in terms of product quality or price. In case of poor quality of such products, company reputation will be harmed¹¹.
35. As per Haier, wholesale prices are not fixed and may vary from dealer to dealer. Dealers are discouraged to exchange products between themselves to promote direct purchase from company and stop the flow of substandard product to consumers. In result of exchange of products, service and product satisfaction is not assured. Therefore, restriction helps to avoid monopoly of one specific dealer in particular article.
36. Haier's defence of its Price Control Policy appears to reflect a contrary scenario from the perspective of competition. It is pertinent to note here that price discounts

⁹ Para 1 Annex H8 and Para 3 Annex H3

¹⁰ Para 5 Annex H3

¹¹ Para 6 Annex H3

and non-price incentives (like complementary/associated products) elevate the buying experience of customers through addition to overall value attained from the amount spent. The purchase process of customers comprises of 05 important stages including: problem recognition, information search, alternatives evaluation, purchase decision and post purchase decision. When a potential customer reaches the stage of evaluation, product is evaluated based on aspects such as price, product quality and availability of the product. Customers deciding purchase on the basis of price not only evaluate between the brands on the same basis but also look for the dealerships that offers the best bargain. Haier, by implementing Price Control Policy on dealers has appeared to disrupt the purchase process of customers. Moreover, Clauses 3(3.1.1 to 3.1.4) of the policy are dedicated entirely to 'propaganda' which prohibits the dealer from bad mouthing Haier products or trying to convert a Haier customer to another brand. This aspect of the policy has an exclusionary effect since the dealer is barred from promoting other brands. It appears that the Price Control Policy depresses inter brand competition as dealers would only stock and promote products where their profit margin is secured.

37. From documents placed on record with the Enquiry Committee, Haier's Price Control Policy is a *prima facie* violation of Section 4 of the Act. The Price Control Policy restricts dealers from providing incentive to customers in the form of cash discount or complementary and associated products on purchase of electric appliances resulting in lessening of intra-brand competition at dealers' level. Through the implementation of price control policy customers lose the benefit attained through bargain with dealers resulting in them paying more for the product purchased. Furthermore, incentives cannot be provided in the form of complementary/associated products, discounts on installation charges and discount on purchase of multiple products/package deals. The overall net impact of such the policy is a rise in prices without the consumer gaining any tangible benefit.
38. In the current case, Haier apart from the implementation of Price Control Policy has imposed restrictive conditions on its dealers through fixed labour rates for air-

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conditioner fitting and provision of allied products including stabilizers, stand for fridge, circuit breaker, time delay breakers. Haier has warned dealerships of penalties in case any dealer offers discount or offer allied products free with the sale of electric appliance. These restrictions appear to impede competition between the dealers and depicts an unfavourable environment from the viewpoint of business that will directly impact customers of electric appliances.

39. Under sub clause (a) of subsection (2) read with subsection (1) of Section 4 of the Act, any agreement between the undertakings that imposes any restrictive condition(s) with regard to the sale or distribution of any goods or the provision of service which have the object or effect to preventing, restricting or distorting competition within the relevant market is prohibited unless exempted under Section 5 of the Act.

40. It appears that Haier has entered into the practice of resale price maintenance through its Price Control Policy whereby under Clause 2.1 dealers are prohibited from selling Haier products below the company's fixed priced. This is further reinforced by clauses which restrict dealers from giving quotations below the fixed price (Clause 2.3), quoting the fixed price and asking the potential customer to check the market (Clause 2.4), selling to a customer under oath (Clause 2.5), applicability of fix price on package deals (Clause 2.8) and selling to a friend/acquaintance below fix price (Clause 2.9). Not adhering to the Price Control Policy would entail in the form of fine or suspension of dealership contract (Clause 4). This restricts competition by containing customers from the right of bargain during purchase process, constituting, *prima facie* violation of sub clause (a) of subsection (2) read with subsection (1) of Section 4 of the Act.

41. Furthermore, Haier appears to be involved in the fixing and imposition of labor rates for fitting of split AC's (Clause 2.10) which is *prima facie* a restrictive trading condition in terms of sub clause (a) of subsection 2 read with subsection (1) of Section 4 of the Act.

