COMPETITION COMMISSION OF PAKISTAN

ENQUIRY REPORT

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

IN THE MATTER OF ALLEGED VIOLATION OF THE COMPETITION ACT, 2010 BY ZARAI TARQIATI BANK LIMITED

Qasim Khan | Anam A. Khan

Dated: July 28th, 2022

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I. Background and Facts

This report has been prepared pursuant to enquiry authorized under Section 37 (2) of the Competition Act, 2010 (the "Act") by the Competition Commission of Pakistan (the "Commission") in October, 2020 on the formal complaint received from Asia Insurance Company Limited ("AICL") (**Annexure A**) against Zarai Tarqiati Bank Limited ("ZTBL"), wherein it was alleged that the act of raising of rating criterion ('A' to 'AA') for participation in tender for the procurement of insurance service for crops (loans on crops) by the latter restricts competition and is therefore a violation of Section 4 of the Act.

II. Overview of the Rural/Agriculture Finance Market of Pakistan

1. Rural finance, as defined by the World Bank (WB Report-2004), includes a range of financial services such as savings, credit, payments and insurance to rural individuals, households, and enterprises, both on farm or non-farm, sustainable basis.[1] Agriculture is the main source of lively hood of small and poor people of the country's rural areas. Credit is necessary for capital formation, diversified agricultural production and efficiency in agricultural resource-use, in the face of excruciating poverty in the rural economy where farmers are the major players.[2]

2. A good resource for understanding the primary aspects and structure of Agrarian financing in Pakistan is a comprehensive report[3] of 2017 prepared by ZTBL (hereinafter 'the report'). As per information provided therein, agrarian financing is not only done through formal channels but informal sources such as Aartis also offer loans to local farmers. The markups charged in the informal sector are comparatively higher, but loans acquired this way still have major appeal due to the array of options they offer. This is evident from the share of

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[1] https://www.ztbl.com.pk/wp-content/uploads/Documents/Publications/Research-Studies/RuralFinMrktAnalysis2017.pdf
[2] ibid
[3] Ibid

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informal segment in the agriculture loan market estimated in the report to be 53% as against 47% in the formal market.

3. Before discussing the formal segment, it may be of use to look at a little bit of history of its development in Pakistan. Agriculture has been the main stake of Pakistan's economy since its inception. Realizing the financial requirement for its growth, the Government established the Agriculture Development Finance Corporation in 1951. Later on Agriculture development Bank was also established under the Agricultural Development Bank Act in 1957. Due to similar functionality these two entities were merged together as Agricultural Development Bank of Pakistan (hereinafter 'ADBP') on February 18th 1961. In December 2002, ADBP was restructured with the aim to uplift farm level productivity, streamline institutional credit and improve income generating capacity of the farmers. The restructured entity was set up as a public limited company with an independent board of directors and was called ZTBL.

4. It is also pertinent to mention that Banking reforms were introduced in 1972 with the objective of equitable distribution of bank credit across various sectors of economy. Given the importance of agriculture, an agriculture loan scheme was also introduced in the same year and commercial banks with their large network of branches were inducted in this mandatory programme/project. With time more and more banks were included. Since 1972, the agriculture loans scheme has been in place and any amendments made to it are conveyed to the banks via circulars.

5. Rural finance policy in Pakistan is governed by the State Bank of Pakistan (hereinafter 'SBP'). Since the time of 18th amendment to the constitution, agriculture has become a provincial subject. However to date provincial governments have played no role in framing any rural finance policy. To this day SBP plays a pivotal role in steering agriculture finance policies. To protect the interest of small farmers agricultural loans are divided into categories based on the size of land holding.

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6. There is a range of institutions, public, private, cooperatives etc. meeting the credit needs of farmers across the length and breadth of the country. As reported, markups in the formal markets range anywhere from 8.5% to 18%. Lately Micro Finance and Islamic banks have shown impressive growth in this sector both in terms of loan disbursement as well as recovery.

7. The sheer quantum of Loans offered in the agriculture sector (hundreds of billions of rupees) essentially requires that the same be protected by insurance cover. Any natural calamities or other unforeseen circumstances could stifle the ability of banks to recover loans from an already affected populace. This explains the importance of insurance service in this area of economy.

8. Having given a sectoral overview, we now proceed to address the basic contention in this matter. AICL, an insurance company (hereinafter 'the Complainant') has approached the Commission seeking invocation of provisions of section 4 of the Act against ZTBL (hereinafter 'the Respondent'). The complainant claims to have done business with the Respondent between the periods of 2014-17. Among the criteria adopted by the Respondent for enlistment of insurance companies to its panel was the requirement to have a minimum of 'A' rating. In light of the Complainant's performance (such as agri business volume), the Respondent even allocated to it two zones of Crop and Livestock loan, in addition to the initially agreed five. When the Complainant first entered into a commercial relationship the prequalification requirement for participation was as listed below:

    a. Insurance Company will be registered in Pakistan with Minimum "A" rated financial strength.
    b. Should have adequate experience providing similar insurance services in Pakistan
    c. Should have adequate reinsurance from a reputable reinsurer for Crop Loan Insurance.

