Enquiry Report

In the matter of Cartelization among Ghee and Cooking Oil manufacturers/Association and with Transporters of Imported Edible Oil

1. The Competition Commission of Pakistan (hereinafter referred to as the "Commission") carried out a comprehensive study in the sector of ghee and cooking oil (hereinafter referred to as the "Sector Study Report") which identified vulnerabilities which may have object or effect to prevent, restrict or distort competition in the sector. It was indicated in the Sector Study Report that manufacturers do not fully synchronize their prices with the changes in the input prices and act independent of a market pressure and influence market price e.g. when international prices of palm oil drop significantly, manufacturers and importers start accumulating palm oil stocks but do not transfer the advantage of a reduced price to the end consumer.

2. Following the observations in the Sector Study Report, prices of ghee and cooking oil were also closely watched which revealed that within a short period of 4 months (starting from December 2010 to February 2011) price hiked four times in a parallel manner in different categories and brands of ghee/cooking oil. From different media reports it was also noticed that the price increase is often referred to a collective decision of all manufacturers or Pakistan Vanaspati Manufacturers Association (**PVMA**) as their association, resulting in simultaneous increase in price.

3. The Commission was apprised through a working paper regarding suspected anti-competitive activities of ghee/cooking oil manufacturers and their association i.e. PVMA which, *prima facie*, may be any collusive activity in respect of pricing and production in the ghee/cooking oil industry in violation of Section 4 of the Competition Act, 2010 (hereinafter referred to as the "Act"). Documentary evidence was produced before the Commission in the

form of Sector Study Report as well as price reviews and media reports. Upon examining the information placed before it, the Commission deemed it appropriate to search and inspect the offices of Pakistan Vanaspati Manufacturers Association (PVMA) and Pakistan Edible Oil Refiners Association (PEORA); the two pertinent associations in the ghee and cooking oil sector in Pakistan. Accordingly, three teams of officers were authorized by the Commission exercising powers granted to it under Section 34 of the Act to search and inspect the aforementioned offices situation in Islamabad and Karachi in order to collect any evidence regarding the suspected violations of section 4 of the Act. The officers conducted the search on 17 February 2011 and impounded valuable materials and documents from the offices of PVMA and PEORA.

4. Documents impounded during the course of search and inspection required detailed scrutiny. Therefore, the Commission decided to initiate a formal enquiry under Section 37(1) of the Act and pursuant to the powers contained in Section 28(2) of the Act, the Commission appointed Ms. Shaista Bano Gilani, Director and Ms. Nadia Nabi, Joint Director as Enquiry Officers (hereinafter collectively the 'Enquiry Committee') to conduct an enquiry as to whether there is any collusion/cartelization in the ghee/cooking oil sector, thereby violating Section 4 of the Act, and to prepare a detailed Enquiry Report under Section 37 of the Act.

I. Ghee and Cooking Oil Industry in Pakistan

5. Vegetable ghee and cooking oil industry is a large manufacturing sector in Pakistan and has grown tremendously since independence from a production of 4000 tones per day in 1950 to a production of 72500 tones per day in 2007.[1] This industry was nationalized in 1972, however, since 1988 private

[1] http://www.petrosin.com/CookingOil.asp.

sector has been allowed to run this industry. Today it is more than 384 billion rupees industry contributing a huge amount to national exchequer. A total of around 160 small and medium sized vegetable and ghee plants are operational in Pakistan. Nearly, 100 units, which are registered members of PVMA, produce vegetable ghee/Cooking oil with an installed capacity of around 3 million tones. The gap between annual consumption and production from registered firms is fulfilled by unregistered firms.

6. Annual consumption of edible oil in Pakistan has reached to 2.8 million tones. Only around 28% of its requirement is available from domestic sources. The remaining needs are met by imports of various edible oils mostly palm oil. Pakistan is third largest importer of Malaysian palm oil in 2009 as its import has reached to over 1.76 million tonnes a year while European Union is the second largest importer of palm oil with 1.89 million tonnes. China remains the biggest importer of palm oil with an annual import of 4.03 million tones.[2]

7. Pakistan edible oil industry has gone in to value addition and investments have been made in setting up large scale refineries in Pakistan. The refining industry is represented by Pakistan Edible Oil Refiners Association (**PEORA**) which currently has 10 refining units as its members refining imported crude palm oil. Once crude oil refined, is used by the manufacturing units of the refineries or sold in the local market to other manufacturers. Crude palm oil imports are on the rise as more than 400,000 tons were imported in 2006.[3]

8. As s substantial foreign exchange is spent on the import of edible oils whether it be refined palm oil & olien or crude palm oil, therefore, government has encouraged private investment for commercial edible oil seed farming, production of edible oils, processing and marketing of edible oils. The main domestic source of edible oil is cottonseed which accounts for major domestic

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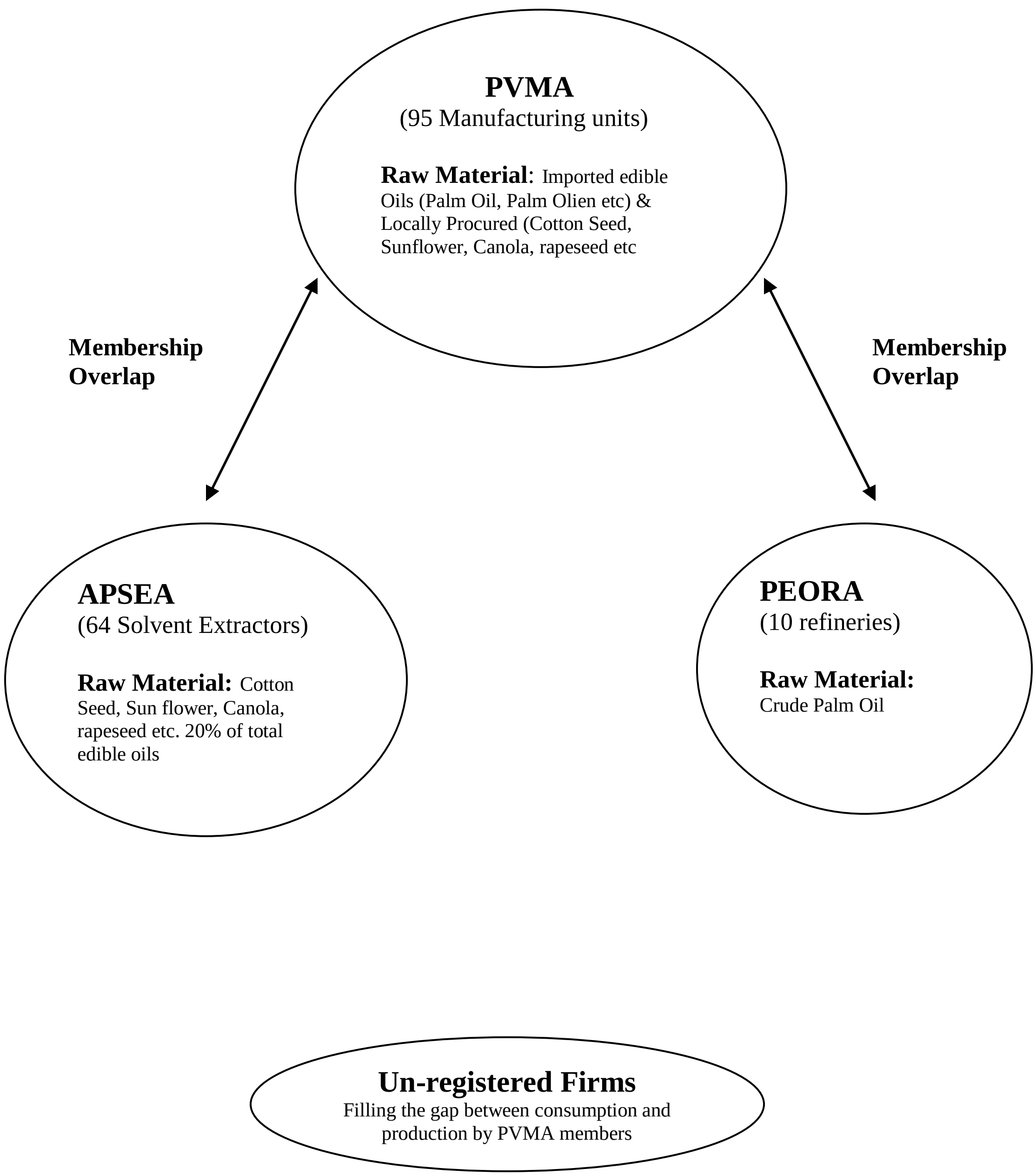
[2] http://dailymailnews.com/1210/03/Business/index.php?id=1 , information from a seminar jointly held by MPOB and PVMA on Malaysian palm oil industry.
[3] http://www.mpoc.org.pk/page/our-partners

