



**BEFORE THE  
COMPETITION COMMISSION OF PAKISTAN  
IN THE MATTER OF  
Polyester Staple Fibre Companies**

- 1. M/s. Dewan Salman Fiber Ltd**
  - 2. M/s. Pakistan Synthetics Ltd**
  - 3. M/s. ICI Pakistan Ltd**
  - 4. M/s. Rupali Polyester Ltd**
  - 5. M/s. Ibrahim Fibres Ltd**
- (File No. 1(1)/Misc/Dir (Inv)/MCA/2006)**

Dates of hearing: 26-02-2007, 28-02-2007, 06-03-2007, 12-03-2007

Present Mr. Khalid A. Mirza  
Chairman  
Mr. Abdul Ghaffar  
Member  
Raja Raza Arshad,  
Member

Dates of hearing 02-01-2008, 04-01-2008, 07-01-2008, 10-01-2008

Present Mr. Khalid A. Mirza  
Chairman  
Mr. Abdul Ghaffar  
Member  
Mrs. Rahat Kaunain Hassan,  
Member  
Maleeha Mimi Bangash  
Member

Present: 1. Mr. Mazhar Javed Khan, CFO, Dewan M Yousuf Farooqui, Group M.D., Mr. Ahmad Nadeem, Director Marketing, Mr. Mansoor-ul-Haq. G.M Treasury & Company Secretary & Mr. Rashid Anwar and Syed Nasik Ali Gillani Counsel of M/s. Dewan Salaman Fibre Ltd.

2. Mr. Abdul Hayee, Director Finance of M/s. Rupali Polyester Ltd.
3. Mr. Shahid Amin, Director of M/s. Ibrahim Fibres Ltd
4. Mr. Ahmad Ibrahim, Director and Mr. Salim Aziz of Pakistan Synthetics Ltd
5. Mr. Pervaiz A. Khan, Vice President Polyester Business, Mr. Ali Zaman, Busienss Manager, Mr. Feroz Rizvi, Finance Director & Mr. Barrister Baddruddin F. Vellani counsel of M/s. ICI Pakistan Ltd.

## **ORDER**

1. The Monopoly Control Authority (hereinafter referred to as the “Authority”), during examination of price pattern of polyester staple fibre (PSF) in the market, noticed that almost same price was being offered in the market by the Staple Fibre Manufacturers, M/s. Dewan Salman Fiber Ltd, M/s. Pakistan Synthetics Ltd M/s. ICI Pakistan Ltd, M/s. Rupali Polyester Ltd, M/s. Ibrahim Fibres Ltd (hereinafter referred to as the “undertakings”), engaged in production and sale of PSF.

2. The Authority observed that there seemed to be unity among the undertakings as they were quoting /charging one price all over Pakistan. There was possibility that they had an understanding not to compete with each other in price and also were sharing commercial information. The almost identical price quoted by the undertakings in the daily Business Recorder, *prima facie*, indicated cartel like behaviour amongst the undertakings.

3. The Authority, therefore, initiated *suo moto* enquiry under Section 14 of the Monopolies and Restrictive Trade Practices (Control & Prevention) Ordinance, 1970 (hereinafter referred to as the “Ordinance”) and the undertakings were asked vide letters dated December 29, 2006 to supply following information under Section 21 of the Ordinance for the period July 2004 to December 2006 within fifteen days from the date of receipt of the letters:

- i). Month-wise Ex-factory price (per Kg) of each category of PSF;
- ii). Month-wise price of raw materials used in production of PSF;
- iii). Cost of production of PSF (as per format attached) for the last two years;
- iv). List of major customers and their market places;
- v). Installed capacity and actual production of PSF, along with reasons, if the capacity was under-utilized;
- vi). Names and addresses of competitors in the production and sale of PSF, including the names & addresses of importers of PSF.
- vii). International prices, freight, marine insurance, import duty, clearing charges, incidental cost, etc (landed cost) of PSF during the corresponding period; and
- viii). Market share of the undertakings in PSF local market.

4. The undertakings, except M/s. Ibrahim Fibres Ltd, supplied the requisite information which was examined by the Authority. The undertakings did not provide ex-factory price (per Kg) for each category of PSF. Month-wise selling price of PSF was, however, provided.

5. The comparison of the prices, quoted by the undertakings and the prices reported in the daily newspaper “Business Recorder”, indicated a wide difference, whereas, per kilogram profit and loss analysis, provided by the undertakings, showed a considerable difference in their cost and expenses structure. Date-wise price per kilogram of PSF quoted by the undertakings in Karachi market during October 2004

to January 2007 was exactly the same for their identical product. The plant capacity, actual production and capacity utilization of the undertakings for the year 2005-06 was as under:

| <b>Company</b> | <b>Plant capacity<br/>(Tonnes)</b> | <b>Actual<br/>Production<br/>(Tonnes)</b> | <b>Capacity<br/>Utilization</b> |
|----------------|------------------------------------|---|---------------------------------|
| Rupali         | 12,000                             | 22,442                                    | 187 %                           |
| Pak Syn        | 28,000                             | 23,225                                    | 83 %                            |
| ICI *          | 56,000                             | 52,611                                    | 94 %                            |
| Dewan          | 259,900                            | 169,823                                   | 65 %                            |
| Ibrahim        | 208,600                            | 162,380                                   | 78 %                            |
| <b>Total</b>   | <b>564,500</b>                     | <b>429,941</b>                            | <b>76 %</b>                     |

