

COMPETITION COMMISSION OF PAKISTAN

ENQUIRY REPORT

(Under Section 37 of the Competition Act, 2010)

***IN THE MATTER OF ALLEGED CARTELIZATION BY
PAKISTAN AUTOMOBILE MANUFACTURERS AUTHORIZED DEALERS
ASSOCIATION (PAMADA)¹***

BY

Syed Umair Javed | Noman Laiq | Irfan-ul-Haq

Dated: 1 October 2014

¹ This report concludes the inquiry initiated under Section 37(2) of the Competition Act, 2010 (the 'Act') by the Competition Commission of Pakistan on 13 December 2013, in the matter of the alleged cartelization by Pakistan Automobile Manufacturers Authorized Dealers Association

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A. BACKGROUND

1. The Commission received a letter from Insurance Association of Pakistan (IAP) on 4 June 2013 informing the former about a decision of Pakistan Automobile Manufacturers Authorized Dealers Association (PAMADA) to increase prices of body repairs and paint jobs. The letter was accompanied with the copy of a circular from PAMADA dated 12 March 2013 regarding the new rates and a table detailing PAMADA's revised rates for body repairs and paint jobs for cars of different models and makes. A copy of the letter and circular is attached as Annex A-1 and A-2 respectively.
2. The Insurance Association of Pakistan in its above referred letter also stated that the decision to increase the rates of body repair and paint jobs of cars is a direct contravention of Section 4 of the Competition Act, 2010 (the 'Act').
3. An informal market survey was conducted by the officials of the Commission to check whether the circular issued by PAMADA was actually circulated to the authorized dealers of various automobile manufacturers and whether the rates specified by PAMADA were being followed. The survey found indications that the circular had indeed been distributed to the dealers. A list of PAMADA recommended rates were provided by the paint and repair section of a Toyota dealership. Similarly, a Suzuki dealership provided a hand written quotation that was comparable to the old PAMADA rates. A copy of the list and quotation is attached as Annex A-3 and Annex A-4 respectively.
4. On the basis of the information provided by IAP and the findings of the survey, the Commission decided to initiate a formal inquiry under Section 37(1) of the Act to probe into the matter of possible violation of the provisions of Section 4 of the Act. The Commission, on 13 December 2013, appointed Mr. Syed Umair Javed, Joint Director (Cartels), Mr. Noman Laiq, Joint Director (OFT) and Mr. Irfan ul Haq, Assistant Director (Trade Abuses) (collectively the "Inquiry

Committee”) to enquire into the matter and submit a report to the Commission. A copy of the Commission’s decision is attached as Annex A-5.

5. The Inquiry Committee proposed to the Commission that in order to assess the nature and extent of possible contraventions of section 4 of the Act and to gather concrete evidence thereof, it is important to conduct an ‘enter and search’ inspection of PAMADA premises located in Karachi. The Commission, after considering the proposal, authorized a team of officers under Section 34 of the Act to enter and search premises of PAMADA and to look for the evidence of possible violation of section 4 of the Act. The authorization of the Commission is attached as Annex A-6.
6. The team of officers of the Commission, duly authorized by the latter, conducted the inspection of PAMADA premises located at 3 Shahra-e-Faisal, Karachi on 7 May 2014 and impounded relevant documents and records. A copy of the inspection report and inventory list of impounded documents and record is attached as Annex A-7 and Annex A-8 respectively.
7. Since the current enquiry relates to the dealers of automobile manufacturers, it is important to present a brief overview of the automobile industry in Pakistan before actual analysis of the facts of the case.

B. AUTOMOBILE INDUSTRY IN PAKISTAN

8. Currently, the automobile industry in Pakistan has three major car manufacturers/assemblers. Pak Suzuki Motors (Pak Suzuki) is a joint venture formed in 1983 between the Pakistani government and Suzuki of Japan based on a Technical Assistance Agreement. Pak Suzuki is in the business of assembling, progressively manufacturing, marketing and distributing Suzuki brand vehicles in Pakistan. Pak Suzuki generally manufactures cars for the middle-income group in Pakistan.

