

**ENQUIRY REPORT**

*(Under Section 37(2) of the Competition Act, 2010)*

**IN THE MATTER OF ALLEGED VIOLATION OF COMPETITION ACT, 2010 BY  
PAKISTAN INTERNATIONAL FREIGHT FORWARDERS ASSOCIATION (PIFFA) &  
AIR CARGO AGENTS ASSOCIATION OF PAKISTAN (ACAAP)**

**Maliha Quddus | Usama Afzal Khan**

**7<sup>th</sup> June, 2024**

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## 1. BACKGROUND AND FACTS

1. A formal complaint under Section 37(2) of the Competition Act, 2010 ('the Act') dated 24.10.2023 was filed by Proprietor M/s. Multiline Traders **Complainant No. 1**, and Proprietor Mashal Oriental Rugs, **Complainant No. 2**, collectively, (the "**Complainants**") against Pakistan International Freight Forwarders Association (**PIFFA**), **Respondent No. 1**, & Air Cargo Agents Association of Pakistan (**ACAAP**), **Respondent No. 2**, collectively, (the "**Respondents**") for violation of the section 3 and/or 4 of the Act. (Complaint and further submissions are attached as **Annex-AI and AII**). After conducting an initial probe an enquiry was initiated on 02.02.2024.
2. The Complainants have alleged that the Respondents have restricted their members to stop providing services to them until a dispute over purported outstanding payments between M/s Shaheen Cargo (member of PIFFA), and Complainant No.1 is resolved.
3. Complainant No. 1 informed that he has been involved in the carpet export business for over 30 years and has consistently paid freight and other business dues on time. The Complainants were availing freight services from M/s Shaheen Cargo Services Pvt. Ltd for many years with no payment dispute with respect to freight services ever arising. According to the complaints, the alleged dispute over non-payment of dues is entirely fictitious and unrelated to their business activities. It was claimed that the supposed boycott is due to an incident from 2011 when M/s Shaheen Cargo Services Pvt. Ltd reached out to him, seeking a referral of someone in Italy who could take possession of carpets. Given their working relationship, he referred M/s Lahore SRL, which ultimately agreed to handle the carpets. Later, a dispute over non-payment arose between the two parties. As per Complainant No. 1, he never acted as a guarantor for either party in this arrangement and had no involvement in the bilateral agreement between them.
4. Recently, Complainant No. 1 secured an export order from France, on 02.10.2023, totaling USD 149,500. However, upon contacting its cargo agent M/s Khawaja Cargo it was informed that the agent could not carry the consignment due to blacklisting by PIFFA (Circulated emails from PIFFA to its members and copied to ACAAP and Pakistan Ship Agents Association ('PSAA') have been provided with the complaint). Complainant No. 1 has stated that since then it has been unable to procure the services of any cargo agent for carriage of its consignment.

5. In light of the above, PIFFA was asked by CCP, vide letter dated 16.11.2023, to provide reasons for blacklisting of the Complainants and mechanism followed in this regard. Subsequently, PIFFA submitted its response dated 29.11.2023 wherein it submitted documents which show that the process of blacklisting has been provided in its bye-laws and Standard Operating Procedures of its standing committee on financial and trade disputes & reconciliation (“PIFFA- SoPs”) (PIFFA initial response **Annex-BI**). Preliminary probe in the matter revealed that not only various requirements of SoPs while handling instant complaint were overlooked but PIFFA also blacklisted Complainant No. 2 as well due to the fact that the undertaking’s proprietor was the brother of Complainant No. 1.
6. Consequently, in the instant case the complainants are unable to send their Cargo as the above mentioned associations have restricted their cargo agents for provision of services and boycotted in addition to refusing to deal with them.
7. PIFFA is an association of Pakistan International Freight Forwarders representing more than 850+ companies based in Pakistan. ACAAP is an association of around 300 air cargo agents approved by IATA (International Air Transport Association). Since both the Respondents are associations it raises concerns of a collective boycott in prima facie contravention of Section 4 of the Act.
8. Upon evaluation of the complaint and the documents provided by PIFFA, it was noted that:
  - a) The evaluation process followed by PIFFA to blacklist the complainant(s) in the instant complaint did not fulfill the criteria set under its own bye-laws and SOPs for the Standing Committee on Financial & Trade Disputes (‘PSCFTD’).
  - b) Complainant No. 2 (M/s Mashal Oriental Rugs) was not party to the transaction, but was also blacklisted.