\* For the calendar year 2005

Source: Companies annual reports

6. It is evident from the above table that M/s. Dewan Salman Fibre Ltd, the largest manufacturer, utilized 65% of its capacity during the year 2005. Following quite a simplistic approach, assuming all costs and expenses as variable, moving directly in proportion to the production level, accept depreciation (Rs4.11), administrative expenses (Rs 0.89) and financial expenses (Rs. 3.46); its per kilogram profit and loss for the year 2005 had been analyzed as under:

|                          |                     |
|--------------------------|---------------------|
|                          | <b><u>Rs/Kg</u></b> |
| Selling price            | 83.51               |
| Variable cost & expenses | <u>74.90</u>        |
| Gross margin             | <b><u>08.61</u></b> |

7. In the given situation of price and cost structure, normal commercial approach would demand Dewan Salman to increase their production to maximize profits, as each additional kilogram of PSF produced by them would have added Rs 8.61 to their profit.

8. Market analysis also indicated that demand was available for local PSF as textile manufacturers opt for imported PSF only when local PSF is not sufficiently available.

9. Since date-wise price per kilogram of PSF quoted by the undertakings in Karachi market during October 2004 to January 2007 showed exactly the same price for their identical product, the Authority, under the above circumstances, issued a show cause notice for concerted price fixing behaviour in the PSF market being a restrictive trade practice in terms of Section 6(1) (a) (i) of the Ordinance. The Authority, therefore, gave an opportunity of hearing to the undertakings to justify their position.

10. Hearing Notices dated February 15, 2007, under Section 14 of the Ordinance, were served on the undertakings directing them to appear before the Authority on the following dates:

|   |                         |
|---|-------------------------|
| M/s. Dewan Salman Fibre Ltd                             | 26-02-2007 at Islamabad |
| M/s. Rupali Polyester Ltd &<br>M/s. Ibrahim Fibres Ltd  | 28-02-2007 at Lahore    |
| M/s. Pakistan Synthetics Ltd &<br>M/s. ICI Pakistan Ltd | 06-03-2007 at Karachi.  |

11. Upon request made by M/s. ICI Pakistan Ltd, matter was adjourned for March 12, 2007 at Islamabad. Other undertakings appeared before the Authority and responded to certain queries. The Authority directed them to provide the following further information within a week:

- i. Rates of anti-dumping duty imposed on various sources of import of polyester staple fiber;
- ii. Bench mark pricing with reference to the import price of PSF from China;
- iii. Pricing structure/mechanism;
- iv. How prices are set in the market vis-à-vis prices of other competitors?
- v. Basic guide lines for determination of business terms offered to customers with particular reference to:
  - a). volume/loyalty discount;
  - b). credit terms; and
  - c). delivery terms.
- vi. How the undertakings seek to attract customers of their competitors?

12. The information supplied by undertakings was examined by the Authority which showed that practice followed by the PSF manufacturers, *prima facie*, fell within the purview of Section 6(1)(a)(i) of the Ordinance. Show Cause Notices were, therefore, served on undertakings on August 13, 2007 on the following grounds:

- a). The Authority vides its letters dated December 29, 2006 called for certain information from the undertakings;
- b). the undertakings supplied the requisite information which was examined by the Authority and found that the major manufacturers of PSF were offering the product at the same price;
- c). The Authority conducted, *suo moto*, special enquiry, under Section 14 of the Ordinance to ascertain the reasons for the above referred phenomenon. The Authority also heard the undertakings and observed that:
  - i) All domestic producers appear to have adopted collusive or parallel pricing policy as reflected in the following table:

**Price of Polyester Staple Fiber (PSF) Karachi Market**

**“Rs/ /Kg”**

| <b>Date</b> | <b>Dewan</b> | <b>Ibrahim</b> | <b>I.C.I</b> | <b>P.S.L.</b> | <b>Rupali</b> |
|-------------|--------------|----------------|--------------|---------------|---------------|
| 02-10-04    | 96.60        | 96.60          | 96.60        | 96.60         | 96.60         |
| 30-10-04    | 101.20       | 101.20         | 101.20       | 101.20        | 101.20        |
| 29-11-04    | 101.20       | 101.20         | 101.20       | 101.20        | 101.20        |