edible oil production. In addition to cottonseed, rapeseed/mustard, canola and sunflower is grown to meet the need of domestic edible oil production. 64 solvent extraction plants are operating in Pakistan which are producing around 0.5M tones (20 %) of local procurement. These solvent extractors are represented by All Pakistan Solvent Extractors Association (**APSEA**).



II. Pakistan Vanaspati Manufacturers Association (PVMA) & Member Mills

9. PVMA is a representative of all ghee and cooking oil manufacturers in Pakistan and is registered under the Trade Organizations Ordinance, 2007. PVMA is an undertaking[4] by virtue of being an association of undertakings as per the definition given in Section 2(1)(p) of the Act.

10. Member mills of PVMA are all registered companies incorporated under the company law of Pakistan and are engaged in the business of manufacturing and marketing ghee and cooking oil. Hence all of them fall under the definition of undertaking as given in Section 2(1)(p) of the Act.

III. Relevant Market

11. The relevant market comprises of product market and geographic market in terms of section 2(1) (k) of the Act[5]. The relevant product market can be classified into two categories; “Vanaspati” and “Cooking Oil”. Cooking oil is

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[4] Undertaking” means any natural or legal person, governmental 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 of services and shall include an association of undertakings.”

[5] “Relevant Market” means the market which shall be determined by the Commission with reference to a product market and a geographic market and product market comprises all those products or services which are regarded as interchangeable or substitutes by the consumer by reason of the products’ characteristics, prices and intended uses. A geographic market comprises the area in which the undertakings concerned are involved in the supply of products or services and in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighboring geographic areas because, in particular, the conditions of competition are appreciably different in those areas.”

basically purified fat of plant origin, which is liquid at room temperature[6]. Whereas when process of hydrogenation is applied to vegetable oils and fats, it results in the conversion of liquid vegetable oil to solid or semi-solid fats which has different melting point[7]. Such hydrogenated oil is called “Vanaspati” or commonly slang for Vanaspati ghee in Pakistan[8].

12. For Ghee (Vanaspati) RBD palm oil & palm olien (imported), cotton seeds oil (local) and rapeseed & mustard oil (local) are used in manufacturing in Pakistan. For Cooking Oils sunflower oil (local and imported), Canola oil (local & imported) and soybean oil (imported) are mostly used in Pakistan.

13. Vanaspati Ghee and cooking oils are widely used in different forms of cooking including baking, sautéing and deep frying and are used at domestic and commercial level. Dietary habits all over the world including Pakistan are changing fast. Low fat, low cholesterol cooking oils are replacing ghee as cooking agent. In addition to health awareness, increase in per capita income is contributing to increased use of cooking oil. But it is mostly observed in urban areas where people have a different life style because of their higher level of education and income. Almost 4% consumers in Pakistan are shifting to cooking oil from vanaspati ghee. However, in rural areas ghee is still given preference considering it more nutritional.

14. The cooking oil and ghee industry of Pakistan is generally classified into three broad segments i.e. premier, middle and popular. There is a wide difference of production capacity, price and quality differentials, and popularity with national, regional and local brand names. It is generally believed that substitution across segments does not normally happen, however substitution within a segment is commonplace. On the basis of this product substitution,

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[6] www.en.wikipedia.org

[7] *Id*

[8] *Id*, Vanaspati is also an Indian/ South Asian name for a fully or partially hydrogenated vegetable cooking oil, often used as a cheaper substitute for ghee/purified butter. In Pakistan, vanaspati is spelled "banaspati".

there are three markets i.e. premier, middle and popular which have distinct customer preferences according to price and quality.

15. There are nearly 100 members of PVMA involved in manufacturing and marketing of different brands of ghee and cooking oil all over Pakistan. PVMA units are spread in all the four provinces and Federal Capital. For the sake of convenience the PVMA units have been divided into three zones; South zone comprising of units in Sindh and Blochistan, Central Zone comprising of Punjab, North Zone comprising of Islamabad Territory, Khayber Pakhtunkhwa & Azad Kashmir. Therefore, the relevant geographic market is whole of Pakistan.

IV. Issues

16. Whether PVMA and its members are indulged in collusion by fixing the price of ghee/cooking oil in violation of Section 4(2) (a) of the Act?

17. Whether PVMA and its members have cartelized with transporters to fix the rates of transportation of edible oil in contravention of Section 4 (2) (a) of the Act?

18. Whether PVMA designated by the Customs authorities for invoice verification of members and non-members is discriminating between its customers by charging two different rates for the same service in contravention of Section 3(3)(b) of the Act?

V. Analysis

19. Agreements and arrangements made in respect of the production, supply, distribution of gods which have as their object or effect to prevent, reduce, restrict or distort competition within the relevant market are representative of restrictive practices explicitly proscribed under Section 4 of the Act, reproduced here:

> 4. **Prohibited Agreements**.-(l) No undertaking or association of undertakings shall enter into any agreement or, in the case of an association of undertakings, shall make a decision in respect of the production, supply, distribution, acquisition or control of goods or the provision of services which have their object or effect of preventing, restricting or reducing competition within the relevant market unless exempted under section 5 of this Ordnance.
>
> (2) Such agreements include, but are 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.

Collective Decision as to Price

20. Only 28% of annual consumption of edible oil is locally procured in Pakistan and the remaining needs are fulfilled by imports of various edible oils mostly palm oil. Palm oil constitutes major component (upto80-85%) in production cost of ghee and cooking oil. The other cost factors include freight charges, utility bills, labour cost, packaging and administrative expenditure, processing wastage and marketing expenses. However, this factor is important to be noted that the prices of vegetable ghee in Pakistan rise despite a steep decline in the price of imported palm oil which constitutes the most important component of price.

21. Sector Study Report indicates that over 2007-08, the international prices of palm oil dropped significantly, by almost around 35%. In exactly the same period, the dollar, this remained stable around Rs. 60 for a number of years, jumped by 28% and the price of vegetable ghee rose by 72%. The aggregate effect on the price of the vegetable ghee should have been none or little, but it was increased by 72%. It could be the possibility that at around that time, the manufacturers and importers had started accumulating palm oil stocks but they did not transfer the advantage of a reduced price to the end consumer. In the year 2008-09, the price of palm oil increased by 22%, dollar appreciated by another 6%, whereas the price of vegetable ghee dropped by 31%. It appears this is the time when government intervened and exerted pressure on ghee and cooking oil industry to reflect the previous import price differential in output price.

