



BEFORE THE  
COMPETITION COMMISSION OF PAKISTAN

PHASE II REVIEW

ACQUISITION OF UPTO % SHAREHOLDING OF M/S. CENTRAL DEPOSITORY  
COMPANY OF PAKISTAN LIMITED BY M/S. PAKISTAN STOCK EXCHANGE LIMITED  
FROM M/S. ALLIED BANK LIMITED AND M/S. IGI INVESTMENTS (PRIVATE) LIMITED

CASE: 1346/Merger-CCP/22

Date of Hearing

13 March 2023

Bench



Ms. Rahat Kaunain Hassan  
Chairperson

Mr. Ahmed Qadir  
Director General

On Behalf of:

Pakistan Stock Exchange Limited

Mr. Farrukh H. Khan (Chief Executive Officer)  
Mr. Nadir Rehman (Chief Operating Officer)  
Dr. Fakhara Rizwan (Company Secretary)  
Mr. Tariq Qureshi (Director General Manager)  
Mr. Vaseeq Khalid (Partner, Mohsin Tayebaly & Co.)  
Ms. Eman Siddique (Associate, Mohsin Tayebaly & Co.)

Central Depository Company of Pakistan Limited

Mr. Badiuddin Akber (Chief Executive Officer)  
Mr. Shariq Jafrani (Chief Financial Officer, Company  
Secretary and Head of Legal)

## ORDER

### A. Background

1. The Competition Commission of Pakistan (“**the Commission**”) is mandated under the Competition Act, 2010 read with the Rules and Regulations framed thereunder, to ensure free competition in all spheres of commercial and economic activity, to enhance economic efficiency, protect consumers and related market players from anticompetitive behavior including abuse of dominance, prohibited agreements deceptive marketing practices and mergers which may substantially lessen competition in the relevant market.
2. The Commission received a pre-merger application (**Application**) pursuant to §11 of the Competition Act, 2010 (“**Act**”) read with Regulation 6 of the Competition (Merger Control) Regulations, 2016 (“**CMR**”) on 12 December, 2022 whereby M/s. Pakistan Stock Exchange Limited (“**PSX**” or “**Acquirer**”) intends to acquire a total of \_\_\_\_\_ shares ( \_\_\_\_\_ % shareholding) of M/s. Central Depository Company of Pakistan Limited (“**CDC**” or “**Target**”) from M/s. Allied Bank Limited (“**ABL**” or “**Seller 1**”) and IGI Investments (Private) Limited (“**IGI**” or “**Seller 2**”) (details in paragraph 15 of this order). All necessary information and documentation pertaining to the Application was provided to the Commission by 27 January, 2023.
3. Subsequently, the Commission issued its **Phase I Order** on 10 February, 2023, wherein it was stated that there was presumption of **dominance** under §2(1)(e) read with §3 of the Act as both PSX and CDC are the sole entities in their area of core licensed activities, *i.e.*, PSX being sole stock exchange and CDC being sole central depository in Pakistan. Both markets are integrated and interdependent as their activities are part of the securities market trading life cycle. Thus, the intended acquisition would likely strengthen their position with the fact on record that (i) PSX intended to acquire \_\_\_\_\_ % of CDC’s shareholding as disclosed on page (90) of CDC’s Financial statements for the period ended June 30, 2022 and (ii) statutory intent as defined in Regulation 8(3)(a) of Central Depositories (Licensing and Operations) Regulations, 2016 (“**CDC Regulations**”) and may have an overall impact on trading services in the securities market. This necessitated a Phase II review, a hearing on which took place on 13 March 2023, prior to the issuance of this Order.