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However, in 2017, the Respondent amended its 'Crop and Livestock loan insurance Bid and award criteria' by raising the minimum required rating from an 'A' to 'AA'. This is the main contention raised in the plaint and is the center point for all the allegations leveled against the Respondent. Referring to the order[4] of the Commission in the matter of <u>COMPLAINT AGAINST PAKISTAN ENGINEERING COUNCIL FILED BY MIS SPI INSURANCE COMPANY LIMITED</u> (hereinafter 'SPI Insurance Order'), the Complainant has submitted that its grievance is identical to the one addressed in the SPI Insurance Order, and hence be treated accordingly.

9. The aforesaid concerns were presented in a formal complaint filed by AICL, and in light of the same, an enquiry was authorized under Section 37(2) of the Act read with Regulation 17(2) of the Competition Commission (General enforcement) Regulations, 2007. Mr. Qasim Khan, Joint Director (C&TA), and Ms. Urooj Shafi, Assistant Director (C&TA) were appointed as enquiry officers to submit their findings in this regard. Upon Ms. Urooj Shafi`s deputation outside the Commission, the team was re-constituted and Ms. Anam Amin Khan, Deputy Director (C&TA) was appointed Enquiry officer in her place. Jointly Mr. Qasim Khan, Joint Director and Ms. Anam Amin Khan, Deputy Director would here from be referred to as the 'Enquiry Committee'

10. It may be pertinent to state at the outset that even though, the Complainant has primarily alleged a Section 4 violation, and not agitated for or alleged any abuse on the part of the Respondent with respect to the action in question, the Enquiry Committee has nevertheless examined and evaluated the same, particularly in light of the scant reference made by the Complainant suggesting Respondent's dominance in the market for loan disbursements.

11. For determining any possible violation of Section 4 of the Act, the modus operandi employed is as follows:

    a) Identification of Undertakings;
    b) Determination of the Relevant market;

[4] http://www.cc.gov.pk/images/Downloads/pec_vs_sic.pd

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c) Identification of issues and evaluation of the same for prima facie violation(s) of Section 4 of the Act ('Prohibited Agreements').

12. In case of determination of an alleged abuse of dominant position under Section 3 of the Act, after carrying out the first 2 steps as above, the next step is to determine whether the undertaking being alleged of abuse, is dominant in the relevant market and if so whether in light of the issues and allegations raised, it has abused its dominant position in terms of the exhaustive list of scenarios provided under Section 3 of the Act. To reiterate, after the concerned 'undertakings' and the 'relevant market' have been defined, the following steps are carried out:

I. Whether Dominance exists in the Relevant Market.

II. If so, Whether an abuse has taken place in terms of Section 3 of the Act ('Abuse of Dominance')

III. **Undertakings:**

13. 'Undertaking' as defined under Section 2(1)(q) of the Act is 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.

14. The Zarai Taraqiati Bank Limited (ZTBL), formerly known as Agricultural Development Bank of Pakistan, is a government-owned agricultural development bank which is based in Islamabad, Pakistan. Founded in 1961 as the agricultural development bank, the bank was renamed in 2002 as Zarai Taraqiati Bank Limited (ZTBL) and was subsequently incorporated as a public limited company in 2002 under Companies Ordinance, 1984. ZTBL being a public sector agriculture development financial institution is an undertaking in terms of Section 2(1)(q) of the Act.

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15. The Asia Insurance Company Limited (AICL) is a publicly listed company established in 1979 which provides a wide range of insurance covers to support its clients in business and in daily life through its general insurance, and general Takaful cover. AICL being engaged in the business of providing insurance services to a diverse group of public/private projects/schemes is an undertaking in terms of Section 2(1)(q) of the Act.

IV. <u>Relevant Market</u>

16. For the purpose of defining a relevant market under 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;"*

17. In view of the above, a relevant product market comprises all those goods and/or services which are regarded as interchangeable or substitutable by the consumers by reasons of the products' characteristics, the prices, and the intended use, among other things.

18. A relevant geographic market comprises the area(s) in which the undertaking(s) concerned are involved in the supply of products and/or services and in which the conditions of competition are sufficiently homogeneous.