22. Documents impounded from the search of PVMA's offices, *prima facie,* indicate that manufacturers behave independent of market conditions and pressure unless government intervenes. In the wake of decline in international price of edible oils government urge the manufacturers to respond and rationalize the price hike in local market which PVMA immediately contrive to act in accordance with government's advice and consequently price is reduced to a pre-determined fixed level. Forum of PVMA is used to take collectively decision as to price fixation**.** PVMA appears to be playing the lead role to negotiate and fix price of ghee and cooking oil with the government and such decisions of the association are binding on its member mills. Followings are few excerpts from the material impounded from the offices of PVMA which explicitly show fixation of price by PVMA on behalf of its member mills:

> **PVMA's Letter dated September 26, 2008 to all its Members regarding Reduction in Prices of Vegetable Ghee/Cooking Oil:** Annex A
>
> *3. It was also pointed out by the Ministry that Vegetable Ghee/Cooking Oil is being sold at around **Rs. 140/-kg** in market.*

*Responding to which it was clarified by the Chairman, PVMA that as matter of fact the Vegetable Ghee/Cooking Oil is available in the open market at **Rs. 120/-** per kg.*

4. *After detailed discussion on this issue and keeping in view the requirement of the Government to reduce the prices significantly, <u>it was decided that all brands manufactured by the PVMA units would reduce their price by **Rs. 5/- per kg** which would result in bringing down the price of one kg Vegetable Ghee to around **Rs. 115/-** per kg w.e.f. 1-10-2008.</u>*
5. *<u>In light of the position explained above, all the PVMA members are accordingly advised to reduce the price of their brands by Rs.5/- per kg.</u>*

<u>Draft Letter dated December, 2008 from Capt. Tariq Subhan (PVMA) for Reduction in Vegetable Ghee Prices:</u> Annex A1

1- *<u>In line with the descending trend of Palm Oil prices in the international market coupled with other edible oils, in month of November Pakistan Vanaspati Manufactures Association (PVMA) significantly reduced the theme prices in consultation with Government of Pakistan. Consequently the revised benchmark of **rupees 98/=** per kilogram was sent by PVMA for the product under discussion, by bringing it down from rupees 115/= per kilogram</u>.*

2- *PVMA has always honored the stipulation of present regime to pass on the maximum price advantage to the masses. Recent Conversation between Mr. Abdul Majid Haji Mohammad , Chairman PVMA and-------------------------, on 7th December, 2008, <u>with a view to further trim down the prices in open market has been expensively argued among Executive members of PVMA.</u>*

3- *<u>PVMA is pleased to inform you that revised bench mark for the product shall be set at **Rupees 88/=** per kilogram with effect from 15 December, 2008</u>.*

<u>PVMA Circular dated December 11, 2008 for reduction in Vegetable Ghee prices:</u> Annex A2

For resolving this crucial issue, the chairman PVMA, Mr. Abdul Majid Haji Mohammad had detailed negotiations with the advisor to Prime minister and Secretary of the Ministry of Interior after having discussions with PVMA members. A brief regarding the costing of Vanaspati ghee was appropriately prepared by Mr. Abdul Waheed, former Chairman, PVMA, which was communicated to secretary, Ministry of Interior, after concurrence of the Chairman, PVMA. <u>The Government was also</u>

*conveyed the inability of the PVMA to accept the demand of the Ministry of Interior for reducing the price of vegetable Ghee to Rs. 70/- per kg. Consequently it was decided that the PVMA units would sell the vegetable ghee at a rate of **Rs. 86/-** per kg (Ex-factory) and the retailers would sell the same at Rs. 90/- per kg to the public.*

In light of the position explained above all the PVMA members units are requested to please honor this agreement made between Ministry of Interior and the PVMA on the 8th of December, 2008 in the national interest.

Working paper for emergent meeting of the executive committee of PVMA scheduled to be held on Monday the 15th December, 2008 in the hotel Avari, Lahore: Annex A3

Item No. 2: Fixation of Ex-Factory and Retail Prices of the Vegetable Ghee Manufactured by the PVMA Units

Various ministries of the Federal Government and departments of the provincial Governments have been exerting pressure on the PVMA for curtailing the prices of the Vegetable Ghee manufactured by its member units to very low level, which they consider should be in consonance with the current prices of Palm Oils in the international market.

*For resolving the crucial issue (i.e. reduction in the prices) the chairman, PVMA, Mr. Abdul Majid, Haji Mohammad had detailed negotiations with the advisor to Prime Minister and secretary of the ministry of interior after having discussions with the PVMA members. A brief regarding the costing of Vanaspati ghee was appropriately prepared by Mr. Abdul Waheed, former chairman, PVMA, which was communicated to Secretary, Ministry of Interior for reducing the price of Vegetable Ghee to Rs. 70/- per kg. However, in the national interest and as a good will gesture, it was agreed that PVMA units would sell the Vegetable Ghee at a rate of **Rs. 86/-** per Kg. (Ex- factory) and the retailers would sell the same at Rs. 90/- per kg to the public.*

Minutes of Executive Committee Meeting held on 15th December 2008 in Lahore

AND

Draft Minutes of the Emergent Meeting of Executive Committee of the PVMA held on 15 December 2008 at Hotel Avari, Lahore

AND

Annex A4

Agenda Item No. 2

Para 1

*The Chairman PVMA Mr. Abdul Majid Haji Mohammad apprised the participants of the meeting regarding the developments just before Eid-ul-Azha which led him to agree with the Federal Government for fixing the price of Vegetable Ghee at Rs. 86/ - per kg (Ex-factory) and Rs. 90/ - kg by the retailers………………………………………………………………… ………………………. The secretary industries made three phone calls, and finally he desired for fixation of the price of vegetable ghee at Rs. 90/ - per kg. Responding to which, the chairman, PVMA told the secretary that PVMA can reduce price to Rs. 95/ - per kg. However, subsequently both the secretary Industries and Secretary, Interior asked finally for fixing the price at Rs. 88/ - per kg. On the 8th of December 2008 the secretary interior again telephoned the chairman PVMA and told that according to their costing the price desired by them i.e. Rs.88/- per kg is still on higher side so, it should be reduced to Rs. 80/ -per kg on which the chairman, PVMA vehemently responded that it is totally unacceptable. The Chairman, PVMA also requested Mr. Abdul Waheed, the former Chairman, PVMA for preparing a fresh costing of the production of Vegetable Ghee. The Chairman further added that after lengthy discussion with the concerned higher ups of the Government, it was agreed by the Government and the PVMA to fix a price of Vegetable Ghee at **Rs.86/-** per kg (Ex-Factory) and press release to this effect was also issued by the Ministry of Interior. It was further clarified by the Chairman that the price structure he had agreed with the Government is only valid for 2 weeks and he had made this decision in consultation with the Senior Vic-Chairman, PVMA, MR. Tariq Ullah Sufi and other PVMA members whom he was able to contact during that time.*

Para 3

Participating in the discussion, Mian Maqbool-ur-Rehman, Executive Director, M/s United Industries Ltd…………further stated that the decision in fixation of the prices has been done singly in haste and without the concurrence of the Executive Committee of the PVMA. This issue should have been decided after due consultation.

