

**COMPETITION COMMISSION OF PAKISTAN**

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**ENQUIRY REPORT**

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

**IN THE MATTER OF COMPLAINT FILED BY EVACUEE TRUST PROPERTY  
BOARD AGAINST ALL PAKISTAN NEWSPAPERS SOCIETY FOR ALLEGED  
CARTELIZATION**

**Syed Umair Javed | Maliha Quddus | Sophia Khan**

**Dated: 27 July, 2016**

## **BACKGROUND:**

1. The Competition Commission of Pakistan (the '**Commission**') received a complaint from Evacuee Trust Property Board (Herein referred to as a '**Complainant**' or 'ETPB'), on 29<sup>th</sup> February, 2016 against M/s Midas (Pvt). Limited, All Pakistan Newspapers Society ('APNS') and Press Information Department ('PID') ('the Respondents').
2. Thereafter, an inquiry was initiated under Section 37 of the Competition Act, 2010 (hereinafter referred to as the 'Act') and appointed Syed Umair Javed, Director (C&TA and currently Director Legal), Ms. Maliha Quddus, Deputy Director (C&TA) and Ms. Sophia Khan, Deputy Director (Legal) (hereinafter the 'Enquiry Committee') to investigate the matter for possible violations of the Act, and to submit a report to the Commission.
3. The Complainant is a statutory body established under Act XIII, 1975 and manages all the Evacuee Trust Properties. In pursuance of its statutory functions ETPB has to regularly place advertisements, regarding sales/leasing etc of properties, in newspapers. The complaint alleges that the Respondents have colluded together to block the advertisements of the Complainant in newspapers due at a dispute over payments.
4. It is pertinent here to give a brief background of the procedure for releasing of advertisements by government departments and semi-autonomous bodies. Classified and/or display advertisements of the concerned department are released to the newspapers through their respective advertising agencies. The agencies then send the bills to PID which recommends them for payment to the concerned department which then makes the payment through the advertising agency.
5. ETPB had hired Midas as its advertising agency in August 2005. The Complainant has alleged that Midas urged PID to issue a letter dated 18.08.2015 asking ETPB to make payments worth PKR 121,503,948. The Complainant states that it cleared bills where there were no audit objections and it appears that only those bills were not paid where there were valid audit objections. The

Complainant wrote to PID to scrutinize these bills subject to pre-auditing by AGPR as per the procedures laid out in the Common Service Manual.

6. The Complainant also wrote to APNS stating that Midas had threatened to block its (Complainant's) advertisements and requesting APNS for cancellation of the services agreement with Midas. It may be noted that Midas is an APNS accredited advertising agency.
7. APNS in reply asked ETPB to submit PKR 18 crores to Midas within seven days failing which advice would be given to all publications in Pakistan not to accept advertisements of ETPB till payments are cleared. On 28.01.2016 APNS issued a letter to all member publications and accredited advertising agencies to this effect. ETPB also alleges that Midas, APNS and PID have refused to negotiate with ETPB for resolution of the dispute.
8. APNS was asked to respond to the allegations made in the complaint and in their response submitted on 8.04.2016 made the following clarifications.
9. Midas vide letter dated 15.08.2013 had informed APNS that ETPB had not cleared their outstanding dues amounting to PKR 183,788,801 despite various communications. Based on this Midas had requested APNS to suspend its business with ETPB as per the relevant APNS rules.
10. APNS stated that they sent many letters to EPTB but no response was received from them. A final notice was sent to ETPB on, 29.10.2013, after which its business was suspended and a circular was issued by APNS to its members.
11. The case was placed before the Chairman APNS Punjab Committee and Vice President to resolve the issue. After a number of meetings Midas and ETPB had made an agreement for the resolution of the payment issue and the business of ETPB had been restored on 14.05.2014. On 18.01.2016 APNS received a letter from Midas claiming that ETPB had violated the abovementioned agreement and had not cleared outstanding dues of over PKR 18 crores and were routing their advertisements through the Ministry of Religious Affairs.