It is noted that blacklisting of the complainants has the likelihood of imposition of restrictive trading conditions and market foreclosure for the Complainants.

9. Foregoing in view, an enquiry was initiated in the matter under Section 37(2) of the Act, on 02.02.2024, against PIFFA and ACAAP in order to ascertain whether there was any prima facie violation of Section 3 and/or 4 of the Act. The following officers were appointed to the enquiry committee:
  - a. Maliha Quddus, Sr. Joint Director (C&TA);
  - b. Usama Afzal Khan, Assistant Director (C&TA) (‘Enquiry Committee’)

### 1.1. Litigation in the matter:

10. The Complainant filed a writ petition in the Islamabad High Court ('IHC') against the Commission regarding non-provision of interim relief sought by the Complainant. The IHC in its order in the matter dated 28.11.23 issued notices to the respondents i.e. CCP, PIFFA & ACAAP. In its next order dated 01.12.2023, IHC had recognized the inability of CCP to provide interim relief to the petitioner until the complaint filed by the petitioner is converted into the proceedings under Section 30 of the Act. Meanwhile, the impugned emails passed by PIFFA & ACAAP to their members for the non-provision of services to the petitioners had been suspended until next date of hearing. Whereas, the subsequent hearings were scheduled for 12.02.2024 and 17.04.2024; however, due to time constraints and requests for adjournment from legal counsel of respondents, respectively, the hearings were postponed.
11. The Complainants also filed defamation suits against PIFFA and ACAAP in the Lahore High Court (LHC) seeking damages (Suit No. 133/2024 and 139/2024). The esteemed Court has asked the respondents to submit written statements regarding the issue at hand. The matter is still pending in the LHC.

### 1.2. Correspondence with PIFFA

12. Subsequent to the initiation of enquiry correspondence was made with PIFFA, vide letter dated 07.02.2024, seeking information on inter alia the following matters:
  - a. Decision/deliberation by PIFFA's PSCFTD to blacklist the Complainants; copies of circulars or notifications with regards to the same;
  - b. Any understanding between PIFFA and ACAAP w.r.t procedure for blacklisting defaulters or handling of disputes.
  - c. The complaint submitted to PSCFTD was against Mr. Salman Saeed of M/s Multiline Traders however M/s Mashal Oriental Rugs whose proprietor was Mr. Irfan Saeed was also blacklisted. An explanation was sought as to the reasons for this. (Copy of CCP letter **Annex B-II**).
13. PIFFA vide its response, dated 19.02.2024, maintained that it had not blacklisted the Complainants and had, as a precaution, circulated the complaint filed by M/s Shaheen Cargo to its members. It was also noted that there was no understanding between PIFFA and ACAAP on blacklisting or handling of defaulters. On the reason for blacklisting M/s Mashal Oriental Rugs, PIFFA maintained that the owner of this business was also Mr. Salman Saeed

and in support it provided copy of document (submitted to its PSCFTD by M/s Shaheen Cargo) which was a 'Certificate of Origin' issued by Lahore Chamber of Commerce & Industry dated 11.06.2012 which showed Mr. Salman Saeed as Proprietor for M/s Mashal Oriental Rugs. On the other hand, an affidavit has been provided to the enquiry committee by Mr. Irfan Saeed stating that he is the proprietor of M/s Mashal Oriental Rugs dated October 2023. (Response by PIFFA placed at **Annex-BIII** and will be referenced further in this enquiry report).

14. A meeting was also held with PIFFA on 19.03.2024, wherein it was reiterated that PIFFA had not blacklisted the Complainant. It also informed that as per the direction of the Court, the Complainants had been allowed to export the subject cargo and therefore, the cause of action no longer exists. Furthermore, it was emphasized that the decisions or findings of the PSCFTD are neither judicial nor binding on PIFFA members and Members have the freedom to engage with any party of their choosing.

