

# **COMPETITION COMMISSION OF PAKISTAN**

## **ENQUIRY REPORT**

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(Under the provisions of Section 37(2) of the Competition Act, 2010)

**IN THE MATTER OF COMPLAINT FILED BY PAKISTAN OVERSEAS  
EMPLOYMENT PROMOTERS ASSOCIATION (POEPA)  
AGAINST  
G.C.C. APPROVED MEDICAL CENTERS ADMINISTRATIVE OFFICE  
(GAMCA) AND GCC APPROVED MEDICAL CENTERS**

**BY**

Nadia Nabi/Noman A. Farooqi

**Dated: 31/01/2012**

## 1. BACKGROUND

- 1.1. This Enquiry Report is prepared pursuant to an Enquiry conducted under the provisions of Section 37(2) of the Competition Act, 2010 (the ‘Act’) on the complaint filed by Pakistan Overseas Employment Promoters Association (POEPA) (the ‘Complainant’) on 31-01-2011 before the Competition Commission of Pakistan (the ‘Commission’) against Gulf Corporation Council (GCC) Approved Medical Centres Administrative Offices (GAMCA) and GCC Approved Medical Centres in Pakistan (GCC Medical Centres) (the ‘Respondents’) for alleged violation of the provisions of Section 3&4 of the Act.
- 1.2. The complaint alleged that GCC Medical Centres working under their respective GAMCA have cartelized to allocate the customers among themselves on equal basis. Such allocation of customers falls, *prima facie*, squarely under the arrangement/agreement prohibited under Section 4(2)(b) of the Act. It was also alleged that GAMCA has divided the territory of Pakistan for provision of services of pre-departure medical tests into five (5) regions namely Karachi, Multan, Peshawar, Islamabad and Lahore, which appears in violation of Section 4 (2)(b) of the Act. Further, GAMCA has been equally distributing the number of customers for pre-departure medical tests to the GCC Medical Centers under its auspices, which is, *prima facie*, in violation of Section 4(2)(c) of the Act. And finally that the anti-competitive behavior of the Respondents affects the consumers who are forced to pay exorbitant fixed charges of the GCC Medical Centers, *prima facie*, in violation of Section 4(2)(a) of the Act. The customers are also unable to get their medical check-ups from a medical center of their suitability. Ironically, after the arrival of the emigrants in the GCC States for employment, they have to undergo the same pre medical tests again, thus paying twice for the same tests.
- 1.3. Keeping in view the above, the Commission initiated an Enquiry in accordance with Section 37(2) of the Act by appointing Ms. Nadia Nabi and Mr. Noman A. Farooqi, Joint Directors as an Enquiry officers to investigate to conduct enquiry under Section 37 (2) of the Act, to conduct a detailed enquiry on the complaint and to determine (i) the relevant market, (ii) as to whether the Respondents have a dominant position in the relevant market, (iii) as to whether Respondents have abused their dominant position in the relevant market, and has thereby violated Section 3 or any other provisions of the Act, (iv) as to whether there exists any agreement *inter se* the GAMCA and/or Medical Centers working under the auspices of GAMCA; regarding fixation of prices, equal distribution of customers and dividing the territories in violation of Section 4 of the Act, and to prepare a comprehensive report under Section 37 of the Act, containing conclusions and recommendations, thereof.

## 2. UNDERTAKINGS

- 2.1. **Pakistan Overseas Employment Promoters Association-(POEPA):** POEPA is a representative body of the overseas promoters in Pakistan. POEPA is licensed by Ministry of Commerce under the Trade Organization Ordinance, 2007 and is also registered under the Companies Ordinance, 1984. Hence, POEPA is an undertaking in terms of Section 2(1)(q) of the Act.
- 2.2. **GCC Approved Medical Centers-(GCC Medical Centers):** The GCC Medical Centers approved and licensed by the Executive Board, Health Ministers Council for GCC states are authorized to conduct pre-departure medical examination of the intending emigrants to GCC Countries and charge medical fee for such tests. At present the GCC Medical Centers operating in Islamabad/Rawalpindi are (i) Khaleej Diagnostic Centre (KDC), (ii) Gulf Medical Centre (GMC), (iii) Urgent Diagnostic Centre (UDC), (iv) Shifa International (SI), (v) GCC Diagnostic Centre (GDC). The undertakings operating in the city/region of Karachi are (i) Taj Medical Centre (TMC), (ii) Al Hilal Medical Diagnostic Centre (AHMDC), (iii) Medical Diagnostic Centre (MDC). The undertakings operating in Multan city/ region are (i) Al-Barakat Diagnostic Centre (ABDC), (ii) Dr. Thagfan Diagnostic Centre (DTDC), and (iii) Multan Diagnostic Centre (MD). The undertakings operating in the Lahore city/region are (i) Advanced Medical Diagnostic Centre (AMDC), (ii) Canal View Diagnostic Centre (CVDC), (iii) Iqraa Medical Complex (IMC) and (iv) Taj Medical Travellers Clinic (TMTC). The undertakings operating in Peshawar city/region are (i) Al-Khair Medical Centre (AKMC), (ii) Caring & Curing Centre (CCC), (iii) Frontier Diagnostic Centre (FDC), (iv) Medical Diagnostics Centre (MC) and (v) Peshawar Medical Chekup Centre (PMCC). The GCC countries include Saudi Arabia, Kuwait, Bahrain, Qatar, the United Arab Emirates and the Sultanate of Oman. In addition to conducting the pre-departure medical tests for the intended emigrants to the GCC Countries except United Arab Emirates, the GCC Medical Centers are also engaged in provision of medical services to consumers. Therefore, GCC Medical Centers are undertakings in terms of Section 2(1)(q) of the Act.
- 2.3. **GCC Approved Medical Centers Administrated Office-(GAMCA):** GAMCA is a coordinating office for GCC Medical Centers established in the regions/cities of Islamabad, Karachi, Lahore, Peshawar, Multan and Gujranwala. If two or more GCC Medical Centers are established in any city, it is mandatory on the GCC Medical Centers to establish a GAMCA office in that region/city. GAMCA is responsible for issuing the registration numbers to the intended emigrants and referring them to the GCC Medical Centers for pre-departure Medical Tests. GAMCA is also responsible for implementation of equal distribution system amongst the GCC Medical Centers and monitor their conduct. Therefore, GAMCA is an undertaking in terms of Section 2(1)(q) of the Act which is engaged, directly or indirectly, in the supply, distribution of provision or control of services.

- 2.4. **Executive Board of Health Ministers Council for GCC States-(EBHMC):** In the First Meeting of Health Ministers Council for GCC States in Riyadh on Safar 1396 H, corresponding to February 1976, the Health Ministers Council for GCC States decided to establish a health general secretariat, based in Riyadh city, to work as the executive body of the council and its name was later on amended to become the '**Executive Board**'. The Executive Board is headed by the Director General who is responsible for supervising the works of the Executive Board and following up the resolutions and recommendations of the Ministerial Council. Other members of the Executive Boards are experts from the corresponding GCC States. The Executive Board is engaged in regulating the GAMCAs and the GCC Medical Centers against a license fee which is being charged to them under the Rules and Regulations framed by the Executive Board, hence, being a regulator of GCC Medical Centers and GAMCA, the Executive Board is an undertaking in terms of Section 2(1)(q) of the Act which is engaged, directly or indirectly, in the supply, distribution of provision or control of services.

### 3. COMPLAINT, COMMENTS AND REJOINDERS

- 3.1. POEPA in its formal Complaint filed before the Commission has alleged that:

- a. *The association has been successful in earning around 50% of the total foreign exchange for the National Exchequer despite impediments it has been made to face. One such example is the innumerable problems created by so called GAMCA. Above all, the medical centers under GAMCA which conduct pre-departure medical tests of the intending emigrants to GCC Countries except UAE have been making unjustifiable demands & rules which are opposite to the principles of law and justice.*
- b. *GAMCA allots a registration number to intending emigrants to pre-departure medical tests totally ignoring his/her choice and convenience.*
- c. *It is requested that strict action may be initiated against the cartelization of the medical centers working under GAMCA as the allocation of medical centers without the consent of its customers amounts to cartelization which is totally against law causing great damage to the business of overseas employment because this act is not in isolation but jus a part of many coercive practices by GAMCA.*

- 3.2. A copy of complaint was forwarded on 07-03-2011 to GAMCA Islamabad, Karachi, Lahore, Peshawar and Multan to seek their comments thereon and they were also requested to provide the following information:

- a. *What is the legal status of GAMCA, its scope and obligations?*
- b. *Whether GAMCA is approved, registered or incorporated by any Ministry, Regulatory Authority, Embassy or Gulf Cooperation Council, if yes, kindly provide the copies of such approval, registration and/or incorporation;*

- c. For how long GAMCA is regulating pre-departure medical tests for GCC countries.*
- d. Whether the pre-departure medical tests of intending emigrants to GCC countries are mandatory in nature, if so, copy of the approval or direction given in this regard may please be provided?*
- e. provide copies of the relevant rules & regulations for medical examination of expatriates recruited?*
- f. Copy of the approval given by the Executive Board, Council of Health Ministers from Gulf Countries to GAMCA, to perform pre-employment medical checkups for GCC countries;*
- g. Copy of the decision taken in the 4<sup>th</sup> meeting of Executive Board, Council of Health Ministers for GCC held in DOHA 21-22 October 2002 to regulate the medical checkups by establishing Central Office of GCC Medical Centers in manpower exporting countries;*
- h. What types of medical test(s) are conducted by the GCC Medical Centers, its significances and recognition in prospective country of employment?*

3.3. A reply from GAMCA Islamabad was received on 10 March 2011 wherein it was requested that an extension of 10 days may be granted to submit the required information and comments. GAMCA Peshawar in its reply dated 11 March 2011 stated that “since the letter has been copied to us, we understand that it does not call for a response”. GAMCAs from Karachi and Lahore sent identical replies by copying the contents of GAMCA Peshawar’s letter, as quoted above. It appears that GAMCA Islamabad was left as front runner to reply and give comments on the complaint on behalf of all other GAMCAs.