### B. Parties

4. The parties involved in the proposed transaction are as follows:
  - i. PSX/Acquirer
  - ii. CDC/Target



- iii. ABL / Seller I
- iv. IGI/Seller II
- PSX/Acquirer**

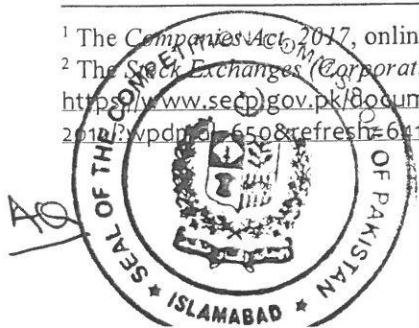
5. PSX was incorporated under the Companies Act, 1913 (now Companies Act, 2017<sup>1</sup>) on March 10, 1949 as a Company Limited by Guarantee. However, on August 27, 2012 the Company was re-registered as public company limited by shares under the Stock Exchanges (Corporatisation, Demutualisation and Integration) Act 2012<sup>2</sup> (XV of 2012). The Company is listed on PSX with effect from June 29, 2017.
6. PSX is engaged in conducting, regulating and controlling the trade or business of buying, selling and dealing in shares, scripts, participation term certificates, modaraba certificates, stocks, bonds, debentures stock, government papers, loans, and any other instruments and securities of like nature including, but not limited to, special national fund bonds, bearer national fund bonds, foreign exchange bearer certificates and documents of similar nature, issued by the Government of Pakistan or any other agency authorized by it.
7. The PSX is the sole securities exchange in Pakistan, which provides a full suite of trading services through *Karachi Automated Trading System (KATS)*, *Karachi Internet Trading System (KITS)*, and *Bonds Automated Trading System (BATS)*. KATS facilitates trading for stockbrokers. KITS is an online system for trading and BATS provides trading platform for corporate debt instruments (term finance certificates), and government debt securities. PSX also provides data solution services.
8. A consortium of Chinese investors (*Shanghai Stock Exchange, Shenzhen Stock Exchange, and China Financial Futures Exchange*) holds % shares of PSX. The remaining % is held by the general public, which includes initial shareholders, local, and foreign investors. The PSX Board (PSX BOD) currently consist of eleven directors:

Table 1: The PSX's Board of Directors

#	Name	Status
1.	Dr. Shamshad Akhtar (Chairperson of the Board)	Independent Director
2.	Mr. Farrukh H. Khan (Chief Executive Officer)	Executive Director
3.	Mr. Ahmed Chinoy	Non-Executive Director

<sup>1</sup> The Companies Act, 2017, online at <https://www.secp.gov.pk/document/companies-act-2017/?wpdmdl=28472>

<sup>2</sup> The Stock Exchanges (Corporatisation, Demutualisation, and Integration) Act 2012 online at <https://www.secp.gov.pk/document/stock-exchanges-corporatization-demutualization-and-integration-act-2012/?wpdmdl=650&refresh=6412cod47b6ea1678950612>



4.	Mr. You Hang	Non-Executive Director
5.	Dr. FU Hao	Non-Executive Director
6.	Ms. Yu Huali	Non-Executive Director
7.	Mr. Jiang Ketao	Non-Executive Director
8.	Mr. Nadeem Naqvi	Non-Executive Director
9.	Mr. Zubair Razzak Palwala	Non-Executive Director
10.	Mr. Javed Kureishi	Independent Director
11.	Mr. Mohammad Salahuddin Manzoor	Independent Director

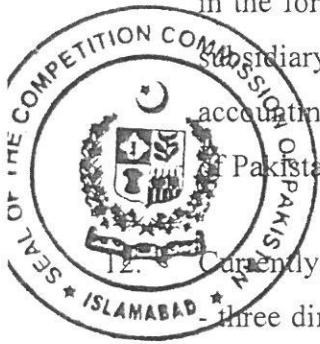
### CDC/Target

9. The CDC was incorporated as a public limited company under the repealed Companies Ordinance 1984 (now the Companies Act, 2017) on 21 January, 2003. CDC's principal business activity is to act as securities depository and, holds the status of a Public Interest Company and a Large Sized Company since it holds assets of general public in fiduciary capacity.

10. The CDC's main function is the management and operation of a Central Depository System (CDS) and related investor account services. The CDS is an electronic book-entry system used to record the title of the accountholders to securities entered therein, to transfer such securities electronically, and for pledging such book-entry securities. The CDS, in addition to managing company shares, also facilitates the electronic entry and management of, inter alia, equity, debt, and other financial instruments in the Pakistani capital market as well as term finance certificates, WAPDA bonds, sukuk, open-end and closed-end funds, and modaraba certificates.

11. The CDC also provides other services beyond the traditional depository domain such as: (i) trustee & custodial services ( % market share), (ii) share registrar services, (iii) Roshan Digital Account-related CDS account opening services and shared know your customer (KYC), (iv) investor portfolio services ( % market share), (v) developing and managing a Centralised Information Sharing Solution for the domestic insurance industry ( % market share), (vi) providing e-services in the form of an eIPO system and an eDividend repository and, (vii) through its wholly owned subsidiary, ITMinds Limited, business process outsourcing services (including back office accounting functions) to the mutual fund industry. Currently, the CDC is the sole depository in and of Pakistan and, thus, has a % market share.