### **1.3. Correspondence with ACAAP**

15. In concurrent to correspondence with PIFFA, the enquiry team has also communicated with ACAAP. In this regard a letter was forwarded to ACAAP dated 07.02.2024, seeking information regarding, among other matters, the following:
- a. Decision/deliberation by ACAAP to blacklist the Complainants; copies of circulars or notifications with regards to the same;
  - b. Any understanding between PIFFA and ACAAP w.r.t procedure for blacklisting defaulters or handling of disputes. (Copy of CCP letter **Annex CI**).
16. ACAAP vide its response dated 23.02.2024 informed that the instant case of outstanding dues was neither filed at ACAAP nor taken up by its dispute resolution committee. The case was filed at PIFFA and that is where it was taken up. Given the interconnected nature of the industry, ACAAP and PIFFA share close linkages as they offer nearly similar services. Consequently, ACAAP merely disseminated the information received from PIFFA to its members to take necessary precautions while dealing with the Complainants. (ACAAP response **Annex C-II**)
17. In a meeting held with ACAAP on 29.04.2024 and later via its email dated 08.05.2024, ACAAP reiterated that they have never blacklisted the complainants and the emails circulated were merely precautionary measures for its members. It was informed that, on

recommendation of ACAAP, its members are enrolled in the Default Insurance Program ('DIP') facilitated by M/s United Insurance Company Pakistan Limited. Under this program, each Airway Bill is insured, and any booking made for a shipment of a defaulted shipper poses challenges for the entire industry. Furthermore, ACAAP emphasized that the shippers are still availing services of their members and successfully dispatching their cargos to their respective destinations (invoice was attached with ACCAP response to show shipment). Moreover, it was also clarified that, neither there is any legal binding upon booking shipments of a defaulter shipper by any ACAAP member nor does such action entails any penal consequences.

#### **1.4. Correspondence with Complainants**

18. Response of PIFFA and ACAAP were shared with counsel for the Complainant for their comments and further information after which a meeting was also held, 04.04.2024, to clarify certain aspects of the matter.
19. The counsel informed that the complainants had faced difficulties in dispatching their cargo despite the directions of the Honorable IHC. He highlighted that both PIFFA and ACAAP have issued instructions to their members against booking shipments for the Complainants. He further emphasized that members of these associations are apprehensive in booking their cargo due to strict legal action from the PIFFA & ACAAP.
20. CCP vide its email dated 05.04.2024, sought information on inter alia the following matters:
  - a) Documentation related to the lawsuit filed by the Complainants against PIFFA & ACAAP in the Lahore High Court.
  - b) Status of their cargo, evidence / document whereby PIFFA / ACAAP advising their members against booking their cargo, past instances where PIFFA & ACAAP have revoked membership of their members due to booking from defaulters.

The counsel vide their email dated 25.04.2024 shared details regarding the lawsuit filed in the LHC. It was informed that the complainants managed to dispatch their cargo from Karachi after non-cooperation from the Lahore agents due to restriction imposed by PIFFA & ACAAP. However, the Complainants were unable to provide any documentation and stated that only verbal instructions were given to PIFFA & ACAAP members against provision of services.



## 2. ISSUES

21. At the outset the enquiry committee would like to clarify that it is not concerned with the merits of payment dispute between the Complainants and M/s Shaheen Cargo. This has also been the past practice of the Commission in a similar case (In the matter of Show Cause Notices Issued to All Pakistan Newspaper Society ('APNS') on Complaint filed by Evacuee Trust Property Board ('ETPB'), 2018). In this particular matter, the ETPB a government department had filed a complaint against APNS noting that the latter had barred its member newspapers from publishing its advertisements over non-payment of dues. The non-payment of dues arose out of an issue w.r.t invoice amounts. However, there were many other practices that APNS was following which were deemed to be anti-competitive such as fixing of agency commission over which cognizance was taken by the Commission.
22. On the matter of payment of dues and rendition of accounts the Order in Para 12 noted: "*Had it been merely a case of penalties for (late) payment of commercial invoices between the parties, the Commission might not have initiated the enquiry under Section 37(2) of the Act. We will, therefore, constrain our assessment viz., the alleged anticompetitive practices within the purview of the provisions of Chapter-II in general and Section 4 of the Act in particular*".
23. Therefore, taking directions from the Commission's practice, the enquiry committee has framed the following issues for further analysis and deliberation:
- a. Whether the blacklisting of the Complainant by PIFFA & ACCAP constitutes a prima facie boycott or refusal to deal in terms of Section 3 (g) and (h) of the Act;
  - b. Whether the blacklisting of the Complainant by PIFFA & ACCAP constitutes a prima facie restrictive condition in terms of Section 4(2)(a) of the Act.
24. Before addressing these issues the enquiry committee would first establish whether PIFFA and ACAAP are undertakings in terms of Section 2(1)(q) of the Act and then defining the relevant market in terms of Section 2(1)(k) of the Act.