3.4. A detailed reply/comments were received from GAMCA Islamabad vide letter dated 22 March 2011. Submissions made by GAMCA Islamabad in response to the complaint are summarized as under:

- a. The Executive Board of Health Ministers Council for GCC states vide its letter dated 27-11-1999 directed GCC Medical Centers to form GCC approved medical centers association i.e. GAMCA. (Copy of the letter is attached as ‘Annex-A’).*
- b. Executive Board of the Health Ministers Council for GCC states held its 4<sup>th</sup> meeting in Doha, 21-22 October, 2001 and it was directed vide letter dated 9-11-2002 that GAMCAs be established in each city where more than two approved medical centers were operating. It was also mandatory for each approved medical center to obtain membership of the relevant GAMCA in its city. (Copy of the said letter is attached as ‘Annex-B’)*
- c. The objective of the Executive Board behind the formation of GCC approved medical centers was to ensure implementation of the Rules and Regulations for medical examination of expatriates recruited for work in the GCC states. Similar GAMCAs are operating in other manpower exporting countries.*
- d. GAMCA was initially using the name as ‘GCC Approved Medical Centers Association’. Later on, Directorate General of Trade*

*Organization, Ministry of Commerce vide its letter dated 29 July 2010 barred GAMCA from using word 'association' on the ground that the word 'association' can only be used by a registered trade body. In compliance of said letter, GAMCA ceased to use the 'association' and changed their respective name to 'GCC Approved Medical Centers Administrative Office'. Role of GAMCA is restricted to implementation of rules and Regulation and referral of intending emigrants to the approved medical centers for pre-departure medical tests. (Copy of the Order of D.G. Trade Organization is attached as 'Annex-B')*

- e. The Executive Board is the only competent authority to grant and cancel licenses to medical centers to conduct pre-departure medical examination of the intending emigrants. The Executive Board has devised an eligibility criteria and conditions for grant of license. The executive Board's technical team physically visits to inspect the applicant center to decide whether or not to grant the license. License is granted for one year and renewed on performance basis. Performance is measured on the basis of accuracy of medical reports compared with post-arrival medical examination reports held in GCC states.*
- f. The role of GAMCA is to serve as coordinating office for GCC Medical Centers and is to strictly implement the rules and regulations issued by the Executive Board. (Copy of the latest Rules and Regulations are attached as 'Annex-C')*
- g. Fee charged by these approved medical centers is prescribed by the Executive Board and medical centers have no role in fixing the fee. If it is proved that any approved medical center is over-charging, the Executive board cancels the license of such medical center. For example, in July 2002 license of Agha Khan Hospital Karachi was revoked for over-charging, non-cooperation with GAMCA and non-abidance of Rules and Regulations. (Copy of the letter dated 14-10-2008 under reference no. 4887 as 'Annex-D')*
- h. After the formation of GAMCA Islamabad, Complainant not only welcomed it vide letter dated 10-08-2000 addressed to Executive Board, Health Ministers' Council for GCC States but also requested the Executive Board to establish similar GAMCAs in other cities of Pakistan. (Copy of letter dated 10-08-2000 under ref. no. POEPA/HMC-GCC/02 is attached as 'Annex-E')*
- i. The Executive Board charges annual license fee of US\$ 1200/- from all GCC Medical Centers. (Copy of letter dated 01-06-2008 under reference no. 2965 is attached as 'Annex-F')*

*Para-wise response to the complaint*

- j. Mandate of approved medical centers is limited to only conducting the required medical tests of intending emigrants which are conducted as per direction of the Executive Board. Further, Rules and Regulations of the Executive Board are neither unjustifiable nor opposed to principles of law and justice.*
- k. We agree that GAMCA allots a registration number to the intending emigrants. However, the allegation that it totally ignores the choice and convenience of the emigrants is incorrect. GAMCA usually refers the*

*individual emigrant to approved medical center which is next in line in the referral system. However, in case an emigrant requests to be sent to a specific approved medical center on the basis of his choice and convenience, GAMCA honors such request.*

- i.** *GAMCAs are in fact facilitating the emigrants in fulfilling the mandatory requirements of their employment in GCC states. Moreover, in the absence of a transparent medical examination system, the possibility of irregularities and issuance of sham report increases which has bad impact on manpower export from Pakistan.*

*Response to information sought by the Commission*

- m.** *GAMCA is not a legal entity but non-profit coordinating office established on the instructions of the Executive Board for the purpose of transparency in the process of pre-departure medical examination and co-ordination among approved medical centers. Scope and obligations of GAMCA are prescribed by the Executive Board through Rules and Regulations and directives.*
- n.** *GAMCAs are not registered entities. They are not issued registration certificate by the Executive Board. However, GCC Medical Centers are approved and licensed by the Executive Board. (Copies of certificates issued to the GCC Medical Centers by the Executive Board are attached as 'Annex-G' to 'Annex-T')*
- o.** *GAMCA Islamabad was formed in the year 2000. Other GAMCAs in Karachi, Lahore, Peshawar and Multan were formed in the year 2001, 2003, 2004 and 2005, respectively.*
- p.** *Pre-departure medical test is mandatory requirement for all intending expatriates.*
- q.** *GAMCA only issue registration to intending emigrants and refers them to respective approved medical center.*

3.5. Comments/reply received from GAMCA Islamabad was forwarded to POEPA i.e. Complainant for their comments. Comments/reply from POEPA was received on 13 April 2011. Salient points of reply are summarized as under:

- a.** *GAMCA creates unnecessary hurdles for POEPA. GAMCAs refuse to entertain the intending emigrants for medical examination on the plea that they belong to other areas and should get their medical checkups done from there.*
- b.** *Choice of customer is not often honoured as is claimed. The referral system of GAMCA has virtually assumed the shape of cartelisation and intending emigrants/POEPA are placed at a disadvantage limiting their choice.*
- c.** *Circumstances do not attest to the claim that GAMCAs and approved medical centres have no role in issuance of licenses of new medical centres and fixing the fee. The authenticity of the Executive Board becomes dubious when the working of GAMCA and the Executive Board's track record is studied. The different signatures of Director General. Executive Director, Dr. Tawfik A.M. Khoja also suggest that the organisation is not what it is being shown.*

- d. *Medical centres under GAMCA are charging Rs.3000 for tests while POEPA has the quotation of reputable medical centres offering Rs.1500 as charges for the same tests.*
- e. *UAE is not member of Executive Board, Health Ministers' Council, GCC States and is not requiring pre-departure medical tests from medical centre working under GAMCA.*
- f. *IF GAMCA is created by the Health Ministers' Council then the concerned embassies would have implemented this system automatically and there would have been no need for the Executive Board to direct the approved medical centres in Pakistan to extend invitations to the Heads of the Counsellor Sections of the embassies to participate in their meetings to know the object of the meeting. This clearly shows that the GAMCA system is created and sustained by the medical centres with the connivance of Dr. Tawfik Khoja who portrays himself as the Director General of the Executive Board. Drastic variation in the signatures of Dr. Tawfik Khoja also makes the claims of GAMCA suspicious.*
- g. *There is a lot of difference in the results of the medical tests conducted by the medical centres of GAMCA. So much so that some intending emigrants are declared unfit by a medical centre and subsequently fir, besides other differences. GAMCA is not allowed to keep any relationship with any customer specially POEPA.*

3.6. We the undersigned enquiry officers, in order to assess the matter, further required GAMCA Islamabad, Karachi, Lahore, Peshawar and Multan vide letter dated 28 March and 11 May 2011, to submit the following information:

- (i). *Provide us a complete list of medical centers working under your auspices;*
- (ii). *How many intending expatriates were subjected to pre-departure medical tests conducted by each of medical centers in your region in the year 2008, 2009, 2010 & 2011? Kindly provide the year-wise breakup;*
- (iii). *What procedure is adopted by GAMCA for allocation of a medical center to an intending expatriate to GCC countries?*
- (iv). *What amount of fee was charged by each of medical centers in your region from the intending expatriates to GCC countries for the pre-departure medical tests in the years 2008, 2009, 2010 & 2011? Kindly also provide their fee schedules, if any.*

