



**BEFORE THE
COMPETITION COMMISSION OF PAKISTAN**

PHASE II REVIEW

**IN THE MATTER OF ACQUISITION OF ADDITIONAL 1.3% SHAREHOLDING OF M/S.
TRI-PACK FILMS LIMITED BY M/S. PACKAGES LIMITED FROM M/S. MITSUBISHI
CORPORATION.**

CASE: 1155/Merger-CCP/21

Date of Hearing

8th of October, 2021

Commission

Ms. Rahat Kaunain Hassan
Chairperson

Ms. Shaista Bano
Member

Mr. Mujtaba Ahmad Lodhi
Member



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ORDER

1. The Competition Commission of Pakistan (the “**Commission**”) is mandated under the Competition Act, 2010 (the “**Act**”) and the Rules and Regulations framed thereunder, to provide for free competition in all spheres of commercial and economic activity, to enhance economic efficiency and to protect consumers and market players from anticompetitive behavior in the form of, *inter alia*, abuse of dominance, deceptive marketing practices and mergers which may substantially lessen competition by creating or strengthening a dominant position in the relevant market.
2. An order concluding the Phase I Review was passed by the Commission on August 23, 2021 (“**Phase 1 Order**”), thereby initiating Phase II review in the instant matter (“**Phase II Review**”). This Order concludes the Phase II Review of the pre-merger application in the matter of the proposed acquisition of 100% shareholding of M/s. Tri-pack Films Limited (“**TFL**” or “**Target Company**”) by M/s. Packages Limited (“**PL**” or “**Acquirer**”) from M/s. Mitsubishi Corporation (“**MC**” or “**Seller**”).

BACKGROUND

3. On February 19, 2021, the Mergers and Acquisitions Department detected a transaction through a notice of the Acquirer that appeared on the data portal of Pakistan Stock Exchange on February 18, 2021 regarding its intention to acquire 100% shareholding of the Target Company (reference: Annex B of the Acquirer’s Paperbook Response (the “**Paperbook**”) (the “**Transaction**”). Following a thorough correspondence with the Target Company and the Acquirer from February 22, 2021 to June 22, 2021 regarding the filing of the pre-merger application (the “**Application**”), on July 6, 2021, the Acquirer submitted the Application to the Commission regarding the Transaction, with the information being completed on August 11, 2021. The Commission, in its Phase I Order, stated that it had concerns regarding the subject merger's compatibility with the antitrust laws. Accordingly, a Phase II Review was initiated under Section 11(6) of the Act.

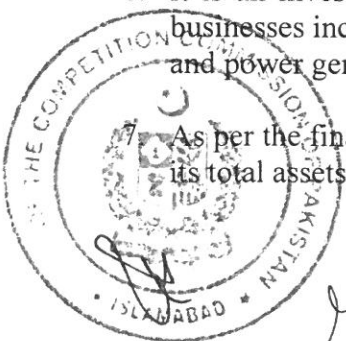
PARTIES

4. The parties involved in the transaction are as follows:
 - i. Acquirer;
 - ii. Target; and
 - iii. Seller

Acquirer

5. Acquirer is a public limited company incorporated under the laws of the Islamic Republic of Pakistan, having registration no. 0000792 with its registered office located at Fourth Floor, The Forum, Suite No. 416 – 422, G-20, Block 9, Khayaban-e-Jami, Clifton, Karachi, Pakistan.
6. It is an investment holding company that holds investments in companies engaged in various businesses including packaging material, tissue and consumer products, industrial inks, insurance and power generation.

7. As per the financial statements submitted by the Acquirer for the year ended December 31, 2020, its total assets were valued at PKR _____ and total revenue was PKR _____.



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8. The Acquirer's Board of Directors list is as follows:

- a) Towfiq Habib Chinoy
- b) Syed Hyder Ali
- c) Syed Aslam Mehdi
- d) Imran Khalid Niazi
- e) Josef Meinrad Mueller
- f) Syed Shahid Ali
- g) Tariq Iqbal Khan
- h) Hasan Askari
- i) Saba Kamal
- j) Irfan Mustafa

Target Company

9. The Target Company is a public limited company incorporated under the laws of Islamic Republic of Pakistan, having registration no. 0030231 with its registered head office located at the Fourth Floor, The Forum, Suite No's 416-422, G-20, Block No 9, Khayaban-e-Jami, Clifton, Karachi Pakistan. The Target Company was created as a joint venture between the Acquirer and the Seller via their Joint Venture Agreement entered into on 13 April 1993 (the "JVA") (attached at pg 92 of the Paperback).