## 3. UNDERTAKINGS

25. Undertaking as defined under Section 2(1)(q) of the Act :

*"any natural or legal person, governmental body including a regulatory authority, body corporate, partnership, association, trust or other entity in any way engaged, directly or indirectly, in production, supply, distribution of goods or provision or control of services and shall include an association of undertakings"*.



26. PIFFA: According to its website “PIFFA is a non-profitable organization representing more than 937 companies based in Pakistan providing Land, Air, Ocean Combined Transport and other Logistics services. PIFFA established in 2005 and became the sole representative body of Pakistan Freight Forwarders”. PIFFA is registered with the Ministry of Commerce, Government of Pakistan, License No. 04. PIFFA has informed the enquiry committee that its current membership stands at 937. PIFFA members constitute entities engaged in the business of freight forwarding services in Pakistan and are therefore, undertakings in terms of Section 2(1)(q) of the Act. PIFFA is an association representing the freight forwarding industry therefore, PIFFA is an association of undertakings in terms of Section 2(1) (q) of the Act.
27. ACAAP: According to ACAAP’s website, it is an Association of IATA (International Air Transport Association) approved agents. Its membership comprises of around 300 undertakings approved by IATA (International Air Transport Association) engaged in the business of booking air cargoes to and from Pakistan. ACAAP’s members are entities engaged in the business of air cargo services in Pakistan and therefore, are undertakings in terms of Section 2(1) (q) of the Act. ACAAP is an association representing air cargo agents in Pakistan and is therefore, an association of undertakings in terms of Section 2(1)(q) of the Act.
28. Complainant No. 1 i.e. Mr. Salman Saeed, Proprietor M/s. Multiline Traders and Mr. Irfan Saeed Mehmood, Proprietor Mashal Oriental Rugs (Complainant No. 2) are involved in the business of export of carpets and rugs and therefore, undertakings in terms of Section 2(1)(q) of the Act.

#### **4. RELEVANT MARKET**

29. For the purpose of defining a relevant market in this enquiry, we refer to the definition of relevant market as provided under Section 2(1)(k) of the Act:

*“Relevant market” means the market which shall be determined by the Commission with reference to a product market and a geographic market and a product market comprises of all those products or services which are regarded as interchangeable or substitutable by the consumers by reason of the products’ characteristics, prices and intended uses. A geographic market comprises the area in which the undertakings concerned are involved in the*

*supply of products or services and in which the conditions of competition are sufficiently homogenous and which can be distinguished from neighboring geographic areas because, in particular, the conditions of the Competition are appreciably different in those areas;*

30. The instant matter relates to the provision of freight forwarding and air cargo and shipping services in Pakistan. The freight forwarders serve as intermediaries between exporters/importers and shipping lines for negotiating and finalizing freight. Additionally certain freight forwarders are also engaged services including but not limited to customs clearance, cargo insurance, transportation, warehousing & storage,. However, the aforementioned services fall outside the scope of freight forwarding.
31. Air cargo agents and freight forwarders are essentially part of the same sector i.e. pertaining to the import and export of cargo. Air cargo agents emphasized that their members are IATA certified agents and deal with booking of cargo space with airlines. The business model of the freight forwarders on the other hand, is more related towards customs clearance and sea freight.
32. The current matter deals with export of consignments to and from Pakistan therefore, keeping all these factors into consideration, the relevant market is the market for freight forwarding and air cargo services for export/import of goods to and from Pakistan. It may be noted that the associations through their members operate all over Pakistan and render their services to the whole of Pakistan. Hence it can be surmised that the conditions of competition for providers of relevant services are homogenous for most parts of the country. The relevant geographic market in this instance, therefore, is the whole of Pakistan.