12. ETPB terminated the services of Midas on 22.01.2016. APNS on 26.01.2016 sent a letter to ETPB enclosing the bills for outstanding dues. As per Rule 13 of APNS' Rules and Regulations Governing Conduct of Advertising Agencies a clearance certificate has to be obtained before hiring a new advertising agency.
13. APNS has argued that if an advertiser (in the instant matter ETPB) does not clear or partially clear the bills of an agency and releases its ads through other sources, the interests of its member publications are compromised. APNS states that its action is "as per the laws of the land".
14. APNS also informed that the case is also sub judice and a Civil Judge Lahore vide its order dated 10.03.2016 advised ETPB to pay 50% of the admitted amount and balance after four months. APNS further stated that the parties to the dispute are in the Courts of Law and in the case of litigation pending the Commission cannot intervene.
15. M/s Midas Private Limited was also requested to respond to the complaint and submitted that the Press Information Department (PID) regulates the publication of government departments. PID has the authority to direct the agency to publish ads in the print or electronic media. It submitted that PID also has the authority to expedite payment of media bills by client departments.
16. M/s Midas stated that after ETPB failed to make payments to it they approached PID, APNS and Pakistan Broadcasters Association (PBA) but in vain and therefore, it filed a suit for the recovery of PKR 185,451,578 against ETPB. The suit was filed before the Senior Civil Judge Lahore.

**ISSUE:**

17. Based on the facts stated above, this Enquiry is not concerned with the purely accounting disputes (pertaining to the recovery and rendition of accounts) which are currently sub judice. Therefore, the question before the Enquiry Committee is whether APNS may be in violation of Section 4 of the Act by taking commercial decisions including but not limited to operating a central clearance system on behalf of its members, governing the conduct of advertising agencies transacting

business with its members and capping/fixing of commission rates for advertising agencies.

18. In order to determine the answer to the question above, the Enquiry Committee will be pursuing the following lines of inquiry:
- a. Whether APNS is an ‘*association of undertakings*’ in terms of Section 2(1) (q) of the Act;
  - b. Whether commercial decisions, by APNS, including but not limited to capping the commission rates for advertising agencies and operating a central payment clearance system on behalf of its members are anti-competitive in terms of Section 4 of the Act.

**ANALYSIS:**

**Whether APNS is an Association of Undertakings in terms of Section 2(1)(q) of the Act?**

19. The issue of determining whether APNS is an association of undertakings in terms of Section 2(1)(q) of the Act is straight-forward; as Section 2(1)(q) 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 or undertakings”.*

20. APNS is a society whose membership comprises of publishers of newspapers and periodicals. The Society consists of a General Body and an Executive Committee. The General Body consists of all Full Members of APNS and is the supreme authority of APNS. The General Body elects 35 members of the Executive Committee from amongst itself and the Executive Committee further elects one President, one Senior Vice-President, one Vice-President, one Secretary General, one Joint Secretary and one Finance Secretary.
21. The Executive Committee is responsible for the general management and control of the business, conduct of relations with and between the advertising agencies

and member publications as well as dealing with applications for accreditation of advertising agencies.

22. Therefore based on the findings of paragraphs 19-21 above, the members of APNS and its decision making organs are undertakings engaged in the business of publication of newspapers and periodicals, therefore, APNS is an association in terms of Section 2(1)(q) of the Act.

**Relevant Market:**

23. Section 2(1)(k) of the Act defines the "relevant market" as:

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

24. In light of this definition the relevant market entails a:

- a. Relevant product market and a
- b. Relevant geographic market.

25. In Pakistan, an entity desirous of placing an advertisement in a newspaper or periodical hires the services of an advertising agency which then negotiates/buys column space from newspaper and periodicals. Alternately, under a different sales model the advertiser may directly purchase advertising space from the newspaper/periodical.

26. The relevant product market therefore is the market for column space in newspapers/periodicals. A perusal of membership of APNS shows that members comprise of all major newspapers/periodicals in Pakistan. (List of members attached in '**Annex A**'). Therefore, the supply of the service of advertising space is dominantly through the members of APNS. The relevant geographic market therefore, is national as these newspapers/periodicals are circulated throughout Pakistan.

27. In terms of paragraphs 23-26 above the relevant market is the market for advertising space in newspapers and periodicals in Pakistan.

**Whether commercial decisions, by APNS, including but not limited to capping the commission rates for advertising agencies and operating a central payment clearance system by APNS on behalf of its members are anti-competitive in terms of Section 4 of the Act.**

28. It is noted that APNS' various rules, regulations and circulars are approved and issued by its General Body or Executive Committee which comprise of APNS members. Therefore, these documents may be considered as decisions by an association.

