



**BEFORE THE
COMPETITION COMMISSION OF PAKISTAN
IN THE MATTER OF**

SHOW CAUSE NOTICES ISSUED TO

1-LINK GUARANTEE LTD AND MEMBER BANKS

(F. NO: 1/24/ATM CHARGES/C&TA/CCP/2011)

&

EXEMPTION APPLICATIONS FILED BY 1-LINK GUARANTEE LTD

(FILE NOS. 2(317) & (318)/AGR/EXM/REG/CCP/2012)

Dates of hearing: May 3, 2012,
June 12, 2012

Present: Ms. Rahat Kaunain Hassan
Chairperson

Mr. Abdul Ghaffar
Member

Dr. Joseph Wilson
Member

On behalf of:

M/s. 1 Link Guarantee Ltd

Haider Mota & Co.

Mr. Kazim Hassan, Barrister

Mr. Nadir Burney,

Ms. Mehvish Muneera, Advocate

M/s. Standard Chartered Bank Ltd

Liaquat Merchant Associates

M/s. JS Bank Ltd

Mr. Liaquat Merchant

M/s. Bank Al-Habib

Mr. Mustafa Ahmed

M/s. KASHF Microfinance Ltd

Mr. Umar Adam,

M/s. Bank Alfalah
M/s. Barclays Bank
M/s. Citi Bank
M/s. Allied Bank
M/s. Habib Bank
M/s. Faisal Bank
M/s. Burj Bank
M/s. Summit Bank
M/s. Soneri Bank
M/s. Tameer Bank
M/s. Al Barka Bank
M/s. Bank of Punjab
M/s. United Bank Ltd
M/s. Askari Bank Ltd
M/s. NIB Bank Ltd
M/s. KASB Bak
M/s. Habib Metropolitan Bank Ltd
M/s. Meezan Bankltd
M/s. National Bank Ltd
M/s. Silk Bank
M/s. Samba Bank

M/s. Mandviwalla & Zafar
Mr. Mehmood Mandviwalla
Ms. Sana Iftikhar

M/s. Bank Islami
M/s. Sindh Bank Ltd

Mohsin Tayebaly & Co
Mr. Umair R. Vadria
Ms. Sanaa Ahmed

M/s. Bank of Khyber

Sheikh Imtiaz Ahmed, Advocate
Supreme Court

M/s. Dubai Islamic Bank Ltd

Century 21 Law & Co.
Mr. Muhammad Azam Zia, Advocate
High Court,
Raja Tariq

ORDER

1. This order disposes of the proceedings initiated under Section 30 of the Competition Act, 2010 (the “Act”) vide Show Cause Notice nos. 35 to 50, 52, 55 to 67 issued to 1-Link (Guarantee) limited (“1-Link”) and to member banks, namely;

- i. National Bank of Pakistan
- ii. Allied Bank Limited
- iii. Habib Bank Limited
- iv. Bank Al-Falah Limited
- v. Askari Bank Limited
- vi. Soneri Bank Limited
- vii. NIB Bank Limited
- viii. United Bank Limited
- ix. Standard Chartered Bank Pakistan Limited
- x. Faysal Bank Limited
- xi. Bank Al Habib Limited.
- xii. Albaraka Bank Pakistan Limited
- xiii. Burj Bank Limited
- xiv. Meezan Bank Limited
- xv. Bank Islami
- xvi. Khadim Ali Shah Bukhari Bank Limited
- xvii. Habib Metropolitan Bank Limited
- xviii. The Bank of Khyber
- xix. Dubai Islamic Bank Pakistan Limited
- xx. JS Bank Limited
- xxi. Silk Bank Limited
- xxii. The Bank of Punjab
- xxiii. Citi Bank Pakistan
- xxiv. Samba Bank Limited
- xxv. Sindh Bank Limited
- xxvi. Barclays Bank PLC, Pakistan Limited
- xxvii. Tameer Microfinance Bank Limited
- xxviii. Summit Bank Limited
- xxix. Kashf Micro Finance Bank, hereinafter collectively referred to as (“Member Banks”)

for, *prima facie*, fixing the charges of ATM cash withdrawal services, Utility Bill Payment Services (UBPS) and Inter-bank Fund Transfer services (IBFT) along with the Exemption Applications (File Nos. 2(317) & (318)/Agr/EXM/Reg/CCP/2012) filed by 1-Link under Section 5 of the Act during the course of subject proceedings in respect of agreements for ATM cash withdrawal services and IBFT.