9. Indus Motor Company Limited (IMC) is a joint venture company set up by Toyota Motor Corporation, Toyota Tsusho Corporation, and members of the House of Habib. All three parties have entered into a Technical Assistance Agreement in which IMC has been granted a license to manufacture Toyota cars in Pakistan. In late 2010, IMC began the domestic production of Toyota Hi-Lux, a utility vehicle. Similarly, Daihatsu Motor Co. Limited (Daihatsu) has signed a Technical Assistance Agreement with IMC, granting IMC a license to manufacture Daihatsu motor vehicles in Pakistan.²

10. The third important player in the automobile market is Honda Atlas Cars (Pakistan) Limited (HACPL), which is also a joint venture between the Atlas Group and Honda Motor Co. Ltd., Japan. The company was created by the merger of Panjdarya Limited and Atlas Autos Ltd. in 1988. HACPL has signed a Technical Assistance Agreement with Honda to assemble, manufacture, market and distribute the Honda Civic and City cars in Pakistan.³

11. Other manufacturers/assemblers with a smaller presence in the country include Gandhara Nissan Limited (GNL) and Dewan Farooque Motors Limited. GNL was incorporated in 1981 and has a Technical Assistance Agreement with Nissan Motor Co. Japan and a Joint Venture Agreement with Nissan Diesel Co. Japan for the progressive assembly of passenger cars and other commercial and heavy duty vehicles. In 1998, Dewan Farooque Motors Limited signed Technical License Agreements with Hyundai Motor Company and KIA Motors Corporation as the manufacturer and distributor of Hyundai and Kia vehicles in Pakistan. Nissan and KIA have stopped operations in Pakistan since 2005, whereas Hyundai has stopped producing cars since 2010, largely due to financial difficulties being faced by the Dewan Group.⁴

² CCP, Automobile Study (2013) available at

<http://www.cc.gov.pk/images/Downloads/research_and_publications/automobile_study_february_19_2013.pdf>

³ ibid

⁴ ibid

12. The car manufacturers engage dealers called 'authorized dealers' to sell their products. The authorized dealers typically offer 2S (Sales, Services\Parts) or 3S (Sales, Spares, Services) services to their customers. 2S/3S automobile dealers do not just sell automobiles but also provide after-sales maintenance or parts to customers.
13. Usually, an authorized dealer is given the non-exclusive right to undertake the sale and service of the products offered by the automobile manufacturer, and in a sense the dealer is an agent or partner or representative of the manufacturing company. Cars delivered at the showroom of such dealers remain the property of the company and the transfer of ownership of the company products from the manufacturing company to the customer becomes effective upon making the payment. An authorized dealer is prohibited from acting as authorized dealer of another manufacturer or to keep a stake in any business engaged in the manufacture, selling or servicing of any motor vehicles, spare parts, accessories, chemicals and tools other than the manufacturing company's products. The automobile manufacturer determines the maximum/final suggested selling price which is inclusive of the dealer's commission and conditions for the sale of company products.
14. The dealer is also responsible for the sale of products in a quantity agreed by the dealer and the company for each year, and if dealer fails to sell such annual planned quantity, he is answerable to the manufacturing company. The dealer places orders with the automobile manufacturer semi-annually, together with sales plan for this period; however, the manufacturing company has discretion to fulfill all or such part of the order as it deems appropriate.
15. The automobile manufacturer reserves the right to directly sell company products to municipalities, government offices and state-owned enterprises. The manufacturer also has the right to make retail sales to real persons or legal entities inside the main sales area. In that case, each transaction for the automobile between the manufacturing company and customer is carried out under an

individual sales contract. The dealer forwards individual sales contracts for all such automobiles in the same month for determining sales and commission.

16. Every year, the manufacturing company and its dealers study the market situation prevailing in the automobile industry, and derive a forecast of the projected demand for automobiles. To promote timely delivery and service to the customer, the dealer has to display cars equal to a demand of roughly two weeks of automobiles, and this number is determined by the manufacturing company.

C. UNDERTAKINGS AND ASSOCIATION OF UNDERTAKINGS

17. PAMADA is an unregistered association of authorized dealers of automobile manufacturers having 44 members across Pakistan. The PAMADA members include dealers of all major automobile manufacturers. It is important to clarify that while PAMADA members represent dealers of auto manufacturers all across Pakistan, not all the authorized dealers are members of PAMADA. The list of PAMADA members is attached as Annex B-1.
18. Section 2(1)(q) of the Act defines 'undertakings' as follows:

Undertaking means any natural or legal person, governmental body including a regulatory authority, body corporate, partnership, association, trust or other entity in any way engaged, directly or indirectly in the production, supply, distribution of goods or provision or control of services and shall include an association of undertakings;

19. In terms of the above definition, both the car manufacturers and the authorized dealers are 'undertakings' and PAMADA being an association of authorized dealers, is an 'association of undertakings'.

