

Enquiry Report

In the matter of Cartelization by Pakistan Ship's Agents Association

1. This report is being prepared pursuant to a *suo moto* enquiry authorized by the Commission under Section 37(1) of the Competition Act, 2010 into alleged collusive behavior by Pakistan Ship Agent's Association (PSAA) in violation of Section 4 of the Act.

Background

2. The Commission received information from Pakistan Paper Merchants Association (PPMA) through its letters dated 9 March 2010 and 12 May 2010 (**Annex A and B**, respectively) which indicated that PSAA might be involved in what appeared to be, prima facie, collusive practices vis-à-vis determination of ancillary charges imposed by various ship's agents. Some information provided indicated that PSAA had a role in setting the charges for the services provided by its members. One such example is an extract from correspondence between PPMA and a local ship's agent, quoted in the 12 May 2010 letter of PPMA, which states:

All the local agents are obliged to apply rate of Ancillary charges on the basis of scale as recommended and approved by Pakistan Ship Agents Association and Collected ancillary charges are within the PSAA's approved scale.

3. The Commission wrote to PSAA about the matter on 29 June 2010 asking about the role of PSAA in determining the charges against the services offered by the ship's agents (**Annex C**). PSAA informed the Commission on 6 July 2010 that PSAA did not determine the ancillary charges and it merely recommended a range for the guidance of its members, to help in case of breach and to inform the various stakeholders (**Annex D**). The relevant extract is reproduced below:

Please find enclosed the most recent and current "recommended range of ancillary charges" dated September, 2008 and February, 2010 respectively. You will note the justification/logic of each charge is also given. You will also note that aside from items delivery order (import and Documentation (export) all other charges are on levied behalf of the principal. Such information is often required by PSAA to be presented to various public and private for a e.g. customs, FPCCI, KCCI etc and enables wide publicity of Ships Agents charges as well as allowing for a redressal mechanism in case of breach. You will however, appreciate

that an association can only recommend a range of charges to its members as a guideline and cannot enforce the same.

4. In light of the information received, and the communication with PSAA, the Commission deemed it appropriate to conduct a search and inspection of PSAA's premises located in Karachi to determine further details about the matter. The Commission's authorization under Section 37 of the Act is attached as **Annex E**.
5. A team of officers of the Commission, duly authorized by the latter, conducted a search and inspection of PSAA's premises on 7 January 2011 and impounded materials relevant to the matter at hand.
6. Thereafter, the Commission appointed Ms. Shaista Bano, Director and Mr. Syed Umair Javed, Deputy Director (collectively the 'Enquiry Officers') to enquire into the matter and submit a report to the Commission.
7. For the purposes of this enquiry, the Enquiry Officers took into account, *inter alia*, the material impounded from the search and inspection as well as PSAA's comments on the matter sent earlier to the Commission.

About PSAA

8. According to PSAA's website, "Pakistan Ship's Agents Association (PSAA) was formed in 1976 and is the sole licensed Trade Association for Shipping Agents comprising over 70 reputed members handling vessels calling at Pakistani Ports. PSAA is registered with the Ministry of Commerce under the Trade Organizations Ordinance, 2007. The main objective of this Association is to resolve problems faced by its members and to make a positive contribution to the long term progress of the Ports and Shipping industry in Pakistan." ¹
9. Being an association of undertakings, it is an undertaking as per the definition given in Section 2(1) (q) of the Act.

Relevant Market

10. During the perusal of the impounded evidence, two kinds of charges have come to light as far as the matter at hand is concerned. First, ship's agents levy terminal handling charges (THC) on behalf of the principals they represent. Second, they levy ancillary charges for the services they provide themselves e.g. security, insurance etc. In the case at hand, we are largely concerned with the ancillary charges levied by the ship's agents.
11. Ancillary services offered by ship's agents include processing delivery orders, documentation, port discharge release, insurance against container loss and security against container damage etc. The relevant product market for this case is

¹ <http://www.psaa.org.pk/>

that of ancillary services like these. These services are provided by the ship agents in addition to the THC which they charge on behalf of the principals they represent.

12. These services are similar on all the sea ports in Pakistan, particularly Port Qasim and Karachi Port. The container terminals therefore covered include KICT, QICT, and PICT. These ports and terminals are used interchangeably hence the geographical market is the whole of Pakistan.
13. The relevant market in this case is the market for ancillary services provided by ship's agents at the sea ports of Pakistan.