I. UNDERTAKINGS

2. 1-Link (Guarantee) Limited is a registered company, incorporated under the Companies Ordinance of 1984. 1-Link provides the platform for the sharing of ATM network of the Member Banks. Hence 1-Link is an undertaking in terms of the definition of Undertaking provided under Section 2(1)(q) of the Act.
3. Member Banks: Members of 1-Link are banking companies which transact the business of banking in Pakistan and are registered under the Banking Ordinance, hence are undertakings in terms of the definition of Undertaking provided under Section 2(1)(q) of the Act.

II. BACKGROUND

4. The Competition Commission of Pakistan (the “Commission”) took notice on its own of ATM cash withdrawal charges implemented by banks in Pakistan. It was observed that banks are charging uniform amount of Rs.15 for ATM cash withdrawal transaction despite having non- uniform business dynamics regarding the aforesaid service.
5. During preliminary fact finding it was found that in Pakistan ATM cash withdrawal service is provided by two ATM networks/switch namely: 1-Link and Mnet. The State Bank of Pakistan has mandated that all commercial banks in Pakistan, both foreign and domestic, have to become members of one or the other switch to provide ATM services to their own customers as well as customers of other banks. Additionally, these two switches have been interconnected in 2006, which means that a consumer holding an ATM or debit card issued by any bank in Pakistan may use any ATM located throughout the country.
6. 1-Link is a shared ATM network and owns and operates the largest representative shared financial services network of Pakistan. It is a consortium of 11 major banks of the country and operates through a Chief Executive Officer. The

company has a Board, consisting of 11 Directors, one from each founder member bank. The banks represented on 1-Link's board are:

- i. National Bank of Pakistan
- ii. Allied Bank Limited
- iii. Habib Bank Limited
- iv. Bank Al-Falah Limited
- v. Askari Bank Limited
- vi. Soneri Bank Limited
- vii. NIB Bank Limited
- viii. United Bank Limited
- ix. Standard Chartered Bank Pakistan Limited
- x. Faysal Bank Limited
- xi. Bank Al Habib Limited

The other member banks are not represented on 1-Link's Board of Directors. Instead they have become members of 1-Link by signing a memorandum of accession.

7. State Bank of Pakistan (SBP) was contacted to enquire and clarify if it has any role to fix the uniform charge on ATM cash withdrawal services. SBP in its reply dated 24 August 2011 stated that *"banks are free to determine the rates of charges of various services they provide to their customers."*
8. In the absence of any direction from the SBP, uniform/parallel rates of ATM cash withdrawal services implemented by majority of banks raised a suspicion of collusion among banks. The suspicion of collusion was strengthened by the fact that 29 banks are members of 1Link, while 11 leading banks are on its board of directors that, *prima facie*, offered them a forum to decide on matters of common interest.
9. To further assess the matter and seek the rationale for uniform ATM cash withdrawal charge among the various banks, a query to that effect was sent to banks representing large and small banks from the 1-Link network. One of the banks in its response explained that after joining 1-Link they had to comply with the schedule of charges devised by 1-Link. The schedule of charges sent along with the letter revealed that interchange fee for ATM transactions including cash withdrawal, Utility Bill Payment System (UBPS) and Inter Bank Fund Transfer

(IBFT) services has been fixed which appeared to be in violation of Section 4 (2) (a) of the Act.