It was also explained by the Mr.Maqbool-ur-Rehman that a uniform price cannot be fixed for all brands of the ghee manufactured by different units are fixed by the units keeping in view the overheads.

Para 15
Mr. Abdul Malik ,Chief Executive M/s Kausar Ghee mills Ltd. questioned that how the prices of vegetable ghee can be same At Karachi and Peshawar as there are many variables in production of ghee at these two stations. He also added that we have intelligently tackled the pressure of the Government.

Input on Cost of Production of Vegetable Ghee by Costing Committee Members Dated 22nd December, 2008: Annex A5

In the meeting of Executive Committee of the PVMA held on 15th December, 2008 at Hotel Avari, Lahore; fixation of Ex Factory and Retail Prices of vegetable Ghee manufactured by the PVMA member units was thoroughly discussed in the light of the pros and cons. Almost all the honorable members expressed deep concern on the matter, keeping in view the harsh attitude of Government towards price fixation.

For further action on this issue, with the approval of the Chair, the House constituted a Committee consisting of the following members to firm up costing of the vegetable ghee produced by the PVMA member units.

i- Mr. Tanveer Hassan.
ii- Mr. Inam Bari.
iii- Main Maqbool-ur-Rehman.
iv- Sh. Abdul Razzaq.

The above mentioned members are requested to kindly provide their input in this regard to the PVMA secretariat at the earliest, so that a plausible action could be taken with the help of collective wisdom.

A copy of Costing already made under guidance by Mr. Abdul Waheed is enclosed as reference material.

Government of Pakistan, Ministry of Industries, Minutes of the Meeting on Edible Oil/ Ghee Industry situation/prices held on 15th January, 2009: Annex A6

The Minister welcomed the participants and briefed them about the objectives of the meeting. He informed the participants that the ministry was being persuaded by the higher forums including ECC of the cabinet for analyzing the domestic prices of cooking oil/ ghee in the wake of decline in international prices of RBD palm Olein and to ensure provision of relief to general public on account of reduction in the price accordingly. He informed that since the general public was aware about the local as well as international price trend of commodities and keeping in view, the

<u>government and the industry would have to pass-on the benefit of decrease in prices to the common man</u>. He asked the Secretary, I&P to highlight the edible oil/ ghee situation.

<u>The secretary, I&P apprised the participants that the international price of palm oil had reduced from US$ 1300/ton to US$632/ton. He explained that any increase in international prices of palm oil was immediately reflected in the prices of ghee/oil in domestic market; but the decrease in prices was not reflected properly by the manufactures.</u> <u>He informed that during January, 2009 the C&F prices of RBD Palm Olein were recorded at US$625-640/ton, however the consignments presently arriving in the country were booked earlier and were being assessed by customs authorities at C&F price of US$ 550, benefit of which was not being based on the consumers</u>. He was further of the view that reduction in international prices of edible oil had not been reflected in the domestic prices particularly the prices of premier brands of ghee/ cooking oil have not dropped accordingly.

After detailed deliberation it was agreed that:

I. Edible oil/ghee manufacturer would decrease the prices of all the brands by 3% on the lines as at Annex-II.

ANNEX-II

Voluntary Decrease in Prices of Edible Oil/Ghee Announced by the Pakistan Vanaspati Manufacturers Association

CODE NO	NAME OF ITEMS	EXISTING SALE PRICE AT USC	PRICE REVISED BY THE PVMA FOR USC	EXISTING OPEN MARKET PRICE	PRICE REVISED BY THE PVMA FOR OPEN MARKET
9288	Mezan Ghee 1Kg Pouch	94	91.18	108	104.76
10407	Mezan Cooking Oil 1 ltr Pouch	96	93.12	115	111.55
10354	Kisan Canola Oil 1 Ltr Pouch	105	101.85	110	106.7
9264	Kisan Ghee 1 KG Pouch	105	101.85	110	106.7
10414	Golden Sun Oil 1 Ltr Pkt	98	95.06	110	106.7
9291	Golden Sun Banaspati 1 Kg Pkt	98	95.06	125	121.25
10451	Sunny Pouch Bottle	101	97.97	110	106.7
9185	Kashmir Ghee 1 Kg Pouch	105	101.85	118	114.46
10324	Kashmir Canola Oil 1 Ltr.	105	101.85	118	114.46
10364	Tullo Pride Cooking Oil 1 Ltr	120	116.4	135	130.95
10353	Tullo Cooking Oil 1 Ltr Pouch	125	121.25	135	130.95
9251	Tullo Ghee 1 Kg Pouch	118	114.46	132	128.04
9270	Tullo Pride 1 Kg Pouch	112	108.64	125	121.25
10362	Dalda Cooking Oil 1 Ltr Pouch	129	125.13	135	130.95
10363	Planta Cooking Oil 1 Ltr Pouch	129	125.13	135	130.95
9278	Sufi Ghee 1 Kg Pouch	112	108.64	125	121.25
9242	Habib Banaspati Ghee 1 Kg.	118	114.46	125	121.25
10378	Sufi Soyabean/ Canola	125	121.25	130	126.1
9269	Dalda Ghee 1 Kg Pouch	119	115.43	125	121.25
10323	Habib Cooking Oil 1 Ltr Pouch	127	123.19	135	130.95
	Utility Ghee/Oil 1 Kg /Ltr.	88	85.36	105	101.85

Note: All the brands other than those listed above shall decrease their prices by three percent.

<u>PVMA Letter to all PVMA Member Mills dated 15th January 2009 regarding Edible Oil/Ghee Industry Situation/Prices:</u> Annex A7

Regarding the costing of Vegetable Ghee/Cooking Oil manufactured by the PVMA's viewpoint was very precisely pleaded by the chairman, and other members especially Mr. Ilyas Ahmed Bilour, Inam Bari and Mr. Arif Qasim. The Federal Minister for Industries and production was also appraised regarding the losses being sustained by the Ghee Manufactures and the difficulties due to short supply/cut off of the electricity and the Sui Gas.

After listening to the submissions of PVMA, the Federal Minister for industries assured for all the possible help for protection of this vital industry. However, <u>he desired the PVMA members to reduce the price of their products by 10% on the existing market prices. After long debate and discussion, it was agreed by the PVMA and the ministry of industries and production that the prices of brands of PVMA members would be reduced by 3%. A copy of the list depicting the existing prices and after reduction prepared and circulated by the ministry of industries and production is hereby forwarded for information in this regard.</u>

23. Form the foregoing, a collective behavior is obvious in ghee and cooking oil industry. Manufacturers do not follow the trend in import price of edible oils. Even though they immediately increase the price of their finished products when price of edible oils goes up in the international market. However, their approach is quite contrary to this when import price of edible oils declines. Government has persistently required ghee and cooking oil manufacturers, , to pass on relief to general public on account of reduction in international price of edible oils.

24. Meeting discussions, particularly in the year 2008-09 as given in above excerpts evidently apprise the situation when PVMA's representatives were categorically required to bring their prices in conformity with the international price of palm oil and olien. For instance, in a meeting between Ministry of

Industries and PVMA held on January 15, 2009, government representative notified “that the international price of palm oil had reduced from US$ 1300/ton to US$632/ton. He explained that any increase in international prices of palm oil was immediately reflected in the prices of ghee/oil in domestic market; but the decrease in prices was not reflected properly by the manufactures. He informed that during January, 2009 the C&F prices of RBD Palm Olein were recorded at US$625-640/ton, however, the consignments presently arriving in the country were booked earlier and were being assessed by customs authorities at C&F price of US$ 550, benefit of which was not being based on the consumers.” In view of the discussion, government required that input price should be synchronized in the output price.