Recommendatory Range of Ancillary Charges

14. PSAA informed the Commission through its letter dated 6 July 2010 that the association merely issues a 'recommended range of ancillary charges' as a guideline for its members. According to PSAA, this range is also required to be submitted to various stakeholders including government agencies and serve as a reference for cases of breach.
15. Documents impounded from the search and inspection shed light on the way in which the range is arrived at. Following are some extracts that are important in this matter.

- a. **Email dated 2 June 2006 from Secretary PSAA to all Managing Committee Members. Annex F**

As you are aware we have recently provided existing recommended range of PSAA with respect to the above to all members with a request to for views on the same i.e. whether they are charging/ collecting as per our range or beyond range and whether they are charging under any other head(s).

Cooper suggested Rs. 1,375 and Asiatic Rs. 1,350.our previous range was Rs. 1,100. we wish to recommend new range of this item between Rs. 1,100-1,400. Please Advise.

United Marine Agencies suggesting following three new charges which we believe perform by agents in rare cases.
Amendment Fee (Export) Rs. 1,000 per B/L
Amendment Fee (Import)Rs. 200 per B/L
Bank Guarantee Release Rs. 200 per B/L

You might be aware that Association is under tremendous pressure from top government officials and other entities

like customs, Ports, FPCCI, agents. Please advise whether these charges are justified.

Please Advise what is the appropriate use of word “Recommended” range or “Indicative” range. Kindly let us have your views separately on the above four points as soon as possible enabling us to reach just and fair conclusion and finalize new range for circulation to members and relevant trade bodies.

b. Email dated 3 June 2006 to PSAA General Secretary from Golden Shipping Lines. Annex G

It should not exceed Pakistan equivalent of USD: 20/- per B/L (B/L ex. Rate). There should be no extra charges for allied services, such as Amendment Fee (Export) or Amendment Fee (Import).

c. Email dated 5 June 2006 to General Secretary PSAA Mr. Amir Ali by Ava Cowasjee. Annex H

The documentation charges should be around Rs. 2100/- per bill of lading and not too much more. Amendment charges (import and export) should be Rs. 1000/-. Release against bank guarantee should not be mentioned.

d. Email dated 3 June 2006 to PSAA General Secretary from Globelink Pakistan. Annex I

Dear Amir Ali

Ref to telecom please note that in my view of the above subject.

- 1- Rs. 1400 is o.k.*
- 2- Shipping line charges Amendment charges only for USA/ CANADA sector.*
- 3- I agree with PSAA.*

e. Notice t Trade, Conference Covering Trades between India Pakistan- Bangladesh-Ceylon Conference 26 June 2007. Annex J

In view of the increased costs and imposition of sales tax at 15% vide sro no. 480(1) dated 26.06.07 on all services rendered by terminal operators, member lines have been constrained to review the THC/Ancillary charges. Member

lines wish to notify the trade that with immediate effect following level of revised THC/Ancillary charges will be applicable at all Pakistani Ports/ Terminals.

16. The extracts in the preceding paragraphs shed light on how the PSAA is used as a platform to discuss and deliberate on the recommended range of ancillary charges issued by PSAA. There are more recent examples of the same exercise which clearly show the manner in which these recommendations are decided and circulated. The extracts are reproduced below.

a. Minutes of the Meeting held on 5 May 2008. Annex L

A meeting was held on 05.05.2008 at 11 am on 3rd floor, Custom House, Karachi to address increasing complaints by the trade against shipping agents, shipping lines, freight forwarders, terminal operator and stevedores, in pursuance of instruction of honorable FTO in decision of Complaint C-752/2007, Chief Collector of Customs (South) Office Order No. 05/2008 dated April 03, 2008 and Board's letter No.2 (41)-ICM/2005 dated 28th March, 2008.

Following was discussed and decided with agreement of participants.

Para 2 (ii)

Pakistan Ship's Agents Association distributed Tariff of their charges (Annex-II). As per the tariff it was agreed that security deposit per one TEU will be Rs. 10,000/- and Rs. 25,000/- for local and upcountry destination respectively .the rates will be double in case of 40' containers.....

b. Minutes of the Managing Committee meeting held on 4 September 2008 at Karachi. Annex M

From Item No. 6

Meeting reviewed the suggestions/ recommendations received from some members in response to Association's emails dated 28-07-2008 and 04-08-2008 inviting feedback from members. With respect to terminal handling charges THC and container demurrage / rent charges it was felt that association should not involve itself / declare any quantum because these charges are related to shipping

lines / owners and association should restrict itself to shipping agents' charges. The meeting also discussed the suggestion of M/s. Anchor shipping that THC should be charged in US dollars like in Srilanka. It was decided that all charges should be in rupees not in dollars. After thorough discussion revised ancillary charges were approved.