D. RELEVANT MARKET

20. 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’ 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 neighboring geographic areas because, in particular, the conditions of the Competition are appreciably different in those areas;

21. This definition, as is clear, has two components: a product market and a geographic market.
22. Since the current enquiry involves authorized dealers of automobile manufacturers, therefore, for the purpose of defining relevant market, the following products offered by these authorized dealers are identifiable:
- (i). new automobiles;
 - (ii). automobile repair and paint job services;
 - (iii). automobile spare parts

23. Apart from the above, automobile dealers employ experienced sales and technical staff for the provision of the services mentioned. Therefore, the employment market is another market to consider in this enquiry.
24. A discussion on each of the above possible relevant market follows.

MARKET FOR NEW AUTOMOBILES

25. The various automobile manufacturers in Pakistan, including Toyota, Honda, and Suzuki, sell new automobiles to customers through a network of authorized dealers. Typically, a dealer carries the automobiles of only one manufacturer and sells them for a pre-determined commission. Authorized dealers of various manufacturers are spread out in almost all major cities of the country. New automobiles differ from used ones in many ways: the former can be bought more reliably, bring with them after-sales support and warranties, and attract broader financing options as compared to the used cars. While some used automobiles may be substitutable to some extent with used automobiles, especially when we take into consideration imported used cars, whose advanced features compensate for disadvantages in terms of mileage or warranty, new automobiles nevertheless are distinct in terms of their condition, reliability, and prices.
26. New automobiles being offered by authorized dealers of automobile manufacturers is a distinct and separately identifiable service, and therefore constitutes a relevant product market. Automobile manufacturers set out terms and conditions for the sale of automobiles by their authorized dealers, irrespective of their geographical location. Furthermore, the prices of new automobiles are similar all across Pakistan. Therefore, for the purposes of this enquiry, the relevant geographic market for the sale of new automobiles may be considered as the whole of Pakistan. In view of above, one of the relevant markets in this enquiry is the market for new automobiles in Pakistan.

MARKET FOR AUTOMOBILE BODY REPAIRS AND PAINT JOBS

27. Automobile repair and paint job services are provided by authorized dealers as part of their after-sales service, as well as by traditional workshops and mechanics. The provision of after-sales service of the vehicle offered at authorized dealerships is different from the services offered by conventional mechanic workshops in terms of quality, convenience, and value for money spent. Staff at authorized dealers is professionally trained to undertake repair and paint jobs. These services are especially important for insurance companies, as vehicles insured by the latter are normally referred to authorized automobile dealers for parts and repairs. Automobiles can also be repaired and painted at both authorized dealers and traditional workshops, and in that sense, the two are substitutes of each other. However, in case of insurance claims, this substitution is usually not available to customers. The rates and other conditions of competition (regulatory frame work, taxes etc) for provision of these services are sufficiently homogenous all across Pakistan, therefore, for the purpose of this enquiry, all the undertakings involved in the provision of automobile paint and body repair services fall into a single geographical market that is the whole of Pakistan.
28. In view of the above, we can consider the market for provision of automobile body repair and paint service at the authorized dealerships of authorized automobile manufacturers as one of the relevant markets for the purpose of this enquiry.

MARKET FOR AUTOMOBILE SPARE PARTS

29. In Pakistan, three types of automobile spare parts are available: Genuine (OEM), local (aftermarket), and kabli (recycled from old/damaged cars). The three vary in price and quality. Genuine parts are of good quality and are sold by authorized dealers as part of their after-sales service. Local and kabli parts are available widely at automobile part shops and traditional mechanic workshops at much lower prices as compared to genuine parts. The level of interchangeability between the three parts depends on several factors including warranty status,

customer choice, prices, condition of the car, and accessibility. Genuine spare parts sold by authorized dealers are important for insurance purposes in a manner similar to the repair market. They are also much sought after by customers whose cars are still under warranty or in a good condition, and by enthusiasts. In a broader context, however, the three types can be considered substitutes of each other in terms of usage. Therefore we can assume that the undertakings involved in the sale of automobile spare parts are part of the same product market.

30. The relevant geographic market for the sale of automobile spare parts is the whole of Pakistan, as the conditions of competition for the undertakings operating in the market are sufficiently homogeneous all across Pakistan.
31. In view of the above, for the purpose of this enquiry, another relevant market to consider is that of all kinds of automobile spare parts in Pakistan.