42. Apart from the above, Haier appears to be engaged in the practice of restricting its dealers from providing customers giveaways and/or discounts on allied products including: stabilizers, circuit breakers, time delay breakers and stands for fridge (Clause 2.7). Haier in the dealership agreement warned its dealers of fines in case of discount or giveaway offer of such items. This practice is a *prima facie* restrictive trading condition in terms of sub clause (a) of subsection (2) read with subsection (1) of Section 4 of the Act.

Whether DEL's Price Control Policy is a *prima facie* violation Section 4 of the Act

43. DEL categorizes its dealers into three categories:
- a. Super Exclusive Dealers – These dealers exclusively sell DEL products in the market;
 - b. Exclusive Dealers – These dealers only sell refrigerators and deep freezers of DEL and for other appliances e.g. air conditioners, washing machines etc. they sell products of other brands also;
 - c. Normal Dealers – These dealers sell products of all the brands.
44. A file containing various circulars was impounded during the raid which included a document titled 'Dawlance Price Control Policy' (2017) dated 15.10.2017 (Annex 'D3'). Perusal of the impounded document reveals that DEL has implemented price control, on refrigerators and split ACs. The Price Control Policy is reproduced below:

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ڈاؤ لینس پرائس کنٹرول پالیسی (2017)

تاریخ: 15 اکتوبر 2017

ڈاؤ لینس کمپنی ڈیٹرز حضرات کی مشکور ہے کہ آپ نے انتہائی لگن اور محنت کے ساتھ نہ صرف کمپنی کی مصنوعات کی فروخت میں اضافہ کیا بلکہ کمپنی کے وسیع شدہ توانیوں کو بھی ٹھوٹا خاطر رکھا۔ آپ حضرات کے مفاد کے تحفظ کے لئے اور آپ ڈیٹرز حضرات ہی کے بے حد اصرار پر کمپنی نے پرائس کنٹرول پالیسی مرتب کی ہے۔ تاکہ آپ کے منافع کو مزید محفوظ کیا جا سکتا ہے۔ وسیع شدہ پالیسی کے نکات درج ذیل ہیں۔