|          |        |        |        |        |        |
|----------|--------|--------|--------|--------|--------|
| 30-12-04 | 109.00 | 109.00 | 109.00 | 109.00 | 109.00 |
| 31-01-05 | 103.50 | 103.50 | 103.50 | 103.50 | 103.50 |
| 28-02-05 | 103.20 | 103.20 | 103.20 | 103.20 | 103.20 |
| 28-03-05 | 106.95 | 106.95 | 106.95 | 106.95 | 106.95 |
| 30-04-05 | 111.55 | 111.55 | 111.55 | 111.55 | 111.55 |
| 30-05-05 | 97.15  | 97.15  | 97.15  | 97.15  | 97.15  |
| 27-06-05 | 87.15  | 87.15  | 87.15  | 87.15  | 87.15  |
| 30-07-05 | 82.00  | 82.00  | 82.00  | 82.00  | 82.00  |
| 29-08-05 | 82.00  | 82.00  | 82.00  | 82.00  | 82.00  |
| 26-09-05 | 82.00  | 82.00  | 82.00  | 82.00  | 82.00  |
| 31-10-05 | 82.00  | 82.00  | 82.00  | 82.00  | 82.00  |
| 29-11-05 | 82.00  | 82.00  | 82.00  | 82.00  | 82.00  |
| 31-12-05 | 82.00  | 82.00  | 82.00  | 82.00  | 82.00  |
| 30-01-06 | 82.00  | 82.00  | 82.00  | 82.00  | 82.00  |
| 27-02-06 | 82.00  | 82.00  | 82.00  | 82.00  | 82.00  |
| 27-03-06 | 82.00  | 82.00  | 82.00  | 82.00  | 82.00  |
| 29-04-06 | 82.00  | 82.00  | 82.00  | 82.00  | 82.00  |
| 29-05-06 | 82.00  | 82.00  | 82.00  | 82.00  | 82.00  |
| 26-06-06 | 83.00  | 83.00  | 83.00  | 83.00  | 83.00  |
| 31-07-06 | 91.00  | 91.00  | 91.00  | 91.00  | 91.00  |
| 29-08-06 | 91.00  | 91.00  | 91.00  | 91.00  | 91.00  |
| 30-09-06 | 91.00  | 91.00  | 91.00  | 91.00  | 91.00  |
| 31-10-06 | 91.00  | 91.00  | 91.00  | 91.00  | 91.00  |
| 27-11-06 | 91.00  | 91.00  | 91.00  | 91.00  | 91.00  |
| 16-12-06 | 87.00  | 87.00  | 87.00  | 87.00  | 87.00  |
| 30-12-06 | 87.00  | 87.00  | 87.00  | 87.00  | 87.00  |
| 15-01-07 | 87.00  | 87.00  | 87.00  | 87.00  | 87.00  |
| 27-01-07 | 87.00  | 87.00  | 87.00  | 87.00  | 87.00  |

Source: Business Recorder

- ii). Domestic producers do not enter into long-term sale contracts at a stated price. Quoted prices remained valid for short periods only and at times prices were changed midway in a transaction. Price uncertainty in turn made it difficult for the PSF industrial user (textile mills) to enter into commercially viable long-term predictable export commitments with their customers abroad. This made purchase of PSF from local producers commercially unviable and imprudent vis-à-vis alternatives;

13. The Authority was also satisfied that the circumstances stated in above paragraph, prima facie, were:

- i). an outcome of collusive arrangement amongst PSF manufacturers;
- ii). a negation of free play of market forces of supply and demand by PSF manufacturers; and

- iii). monopolistic or restrictive trading behavior of PSF manufacturers through which the price of PSF had been manipulated by them.

14. In response to the Show Cause Notice, the undertaking, M/s. Dewan Salman Fiber Ltd. vide its letter dated August 29, 2007 requested for grant of a month's time to respond to the Show Cause Notice. It was allowed ten days time, and thus it was required to file response to the Show Cause Notice by September 10, 2007. The undertaking filed its response vide letter dated September 13, 2007.

15. The submissions made by the undertakings are discussed hereunder:

**(a) M/s.Dewan Salman Limited**

- i. The undertaking denied from entering into a collusive arrangement with other PSF manufacturers or resorting to any unreasonably restrictive trade practices. It submitted that prices of its products were fixed on the basis of a large number of factors which include; cost of raw material, labor charges, efficiency of its plants, quality of PSF being produced, financial costs, delivery and payment terms and forces of demand and supply. Due to increase in price of two most important raw material items i.e. PTA & MEG which are directly correlated with international oil prices, movements in interest rates that directly affect the financial cost and increase in labour charges, leaving no choice but to follow market trends to set prices at a level determined by the forces of demand and supply.



ii. The Business Recorder mis- quoted the prices of PSF manufacturers. The data relied by the Authority reflects 26.19% decrease in prices between April & July 2005. The allegation that all the domestic producers had adopted collusive or parallel pricing practices on the basis of table mentioned in the Show Cause Notice was inaccurate.

iii. As per the judgment of the Honorable Lahore High Court in the matter of DG Khan Cement Co. Ltd vs. MCA (2006 CLD 1237), the High Court referred to the decision of a US Court of Appeal for the 7<sup>th</sup> Circuit in the case of Bendix Corporation vs. Balax Inc in which it was held:

“..... similarly in the sale of standardized products does not alone make out a case of collusive price fixing, the reason being that competition will ordinarily cause one producer to charge about the same price charged by any other.”