MARKET FOR EMPLOYMENT OF EXPERIENCED SALES AND TECHNICAL STAFF AT AUTHORIZED DEALERSHIPS

32. Authorized dealerships hire staff to manage and provide sales and after-sales service. These staff members are trained and develop expertise in their respective areas. The demand and supply of such human resource is contained within the authorized dealership circles, as traditional mechanic workshops have no requirement for such trained manpower. This makes the market for experienced sales and technical staff a relatively small market, albeit an important one. The relevant geographic market for this employment market is Pakistan, as the requirements and terms of employment at dealerships are also fairly homogenous countrywide. Hence, for the purpose of this enquiry, another relevant market to consider is the market for employment of experienced technical and sales staff at authorized dealerships in Pakistan.

E. ANALYSIS OF IMPOUNDED DOCUMENTS

33. Section 4 of the Act prohibits such agreements between the undertakings, or decisions of associations of undertakings with regard to provision of services that may have the object or effect of preventing, restricting or reducing competition within the relevant market. These agreements/decisions include the fixing of price or imposing any other restrictive condition with regard to provision of services, dividing or sharing market for the provision of services, fixing or setting quantity of production or manners or means of providing services.
34. The scrutiny of the impounded documents indicates that PAMADA, being an association of undertakings, is possibly taking decisions with regard to fixing the charges of automobile body repairs and paint jobs, fixing the prices of genuine automobile spare parts, dividing new automobile markets, and restricting inter-dealership employment, indicating prima facie violation of the provisions of Section 4 of the Act. The documents and incidences indicative of such violations are discussed below.

VIOLATIONS IN THE MARKET FOR AUTOMOBILE BODY REPAIR & PAINT JOB

35. The examination of the impounded documents indicate that PAMADA members discussed the rate of charges for body repairs and paint jobs and took decisions for fixing the same, prima facie violating provisions of section 4 of the Act. It is important to highlight that at certain occasions, PAMADA, as a representative body of authorized dealers of automobile manufacturers, attempted to ensure the enforcement of the rates decided by it on insurance companies as well. The relevant extracts from the impounded documents indicative of the fixing of charges for body repair and paint job of cars by PAMADA members are discussed and reproduced below in descending chronological order:

- a. **Annex C-1** is the minutes of a PAMADA/Toyota dealers meeting dated 7 February 2014, attached with an email of the same date from Mr. Muhammad Ahmed on behalf of Mr. Saleem Godil, President PAMADA, in which decision to boycott EFU Insurance is made due to their refusal to accept revised paint job rates of PAMADA. This annexure is presented as an example of insurance company boycott by PAMADA.

...

7. In the light of above increasing trend in the cost of performing body repair it is decided to adjust our job rates on reasonable grounds accordingly to make the business viable.

8. The current increase in our rates has been accepted by cash paid customers and insurance companies except M/s EFU Insurance Company Limited.

9. We have exercised our best efforts to convince EFU management to accept the logical change but unfortunately we could not get favorable reply.

10. It is therefore unanimously decided that to suspend undertaking insurance jobs from EFU Insurance Company Limited with immediate effect, who are not willing to accept our bonafide request till such time the new rates are acceptable by them.

...

- b. **Annex C-2** is an email dated 14 March 2013 from Syed Imran Junaid of Naseer Autos <suzukinaseer@yahoo.com>, a member of PAMADA, to Mr. Salim Godil, President PAMADA, in reply to the latter's emails

regarding revision of labor charges, highlighting how the insurance premiums have gone up from 2009 to 2013, that this increase should be added to the labor rates, and that a service manager level meeting of the association should be called to look into the issue. The annexure shows facilitation of service managers for fixing labor rates.

...

As in 2009 corolla was almost 1200,000 and now it is 1800,000. Simultaneously the insurance premium also increased but labor charges paid by insurance did not increased.

In this connection please arrange Service Manager Meeting on this issue so that the same could be expedite in true spirit.

...

- c. **Annex C-3** is a PAMADA circular dated 12 March 2013 to all Insurance Companies notifying them of the collective decision taken by PAMADA to increase rates of body repair and paint jobs with effect from 15 March 2013. The circular is followed by various tables explaining the rationale for the increase.

...

PAMADA had revised in consultation with all authorized dealers for the uniformity of body repair and paint jobs in 2009 which the surveyors continue to approve.

...

Cost of material, electricity, gas, labor and other essentials have drastically increased in the last few years and continue to increase from time to time... This increase has compelled us to revise our rates which are effective March 15, 2013.

...

- d. **Annex C-4** is an email dated 1 April 2013 from Mohaamad Shoaib, CEO of Toyota Hyderabad Motors <toyota.hyd@cyber.net.pk> to PAMADA complaining that no insurance companies have replied to them positively about the revised PAMADA rates and requesting that help may be given in this regard. The annexure shows how members are looking to PAMADA for help in implementation.