Currently, PSX has a % shareholding and % representation in the CDC's Board of Directors. Three directors out of 12 on CDC BOD. Other major shareholders in CDC include M/s. Muslim Commercial Bank Limited (MCB) ( %), Habib Bank Limited (HBL) ( %), LSE Financial



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Services (LSE Financials) ( ), National Investment Trust Limited (NIT) ( ), and Pak-China Investment Company Limited (PCIC) ( ). PCIC, which the PSX has categorized as an associated company in its Annual Report 2022,<sup>3</sup> also has one nominee director on the CDC BoD:

Table 2: CDC's Board of Directors

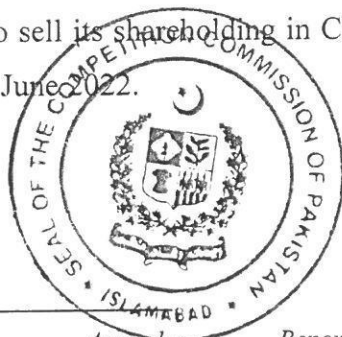
#	Name	BOD
1.	Mr. Moin M. Fudda (Chairman of the Board)	Independent Director
2.	Ms. Ammara Masood	Independent Director
3.	Ms. Jehan Ara	Independent Director
4.	Syed Ali Sultan	Independent Director
5.	Mr. Badiuddin Akbar (Chief Executive Officer)	Executive Director
6.	Mr. Ahmed Chinoy ( )	Director
7.	Mr. Farukh H. Khan ( )	Director
8.	Mr. Nadeem Naqvi ( )	Director
9.	Dr. Aamir Mateen ( )	Director
10.	Mr. Zahid Latif Khan ( )	Director
11.	Mr. Tariq Mehmood	Director
12.	Mr. Muhammad Tariq Rafi ( )	Director

#### Seller I/ABL

13. It is principally engaged in commercial banking and related services. It currently holds % shareholding in CDC. ABL is an eligible shareholder as defined in Regulation 8 (1) of CDC Regulations which is willing to sell its shareholding in CDC to PSX as per Agreement for Sale and Purchase of shares dated 21 July 2022.

#### Seller II/IGI

14. It is a wholly owned subsidiary of IGI HOLDINGS LIMITED and is primarily engaged in investing, acquiring, selling, and holding of debt and equity securities. It currently holds % shareholding in CDC. IGI is an ineligible shareholder as defined in Regulation 8 (1) of CDC Regulations and is willing to sell its shareholding in CDC to PSX as per Agreement for Sale and Purchase of shares dated 17 June 2022.



<sup>3</sup> PSX, Annual Report 2022, pg 167, online at [https://www.psx.com.pk/psx/themes/psx/uploads/PSX\\_AR\\_22\\_Marge\\_Separator\\_%28For\\_Web%29\\_compressed.pdf](https://www.psx.com.pk/psx/themes/psx/uploads/PSX_AR_22_Marge_Separator_%28For_Web%29_compressed.pdf)

C. The Proposed Transaction & Resultant Change in CDC's Shareholding Pattern

15. As per the Application, PSX will purchase \_\_\_\_\_ ordinary shares of CDC from ABL ( \_\_\_\_\_ % shareholding) at PKR \_\_\_\_\_ /share and \_\_\_\_\_ ordinary shares of CDC from IGI ( \_\_\_\_\_ % shareholding) at PKR \_\_\_\_\_ /share – a total of \_\_\_\_\_ ordinary shares. The transaction value amounts to PKR \_\_\_\_\_ from ABL and PKR \_\_\_\_\_ from IGI for a total of PKR \_\_\_\_\_

The change in the shareholding structure of the Target before and after the transaction is shown in Table 3.