The Court then gave a categorical finding (at page 1286):

*“In my view, parallel business behavior or conscious parallelism is not in itself sufficient to lead to or permit an inference that a price fixing agreement or cartel exists. There must be shown to exist factors in addition to, and over and above the conscious parallelism for the existence of a cartel in violation of Section 3 read with Section 6 to be established. Obviously the Authority must identify and particularize the*

*“plus” factors on which it seeks to rely in addition to the parallel business behavior.*

*..... If the submissions made by the learned D.A.G. are accepted then any price change or movement could be held to constitute a price fixing cartel. At any time that the prices moved in parallel, the Authority would be able to claim that a cartel existed and that the Authority was entitled to action in the matter. **It is a matter of common experience that the prices of most commodities tend to fluctuate and such changes usually occur in parallel, and this is certainly true for standardized products which are (if at all) differentiated only by the public perception of their brand names or trademarks.**”*

- iv. The management is legally bound to act in the best interest of its shareholders. The Authority had erred in concluding that the circumstances show collusive arrangements between the local producers. The Authority has not shown anything other than the alleged parallel price movement to indicate collusion. The undertaking further quoted legal interpretation of Section 3 read with Section 6 laid down by the Lahore High Court (the correctness of which interpretation was expressly admitted by the Authority in the Sindh High Court in the case of Attock Cement vs. MCA (MA 6/2005) - *“a mere parallel price movement is not sufficient to establish the existence of a cartel in the case of commodities”*. It reiterated that there has been no violation of Section 6 of the Ordinance.

**(b) M/s. Pakistan Synthetics Ltd**

- i. The undertaking submitted that neither it had any collusive agreement with local manufacturers of PSF nor had parallel pricing policy. Its production capacity is only 28,000 tons per annum, whereas, the total domestic capacity is around 550,000 tons per annum. It is one of the small units and has no say whatever in price determination. The pricing structure of its PSF is based on the cost of basic raw materials i.e. PTA and MEG which constitutes more than 80% of the total cost of production. Moreover, market forces of supply and demand and PSF prices quoted by major domestic producers also affect its PSF price mechanism. Due to volatility in prices of oil derivatives, quoted prices of PTA and MEG remain valid for short periods and as such it could not enter into long term purchase contracts with the suppliers of PTA and MEG at a particular price. With regard to passing on the benefits of zero rating of sales tax and custom duties, the undertaking submitted that it did not charge sales tax on the supply of PSF manufactured by it since 05-05-2005 and it also reduced its price to the extent of reduction of custom duties on PTA and MEG.
- ii. It further submitted that keeping in view the tough competition among the leading manufacturers, it is obliged to offer discounts to the customers, and as such price realized is generally lower than the quoted price. It requested for dropping the proceedings.

**(c) M/s. ICI Pakistan Ltd**

- i. The undertaking submitted that it is a listed company, limited by shares, incorporated in Pakistan and registered at Karachi as a public company. Its shares are listed at Karachi, Lahore and Islamabad Stock Exchanges. It is a subsidiary of ICI Omicron B. V., which holds 75.81% of the total issued share capital. It has been for many years in sale and manufacture of PSF in Pakistan. The PSF manufactured is sold directly to the customers. There is no trader, distributor or whole seller for affecting the sale of PSF in the domestic market.
- ii. It denied that any circumstances existed or exist, or that there is any evidence, on the basis of which the Authority has concluded or could conclude that there existed a collusive arrangement or agreement between the undertaking and the other PSF manufacturers with regard to fixing the prices of PSF.
- iii. It submitted that the Authority based the Show Cause Notice on an incorrect understanding of the facts and circumstances and a misreading of material placed before it. The undertaking denied about sale of its products at the same price as of other PSF manufacturers.
- iv. It further submitted that its PSF market is divided into four products, namely 1.2 denier (Semi-Dull), Micro Fiber, Grade-II and Super White.

Super White is a unique product of the undertakings in terms of manufacture and sale. It also submitted that the bench mark prices of each of the products are frequently changed based on an independent commercial evaluation by the undertaking, in response to the prevailing market conditions and changes therein. It submitted a document which provided a comparison between the prices as wrongly alleged by the Authority and the undertaking's benchmark prices for each of the PSF products prevailing on the dates, specified therein during the period from 2-10-2004 to 27-01-2007.

- v. It was submitted that the undertaking's pricing policy and prices have always been independently determined and are based on quality of its product, the cost associated with manufacturing thereof and the degree of competition in the market. The terms of sale are agreed individually with each customer and kept strictly confidential from other PSF manufacturers. There is no wholesale market for PSF in Pakistan. The prices of PSF, both internationally and in Pakistan, were determined purely by market forces and that any changes in the cost of production or manufacture of PSF had direct bearing on the market price of PSF. Pure Terephthalic Acid (PTA) and Mono-Ethylene Glycol (MEG) which are derivatives of crude oil, are key raw material and constitute more than 75% of the total cost of manufacturing of PSF.
- vi. The Authority has wrongly presumed and alleged that there was a price movement in parallel and has incorrectly implied that any inference of

collusion may be drawn from such alleged parallel price movements or that it may be equated with collusion or unreasonably restrictive trade practices or that it may be indicative of, prima facie, existence of an agreement or arrangement; whereby the parties to such alleged agreement or arrangement have colluded to fix or manipulate prices. It referred judgment of Lahore High Court (in PLD 2007 Lhr).