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19. Coming to the matter at hand, as explained earlier, farmers are offered loans for the purpose of Agriculture development and growth. Such loans may encompass all expenses incurred by a farmer from sowing all the way to harvesting/thrashing of the crop. Provision of rural agriculture loans in Pakistan is not restricted to the formal sector, as aartis/local lenders fulfill 53% of the needs of rural/agri finance (In arid lands, Loans may be given at the time of sowing or little before harvest at mutually bargained rates of crop, and not any fixed interest or rate of return. In a similar way loans may be pegged against commodities). However this market segment is not governed by any rules and regulations, nor do its participants seek out services from the formal insurance sector.

20. Referring back to the formal disbursement of loans, this market is catered to by various categories of public as well as private financial institutions spread across the length and breadth of the country and for the most part operate under the policy/guidelines issued by the State Bank of Pakistan from time to time. Even though after the 18^{th} amendment, agriculture has become a provincial subject, the provinces have not framed any new policies or guidelines in respect of rural financing, and financial institutions continue to operate under a common policy framework. The sheer quantum of such loans warrants an insurance cover to protect against acts of nature such as flood, drought, hailstorm, pest attack and fire damage.

21. Crop insurance was introduced in 2008 under a public private partnership for a national crop loan insurance scheme (hereinafter 'CLIS')[5]. As per a report[6] of Pakistan Today, Since the Rabi season 2008/09 ten insurance companies in conjunction with 20 commercial banks have been involved in CLIS. However in response to a query from the enquiry Committee, Insurance Association of Pakistan (hereinafter 'IAP') has provided a list 14 of its members that underwrite Crop Loan Insurance for banks under the state bank of Pakistan CLIS (copy enclosed as **Annexure B**).

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[5] https://profit.pakistantoday.com.pk/2021/11/21/why-we-need-to-give-crop-insurance-more-attention/
[6] Ibid

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22. The relevant service in the matter at hand is the market for provision of insurance for agriculture development loans and includes all undertakings that underwrite such loans under the terms and conditions of CLIS as framed by the State Bank of Pakistan.

23. As the relevant service is provided by the concerned undertakings under the same terms and conditions and their reach is spread across Pakistan, the geographic market in this instance appears to be the whole of Pakistan.

24. In light of the above, the relevant market for the purpose of this enquiry appears to be the market for insurance of agricultural development loans across the territory of Pakistan.

V. Issues

Based on the concerns raised the Enquiry Committee has in this matter followed the following line of enquiry

I. Whether making the minimum rating requirement 'AA' up from 'A' by the Respondent for participation in bidding to qualify on its panel of insurance companies restrictive of competition in terms of Section 4 of the Act?

II. Whether the above stated action of the Respondent amounts to an abuse of dominance in terms of Section 3 of the Act?

V.1 Whether making the minimum rating requirement 'AA' up from 'A' by the Respondent for participation in bidding to qualify on its panel of insurance companies restrictive of competition in terms of Section 4 of the Act?

25. Section 4 of the Act states that,

> 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

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services which have the object or effect of preventing, restricting or reducing competition within the relevant market unless exempted under Section 5

26. From the above, it follows, that, for a section 4 violation to take place, the conduct in question should either be an agreement between undertakings or a decision, in case of an association of undertakings. In other words, Section 4 of the Act deals with agreements that by their very object or effect, sabotage competition in a relevant market. Thus this section of the Act is titled ' Prohibited Agreements' The only case where a decision is evaluated for a Section 4 prohibition is when an association of undertakings makes or issues a decision that by its object or effect appears to thwart competition in the market of relevance.

27. In the matter at hand, the very behavior that has been alleged to be in breach of Section 4 of the Act i.e. the upgradation of insurance rating from 'A' to 'AA' by the Respondent for participation in its tenders, is seemingly a unilateral measure introduced by the Respondent. The Enquiry Committee does not have any evidence to suggest any acquiescence, written or implied, between the Respondent and any other party with regard to the said upgradation of required rating.

28. Coming to the decision aspect, it may be noted that the Respondent is engaged in an economic activity much like any of its competitors, and does not operate as an association of or an umbrella organization for any undertakings within or outside the relevant market. Therefore any initiative/decision on its part could not ostensibly be construed as a decision taken by an association of undertakings as seemingly implied in Section 4 of the Act.

29. Since any decision taken by the Respondent does not seem to amount to a decision taken by an association, a violation of Section 4 of the Act seems unlikely and may not warrant any further evaluation.

30. Without prejudice to the above finding, the enquiry committee may also discuss the **SPI insurance Order ('the Order')**, since it is referred to by the complainant as having

concerns similar to the matter at hand. In this regard, it may suffice to say that the criteria given in the Order for an undertaking to qualify as an association does not seem to apply to the Respondent as it is neither a regulator nor a standard development organization for any undertakings partaking in a common economic activity. Therefore any parallel drawn between the Respondent and Pakistan Engineering Council (the undertaking qualified to be an association in the Order) appears to be misplaced.

V.2 Whether the above stated action of the Respondent amounts to an abuse of dominance in terms of Section 3 of the Act?