25. PVMA has also been reprimanded by the Government on certain occasions that costing of production prepared by PVMA and submitted to Government departments is on the higher side. As is evident from the above quoted minutes of Executive Meeting held on 15 December, 2008 in Lahore that “on the 8th of December 2008 the secretary interior again telephoned the chairman PVMA and told that according to their costing the price desired by them i.e. Rs.88/- per kg is still on higher side so, it should be reduced to Rs. 80/ -per kg.”

26. It is quite interesting to see here that instead of individual manufacturer presenting its costing and justification for the prevailing price, costing is done by the PVMA and a collective decision is taken on behalf of its member mills and a common revised price is announced for all brands. After fixing the price a circular is issued to all PVMA members to inform the new price which is binding on them. It is also irrational to reduce the price uniformly for all brands of ghee and cooking oil when there is a clear segmentation in the market of edible oil and ghee. How is it possible for a premier brand and middle range brand to reduce price uniformly when both classes have different factors/overheads for price variation.

27. With the intervention of government, PVMA agreed to trim down the ghee price from 120 per kg to Rs.98 per kg and then finally at Rs.86 per kg within three months (26th September 2008 to 15th December 2008). It clearly shows that mills act independent of market forces and can maneuver the price when they are asked by the government to do so.

Instead of giving any justification for price rocketing and failure to pass on the benefit to consumer, PVMA pressurizes the government to reduce custom duty and claim that price will come down automatically when import duties are reduced. Following is an extract taken from minutes of Executive Committee of PVMA which elaborates on the approach of PVMA and its member towards price:

> **<u>Minutes of Executive Committee Meeting held on January 16, 2007 in Islamabad:</u>** Annex A8
>
> **Item No. 3. Rationalization of Custom Duty on Imported Edible Oils including Palm Oils with Fluctuation in the International Prices.**
>
> Para 7
> ………Mian Maqbool-ur-Rehman, Member Executive Committee stated that the PVMA should have nothing to worry about increase/decrease in the price of vegetable ghee/cooking oil and it is the public which will take appropriate relief from the Government when it becomes unbearable price pressure. He felt it was a simple demand/supply issue and the PVMA have nothing to fear.
>
> Para 9
> ….. PVMA concluded discussion on this item as follows:
>
> (i) PVMA must defend their industry on the premise that increase in the price of vegetable ghee is because of increase in the C&F price of RBD palm olien.
>
> (ii) The PVMA will not take any initiative on their own and if the Government reduces the custom duty, the price of vegetable ghee will automatically reduce proportionately.
>
> (iii) The duty structure on imported edible oils should be in line with increase/decrease in the international price.

From foregoing it appears that PVMA is trying to shift the burden on government for price hike. Member mills fail to reflect reduction in price in wake of decline in input cost at the time of import and maintain the price at a higher bench mark of prevailing international price of edible oils or price before the import and then PVMA comes up with a reason that import duty structure is the major factor for increase in price to blackmail the government.

Costing

28. Costing for final price of ghee and cooking oil is prepared by the PVMA on behalf of its member mills and submitted to Ministry of Industries to discuss and negotiate the revised bench mark of price. A brief regarding the costing of Vanaspati ghee prepared by Mr. Abdul Waheed, former chairman, PVMA, which was communicated to Secretary, Ministry of Interior for reducing the price of Vegetable Ghee is given at *Annex A9*. Costing done by an association reflects a collective decision of manufacturers regarding setting their price and raises serious concerns as to competition. Credibility of such costing prepared by the PVMA is itself doubtful as it appears from the following excerpt:

> **Minutes of the 307th Meeting of the Executive Committee PVMA held on 22nd October, 2007 in Holiday Inn Hotel, Islamabad:** Annex A10
>
> **Item No. 4: Proposal for appointment of consultants to carry out research/survey of the vegetable ghee/cooking oil industry of the country.**
>
> *The Chairman PVMA while opening discussion on this issue stated that presently we are facing very setback at the various Government forum as well as before the media as and when they ask for production of vegetable ghee in the country, use of edible oils produced locally as well as imported and break up between the vegetable ghee and the cooking oil produced in the country. Chairman PVMA, therefore, himself proposed this agenda for consideration of the Executive Committee for appointment of consultants*

to carry out research/survey of the vegetable ghee/cooking oil industry of the country.

Majority members of the Executive Committee were of the view that the PVMA member mills would not disclose their production etc. even to such consultants and this exercise will, therefore, be futile.

Fixing rate of Transportation

29. PVMA has entered into agreements/arrangements with oil tanker transporters associations namely; Edible Oil Carriage Contractors Association (EOCCA) & All Pakistan Oil Tankers Owners Association (APOTOA) and also with National Logistic Cell (NLC) to fix rates of transportation of imported edible oil to PVMA member mills from Karachi port to up and down country at different destinations. Followings are extracts taken from the documents impounded during the search and inspection of PVMA offices in Islamabad and Karachi which reveal fixing of transportation rate by PVMA:

.

Fixing Transport Rates with EOCCA & APOTOA

PVMA Letter dated March 03, 2008 to all Member Units regarding New Rates of Transportation of Imported Edible Oil: Annex B1

As per increase announced by the GOP, the price of diesel has been enhanced from Rs.32.57 per liter to Rs.36.07 per liter i.e. an increase of Rs.3.5 per liter in the previous price of diesel. For reaching to a settlement agreeable by the PVMA, the Chairman, PVMA had lengthy discussions with the Edible Oil Carriage Contractors Association (EOCCA) for fixing a new price for transportation of the edible oil to PVMA member units. Consequently an enhancement of 7% in the existing rates of transportation of edible oil has been agreed between the EOCCA and the PVMA with effect from 3rd March, 2008.

PVMA Letter dated April 19th, 2008 to all Member Units regarding New Rates of Transportation of Imported Edible Oil: Annex B2

As per increase announced by the GOP, the price of diesel has been enhanced from Rs.44.12 per liter to Rs.47.12 per *liter i.e. an increase of Rs.3.00 per liter in the previous price of diesel. To reach on an accord, Mr. Arif Qasim, Chief Executive M/s Mehboob Industries, Lahore Convener PVMA Transport Committee had detailed negotiations with the Edible Oil Carriage Contractors Association EOCCA, for fixing new rates for transportation of the edible oil by the EOCCA, and it has been agreed between the PVMA and EOCCA to raise the existing transportation rates by 4.5 %* .

In future if there is any increase/decrease in the petroleum prices the revised rates will be settled between PVMA & EOCCA, accordingly

PVMA Letter dated May 02, 2008 to all PVMA Members regarding New Rates of Imported Edible Oil: Annex B3

As per increase announced by the GOP, the price of diesel has been enhanced from Rs.47.12 to Rs.50.12 per liter i.e. an increase of 3.0 per liter in the previous price of diesel. To reach on an accord, Mr. Arif Qasim, Chief Executive M/s Mehboob Industries, Lahore/ Convener, PVMA Transport Committee had detailed negotiations with the Edible Oil Carriage Contractors Association (EOCCA) for fixing new rates for transportation of the edible oil by the EOCCA, in wake of the recent increase in the diesel prices. Consequently, it has been agreed between the PVMA and Transporters to raise the existing transportation rates by 4.5% with effect from 03-05-2008.