3.7. Response from GAMCA Islamabad, Karachi, Peshawar, Multan and Lahore were received through letters dated 01 April, 12 May, 17 May, 16 May, respectively which provided the required information as follows:

**a. Member Medical Centres:**

List of medical Centres co-ordinating with GAMCA Islamabad  
 Khaleej Diagnostic Centre  
 Gulf Medical Centre  
 Urgent Diagnostic Centre  
 Shifa International  
 GCC Diagnostic Centre



List of medical Centres co-ordinating with GAMCA Karachi

Taj Medical Centre  
Al Hilal Medical Diagnostic Centre  
Medical Diagnostic Centre

List of medical Centres co-ordinating with GAMCA Multan

Al-Barakat Diagnostic Centre  
Dr. Thagfan Diagnostic Centre  
Multan Diagnostic Centre

List of medical Centres co-ordinating with GAMCA Lahore

Advanced Medical Diagnostic Centre  
Canal View Diagnostic Centre  
Iqraa Medical Complex  
Taj Medical Travellers Clinic

List of medical Centres co-ordinating with GAMCA Peshawar:

Al-Khair Medical Centre  
Caring & Curing Centre  
Frontier Diagnostic Centre  
Medical Diagnostics Centre  
Peshawar Medical Chekup Centre

- b. Year-wise number of intending emigrants subjected to pre-departure medical examination by approved medical centres:

<b>GAMCA</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
Islamabad	87105	110023	87104	26095
Karachi	27732	31662	22659	13197
Peshawar	16882	17618	17404	7375
Multan	Nil	Nil	Nil	13481
Lahore	Nil	Nil	Nil	34800

- c. **Referral System:** Regarding the referral system, GAMCAs from all regions have similar response that referral system is based on equal distribution as per Rules and Regulations of the Executive Board of Health Ministers Council of the GCC States. However, if request is made by any emigrant to be referred to a specific medical centre of his/her choice and convenience, such request is honoured.
- d. **Fee:** Regarding fee for pre-departure medical examination, GAMCAs provided that fee is prescribed by the Executive Board of Health Ministers Council of GCC States. Approved fee was Rs.2300/- till October 2008 and was increased to Rs.3000/- as the approved medical centres were permitted by the Executive Board vide letter dated 13 October 2008 to charge fee upto 3000 PKR

- 3.8. The Secretary General, Cooperation Council for the Arab States of Gulf was also sent a letter seeking following information:

- (i) *Whether GCC has made any decision to regulate the pre-departure medical checkups by establishing Central Office of GCC approved medical centres in manpower exporting countries, if so, then please provide copies of the decisions so made in this regard;*
- (ii) *Whether the pre-departure medical tests of intending emigrants to GCC countries are mandatory in nature, if so, copy of the approval or direction given in this regard may please be provided;*
- (iii) *Whether GCC has requested the Government of Pakistan to establish a central office of GCC approved medical centres in Pakistan, if so, the please provide copies of the decisions so made or any intimation to the government of Pakistan or any allied department, in this regard, may please be provided.*

However, it is pertinent to mention here that the aforementioned letter to date is not replied.

3.9. GAMCAs vide letter dated 11-05-2011 along with other information was also requested to provide the details regarding the intended emigrants subjected to pre-departure medical tests by each of medical centres in their respective regions/cities for the years 2008, 2009, 2010 and 2011.

3.10. GAMCA Karachi vide their letter dated 12-05-2011 provided the GCC Medical Centers working in Karachi Region/city as well as the year wise details of the medical tests conducted. The table as depicted in the letter is as follows:

<b>Year</b>	<b>Taj Medical Centre</b>	<b>Al-Hilal Medical Diagnostics</b>	<b>Medical Diagnostic Centre</b>	<b>Total</b>
2008	9243	9245	9244	27732
2009	10555	10554	10553	31662
2010	7552	7553	7554	22659
2011	4399	4400	4398	13197

Copy of the letter is attached as ‘**Annex-U**’

3.11. Similarly, the GAMCA Peshawar vide their letter dated Nil, provided the details of the medical tests conducted at the GCC Medical Centres in Peshawar Region/city. The detail so provided is as follows:

<b>Year</b>	<b>Al-Khair Medical Centre</b>	<b>Caring &amp; Curing Centre</b>	<b>Frontier Diagnostic Centre</b>	<b>Medical Diagnostics Centre</b>	<b>Peshawar Medical Checkup Centre</b>
2008	16844	16887	16670	16942	16882
2009	17574	17498	17418	17515	17618
2010	17319	17586	17468	17662	17404
2011	7499	7573	7629	7653	7375

Copy of the letter is attached as ‘**Annex-V**’

3.12. GAMCA Multan vide their letter dated 16-05-2011 submitted the details of the medical tests conducted during the period 01-04-2010 to 31-03-2011. The detail so provided is as follows:

Year	Al-Barkat Diagnostic Centre	Dr. Thagfan Diagnostic Centre	Multan Diagnostic Clinic	Total
01-04-2010 To 31-03-2011	4493	4494	4494	13481

Copy of the letter is attached as 'Annex-W'

3.13. GAMCA Lahore vide its letter dated 16-05-2011 submitted the details of the medical tests conducted at the GCC Medical Centres during the year 01-4-2010 to 31-03-2011. The detail so provided is as follows:

Year	Advance Medical Diagnostics Centre	Canal View Diagnostic Centre	Iqraa Medical Complex	Taj Medical Travellers Clinic	Total
01-04-2010 To 31-03-2011	8654	8685	8699	8762	34800

Copy of the letter is attached as 'Annex-X'

3.14. For Islamabad/Rawalpindi Region/city, independent letter were issued to the GCC Medical Centres of the region/city. The detail so received is summed up as follows:

Year	Khaleej Diagnostic Centre	Gulf Medical Centre	Urgent Medical Centre	Shifa International	GCC Diagnostic Centre
2008	17344	17400	17435	17396	17530
2009	21938	21998	22268	21968	21851
2010	17409	17392	17500	17394	17409
2011	5152	5286	5258	5241	5158

Copies of the letters received from the GCC Medical Centres for Islamabad/Rawalpindi Region are attached as 'Annex-Y' to 'Annex-AC'

3.15. POEPA sent additional submissions vide letter dated 17 May 2011 to support their claim which, *inter alia*, included following salient contentions:

- a. *Equal distribution system at the end of GAMCA results into two major problems.*
- b. *GAMCA does not give right to concerned recruitment agencies to refer recruited workers to approved medical centres of their own choice due to GAMCA's self created equal distribution system. This equal distribution*

*system has created a monopoly of GAMCA and approved medical centres. Due this monopoly GAMCA and approved medical centres are exploiting recruitment agencies and workers. Approved medical centres know that they will automatically receive workers for medical checkups through referral system of GAMCA. Therefore, their behaviour with recruitment agencies and workers is totally non-cooperative. GAMCA in response to this objection has given a contrary statement. At one point they are bound to follow the equal distribution system as laid down in the Rules and Regulations and then they also say that they honour the choice of customers and refer them to medical centre of their choice.*

- c. Second major problem is that GAMCA has established city wise jurisdiction of medical centres by itself for conducting of medical examination by keeping their permanent address in view regardless of where he is working or living presently. GAMCA has not commented on this objection because they do not have any genuine reason for it except safeguarding internal financial benefits for medical centres.*
  - d. POEPA does not accept the photocopies of the Executive Board's letters submitted before the Commission as the evidence seems doubtful. POEPA is confident that these documents are forged and prepared by GAMCA itself. GAMCA may be asked to produce the originals of these letters. Even if the letters are genuine, no foreign authority has jurisdiction to issue such instructions to implement in Pakistan which are against the fundamental rights and provisions of the Constitution.*
  - e. Before establishment of GAMCA, the recruitment agencies and workers were at liberty to approach any of approved medical centres on equal distribution basis. In fact, this system has been implemented by GAMCA on demand of such approved medical centres which were getting lesser business as compared to some other approved medical centres to make sure equal distribution of income among them.*
- 3.16. Later on, vide letter dated 19 May 2011, POEPA also sent copies of three medical reports of intending emigrants who were forced to conduct their medical tests in other cities while visa were processed by recruitment agencies in other cities.
- 3.17. Similarly, GAMCA Islamabad also sent additional submissions in their defence vide letter dated 29 July 2011. These submissions, *inter alia*, included following assertions:
- a. There is cut throat competition among manpower exporting countries as this constitutes their biggest source of foreign*
  - b. exchange remittance. GCC states have laid down their own Rules and Regulations that govern the issuance of visa including work/employment visa. These Rules and Regulations are applicable to all manpower exporting countries including Pakistan. If Pakistan wishes to continue to export manpower to these countries, Pakistan will also have to abide by these rules and regulations.*
  - c. As in case of all the licensing regimes, the Executive Board has laid down criteria for grant of license to medical centres to conduct pre-departure medical tests. Any medical centre is free to apply to the Executive Board. These applications are scrutinized by the Executive*