10. The Target Company is engaged in the manufacturing and sale of BOPP and CPP films that are best suited for food and beverage applications such as snacks, confectionary, dairy food, fresh cut vegetables, beverages etc. as well as non-food applications like overwrapping, lamination and bag-making etc. The films are produced in various thickness, ranging from 10 to 150 micron.

11. As per the financial statements submitted by the Target Company for the year ended December 31, 2020, its assets were valued at PKR _____ and total revenue was PKR _____.

12. The Target's Board of Directors list is as follows:

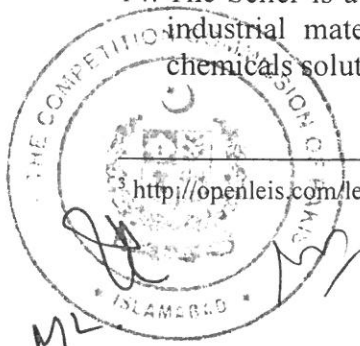
- a) Syed Babar Ali
- b) Syed Hyder Ali
- c) Khurram Raza Bakhtayari
- d) Nermeen Towfiq Chinoy
- e) Yukio Hayasawa
- f) Asif Qadir
- g) Yohei Shiimoto
- h) Saquib Hussain Shiraz

Seller

13. The Seller is a listed company incorporated under the laws of Japan having registration no. RA999999¹ with its registered head office located at 3-1, Marunouchi, 2-Chome, Chiyoda-ku Tokyo, 100-8086, Japan.

14. The Seller is a conglomerate that is engaged in various businesses including but not limited to industrial materials, natural gas, mineral resources, finance, machinery and petroleum and chemicals solution.

http://openleis.com/legal_entities?utf8=%E2%9C%93&q=mitsubishi+corporation&commit=Search



TRANSACTION

15. As per the Share Purchase Agreement entered into on June 8, 2021 between the Acquirer and the Seller (the “SPA”), the Acquirer will buy _____ ordinary shares (that represents _____% shareholding of the Target Company) from the Seller. The total estimated amount under consideration to be paid for _____ shares is PKR _____/-. The Acquirer already holds _____% shareholding in the Target Company and upon completion of the proposed Transaction, the shareholding of the Acquirer in the Target will increase from _____% to _____% as evidenced by the table below.
16. Furthermore, it is pertinent to note that, additionally, _____% shareholding in the Target Company is also held by the Acquirer indirectly, *inter alia*, through associated companies, the Chairman of the Board of Directors of the Acquirer holds _____% direct equity stake and the CEO of the Acquirer holds _____% direct equity stake in the Target Company (reference Acquirer’s letter dated September 13, 2021 at pg 85 of its Paperbook). The Acquirer also, prior to this transaction, already holds management control of the Target Company (reference: Clause 1.3 of the JVA) and may intend to purchase such number of shares through the Public Offer in accordance with the applicable Take Over laws in Pakistan.

Undertakings	Shareholding (%)	
	Pre-Transaction	Post-Transaction
Acquirer		
Seller		
IGI Investments (Pvt) Ltd		
Babar Ali Foundation		
Directors & their Spouse(s) & minor Children		
Insurance Companies		
Modarabas & Mutual Funds		
General Public		
Others		
Total	100	100

Source: Application

PHASE I ORDER

17. On the basis of information presented before a two Member Bench of the Commission, the Commission issued the Phase I Order, under Section 11(5) read with Section 31 of the Act, wherein the relevant product markets in this case were identified as **Biaxially Oriented Polypropylene films (“BOPP” or “Relevant Market-1”)** and **Cast Polypropylene films (“CPP” or “Relevant Market-2”)** while the relevant geographic market was Pakistan.
18. As per the data submitted by the Applicant/Acquirer, pre-merger market share of the Target in the Relevant Market-1 is estimated to be _____%, whereas in Relevant Market-2, the pre-merger market share is estimated to be _____%. The Target Company stands as the largest company in Pakistan in both Relevant Markets followed by M/s. I-Pack and M/s. Astropak respectively. For ease of reference, see the table below:



Pre-merger Market Share of the Target/Acquirer along with its Competitors			
Company	Market Share		
	Relevant Market-1		Relevant Market-2
Target/Acquirer			
I-Pack			
Macpac			
Astropak			
Golden			
Nafees			
Others			
Total	100%		100%

Source: Application

19. It was further determined that the proposed Transaction met the presumption of dominance as determined in Section 2(1)(e) read with Section 3 of the Act, and, therefore, required a more detailed assessment during the Phase II Review to determine whether the Transaction would substantially lessen competition in the Relevant Markets.

CORRESPONDENCE WITH THE MERGER PARTIES DURING PHASE II REVIEW

20. On September 7, 2021, after the passing of the Phase I Order, the first letter was sent by the Commission to the Acquirer requesting the following information in order to assess the impact of the intended acquisition on the packaging industry in Pakistan:

- a. Complete list and market shares of the competitors for Relevant Market-1 and Relevant Market-2.
- b. A description of the potential impact on market share of paper, paperboard, cartons and packaging material ("**Related Markets**").
- c. Detailed list of products and services provided by the Acquirer, its subsidiaries and associated companies.
- d. Nature and detail of transactions taking place between the Target Company and the Acquirer's competitors along with its subsidiaries and associated companies.
- e. Complete disclosure of the related party transactions provided by the Acquirer in the financial statements along with details of procedures in place to ensure that such transactions are taking place at an arm's length basis.
- f. List of customers of the merging parties separately for all the products and services offered with common buyers highlighted.

21. The Acquirer submitted its response to the above via its letter dated September 13, 2021 (reference: pages 85-91 of its Paperbook) whereby it broadly stated:

- a. The nature of the Transaction – in particular, the Acquirer highlighted that the Transaction would not result in any change in the management control of the company and that the Target Company's market shares in the Relevant Markets would remain unchanged post Transaction.



- b. Its business/objects and that of the Target Company
 - c. Provision of market shares
 - d. List of competitors as well as their respective market shares
 - e. Details pertaining to the Related Markets – in particular, the Acquirer highlighted that BOPP and CPP films are not a part of the supply chains for carton and paperboard products, but are a part of the supply chain for flexible packaging products.
 - f. Details pertaining to the business of the Acquirer’s associated companies/subsidiaries;
 - g. Details of its related party transactions
 - h. List of customers
22. Further clarification pertaining to information submitted by the Acquirer was required, therefore a follow-up letter dated September 28, 2021, was sent by the Commission addressed to the Acquirer, requesting the following information:
- a. Complete list and market shares of the competitors for Relevant Market-1, Relevant Market-2 and Related Markets (along with their addresses and clarification regarding competitors categorized as others).
 - b. List of major customers of the Target Company, subsidiaries and associated companies of the Acquirer separately for all the products and services offered with common buyers highlighted.

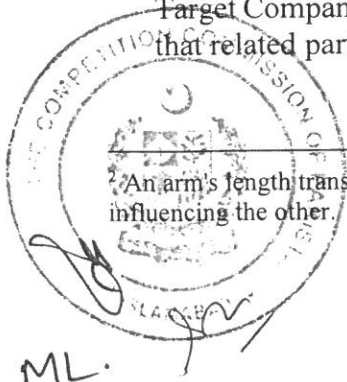
23. The Acquirer responded to the above via its letter dated 6 October, 2021.

Hearing (October 8, 2021)

24. The Commission provided an opportunity of hearing to the concerned parties, which opportunity was availed on October 8, 2021. During the hearing, the Counsel, on behalf of the Acquirer, made a preliminary argument explaining that the Seller decided to exit Pakistan and the Acquirer already owns 77% of the Target Company. In addition (as stated above), the Acquirer indirectly owns 23% of the Target Company already through associated companies and persons such as IGI Investments (Pvt.) Ltd. and Babar Ali Foundation and it further intends to acquire 3% shareholding in the Target Company. The Counsel further contended that the Transaction will not improve the Acquirer’s dominant position because the Acquirer is already dominant in the market, since the Target Company already has a large market share and the Acquirer has management control of the Target Company prior to the Transaction.