31. Section 3 of the Act titled 'Abuse of dominant position' states that, 'No person shall abuse dominant position'. Section 2(1)(e) of the Act states that:

> *'dominant position of one undertaking or several undertakings in a relevant market shall be deemed to exist if such undertaking or undertakings have the ability to behave to an appreciable extent independently of competitors, customers, consumers, and suppliers and the position of an* undertaking shall be presumed to be dominant if its share of the relevant market exceeds forty percent'

32. The foregoing defines dominance to exist in two situations. If an undertaking's share in the relevant market exceeds 40 percent, it is presumed to be dominant and no further analysis is required. The other situation demands that irrespective of the market share, an undertaking may still be dominant if it can be shown that such an undertaking can behave to an appreciable extent independently of competitors, customers, consumers and suppliers.

33. Only if an abuse is carried out by an undertaking that is found to be dominant by applying any or both the tests applied above, shall it constitute a violation under Section 3 of the Act. To determine dominance we first apply the test that presumes dominance based on a market share threshold (40%).

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34. For an undertaking to abuse its dominant position or in this case monopsony power it may not be necessary for it to operate in the market where the abuse is taking place. An entity that may be dominant in the upstream or downstream market may still have the market power to cause a vertical foreclosure such that competition is restricted among players competing in the upstream or downstream function.

35. A vertical foreclosure is said to take effect when a downstream buyer is denied access to an upstream supplier (upstream foreclosure) or when an upstream supplier is denied access to a downstream buyer (downstream foreclosure)[7]

36. This context necessitates an appraisal of whether the Respondent in question enjoys a dominant position in the market it operates and whether it has leveraged that position to carry out an abuse in the relevant market. For this analysis, the Enquiry Committee has relied on market trend for three years i.e. 2014-15, 2015-16, and 2016-17, as it was post 2017 that the cause of main contention arose (upgradation of rating requirement from A to AA in ZTBL tenders for selection of insurance companies on its panel) . After careful examination, data over the given years was found to be sufficient in capturing the relevant parameters concerning the structure and scope of the market in question.

V.2.1 The Market Share Test:

37. The following table provides a list of financial institutions that extend agricultural loans, along with their performance for the years 2014-15. 2015-16 and 2016-17: Among other things the table lists down the market shares of each of the categories of financial institutions that compete with the Respondent.

[7] https://www.jstor.org/stable/2950611#:~:text=DEFINITION%3A%20Vertical%20foreclosure%20is%20the,'

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Banks/FIs years	Target	2014-15(July to June)			Target	2015-16 (July to June)			Target	2016-17 (July to June)		
	2014-15	Disbursed	Target Achieved (%)	% Share in Total Disbursement	2015-16	Disbursed	Target Achieved (%)	% Share in Total Disbursement	2016-17	Disbursed	Target Achieved (%)	% Share in Total Disbursement
Five Major Commercial Banks	252.5	228.287	90.81	52.1	305.7	269.598	88.19	52.86	340	342.088	[illegible]	[illegible]
ZTBL	90	78.672	87.41	17.88	102	71.302	69.9	14.02	102.5	92.451	90.20	13.123
DPBs	115.5	91.125	79.2	20.7	131.8	106.838	81.05	20.95	139.6	139.081	[illegible]	[illegible]
PPCBL	11.5	8.097	70.41	1.84	12.5	7.947	63.58	1.55	12.5	10.880	87.04	1.544
MFBs	28.2	27.822	98.8	6.3	40.1	46.744	116.5	9.166	94.4	107.702	[illegible]	[illegible]
Islamic Banks	2.3	4.751	170.31	1.08	7.9	7.53	95.93	1.47	11	12.326	112.06	1.750
Total	500	439.754	87.95	100	600	509.95	87.95	100	700	704.488	[illegible]	100.000

38. From the above displayed table, we can see that in terms of total agriculture loans disbursed, for the three years spanning 2014-17, the market shares of ZTBL have been **17.9%, 13.9%, and 13.1%** respectively. With its shares well below 40%, ZTBL cannot be presumed to be dominant in terms of the market share test provided in the Act. The comparative position of the Respondent with reference to other categories of banks i.e. five major commercial banks, the domestic private banks, Punjab Cooperative bank, Micro Finance Banks and the Islamic banks in terms of market shares, can be seen in the following graphs:

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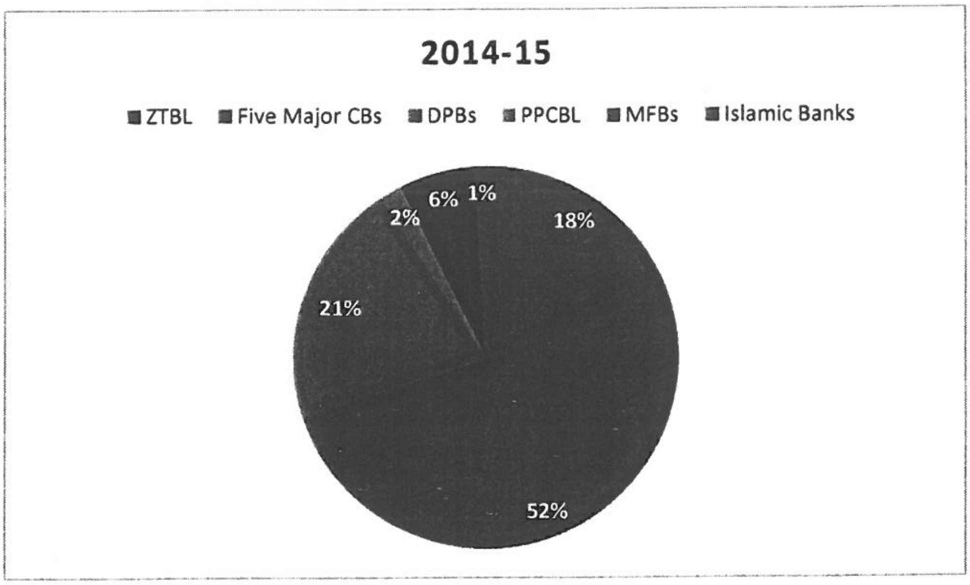
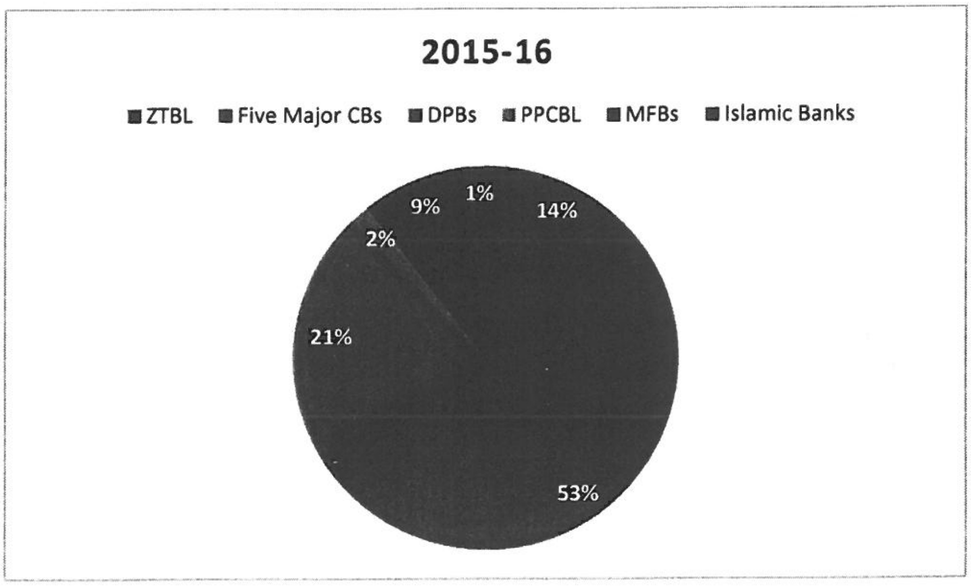

2014-15
ZTBL
Five Major CBs
DPBs
PPCBL
MFBs
Islamic Banks
6%
1%
2%
18%
21%
52%


2015-16
ZTBL
Five Major CBs
DPBs
PPCBL
MFBs
Islamic Banks
9%
1%
2%
14%
21%
53%

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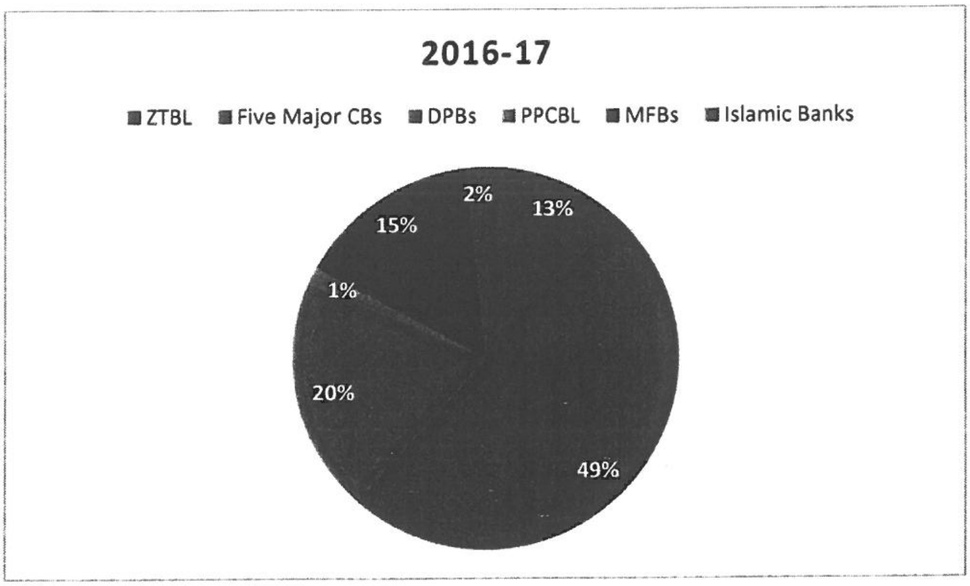