- 1- ڈاؤ لینس ریفریجریز اور اسپاٹ انڈرکنڈیشنرز کمپنی کی فراہم کردہ کنٹرول پرائس لسٹ پر فروخت ہونگے۔ پرائس کنٹرول لسٹ سے کم اور ہول سیل سے زیادہ فروخت کرنا انڈرکنڈیشنرز ہوگا۔ جس کا جرمانہ مبلغ -/30,000 روپے کیا جائے گا اور جرمانے کی ادائیگی تک سپلائی معطل رہے گی۔ دوسری مرتبہ انڈرکنڈیشنرز کا مرتبہ ہونے پر -/50,000 روپے جرمانہ اور تیسری مرتبہ انڈرکنڈیشنرز کا مرتبہ ہونے کی صورت میں -/75,000 روپے جرمانہ اور چوتھی بار تکس ثابت ہونے پر -/100,000 روپے جرمانہ عائد کیا جائے گا۔
- 2- کمپنی کو یقین حاصل ہے کہ کس ثابت ہونے کی صورت میں ڈیٹرز کی سپلائی فیہر معینہ ہونے کے لئے معطل کر دے۔
- 3- ڈیٹرز کی کارآمدگی کے بغیر ڈاؤ لینس مصنوعات کی فروخت ممنوع ہوگی۔ فروخت کے وقت گارنٹی کارڈ پر ڈیٹرز کی ممبر اور تاریخ کا اندراج ہونا انتہائی ضروری ہے۔ خلاف ورزی کرنے والے کو کمپنی گراؤنڈ رولز کے مطابق -/100,000 روپے جرمانہ عائد کیا جائے گا۔
- 4- ڈاؤ لینس مصنوعات کی برائی (مخفی پروڈیگنڈ) کرنا کسی دوسرے برانڈ کے ساتھ موازنہ کرنا، ڈاؤ لینس گراؤنڈ رولز پالیسی کی خلاف ورزی ہوگی اور -/100,000 روپے جرمانہ عائد کیا جائے گا۔
- 5- چیک (ڈاؤ لینس مصنوعات) کی صورت میں ریفریجریز اور اسپاٹ ایئر کنڈیشنرز کنٹرول پرائس لسٹ سے کم میں فروخت کرنا، بھی انڈرکنڈیشنرز ہوگا البتہ باقی ڈاؤ لینس مصنوعات کو ہول سیل پر فروخت کیا جاسکتا ہے۔
- 6- اپنے شہر یا کسی دوسرے شہر (برانچ) کے ڈیٹرز، مان ڈیٹرز، معطل شدہ ڈیٹرز یا کینسل شدہ ڈیٹرز کو مال دینا، ڈیٹرز ڈیٹرز یا ڈیٹرز کی تبدیلی کو ہول سیٹنگ تصور کیا جائے گا اور گراؤنڈ رولز پالیسی کے مطابق جرمانہ عائد کیا جائے گا۔ ایک ماہ اور ڈیٹرز، مان ڈیٹرز، معطل شدہ ڈیٹرز یا کینسل شدہ ڈیٹرز سے -/200,000 روپے جرمانہ عائد کیا جائے گا۔
- 7- ڈاؤ لینس کی مصنوعات کے ساتھ کیلیڈ راکر پیمنٹ لکڑی کی چوکی (صرف فریج کے ساتھ) اور کمپنی کی اسکیم میں شامل گنٹ آئٹم کے علاوہ کوئی گنٹ آئٹم نہیں دیا جاسکتا۔ خلاف ورزی کی صورت میں انڈرکنڈیشنرز تصور کیا جائے گی اور پرائس کنٹرول پالیسی کے مطابق جرمانہ مبلغ -/30,000 روپے کیا جائے گا۔
- 8- ڈاؤ لینس اسی کے ساتھ کمپنی کی طرف سے دی جانے والی ایسیریز کے علاوہ کسی دیگر کوئی ایسیریز نہیں دی جاسکتی اور کم از کم ڈنٹنگ چارجز -/800 روپے اور بریکٹ کے کم از کم -/400 روپے وصول کئے جائیں گے۔ خلاف ورزی کی صورت میں انڈرکنڈیشنرز تصور کیا جائے گی اور پرائس کنٹرول پالیسی کے مطابق جرمانہ مبلغ -/30,000 روپے کیا جائے گا۔
- 9- ڈاؤ لینس ریفریجریز اور ڈیٹرز کے ساتھ سٹیبلائزر کی قیمت فروخت کم از کم -/1400 روپے ہوگی۔ خلاف ورزی کی صورت میں انڈرکنڈیشنرز تصور ہوگا اور پرائس کنٹرول پالیسی کے مطابق جرمانہ مبلغ -/30,000 روپے کیا جائے گا۔
- 10- کسی بھی ڈیٹرز شدہ ایئرٹ کم قیمت پر فروخت کرنے کے لئے کمپنی سے اسکی پیجنگی تجزیہ طور پر اجازت لین ضروری ہے۔ اور کابک کو آگاہ کرنا ضروری ہے، آگاہ کرنے کی صورت میں کس آجانے پر انڈرکنڈیشنرز تصور ہوگا۔ خلاف ورزی کی صورت میں انڈرکنڈیشنرز تصور ہوگا اور پرائس کنٹرول پالیسی کے مطابق جرمانہ مبلغ -/30,000 روپے کیا جائے گا۔
- 11- انڈرکنڈیشنرز کا مرتبہ ہونے کے بعد انڈرکنڈیشنرز کو پروجیکٹ کرنا، اس کے گھر جانا یا کسی بھی طریقے سے ٹھگ کرنا ممنوع ہے، ثابت ہونے کی صورت میں مبلغ -/20,000 اٹھائی جاتا ہے۔
- 12- آرٹوئی ڈیٹرز ڈاؤ لینس پروڈکشن ہول سیل سے کم پر فروخت کرتا ہے تو ڈاؤ لینس گراؤنڈ رولز پالیسی کی خلاف ورزی تصور کیا جائے گا اور ڈاؤ لینس گراؤنڈ رولز پالیسی کے مطابق مبلغ -/100,000 روپے جرمانہ عائد کیا جائے گا اور سپلائی فیہر معینہ ہونے کے لئے معطل کر دی جائے گی۔

یکے لٹنڈاؤں کے ساتھ
ڈاؤ لینس الیکٹرونکس پرائیویٹ لمیٹڈ

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45. The main features of the aforesaid policy are as follows:

Clause 1: Dawlance refrigerators and Split ACs would be sold at the company provided price control list. Selling below the price control list and below the wholesale price would be considered as undercutting and any infringement would result in fines and suspension of supplies. The first violation will attract a penalty of PKR 30,000, second PKR 50,000, third violation PKR 75,000 and a fourth violation PKR 100,000.