## 5. ANALYSIS

### 5.1. Whether the blacklisting of the Complainant by PIFFA & ACCAP constitutes a prima facie boycott or refusal to deal in terms of Section 3 (g) and (h) of the Act;

33. Section 3 of the Act is directed towards the unilateral conduct of dominant firms which act in an abusive manner. It states:

*“No person shall abuse dominant position. An abuse of dominant position shall be deemed to have been brought about, maintained or continued if it consist of*

*practices which prevent, restrict, reduce or distort competition in the relevant market.”*

34. As per the Section 3, to exercise abuse of dominant position there must be either an individual or an undertaking(s) holding a dominant position within the relevant market. The abuse of dominant position occurs when the said individual or undertaking(s) adopt such practices that restrict, prevent, or reduce competition within that market. However, the instant matter involves an alleged collective decision or conduct by associations to blacklist the Complainants thereby examination of the issue under provisions of Section 4 of the Act would be more relevant. Based on the above, the enquiry committee finds no *prima facie* violation of Section 3(2) (g) and (h) of the Act is made out.

**5.2. Whether the blacklisting of the Complainant by PIFFA & ACAAP constitutes a prima facie restrictive condition in terms of Section 4(2) (a) of the Act.**

35. The enquiry committee addresses whether the decision by PIFFA and ACAAP instructing their respective members to refrain from doing business with the Complainants thus preventing the latter from procuring services of freight forwarding and air cargo agents for export of consignment is restrictive in terms of Section 4(2)(a) of the Act.

36. The relevant excerpts from Section 4 of the Act are reproduced below:

*“Prohibited agreements-. — (1) No undertaking or association of undertakings shall enter into any agreement or, in the case of an association of undertakings, shall make a decision in respect of the production, supply, distribution, acquisition or control of goods or the provision of services which have the object or effect of preventing, restricting or reducing competition within the relevant market unless exempted under section 5.*

*(2) Such agreements include but are not limited to-*

*(a) “fixing the purchase or selling price or imposing any other restrictive trading conditions with regard to the sale or distribution of any goods or the provision of any service”;*

37. First the question of whether the Complainants were blacklisted by PIFFA and ACCAP is addressed. Both the Respondents have maintained that the Complainants were never blacklisted by them and they were merely passing on the information to their members in this regard. The record and facts available with the enquiry committee are examined in this regard in the subsequent paragraphs.

38. The matter at hand essentially stems from a payment dispute that originated between M/s Shaheen Cargo, a PIFFA member, and Complainant No. 1 with the former filing a complaint with PIFFA on 05.10.2022. In response PIFFA sent an email to Complainant No. 1, on 13.10.2022, excerpt of which is reproduced below:

*"We have received complaint against your company from one of our member company M/s Shaheen Cargo Services (Pvt) Ltd (Attached) for an overdue amount of Euro 13,893/= You are kindly requested to clear your stance by return Email or letter with supporting documents in order to review and settle this matter amicably in a professional way.*

*Thanks & Best Regards*

*Regional Secretary*

*PIFFA"*

39. In response Complainant No. 1 vide email dated 19.10.2022 to PIFFA stated:

*"In response to your email, we would like to inform you that we have no concern with the Complainant's alleged transaction, neither we were the buyer of carpets concerning to the complainant nor we had exported carpets on behalf of the Complainant. Hence, there is no question of any overdue amount of Euro 13,893/.*

*Since there was no any kind of transaction between the Complainant and us, question of having any supporting document in this regard does not arise from our side".*

40. On 16.11.2022 the matter was discussed in the meeting of PIFFA's Standing Committee on Financial & Trade Dispute & Reconciliation (North Zone) and it was decided to hold a joint meeting with the parties. Based on this decision, email dated 24.12.2022 was sent from PIFFA to Complainant No. 1 relevant excerpt reproduced below:

*"....PIFFA standing committee on Trade dispute (nz) is going to arrange a joint meeting with complainant and respondent to settle this matter amicably, committee is going to offer you last time to join the joint meeting*

*Any time on one day notice up to 31<sup>st</sup> December 2022. If you will not participate committee will decide the case as per SOP of Association".*

41. Thereafter an email, dated 08.03.2023 was sent by PIFFA to its members and copied to Pakistan Ship Agents Association ('PSAA') and ACAAP with the subject: "Circular-Request for Suspension of Business with M/s Multiline Traders/Mashal Oriental Rugs Lahore". The contents of the email are reproduced below:

*"Dear Sirs,*

*Please find attached a self-explanatory letter from Member Company M/s Shaheen Cargo Services (Pvt) Ltd. Lahore regarding suspension of business with M/s Multiline Traders/Mashal Oriental Rugs (Lahore).*

*You are requested not to book any shipment of M/s Multiline Traders/Mashal Oriental Rugs (Lahore) till NOC is issued by M/s Shaheen Cargo Services (Pvt) Ltd.*

*Regards,*

*Secretary General*

*PIFFA”*

42. This email is then forwarded by ACAAP to all its members dated 24.08.2023 and it states:  
*“Please find appended below email received from M/s Pakistan International Freight Forwarders Association-PIFFA regarding Suspension of business with M/s Multiline Traders/Mashal Oriental Rugs (Lahore) on complaint filed by M/s Shaheen Cargo Services (Pvt) Ltd.*

*Forwarded herewith for your information and compliance please.*

*Thanks & best regards,*

*For & on behalf of Air Cargo Agents Association of Pakistan.*

43. Consequently when Complainant No. 1 contacts an air cargo agent M/s Khawaja Cargo, he vide his email dated 11.10.2023 informed that that they cannot book the cargo in question stating:

*“Subject: Fwd: Email from ACAAP regarding Defaulter*

*Dear Sir*

*It is informed to you we are unable to book your cargo till further notice insteion (sic) of our association regarding suspension of business. See below emails.*

*With best wishes and regards,*

*Khawaja Air Cargo Services Private Ltd.”*

44. PIFFA maintains that Complainant No. 1 was contacted several times via email to appear at the joint meeting to discuss and resolve the matter amicably. However, Complainant No. 1 did not attend the meeting. Owing to that, PIFFA circulated an email amongst its members identifying Complainant No.1 as defaulter and to take a precautionary step whilst dealing with such defaulter. Furthermore, as per the documents available with PIFFA, the complainant No. 1 is the sole proprietor of both M/s Multiline Traders and M/s Mashal Oriental Rugs that is why PIFFA referred both the entities as defaulters in its Email.

45. In a meeting held with PIFFA it contended that there were no penal consequences and PIFFA was essentially maintaining a database of defaulters and disseminating information to its members. The term issuance of NOC from M/s Shaheen Cargo was specifically mentioned in the email to inform the members that the complainants have defaulted on payments to M/s Shaheen Cargo. Reference to the advisory note issued by CCP to Pakistan Ship Agents Association regarding maintenance of credit defaulters' data base wherein CCP had noted that such a data base would be procompetitive (CCP advisory dated March 13, 2012 provided by PIFFA in their response to CCP). The enquiry team pointed out that PSCFTD SOPs had indicated penal consequences for members not following its orders / decisions. On this PIFFA emphasized that the decisions or findings of the PSCFTD are neither judicial nor binding on PIFFA members. The Members have the freedom to engage with any party of their choosing. The shipment of Complainant No. 1 to France, which constituted to be the plea of grievance of the Complainant, was exported, and therefore, no cause of action now existed.
46. PIFFA submitted that the grievance plea of the Complainant was premised on an advisory forwarded by an Air Cargo Agent (M/s Khawaja Air Cargo Services Pvt. Ltd), whom the Complainant had allegedly approached for the shipment of his cargo by air, at no instance the Complainant had any grievance against any freight forwarder. Hence, no cause had accrued to the Complainant against PIFFA. The enquiry committee notes that although Khawaja Air Cargo is a member of ACAAP the advisory was issued by PIFFA on complaint filed by its member freight forwarder M/s Shaheen cargo services.
47. ACAAP in its submissions to the enquiry committee, vide letter dated 23.02.2024, and Zoom meeting held on 29.04.2024 underscored the following points:
- a. The air cargo and freight forwarding industry faced a lot of payment related issues from shippers/exporters who fail to pay their dues and instead of settling bills the next time they want to ship they move to another agent/forwarder. Since activities of the industry (freight forwarders and air cargo agents) are interconnected, such information is passed on between them.
  - b. ACAAP stressed that they have not blacklisted the Complainants and as the email record shows information is passed on to its members and nobody is forced by it. It is at the discretion of the member whether or not to book shipments from defaulters.