In future, if there is increase/decrease in the petroleum prices, the revised rates will be settled between PVMA & EOCCA, accordingly.

PVMA Letter dated June 30, 2008 to all PVMA Members regarding New Rates of Transportation of Imported Edible Oil: Annex B4

As per increase announced by the GOP, the price of diesel has been enhanced from Rs.50.13 to Rs.55.5 per liter i.e. an increase of 5.0 per liter in the previous price of diesel. To reach on an accord, Mr. Abdul Waheed, Chairman, PVMA and Mr. Arif Qasim, Convener, PVMA Transport Committee had detailed negotiations with the Edible Oil Carriage Contractors Association (EOCCA) for fixing new rates for transportation of the edible oil by the EOCCA, in wake of the recent increase in the diesel prices. Consequently, it has been agreed between the PVMA and Transporters to raise the existing transportation rates by 8% with effect from 01-07-2008.

In future, if there is increase/decrease in the petroleum prices, the revised rates will be settled between PVMA & EOCCA, accordingly.

PVMA Letter dated July 22, 2008 to all PVMA Members regarding New Rates of Transportation of Imported Edible Oil: Annex B5

As per increase announced by the GOP, the price of diesel has been enhanced from Rs.55.15 to Rs64.64 per liter i.e. an increase of 9.49 per liter in the previous price of diesel. To reach on an accord, Mr. Arif Qasim, Convener, PVMA Transport Committee had detailed negotiations with the Edible Oil Carriage Contractors Association (EOCCA) for fixing new rates for transportation of the edible oil by the EOCCA, in wake of the recent increase in the diesel prices. Consequently, it has been agreed between the PVMA and Transporters to raise the existing transportation rates by 13% with effect from 22-07-2008.

PVMA Letter dated November 17, 2008 to all PVMA Members regarding New Rates of Transportation of Imported Edible Oil: Annex B6

As per decrease announced by the GOP, the price of diesel has been reduced from Rs.64.14 per liter to Rs.61.14 per liter i.e. a reduction of Rs.3.00 per liter in the previous price of diesel. In wake of reduction, the PVMA desired a significant decrease in the existing transportation rates by the APOTOA on which the are not agreeing. To reach an accord on this issue, The Chairman PVMA, had detailed negotiations with them for reviving the transportation rates in accordance with reduction announced by the government. Consequently, it has been agreed b between PVMA and APOTOA to decrease the existing transportation rates by 4.5% with effect from 16th November, 2008.

PVMA Letter dated December 01, 2008 to All Pakistan Oil Tankers Owners Association regarding New Rates of Transportation of Imported Edible Oil: Annex B7

I am sure that to continue good business relations existing between the PVMA and your Association, you will please agree to a minimum 8% reduction in the existing transportation rates of Edible Oil w.e.f. 1st Dec., 2008.

PVMA Letter dated May 03, 2009 to all PVMA Members regarding New Rates of Transportation of Imported Edible Oil: Annex B8

In light of increase announced by the GOP, the price of diesel has been enhanced from Rs.73.50 per liter to Rs.76.97 per liter i.e. an enhancement of Rs.3.47per liter in the previous price of diesel. For reaching to a settlement keeping in view the interests of PVMA members, The Chairman PVMA, Mr. Arif Qasim and Mr. Abdul Waheed (former Chairman PVMA) had detailed discussions with the representatives of the Edible Oil Carriage Contractors' Association (EOCCA) and the All Pakistan Oil Tankers Owners' Association (APOTOA) for fixing the transportation rates of the Edible Oils from Karachi Ports to the PVMA units. Consequently, it has been decided to increase the transportation charges by 5% of the existing rates charged by the EOCCA/APOTOA with effect from May 03,2010. This is the information for all the PVMA members.

PVMA Letter dated July 06, 2009 to All Pakistan Oil Tankers Owners Association regarding New Rates of Transportation of Imported Edible Oil: Annex B9

It has been learnt that you have unilaterally enhanced the transportation charges by 15% and have started charging the same from the PVMA units. This action is highly unethical, against the business norms and against the spirit existing between APOTOA and the PVMA.
The PVMA is still hopeful that you will agree to continue the transportation of edible oil consignments of its members at an increased rate i.e. 7% in the existing transportation charges.

PVMA Letter dated July 06, 2009 to all PVMA Members regarding New Rates of Transportation of Imported Edible Oil: Annex B10

It has been learnt that the Oil Tankers Owners Association (APOTOA) has now unilaterally enhanced the transportation charges by 15% and have started lifting consignments with effect from 4-7-2009. As the designated representatives of the PVMA are fighting for the common cause and are still persuading the transporters for agreeing to our offer (7% increase), so, it is accordingly conveyed that the PVMA members should not pay more than 7% enhancement in the existing transportation charges.

Letter dated September 03, 2009 to all Member Units of the PVMA from Secretary General PVMA Mr. Zafar Hameed regarding New Rates of Transportation of Imported Edible Oil: Annex B11

In light of increase announced by the GOP, the price of diesel has been enhanced from Rs.61.52 per liter to Rs.66.11 per liter i.e. an enhancement of Rs.4.59 per liter in the previous price of diesel. For reaching to a settlement agreeable and in interest of the PVMA, on behalf of PVMA, Mr. Abdul Waheed, former Chairman has detailed discussions with the Edible Oil Carriage Contractors' Association (EOCCA) for fixing the transportation rates of the Edible Oils to the PVMA units. Consequently I have been successful in persuading the EOCCA to come down to a reasonable increase. As a result an enhancement of 8% in the existing rates of transportation of Edible Oil has been agreed by the EOCCA with effect from September 4, 2009. This is the information for all the PVMA members.

PVMA Letter dated October 02, 2009 to All Pakistan Oil Tankers Owners Association regarding New Rates of Transportation of Imported Edible Oil: Annex B12

As far as PVMA is concerned, it is hereby clarified there is no agreement existing between the APOTOA and the PVMA which hinders the reduction of fare charges if the Diesel Rates are reduced by less than Rs.2/- pr liter. There is only an understanding that whenever there is an increase/decrease in the price of petroleum products, the transportation fare will be adjusted accordingly.

In the light of the position explained above, the PVMA urges you to reduce the transportation fare of Edible Oils by 4%, as already communicated, with effect from 3-10-2009.

PVMA Letter dated December 02, 2009 to all PVMA Members regarding New Rates of Transportation Of Edible Oil: Annex B13

In light of increase announced by GOP, the price of diesel has been enhanced from Rs.64.90 per liter to Rs.70.52 per liter i.e. an enhancement of Rs.5.62 per liter in the previous price of diesel. For reaching to a settlement, keeping in view the interests of PVMA members, the Chairman PVMA Mr. Arif Qasim and the former chairman had detailed discussions with the representatives of the Edible Oil Carriage Contractor's Association (APOTOA) for fixing the transportation rates of the Edible Oil from Karachi Ports to the PVMA units. Consequently, it has been decided to increase the transportation charges by 9.5% of the existing rates of the EOCCA/APOTOA with effect from December 03, 2009. This is for information of all the PVMA members.