29. According to APNS' Memorandum of Association one of its objectives among others is to make rules for accreditation and conduct of business of advertising agencies and to provide penalties for the infringement thereof. APNS' Rules and Regulations Governing Conduct of Advertising Agencies deal with the relationship between APNS and advertising agencies.

30. There are certain APNS decisions i.e. regulations and circulars that appear to be anti-competitive in terms of Section 4 of the Act. These APNS decisions include:

- a. APNS' Rules and Regulations Governing Conduct of Advertising Agencies ('**APNS Rules**' or '**the Rules**') ('**Annex B**');
- b. Special Supplement Rules (part of APNS Rules '**Annex B1**');
- c. Advertisement Rules and Code of Ethics (part of APNS Rules '**Annex B2**');

- d. Rules for the Acceptance of Advertising Business by the Members (Schedule B of APNS Memorandum of Association) ('Annex C')
- e. APNS Circular APNS/2013/200 ('Annex D')
- f. Rules and Regulations Media Buying Houses ('Annex E');

We examine each of the clauses under contention one by one.

### **Accreditation of Advertising Agencies**

31. One of the functions/objectives of APNS is the accreditation of agencies which is dealt with in detail in Clause 1 through 9 of the Rules. Applications for accreditation would be made by the advertising agencies to APNS' Executive Committee. As per Clause 4(A) of the Rules there are two stages of accreditation: (i) Associateship and/or Provisional accreditation and (ii) Confirmed accreditation. In the first stage the agency would be admitted as an associated agency or it may apply for provisional accreditation which is for the duration of one year. After expiration of one year the agency can apply for confirmation. Certain criteria for accreditation which appear to be anti-competitive in terms of Section 4 of the Act and are examined in further detail below.
32. As per Clause 4(A) an agency applying for Associateship and/or provisional accreditation is, among other conditions, required to: provide a list of its clients and provide a guarantee of PKR 1.5 million. An agency seeking confirmed accreditation is required under Clause 3 to have fulfilled the following criteria:
- a. It should have been in active operation as an agency for at least 6 months prior to application and placed business of PKR. 50 lacs (PKR 5 million) with member publications within a relevant period not exceeding 12 calendar months. (Clause 3(a)).
  - b. It should have at least five clients. (Clause 3(b));
  - c. A guarantee that the business to be placed by it with APNS member publications during every year of its accreditation would not be less than PKR 5 million (Clause 3(c));
  - d. Letters of authorization from the agency's clients indicating their proposed budgets for press advertising for the ensuing twelve months. (Clause 3(d));



33. Moreover, Clause 4 states:

*"The Executive Committee may accept, defer or reject applications for confirmation without assigning reasons thereof. The decision of the Executive Committee of the Society on such applications shall be final and binding on applicants".*

34. The abovementioned clauses pertaining to the accreditation of advertising agencies shows that APNS is being used as a forum for collectively controlling the entry of advertising agencies into the relevant market by imposing *prima facie* unfair trading conditions on new entrants. Specifically the clause pertaining to placement of business of PKR 50 lac (PKR 5 million) with member publications over one year period to be eligible for confirmed accreditation seems unfair since the associate agencies are given less favourable trading terms than provisionally and fully accredited agencies (discussed below).

35. The accreditation requirements create a barrier to entry for new advertising agencies into the relevant market which impedes competition among agencies and limits choice of agencies for clients wishing to place advertisements. The complete discretion by APNS to accept or reject applications without assigning any reasons further restricts entry into the relevant market.

36. APNS was asked to provide the rationale behind the accreditation process in its response it observed that a majority of business in the relevant market was transacted on a credit basis. Therefore, in order to tackle the issue of bad debts.. *"APNS devised a system of accreditation to advertisement agencies after verifying their business credentials and financial standing and taking certain guarantees from them. Member publications can deal with accredited agencies and extend credit to them with greater ease of mind".*

37. The Enquiry Committee is of the view that imposing conditions such as a minimum amount of prior business and a guarantee of future business appear *prima facie* to be in conflict with Section 4(1) read with 4(2)(a) of the Act of Act. Furthermore the requirement that agencies submit letters of authorization from

clients indicating their proposed budgets for press advertising for the ensuing twelve months does not bear any relation to the credit worthiness of an agency.