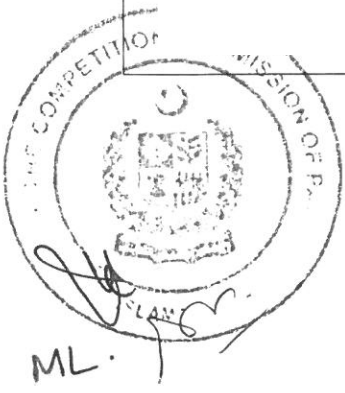
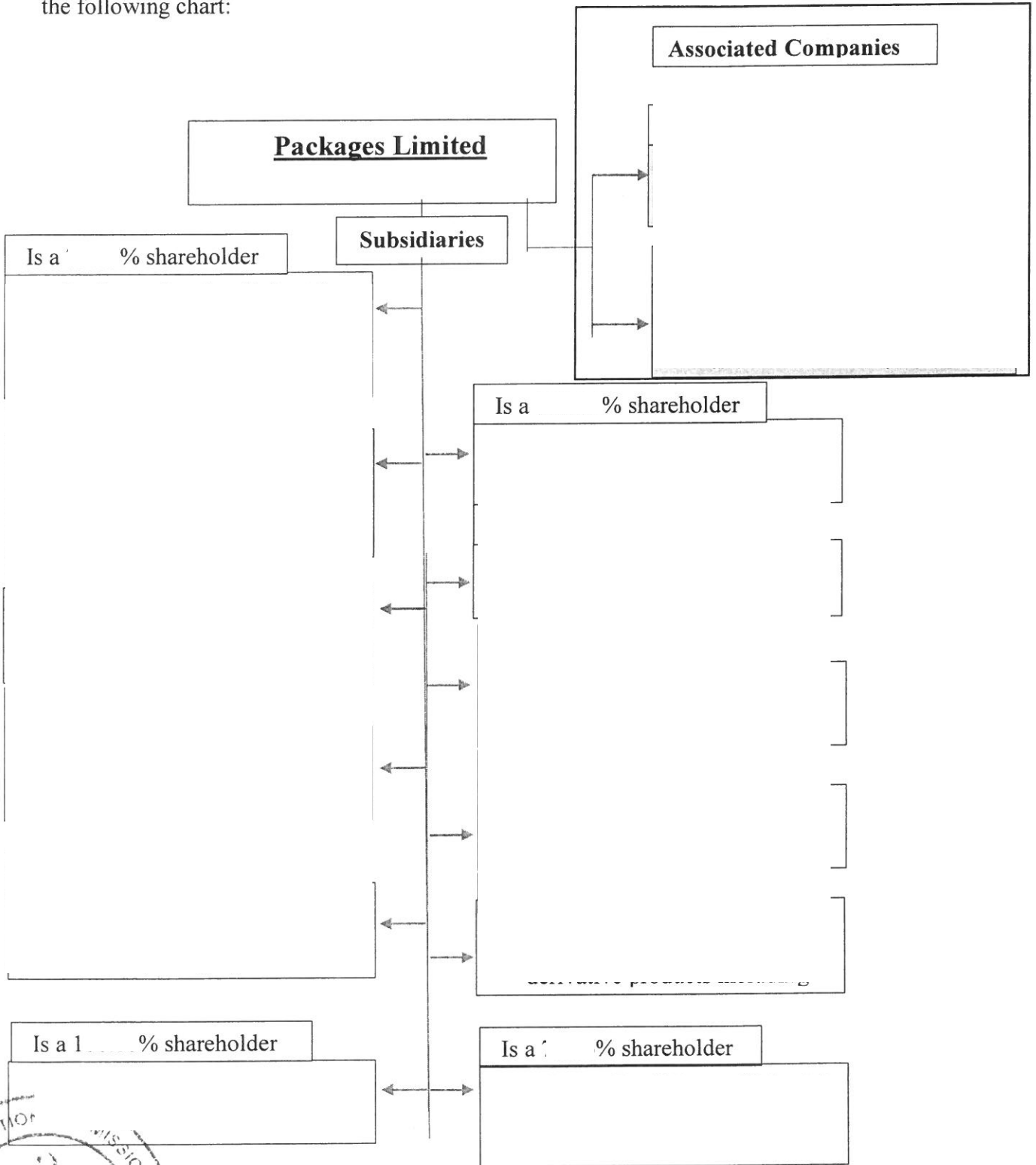
25. The Counsel further elaborated that all the transactions taking place with sister concerns were taking place at an arm’s length basis² which are disclosed in the annual report. Furthermore, the Target Company has a policy in place called the ‘Related Party Transactions Policy,’ which ensures that related party transactions are carried out at an arm's length basis.