- vii. The undertaking also submitted that in the year 2006 the estimated average capacity utilization of the domestic PSF industry was approximately 69% whereas its average capacity utilization was 83%. It denied that there exists uncertainty in PSF prices due to the absence of long term sale contracts as has been alleged by the Authority. The prices of PSF are not fixed or offered in absolute terms on a long term basis by any PSF manufacturer whether internationally or locally. It also denied that its prices remained valid for short periods only or that the prices changed midway in a transaction. The products manufactured were sold to customers directly on terms of sale agreed with each of them and there was not any collusive arrangement or agreement of the undertaking with other PSF manufacturers. In view of its submission it requested for withdraw of show cause notice.

**(d) M/s. Rupali Polyester Ltd**

- i. The undertaking submitted that it is a company incorporated under the Companies Ordinance 1984 having its main office at Lahore. The

purpose of the company is to conduct the business of manufacture and sale of PSF and polyester filament yarn. It is an independent company and has no connection or relationship with the other fiber manufacturers, who are all its competitors.

- ii. The undertaking further submitted that it would like to defend itself against the first misconception of the Authority as stated in paragraph 7(i) of the Show Cause Notice. The rationalization of tariff structure and reduction in duties and sales tax does not automatically imply the reduction in the sale price of fiber. There are many variable factors which constitute the sale price of fiber. These variables includes manufacturing expenses, product quality, international prices of basic raw materials which are primarily PTA & MEG and prevailing market price of dumped fiber. The most rapidly changing constituent of sale price is the cost of the raw material which directly linked with crude oil prices and keeps on fluctuating in international market. During the period i.e. 2005 the cost of PTA and MEG increased. It quoted average landed cost per kg of PTA and MEG raw materials for the period July 2004 to December 2006. In spite of such increase in the price of fiber, as the Authority itself admitted, the price of fiber was indeed reduced considerably. It is not for the Authority to judge whether or not the reduction in the prices of fiber should have been more or less than what it actual was. The fixation of the price of fiber takes place according to the market conditions like; manufacturing costs and expenses, condition of the machinery and equipment used in the production of fiber, cost of

labour, overheads, geographical locations, cost of PTA and MEG, quality of the product, international prices of fiber and eventually the market supply and demand situation.

iii. It contradicted the figures stated in the table, mentioned in the Show Cause Notice, and submitted its figures under Para 3 of its letter dated August 29, 2007. It also stated that the sale prices quoted by the Authority in the Notice were based on false information and any assumption or conclusion drawn from those figures was dubious and unreliable. In support it provided a set of invoices for the said period. It submitted that the demand and supply situation is far from being at the advantage of the manufacturers and infact is not even close to reaching a state of equilibrium. The economic theory of monopolistic or restrictive trade practices is where there is surplus demand as opposed to supply. In Pakistan there is a glut of fiber productions and all manufacturers are at the behest of potential buyers. At times it has to suffer loss in order to meet the minimum price requirements as determined by the market forces which are beyond individual or collective control of the manufacturers. Therefore, the Authority's allegations of collusion and parallel price fixing are not justified.

iv. The undertaking submitted that the prices of each manufacturer differ. It produces fiber of finest quality in comparison to many other manufacturers because such quality is preferred by cliental and this adds to its production making its prices slightly higher in relation to other



manufacturers. This obviously shows that there can be no collusion as alleged in the Show Cause Notice. The price of fiber is sensitive to market forces which are beyond the control of any manufacturer. Every manufacturer has its *modes operandi* for determining the sale price of fiber depending on the conditions mentioned in the above paras which *inter alia* include all its manufacturing costs and expenses alongwith other factors.

- v. With regard to the Authority's concern that domestic producers do not enter into long term sale contracts due to the over-sensitivity of price to external market forces the undertaking submitted that it is not any way connected to business of textile mills. It is agreeable that the undertaking does not enter into long term sale contracts but the intention is not to undermine the business of textile mills. There are numerous factors which determine the prices of fiber manufacturers and sellers. Entering into long term sale contracts is not economically feasible. The Authority is unjustified in accusing the undertaking of monopolistic activities on the basis of its considering the company's best interests as opposed to the interest of the textile mill owners. The fact of the matter is owing to the rapid fluctuations in price of PTA and MEG, it is impossible to have long term sale contracts for fiber. The dumping of imported fiber has resulted in under utilization of local capacities of fiber production plants and has created an unfair competition amongst the local manufacturers. The fiber industry, due to unavailability of imported yarn at cheaper rates, is not in a position to share upsurge in fiber prices due to increase

in input costs. Thus in order to survive in the market it has to make adjustments in the sale price of fiber intermittently according to demand, some times, at the cost of its margin.

