SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present
Justice Jamal Khan Mandokhail
Justice Salahuddin Panhwar

Civil Appeal No. 367 of 2025
(On appeal from the judgment of the Competition Appellate Tribunal, Islamabad dated 24.04.2025 passed in Appeal No. 46 of 2023)

Pakistan Vanaspati Manufactures Association (PVMA) **Appellant**

Versus

Competition Commission of Pakistan ***Respondent***

For the Appellant: Mr. Muhammad Sohaib, ASC

For the Respondent: Mr. Amjad Hameed Ghauri, ASC

Date of Hearing: 24.06.2026

JUDGMENT

Jamal Khan Mandokhail, J. Briefly stated, the facts of the case are that Pakistan Vanaspati Manufacturers Association ("**the appellant**") is a representative trade association of manufacturers engaged in the production and sale of ghee and cooking oil in Pakistan. Under its bylaws, its function is to represent the collective interests of its members before the Government and public bodies. Between 2007 and 2009, against a backdrop of inflationary pressure and consumer concern over the price of essential commodities, the Federal Government, principally through the Ministry of Industries and Production and the Ministry of Interior, urged the industry to pass on to consumers the benefit of falling international palm oil prices. In this behalf, a series of communications took place between the appellant and the Government, following which the prices of ghee and cooking oil were reduced by the manufacturers.

2. On 27.04.2011, the Competition Commission of Pakistan ("**the Commission")** issued a show-cause notice to the appellant, framing three allegations: (i) that the appellant had "played a lead role to negotiate and fix price on behalf of its members with the Government", in violation of section 4(1) read with section 4(2)(a) of the Competition Act, 2010 ("**the Act**"); (ii) that the appellant had entered into arrangements with transporters to fix rates of

transportation, in violation of the same provisions; and (iii) that the appellant had discriminated between manufacturing units and commercial importers, in violation of section 3(3)(b) of the Act.

3. The appellant submitted its reply to the show-cause notice. After hearing the parties, the Commission, by order dated 30.06.2011, dismissed the second allegation concerning transporters for want of evidence and addressed the third allegation concerning differential verification fees by way of a curative direction. As regards the first allegation, the Commission concluded that the appellant had "negotiated and fixed prices on behalf of its members with the Government" in violation of section 4(1) read with section 4(2)(a) of the Act and imposed a penalty of Rs.50 million. Aggrieved by the said order, the appellant preferred an appeal before the Competition Appellate Tribunal, Islamabad ('**the Tribunal**'), which was partly allowed by means of the impugned judgment dated 24.04.2025. While modifying the direction concerning the third allegation, the Tribunal affirmed the finding that the appellant had contravened section 4 of the Act and maintained the penalty of Rs. 50 million. Hence this appeal.

4. Learned counsel for the appellant contended, first, that the impugned order penalizes the appellant for causing a price 'reduction' at the request of the Government. According to the learned counsel, a downward revision in the price of an essential commodity, urged by the Government and passed on to consumers, does not answer that description. Second, that the decision of the association was for facilitating a policy directive of the State, as mandated by Article 38 of the Constitution of the Islamic Republic of Pakistan, 1973, aimed at consumer welfare. Lastly, learned counsel contended that the communications to its members were merely recommendatory in nature, carrying no penal consequences for non-compliance. He therefore submitted that the negotiations between the appellant and the Government did not restrict competition among manufacturers and that the communications issued by the appellant could not, in the circumstances, constitute a "decision" within the meaning of section 4 of the Act.

5. Learned counsel for the Commission, on the other hand, supported the impugned judgment and submitted that section 4 expressly extends to associations of undertakings. According to

learned counsel, the appellant's costing committee was used to collect and analyse costing information, share commercially sensitive data, negotiate uniform prices with the government, and issue circulars directing member mills to adhere to the fixed rates, thereby affecting independent pricing autonomy and distorting market competition in violation of section 4 of the Act. While rebutting the appellant's arguments, he submitted that the 'State Action Defence' is wholly inapplicable as the Government merely persuaded, rather than compelled price adjustments, and no legal mandate existed to force uniform rates. Furthermore, the counsel argued that the circulars, regardless of their advisory nature, constituted prohibited "decisions" within the meaning of section 4.

6. Arguments heard and record perused. The Act was promulgated with the object of ensuring free competition in all spheres of commercial and economic activity, thereby promoting economic efficiency and protecting consumers from anti-competitive conduct. In furtherance of that object, section 12 provides for the establishment of the Commission to act as a market regulator, while sub-section (3) thereof makes the Commission independent and requires that the Federal Government shall use its best efforts to promote, enhance and maintain the independence of the Commission. The legislature has entrusted the Commission with the following functions and powers as provided by section 28 of the Act:

> *"28. Functions and powers of the Commission.—(1) The functions and powers of the Commission shall be, —*
>
> > *(a) to initiate proceedings in accordance with the procedures of this Act and make orders in cases of contravention of the provisions of the said Act;*
> >
> > *(b) to conduct studies for promoting competition in all sectors of commercial economic activity;*
> >
> > *(c) to conduct enquiries into the affairs of any undertaking as may be necessary for the purposes of this Act;*
> >
> > *(d) to give advice to undertakings asking for the same as to whether any action proposed to be taken by such undertakings is consistent with the provisions of this Act, rules or orders made thereunder;*
> >
> > *(e) to engage in competition advocacy; and*
> >
> > *(f) to take all other actions as may be necessary for carrying out the purposes of this Act."*

Section 29, which follows, further requires the Commission to promote competition through competition advocacy and identifies various means through which that object may be achieved.