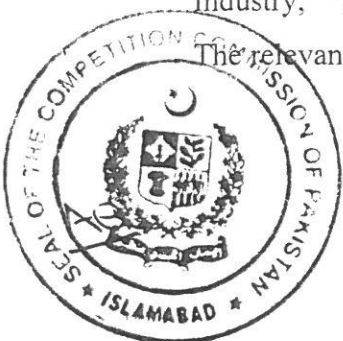
Table 3: Change in Target's Pattern of Shareholding

Target Pattern of Shareholding		
Shareholders	Pre-Transaction	Post-Transaction
PSX(Acquirer)	_____ %	_____ %
Allied Bank Limited (Seller 1)	_____ %	-
IGI (Seller 2)	_____ %	-
Muslim Commercial Bank	_____ %	_____ %
Habib Bank Limited	_____ %	_____ %
LSE Financial Services	_____ %	_____ %
National Investment Trust	_____ %	_____ %
Industrial Development Bank Ltd	_____ %	_____ %
Pak-China Investment Company Ltd	_____ %	_____ %
Crescent Steel And Allied Products Limited	_____ %	_____ %
Ise Towers Reit Management Company Ltd	_____ %	_____ %
Innovative Investment Bank Ltd	_____ %	_____ %
Crescent Standard Business Management (Private) Ltd	_____ %	_____ %
<b>Total</b>	<b>100%</b>	<b>100%</b>

D. The Commission's Phase I Order – Key Findings

16. As per §11 of the Act, any undertaking intending to acquire shares of another undertaking shall apply for clearance from the Commission of the intended transaction subject to pre-merger thresholds and exemption as provided in CMR. The Commission issued its Phase I Order under §11(5) read with §31 of the Act, wherein the relevant **product markets** were identified as “Central Depository System and Ancillary Services,” “Trustee and Custodial Services,” “Investor Portfolio Services,” “Share Registrar Services,” “Centralised Information Sharing Solutions for Insurance Industry,” “Initial Public Offering (IPO) Services,” and “Business Process Outsourcing Services.”

The relevant **geographic market** is Pakistan. The definition of the relevant markets as well as the

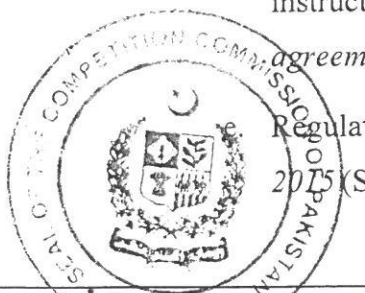


respective market shares of the Target remains the same as defined in Phase I Order and are further detailed in (Paragraph 21 of the this Order).

17. The Phase I Review Order observed that:

- a. At present, PSX is the only securities exchange in Pakistan and the CDC is currently the only licensed entity acting as a central depository. Both are, therefore, dominant in their respective markets. Overall, PSX provides trading services and CDC provides post-trading services to investors and participants. Together they form a crucial part of the value chain providing complementary, interconnected, and related services that are part of the securities trading life cycle.
- b. It was noted that the current acquisition of shares would not lead to any material change in control of CDC, however, the transaction is the PSX's first step towards acquiring at least % shareholding in CDC. The Applicant has reiterated its intent to acquire up to % shareholding in CDC through its email dated 13 August, 2022. *"...Additionally, PSX is acquiring further shares from ineligible shareholders of CDC & NCCPL merely to comply with the requirements of the law and SECP's direction. As only the Exchange is allowed to hold % shares in the Central Depository..."*
- c. PSX's purpose to acquire CDC shares is *"to consolidate shareholding in CDC to make it a subsidiary company and its members from such investment while facilitating compliance with applicable Regulations and period of investment by CDC and its shareholders."*<sup>4</sup>
- d. The Securities and Exchange Commission of Pakistan ("SECP"), being the apex sector regulator responsible for overseeing the operations of PSX and CDC, had instructed PSX *"to engage with other ineligible shareholders for reaching an agreement over a suitable price for divestment of shareholding in CDC..."*<sup>5</sup>

Regulation 8(3)(A) of the CDC Regulations<sup>6</sup> read with §48 of the Securities Act, 2015 (Securities Act) provides that *"collective shareholding of all shareholders other*



<sup>4</sup> PSX, *Annual Report 2022* (Annexure A - information required under Regulation 3(1) of the Companies (Investment in Associated Companies or Associated Undertakings) Regulations, 2017), pg 90, online at [https://www.psx.com.pk/psx/themes/psx/uploads/PSX\\_AR\\_22\\_Marge\\_Separator\\_%28For\\_Web%29\\_compressed.pdf](https://www.psx.com.pk/psx/themes/psx/uploads/PSX_AR_22_Marge_Separator_%28For_Web%29_compressed.pdf)

<sup>5</sup> SECP's letter to PSX, dated 5 March 2021 (Ref: letter no. SMS/SE/2(307)/2019)

<sup>6</sup> Amended through S.R.O. 1417 (I)/2021 (dated 3 November 2021)

than those mentioned at clause (a) of sub-regulation (1) above (i.e., a securities exchange or a connected company) shall not exceed forty nine percent." This, thus, implies that PSX is permitted to acquire at least % shares of CDC (being the sole securities exchange in Pakistan).