*Board's technical team who physically visits the applicant centre to inspect and decide on grant of license. This licensing regime enhances competition between the potential applicants to improve their facilities and quality to be able to qualify for license.*

- d.** *License is granted for one year. No exception is granted to the existing approved medical centre. The approved medical centres have to compete not only with each other but with other applicants as well for renewal of license and decision for renewal is based on performance and quality of service.*
- e.** *Decision to form separate GAMCAs in different cities was taken by the Executive Board for the convenience of the emigrants so that each intending emigrant can go to the nearest GAMCA office. However, the referral system is a free service based on fair distribution on the basis of facilitation of the intending emigrants. The system has been devised to protect the emigrants from the mal-practices of the pre-GAMCA era. Each intending emigrant is free to contact any of the GAMCAs, irrespective of the area of his/her origin or residence, as to his/her choice and convenience.*
- f.** *In order to protect the interests of consumers the Executive Board has prescribed fee and approved medical centres have no role in fixing such fee. The prescribed fee is maximum fee and if any medical centre is found over-charging, its license is revoked.*
- g.** *Referral system is based on fair distribution. While referring emigrants the foremost objective is to protect the interests of consumers by referring him/her to an approved medical centre that is convenient for the consumer to visit. GAMCA also keeps in mind the capacity of medical centre in order to reduce waiting time of consumer at the centre. Key objective of referral system is to curb the mal-practices during pre-GAMCA era. GAMCA referrals are made without any intervention of medical centres.*
- h.** *GAMCAs do not impose any restriction on business on the basis of geographical location. Intending emigrants are free to have their medical examination conducted from any approved medical centre irrespective of area of origin and according to their choice.*
- i.** *In pre-GAMCA era, since no referral system was in place, each promoter would refer its clients to approved medical centre of his choice for commissions and kick backs. When some medical centres refused to pay commissions, POEPA boycotted and made sure that emigrants go to medical centre of their choice. Therefore, absence of a fair referral system and an independent body to ensure implementation of rules and regulations not only promoted corrupt practices but also doubt about the medical examination process. The Executive Board took notice of this indulgence of POEPA and advised to form GAMCAs to ensure transparency.*

3.18. The above quoted submissions filed by GAMCA Islamabad brought up a new factual position and averments were made against POEPA's exploitative behavior and mal-practices. Therefore, we, the undersigned Enquiry Officers forwarded GAMCA Islamabad's submissions to POEPA to seek clarification. POEPA sent

its response vide letter dated 30 August 2011. Submissions of POEPA are summarized as under:

- a. *Claims of GAMCA are academic and contrary to reality. If licensing regime was open to all then the strength of medical centers would have been double.*
- b. *GAMCA should provide a list of medical centers whose license has been cancelled for unsatisfactory performance or facilities.*
- c. *The new system of GAMCA could achieve its aim if it is not practiced arbitrarily.*
- d. *GAMCA claims that fee prescribed is the maximum fee then there should be minimum and optimum fee.*
- e. *GAMCA's claim the foremost objective of referral system is to protect consumers by referring them to approved medical centre of their convenience is contrary to facts.*
- f. *GAMCA claims POEPA demanded commissions for referring emigrants to approved medical centres. In fact medical centres themselves offered such incentives and were responsible for this unethical practice.*

#### **4. MEETING WITH THE COMPLAINANT & RESPONDENTS**

- 4.1. After receiving additional submissions from both parties, Enquiry Officers deemed it appropriate to have a joint meeting with both parties to hear the contentions of both parties and require them to place on record facts, material in support of their contentions with reference to the enquiry. However, on the request of GAMCA Islamabad and Mr. Shehzad Ahmad, owner of Al-Khaleej Medical Center, meeting was conducted separately with both parties.
- 4.2. Mr Fida Hussain, Secretary General, POEAP and Mr. Mohamad Nazir Ex-Member Central Executive Committee POEPA represented POEPA while Mr. Rashid Haneef and Mr. Mohammad Ahmad Shaikh, advocates, AQLAAL, represented GAMCA Islamabad.
- 4.3. During the meeting POEPA representatives stated that they want to provide further evidence on exploitation of intending emigrants by GAMCA for the sole reason of equal referral system of GAMCA. However, as the election of office bearers of the association is approaching, therefore, they have not been able to submit a comprehensive reply to averments made by GAMCA Islamabad, in particular, in respect of allegations leveled against POEPA for commissions/kickbacks. Later on, they again requested vide letter dated 05 October 2011 that the newly elected office bearers of the association have assumed charge. The meeting of the Central Executive Committee is supposed to be held in the next two weeks. More submissions regarding GAMCA will be furnished after the approval of Central Executive Committee.

4.4. In the meeting with representatives of GAMCA Islamabad a list of queries was raised by the undersigned Enquiry Officers and information/data was required to be provided to understand the scope and working of GAMCAs. List of queries and information submitted by GAMCA Islamabad in its reply is reproduced below for ease of reference:

a. Suggestion made from the Medical Centers at Pakistan as referred in letter dated 27-11-1999 of Executive Board of the Health Minister's Council for G.C.C States

*The executive committee were formed for the purpose of establishing GAMCAs. However, such committees did not formally provide any suggestions to the Executive Board. It was the Executive Board that provided GAMCA with the guidelines and suggested internal rules and regulations for smooth functioning of GAMCAs and the GAMCAs are following such internal rules and regulations.*

b. How the expense of the Regional GAMCA is shared by the GCC approved Medical Centers?

*The expenses are borne equally by the GCC Medical Centres.*

c. The names and address of the President and the General Secretaries of GAMCA for the current year, the details regarding their tenure and the mode of their election;

*Pursuant to the decision of DG Trade Organisations-Ministry of Commerce and Trade and subsequent change of name from association to administrative office, GAMCA no more elects its office bearers. Previously, the president and other office bearers would be elected annually on rotation basis without voting.*

d. Approval of Government of Pakistan, if any, in favour of GAMCA, if yes, please provide a copy thereof;

*Being administrative and coordinating office, GAMCA is not required to have any approval from the Government of Pakistan under the prevalent laws of Pakistan. However, GAMCAs and approved medical centres are recognised by the Bureau of Emigration and Overseas Employment as evident from their enlistment on the official website of Bureau of emigration & Overseas Employment- Ministry of Labour and Manpower.*

e. The details of the GCC approved Medical Centers licensed/entered in the market or approved within last three years;

*The Executive Board has not issued approval/license to any new medical center in last three years.*

f. The details of the Medical Centers whose approval/license has been cancelled by the GCC;

*List of approved medical centres license of which has been revoked includes Karachi Lab (1999), Agha Khan (2000) VIP Diagnostic Centre (2000) All Arabi Centre (2004). The Executive Board does not share with GAMCAs the reason for cancellation of license.*

- g. Whether VIP and Gulf Medical Centers are still operative, if yes, please inform as to whether they are still approved GCC medical Center or not?  
VIP Medical Centre was approved in 1999 and its license was revoked in July 2000. Gulf Medical Centre was licensed in 1999 and is still operative as an approved medical centre.
- h. The history and details of charging of fee by the GCC approved Medical Centers in the last three years in Pakistan, India and Bangladesh;

History of fee charged by approved medical centres:

Year	Amount of Fee In PKR
2004	1950/-
2005	2350/-
2008	3000/-
2011	3000/-

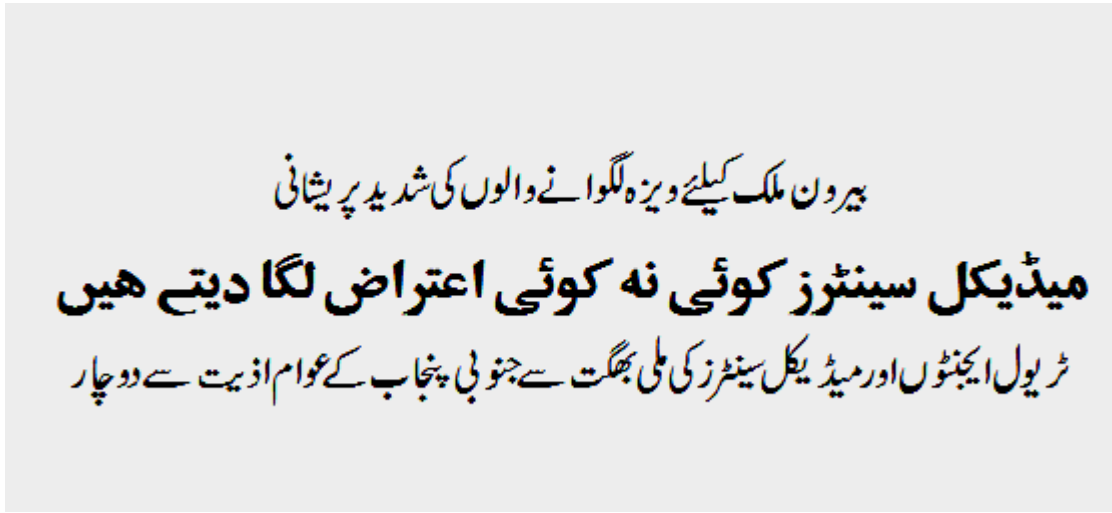
- i. What preferences are considered while refereeing the expatriates to GCC approved medical centers by GAMCA?  
(i). Facilitation of the consumer-referring to medical centre which is convenient for consumer; (ii) administrative capacity of centre- this is to reduce the waiting time of the consumer; and (iii) to curb mal-practices- to restrict employment promoters to receive commissions/kickbacks for referring to medical centre of their choice.
- j. When and why GCC approved medical centers refuse to conduct test?  
The approved medical centres refuse to conduct medical examination if the intending emigrant has not been referred by GAMCA.
- k. For how long the GAMCA number issued remains valid?  
The numbers issued by GAMCA do not have a specific validity. They remain valid till the time the intending emigrants visit the designated approved medical centres for medical examination.
- l. Whether the GAMCA number is revised and/or medical center is changed, if requested by the customer?  
At the time of issuance of GAMCA number if the intending emigrant request to be referred to a specific approved medical centre, the GAMCA facilitates by referring him/her to such approved medical centre.

In normal circumstances, once issued, the GAMCA number is usually not revised. However, if the intending emigrant satisfies GAMCA that there exists a genuine reason, GAMCA issues a new/revised number.

- m. Whether some internal guidelines have been framed by GAMCA in pursuance of Rule 5(3) of the Rules & Regulations for Medical Examination of Recruited Expatriates, please provide a copy?  
The Executive Board itself devised and suggested the internal rules and regulations for GAMCA which were adopted and followed by the GAMCAs.



- 4.5. GAMCA Islamabad was also required to provide number of medical tests repeated by each GCC Medical Centre in Pakistan during the last six months and the total amount of fee collected by each GCC Medical Centre for such repeat tests. However, GAMCA Islamabad only provided the information in respect of approved medical centers in Islamabad and Rawalpindi. Total number of repeat tests in last six months are 2248 and the fee collected in this account is PKR 786,029/-.
- 4.6. It is pertinent to mention here that during the conduct of enquiry an article was published in the Nawa-e-Waqt Sunday Magazine dated 16-10-2011 under the following title:



(Copy of the article is attached as 'Annex-AD')

## 5. TORs AND THEIR ANALYSIS

- 5.1. As mentioned in Para 1.3. *ibid* the undersigned enquiry officers were directed to conduct the enquiry on the issues raised in the complaint and to submit the enquiry report by giving their findings and recommendations *inter alia* on the following TORs:
- Whether there exists any agreement *inter se* the GAMCA(s) and/or Medical Centers working under the auspices of GAMCA(s); regarding fixation of prices, equal distribution of customers and dividing the territories in violation of Section 4 of the Act?
  - Whether the Respondents are engaged in any exploitative practices in contravention of Section 3 of the Act?

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## 5.2. RELEVANT MARKET

5.2.1. Relevant market is defined under clause (k) sub-section (1) of Section 2 of the Ordinance in the following words:

*“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’ characteristic, 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;*

5.2.2. From the above definition it is clear that the relevant market has to be defined in two dimensions (i) Product market and (ii) Geographic market. In the following paragraphs the product as well as the geographic market has been defined:

5.2.3. In order to determine the relevant product market under this enquiry it would be relevant to first identify the relevant product/service. The basic issue under this enquiry is to determine as whether the Respondents have violated the provisions of the Act or not. The Respondents mainly the GCC Medical Centers are engaged in provision of medical services to the intended immigrant to the GCC countries in particular Saudi Arabia, Kuwait, Bahrain, Qatar, the Sultanate of Oman and the Republic of Yemen for their pre-departure medical tests. It is pertinent to mention here that to-date there is no mandatory requirement of pre-departure medical tests for the United Arab Emirates, therefore, it is excluded.

5.2.4. The pre-departure medical test is further divided in two separate sets **(i). Medical Examination** includes: Eyes, Ears (hearing ability), System Exam: Cardio-vascular (BP, Heart beat), Respiratory System: Lungs, Chest X-Ray, Gastro Intestinal: Abdomen, Others, Hernia, Varicose Veins, Extremities, Deformities, Skin allergies, Venereal Diseases: Clinical, C.N.S and Psychiatry. **(ii). Laboratory Examination** includes: Urine: Sugar, Albumin, Bilharziasis (If Endemic), Stool: Routine (Helminthes, Guardia, Bilharziasis (If Endemic Culture), Salmonella, Shigella and V.Cholera (If Endemic)), Blood: Hemoglobin: Thick Film for: Malaria, Micro Filaria, Serology: F.B.S, L.F.T.S. and Creatinine, Elisa: HIV, 1, 2 Test, HBs Ag and Anti HCV, VDRL: TIPHA (If VDRL Positive) and Pregnancy Test.

5.2.5. Although each and every test conducted under the head of ‘pre-departure test’ can be done from any other medical centre, however, the tests for the intended

- immigrants/expatriates can only be conducted from the GCC Medical Centres being the authorized centres in this regard.
- 5.2.6. Therefore, the pre-departure medical tests are distinct in their nature as they can only be conducted by the GCC Medical Centers and not by any other Medical Center. Therefore, there is no debate regarding the interchangeability and substitutability of the pre-departure medical tests conducted at GCC Medical Centers. Hence, the relevant service for the purposes of this enquiry is '*pre-departure medical tests for the intended immigrants/expatriates to the GCC Countries*' except United Arab Emirates.
- 5.2.7. The relevant product market for the purposes of this Enquiry Report is a market for the supply of the relevant service i.e. '*pre-departure medical tests for the intended immigrants/expatriates to the GCC Countries except United Arab Emirates*'. As discussed above, the relevant services although can be availed from any other medical centre; however, in order to proceed to GCC countries except United Arab Emirates, the relevant service i.e. the pre-departure medical tests must be got conducted at the GCC Medical Centres, which has a valid license/approval from the Executive Board of the Health Ministers Council and not otherwise as they are authorized for conducting required pre-employment medical checkup for manpower to be recruited for GCC states excluding United Arab Emirates. Such medical tests are compulsorily required for visa, in particular, work/employment visa for GCC states except United Arab Emirates. Such approval/license is granted for the period of one year to any medical centre in Pakistan who qualifies the criteria of selection laid down in the Rules and Regulations framed by the abovementioned Executive Board.
- 5.2.8. As already mentioned in the above Paras, the pre-departure medical tests are neither substitutable nor interchangeable with the tests conducted at any other medical centre. Therefore, the relevant product/service market for the purposes of this enquiry is '*pre-departure medical tests for the intended immigrants/expatriates to the GCC Countries except United Arab Emirates*' conducted by the approved medical centre by the Executive Board of the Health Ministers' Council for Cooperation Council States i.e. GCC Medical Centres.
- 5.2.9. With reference to the relevant geographic market, it needs to be appreciated that undertakings concerned i.e. GCC Medical Centres are engaged in provision of relevant service i.e. '*pre-departure medical tests for the intended immigrants/expatriates to the GCC Countries except United Arab Emirates*' all over the country. GAMCA is also engaged in issuing the registration numbers to the intended emigrants and referring them to the GCC Medical Centres for pre-departure Medical Tests. GAMCA is also responsible for implementation of equal distribution system amongst the GCC Medical Centres and monitor their conduct, throughout Pakistan. However, it would be relevant to point out that in the country i.e. Pakistan the GCC Medical Centers are mainly situated in Islamabad/Rawalpindi, Lahore, Peshawar, Karachi and Multan. In each of the said

city more than one GCC Medical Centre is established; consequently, a GAMCA office is also established to regulate the conduct as mentioned above. The undertakings involved in provision of relevant services in Rawalpindi/Islamabad region/city are (i) Khaleej Diagnostic Centre (KDC), (ii) Gulf Medical Centre (GMC), (iii) Urgent Diagnostic Centre (UDC), (iv) Shifa International (SI), (v) GCC Diagnostic Centre (GDC). The undertakings involved in the city/region of Karachi (i) Taj Medical Centre (TMC), (ii) Al Hilal Medical Diagnostic Centre (AHMDC), (iii) Medical Diagnostic Centre (MDC). The undertakings involved in the city/region of Multan are (i) Al-Barakat Diagnostic Centre (ABDC), (ii) Dr. Thagfan Diagnostic Centre (DTDC), and (iii) Multan Diagnostic Centre (MD). The undertakings involved in the city/region of Lahore are (i) Advanced Medical Diagnostic Centre (AMDC), (ii) Canal View Diagnostic Centre (CVDC), (iii) Iqraa Medical Complex (IMC) and (iv) Taj Medical Travellers Clinic (TMTC). The undertakings involved in the city/region of Peshawar are (i) Al-Khair Medical Centre (AKMC), (ii) Caring & Curing Centre (CCC), (iii) Frontier Diagnostic Centre (FDC), (iv) Medical Diagnostics Centre (MC) and (v) Peshawar Medical Chekup Centre (PMCC).