10. Keeping in view the foregoing, the Commission deemed it appropriate to authorize a team of officers for inspection of the premises in use of 1-Link in exercise of powers granted to under Section 34 of the Act in order to collect any further evidence regarding the suspected violations of the Act. Accordingly, a team of officers were authorized by the Commission to search and inspect the office of 1-Link in Karachi. The officers conducted the search on 07 September 2011 and impounded valuable materials and documents from the offices of 1-Link.
11. Documents impounded during the course of search and inspection required detailed scrutiny and examination. Therefore, pursuant to the powers contained in Section 28(2) of the Act, the Commission appointed Shaista Bano (Director), Nadia Nabi (Senior Joint Director) and Muhammad Qasim Khan (Junior Executive Officer) (hereinafter collectively the “Enquiry Committee”) to conduct an enquiry as to whether 1-Link and member banks are involved in collusive activities to fix the rates of services provided by them, thereby violating Section 4 of the Act, and to prepare a detailed Enquiry Report under Section 37 of the Act.
12. The Enquiry Committee completed the Enquiry by submitting the Enquiry Report on 09 December, 2011. The Enquiry Report concluded that ‘1-Link Agreement’ among founding members appears to fix the charges of inter-bank ATM cash withdrawal which the other network parties/members have acceded to by signing an Accession Memorandum. Whereas in respect UBPS and IBFT, 1-Link has entered into agreements on behalf of its all network parties/members apparently to fix the charges in respect of both services. Further, 1-Link has issued periodically schedule of charges to its member banks and has, *prima facie*, taken decisions acting as an association of undertakings to fix interchange fee in respect of ATM cash-withdrawal and IBFT services and bill payee bank fee in respect of UBPS and also the rates of ATM cash withdrawal and UBPS charges to be paid to the member banks by their customers.

13. The Enquiry Report also concluded that member banks have signed Accession Memorandum to ‘1-Link Agreement’ among founding members and to ‘UBPS Agreement’ and ‘IBFT Agreement’ entered into by 1-Link on behalf of its members and have also implemented the uniform charges as per the schedule of charges issued by 1-Link. Such decisions on price fixing by 1-Link, and price fixing agreements entered into by member banks, *prima facie*, have the object or effect of restricting, reducing or preventing competition within the relevant market in contravention of Section 4(1), in particular, Section 4(2)(a) of the Act. Therefore, the Enquiry Report recommended it necessary, in the public interest to initiate proceedings against 1-Link and its member banks under Section 30 of the Act.
14. Based on the findings of the Enquiry Report, the Commission initiated proceedings under Section 30 of the Act and issued Show Cause Notice to 1-Link and its member banks on 14 March, 2012 which, *inter alia*, stated¹:

WHEREAS, in terms of the Enquiry Report in general and in particular paragraph 15-24, the relevant market is ATM cash withdrawal services, Interbank Fund Transfer (IBFT) and Utility Bills Payment Services (UBPS) provided by banks, through a switch/network in Pakistan;

WHEREAS, in terms of the Enquiry Report in general and in particular paragraph 33-48, it appears that the ‘1-Link Agreement’ executed by the founding members of the Undertaking namely; ABN AMRO Bank N.V., Allied Bank of Pakistan Limited, Askari Commercial Bank Limited, Bank Alfalah Limited, Bank Al-Habib Limited, Habib Bank Limited, National Bank of Pakistan, PICIC Commercial Bank Limited, Soneri Bank Limited, United Bank Limited and Union Bank Limited (hereinafter referred to as the ‘founding members’), provides for the contractual arrangement for any bank to join the Undertaking as a new ‘founding member’ or a new ‘member bank’. Further, it also appears that the ‘1-Link Agreement’ among founding members fixes the charges in respect of ATM cash withdrawal transactions carried out at member banks’ ATMs;

¹ Paragraph reproduced have been taken from the Show Cause Notice issued to 1-Link, therefore the term undertaking with this SCN is 1-Link. To avoid the length of document Show Cause Notice issued to member banks has not been reproduced, however, allegations leveled in both type of Show Cause Notices are substantially along the same lines and shall be dealt with accordingly.

WHEREAS, in terms of the Enquiry Report in general and in particular paragraph 33-48, it appears that the Undertaking on behalf of its member banks has entered into 'Bill Payment Agreements' with utility companies to fix the terms and conditions, particularly UBPS charges for payment by utility companies to 1-Link network banks, be it founding members or member banks;

WHEREAS, in terms of the Enquiry Report in general and in particular paragraph 33-48, it appears that the Undertaking on behalf of its member banks has entered into IBFT Agreement with TPS Pakistan (Private) Limited and ABN AMRO Bank N.V. to fix the terms and conditions, particularly charges for IBFT transactions carried out inter se member banks;