- f. The likelihood of PSX being able to exercise influence on the CDC BOD remained. Presently, it has three nominee directors. PCIC also has one nominee director on the Board of CDC (See **Para 12, Pg4** for details). Pursuant to the eventual acquisition of % shareholding of CDC, PSX would have a greater presence on the CDC BOD.
- g. Possible competition concerns highlighted in the Commission's 2015 **Phase II Order** in the matter of **Integration of Karachi Stock Exchange, Lahore Stock Exchange and Islamabad Stock Exchange** remained valid.<sup>7</sup> At the time of integration, PSX (the former Karachi Stock Exchange) had % shareholding and was only allowed to have up to % shareholding in CDC as per the earlier Regulation 8(3)(a) of the CDC Regulations, before it was amended in 2021 (**Para 17.e, Pg6**). The Commission had opined that any "*future integration (between CDC and PSX) could possibly become a barrier to entry for new entrants in the market.*"<sup>8</sup> The Commission, at the time, had not discussed the same in detail as it was not the main subject matter of the stock exchange merger. However, for the subject transaction, such considerations may require a more in-depth analysis.
- h. Given then facts, the Commission observed that the presumption of dominance (as determined under §2(1)(e) read with §3 of the Act) is met as *both* PSX and CDC are the sole entities in their area of licensed activity, *i.e.*, the sole stock exchange and the sole central depository. Both are closely integrated, and their activities are a crucial and critical part of the trading life cycle. Thus, the (overall) intended acquisition would likely strengthen their position and may have an overall impact on trading services in securities market. Considering the foregoing, a Phase II review was initiated under §11(6) of the Act.

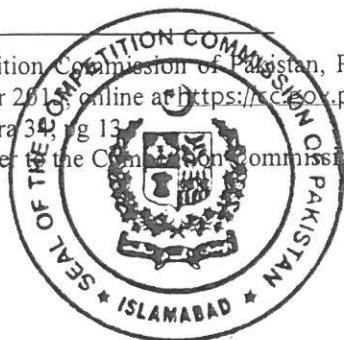
#### **E. The Phase II Review & Subject Transaction's Impact on Competition**

18. In response to the Commission's Phase I order (10 February, 2023), PSX expressed<sup>9</sup> concern that:

<sup>7</sup> Competition Commission of Pakistan, Phase II order on integration of Pakistan's three Stock Exchanges into the PSX, 27 November 2015; online at [https://ccc.gov.pk/images/Downloads/integration\\_of\\_karachi\\_stock\\_exchange.pdf](https://ccc.gov.pk/images/Downloads/integration_of_karachi_stock_exchange.pdf)

<sup>8</sup> Fn 8, Para 34, Pg 13

<sup>9</sup> PSX letter to the Competition Commission of Pakistan, 17 February, 2023





“...two separate matters are being commingled here which has perhaps led to the particular outcome, namely: (i) the proceeding with the Proposed Transaction by PSX, which simply involves the purchase of up to % additional shareholding and increasing PSX shareholding in CDC from ( % to ( %); and (ii) PSX's intention to potentially acquire additional shares representing at least % shareholding in CDC...

And

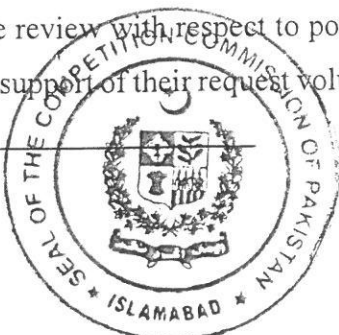
... the Commission is not necessarily too concerned with respect to the current leg of the transaction i.e. the Proposed Transaction, and that the same is not likely to have the effect of reducing competition or result in the creation or strengthening of a dominant position, and that the Commission's concerns largely emanate from the potential next stage, which could possibly involve the acquisition of additional shares and increase of PSX's shareholding in CDC to at least %, as the Commission has stated that "the eventual acquisition of % shareholding of CDC by PSX would amount to a 'change of control'..." (Para 1 of the letter)