...

With reference to your e-mail regarding subject matter, we are not getting positive response from surveyor company. They are not accepting PAMADA revised rates, further we have also emailed and send letters to all insurance companies to revise rates as per PAMADA request but we have not been replied by any insurance companies.

...

- e. **Annex C-5** is a circular for the 74th monthly meeting circular dated 18 September 18 2013 to all PAMADA members, showing that they meet regularly.

All members of PAMADA are informed that 74th monthly meeting will be held as per following program:

- f. **Annex C-6** is a PAMADA circular dated 24 December 2010, circulated by Mr. Salim Godil, President PAMADA <toyota@cyber.net.pk> regarding formation of a monitoring committee to implement PAMADA policies including PAMADA body repair and paint rates.

...

With reference to the subject above, this is to inform all PAMADA members that PAMADA management has formed the following committee for monitoring/implementation of PAMADA policies.

...

We hope that all members will help PAMADA for the successful, satisfactory and peaceful implementation of PAMADA Policies.

...

- g. **Annex C-7** is the minutes of PAMADA's service managers meeting dated 20 December 2010 regarding the implementation of revised rates for body and paint jobs. This meeting also refers to the monitoring committee referred to in Annex C-6 (see para (f) above). The minutes are followed by the names and details of the 35 participants. The annexure sheds light on the implementation and monitoring arrangement.

...

As per the decided schedule Service Mangers meeting of PAMADA dealers was held on December 18, 2010, at Toyota Central motors to establish understanding and to ensure the

implementation of “Revised Rates for Body and Paint Jobs” which will be effective from January 01, 2011.

...

Service Managers also emphasized that a proper check and balance regarding the implementation of new rates should be arranged and they appreciated the idea of above referred monitoring committee.

...

The meeting was ended with full harmony and agreement to implement the new rates and it was decided that all PAMADA dealers will stand together in the coming days.

...

- h. **Annex C-8** is a letter dated 1 December 2010 from Mr. Salim Godil, President PAMADA to Mr. M Junaid Moti of PICIC Insurance Limited informing the latter about the decision of PAMADA regarding the revision in rates of body repairs and paint jobs and requesting dissemination to surveyors. The letter is followed by a table showing the revised rates. This is further evidence of collective price fixing.

...

With reference to the subject above, please be informed that the Executive Committee of PAMADA has decided to revise the existing rates of body repair and painting charges with effect from January 01, 2011. Revised rates are given in Annexure- A.

...

We will appreciate if the revised rates, are conveyed to the Surveyors and your Branch Managers to ensure smooth disposal of our bills.

...

- i. **Annex C-9** is an e-mail dated 17 November 2008 by Mr. Ali Asghar Rajabali of Honda SITE <crisism@cyber.net.pk>, a PAMADA member, commenting on a draft agreement between PAMADA and IGI Insurance. This annexure is another example where PAMADA has sought to collectively fix prices.

...

Comments on the agreement:

1. *New revised PAMADA labor rates are attached herewith. Kindly note that we have now proposed to separate the denting and painting charges i.e. the surveyor will assess the denting charges as per the accident damage but the panel charges are standardized.*
2. *Agreement does not mention payment of commission on the insurance policies sold by the PAMADA member nor does it clarify the amount payable to the member if the policy is renewed by the customer. Furthermore payments of all commission amounts should be in favor of the individual dealerships.*

...

36. The documents listed above indicate that PAMADA, *prima facie*, had fixed the prices of body repairs and paint jobs on no less than three occasions, i.e. 2008, 2010 and 2013. It further indicates that PAMADA members routinely meet and decisions regarding the rates are taken after mutual consultation. Moreover, the above referred documents indicate that PAMADA has a monitoring committee to ensure compliance, and that it does not hesitate to boycott customers that do not follow their rates. Such actions and decisions of fixing prices, ensuring the implementation of prices fixed by an association of undertakings, eliminate any price competition between the member undertakings of the associations and appear violate the provisions of Section 4 of the Act. Insurance companies and end customers are affected by these collusive arrangements, specifically those related to pricing of body repairs and paint jobs.

VIOLATIONS IN THE MARKET FOR AUTOMOBILE SPARE PARTS

37. The extract below from a letter by PAMADA to all its members indicate that PAMADA is also being used as a forum to fix prices of genuine automobile spare parts by refusing discounts on the listed prices. **Annex C-10**, reproduced below, is a letter from Mr. Salim Godil, President PAMADA, to its members regarding its decision to implement similar rates of genuine parts at all Toyota dealerships:

...