WHEREAS, in terms of the Enquiry Report in general and in particular paragraph 33-48, it appears that the Undertaking has provided a forum acting as an association of undertakings to its member banks, particularly those who are represented on its Board, inter alia; to meet, discuss, review/revise and fix the charges for ATM cash withdrawal, IBFT and UBPS;

WHEREAS, in terms of the Enquiry Report in general and, in particular paragraph 33 to 48, it also appears that the Undertaking has issued schedule of charges periodically to its member banks and taken decisions to fix interchange fee paid by issuer bank to acquirer bank in respect of ATM cash-withdrawal services, interchange fee paid by sending bank to beneficiary bank in respect of IBFT services and bill payee bank fee in respect of UBPS and also the rates of ATM cash withdrawal and UBPS charges to be paid by the customers of member banks;

WHEREAS, in view of foregoing, it appears to the Commission that the Undertaking has taken decision and has entered into arrangement/agreement on price fixing which have the object or effect of restricting, reducing or preventing competition within the relevant market, prima facie, in contravention of Section 4(1), in particular, Section 4(2)(a) of the Act.

III. WRITTEN SUBMISSIONS

15. In response to the Show Cause Notice, 1-Link represented by Haidermota & Co., legal counsel, submitted its reply, salient points whereof are summarized as here below:

- i. With respect to the role of SBP, 1-Link establishes through various circulars that SBP plays an active role in regulating the interchange fee for ATM cash withdrawals.
- ii. Various minutes of meetings and an Email from SBP to 1-Link reveal that SBP has played a pivotal role in maintaining the ATM cash withdrawal fee at a rate of Rs 15/- despite the willingness of the two ATM network operators to increase it. As per 1-Link SBP has therefore standardized the interchange fee for cash withdrawal and set a ceiling with respect to the same.
- iii. 1-Link disagreed with the definition of Relevant Product Market provided for in the Enquiry Report with respect to ATM cash withdrawal on Off-Us transactions ('Off-Us'), 'IBFT' and 'UBPS'. As per 1-Link all modes whether electronic or otherwise, with respect to these services should be included in the definition of the relevant market.
- iv. 1-Link maintained that the interchange fee with respect to IBFT and ATM cash withdrawal as well as UBPS fee contribute to improving production and distribution, economic and technical progress in addition to allowing consumers a fair share of the benefit. Also 1-Link contended that its Off-Us services compete with the On-Us ATM networks of its own network parties and that the ATM cash withdrawal services as a whole compete with all other means of withdrawing cash.
- v. The Supreme Court of Pakistan sought to improve the procedure for the payment of utility bills when it took notice of the matter in 2006. In light of the Deputy Attorney General's report the Supreme Court directed the Governor SBP to convene meetings with pertinent Secretaries in order to allow mediums other than Banks to accept utility bills.
- vi. Separately Utility Companies were directed to cooperate with the SBP and if necessary meet with the Governor of SBP. In one of the meetings it was concluded that Governor SBP, Ms. Shamshad Akhtar, proposed a Rs 8/- per collection bill charge keeping in view factors such as inflation with effect from July 1, 2006 and subject to revision every two years.
- vii. It was therefore submitted that the lead role in determining the charge was played by the committee established by the Supreme Court and with whom the Supreme Court had directed the network parties to cooperate. This is evidenced by the fact that Bill payment agreements were entered into subsequent to the decision of the committee formed by the Supreme Court.
- viii. For the reasons given and for furtherance of efforts to ensure full compliance with the Act, the bank prayed that this Commission grant block exemption with respect to the interchange fees pursuant to section 7 as each meets the criteria of Section 9 of the Act or alternatively direct 1-Link and the relevant network parties to submit individual applications for exemption in respect of the practices.