- vi. The undertaking submitted that its production capacity is much lower than its competitors and it has a standardized demand. Accordingly its share of downstream users is allocated according to the demand. The contracts are executed on the basis of 100% advance. No credit based sale is involved. The delivery of the product is ex-plant site. It does not determine its prices according to fiber prices of China. Chinese market prices are not comparable with our prices since their sale price does not even cover our cost of production. It is also pertinent to understand that in the market of fiber production the lowest price offered in the market by any fibre manufacturer then triggers off a price demand which more or less becomes a mean point upon which the prices of manufacturers are based. It is a fact that the fibre manufacturers compete with each other and offer various terms and conditions of sale in which there is no possibility of any monopolistic practices.
  
- vii. The undertaking denied formation of any kind of collusion or price fixing strategy. It has no malafide intention and its only aim to promote its business through fair means despite the unfavourable circumstances in Pakistan for the fiber industry. Had there been collusion in the fibre industry each manufacturer would be using the production plants to the maximum capacity and would be reaching enormous profit levels. The

fibre industry is struggling to make their ends meet it requested for withdrawal of the Show Cause Notice.

**(e) M/s. Ibrahim Fibres Ltd**

- i. The undertaking submitted that it is an independent company registered under the Companies Ordinance 1984. It conducts the business of manufacture and sale of PSF and has its own independent and duly verified balance sheets and audited costs which confirm its expenses of production and manufacturing costs as well as sale volumes and sale prices of PSF. It always intends to determine the sales prices of its products based on the production and manufacturing costs and expenses which are stated in its balance sheets and audited accounts. This depends on the cost of raw material namely PTA and MEG and on the efficiency of the plant. The cost of raw materials fluctuates on a regular basis in the market and therefore derives the sale price of PSF. The ultimate sale price of PSF is beyond its control and also depends upon the international import prices of polyester staple fiber, the local price of PSF charged by the other manufacturers, the product quality, customer requirements and ultimately the market demand and supply. The undertaking has neither any shareholding nor any connection with the other manufacturers and sellers of PSF in Pakistan. The Show Cause Notice stating that it is in any manner fixing the price in collusion with

other PSF manufacturers in Pakistan is misinformed and indicates unawareness of dynamics of PSF industry in Asia Pacific.

- ii. The undertaking submitted that in the year 2005 the duties and sales tax in case of PSF and the raw material used to produce PSF, the producers did not fully reduce the price of the PSF products, has no nexus or connection with the Show Cause Notice. It is indeed upto each individual manufacturer and seller of PSF products to determine price according to its production costs and market conditions. Accordingly the issue whether or not prices were reduced in 2005 by it is not in any manner relevant to nor supports the allegation that it is in collusive arrangement with other polyester staple fiber manufacturers. The contention that price of PSF would be reduced only because of the reduction in duties and sales tax is based on misconception of the economics of determination of the sale price of PSF. The fact of the matter is that if the manufacturing cost increased because of the increase of raw materials, then irrespective of the reduction in duties structure, the sale price of PSF would either be increased or would not be reduced to a great extent. In 2005 while the duties were reduced the cost of manufacturing and the cost of raw material increased. In spite of this increase the prices of PSF were reduced drastically from Rs.97/kg on 30-04-2005 to Rs 82/kg on 30-07-2005. Even the Authority has admitted that the prices of PTA and MEG were reduced in the said period but the sale price was not reduced fully. This infact is factually incorrect as the prices were reduced considerably and furthermore it is

not for the Authority or undertaking, to judge the impact of the reduction of the duty on sale price of PSF. The prices are determined by market forces.

- iii. The undertaking further submitted that the table provided by the Authority containing the list of prices of various PSF manufacturers and sellers between the period October 2004 to January 2007 and based on that table it is alleged that there is collusion amongst the PSF manufacturers for the prices is incorrect and false and does not accurately reflect the price changes during that period. The price list of PSF on which the Show Cause Notice is based is factually false and wrong and hence the case of the Authority against it for collusion with other PSF manufacturers collapses. The gross sale price of PSF charged by it is clearly different from the price charged by the other manufacturers. It is absolutely wrong to base any case of collusion simply on the sale price of PSF as pricing of PSF depends on cost of manufacture. The price of the raw material of course is not the only factor to be taken into account to determine the price of PSF. The sale price of PSF also takes into account the international prices of PSF; the prices of PSF charged by the other manufacturers, the terms and conditions of sale being offered by other PSF manufacturers and ultimately depends upon the market demand and supply situation. Infact in Pakistan the supply of PSF is more than the demand and indeed the PSF supply has to compete with the imported products. To the contrary had there been a collusion all the PSF manufacturers would have been

making huge profits which is not the case. Infact the undertakings is only operating 70% of its capacity. The PSF manufacturers are offering different terms and conditions to their customers e.g. some PSF manufacturers are selling PSF on the basis of credit whereas others are including the transportation cost in their sales price.