- c. It is due to this reason, that ACAAP has instituted a Financial Dispute Subcommittee to look after such issues. In this instance, the complaint was never referred to ACAAP's forum. After receiving intimation from PIFFA the information was circulated amongst its members.
  - d. It was informed that the Cargo to France was ultimately shipped and ACAAP underscored it did not take punitive action nor did it suspend any member with regards to the shipment of defaulter cargo.
  - e. It was noted that ACAAP and its members were enrolled in a Defaulter Insurance Program ('DIP') through M/s United Insurance Company Pakistan Limited which insures airway bill issued by cargo agents/freight forwarders.
48. The Complainants in their submissions to the enquiry committee have maintained that although the consignment to France was exported on the directions of the Honorable IHC however, they are still facing problems in booking of consignments. In this regard the Complainants have failed to provide any evidence that can indicate association involvement in refraining its members from booking their shipments. (Complainant's email response **Annex-D**)
49. During the meeting, it was inquired why the complainants did not attend the meeting when approached by PIFFA to resolve the matter amicably. It was explained that the issue does not pertain to freight charges and PIFFA has no mandate to oversee this matter, therefore, the complainants did not find it necessary to attend the meeting.
50. Based on the above, the enquiry committee notes that the Complainants were not blacklisted, and the export consignment to France was shipped. PIFFA and ACAAP have both underscored that they have not taken any punitive action against any of their members for dealing with the Complainants. Without prejudice to the foregoing, the enquiry committee assesses whether the provisions of Section 4 will be attracted to the matter which is done in the paragraphs below.
51. The actions of the Respondents in the instant matter can be described as a collective or concerted boycott by association of undertakings. We begin by addressing the question of when can a collective boycott by an association of undertakings be illegal under competition law? An analysis of different jurisdictions including Australia, EU and US shows that a collective boycott will attract provisions of competition law if it is used to impose on a particular supplier or customer the terms and conditions of an association or group. In the



context of collective boycotts Richard Whish and David Bailey state: “*A distinction should be made between naked restraints which are clearly intended to be exclusionary on the one hand and agreements which promote efficiency and which therefore may be permitted*”. Such scenarios include for example, a cartel deciding to boycott a dealer who does business with a producer outside the cartel. In the US a group boycott—or concerted refusal to deal—is an agreement among two or more entities, often competitors, not to do business or to do business only on certain terms with disfavored individuals or firms. The US treats boycotts that are exclusionary and which cause harm to the competitive process as per se illegal. A boycott can reinforce a price-fixing agreement where, for example, it is the mechanism by which competitors attempt to defeat a price cut. In *Superior Court Trial Lawyers Association*, members of a D.C. Bar association agreed to stop representing indigent criminal defendants unless the District of Columbia raised their compensation.

52. At the start of the 20th century US courts considered ‘concerted refusals to deal’ as a per se violation however, there has been a shift in this approach and per se action can be taken in circumstances where the ‘Northwest Stationers Factors’ exist<sup>1</sup>. In *Northwest Wholesale Stationers*, the Supreme Court laid out the characteristics of a per se illegal group boycott where anticompetitive effects are likely and procompetitive effects are unlikely. The Supreme Court found that per se illegal group boycotts generally display the following common factors:

- a. Joint efforts by a firm or firms to disadvantage competitors; Per se illegal group boycotts are typically targeted at a competitor of one of the conspirators.
- b. By either directly denying or persuading or coercing suppliers or customers to deny relationships the competitors need in the competitive struggle / the boycott cut off access to a supply, facility, or market necessary to enable the boycotted firm to compete.
- c. The practices were generally not justified by plausible arguments that they were intended to enhance overall efficiency and make markets more competitive.