38. Accredited agencies are given more favourable terms of trade than an associate/ /non-accredited agencies which are as follows:

- a. An accredited agency and provisionally accredited agency is allowed a trade discount of 15 percent and a further 5 percent if the business is on a cash basis (Clause 7) whereas an associate agency is allowed a maximum trade discount of 14 percent (Clause 4(A)iii) and a non-accredited agency is allowed a discount not exceeding 6.5% on advance cash payment (Paragraph 13 of Advertisement Rules and Code of Ethics).
- b. Accredited agencies are allowed a credit period of 75 days<sup>1</sup> of (Clause 9), provisionally accredited agencies are allowed credit of 45 days (Clause 6), associate agencies are required to submit alongwith their releases post dated cheques of 60 days (Clause 4(A)v). Non-accredited agencies can do business in cash only (Paragraph 13 of Advertisement Rules and Code of Ethics).
- c. Associate agencies are not allowed to handle government advertising (Clause 4(A)iv).

39. APNS was of the view that these favourable terms are extended to accredited agencies to incentivize agencies to obtain accreditation. However, it appears that these incentives give undue advantage to accredited agencies, distort the level playing field with majority of the business going to accredited agencies who would be able to offer better rates to clients.

40. The Enquiry Committee notes that offering a higher trade discount to accredited agencies as compared to associate/non-accredited agencies is discriminatory and is tantamount to applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a disadvantage which is in contravention of Section 4(1) read with Section 4(2)(f) of the Act.

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<sup>1</sup> The credit facility is counted from the last day of every clearance period for the advertisements published in the respective clearance period.

41. In terms of the findings of paragraphs 31-40 , it appears *prima facie* that the following Clauses are anti-competitive in terms of Section 4 of the Act:
- a. Clauses 3(a), Clause 3(b), Clause 3(c) and Clause 3(d),of the Rules, pertaining to conditions for confirmed accreditation (Section 4(2)(a)).
  - b. Clause 4, of the Rules, pertaining to the power of APNS' Executive Committee with respect to confirmation of accreditation. (Section 4(2)(a)).
  - c. Clause 4A(iii), Clause 7 of the Rules and Paragraph 13, of the Advertisement Rules & Code of Ethics, pertaining to difference in trade discount between associate, accredited/provisionally accredited and non-accredited agencies; (Section 4(2)(f)).
  - d. Clause 4A(v), Clause 6 and Clause 9, of the Rules, pertaining to difference in credit terms between associate, provisionally accredited, accredited, and non-accredited agencies. (Section 4(2)(f)).
  - e. Clause 4A(iv), of the Rules, restricting associate agencies from handling government business. (Section 4(2)(a) and 4(2)(f)).

#### **Fixing of agency Commission**

42. The business model for the relevant market is such that the agency places advertisements on behalf of its clients with newspapers/publications. The agency is paid a commission, known as a trade discount, for the business and all the payments are made to the channels via the agency.

43. Clause 7 of the Rules states:

*"All accredited agencies, whether provisionally or fully accredited, shall be entitled to a trade discount, not exceeding 15% of the invoice on the business placed by them with the member publications and no agency shall claim, demand or receive any trade discount or compensation from a member publication beyond this specified rate. Provided that at its option a member publication may allow a cash discount of upto 5% to an agency in case of settlement of its bills by the agency within 30 days of billing in case of fully accredited agency and 15 days in case of provisionally accredited agency".*

44. Similarly Clause 4(A)(iii) dealing with associate agencies allows a trade discount not exceeding 14% of the invoice. With regards to Paragraph 12 of APNS' Advertisement Rules and Code of Ethics non-accredited agencies may be allowed a trade discount not exceeding 6.5% provided that advance payment is made in cash.