Clause 2: in case of a violation of said policy Dawlance has the right to suspend a dealer's supply for an indefinite period of time.

Clause 3: for all sales made the Guarantee Card needs to be completely filled, including date of sale and dealer's stamp, and any violation would result in a penalty of PKR 100,000.

Clause 4: bad mouthing Dawlance products (negative propaganda) or comparing Dawlance products with another brand would be considered a violation of Dawlance ground policy and subject to a fine of PKR 100,000.

Clause 5: in case of a package deal selling refrigerators and split ACs for less than the control price would be considered as undercutting however, other Dawlance appliances can be sold at wholesale price.

Clause 6 pertains to dealings between dealers and notes that selling to or exchange of colour or models between dealers, non-dealers or suspended/terminated dealers would be classified as wholesaling and a violation of ground rules.

Clause 7: no gift item other than calendar, key-chain, wooden stool (for refrigerator) and gift items included in Dawlance's scheme may be given with the sale of Dawlance items. Any



violation would be considered as undercutting and a violation of the price control policy and subject to a fine of PKR 30,000.

Clause 8: on the sale of Dawlance ACs customers cannot be given any accessories apart from the ones provided by the company. The minimum charges for fitting are PKR 800 and for brackets are PKR 400. Any violation would be considered as undercutting and a PKR 30,000 fine would be imposed.

Clause 9: price of stabilizer, with Dawlance refrigerator and deep freezer, would be at least PKR 1,400. Any violation would be considered undercutting and liable to a fine of PKR 30,000 under the Price Control Policy.

Clause 10: prior to sale of a dented unit at a low price written permission from the company must be obtained and the customer must be informed. Any violation would be considered as undercutting and liable to a fine of PKR 30,000.

Clause 11: after being found guilty of undercutting a dealer cannot approach the informant. Any violation would attract a further fine of PKR 20,000.

Clause 12: if a dealer sells Dawlance products at less than the wholesale price then it would be considered as a violation of Dawlance Ground Policy and will be liable to a fine of PKR 100,000 and an indefinite suspension of supplies.

46. Based on the contents of DEL's Price Control Policy, it appears that for the sale of refrigerators and split ACs:
- a. DEL has fixed the minimum price at which dealers can sell to consumers; There is an element of coercion in the said policy which is constantly reinforced with clauses that warn of punitive measures in case of any deviation from the company fixed price which include fines and termination of dealership.



- b. DEL made it mandatory on its dealers to not offer associated products, such as stand for fridge, circuit breakers, time delay breakers and stabilizers, free of cost along the sale of electrical appliances a violation of which would be considered as undercutting.
 - c. Installation of air-conditioners is made mandatory through company designated technicians at minimum rates fixed by DEL.
 - d. No dealer is allowed to give complementary products to consumers apart from calendar and key chain.
 - e. Any dealer found to be in violation of the Price Control Policy would be penalized in terms of fines or suspension of dealership.
47. To understand the reasons behind the Price Control Policy implemented by DEL and to collect further information, the Enquiry Committee sent two set of questions (identical to the ones sent to Haier) vide letter dated May 30, 2018 and October 02, 2018 (Annex D4) and also held a meeting with representatives from DEL/Arcelik.
48. DEL in its replies (attached as Annex 'D5') states:

"... at the very outset, we would like to categorically point out that the Price Control Policy was introduced and implemented by the previous management of DPL (DEL). Subsequent to the acquisition by DPL in November 2016, questions were raised regarding this policy's compliance with Competition Laws even though, to our knowledge, at that time, there had not been any clear case law to condemn vertical price control. Due to this change, the number of cases wherein dealers were fined for violating the price control policy significantly reduced and eventually ceased by the end of the year 2017. This is also evident from the ledgers attached hereto in response to your query no. 9".



49. With regards to the rationale behind the Price Control Policy, DEL has stated that the Price Control Policy was implemented on the demand of small and medium sized dealers to ensure their profitability. It prohibited the provision of complementary and allied products and fixed charges for installation etc. because dealers would offer these items/services which would defeat the purpose of the price control policy¹².
50. The Enquiry Committee notes that regardless of whether the impetus for the policy came from dealers, ledgers impounded by DEL and those submitted to the Enquiry Committee, show that DEL actively implemented the policy and dealers were PKR 24.2 million for violations (Annex D6)¹³.
51. On a query by the Enquiry Committee as to the efficiency benefits of introducing price controls and how consumers would benefit from the same, DEL reiterated that the impetus for the price controls came from dealers so as to secure their profitability. Apart from this the main efficiencies resulting from the policy are as follows:
- a. It reduces free riding among dealers as it may encourage dealers investing in service quality and explaining the technical complexities or attributes of the products which ultimately results in consumers' satisfaction. For example, without price control policy, consumers can take free advice from knowledgeable sales assistants and then go buy from a cheaper dealer which does not invest in explaining or demonstrating.