53. What is evident from a perusal of cases in these jurisdictions is that such boycotts will be considered as illegal if they are exclusionary and harm the process of competition usually in the context of a cartel trying to exclude a non-member competitor or a cartel excluding a purchaser or supplier that refuses to adhere to its terms. The assessment of group boycotts is

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<sup>1</sup> “Group Boycotts or Concerted Refusals to Deal”, Lexis Nexis.

considered in the broader context of the relevant market and includes factors such as barriers to entry and exit and market power of the party enforcing the boycott.

54. It is concluded that both these scenarios do not apply in the instant matter as firstly the Complainants are engaged in the business of export of rugs and carpets from Pakistan and in order to do so require services of freight forwarders and air cargo agents. They are thus the clients for these services and are neither competitors nor suppliers of PIFFA or ACAAP and hence the exclusionary aspect is not applicable. It is also further noted that there is no evidence that the Respondents have formed a cartel and are forcing customers or other undertakings in the supply chain such as airlines or shipping companies to adhere to their fixed prices and/or terms and conditions and neither has such allegation been made.
55. Moreover, before disseminating the emails to its members, PIFFA had arranged a joint meeting between the complainants and M/s Shaheen Cargo to amicably resolve the matter, which the complainants did not attend. Furthermore, both parties have submitted that they have neither blacklisted the Complainants nor do they intend to take punitive/penal actions against members doing business with the Complainants. The Respondents have also submitted that the Complainant had exported the consignment to France and therefore, no cause of action existed.
56. Based on the findings of the paragraphs above, it is noted that there is no prima facie evidence of the existence of a cartel which is trying to exclude a competitor or is imposing a boycott on customers that are refusing to follow the prices set by it. Therefore, no violation of Section 4 of the Act on part of the Respondents is found in the instant matter.

## 6. CONCLUSION & RECOMMENDATION

57. **Issues:** Based on the previous practice of the Commission in dealing with such cases, the matters relating to payment and accounting disputes are beyond the scope of the enquiry committee and therefore, it has framed the following issues for further analysis and deliberation:
- a. Whether the blacklisting of the Complainant by PIFFA & ACCAP constitutes a prima facie boycott or refusal to deal in terms of Section 3 (g) and (h) of the Act;
  - b. Whether the blacklisting of the Complainant by PIFFA & ACCAP constitutes a prima facie restrictive condition in terms of Section 4(2)(a) of the Act.

58. **Relevant Market:** Based on the findings of paragraphs 29 to 32 above, the relevant market is the market for freight forwarding and air cargo services for export/import of goods to and from Pakistan. It may be noted that the associations through their members operate all over Pakistan and render their services to the whole of Pakistan. Hence it can be surmised that the conditions of competition for providers of relevant services are homogenous for most parts of the country. The relevant geographic market in this instance, therefore, is the whole of Pakistan.
59. **Prima facie violation of Section 3:** Based on the findings of paragraphs 34 to 35 above, the instant matter involves an alleged collective decision or conduct by associations to blacklist the Complainants thereby examination of the issue under provisions of Section 4 of the Act would be more relevant. Based on the above, the enquiry committee finds no *prima facie* violation of Section 3(2)(g) and (h) of the Act is made out.
60. **Prima facie violation of Section 4:** Based on the findings of paragraphs 36 to 58 above the enquiry committee notes that the Complainants were not blacklisted, and the export consignment to France was shipped. PIFFA and ACAAP have both underscored that they have not taken any punitive action against any of their members for dealing with the Complainants. Furthermore, from a perusal of cases in various jurisdictions it is noted that boycotts by associations will be considered as illegal if they are exclusionary and harm the process of competition usually in the context of a cartel trying to exclude a non-member competitor or a cartel boycotting a client refusing to adhere to its set prices or terms and conditions. It is concluded that both these scenarios do not apply in the instant matter. Therefore, no *prima facie* violation of Section 4 on part of the Respondents is made out in the instant matter.

**Maha Quddus**  
Sr. Joint Director

**Usama Afzal Khan**  
Assistant Director