5.2.10. Although we note that major undertakings are involved in the above-mentioned five cities, however, there are two other undertakings i.e. GCC Medical Centres one in Gujranwala and the other in Quetta, however, no GAMCA is established there; as for establishment of GAMCA there has to be at least two or more GCC Medical Centres. Since, the precondition for establishment of GAMCA is not met in the case of Gujranwala and Quetta, therefore, no GAMCA is established in these cities.

5.2.11. At present the undertakings are engaged in Islamabad/Rawalpindi, Lahore, Gujranwala, Multan, Peshawar, Karachi and Quetta Region/Cities in the provision of the same service, however, possibility of establishing GCC Medical Centres in other cities/regions and subsequently the establishment of GAMCA cannot be ruled out. Apparently the undertakings i.e. GCC Medical Centres are not competing with each other in their respective cities, however, the conditions of competition throughout Pakistan are homogenous and identical. Hence, for the purposes of this enquiry the relevant geographic market is Pakistan.

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### **5.3. SECTION 4 VIOLATION, IF ANY**

5.3.1. Section 4 of the Act prohibits undertakings from entering into agreements or in the case of association of undertakings from making decisions, which have the object or effect of preventing, restricting or reducing competition within the relevant market. In terms of Section 2(1)(b) of the Act, the agreement would include any arrangement, understanding or practice whether or not in writing or intended to be legally enforceable.

5.3.2. Certain type of agreements horizontal agreements (between competitors) are declared by the competition agencies across the globe, which always have the anti-competitive object, they include price fixing, output limitation and sharing of markets and customers. The relevant provisions of the Act in this regard are as follows:

*“Section 4. Prohibited Agreements.—(1) No undertaking or association of undertakings shall enter into any agreement or, in the case of an association of undertakings, shall make a decision in respect of the production, supply, distribution, acquisition or control of goods or the provision of services which have the object or effect of preventing, restricting or reducing competition within the relevant market unless exempted under Section 5.*

*(2) Such agreements include but not limited to—*

*(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;*

*(b). dividing or sharing of markets for the goods or services, whether by territories, by volume of sales or purchase, 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 the manner or means of providing any services;*

*...  
...”*

5.3.3. For the purposes of analysis under Section 4 under this report, on the basis of documents made available to us, it appears that five GAMCAs have been established to make territorial distribution in five regions/cities i.e. (i) Islamabad/Rawalpindi, (ii) Peshawar, (iii) Lahore, (iv) Karachi, and (v) Multan. In addition to the division of territories, it *prima facie* appears that an equal distribution of consumers among the GCC Medical Centers has also been in place. Moreover, as per submissions made the consumers are charged a uniform fee of Rs. 3000/- (Rupees Three Thousand Only), in addition to the repeat test fee by all these medical centers. .

5.3.4. The representatives of GAMCA during the meetings as well as in their written replies have consistently relied that they have not formed the rules and in-fact the rules have been framed by the Executive Board and they are directed to implement the said rules. The rules so framed are at **Annex-C** to this report.

5.3.5. GAMCA Islamabad/Rawalpindi in its reply dated 29-07-2011 has given reasons for creation of GAMCA and action on part of the Executive Board for creation and implementation of the rules and regulations for the pre-departure medical examination of intended expatriates.

- 5.3.6. **Equal Distribution System:** In this regard, reference has to be made to **Annex-A**, which was issued by Executive Board to all the GCC Medical Centers on 27-11-1999. For ease of reference, the relevant paragraphs of the said letter are reproduced below:

*“This Office has been receiving complaints from various GCC Approved Medical Centres that the involvement of recruitment agents/travel agents in the medical examination of candidates has caused uncertainty in distribution of medical slips. Some centres to get more business have lost their professional sincerity and the medical examination has become a business between recruiting agencies and so called health centres. The approved centres have no control on such practices. Therefore, in the interest of utmost care for the safeguard of our approved health centres we suggest that all the GCC Approved Medical Centres form an Association namely GCC Approved Medical Centres Association (GAMCA).*

*In this regard, it will be appreciated if centres contact with each other and form an Executive Committee consists of some members which will develop a working plan on this subject. Upon mutual arrangements a meeting may be arranged at a suitable place in your city. Invitations may be extended to the Head of Counsellor Section of the embassies to participate in the meeting and know the object of the meeting. The executive committee should put forward a resolution in the meeting that the office of GAMCA should receive all the medical slips issued from any source and in turn distribute that to all approved health centres on equal distribution system.”*

- 5.3.7. It appears that the action was taken by the Executive Board on the complaints made by the GCC Medical Centres. From the plain reading of the aforementioned letter it appears that the GCC Medical Centres basically complained about the **“involvement of recruitment agents/travel agents in the medical examination of candidates has caused uncertainty in distribution of medical slips”** (emphasis added). *Prima facie*, the possibility of recommending creation of GAMCA by the GCC Medical Centres is also strengthened from the fact that Executive Board in response to their complaints suggested that **“it will be appreciated if centres contact with each other and form an Executive Committee consists of some members which will develop a working plan on this subject.”** Further, **“invitations may be extended to the heads of counsellor Section of the embassies to participate in the meeting and know the object of the meeting.”**(emphasis added)

- 5.3.8. As per the submissions of GAMCA throughout the enquiry, we are unable to understand that a body i.e. Executive Board which is claimed to have stringent criteria for selection/approval/inspection/renewal of GCC Medical Centres is asking the GCC Medical Centres to work out themselves the functioning of GAMCA, a supervisory body/regulator. We do not find merit in GAMCAs’ claim that Executive Board takes decisions itself for every action of GCC Medical

Centres while these centres just act according to instructions of Executive Board does not seem to have any basis.

- 5.3.9. Quite contrary to GAMCAs claim and in view of the preceding paragraphs and in particular ‘**Annex-A**’, it appears that GCC Medical Centres were to form an executive committee consisting of some members which will develop a working plan and will make deliberations and discussions on the formation of GAMCA. It is beyond comprehension as to why such deliberations and discussions were not undertaken by the Executive Board itself and the same was left at the discretion of GCC Medical Centres.
- 5.3.10. From the afore-mentioned it appears that instead of having a proper mechanism to take disciplinary actions against GCC Medical Centres involved in mal-practices, if any, these centres came up with an arrangement of equal distribution of consumers to avoid any competition which was later on, translated into the Rules and Regulations of the Executive Board. The opening lines of the afore-mentioned letter appear to be very clear regarding the object and the basic concern of GCC Medical Centres before Executive Board i.e. “uncertainty” in distribution of medical slips which was taken care of through formulating an equal distribution system. Such conduct of GCC Approved Medical Centres, *prima facie*, shows an arrangement having “object” to restrict competition *inter se*.
- 5.3.11. It was also highlighted during the meeting with the representatives of GAMCA that in pre-GAMCA phase the GCC Medical Centres were engaged in giving kickbacks to the recruitment agents/travel agents and the business was generated by the medical centres on the basis of the kickback offered. GAMCA in their letter dated 29-07-2011 stated that:

*“To Curb Malpractices:*

*Another key objective of the referral system is to curb the malpractices which were common during the pre-GAMCA era, where employment promoters would refer their clients to one of more approved medical centres and receives commission/kickbacks for such referrals.”*

- 5.3.12. In this regard letter dated 19-07-1999 under reference no. POEPA/132/99 of the Complainant was submitted by GAMCA wherein two medical centres were mentioned who were supporting the promoters and the promoters were specifically asked to refer their clients to those medical centres. They were (i) VIP Health Clinic and (ii) Gulf Medical Centre. GAMCA was inquired as whether both the medical centres are still operative or not? In response it was submitted that VIP Medical Centre was approved in 1999 and its license was revoked in July 2000. Gulf Medical Centre was licensed in 1999 and is still operative as an approved medical centre. In this regard, we are unable to understand that, if the malpractice, as mentioned by GAMCA was one of the major reasons behind having an equal distribution system, then why the license issued to Gulf Medical Centre was not revoked being involved in such malpractices?