c. Extract from Minutes of the Meeting held on 25 November 2008. Annex N

A meeting was held on November 25, 2008 at 11-00 A.M. at 4th Floor, Custom House, Karachi, to address various problems being faced by the trade, clearing agents and shipping agents in relation with the issues of security deposit for containers and destination charges for import cargo. The problems were discussed specifically in the light of directions of Honorable Federal Tax Ombudsman in various complaints, directives of Federal Board of Revenue, Islamabad and Chief Collector of Customs (south), Karachi.

2- The Additional Collector told the participants that agenda of the meeting comprised of two issues as detailed below; however, floor shall be open for discussion after the discussion on agenda items.

- A) The Shipping companies were charging amount of Security Deposit higher than that prescribed in Minutes of Meeting dates May 15, 2008. And such Security Deposits were being returned back to traders after exorbitant delay.*
- B) Complaints of Mr. Noor Mohammad against various Shipping Agents.*

3- A- i) The first issue was discussed at length. The Karachi Clearing Agents Association (KCAA) and Karachi Chamber of Commerce & Industry (KCCI) complained for overcharging as well as delay in refund of deposits. The Pakistan Ship Agents Association (PSAA) told that they had circulated new tariff in September 2008. A copy of the same was circulated to all the participants during the meeting and same is enclosed as Annex-I. As far as delay in refund of the Security Deposit is concerned, PSAA told that they had never been complained about it from any corner. They

further told that if any complaint comes to them they respond it within one day positively...

d. Minutes of the Executive committee meeting held on 1 December 2008 at Karachi. Annex K

From Item No. 3

Paragraph 3 (c),

The meeting also discussed the scenario Vis a Vis APSA arising after granting of fresh license to PSAA. It was decided to inform all government agencies and authorities regarding sole representative status of PSAA and adopt open attitude to induction of APSA members subject to their compliance of / accession to PSAA code of conduct and range of recommended charges and to request those members having dual membership in both organizations to opt solely for PSAA.

e. Letter dated 28 July 2009 from General Shipping Agencies (pvt) LTD to Mr. Ghulam Asghar Khan Managing Director Income Rock wool (Pvt.) Ltd, Karachi. Annex O

I am also enclosing our Association's recommended range of Ancillary charges, so you have an idea of prevailing practice.

f. Letter addressed by Pakistan International Freight Forwarding Association (PIFFA) to Secretary, Ministry of Commerce, Islamabad dated 6 February 2010. Annex P

Following your directive issued in said meeting held under your esteemed chairmanship on January 18, 2010, we are enclosing herewith our recommended charges.

g. Letter Addressed by PSAA to Secretary (Commerce), Ministry of Commerce, Islamabad dated 13 February 2010. Annex Q

Dear Sir, As directed by your good self during the meeting held on 18th January, 2010 at KPT, please find attached list of our recommended range of ancillary charges along with Justifications thereof.

h. Minutes of the Executive committee meeting held on 25 January 2010 at Karachi. Annex R

Point (a)

Paragraph 1,

In the meeting it was said that, it seems that now government approach will be tough in order to resolve long standing issue of various charges charged by shipping agents, freight forwarders, terminal operators, etc...Therefore it is better that issue be resolved by mutual understanding with the trade otherwise government will intervene in order to monitor and regulate the sector.

Paragraph 2,

MR. Amir Ali Jamal, secretary general informed the meeting that PSAA recommended range of ancillary charges has been provided time and again to FPCCI, KCCI, KCAA, PIFFA etc. this list was also provided once again to all participants in today's meeting.

i. Email dated 12 February 2010 from Secretary General PSAA to all Members. Annex S

Please find attached existing list with respect to the above, we invite members suggestions for any change(s). However, such change(s) should be justified, therefore kindly mention the same.

Upon receipt of this information the executive committee shall determine if the present range should remain or be unchanged.