²An arm's length transaction refers to a business deal in which buyers and sellers act independently without one party influencing the other.



ANALYSIS FOR PHASE II REVIEW

26. Shareholding of the Acquirer in the different entities and their principal activity is illustrated in the following chart:



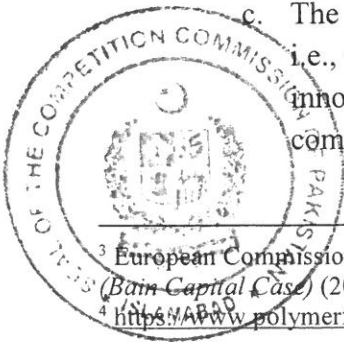
Determination of Relevant Market

27. BOPP film is one of the materials used for flexible packaging and labelling in food (such as confectionary items, biscuits, snacks, tea, etc.) and non-food sectors (labels, textile bags, tobacco, pharmaceutical items, etc.). Upstream of BOPP film manufacturers are polypropylene manufacturers, and downstream BOPP film is principally supplied to converters and large multi-national consumer product manufacturers. BOPP film can be subdivided into transparent, white/opaque and metallised plastic material³.
28. CPP film is a cost-effective, low density, high-performance transparent cast polypropylene film. CPP films are often seen as having optical clarity, high gloss, good seal strength, and machinability, and are resistant to tears and punctures. These characteristics make this plastic good for the medical, food packaging, and textile industries⁴.
29. The Target Company is engaged in the manufacturing and sale of only BOPP and CPP films, the relevant product markets are therefore the same as determined by the Commission in its Phase I Order, i.e., Relevant Market-1 and Relevant Market-2. Given that the Target Company sells its products to customers located all over Pakistan, the relevant geographic market has been taken to be the whole of Pakistan.

Theories of Harm

30. Concerns related to the Transaction are broadly that:

- a. Post-merger scenario, the Acquirer's shareholding in the Target Company would increase to 50% in addition to any other shares acquired by the Acquirer as may be offered through the Public Offer in accordance with the provisions of the Take-Over laws in Pakistan.
- b. The Acquirer has numerous subsidiaries/associated companies in the downstream packaging market, i.e., the Related Market (we note that not every packaging material is suitable for any product, however, most products do have a choice of at least two or three packaging materials that may be significantly interchangeable) including one that uses BOPP films in its packaging material, therefore, the increase in shareholding may increase the market power of the Acquirer and put it in a position where it could foreclose the downstream market and affect competition therein through anti-competitive practices such as refusal to supply, tie-ins/bundling, predatory pricing etc.
- c. The Acquirer/Target Company may also, post Transaction, impose unilateral effects, i.e., when the merged group is able to profitably reduce the value for money, choice or innovation through its own acts without the need for a co-operative response from the competitors. This can be in the form of various examples of exclusionary conduct as



³ European Commission decision in Case No COMP/M.3025 - BAIN CAPITAL / DOR CHEMICAL / TRESPAPHAN (Bain Capital Case) (2002)

⁴ <https://www.polymerfilms.com/product/cpp/>

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stated in 28(ii) above, including stopping supplies to competitors of its subsidiaries/associated companies in the Related Market.

- d. As per the Herfindahl-Hirschman Index (“HHI”), Relevant Market-1 is highly concentrated with a HHI of), whilst Relevant Market-2 has a HHI of approximately). This signifies that both markets are highly concentrated. The Target Company is already a dominant/leading player on both markets, which are highly concentrated and already has few companies competing therein.
- e. The Transaction raises the likelihood that, following the merger, merging parties and their competitors will be able to possibly coordinate their behavior in an anti-competitive manner, as there are only three big players in the Relevant markets (I-Pack, Macpac & Astropack), potentially driving smaller firms out of the industry due to a highly concentrated market.