19. Furthermore. PSX said:

...It may be noted that the only transaction for which parties have agreed in-principle or have signed a non-binding letter of intent, pertains to the Proposed Transaction and for which purpose the Pre-Merger Application dated December 12, 2022 was submitted to the Commission. Whilst PSX may in the future, if at all, explore the possibility of acquiring additional shareholding in CDC and increasing its shareholding to at least %, at this point in time, PSX does not have an in principle understanding or agreement with any other party for the purchase of such additional shares... (Para 2 of the Letter)<sup>10</sup>

20. On the request of PSX's legal counsel, the Phase II hearing was scheduled for 13 March, 2023. It was attended by PSX counsel along with other authorized representatives including that of CDC. Broadly, the purpose was to hear the views of both PSX and CDC and to glean a more detailed understanding of the proposed transaction. PSX also requested to expedite the process keeping in view that share purchase agreements were executed with ABL and IGI of the proposed transaction in 2022. It requested for clearance of the proposed transaction (% shareholding) and continue the review with respect to potential remaining acquisition upto % of shareholding in CDC. PSX in support of their request volunteered to undertake that until the clearance of the remaining potential

<sup>10</sup> See fn 10



acquisition it will not acquire any further shares of CDC. The Bench at that time clarified that the timelines with respect to filing of Application and information provided at PSX's end did not reveal any delay on part of the Commission to which the representatives agreed.

21. Description of relevant markets defined in Para 15 above, along with the estimated market shares is as follows:

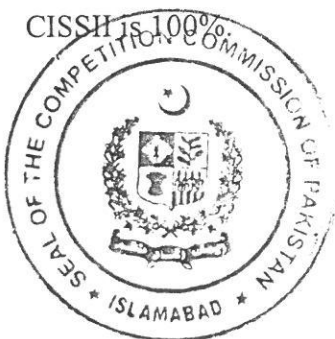
a. Central Depository System and Ancillary Services. The main function of CDC is to operate and maintain the Central Depository System (CDS). Transactions handled by CDS includes deposit of securities, transfer of securities, pledging of securities, pledge release, pledge call, withdrawal of securities, corporate action, and partial cancellation. The Securities and Exchange Commission of Pakistan grants the CDS license under §46 of the *Securities Act, 2015* read with Regulations 3-5 of Central Depositories (Licensing and Operations) Regulations, 2016. Ancillary services means where data available in CDS system is used to provide different services or related to the usage of CDS system: The share in this market is % and these include:

- i. Investor Account Service (IAS): IAS allows retail investors to directly open and maintain accounts with CDC in Central Depository System for secure and safe custody of securities. Investors have direct access to their securities through Investor Account, which are maintained by CDC and operated on the instructions of investors. CDC also provides direct settlement services, online right subscription request and e-Dividend services to IAS accounts.
- ii. Roshan Digital Accounts: An initiative by CDC under the regulatory ambit of State Bank of Pakistan (SBP) and Securities & Exchange Commission of Pakistan (SECP) to facilitate Overseas Pakistanis in capital market investments in Pakistan. CDC act as the central hub by collecting and processing their account information from banks to enable them to trade on PSX; and
- iii. Shared KYC: The Shared KYC channel among the market stakeholders facilitates seamless digital capital market account-opening of local bank-account holders in the same manner as it is done for RDA holders. The pilot implementation of this project is live with five banks and eight Brokers connected to CDC. The CDC acts as the information sharing bridge between Banks and Brokerage houses for sharing of local KYC information by Banks.