7. The scope and effect of sections 28 and 29 become clear when the two provisions are read together. Out of the functions and powers conferred upon the Commission under section 28(1), only clause (a) relates to the initiation of proceedings for contravention of the Act. The remaining functions, including conducting studies, creating awareness, undertaking enquiries, providing advice, engaging in competition advocacy and taking such other measures as may be necessary, are essentially directed towards the prevention of anti-competitive conduct, cultivating a culture of competition, and promoting economic efficiency. In matters of economic regulation, prevention is ordinarily preferable to punishment after the event.

8. Before adverting to the issue, it is useful to set out the statutory scheme governing prohibited agreements. Section 4 of the Act, so far as is relevant, reads:

> *"4. 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..."*

The expression “agreement” is defined in section 2(b) of the Act to include *"any arrangement, understanding or practice, whether or not it is in writing or intended to be legally enforceable".* Section 2(q), in turn, defines "undertaking" as "*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 the production, supply, distribution of goods or provision or control of services and shall include an association of undertakings*". The legislature has deliberately adopted an expansive definition of "agreement". Nevertheless, an agreement ordinarily requires some form of meeting of minds between independent economic actors concerning their commercial conduct. Such conduct may, depending upon the circumstances, be established through direct evidence or inferred from the surrounding circumstances. If the object or effect of such an agreement or decision, in the case of an association of undertakings, results in the prevention, restriction or reduction of competition within the relevant market, it is prohibited under section 4 of the Act. The section, on its plain terms, is concerned with the "object or effect" of the agreement or decision. The “object” refers to the goal, purpose or intrinsic nature of the conduct, whereas “effect” refers to its actual or likely consequence upon competition in the relevant market. These two limbs are alternative, not cumulative. It is well settled in comparative competition jurisprudence that certain categories of conduct, including horizontal price-fixing amongst competing undertakings, whether directly or through their association, are by their very nature restrictive of competition. In such cases, the prohibition is engaged by the object of the conduct, without any separate enquiry into its actual or likely effects. Any collusive arrangement, understanding or practice that may restrict competition falls within the definition of an agreement and is cognizable by the Commission.

9. With the above statutory provisions in view, we now turn to examine the conduct attributed to the appellant, namely, whether its consultations with the Government and subsequent communications to its members constituted an understanding which resulted into the “decision” having the object or effect of preventing, restricting or reducing competition within the meaning of section 4 of the Act. The show-cause notice alleged that the appellant had engaged in price-fixing in violation of section 4, arising from its consultations with the Government. The reduction in the international price of palm oil led to these consultations and negotiations. In view of the decrease in the cost of the raw material, the Government sought a voluntary reduction in the prices of the commodities, keeping in view the reduced cost of manufacturing. The record shows that the appellant participated in discussions concerning the prices and subsequently communicated the agreed reduced rates to its members. These consultations resulted in a collective decision by the association on behalf of its members. Under section 4, any arrangement, understanding or practice resulting in a collective decision to fix

prices is prohibited. It is so, because each undertaking must independently determine its prices in accordance with its own pricing policies, in order to promote competition. A collective decision by competing undertakings, whether taken directly or through their association, interferes with that freedom. This principle is in line with competition laws in different jurisdictions. For instance, Article 101 of the Treaty on the Functioning of the European Union prohibits decisions by associations of undertakings that have as their object or effect the restriction of competition. Such a restriction on an association's ability to issue price recommendations is intended to protect the rights of consumers. The Court of Justice of the European Union in the case of *IAZ International Belgium*[1] has held that a recommendation issued by a trade association, even if formally non-binding, constitutes a "decision" where it is capable of influencing the commercial conduct of its members. In the present case, admittedly, after reducing and fixing the prices at a particular level upon the recommendation of the association, none of the undertakings reduced its prices further. Even though the prices fell and consumers benefited for the time being, this establishes that the result was a collective understanding among the competitors, which resulted in anti-competitive conduct. Irrespective of any short-term benefit to consumers, such a collective understanding is prohibited under Section 4 of the Act.