¹² Annex D5 Reply to Query 3 and Query 5.

¹³ According to DEL these penalties are exclusive of other violations of the policy such as bad mouthing.

- b. Keeping the maximum number of dealers in the market and reducing the search cost. The price control policy may assist to keep the maximum number of dealers in the market which allows consumers easy access to the retail point and reduce the search cost (Annex D7)14.
52. A look at DEL and its competitors' distribution model shows that in majority of urban centers, sales are primarily made through dealers located next to each other in a cluster/electronics market. Data impounded from DEL's premises shows that a vast majority of its dealers are what the company classifies as 'normal dealers' i.e. dealers that stock products of all major brands. Other sales channels include online sales, corporate customers and through the hypermarket format however, the value of sales through these channels appears to be negligible with majority of sales occurring via dealers. These dealers, as mentioned above, operate on the same business model and have a similar cost structure hence, there are no 'discount' dealers in the market who 'free ride' on the investments made on display and sales staff etc. by other dealers.
53. The other argument put forth by DEL with regards to efficiency reasoning of price controls is that it helps to keep maximum number of dealers in the market. RPMs/price controls guarantee the dealer a profit margin and he is therefore, incentivized to stock DEL products. It is noted that dealers are incentivized to carry products of a particular brand which in the current scenario may take the following forms: discounts on the invoice price, international tours on meeting sales targets, more credit days and RPM/price controls. It is therefore, noted that dealers can be incentivized by methods other than RPM/price controls.
54. DEL has also submitted that cessation of the Price Control Policy has had an adverse impact on its sales:

14 Annex D7 Reply to Query 1.



“Subsequent to the acquisition of DPL in November 2016, questions were raised regarding this policy which eventually ceased by the end of the year 2017. However currently dealers blame DPL for not protecting their interests and direct customers to our competitors’ products which aggressively continue implementing price control policies and ensure dealer’s profitability as we documented before. Due to the negative reaction of dealers, DPL observes huge reduces (sic) in its sales which shows why such a policy was implemented in the past¹⁵”

The above statement underscores the negative exclusionary impact of such price controls/RPMs on inter-brand competition to the ultimate detriment of consumers as dealers ‘push’ them towards products which are under price controls (where they have a guaranteed margin).

55. The Enquiry Committee observes that the Price Control Policy implemented by DEL may impact its dealers in the form of lower sales (since a dealer cannot increase its sales by lowering prices for customers). Implementation of price control policy restricts dealers from providing incentive to customers in the form of cash or discount on purchase of electric appliances resulting in lessening of intra-brand competition at the dealers’ level. Through the implementation of Price Control Policy customers loose the benefit attained through bargain with dealers. Furthermore, dealers often attract customers by offering discounts on complementary products or allied services however, this practice has also been forbidden by DEL. Therefore, price restriction implemented on dealers by DEL appears to disrupt the efforts that dealerships make by offering price and non-price incentives for selling electric appliances.

¹⁵ Annex D7 Reply to Query 1.



56. Section 4 of the Act, restricts buyers/resellers including dealers, or distributors, or retailers from the determination of resale price¹⁶. Furthermore, the application of Section 4 of the Act is not limited to formal legal contracts and it includes arrangements achieved through informal agreements, practices, understandings and circulars or practices.
57. Under sub clause (a) of subsection (2) read with subsection (1) of Section 4 of the Act, any agreement between the undertakings that imposes any restrictive condition(s) with regard to the sale or distribution of any goods or the provision of service which have the object or effect to preventing, restricting or distorting competition within the relevant market is prohibited. In the current instance, it appears that DEL had imposed a restrictive trading condition barring its dealers from selling refrigerators and split ACs below a certain price (Clause 1). This is reinforced by clauses such as 'bad mouthing or comparing DEL products with other brands (Clause 4) and selling refrigerators and split ACs at fix price even with package deals (Clause 5). Failure to adhere to clauses of the Price Control Policy would attract fines or suspension of dealership. Therefore, DELs Price Control Policy appears to be in violation of sub clause (a) of subsection (2) read with subsection (1) of Section 4 of the Act.
58. Furthermore, DEL appears to be involved in the fixing and imposition of labor rates for fitting of split AC's (Clause 8) which is *prima facie* a restrictive trading condition in terms of sub clause (a) of subsection 2 read with subsection (1) of Section 4 of the Act.
59. Apart from the above, it appears that DEL is engaged in setting rates for stabilizers (Clause 9) and prohibiting the provision of any gift items other than those provided by the company (Clause 7). This is a *prima facie* restrictive trading condition in