Please treat this issue as urgent and reply positively by 4th February. Any suggestion(s) received after this deadline will not be considered.

j. Minutes of the Executive Committee meeting held on 8 February 2010 at Karachi. Annex T

(2)

Mr. Aamir ali jamal inform the meeting that secretary chaired a meeting on 18-01-2010 at KPT and asked PSAA

to submit list of its recommended range of ancillary charges. Since the last range existed from Sept, 2008, therefore another survey from members was conducted. Very few replied on the basis of whose input he presented a chart of these items. During the discussion it was agreed there should be no endorsement charges which pertains to freight forwarders and same should be excluded from ships agents recommended ancillary charges. Finally meeting approved the revised recommended range of ancillary charges for information/circulation to all concerned quarters.

k. Email dated 12 February 2010 from Pakistan Ships Agent's Association PSAA. Annex U

Paragraph 2,

A few members responded where after Executive committee in its meeting held on 08-02-2010 reviewed the recommendations of these members and recommended the attached revised range of ancillary charges with immediate effect. All members are requested to adhere to the same.

Paragraph 3,

We invite members suggestions for any changes .however such changes should be justified, therefore kindly mention the same.

Paragraph 4,

Upon receipt of this information the executive committee shall determine if the present range should remain or be changed.

17. From these extracts the following picture emerges. PSAA invites its members to submit information and suggestions regarding the revision of previous recommended charges. At times members are surveyed for their opinion. The executive or managing committee of PSAA then decides the recommended range of ancillary charges based on the feedback it receives. The recommendations are then circulated to all members with the exhortation to implement the same. The recommendations are also shared with other related associations and government bodies. According to these extracts, PSAA has at times conditioned the membership of the association of the compliance with the recommended range of charges. This clearly indicates that the intention of PSAA behind the

- recommended charges which is to confine the ship agents into observing a particular range of charges.
18. The recommended range of ancillary charges decided and issued by PSAA over the years are attached as follows for the record and ease of reference:
 - a. **Recommended Range of Ancillary Charges by PSAA dated October 2001. Annex V**
 - b. **Maximum Ancillary Charges Recommended by PSAA dated May 2003. Annex W**
 - c. **PSAA Recommended Range of Ancillary Charges dated May 2006. Annex X**
 - d. **Shipping Agent Recommended Range of Ancillary Charges by PSAA dated September 2008. Annex Y**
 - e. **PSAA Recommended Range of Ancillary Charges dated February 2010. Annex Z**
 19. These tables document how PSAA regularly updates its recommendations to its members regarding the charges to be taken for ancillary services. As mentioned above these recommendations are made after collecting and consulting members and are widely circulated after the determination has been made.
 20. PSAA insists that it only recommends a range of charges to its members as a guide line and does not fix prices. However, practically such suggested ranges create a reference for minimum and maximum prices. This reference range distorts competition as members tend to price within this range, rather than independently arriving at their own prices. Most of the times the members tend to follow the maximum price in a suggested range, in order to maximize their profits and the maximum price emerges as a fixed price for provision of a particular service. In this way, the price range essentially works as a mechanism to fix the price of the service in question.
 21. It is pertinent to mention here that recommendations of associations are generally understood to be decisions of the latter in many jurisdictions including EU and UK. In cases of recommendations, it is not important that the recommendations are implemented by the association's members as long as it is clear that the recommendations can have an anti-competitive effect. In our case, as mentioned in the preceding paragraph, it is clear that these recommendations can have a serious anti-competitive effect in the relevant market.
 22. While these recommendations are decisions of PSAA, the foregoing extracts show that members of PSAA regularly provide information to the latter regarding

their charges and deliberate on the quantum of the recommended charges. By doing so, the members are engaging in a practice that amounts to entering into an agreement amongst them selves, as well as with PSAA, with regards to fixing prices in the relevant market.

Conclusion

23. The evidence produced above indicates that PSAA is, *prima facie*, involved in deliberating on and deciding a range of charges to be followed by its members with respect to ancillary services. This practice amounts to making a decision with respect to fixing the price for provision of services in violation of Section 4(1) read with Section 4 (2) (a) of the Act.
24. The evidence also indicates that PSAA members, by providing information related to pricing of their services to PSAA and by assisting the latter by means of deliberation to arrive at recommended range of charges, have, *prima facie*, entered into an agreement amongst themselves and with PSAA with regard to price fixing in violation of Section 4(1) read with Section 4(2) (a) of the Act.

Recommendations

25. Shipping related services are one of the key services in an economy, as they directly affect the cost of imports and exports. Any distortion in the market of these services has significant impact on the state of competition in the other sectors of economy. It would, therefore, be in public interest to initiate proceedings under Section 30 against PSAA and its members for *prima facie* violation of Section 4 of the Act.

Shaista Bano
Director

Syed Umair Javed
Deputy Director