With reference to the subject above, all Toyota Dealers are advised that as per PAMADA policy, supplies of Toyota/ Daihatsu parts to all insurance companies including Adamjee Insurance Company Limited, EFU Insurance Company Limited and TPL Tracker Limited will be made on IMC issued parts price list without any discount.

In this regard you are requested to please strictly follow the above policy and do not provide any kind of discount over IMC approved

parts price list. Kindly furnish your “written confirmation” that the above policy will be strictly followed by you at your earliest.

Please inform us if any insurance company official insists on giving discount on parts prices in written.

...

VIOLATIONS IN THE MARKET FOR NEW AUTOMOBILE SALES

38. During the examination of documents, it has been observed that PAMADA members have divided the market for new automobile sales and have allocated quotas on basis of geography and customers. Some relevant extracts from the impounded documents are reproduced below in descending chronological order:
- a. **Annex C-11** contains the minutes of Toyota dealers meeting contained in an email dated 31 August 2013 in which the new car allocations are divided amongst the dealers on basis of geography. The minutes are attached to an email sent by Mr. Nadeem Khalid <forte.rawal@hotmail.com>. The minutes discuss the rational and mechanism to divide the market in detail.

...

It was discussed and agreed that by offering discounts of few thousands out of commissions, we do not convert Honda customers into Toyota customers and increase the Toyota market share against Honda or used imported vehicles but are fighting among ourselves and are merely snatching the Toyota market share from our brother dealers and not from competition.

...

It was also discussed and agreed that mostly the discounting trend is triggered because of influx of vehicles from other regions and then afterwards it becomes a snow ball effect.

...

With these objectives in mind, it was agreed that three regional committees shall be formed which are as follows.

...

- 1. These committees shall coordinate with dealerships in their respective regions and shall jointly discuss and revise forecasts of the dealership to bring them closer to the actual market potential in their respective regions. Regional total achieved number shall be then discussed in the joint dealer committee meeting, consisting of all eight members of the three committees. If the numbers are in line with the total market potential of the country then they shall be accepted other wise the joint dealership committee shall make adjustments. The final figures shall be discussed with IMC and when both parties shall agree on numbers, the same shall be intimated to all dealerships. Supposing IMC and dealers committee agree that in a particular month the total market potential in the country is 2000 units and suppose all three dealers committees agree after discussions and past performance that their respective shares are as follows.*

Southern Committee: 35% i.e. 700 units shall be divided among all southern region dealers.

Central Committee: 40% i.e. 800 units shall be divided among all central region dealers.

Northern Committee: 25% i.e. 500 units shall be divided among all northern region dealers.

...If a dealership sells a portion of its own allocation at discounted rates, it shall not affect the other dealerships business as they shall be having enough customers of their own to whom they shall be able to sell the allocated vehicles at full price. No dealer shall have any extra units to sell at discounted prices or send them to other areas. This idea is based on the basic principle of balancing the demand and supply rather my suggestion is that the supply should be marginally less than the demand so that a pull can be created in the market.

...

- b. **Annex C-12** is a letter from Mr. Salim Godil, Managing Director Toyota Central Motors <toyota@cyber.net.pk> dated 7 June 2010 to Mr. Ali Jamali, General Manager Indus Motor Company <ali.jamali@toyota-indus.com> in which a protest is registered against Toyota Southern Motors for poaching its corporate client.

...

Reference to the subject, this is to bring to your kind attention that Fauji Fertilizer Bin Qasim Ltd is our valued PRA customer and our sales team was in continuous follow up with this customer regarding the purchase of Toyota Corolla XLI & GLI.

Upon the follow up with customer for the payment of the vehicle it has been found that Toyota Southern Motors has sent the orders to Indus Motor Company Limited, Vide PBO numbers 1431349 and 1431350, which as per PRA policy is considered as PRA violation.

In this respect we request you to kindly transfer the sales commission to Toyota Central Motors and also request other dealerships to not to participate any sales enquiries generated by this customer in future.

...

39. The evidence listed above indicates that PAMADA's members, along with other Toyota dealers, have taken the decision to divide and allocate vehicles sales along territorial lines and have an understanding not poach each others' corporate clients. Clearly, this restricts and potentially eliminates any meaningful competition, to a large extent, in the relevant market.