PVMA Letter dated April 04, 2010 to all PVMA Members regarding New Rates of Transportation of Edible Oil: Annex B14

In the light of increase announced by GOP, the price of diesel has been enhanced from Rs.70,00 per liter to Rs,73.50 per liter i.e. an enhancement if Rs.3.50 per liter in the previous price of diesel. <u>For reaching to a settlement, keeping in view the interests of PVMA members, the Chairman PVMA Mr. Arif Qasim and Mr. Abdul Waheed (former Chairman PVMA) had detailed discussions with the representatives of the Edible Oil Carriage Contractor's Association (EOCCA) and the All Pakistan Oil Tankers Owners' Association (APOTOA) for fixing the transportation rates of the Edible Oil from Karachi Ports to the PVMA units. Consequently, it has been decided to increase the transportation charges by 5% of the existing rates charged by the EOCCA/APOTOA with effect from April 01, 2010. This is information to all the PVMA members.</u>

PVMA Letter Dated May 05, 2010 to all PVMA members regarding Increase/Decrease in Transportation Fares: Annex B15

<u>In the said meeting after thoroughly pondering upon the issue, it has been agreed by the PVMA and the APOTOA/EOCCA that</u>:
If there is an increase in the Diesel Price by Re. 1/- per liter, the transportation would by enhanced by 1.5%. If increase is by Rs. 2/- per liter then enhancement would be by 3% and if Diesel price increase by Rs 3/- per liter, the transportation rates would automatically enhanced by 4.5% of the existing rates. <u>The formula will be valid for any amount by which the prices are enhanced</u>.
<u>This Agreement will come into force with immediate effect and both the parties bind themselves to adhere to the mode of increase/decrease enumerated in preceding sub-paras (a), (b) & (c).</u>
This is for information of all concerned.

PVMA Letter dated January 01, 2011 to All Pakistan Oil Tankers Owners Association regarding Increase in Transportation Charges of the Edible Oils: Annex B16
<u>Consequent upon increase in the Diesel Prices you have desired an increase of 6.63% in the existing transportation charges of the Edible Oils announced with effect from 1.1.2011. However keeping in view the good relations, the PVMA suggest that an increase of 6% in the existing rates may kindly be agreed which will a sign of pleasant business relation between the PVMA and the APOTOA.</u>

Fixing Transport Rates with NLC

Minutes of the Executive Committee meeting dated: 22nd Oct, 2007 held at Islamabad: Annex B17

Item No. 5

Chairman PVMA and Mr. Mehboob Ali, Vice Chairman to carryout negotiations with NLC, which had shown interest in past. PVMA with utmost efforts, prolonged discussion with NLC authorities have succeeded to conclude a Memorandum of Understanding (MOU) with NLC for transportation of edible oil for PVMA member units. The chairman further stated that this agreement has been received on 21st Oct, 2007 and is now placed at the table of the house.

Minutes of the Executive Committee meeting dated April 14, 2008 held at Islamabad: Annex B18

Annex- 2

Agenda Item No. 2

Mr. Bilour pointed out very pertinently that PVMA has signed an agreement with the NLC on 12th December, 2007 for providing logistic facilities for safe transportation of edible oil from Karachi port to the refineries of the PVMA in the country.

According to the agreement 25% of the loading share is to go to the NLC while rest 75% shall remain with the APOTOWA.

Letter dated 9th July, 2009 to Lt. Col. Saeed Ahmed Khan HQ Freight Services NLC from Secretary General PVMA Mr. Zafar Hameed: Annex B19

It has been unanimously resolved that NLC to float/call a tender for the up-country down country transportation of edible oil of PVMA member units through Hired Mechanical Transport HMT, in accordance with the clauseI.1 of MoU signed between NLC & PVMA on December 2007. The joint/mutual decision of OIC, NLC, GHQ, Rawalpindi & Sh. Abdul Waheed shall be binding on both NLC & PVMA member parties under same clause.

Addendum Number 20 To The Transportation Agreement between Pakistan Vanaspati Manufacturers Association (PVMA) And NLC For Transportation Of Edible Oil From Karachi To Various Destinations In Pakistan Dated: 20th July 2009: Annex B20

Both the parties have agreed to undertake transportation of edible oil from Karachi Port and Port Qasim to various destinations at <u>*revised freight rates*</u> *(Annexure – A) through NLC and NLC's HMT vehicles. The freight rates are effective from 1st November 2010.*

30. From the passages cited above, it is evident that PVMA on behalf of its member mills has entered into agreements/arrangements with transporters' Associations, EOCCA & APOTOA and also with NLC to fix the rate of transportation of edible oil to its member mills. If there is increase or decrease in price of diesel and rate of transportation of edible oil is enhanced by the oil tanker owners or are not reduced as per PVMA desire. PVMA negotiates on behalf of its member mills with the representative association of transporters and obligate them to trim down the rates of transportation as it deems appropriate.

31. PVMA represents nearly 100 manufacturers and majority of members import edible oil to produce finished products. Consignments of imported edible oils are carried to destinations by above mentioned oil transporters whose major part of business is dependent on transport of imported edible across the country. PVMA when comes to negotiation table with this enormous buying power, transporters have no other option except to succumb to PVMA demands.

32. Individual mill are not allowed to have independent arrangement with oil tanker owners/transporters. Any such step taken by any of member is strongly condemned by the association. In past when individual mills started transportation of their consignments from Port Qasim to their units on the rates agreed between them and oil tankers owners, it was considered threat to mandate of PVMA and disciplinary actions against them for violating the rules of association were suggested by the other member mills in PNMA meetings. Aforementioned stance of PVMA and some of its members is

reflected in the following extract taken from the minutes of Extra Ordinary meeting of PVMA held on July 09, 2009 in Islamabad:

> **Minutes of Extra Ordinary meeting of PVMA held on July 09, 2009 in Islamabad:** Annex B21
>
> **Agenda No. 2: Issue of Enhancement of Transportation Charges of the Edible Oil from Karachi Ports to PVMA Units**
>
> ……On the other hand APOTOA misled some of the PVMA units with the pretext that they are agreed to pay according to their enhanced rates and these units have started transportation of their consignments from Port Qasim to their units. Under this impression some units have started transportation of their consignments, without consulting the Convener Transport Committee of PVMA…….
>
> ……….Mr. Abdul Majid Haji Muhammad revived that APOTOA has pointed out names of some weak persons, who could bow before APOTOA. At this point of discussion, Mr. Abdul Waheed said that contents of the letter of APOTOA is going to disregard the PVMA and suggested that should constitute a new Transport Committee, who could take stern notice of such issues……..
>
> ……..Ch. Muhammad Waheed suggested that action should be taken against those units who negated the mandate of PVMA. Sh. Muhammad Ikrama nd Khawaja Arif Qasim jointly informed the house that PVMA has no such power to take action against such units. <u>Mr. Tariq Ullah Sufi asked Sh. Mohammad Ikram, what action should be taken against them? Sh. Muhammad Ikram suggested that their Invoice Verification should be stopped. Mr. Aamir Ali Malik said that by doing so we will loose our unity. Mr. Chairman, sh. Muhammad Ikram, Ch. M. Azam and Mr. Atta-ur-Rehman jointly proposed that we should send a delegation to compel these members that in future they won't violate PVMA Rules. Khawaja Arif Qasim suggested that their membership be suspended.</u>

33. PVMA appears to have transgressed its mandate as an association and taken a lead role in business decision making process of its member mills. Instead of member mills having a direct business relationship with their suppliers, PVMA enters into negotiations with edible oil transporters and decides the

purchase price for its member mills. Such practice of PVMA of fixing the purchase price where prevents and restricts competition between the members of a transporters association *inter se* also distorts competition between members of different transporters associations and NLC.

Invoice Verification by PVMA

34. Under the Act, abuse of dominance is prohibited under Section 3 which is reproduced in relevant context as under:

> 3. Abuse of dominant position.- (1) No person shall abuse dominant position.
>
> (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-
>
> (b) price discrimination by charging different prices for the same services from different customers in the absence of objective justification that may justify different prices.