Competition Assessment

31. Upon detailed review/perusal of the material, documents and facts on record, the Commission finds merit in the submissions of the Acquirer that the Transaction shall not adversely impact competition in the Relevant Markets due to the following reasons:

- a. As highlighted above in the factual background, as per Clause 1.3 of the JVA, the Acquirer was originally and always in charge of the management of the affairs of the Target Company. Moreover, as per Clauses 5.1 and 5.11 thereof, the CEO and Chairman of the Board of Directors of the Target Company was to be nominated from the directors nominated by the Acquirer.

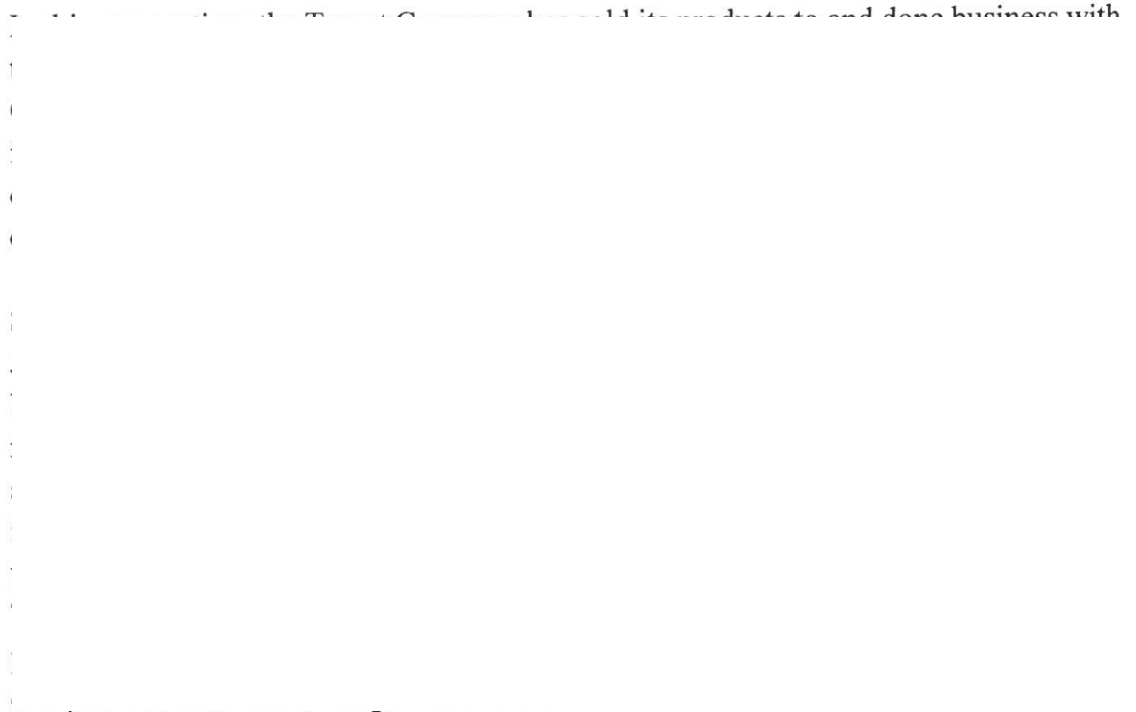
Post-merger scenario, the Acquirer’s role as managing the affairs of the Target Company does not change. The only change to the management of the Target Company is that completion of the Transaction, as per Clause 7 of the SPA, would require the Seller’s nominated directors on the Board of Directors of the Target Company to resign and for the Acquirer to nominate its own directors in their stead. Management control would still remain with the Acquirer.

- b. Its associated companies in the packaging business related to *inter alia* paper and paperboard products, cartons and tissue products do not use BOPP or CPP films as raw materials and such films do not form a part of the supply chain for such products. Such products may also not be considered as a substitute for BOPP or CPP film as packaging material given their different packaging properties and the different items/brands that they respectively target. Hence, it is unlikely that the Transaction would have an adverse effect on competition in this area.

- c. As stated by the Acquirer, BOPP and CPP films form part of the supply chain of flexible packaging products. Flexible packaging involves the manufacture, supply and



conversion of plastic and cellulose films, aluminium foils and papers into reels of packaging to be used for primary retail food packaging and labelling and certain other non-food sectors. There are thousands of different flexible packaging products, based on a variety of films, papers and foils⁵. Standard flexible packaging materials using polypropylene can be subdivided into three categories, with BOPP plastic film being one of them⁶.