16. In response to the Show Cause Notice issued by the Commission 21 banks namely; National Bank of Pakistan, Allied Bank Limited, Habib Bank, Bank Al-Falah Limited, Askari Bank Limited, Soneri Bank Limited, NIB Bank Limited, United Bank Limited, Faysal Bank, Albaraka Bank, Burj Bank Limited, Meezan Bank Limited, Khadim Ali Shah Bukhari Bank Limited, Habib Metropolitan Bank Limited, Silk Bank Limited, The Bank of Punjab, Citi Bank Pakistan, Samba Bank Limited, Barclays Bank PLC, Pakistan Limited, Tameer Microfinance Bank Limited and Summit Bank Limited represented by Mandviwalla & Zafar, Advocates and Legal Consultants, submitted replies to their respective Show Cause Notices. Identical submissions have been made with respect to all the Show Cause Notices. A summary of submissions is reproduced below:

- i. The relevant market is narrowed down to “ATM Cash Withdrawal” without taking into account interchangeable or substitutable services. ATM Cash withdrawal forms a smaller subset of a wider market of which branchless banking is a part. Other than Branchless banking the relevant market should also include Conventional Banking as a mode of cash withdrawal. Further, a very large quantum of on-us transactions carried out on the Banks’ ATMs cannot be excluded from the definition of the Relevant Market.

1-Link Agreement

- ii. An issuing bank is prescribed to pay PKR 15 for each Off-Us transaction. While 1-Link prescribes the above charge it doesn’t hinder competition because:
 - a. 1-Link does not charge the customers of its member banks directly, the decision to pass on this charge and to what extent is a prerogative of the banks as they are independent in devising pricing policies.
 - b. It is upon customer’s discretion to avail cash withdrawal facility via an Off-Us (free transaction) or On-Us transaction. 1-Link or its members’ banks have no role in determining which mode a customer adopts.
 - c. The transaction fee is a transfer of costs between entities and purely accounts for the expenses incurred by the Issuing bank, Acquiring bank and the settlement agent with respect to Off-Us transactions. There is no element of profit and the fee has remained unchanged for the last 10 years.
- iii. In fact, the 1-Link arrangement:

- a. Is transparent, stable, harmonized and non-discriminatory. In the event of bilateral negotiations charges would vary from ATMs of one bank to another effecting transparency and discouraging customer from using ATMs of other banks. Furthermore in case of bilateral negotiations banks with vast ATM networks would have used their leverage leaving higher charge on customers of smaller banks and vice versa resulting in discriminatory pricing in violation of Section 4(2)(f) of the Competition Act, 2010.
- b. Provides wider access. Deployment of ATMs is very capital intensive. 1-Link arrangement allows customers of smaller banks that do not have ATMs of their own to avail facilities on ATMs deployed by other bank.
- c. Payment Systems Review of SBP dated Feb 3, 2012 shows yearly growth figures of 20% in volume and 30% in value of ATM transactions which shows efficiency and effectiveness of ATM network in Pakistan of which 1-Link is an integral part.

Bill Payment Agreements

- iv. Supreme Court of Pakistan in Suo Moto Case No. 4 of 2006 had directed all banks to have proper arrangement in place for depositing of utility bill payments. SBP vide its circular issued in 2009 had directed all the banks to comply with the said order. Subsequently the SBP informed all the banks that It has in consultation with Banks and I-Link/M-net decided to offer Utility Bill Payments across the ATM network in Pakistan.
- v. The 1-Link UBPS service enables the customers of utility companies to make payment of their utility bills at the sole cost of utility companies (Commission of PKR 8 per transaction).
- vi. 1-Link does not charge the customers of its member banks directly. Moreover the SBP does not permit the banks to pass on the Switch fee and the settlement fee in respect of UBPS to their customers and therefore does not violation Section 4(2) (a) of the Competition Act, 2010.
- vii. UBPS is also a feature of branchless banking where PKR 10 is charged for every bill payment transaction. Hence UBPS facility offered by 1-Link and its member banks does not hinder competition in the market.

IBFT Facility

- viii. IBFT can be executed through a number of electronic channels enabled by 1-Link including but not limited to ATMs and Branchless banking.
- ix. In terms of IBFT the sending bank carrying out the transfer is obligated to pay PKR 2 to 1-Link and a settlement fee PKR 2 to Faysal bank which are entirely costs incurred by the processing entities. 1 Link does not

charge the customers of its member banks directly and devising charges for this service is entirely Banks' discretion.