- iv. The undertaking further submitted that the Authority has correctly observed in Para 7(iii) of the Show Cause Notice that local producers do not enter into long term sales contracts at stated price. The cost of raw material PTA and MEG fluctuates rapidly making it impossible to have long term sale contracts at any fixed price. In addition to that there are various variable market forces which determine the prices of PSF manufacturers and sellers from time to time. The uncertainty in the price of PSF makes it difficult for the textile mills to enter into export commitments. It is surprising that the Authority is presenting the point of view of the textile mills as if the entire Show Cause Notice is being made out at their behest. the Authority cannot allege any collusion against PSF manufacturers on the basis that the fix price of PSF would benefit the textile mills. The benefit to the textile mills has no nexus with the allegations of collusion and even in the case of imported fiber the prices do constantly vary.
- v. The pricing table prepared by the Authority is totally wrong. PSF is a bulk commodity and even a slight increase by any producer results in loss of business for that producer. It is the lowest price offered in the

market that becomes the benchmark of the prevailing market rate of PSF. Infact the PSF manufacturers compete with each other on the prices and the terms and conditions of sale. The Authority's allegation that there is any negative free play of market forces of supply and demand by PSF manufacturers are merely words without any substance in the given circumstances.

- vi. The undertaking finally submitted that monopolistic or restrictive trade practices activity arises when there is excess demand in the market but there is not enough production to meet that demand and the producers mutually agree on a higher price to take undue advantage of the market situation. However, in the current situation there is a surplus of PSF production in Pakistan and the undertaking is not in a position to dictate prices. Even if the major producers form a collusive pricing policy their businesses would not improve as the potential customers would meet their requirement by importing PSF.
- vii. The undertaking has requested for withdrawal of the Show Cause Notice.

16. After promulgation of the Competition Ordinance, 2007, the Competition Commission of Pakistan (hereinafter referred to as the "Commission"), as successor of the Authority, decided to fix the matter for hearing under the provisions of Section 11 of the Ordinance, read with Section 59 of the Competition Ordinance, 2007.

17. The matter of the following undertakings was, therefore, fixed for hearings on the dates mentioned against each.

- |       |  |          |
|-------|--|----------|
| i).   | M/s. Dewan Salman Fibre Ltd at Islamabad | 2-1-2008 |
| ii).  | M/s. Pakistan Synthetics Ltd at Karachi  | 4-1-2008 |
| iii). | M/s. ICI Pakistan Ltd at Karachi         | 4-1-2008 |
| iv).  | M/s. Rupali Polyester Ltd at Lahore      | 7-1-2008 |
| v).   | M/s. Ibrahim Fibres Ltd at Lahore        | 7-1-2008 |

18. The undertakings appeared before the Commission on the above mentioned dates and responding to the queries raised by the Commission. They submitted that they are not members of any formal association and the informal association, that does exist, in no manner meets or coordinates to adopt or fix parallel pricing or levels of output. They denied that they quoted any price in the media or discontinued the same at any stage. They also acceded to providing an undertaking and an affidavit assuring their contentions.

19. We have taken into account the judgment relied upon by M/s. Dewan Salman Fiber Limited in the matter of DG Khan Cement Company Ltd Vs MCA, 2006 CLD1237, which in our view can be distinguished from the present case on the basis of facts and circumstances cited therein. For instance, in the said case, the authority did not specify or identify the alleged conspirators, it only referred to “good numbers of manufacturers” or “some cement manufacturers”. Parties were not particularized and participants in the conspiracy were not identified to show when or how they functioned. Although it was alleged that budgetary relief in central excise duty was



not passed on the consumers, the record contradicted the position and in fact the same was passed on to the consumers. Another very important aspect was the acceptance of the fact that prior to April 2003 there was no cartel or collusion in violation of the ordinance. However, the price levels in October, 2002 were at about same level as the prices after May, 2003 increased. (At pgs 1289-92).

20. More importantly, the excerpts relied upon in the referred decision M/s. Bandy Corporation Vs M/s. Balas Inc (US court of appeal) have also been quoted in isolation. The above judgment laid down the principle that “*conscious parallelism is not in itself sufficient to lead to or permit an inference that a price fixing agreement or cartel exists*”. However, various principles deduced from the decisions of US courts of appeal have taken into account the significance of such conscious parallelism. In this regard attention is drawn to paragraph 49 at page 1284 of the judgment:-

*“Because the evidence of conscious parallelism is circumstantial in nature, courts are concerned that they do not punish unilateral, independent conduct of competitors...They therefore, require that evidence of a defendant’s parallel pricing be supplemented with “plus factors”...The simple term “plus factors” refers to “additional facts to factors require to be proved as a prerequisite to finding that parallel action amounts to a conspiracy...They are necessary conditions for the conspiracy inference....That show that the allegedly wrongful conduct of the defense was conscious and not the result of independent business decisions of the competitors. **The plus factors may include, and often do, evidence demonstrating that the defendants: (1) acted contrary to***