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- b. Trustee and Custodial Services: As a Trustee & Custodian, CDC takes into its custody all the assets of the Collective Investment Scheme/Pension funds and holds them in trust on behalf of the Unit holders/Participants and carries out instructions of Asset Management Companies (AMCs)/Pension Fund Managers (PFMs) in respect of the investment portfolio in addition to this, CDC is providing its Trustee & Custodian services for specialized nature of CIS, which include REIT Schemes, Exchange Traded Funds and Private Equity Funds. In this product category, currently, CDC has % market share in terms of number of Funds and % market share in terms of the Net Assets in various categories of Mutual Fund in Pakistan.
- c. Investor Portfolio Services: CDC facilitates investors in opening and maintaining an Investor Portfolio Services (IPS) Account to keep Government Securities with CDC since 2014. Moreover, it facilitates the settlement of government securities traded on the secondary market, such as BATS or with other primary dealers. Another such initiative which has been launched in 2020 to facilitate Capital Market investors is the facility that assists TREC Holders & their clients to pledge their Government Securities held in CDC IPS account in favor of NCCPL as margin against their equity trades, similar to any other capital market security, without transferring ownership. Reported market share of CDC in IPS is %.
- d. Share Registrar Services (SRS): This service is being offered by CDC Share Registrar Services Limited (CDCSR), a wholly owned subsidiary of CDC. It provides share issuing companies facilities of registrar and transfer agents, including customer dealing on behalf of the companies. CDCSR offers a composite portfolio of maintenance, registration, verification, and direct customer dealing & interaction. It has developed a high-tech Share Accounting System with an exclusive Authority & Security Management System and workflow components to guarantee efficient services. CDCSR has taken a competitive lead in the market for SRS by providing a one-window solution to shareholders, backed by a country-wide branch network and state-of-the-art IT infrastructure. Reported market share in SRS is %
- e. Centralised Information Sharing Solutions for insurance industry (CISSII): it provides a centralized database of insurance industry on real time basis to all the stakeholders of the Insurance Industry including the Regulator. CISSII contains the following registers (i) Agency Register, (ii) S-reference Register, (iii) Claim Register, (iv) Adverse Information Register, (v) Group Life Experience Register, (vi) Centralised Policy Register. Reported market share in CISSII is 100%



- f. Initial Public Offering (IPO): IPO is one of the basic components of a capital market. It enables a company to establish a trading market for its shares, as shares sold through Public Offerings are listed at the Securities Exchange for trading and quotation of their prices. The general public participates in companies' Initial Public Offerings (IPO) in two ways: (i) through physical submission of the requisite application/documents; or (ii) their online submission. To facilitate subscribers, CDC & PSX have developed an e-IPO system/software. Since April 2021, the total value of IPOs was PKR [REDACTED]. Out of this, a total amount of PKR [REDACTED] was through both PSX and CDC's e-IPO systems, amounting to a total market share of [REDACTED]%. CDC's market share is [REDACTED]% (based on the amount received through CDC's e-IPO system, i.e., PKR [REDACTED] /-), whereas PSX's e-IPO market share is only [REDACTED]%.
- g. Business Process Outsourcing Services (BPO): BPO services are being offered by CDC through its wholly owned subsidiary, ITMinds Limited. BPO service portfolio includes: (i) BPO services for the mutual fund industry, (ii) BPO services for accounting of Retirement Benefit Schemes, (iv) BPO Services for Standard Accounting Functions. As per the Applicant, market shares in the relevant market of 'Business Process Outsourcing Services', considering the fragmented nature of the market, are not accurately determinable.

22. As the trading platform and the depository function are complementary and interconnected vertical services bestowing the players a significant "big data" and network advantage, the inability of new entrants to enter the value chain could be of concern. This aspect was also previously highlighted in the Commission's 2015 Phase II Order (See **Paragraph 17, Pg8**),<sup>11</sup> considering the substantial barriers to entry. Starting a depository or security exchange requires substantial investment in the development of infrastructure, clearing numerous regulatory and licensing requirements, and challenging the incumbent's decades long advantage. Nonetheless, we note that even prior to the integration of stock exchanges the CDC regulation did envisage and permit holding of shares in CDC by any securities exchange upto [REDACTED] %.

23. In this regard for the sake of completeness, the Bench in its assessment also took into account foreclosure theories of harm and the regulatory framework which govern the Parties. With reference to subject acquisition following three aspects have been looked at:



<sup>11</sup> See fn 8 above pg 6

- i. **Ability:** Post-transaction, could the PSX and CDC weaken the overall competitive offering of their rivals and their ability to compete in the capital market by raising or lowering prices or refusing to supply with essential data and services?
- ii. **Incentive:** Would the PSX and CDC find it profitable to do so, post-transaction?
- iii. **Effect:** Would the effect of any action by the PSX and CDC be sufficient to alter competitive dynamics in their respective product markets?