- x. IBFT is also a feature of branchless banking and is bifurcated into fund transfer from one mobile account to another and fund transfer from a mobile account to a computerized national identity card number. The charges levied on such transactions are divided into different slabs.
- xi. In view of the foregoing when determining whether the 1-Link, UBPS and IBFT agreements restrict competition in the relevant market the Commission must consider that whether such agreements qualify for block exemption under the relevant provisions of the Competition Act.

17. In response to the Show Cause Notices issued to Standard Chartered Bank (Pakistan) Ltd, Bank Al Habib Limited, J.S. Bank Limited and Kashf Micro-Finance Bank Ltd. Liaquat Merchant Associates responded in the following terms:

- i. The above mentioned banks have not violated the provisions of Section 4 of the Competition Act by following an agreement to charge Rs. 15/- as this rate was approved by the State Bank of Pakistan being the regulatory authority for banks.
- ii. Competition Commission of Pakistan should not proceed further without hearing SBP as it has played a pivotal role being the regulator.
- iii. The agreement with 1-LINK of charging Rs. 15/- is not a price fixing and is no anti-competitive concern. SBP prescribed the maximum ceiling for banks which does not lead to any violation of Section 4 of the Competition Act.
- iv. 1-LINK Agreement facilitates the ATM service providers as well as to benefit customers.
- v. For the mentioned reasons Competition Commission of Pakistan should take sympathetic and lenient view in regard to 1-LINK Agreement as it promotes technical and economic development.
- vi. Banks have filed applications for exemption under Section 5/9 of the Competition Act 2010. Therefore Show Cause Notices issued to the Banks are liable to be discharged with no penalties or order as to costs. Competition Commission has been requested to defer the processing of this exemption application as 1-LINK is now preparing a second phase of Agreement which will provide for bilateral charging arrangements between the paying and receiving banks.
- vii. The exemption application under the IBFT Agreement may kindly be deferred and held in the custody of Competition Commission till Banks can take a final decision in this respect if there is a need to apply for exemption. The decision communicated by 1-LINK on this issue is

reproduced as “1-LINK will not file an exemption application for the IBFT Agreement. Rather, we will inform the CCP at the hearing on 3rd May, 2012, that 1 LINK is in the process of developing phase two of the IBFT system, which will provide for the IBFT fee to be determined bilaterally between remitting and receiving banks.”

- viii. Time may kindly be granted to the Banks to consider filing an exemption application in view of the decision by 1-LINK with regard to a revised charge of Rs. 8/-. As 1-Link has stated that “1LINK will not file an exemption application for the UBPS Agreement, and will endeavor to highlight to the CCP that UBPS fee has been set at PKR 8.00 as consequences of an industry-wide practice resulting from a decision of the SBP Committee to comply with the Supreme Court Sou Motu Order No. 4/2006.”

18. Sindh Bank Limited and Bank Islami filed their replies through their legal representative, Mihsin Tayabaly & Co., Corporate Legal Consultants, Both replies include identical grounds, therefore, gist of submissions is summarized as under:

- i. The Sind Bank maintains along the same lines as other banks have stated that SBP have played its role as a regulator in issuing directives and circulars showing its active role in ensuring a strict maintenance of a price ceiling (PKR 15.00) with respect to inter-switch transactions. To confirm the understanding of the role of SBP with respect to interchange fee for cash withdrawal 1 Link has written a letter to SBP and awaits its response.
- ii. The relevant product market as defined in the Enquiry Report is not correct with respect to ATM cash withdrawal transactions. The relevant product market should include all modes whether electronic or otherwise of withdrawing cash from a bank account. The product market defined for IBFT in the Enquiry Report was admitted and for UBPS again it should include all modes whether electronic or otherwise through which utility bills are paid.
- iii. The bank did not enter into a price fixing arrangement with the object of reducing or restricting competition in contravention of Section 4 of Competition Act, 2010. It is clarified that the “Phase II” stages enumerated as minutes in annexures F, G, H and I of the Enquiry Report were limited to internal discussion and have undergone no implementation. The bank has at all times complied with the directives of SBP regarding interchange fee for ATM cash withdrawal, orders of Supreme Court with respect to the UBPS transactions and acted with the aim of giving utmost benefit to the customer and all related parties with respect to the IBFT transactions.
- iv. The Interchange fee of PKR 11.61 in case of ATM cash withdrawal became affective after the 1-Link agreement between the network parties (‘Master Agreement’) in April, 2003. It was clarified that 1-Link is not a party to this agreement. At the time the “Master Agreement, IBFT

agreement and various Bill Payment agreements took place, the Competition Ordinance 2007 or the Competition Act were promulgated.