¹⁶ In the matter of show cause notice issued to M/s. Reliance Paints Pakistan



terms of sub clause (a) of subsection (2) read with subsection (1) of Section 4 of the Act.

CONCLUSION & RECOMMENDATION

60. Based on the findings of paragraphs 17-20 the relevant market appears to be the market for distribution of home appliances between: Haier and its dealers and (ii). DEL and its dealers. Whereas, the for the purpose of this enquiry the relevant geographic market is considered as the whole of Pakistan.

Haier

61. Based on the findings of paragraph 40 it appears that Haier has entered into the practice of resale price maintenance through its Price Control Policy whereby under Clause 2.1 dealers are prohibited from selling Haier products below the company's fixed priced. This is further reinforced by clauses which restrict dealers from giving quotations below the fixed price (Clause 2.3), quoting the fixed price and asking the potential customer to check the market (Clause 2.4), selling to a customer under oath (Clause 2.5), applicability of fix price on package deals (Clause 2.8) and selling to a friend/acquaintance below fix price (Clause 2.9). Not adhering to the Price Control Policy would entail in the form of fine or suspension of dealership contract (Clause 4). This restricts competition by containing customers from the right of bargain during purchase process, constituting, *prima facie* violation of sub clause (a) of subsection (2) read with subsection (1) of Section 4 of the Act.
62. Based on the findings of paragraph 41 Haier appears to be involved in the fixing and imposition of labor rates for fitting of split AC's (Clause 2.10) which is *prima facie* a restrictive trading condition in terms of sub clause (a) of subsection 2 read with subsection (1) of Section 4 of the Act.



63. Based on the findings of paragraph 42 Haier appears to be engaged in the practice of restricting its dealers from providing customers giveaways and/or discounts on allied products including: stabilizers, circuit breakers, time delay breakers and stands for fridge (Clause 2.7). Haier in the dealership agreement warned its dealers of fines in case of discount or giveaway offer of such items. This practice is a *prima facie* restrictive trading condition in terms of sub clause (a) of subsection (2) read with subsection (1) of Section 4 of the Act.
64. In light of the above mentioned findings, it is recommended that the Commission may consider initiating proceedings against Haier under Section 30 of the Act.

DEL

65. Based on the findings of paragraph 57 it appears that DEL through its Price Control Policy had imposed a restrictive trading condition barring its dealers from selling refrigerators and split ACs below a certain price (Clause 1). This is reinforced by clauses such as 'bad mouthing or comparing DEL products with other brands (Clause 4) and selling refrigerators and split ACs at fix price even with package deals (Clause 5). Failure to adhere to clauses of the Price Control Policy would attract fines or suspension of dealership. Therefore, these clauses appear to be in violation of sub clause (a) of subsection (2) read with subsection (1) of Section 4 of the Act.
66. Based on the findings of paragraph 58 DEL appears to be involved in the fixing and imposition of labor rates for fitting of split AC's (Clause 8) which is *prima facie* a restrictive trading condition in terms of sub clause (a) of subsection 2 read with subsection (1) of Section 4 of the Act.

67. Based on the findings of paragraph 59 it appears that DEL is engaged in setting rates for stabilizers (Clause 9) and prohibiting the provision of any gift items other than those provided by the company (Clause 7). This is a *prima facie* restrictive trading condition in terms of sub clause (a) of subsection (2) read with subsection (1) of Section 4 of the Act.
68. In light of the above mentioned findings, it is recommended that the Commission may consider initiating proceedings against DEL under Section 30 of the Act.



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Enquiry Officer



Irfan ul Haq
Enquiry Officer



Aqsa Suleman
Enquiry Officer