V.2.2 **<u>The Deeming Clause Test:</u>**

39. Talking about the part in the definition of dominance, that deems an entity to be dominant if it can behave to an appreciable extent independent of its competitors, customers, consumers and suppliers, it appears to be synonymous with the concept of significant market power defined by the European court in following words:

'a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of consumers.'...

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40. To understand this concept, it may be apt to allude to its explanation provided in the 'Guideline[8] for market power assessment' issued by OFT, U.K as general advice on application and enforcement of articles 81 and 82 of the EC treaty as well as Chapter I and II prohibitions as contained in the United Kingdom's Competition Act, 1998.

41. In the said guideline, the term Market power is not identified as an absolute term but a matter of degree, which depends very much on the competitive constraints brought about by existing or potential competitors, and/or any countervailing buyer power. Much like Pakistan, In UK, an entity with a market share below 40% is seen as less likely to be dominant unless factors such as weak position of existing competitors or high entry barriers exist. Broadly speaking, it is paramount to examine the various market facets such as its structure, entry conditions, and financial performance of individual undertakings, before any meaningful findings in respect of 'significant market power' or 'dominance' can be reached. The following part of the enquiry offers an analysis of these factors in light of the information available with the enquiry committee.

V.2.2.1 State of Competition and Market strength of Competitors:

42. The Market strength of undertakings involved in any market is often a function of different factors. Whether the market structure is monopolistic or Oligopolistic? What is the number of undertakings? Is the market growing or saturated? Are their major barriers to entry or growth? If any suppliers are involved, what is their market strength? If there is a buyers' market, what is its strength, and lastly what options are available to the end consumers? and so on and so forth. These are typically the sort of questions that need to be addressed in identifying the presence or absence of any competitive constraints in any market under consideration.

43. If we look at the market for rural or agriculture loans, it does not seem to be monopolistic, or even oligopolistic. Banking institutions of all classifications, whether it is commercial

[8] Framework for Assessment of Market Power ' Office of Fair Trade, United Kingdom - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/284400/oft415.pdf

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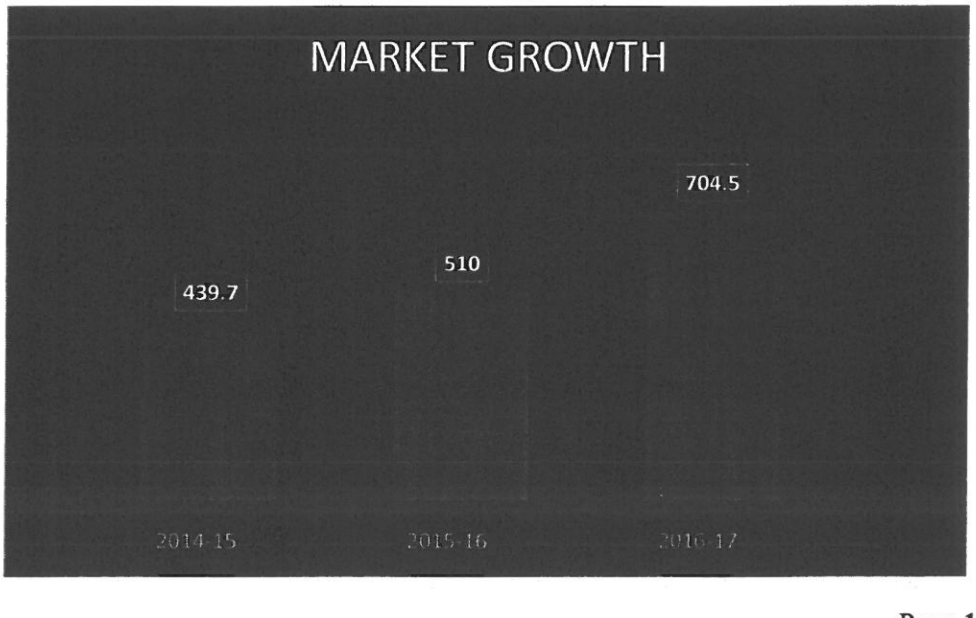
banks, domestic private banks, micro finance banks or Islamic banks are offering loans for agriculture purposes. There do not appear to be any commercial suppliers or buyers in the market. The only buyers are the end consumers, ranging from small landowners to large land holders, spread across all districts across Punjab and rest of Pakistan where farming is carried out as a means of living. Thus it may be reasonable to say that the market for agriculture loans has a very diverse and large consumer base. Having glossed over the structure of the market, we next proceed to identify the competitive constraints in the market of relevance.