*their economic interests, and (2) were motivated to enter into a price fixing conspiracy.* (Emphasis added)

21. It is also helpful to refer to paragraph 53 at page 1286:-

*“If such “plus” factors do exist in addition to parallel business behavior, it would be open to the alleged conspirators to present material to show that it cannot be reasonably inferred by the Authority that they had entered into a price fixing conspiracy. They would be entitled to rebut the inferences being drawn from the parallel business behaviour and the “plus” factors. The reason is that the matter is being determined not on the basis of direct evidence, but on deductions being indirectly made and inferred from the facts and circumstances of the case. It is possible in such a situation that Authority may misread or draw the wrong conclusions from the circumstantial material and it is only right for the alleged conspirators to be entitled to present material to rebut the inferences. **If the alleged conspirators fail to present any such material or the material presented is found to be deficient or unconvincing, then it can legitimately be inferred from the parallel business behaviour and the “plus” factors being relied upon that an agreement exists which is violative of section 6(1) of the Ordinance, and that there has thus been a violation of section 3 thereof.***

(Emphasis added).

22. In the present case, along with the parallel price fixing there certainly are some “plus factors” present, such as, despite both importers and local producers being equal

beneficiaries of the tariff reduction by around 22% in the case of PSF and the raw material used to produce PSF i.e. PTA and MEG, The local PSF producers did not reduce the prices timely as was the case with imported PSF. Worldwide bumper cotton crop also lowered cotton prices in 2005. It is perhaps plausible to argue that by not lowering the prices the local producers acted against their long term economic interest as it had an impact on the number of their customers. Even if the prices were lowered subsequently, by that time customers had placed their orders with the importers as is evident from the increase in import. Other things being equal there would have been an impact on the price which was not duly explained. The show cause notice, however, has not addressed this aspect specifically. Also, the reluctance by the domestic producers of the PSF to enter in to long term sales contracts at the stated price perhaps makes purchase of PSF from local producers commercially unviable and imprudent vis-à-vis alternatives i.e. import from China or South Korea etc who are amenable to long term sales. Moreover, the price pattern may not be identical which in any case is not required in such cases. The price pattern followed is similar, which in itself also has an indicative value. Slight variation in price, if any, could be attributed to the variance in the terms and conditions applicable to each party. This type of price parallelism is normally not possible in a fairly competitive market where the competitors have quite different installed capacities and levels of capacity utilization as well as divergent cost structures. The above factors are indicative of a tied arrangement and it would be incorrect to state that it is merely a case of price parallelism or that every thing can be justified under one umbrella ground that prices are determined by the “market forces”. Nothing cogent has been provided as to how these market forces worked, whereas on the other hand, there is some reason to believe that market forces could have been impeded by collusive

behaviour. We are not in agreement with the stance taken that restrictive trade practices arise only when there is excess demand in the market but there is not enough production to meet the demand. To the contrary where there is a surplus, you may want to cartelize either the production or the price.

23. Under the given facts and circumstances, while on one hand, these plus factors, although present may not be conclusive, on the other hand, in view of the submissions made, the Commission was not fully satisfied with the grounds and explanations offered on part of the concerned undertakings.

24. The Commission, therefore, inquired whether the parties would be willing to come forward with any assurances in this regard. The parties were informed that such assurance had to be in the form of an undertaking, for and on behalf of their Board of Directors and affidavits of their Chief Executive Officers to the satisfaction of the Commission, *interlaid* affirming that they have not organized themselves in any formal association and the informal association, that exists, in no manner meets or coordinates to adopt or fix parallel pricing or levels of output. Apart from assuring the Commission that due compliance with the existing law shall be ensured, the undertakings also had to categorically state and confirm that they had neither quoted any prices in the media nor provided any information in this regard. Since all the parties in the subject proceedings readily consented to comply with the requirement of filing an undertaking and submitting the affidavit of Chief Executive Officer, they were directed to file the same within a specified period of two weeks.

25. All parties to these proceedings namely M/s. Dewan Salman Fiber Ltd,

M/s. Pakistan Synthetics Ltd, M/s. ICI Pakistan Ltd, M/s. Rupali Polyester Ltd and M/s. Ibrahim Fibres Ltd have filed the undertakings and affidavits with the Commission. The Commission, after considering the facts of the case, the submissions of the authorized representatives and the fact that the parties voluntarily furnished Undertakings on behalf of their Board of Directors and Affidavits of their Chief Executive Officers, is inclined to give the benefit of doubt to the said undertakings. The said undertakings are, however, cautioned that the Commission shall maintain a vigilant eye on their conduct of business, and in the event any violation of the law is apprehended or detected, the Commission shall proceed in accordance with the law. In terms of foregoing, the subject Show Cause Notices are accordingly disposed off.

(Khalid A. Mirza)  
Chairman

(Abdul Ghaffar)  
Member

(Rahat Kaunain Hassan)  
Member

(Maleeha Mimi Bangash)  
Member

**Islamabad the June 10, 2008**