10. The appellant's other contention is that the prices were reduced upon the request of the Government, for the public good, therefore the decision does not contravene the provision of section 4 of the Act. The Government's concern to secure relief for consumers cannot be questioned merely because it sought a reduction in the prices of essential commodities. This, however, does not answer the question before us. The relevant consideration is not whether the ultimate price was beneficial to consumers, but whether competing undertakings remained free to determine their prices independently. The mere reduction of prices is not, in itself, anti-competitive. Lower prices are ordinarily a manifestation of competition and may benefit consumers. The vice in the present case lies in the collective determination of the price by an association representing competing undertakings, thereby substituting a common price for the independent pricing decisions

[1] *IAZ International Belgium NV v. Commission, Joined Cases 96–102, 104, 105, 108 & 110/82, [1983] ECR 3369*

which each undertaking was required to make. Even if the objective of the appellant was public good, the resulting impairment of independent price rivalry cannot be disregarded merely because the agreed price was lower than the prevailing price. Thus, the plea of the appellant that the decision was taken for the public good does not absolve it of the obligation to refrain from making any decision, the object or effect of which is to restrict or reduce competition. Courts across the globe have held on a number of occasions that any agreement or fixing of prices on the pretext of public good, even if based on good intention, remains fundamentally unlawful, if it results in anti-competitive behaviour. The act of the association of issuing collective pricing recommendation, which was unanimously accepted by the undertakings, amounts to restricting the members from making independent commercial choices. Irrespective of the fact that as a result of consultation between the appellant and the Government, the prices of commodities were reduced, in effect, the decision prevented, restricted and reduced competition within the relevant market, in violation of section 4 of the Act.

11. Without prejudice to the above, the Act mandates that the Commission shall be administratively and functionally independent. It is the responsibility of the Federal Government to promote, enhance and maintain independence of the Commission. Had the Federal Government wanted the undertakings to reduce the prices of the commodities, it was supposed to have taken up the issue with the Commission itself. The Commission alone was competent to advise the undertakings individually to pass on to the consumers the benefit of the reduction in the price of raw materials, enabling each undertaking to independently determine the prices of its finished products in accordance with its own commercial considerations. The act of the Government of directly approaching the association is an interference in the affairs of the statutory authority, which undermined the Commission's independence. In the present scenario, we do not doubt the intention of the Government or even the association, however, the interference of the Government, if permitted to continue, may be misused in the future and may influence the market on political or personal considerations. In any case, the consultation of the Government with the appellant for reduction of prices, bypassing the Commission, and the subsequent conduct of the appellant in

collectively determining the prices, constitutes a violation of the Act. So far as the finding of contravention of section 4 is concerned, the Commission and the Tribunal, upon examining the material available on record in the light of the relevant provisions of law, have reached a correct conclusion, and the learned counsel for the appellant has not been able to point out any illegality or irregularity in that finding warranting our interference. However, the circumstances in which the contravention occurred are relevant to the quantum of the penalty. The appellant's collective decision was not the result of concealed collusion or covert cartel behaviour ordinarily warranting the imposition of the maximum penalty under the Act. The record shows that the negotiations for reduction of prices were initiated at the instance of the Federal Government. As already held, this does not absolve the appellant of liability under section 4; but is relevant to the assessment of the appropriate penalty. Taking this circumstance into account, we are of the view that the penalty of Rs. 50 million imposed by the Commission and affirmed by the Tribunal is excessive in the peculiar circumstances of the present case.

12. Before parting with this matter, it is important to observe here that it is the constitutional obligation of the Government as provided in Article 38 of the Constitution of the Islamic Republic of Pakistan 1973, to promote the economic and social well-being of the people. One of the principles of economics is that "people respond to incentives". Through appropriate policies, the Government may create incentives which reduce the cost of doing business and, consequently, the cost of producing and supplying goods, thereby facilitating lower prices for consumers. The Commission may also advise the Government in this regard. Besides, competition advocacy serves as a preventive tool at the wider market level. It can bring positive behavioral changes in manufacturers, consumers or suppliers. Where the Commission notices a practice or a proposed course of conduct which may subsequently raise concerns under the Act, it is empowered to bring those concerns first to the notice of the undertaking or the association of undertakings and, where appropriate, to advise it, that an action proposed to be taken by such undertaking is inconsistent with the provisions of the Act, rules or order made thereunder. It is preferable to prevent an undertaking or an association of undertakings from entering into an agreement or

making a decision having the object or effect of preventing, restricting, or reducing competition within the relevant market. The Commission must therefore create awareness and exercise its advocacy role before a violation of the Act occurs. What the statutory scheme makes clear, however, is that enforcement is one part of the Commission's mandate, not the whole of it, and it must be exercised regularly in a manner consistent with the broader object of promoting economic efficiency and preventing anti-competitive behaviour, rather than merely imposing penalties upon those who have departed from the statutory standards. The power to impose penalties is undoubtedly an important component of that mandate; however, it is a measure of last resort, to be invoked where the Commission’s efforts to promote a culture of competition and secure compliance with the Act have failed. This, however, does not mean that the Commission must, in every case, exhaust its advisory or advocacy functions before initiating proceedings. Where the material discloses a clear contravention of any provision of the Act, it must exercise its enforcement jurisdiction in accordance with law.

Thus, the appeal is partly allowed. The findings of the Commission and the Tribunal are affirmed, however, the penalty of Rs. 50 million is reduced to Rs. 30 million. There shall be no order as to costs.

Judge

Judge

Announced in Open Court at Islamabad on _______________.

Judge

Islamabad
APPROVED FOR REPORTING
K.Anees & Saniya Diyar, LC