- d. We also find no history of collusion or any other anti-competitive practices in the Relevant Market. In this regard, it is important to highlight that the Target Company has, as of 30 June 2021, a large number of active customers in the market. With such a large and diverse consumer base, we find that there is also a degree of countervailing buyer power in the market.

32. As per the European Commission's Merger Regulations⁷, the concept of concentration covers "*operations bringing about a lasting change in the control of the undertakings concerned and therefore in the structure of the market.*" The Transaction affects neither the incentive of the controlling shareholder of the Target Company, as the Acquirer remains the controlling shareholder nor the nature of the control structure. In this regard, the European Commission in its note, which was a part of the OECD Policy Roundtables on the Definition of Transaction for the Purpose of Merger Control Review (2013) stated that "*mere changes in the level of shareholdings of the same controlling shareholders, without changes of the powers they hold in a company and*



⁵ European Union Decision in Case No COMP/M.2441 - AMCOR / DANISCO / AHLSTROM (2001)

⁶ Bain Capital Case

⁷ COUNCIL REGULATION (EC) No 139/2004 of 20 January 2004

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of the composition of the control structure of the company, do not constitute a change in the quality of control and therefore are not a notifiable concentration.”

33. The status of the incorporated companies being public listed companies is also a positive factor. Any transactions with interested/related parties must be duly disclosed and recorded in accordance with the applicable provisions of law. Furthermore, the Acquirer and the Target Company have set in place a formal policy namely ‘Related Party Transactions Policy’, in accordance with the provisions of Section 208 of the Companies Act, 2017. This policy further mitigates the Commission’s concerns over the Transaction.

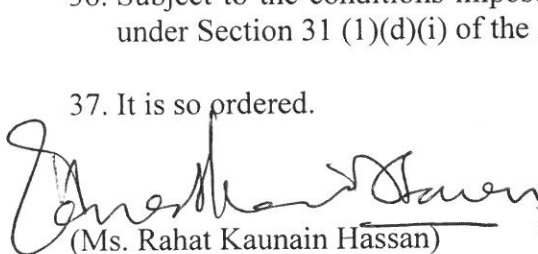
CONDITION & CONCLUSION

34. In light of the above, the Transaction is not likely to substantially lessen competition in the Relevant Markets and it neither creates nor strengthens a dominant position as the Acquirer’s position of control remains the same in effect.

35. This Order is subject to the undertakings submitted by the merger parties (Target Company and Acquirer) stating that the merger parties will continue their operations at arm’s length basis in any transaction and will not abuse their dominant position by taking part or conducting any anti-competitive practices, in strict compliance of the Act. Without prejudice to sub-section (14) of Section (11), or any other provision under the Act and merger regulations thereunder (as amended from time to time), the Commission also reserves the right to assess and review the effects of the Transaction on the Relevant Markets on its own (if the circumstances so warrant) or upon application by any other concerned undertaking(s).

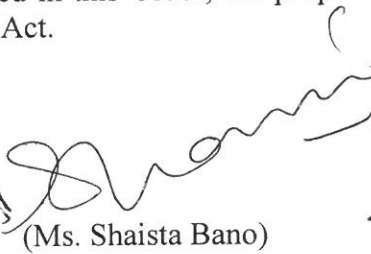
36. Subject to the conditions imposed in this Order, the proposed Transaction is hereby authorized under Section 31 (1)(d)(i) of the Act.

37. It is so ordered.



(Ms. Rahat Kaunain Hassan)

Chairperson



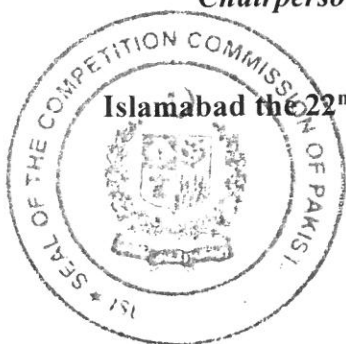
(Ms. Shaista Bano)

Member



(Mr. Mujtaba Ahmad Lodhi)

Member



Islamabad the 22nd of October, 2021.