V.2.2.2 Entry Conditions or Barriers to Entry and Growth

44. As already discussed, all categories of banks and financial institutions (having branches spread across the country) are offering agriculture loans in Pakistan. This market was initially served by the Respondent and commercial banks, however with time it came to include other financial institutions, the most recent being micro-finance and Islamic banks.

45. The market is not saturated as is evident from its astronomical growth from 2014 – 17. Within the short span of 3 years, loan disbursements have went up from 439.7 Billion PKR to 704.5 Billion PKR. This is an increase of 60%. The enormity of market growth can be witnessed in the following graph:



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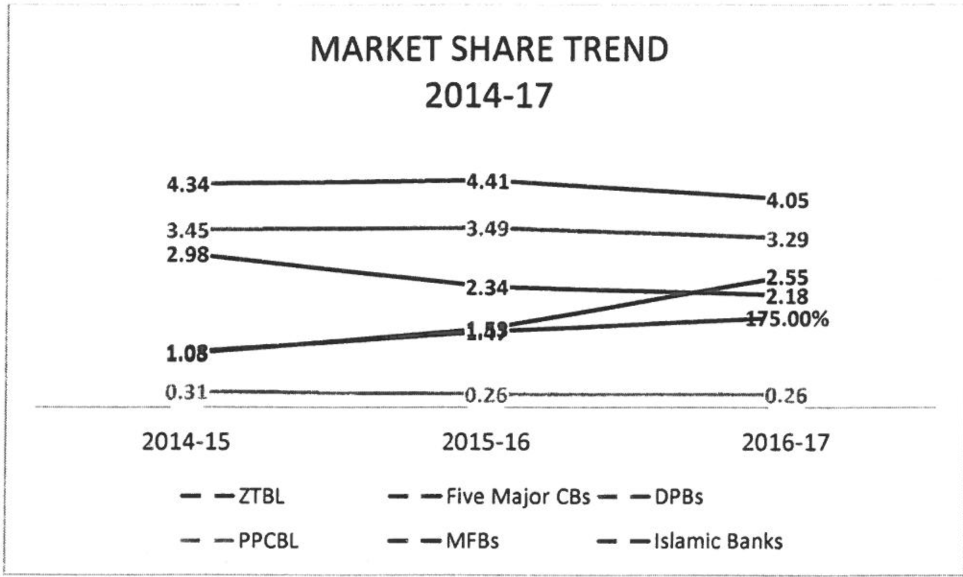
46. Regardless of any factors causing barriers to entry or growth, the level of market growth along with the shifting market share from the incumbents to the relative recent entrants is evidence that these barriers are surmountable. This is also evident from presence of all categories of financial institutions in this market, as mentioned above.

V.2.2.3 Position of Competitors relative to the Respondent

47. Talking about the position of competitors in comparison with the Respondent, one need not look beyond the trend in market shares (total loans disbursed) for the sample period considered. This is shown in the following graphical representation (drawn to scale).



48. As witnessed above, the Respondent's market share has been following a downward trajectory, while the overall market was growing. In fact the Respondent's loss in market share seems to be more pronounced than any of its competing undertakings. In contrast MFBs and Islamic banks that entered the market later, are on an upward trajectory, the former rather starkly. From having a measly market share of 6.3% in 2014-15 as against the Respondent's 18%, MFBs attained an impressive market share of 15.3% while that of the Respondent dwindled to 13%. Thus it turns out that for the period considered, the