45. APNS were asked to explain the rationale behind the fixing of agency commission and in their response stated that the process of accreditation required the submission of bank guarantees and other formalities to ensure credit worthiness of the advertising agency. It is further noted that the entire scheme was designed to incentivize agencies to get accreditation so that member publications would have more accredited agencies to do business with. APNS also stated that:

*"There is no anti-competitive element involved as all member publications are free to fix their own advertisement rates and are free whether to extend discount or not".*

46. Clause 10 of the Rules however seem to contradict APNS' argument on the issue. It reads as follows:

*"All accredited agencies shall accept and release business at the scheduled rates of member publications and any effort to negotiate for lowering the rate shall be treated as a violation of the Society's Rules".*

47. Similarly, in the Rules for the Acceptance of Advertising Business by the Members prohibits APNS members from offering lower rates for advertisements Paragraph 5 states:

*"No member shall accept business at rates lower than its scheduled rates except for charitable organizations. Any change in the scheduled rates shall be notified to the Society one month before such change is enforced".*

48. Paragraph 1 of the Special Supplement Rules also caps the trade discount/commission of agencies it states:

*"The sponsoring agency of a special supplement will be required to provide authority letter of the clients consent and undertaking by the agency to share 50% of trade discount, not exceeding 15% of the invoice*

*with participating agencies on the advertisements contributed by them in the supplement at least 7 days before the date of the supplement".*

49. The Enquiry Committee is of the view that APNS as an association by capping agency commissions/trade discount is in effect fixing prices which is in contravention of Section 4(1) read with Section 4(2)(a) of the Act. APNS by capping commissions reduces the price competition amongst its member newspapers/publications. Normally an agency would place advertisements with the newspapers that would offer it the highest trade discount. APNS has argued that newspapers are free to fix their advertisement rates however, by capping trade discounts/commissions the newspapers reduce price competition amongst themselves. Price fixing is a term that is generically applied to a wide variety of concepts and is not restricted to fixing sale prices but also includes agreements to eliminate price discounts or to establish uniform discounts. Furthermore, Clause 10 clearly eliminates any effort at obtaining a trade discount by agencies by threatening punitive action under APNS' Rules.

50. Therefore, in terms of paragraphs 42-49 the following appear *prima facie* to be anti-competitive in terms of Section 4 of the Act:

- a. Clause 7, Clause 4A(iii) and Paragraph 12 of Advertisement Rules and Code of Ethics regarding capping of trade discount to accredited agencies, associate agencies and non-accredited agencies (Section 4(2)(a)).
- b. Clause 10 barring any negotiations on advertisement rates. (Section 4(2)(a)).
- c. Paragraph 5 of the Rules for the Acceptance of Advertising Business by the Members barring members from offering lower rates. (Section 4(2)(a)).
- d. Paragraph 1 of Special Supplement Rules capping trade discounts/commissions for supplements (Section 4(2)(a)).

### **Operating a clearing system on behalf of its members**

51. APNS operates a clearance system on behalf of its members under which a 75 day credit period is allowed to accredited agencies to effect payments. The rules for clearance are detailed in Clause 9 of APNS Rules. Under the system the clearance

calendar is divided into twelve monthly clearance periods<sup>2</sup>. In case there is a non-payment of dues by an advertising agency the member publication would lodge a complaint with the APNS Secretariat on the 15th of the payment month. The agency would be granted a grace period of 7 days after the last date of payment.

52. The APNS action against the defaulting agency would be in three phases. In the first phase APNS will initiate action against the defaulting agency on the 23rd of the payment month. The suspended agency will only be restored on the payment of dues and a Late Payment Surcharge (LPS) of 1%. The LPS would increase 1% for every week till it reaches 4%. APNS' share in the first stage would be 1/2% and the balance would be paid to the publication.
53. In the second phase publications that could not lodge their complaints on the 15th of the payment month may send in their claims till the 22nd of the payment month. Any agency suspended in the second stage will be restored subject to a payment of all dues and LPS of 2% alongwith restoration fees. LPS will increase 1% for every week till it reaches 4%. The share of APNS in the LPS would be 1%.
54. In the third phase publications that could not lodge their complaints in the second stage may send in their claims till the 29th of the clearance month. LPS would be levied at the same rate as the first and second stage the share of APNS of the LPS would be 2%.
55. The agency is given a period of 4 weeks to clear its dues after which APNS would issue a dis-accreditation notice and the trade discount would be withdrawn.
56. An extension ranging from 1-60 days can be provided based on the decision of the Office Bearers Committee (OBC) comprising of office bearers of APNS. If an agency is seeking extension for 1-15 days the OBC will have the power to grant the extension. If an extension is sought for 16-30 days the major claimants will be consulted and the extension will be granted with the consent of over 50% of

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<sup>2</sup> W.e.f from 01 July, 2016. Previously there were 6 bi-monthly clearance periods.

claimants. If extension is sought for 31-60 all the claimants would be consulted and extension would be granted with the consent of over 75% of claimants.