- 5.3.13. *Prima facie*, the GCC Medical Centres proposed, under garb of complaint, not only the territorial division of Pakistan among themselves but further recommended an equal distribution of consumers among themselves, thereby eliminating any chance of reduction in their profitability and having substantial consumers at their disposal without competing with any other market player i.e. GCC Medical Centre. It appears that the equal distribution systems, which the Executive Board, knowing to be in the interest of the GCC Medical Centres alone, acted in pursuance of the said proposal/complaint, which in any event was not a legislative act and agreed to an equal distribution system, thereby eliminating any competition *inter se* GCC Medical Centres.
- 5.3.14. In addition to the above, during the meeting with the representatives of GAMCAs it was brought to our knowledge that the expenses and day to day affairs of GAMCAs are regulated by a board which consists of at least one representative from the concerned GCC Medical Centre. Although no document has been provided to us, but during the meeting it was also brought to our knowledge that every year President and General Secretary of GAMCA was elected from among the Board members on rotational basis, which consists of the representatives of GCC Medical Centers. It was submitted that subsequent to the Order of Director General Trade Organizations they have discontinued this practice. However, no document to this effect was produced before us. Copy of letter dated 06-02-2007 under reference no. 754 is relevant and attached as 'Annex-AE'. Moreover, in the letter dated 11-11-2010 addressed to the Executive Board, although GAMCA Islamabad/Rawalpindi along-with other GAMCAs have informed that they can no longer use the term 'Association' with their name in light of the DG Trade Organization Order, however, there is no mention that they would not conduct any election of President or General Secretary of GAMCAs. Copy of the letter is 'Annex-AF'. From the above, it appears that GAMCAs is a forum to discuss matters of mutual interests of GCC Medical Centers and make anti-competitive decisions.
- 5.3.15. It has been observed that from the documents made available in particular, Annex-A & Annex-B to this enquiry that the GAMCA and GCC Medical Centers regime was established in 1999 and subsequently implemented in full in 2002. The practice of equal distribution since then has been consistently followed by GCC Medical Centers i.e. for almost 9 years.
- 5.3.16. It was also noticed that the license of one of the GCC Medical Centre i.e. Agha Khan Hospital, Karachi (which is one of the most renowned and best medical facility in Pakistan) for non-cooperation with GAMCA Karachi, charging different fee than prescribed by the committee, irregularity in sending quarterly reports and non-payment of the license fee. From the above it appears that Agha Khan Hospital was penalized for not following the price recommended by the committee probably of GAMCA Karachi, non-submission of quarterly report, which would provide a clear check on the number of tests conducted and the fee



charged for the ‘pre-departure’ tests. (Copy of the letter dated 20-07-2002 under reference no. 2578 hk/2a/02 is attached as ‘**Annex-AG**’)

5.3.17. **Price Fixing:** With reference to the price/fee of the ‘pre-departure medical tests for GCC countries except United Arab Emirates’, it has been submitted on behalf of GAMCA that the fee was prescribed by the Executive Board and they have no role in fixing the price. The history of fee charged for the pre-departure medical tests as provided by GAMCA(s) is as follows:

<b>Year</b>	<b>Amount of Fee In PKR</b>
2004	1950/-
2005	2350/-
2008	3000/-
2011	3000/-

5.3.18. From the above chart it is inferred appears that same fee was charged by all the GCC Medical Centres. We have perused the Rules and Regulations as amended upto 15-12-2010, which are at **Annex-C** to this report. We were unable to locate any article regarding the fixation of fee by the Executive Board.

5.3.19. In this respect, Executive Board’s letter dated 14-10-2008 under reference no. 4887 which is at ‘**Annex-D**’ to this report is very important. Relevant parts of the said letter are reproduced below for sake of brevity:

*Reference to your letter dated 19 September 2008 which was received by this office on 11 October 2008, requesting for approval to charge P Rs.3000/- per candidate instead of P Rs.2300/- due to currency fluctuation.*

*The prescribed fee for medical examination is US\$ 38.5, so far you did not request to increase in the prescribed fee i.e. 38.5 US\$ which now according Pakistan currency is 3000/- Pak Rupees. We have no objection and accept your request with effect from 15 October 2008.*

5.3.20. It is pertinent to mention here that the afore-referred letter was issued pursuant to the request made by Mr. Shehzad Ahmad, President GAMCA vide his letter dated 19-09-2008, copy whereof was not provided to us. From the paras quoted above, it appears that there was no determination of the amount to increase in fee by the Executive Board. A proposal was suggested by the GAMCA probably on the behest of GCC Medical Centres and was endorsed by the Executive Board. In view of the documents and information made available on the record, we are unable to accept the claim of GAMCA(s) that fee is prescribed/ fixed by the Executive Board. In fact, it appears that fee is fixed by GAMCA(s) and only submitted to the Executive Board for its approval. As the letter at **Annex D** goes ahead, it gives an impression that, if in future a request is made to further enhance the fee, the same will be done by the Executive Board.

5.3.21. We the undersigned enquiry officers inline with the settled position are of the *prima facie* view that where any undertaking on their own initiative recommend fixation of any fee/price, which is subsequently approved by any regulator, would attract the provisions of the competition law regarding the price fixation. In any event, it is also pertinent to mention here that under the Article 5 of the Constitution of Islamic Republic of Pakistan, 1973, obedience to the Constitution and law is the inviolable obligation of every citizen wherever he may be and of every other person for the time being within Pakistan. The Act is a validly enacted law and its obedience is mandatory on every citizen and Person.

5.3.22. In view the the foregoing, we the undersigned enquiry officers are of the view that all the practices as discussed above i.e. division of territories, equal distribution of consumers/intended emigrants for the ‘pre-departure medical test for the GCC Countries except United Arab Emirates and fixation of fee for the tests conducted are, *prima facie*, in violation of Section 4 of the Act.

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#### **5.4. SECTION 3 VIOLATION, IF ANY**

5.4.1. Dominant position is defined in clause (e) of sub-section (1) of Section 2 of the Act, as following:

*“dominant position” of one undertaking or several undertakings in a relevant market shall be deemed to exist if such undertaking or undertakings have the ability to behave to an appreciable extent independently of competitors, customers, consumers and suppliers and the position of an undertaking shall be presumed to be dominant if its share of the relevant market exceeds forty percent;*

5.4.2. As explained above under the head of ‘Relevant Market’ the instant case involves captive markets as the potential consumers i.e. intended immigrants/expatriates for the GCC Countries except United Arab Emirates face severely limited amount of competitive suppliers; their only choices are to get their pre-departure medical tests (which is of mandatory nature in order to procure visa for GCC Countries) from the GCC Medical Centres or not to get the medical test conducted at all and eventually opt not to procure the visa to any GCC Country except United Arab Emirates.

5.4.3. It has been admitted by all the GAMCAs that the referral system i.e. allocation of the GCC Medical Centre to intended immigrant/expatriate for the ‘pre-departure’ medical test is based on equal distribution system. GAMCAs are the coordinating offices for all the GCC Medical Centers in their region/cities and they do not let the GCC Medical Centers deviate from this common policy. Respondents have divided the territory of Pakistan in major cities i.e. Islamabad/Rawalpindi, Peshawar, Lahore, Multan, Gujranwala, Quetta and Karachi. It appears that the existence of GAMCAs in every city where two or more GCC Medical Centers are

established and supervising the referral system is in itself a sufficient mechanism to implement the common policy among the undertakings concerned.

- 5.4.4. It has also been observed from the documents made available by GAMCA that it is not only regulating the equal distribution system among the undertakings concerned but also monitoring the equal prescribed fee charged for the 'pre-departure' which is uniform throughout Pakistan. The most relevant document in this regard is **Annex-D** to this enquiry. Furthermore, the replies sent by the GAMCAs are in themselves sufficient as they provide that the fee till October 2008 was Rs.2300/- and was increased to Rs.3000/- in October 2008.
- 5.4.5. It is relevant to mention here that GCC Medical Centers are protected from the competitive pressure of potential new entrants. It has been noticed from the list provided by GAMCA that no new license has been issued to any medical centre after 2005. (Copy of the list is attached as '**Annex-AH**'). Moreover, in light of **Annex-D**; wherein it has been mentioned that technical committee could not visit due to the some reasons for the year. No other document was provided to us in support of the assertion that the technical committee made visit in the subsequent years.
- 5.4.6. Keeping in view the above, it appears that the relevant market is captive and the prospective consumers can only get the relevant services from the Respondents on their terms and conditions and not otherwise. Therefore, we are of the *prima facie* view that the GCC Medical Centers, severally and jointly, under the auspices of GAMCAs have the ability to behave to an appreciable extent independently of competitors, customers, thus hold dominance in the relevant market. Additionally, GAMCAs are also the only undertaking engaged in issuance of the slips and allocation of GCC Medical Centers to the consumers/intended emigrants and expatriates; hence, *prima facie*, GAMCAs also, individually and jointly have the ability to behave to an appreciable extend and thus holds the dominant position in the corresponding relevant market.
- 5.4.7. We are conscious of the fact that Section 3 of the Act prohibits two types of abuse of dominance; exploitative and exclusionary. Exploitative conduct is when a dominant undertaking uses its dominance to exploit its customers or suppliers. Charging monopoly prices to customers and paying low prices to suppliers or imposing unfair trading conditions<sup>1</sup> are examples of exploitative conduct. Section 3 in relevant parts is reproduced as below:

*3. Abuse of dominant position.- (1) No person shall abuse dominant position.*

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<sup>1</sup> Tetra Pak II [2001] OJ 1161/1 Para 112, *aff'd*. in Appeal

(2) *an abuse of dominant position shall be deemed to have been brought about, maintained or continued if it consists of practices which prevent, restrict, reduce, or distort competition in the relevant market.*

(3) *the expression “practices” referred to in sub-section (2) shall include, but are not limited to –*

*(a) limiting production, sales and unreasonable increase in price or other unfair trading conditions;.....*

5.4.8. In the month of October 2011, an Article was published in the Nawa-e-Waqt Sunday Magazine, a copy whereof is 'Annex-AD' to this enquiry. It has been categorically mentioned therein that the consumers have been exploited by GCC Medical Centres. The question is how? From clear reading of the article it appears that the GCC Medical Centres conduct repeats of the 'pre-departure' medical tests and charge the consumers/intended emigrants/expatriates the same amount of money or at least half of it. It appears that many consumers/intended immigrants/expatriates could not travel due to the repeats and their visas expire because the GCC Medical Centres do not issue them clear medical certificate.