35. PVMA has been designated to verify the invoices of palm oil, CPO, palm olein, other edible oils imported from Malaysia, Indonesia and other countries of the world. PVMA maintains a record of letter of indents of the importing units. Price mentioned in the letter of indents is counter checked by the Secretary, PVMA on daily basis through the Reuters Source. Currently PVMA is charging PVMA members Rs.04/M. Ton and Non-PVMA members Rs.10/M. Ton for their invoice verification. Following is an excerpt taken from the impounded documents which explicitly shows role of PVMA in invoice verification:

> **<u>Minutes of Extra Ordinary Meeting held on July 28, 1998 in Islamabad:</u>** Annex C
> **Any Other Item:**
> **(A) To consider Valuation of Imported Edible Oil:**
> The Chairman apprised the participants of the meeting that after holding meeting with the concerned Collectorate of

> Customs at Karachi, the Assessment of imported oil shall be made on the Declared Value with an assurance that PVMA shall maintain a proper record of letter of indents of the importing units as a counter check to resolve any dispute as and when raised by Customs Department/Importing Units.

36. To appraise the matter, letters were sent to Deputy Collector, Preventive Headquarter, Customs House, Karachi enquiring whether there is any legal requirement to seek the aforementioned information from the association or it is an exercise generally employed to facilitate Customs authorities. Secretary PVMA was also sent a letter seeking rationale behind this practice.

37. PVMA in its reply dated March 30, 2011 referred to a resolution passed in a meeting held with Customs authorities in 2001, whereby invoice verification by PVMA was given effect. The rationale behind the verification of invoices is to discourage suspected under-invoicing and remove the difficulties thereby helping the revenue collectors to compute duty/taxes and other levies to the maximum benefit of national exchequer. Minutes of meeting held with Customs authorities are given below.

> <u>**Minutes of Meeting with the Office Bearers of Pakistan Vanaspati Manufacturers' Association held on January 22, 2000 in the Member (Customs), Camp Office, Customs House, KYC:**</u> Annex C1
>
> *<u>It was decided that Reuters prices prevailing on the date of contract shall be the basis of Valuation for assessments purposes,</u> the <u>association assured necessary assistance</u> in obtaining the Reuters prices. <u>The association also agreed to verify the invoices in respect of imports made by its members. The same will be applicable to commercial importers as well.</u>*

38. Deputy Collector, Preventive, Karachi has not reverted on the query sent by the Enquiry Team. Therefore, no comments can be made on the legal basis of seeking information from an association. Nevertheless, collection of information by PVMA as to the price and quantity of edible oils imported by its member mills is sharing sensitive information that may have serious

repercussions on competition among them. Whereas Customs authorities may have their own confidential arrangement to verify invoice price with Reuters source instead of appointing PVMA to do this exercise.

39. As per the minutes of meeting between PVMA and Member (Customs) held on January 22, 2000, PVMA was opted to extend the service of invoice verification for member mills and also commercial importers to facilitate Customs authorities. Therefore, PVMA is the sole service provider designated to verify invoices of its members and commercial importers and hence holds a dominant position. PVMA is currently charging its members Rs.04/M. Ton and Non-PVMA members Rs.10/M. Ton for their invoice verification. Amount charged to non-PVMA members is more than double the rate charged to its member mills. Being the sole service provider, PVMA is obliged to provide equal services to both members and non-members. Disparity of rates charged to its customers for the same services appears to violate Section 3(3)(b) of the Act which prohibits price discrimination by charging different prices for the same services from different customers in the absence of objective justification that may justify different prices.

Summary of Findings

40. From the foregoing, it appears that ghee and cooking oil manufacturers behave in a collective manner. They do not synchronize their prices with the change in the input prices and set their price at a higher bench mark. Price is immediately increased when the price of edible oils goes up in the international market but they fail to reflect reduction in ghee/cooking oil price in the wake of decline in edible oil price in the international market. However, manufacturers easily menuvour the price to a lower level when government intervenes. For that forum of PVMA is used to take a collective decision and set the price uniformly at a pre-determined level for all brands of ghee/cooking oil**.** PVMA appears to be playing the lead role to negotiate and

fix price with the government and such decisions of the association are binding on its member mills. From the aforementioned collective behavior it appears that there is, *prima facie,* cartelization in the market of ghee and cooking oil in violation of Section 4(1) and in particular 4(2) (a) of the Act.

41. From the forgoing, it appears that PVMA has transgressed its mandate as an association and taken a lead role in business decision making process of its member mills. Instead of member mills having a direct business relationship with their suppliers, PVMA enters into negotiations with edible oil transporters and NLC and decides the transport rates for its member mills. Such arrangements/agreements between PVMA and APOTOA , EOCCA and NLC to fix the transport rates for PVMA units, *prima facie*, prevents and restricts competition between the members of a transporters association *inter se* and also distorts competition between members of different transporters associations and NLC in violation of Section 4(1) and Section 4(2)(a), in particular, of the Act.

42. PVMA designated in a meeting with Member (Customs) held on January 22, 2000, to extend the service of invoice verification for member mills and also commercial importers to facilitate Customs authorities makes it the sole/dominant service provider for invoice verification. PVMA's practice to charge different rates to its members and non-members for the same service, *prima facie*, violates Section 3(3)(b) of the Act which prohibits price discrimination by charging different prices for the same services from different customers in the absence of objective justification that may justify different prices.

Recommendations

43. A trade association is a representative of a particular industry, formed to protect the interest of its members. Among its functions, trade association

provide a venue to keep members informed of industry developments to promote more informed business decisions and, therefore, provide their members with a variety of information. However, this activity is not entirely free from anti-competitive concerns. Consultation of members with their association to reach a common agreed price and then designating their association to negotiate with government to approve their bench mark price in reality makes their association a front for price fixing. Similarly a trade association entering into negotiation/arrangement with trade associations of its members' suppliers to reach an accord to settle prices for their inputs is beyond the required mandate and role of an association which may have serious implications on competition in the market of suppliers.

44. It is recommended that, in light of the above, proceedings be initiated under Section 30 of the Act against PVMA and its sub-committees, and member mills for, *prima facie,* violation of Section of Section 4(1) read with Section 4(2) (a) and also for violation of Section 3(3)(b) of the Act against PVMA.

45. It is also important to highlight here the alarming conduct of government departments. Discussions and negotiations of government with trade association price encourage the collusive behavior. A trade association represents an industry, however, it does not fall within its mandate to negotiate selling price with the government on behalf of manufacturers who are supposed to compete with each other. Negotiation of PVMA with government representatives in fact has given support to manufacturers to fix the price of ghee and cooking oil through a common platform of PVMA. Such conduct of government itself propagates and gives a signal in business community to discuss and share information regarding confidential matters at the forum of their associations that constitutes anti-competitive practice. It is therefore, recommended that policy notes may be issued to Ministry of Industry explaining the competition issues involved in the instant case and directing them to take up matters with the manufacturers directly instead of

their association. Similarly, Customs authorities should also be recommended to discontinue their practice of collecting information of invoice verification from PVMA which may expose sensitive information as to price and quantity imported by a particular manufacturer. Instead Customs authorities may have their own internal arrangement to verify invoice price and same can be charged at the rates currently being charged by the PVMA to its members.

1-Shaista Bano
Director (C & TA)

2-Nadia Nabi
Joint Director (C & TA)