57. In case of extension for a period more than 60 days, known as default restructuring, APNS Secretariat will propose the schedule of payment to all reporting publications and ask their consent. In case a publication dissents to the proposed schedule the agency will be required to clear dues of that publication.

58. APNS was asked to provide the rationale for the clearance system and procedures detailed in Clause 9 of the Rules. APNS has expressed the view that Clause 9:

*"... provides a mechanism and guidelines for issuing bills so as to avoid fraud and malpractice. It further ensures that payments for advertisements are made in a timely manner whilst providing a certain cushion period (75 days credit facility) to all advertising agencies. It may be noted that the said procedure in consonance of standard business practices and is an effective method to increase business efficacy in our field".*

59. It further noted that it provides an effective procedure for making payments and also provides an alternate dispute resolution mechanism in case of a dispute between an advertising agency and a member publication. It provides an opportunity to both parties to lodge a complaint in case of non-payment of bills or to file objections in case of a disputed bill before APNS.

60. The following aspects of the clearance procedure appear to be anti-competitive in terms of Section 4 of the Act:

- a. Once a complaint is lodged with APNS the member publication would not be allowed to receive any cheques from the agency or the client and any payment made would be to APNS.
- b. The member publications are not allowed to withdraw their complaint and cannot unilaterally allow any extension of payment date against claims reported to APNS. Only APNS can provide such an extension.
- c. APNS setting LPS.

61. Dictating such rules in the industry should be beyond the scope of the Association and should be left up to the clients and service provider to decide upon, as it reduces competition. Credit recovery is an issue that is faced by all sectors and is not unique to the relevant market and an association placing strict control over the payment process seems to be restrictive in terms of Section 4 of the Act.
62. In terms of paragraphs 51-61 above, provisions in Clause 9 detailed in paragraph 60 above appear *prima facie* to be anti-competitive in terms of Section 4 (2)(a) of the Act.

### **Sanctions for Violation of APNS Rules**

63. The sanctioning power of APNS is detailed in Clauses 14 and it appears that the following aspects are anti-competitive:

*"No accredited agency shall act against the directives of APNS or be involved in releasing business of its clients through some other agency or approach any other forum against the decision of APNS arbitration. In case of violation APNS would take punitive action including fine, penalty, or suspension of business".*

*"No accredited agency shall accept the business of a client listed by APNS with an agency whose accreditation/associateship has been suspended or withdrawn unless it has secured clearance from APNS".*

64. The Enquiry Committee observes that this clause unduly punishes the clients for the suspension of its agency even though the client may not have any responsibility for the suspension. It seems that APNS through this clause is exerting its control over the relevant market by imposing restrictive conditions on the parties involved which is in contravention to Section 4(1) read with Section 4(2)(a) of the Act.
65. The abovementioned clause is also contrary to the explanation offered by APNS where it states that it acts as a platform for an alternate dispute settlement



mechanism. APNS specifically directs accredited agencies not to approach any other forum against the decision of APNS arbitration.

66. Similarly with respect to placing of advertisements of a client that is blacklisted by APNS Clause 14 reads:

*"The advertising agencies shall not release the advertisements of blacklisted clients and or blacklisted agencies, advertisements of listed clients of accredited/associated agencies through any source whether directly by the clients or any other agency".*

67. Therefore, if for whatever reason a client defaults on payments APNS completely restricts the placement of its advertisements. In the instant case of APNS the client ETPB failed to make payments due to accounting disputes with the agency and APNS. Without going into the merits of whether the claims of ETPB were genuine or not, under the existing rules APNS completely denied it (ETPB) access to advertisement space causing hindrance to the Complainant in the fulfillment of its essential functions. ETPB stated that it was not even allowed to place advertisements through the Ministry of Religious Affairs (its parent ministry). APNS through its circular no APNS/2016/14 dated 28 January 2016 directed its member publications not to publish any advertisement of ETPB released directly or through Ministry of Religious Affairs.