5.4.9. GAMCAs were asked regarding the repeat medical test conducted in the last six months and only GAMCA Islamabad provided the data regarding the repeats. The GCC Approved Medical Centers only in Islamabad/Rawalpindi have conducted 2248 repeats of 'pre-departure' medical tests and the fee collected in this account is PKR 786,029/- (Rupees Seven Hundred Eighty Six Thousand and Twenty Nine Only).

5.4.10. From the documents available with us and the submissions made before the enquiry officers during the meeting, it appears that once, any consumer is declared unfit and requested by the GCC Medical Centre to undergo a repeat pre-departure medical test, no other GCC Medical Centre is obliged to conduct his/her test as he/she was declared to be unfit by the other GCC Medical Centre and the consumer is left with no option but to again go for a repeat after making payment of the test again.

5.4.11. POEPA in their written submissions as well as during the meeting have allged that GAMCAs create unnecessary hurdles for consumers. GAMCAs refuse to entertain the intending emigrants for medical examination on the plea that they belong to other areas and should get their medical checkups done only from their place of residence. This question was also put up during the meeting with the representatives of GAMCAs. Their response was that it is done so to avoid any possibility of fraud by the intending emigrants. However, there was no answer when it was asked them that from where this discretionary power is derived by GCC Medical Centers who claim that they are just mannequin following the instructions of Executive Board and can't go an inch beyond from what has been prescribed for them.

- 5.4.12. Under the given facts and circumstances, it appears that consumers are exploited by the GCC Medical Centers and GAMCAs and are forced to go to a GCC Medical Centre referred by GAMCA and not a medical centre of their own choice. They have to undergo the repeat medical tests and also to pay additional fee. It is also worth mentioning here that once any GCC Medical Centre declares anyone unfit and requires them to repeat the pre-departure medical test after 10-15 days, the consumer is left with no choice but to come back after that period and again undergo the pre-departure medical test and pay GCC Medical Centers additional fee. In addition, consumers are refused to conduct medical on the basis of city of origin. From the article and from the statements made by the representatives of POEPA, we observe that the GCC Medical Centers are also charging some extra amount to issue them the 'pre-departure' medical certificate.
- 5.4.13. In view of the foregoing, we the undersigned enquiry officers are of the view that all the practices discussed in Part 5.4 of this report are in *prima facie* violation of Section 3 of the Act.

## **6 CONCLUSIONS/FINDINGS**

- 6.1. Under the given facts and circumstances, submissions made by the parties and the relevant provisions of the Act as discussed in the preceding paragraphs, we have analyzed the allegations leveled by the Complainant regarding cartelization of the medical centers working under GAMCAs to (i) distribute customers on equal basis without the consent of customers, (ii) fix the medical fee; and (iii) also exploiting customers by restricting their choice and imposing unfair terms and conditions, and are of the following opinion:
- 6.1.1 Territorial allocation is an arrangement among the GCC Approved Medical Centers which, *prima facie*, has the object or effect of preventing, restricting or reducing competition within the relevant market in violation of the provisions of Section 4(1) and, in particular, Section 4(2) (b) of the Act;
- 6.1.2 Practice of equal distribution of consumers/customers among the GCC Approved Medical Centers for the purpose of conducting pre-departure medical test, *prima facie*, has the object or effect of preventing, restricting or reducing competition within the relevant market in violation of the provisions of Section 4(1) and in particular Section 4(2)(b) & (c) of the Act;
- 6.1.3 The GCC Approved Medical Centers appear to have fixed the fee to be charged from the consumers/customers for the pre-departure medical tests, *prima facie*, in contravention of Section 4(1) and in particular Section 4(2)(a) of the Act;
- 6.1.4 The role of GAMCAs, *prima facie*, is that of a facilitator of the GCC Approved Medical Centers. In fact GAMCA plays a major role to monitor the 'common policy' of equal distribution and fixed fee being charged from the

consumers/customers for the pre-departure medical tests. Such practices of GAMCA, *prima facie*, have object or effect of preventing, restricting or reducing competition within the relevant market in violation of the provisions of Section 4(1), in particular, Section 4(2) (a), (b) & (c) of the Act.

- 6.1.5 The GCC Approved Medical Centers are the only authorized medical centers to carry out pre-departure medical tests mandatory to procure visa for GCC Countries except United Arab Emirates. The GCC Approved Medical Centers appear to carry out their functions under the supervision of GAMCA in their respective region/city and under a common policy of equal distribution and fixed fee. It appears that this captive market arrangement enables them to engage in exploitative conduct by imposing trading conditions on their customers, *prima facie*, in contravention of Section 3(1), in particular, Section 3(3)(a) of the Act.
- 6.1.6 Having said above, we the undersigned enquiry officers are of the view that overseas employment is major earning source of foreign exchange in the form of overseas workers' remittances and is also playing a vital role in reducing the pressure of un-employment at home. Foreign exchange brought home through these remittances is crucial for national economy as it is used for debt servicing, alleviation of poverty, development projects and economic activities. Only in the month of November, 2011, total remittance from GCC Countries was approximately 537 Million US dollars<sup>2</sup> which could range between 6 to 8 Billion US Dollar in year<sup>3</sup>. Total number of overseas employees in GCC Countries during the year 1971 to 2008 is 4.4 Million which constitutes 47.7% of the total overseas employees in those countries<sup>4</sup>. Only in the year 2008 0.4 Million Pakistanis procured employment visa in GCC Countries<sup>5</sup>.
- 6.1.7. On the other hand, we also observed during the enquiry that GCC Approved Medical Centers earn a huge amount by conducting mandatory medical tests to procure visa of these intending overseas employees. Only in last three years (2008-2010), GCC Medical Centers in the region/Cities of Peshawar, Karachi and Islamabad/Rawalpindi earned 1.8 Billion Rupees from medical tests for overseas employees excluding repeat tests, whereas medical centers in the region of Lahore and Multan in one year (2010-2011) earned 144 Million Rupees.
- 6.1.8. However, in terms of observations made in the Enquiry Report, intended immigrants/expatriates face hurdles and exploitation or even fail to travel and their visas expire because of *prima facie* malpractices of GCC Approved Medical Centers, apparently for the unfortunate reason that there is no regulatory body to oversee the functioning of GCC Medical Centers and the consumers/intending emigrants/expatriates have no mechanism to redress their grievances. It appears

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<sup>2</sup> <http://www.sbp.org.pk/ecodata/Homeremit.pdf>.

<sup>3</sup> [http://finance.gov.pk/survey/chapter\\_11/08-Trade%20and%20Payments.pdf](http://finance.gov.pk/survey/chapter_11/08-Trade%20and%20Payments.pdf).

<sup>4</sup> [http://www.iom.int/jahia/webdav/shared/shared/mainsite/published\\_docs/studies\\_and\\_reports/pakistan-remittance-study.pdf](http://www.iom.int/jahia/webdav/shared/shared/mainsite/published_docs/studies_and_reports/pakistan-remittance-study.pdf), Reliance placed on Bureau of Immigration and Overseas Employment.

<sup>5</sup> *Ibid*

that GAMCAs and GCC Approved Medical Centers dictate their own terms and conditions and customers are playing in the hands of GCC Medical Centers which go absolutely unchecked.

- 6.1.9. We also find it worth mentioning that, despite of the arguments on behalf of GAMCA that the equal distribution system is pro-competitive rather than being anti-competitive, no effort was made by them to seek exemption of the claimed 'pro-competitive' system from the Commission under the gateway provision of Section 5 of the Act.
- 6.2. Keeping in view the public interest as highlighted in the preceding paragraphs, We the undersigned enquiry officers are of the opinion that proceedings be initiated under Section 30 of the Act against GAMCAs and GCC Medical Centers for, *prima facie*, violation of Section 4(1) read with Section 4(2) (a) (b) & (c) and Section 3 (1) read with Section 3(3)(a) of the Act.

**(NADIA NABI)**  
**SR. JOINT DIRECTOR**  
**ENQUIRY OFFICER**

**(NOMAN A. FAROOQI)**  
**JOINT DIRECTOR**  
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