VIOLATIONS IN THE MARKET FOR EMPLOYMENT AT AUTHORIZED DEALERS

40. Impounded documents indicate that PAMADA has applied restrictions on the movement of employees between its members, restricting competition between dealerships in procuring experienced human resources. The following is some of the evidence that was found in this regard in descending chronological order:

- a. **Annex C-13** is a PAMADA circular issued by Mr. Salim Godil, President PAMADA, dated 11 June 2011, specifying that PAMADA members

should not hire former employees of other members unless an NOC is given by the previous employer.

...

It has come to the notice of management that few PAMADA members are still hiring employees of other PAMADA members.

In this regard and as per earlier instructions, all members of PAMADA are informed that at the time of hiring new employees, please make sure that the candidate is not one, who had been working with other PAMADA Member. If the candidate is an ex-employee of any other PAMADA member, please do not hire such candidate until unless the ex-employer furnishes No Objection Certificate (N.O.C)

...

- b. **Annex C-14** is an email dated 9 March 2009 by Mr. Salim Godil, President PAMADA to Mr. Hassan Ali Fado <afadoo@cyber.net.pk>, CEO of Toyota Southern Motors regarding the hiring of an employee in violation of PAMADA policy.

...

Kindly refer PAMADA Circular dated March 27, 2007 regarding hiring of employees, wherein it was informed that no PAMADA Member can hire any previous employee of other PAMADA member until unless the previous employer issues No Objection Certificate (NOC) to their ex-employee.

...

- c. **Annex C-15** is an email dated 3 February 2010 from Mr. Salim Godil, President PAMADA to a Mr. Hassan Ali Fadoo, CEO of Toyota Southern Motors <afadoo@cyber.net.pk> informing him of Toyota Hyderabad Motors's decision to terminate an ex-employee of the former employee who was hired in violation of PAMADA policy.

...

With reference to your letter dated February 03, 2010 on the above subject we would like to inform you that M/s Toyota Hyderabad motors has terminated Mr. Junaid Mansuri as per PAMADA instructions in response to your complaint.

...

- d. **Annex C-16** is an email dated 28 January 2010 from Mr. Salim Godil, President PAMADA to Mr. Muhamad Shoaib, CEO Toyota Hyderabad Motors <m.shoaib@toyota-hyderabad.com>, regarding a dispute between two members over the hiring of a former employee, Mr. Junaid Mansuri, without obtaining an NOC.

...

If you want to keep Mr. Junaid Mansoori associated with your organization, please provide NOC issued by Toyota Southern/Defense Motors in favor of Mr. Junaid Mansoori at your earliest.

...

We have received application from Mr. Junaid Mansuri dated 04, Jan, 2010.

Our sales Manager contact Mr. Raja Bisham (Manager Administration) Toyota Defence motors and ask about Mr. Junaid Mansuri and he replied that we have No Objection if you employe him.

After his assurance we called Mr. Junaid Mansuri for interview. ..., as per him, Toyota Defence Motors Management told him that you are not permanent employee therefore we cannot give NOC. Therefore, we have not hire him as a employee until and unless we got NOC.

41. The documentary evidence listed above indicates that PAMADA has formulated a policy whereby a member cannot hire another member's employees without the latter's consent. An example has been provided in the evidence above in which an ex-employee of one PAMADA member who was hired by another PAMADA member was fired to avert a violation of PAMADA policy. This provides an unwarranted means of collectively controlling movement of human resource within the industry. The restriction hampers competition between members, as experienced sales and technical staff cannot freely move around, which is critically important for bringing effective competition in the relevant market.

F. FINDINGS

42. In terms of paragraph 35-36 above and the documents and excerpts quoted therein, it appears that in the relevant market for provision of services of automobile body repairs and paint jobs at the authorized dealerships of various automobile manufacturers in Pakistan, PAMADA is being used as a forum by its members to discuss and decide the prices of services being offered by them. The impounded documents contain circulars and schedules addressed to PAMADA

members to communicate the rates for provision of services of body repair and paint jobs. The documents indicate that PAMADA has also tried to ensure the implementation of rates by circulating the price schedule to the insurance companies as well, and have threatened boycott of the insurance companies in case of non-compliance.

43. The authorized dealers are appointed by the auto manufacturers mainly to provide 2S or 3S services and dealers enter into exclusive agreements (usually having territorial allocations) with the auto manufacturers. The manufacturers require good standard of facilities, ambiance and quality of service from their authorized dealers, in order to facilitate their customers. This type of competition is typically called intra-brand competition. OECD Glossary of Statistical Terms defines intra-brand competition as follows:

Firms marketing differentiated products frequently develop and compete on the basis of brands or labels. Coca Cola vs. Pepsi-Cola, Levi vs. GWG jeans, Kellogg's Corn Flakes vs. Nabisco's Bran Flakes are a few examples of inter-brand competition. Each of these brands may be preferred by different buyers willing to pay a higher price, or willing to make more frequent purchases of one branded product than another.