68. It is noted that if there was an accounting dispute between the parties and as such it is understandable if the publications involved did not want to transact business with ETPB. However, it is restrictive and anti-competitive for an association i.e. APNS to act on behalf of all its members and bar the advertisements of clients.

69. In terms of the findings of paragraphs 63-68, it appears *prima facie* that Clause 14 is in contravention of Section 4(1) read with Section 4(2)(a) of the Act.

## **Restriction on Direct Business**

70. It appears that under APNS' Advertisement Rules and Code of Ethics Paragraph 12 it has placed a restriction on direct business whereby the client approaches the publication directly. Paragraph 12 states:

*"Member publications shall not favour direct advertisers by giving them better facilities such as lower rates, longer credit periods, preferential positions, trade discount, discounts and supplying artwork at nominal rates".*

71. Paragraph 12 should be read with paragraph 15 of the Advertisement Rules and Code of Ethics which allows APNS members to approach clients directly for business however, the business has to be routed through the advertising agency appointed by the client.

72. It is observed that it is up to the individual publications to decide the terms and conditions on which they transact business with clients and agencies. APNS as an association cannot dictate whether direct business can be handled by publications. It appears that not permitting any trade discount, discounts is a form of price fixing. Whereas denying longer credit periods and preferential positions are restrictive trading conditions.

73. Therefore in terms of findings in paragraphs 70-72 it appears *prima facie* that Paragraph 12 of the Advertisement Rules and Code of Ethics appears be in contravention of Section 4(1) read with Section 4(2)(a) of the Act.

## **APNS Circular APNS/2013/200**

74. It is noted that APNS Circular number APNS/2013/200 dated September 24, 2013 on the subject *"Ads for Notices referred to websites"* is reproduced below:

*"We have to inform you that the Executive Committee of the APNS at its meeting held on September 19, 2013 has noted with grave concern that the Federal Government has decided to issue tender notices on websites"*

*which tantamount to deprive the print media from a sizeable quantum of advertisements and also curtail the information from the prospective bidders of their access to such important public information. The Executive Committee has decided to advise member publications not to publish any advertisement containing the information to visit website for display of tender notices etc.*

*The member publications are hereby advised in their long term interest not to publish any advertisement which does not give the information/material of a notice (tenders, bids, prequalifications, job opportunities, auctions etc.) but states to visit the website of the issuing authority for details of the notice. In case of any confusion, the members may contact the APNS Secretariat for advice".*

75. It appears *prima facie* that APNS through this circular is in effect coercing government clients to purchase more advertising space which amounts to imposing restrictive trading conditions with regards to the provision of a service which is prohibited under 4(1) read with 4(2)(a) of the Act.

### **Rules and Regulations for Registration and Conduct of Media Buying Houses**

76. The following clauses of the Rules for Media Buying Houses (MBHs) also appear to be in contravention of Section 4 of the Act:

77. **Accreditation:** Appointment letter by at least three APNS listed clients (Clause 3(c)). A guarantee that the business to be placed by it in the member publications during every year of its registration would not be less than PKR 10 million with a review by APNS every year (Clause 3(e)).

78. **Renewal of Registration:** An MBH shall be required to pay a sum of PKR 100,000 along with a list of its clients and the quantum of business placed by it to the member publications during the preceding year (Clause 4).

79. **Restriction on Business:** An MBH may plan, negotiate, buy and release business of only those private clients, which are already listed with it. These clients will be required to place a minimum business of PKR 5 million per annum in print media. An MBH shall not release business on behalf of non-accredited advertising agencies or of non-listed clients to APNS member publications. (Clause 7).
80. **Fixing of Commission:** A rate of commission of 15% is fixed out of which the MBH may retain a maximum of 3% and pass on the rest to the concerned listed brand agency. (Clause 14).