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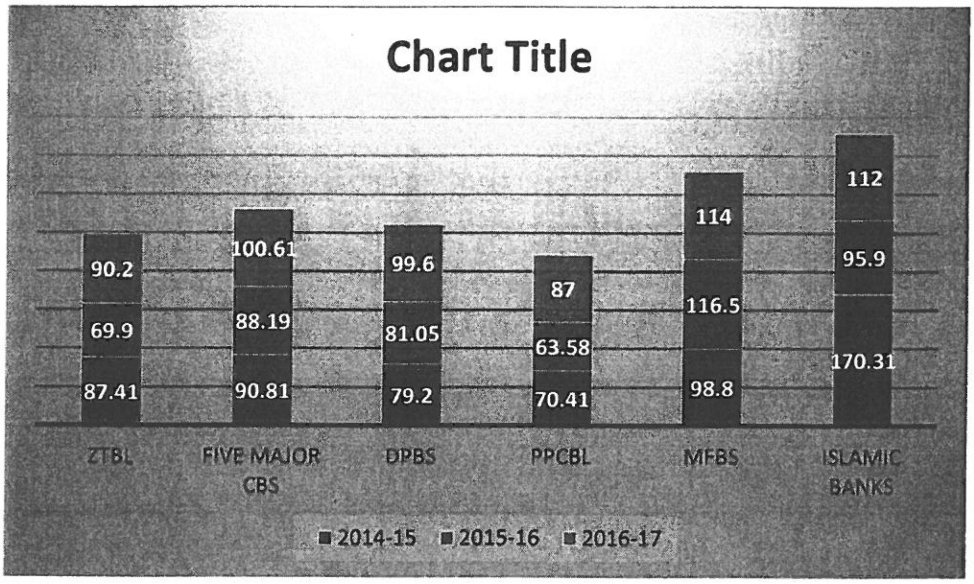
Respondent did not have a winning position in the growing contestable market. In comparison, the growth of two categories of financial institution, i.e. IBs and MFBs, particularly the latter, and the fact that the five major commercial banks and DPBs have somewhat retained their market shares, demonstrate a strong competitive position of the Respondent's market rivals.

49. Another factor that may be employed in gauging the relative market strength of the Competitors of Respondent is the comparative analysis of percentage target achievement by each of the market players that were set by the State Bank of Pakistan. For the years under consideration, the graphical representation of the same is as produced below:



50. From the above, it follows that the average cumulative target achievement of Respondent has been below every other category save the PPCBL. Thus even this aspect does not imply a weak footing of the undertakings competing with the Respondent. In fact it appears to be opposite.

51. In view of the foregoing factors, it would be rather un-natural to conclude that the competitors of the Respondent have a weak competitive position in comparison with the latter. Extending that rationale it may also be unrealistic to surmise that the Respondent can act independent of its competitors to an appreciable extent.

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52. Going by the definition of dominance provided in the Act, this is sufficient to demonstrate that the Respondent does not enjoy a dominant position in the relevant market. However even if for the sake of argument, it was assumed that the Respondent could act independent of its competitors to an appreciable extent, there would still be need to demonstrate that the Respondent can act independent of its customers and end consumers. In this regard we next examine the bargaining position of the end consumers in the given market.

V.2.2.4 **Countervailing Buyer Power**

53. In case of the Respondent there are no intermediaries or commercial buyers as the former deals directly with the end consumers by disbursing them agriculture loans. To show that the Respondent can act independent of its buyers, it must hold such sway over them so as to restrict their choices in purchasing the relevant service. With the presence of all kinds of financial institutions and evidence of their rather strong market position, along with the farmers' access to custom designed loans from the informal sector, it is but natural to assume that with respect to the relevant service, the farmers have a vast array of options to choose from. The market growth of two categories of financial institutions/banks with respect to the Respondent may serve as an evidence of such buyer discretion. Furthermore, as mentioned previously the end consumers or farmers have also access to loans from the informal sector which heretofore has been a more popular option due to the customized options it presents. Thus it does not appear that, in the market for disbursement of agriculture loans, the Respondent can act independent of its end consumers i.e. farmer.

54. Summing up the above, there does not appear to be any indicators to demonstrate that the Respondent can act independent of its competitors and/or buyers, and therefore does not appear to be dominant in the relevant market. This finding on its own seems to render any further evaluation of an 'abuse of dominance' under Section 3 of the Act, unnecessary and undesirable for the purposes of the Act.

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VI. Conclusion & Recommendation

55. In terms of paras 16 to 24 the relevant market for the purpose of this enquiry appears to be the market for underwriting of agriculture/crop loans issued by formal banking/financial institutions within the geographic boundary of Pakistan.

56. As per paras 25 to 30, it appears that the increase in rating criterion from an 'A" to 'AA' by the Respondent is not an outcome of an explicit or implied agreement between the Respondent and any other undertaking(s), nor is there any proof or evidence to show otherwise. Furthermore, while the measure taken by the Respondent may qualify as a decision, the Respondent itself does not appear to qualify as an association of undertakings, and therefore any decision taken by it does not seem to amount to a 'decision by an association'. The impugned action of the Respondent therefore does not meet the necessary conditions that need to exist for a prima facie Section 4 violation.

57. In terms of paras 31 to 54, the Respondent does not appear to be dominant in the relevant market, which is a necessary condition in finding an abuse in terms of the provisions of Section 3 of the Act.

58. In view thereof, the necessary conditions required in finding a prima facie violation(s) under Section 4 and/or Section 3 of the Act on the part of the respondent seem to be unfulfilled. Accordingly, it is suggested that the enquiry at hand may be considered for closure.

Qasim Khan	Anam A. Khan
Enquiry Officer	Enquiry Officer