Intra-brand competition is competition among retailers or distributors of the same brand. Intra-brand competition may be on price or non-price terms. As an example, a pair of Levi jeans may be sold at a lower price at a discount or specialty store as compared to a department store, but the discount or specialty store would be without the amenities in services that a department store provides. The amenities in services constitute intra-brand non-price competition. Some manufacturers seek to maintain uniform retail prices

for their products and prevent intra-brand price competition through business practices such as resale price maintenance (RPM) in order to suppress intra-brand non-price competition, if it will increase sales of their product.⁵

44. Usually, the insurance companies entertain the claims of their clients at the authorized dealerships of the auto manufacturers to ensure quality of work, although similar work can be done in the open market at lesser rates, and the customers also prefer to get their work done at the authorized dealerships of auto manufacturers perceiving better quality. However, the documents impounded from the PAMADA office indicate that PAMADA members, by way of collectively fixing the rates of the services, are prima facie hampering the free market mechanism of price discovery. Such arrangement of fixing prices is clearly against the interest of insurance companies who are subjected to a fixed price irrespective of the quality of service they obtain, and to customer who invariably end up paying higher premiums. Furthermore, such arrangements leave no incentive for the service provider to improve the quality of service and attract new customers. Therefore, in long run, the investment in development of new products and services is also curtailed.
45. In view of above, it appears that PAMADA has taken decisions regarding the rates of automotive body repairs and paint job services offered by PAMADA members, especially for insurance companies, which have the object and effect of preventing, restricting or reducing competition in the market for automobile body repairs and paint jobs in Pakistan, in prima facie contravention of Section 4(1) read with Section 4(2) (a) of the Act.
46. In terms of paragraph 37 above, PAMADA appears to have taken decisions relating to fixing the prices of genuine spare parts supplied by automobile manufacturers by strictly prohibiting its members to offer discounts, which have the object and effect of preventing, restricting or reducing competition in the

⁵ OECD, Glossary of Statistical Terms available at < <http://stats.oecd.org/glossary/detail.asp?ID=3153>>

- market for automobile spare parts, in prima facie contravention of Section 4(1) read with Section 4(2) (a) of the Act.
47. In terms of paragraph 38-39 above, PAMADA appears to have taken decisions relating to the division of market and allocation of quota with respect to new automobile sales, which have the object and effect of preventing, restricting or reducing competition in the market for new automobiles, in prima facie contravention of Section 4(1) read with Section 4(2) (b) & (c) of the Act.
48. In terms of paragraphs 40-41 above, PAMADA appears to have taken decisions relating to restrict the movement of staff between automobile dealers, which have the object and effect of preventing, restricting or reducing competition in the market for employment of experienced sales and technical staff at authorized dealers, in prima facie contravention of Section 4(1), read with Section 4(2) (a), (b) & (c) of the Act.
49. In terms of paragraph 19 above, the members of PAMADA are ‘undertaking’. Various documents presented in the report indicate that members of PAMADA have not only taken part in the decision making of the association but have also implemented those decisions in all relevant markets identified above, which prima facie amounts to an agreement between undertaking which has the object and effect of preventing restricting and reducing competition. Therefore it appears that PAMADA members by way of participating in and implementing the decisions of PAMADA have prima facie acted in contravention of Section 4(1), read with Section 4(2) (a), (b) & (c) of the Act.

G. RECOMMENDATION

50. Collusion and cartelization are the most egregious form of anti-competitive behavior. When competitors take collective business decisions, the market and consumers suffer from uncompetitive prices, fewer choices, and reduced quality of products. Collusion and cartelization also raise entry barriers, restricting entry of new players, which further stagnates competition.

51. The automobiles sector in Pakistan is a relatively small one, with just a handful of major market players competing in the market. In this situation, any collusion between the market players, like the instances highlighted in this inquiry, will lead to a serious degradation of competition in the market. It would, therefore, be in the public interest to ensure that there is no collusion or cartelization in the sector so as to ensure healthy competition therein.
52. In light of the above mentioned findings, it is recommended that the Commission may consider initiating proceedings against PAMADA and its members under Section 30 of the Act.

Syed Umair Javed
Joint Director

Noman Laiq
Joint Director

Irfan-ul-Haq
Assistant Director