## CONCLUSION

81. The Enquiry has no concern with the purely accounting disputes (pertaining to the recovery and rendition of accounts) which are currently sub judice. Therefore, the question before the Enquiry Committee is whether APNS may be in violation of Section 4 of the Act by taking certain commercial decisions on behalf of its members.
82. Based on the findings of paragraphs 19-21 above, the members of APNS and its decision making organs are undertakings engaged in the business of publication of newspapers and periodicals, therefore, APNS is an association in terms of Section 2(1)(q) of the Act.
83. In terms of paragraphs 23-26 above the relevant market is the market for advertising space in newspapers and periodicals in Pakistan.
84. In terms of the findings of paragraph 28 the following are considered as decisions of APNS:
- a. APNS' Rules and Regulations Governing Conduct of Advertising Agencies;
  - b. Special Supplement Rules (part of APNS Rules);
  - c. Advertisement Rules and Code of Ethics (part of APNS Rules);
  - d. Rules for the Acceptance of Advertising Business by the Members (Schedule B of APNS Memorandum of Association);

- e. APNS Circular APNS/2013/200;
- f. Rules and Regulations Media Buying Houses;

**85. Accreditation of Advertising Agencies:** Based on the findings of paragraphs 31-40, it appears *prima facie* that the following clauses appear to be anti-competitive in terms of Section 4 of the Act:

- a. Clauses 3(a), Clause 3(b), Clause 3(c) and Clause 3(d), of the Rules, pertaining to conditions for confirmed accreditation (Section 4(2)(a)).
- b. Clause 4, of the Rules, pertaining to the power of APNS' Executive Committee with respect to confirmation of accreditation. (Section 4(2)(a)).
- c. Clause 4A(iii), Clause 7 of the Rules and Paragraph 13, of the Advertisement Rules & Code of Ethics, pertaining to difference in trade discount between associate, accredited/provisionally accredited and non-accredited agencies; (Section 4(2)(f)).
- d. Clause 4A(v), Clause 6 and Clause 9, of the Rules, pertaining to difference in credit terms between associate, provisionally accredited, accredited, and non-accredited agencies. (Section 4(2)(f)).
- e. Clause 4A(iv), of the Rules, restricting associate agencies from handling government business. (Section 4(2)(a) and 4(2)(f)).

**86. Fixing of agency Commission:** Based on the findings of paragraphs 42-49 the following clauses appear *prima facie* to be anti-competitive in terms of Section 4(1) read with 4(2)(a) of the Act:

- a. Clause 7, Clause 4A(iii) of the Rules and Paragraph 12, of Advertisement Rules and Code of Ethics, regarding capping of trade discount to accredited agencies, associate agencies and non-accredited agencies;
- b. Clause 10, of the Rules, barring any negotiations on advertisement rates;
- c. Paragraph 5 of the Rules for the Acceptance of Advertising Business by the Members barring members from offering lower rates;
- d. Paragraph 1, of Special Supplement Rules, capping trade discounts/commissions for supplements.

87. **Operating a clearing system on behalf of its members:** provisions in Clause 9 of the Rules (detailed in paragraph 60) above appear *prima facie* to be in contravention of Section 4(1) read with Section 4(2)(a) of the Act.
88. **Sanctions for Violation of APNS Rules:** In terms of the findings of paragraphs 63-68, it appears *prima facie* that Clause 14 of the Rules is in contravention of Section 4(1) read with Section 4(2)(a) of the Act.
89. **Restriction on Direct Business:** in terms of findings in paragraphs 70-72 it appears *prima facie* that Paragraph 12 of the Advertisement Rules and Code of Ethics is in contravention of Section 4(1) read with Section 4(2)(a) of the Act.
90. **APNS Circular APNS/2013/200:** It appears *prima facie* that APNS through this circular is in effect coercing government clients to purchase more advertising space which amounts to imposing restrictive trading conditions with regards to the provision of a service which is in contravention of Section 4(1) read with Section 4(2)(a) of the Act.
91. **Rules and Regulations for Registration and Conduct of Media Buying Houses:** It appears *prima facie* that Clause 3(c), 3(e), Clause 4, Clause 7 and Clause 14 are in contravention of Section 4(1) read with Section 4(2)(a) of the Act.
92. Based on the findings of paragraphs 85-91 above the Enquiry Report finds 18 instances of violations of Section 4(1) read with Section 4(2)(a) of the Act and 6 instances of violations of Section 4(1) read with Section 4(2)(f) of the Act.
93. In light of the above mentioned findings, it is recommended that the Commission may consider initiating proceedings against APNS and its members under Section 30 of the Act.

Syed Umair Javed  
Enquiry Officer

Maliha Quddus  
Enquiry Officer

Sophia Khan  
Enquiry Officer