24. After hearing the parties at length and taking into account the facts on record the Bench finds that:

h. As reported by Applicant, we note that, both PSX and CDC are dominant in their respective product markets, but they are not competing with each-other as they are active in different markets CDC is dominant in CDS and ancillary services, Trustee and custodial services, IPS and CISSII. However, in the Share Registrar Services through its wholly owned subsidiary holds % of the market share. Further the overlapping market between PSX and CDC i.e., IPO both collectively would not hold more than % of the market share.

i. The provision of complementary and interconnected services offered by PSX and CDC, as part of the securities market trading lifecycle, with or without the acquisition of % shareholding in CDC gives them the ability to significantly impact competition dynamics or affect customers, consumers, investors of capital market and other players operating in the same market. Neither presently, there is any other player present in the market offering trading or depository services nor are we aware of any undertaking having made such application. The Commission has also not received any objection from any undertaking subsequent to its Phase I Order issued on 10 February, 2023. Hence, PSX and CDC are expected to remain dominant entities in their respective product markets for the time being.

j. Importantly both PSX and CDC are Self Regulatory Organizations<sup>12</sup> and their activities come under the regulatory ambit of the sector regulator, the SECP. They are, thus, bound by greater ethical and legal standards applicable under the regulatory framework in Pakistan, e.g., conducting transactions on an arms-length basis and disclosing related party transactions.

k. Independent of the subject transaction, the fact that the functions of both the PSX and the CDC – including fee structure on capital market transactions – are regulated and approved by the SECP, any element of abuse or its likelihood to indulge in such practices may first with prejudice



<sup>12</sup> "self regulatory organization" means an entity connected with financial services market and registered by the Commission under this Act for the purpose of regulating the operations, standards of practice and business conduct of its members and their representatives with a view to promote protection of investors and the public interest; ( Section 2(1)(t) of Securities and Exchange Commission of Pakistan Act, 1997

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to the Commission's power may also stand corrected/checked by the oversight of the sector specific regulator.


- l. PSX's existing % shareholding in CDC and % representation on the CDC BoD (3 out of 12 directors) means it already exercises influence over the CDC as defined in explanation I & II of the CMR. Therefore, an additional % shareholding shall not necessarily be strengthening the PSX's control over CDC. The CDC BoD comprises of twelve directors, of which seven are shareholders directors, four are independent directors and one is the chief executive officer. PSX would require approximately % additional voting shares in addition to the % shares of the proposed transaction in case of election of BoD to garner one more director's position on the CDC BoD by virtue of shareholding. Moreover, the subject transaction also stems from a regulatory requirement imposed by the SECP *i.e.*, PSX is *permitted* to acquire at least % and were instructed to act in pursuance thereof.
- m. The Bench upon due consideration is of the view that there is merit in the Applicant's argument to the extent that an intention of any acquisition is based on two circumstances *i.e.*, where the parties have signed a share purchase agreement or have agreed in principle to proceed with the transaction. §11(2) deals with a situation where an undertaking intends to acquire and §11(3) deals with a situation where the concerned undertakings agree in principle or sign a non-binding letter of intent. Accordingly, regarding intent to acquire more shares in CDC, as disclosed in PSX's financial statement the same would not attract pre-merger notification requirement until willingness of the seller(s) exists.


25. As for the request to allow clearance for the subject transaction and review the remaining potential acquisition upto % as part of Phase II review is not tenable. The Bench is not empowered to treat the subject transaction piecemeal. It also appears to be a contradictory stance on part of PSX. Where it has it-self stated that "*Such a transaction is not at all certain and will require a number of steps to be consummated before PSX will be in a position (if at all) to submit a pre-merger application. Therefore, considering such an eventuality at this stage, in our view, is premature*". We agree that the Bench cannot assume or approve the transaction hypothetically. We also note that in the regulatory scheme the timeline envisaged have not been followed, therefore, notwithstanding the regulatory intent the Commission cannot proceed on mere assumption in the absence of the willing seller(s) in the present case. We have therefore restricted our Phase II review to the extent of PSX acquiring 1.65% shareholding in CDC.



F. Conclusion

26. Considering the above in view, the Bench finds that the current acquisition of a % shareholding taking the total shareholding to % in CDC, does not raise any competition concern and would not lead to any material change in control in CDC or lessening of competition in the relevant markets. The proposed transaction is hereby authorized under §31(1)(d)(i) of the Act.
27. In the subject transaction, matters that may fall outside the scope of the Commission's purview remain subject to the applicable laws.
28. It is so ordered.

  
(Ms. Rahat Kaunain Hassan)  
*Chairperson*

  
(Mr. Ahmed Qadir)  
*Director General*

Islamabad the March 21<sup>st</sup>, 2023.