- v. Issuing Banks are not obliged by 1-Link or the master agreement to pass on its interchange fee to their respective customers. However all the issuing banks with the exception of Citibank chose to pass on the fee to their customers.
 - vi. The ATM interchange fee is essential to enable interoperability between the ATM networks of different banks for the absence of a standardized fee would result in higher fees for consumers, less competitive deposit market, lack of transparency, higher transaction costs and higher costs as a result of excessive bilateral agreements.
 - vii. With respect to IBFT, the agreement does not impose any obligation on the sending bank in regard to charging a fee to its customers. These amounts vary substantially among the sending banks. Thus the interchange fee charged by the beneficiary bank is in no way correlated to what sending banks charge their customers. In the absence of a standardized IBFT interchange fee beneficiary banks would have no incentive to lower them as it would neither increase the funds transfer to them nor attract any depositors. Infact banks with greater quantum of funds transferred to them would be in a position to raise the interchange fee at the cost of sending banks that could then pass it on to the customers. This may have the effect of making the system unworkable.
 - viii. A network party when it accedes to bill payment agreement with 1-Link and a utility company, a number of channels such as ATMs, call centers, the internet, mobile phones and bank branches become available to its customers to pay utility bills. The expense of the transaction is borne by the utility company. The then Governor SBP, Shamsah Akhtar, proposed Rs 8/- per collection bill charge keeping in view factors such as. It was submitted that the lead role in determining the charge was played by the committee established by the Supreme Court. This was evident by the fact that Bill payment agreements were entered into subsequent to the decision of the committee formed by the Supreme Court.
 - ix. To ensure full compliance with the Competition Act, the bank prayed that this Commission grant it a block exemption with respect to the interchange fees as each meets the criterion of Section 9 of the Act or alternatively direct 1-Link and the relevant network parties to submit individual applications for exemption in respect of the practices.
19. In response to the Show Cause Notices, Bank of Khyber represented by Sheikh Imtiaz Ahmed and Dubai Islamic Bank Pakistan Limited represented by Century 21 Law Co. responded along the same lines as submitted above by other banks.

IV. ISSUES

20. The hearing pertaining to subject matter concluded on 13 June, 2012. Before we delve into the issues involved in this particular case, we would like to appreciate the immense cooperation extended by 1-Link during the search and inspection of its office and also the co-operation of all the parties during the hearings.
21. In view of the written submissions and arguments made by each of the party, primarily following issues have arisen which need to be addressed:
- i. Whether the relevant market and sub-sets thereof have been rightly defined/identified in the Enquiry Report?
 - ii. What is the role of SBP with respect to fee charged to customer for ATM cash withdrawal transaction and UBPS?
 - iii. Whether fixing of inter-change fee in respect of ATM cash withdrawal and IBFT services is per se violation of Section 4 of the Act or qualifies for exemption in terms of Section 5 read with Section 9 of the Act?
 - iv. Whether fixing charges for UBPS is per se violation of Section 4 of the Act or qualifies for exemption in terms of Section 5 read with Section 9 of the Act?
 - v. Whether the ATM cash withdrawal fee in the sum of PKR15 uniformly charged by 1-Link member banks to their customers for inter- bank transactions amounts to collusive price fixing or is merely a parallel behavior?

ISSUE No.1

Whether the relevant market and sub-sets thereof have been rightly defined/identified in the Enquiry Report?

22. Major objection has been raised that the Show Cause Notice based on the findings of the Enquiry Report has narrowed down the relevant product market to “ATM Cash Withdrawal” without taking into account interchangeable or substitutable services. ATM cash withdrawal forms a smaller subset of a wider market of which branchless banking is a part. Other than branchless banking, the relevant market should also include conventional banking as a mode of cash withdrawal.
23. Even though the objection on relevant product market has been raised in the pleadings mostly to the extent of cash withdrawal service, however, we would also like to address other sub-sets of relevant product market mentioned in the Show Cause Notice and the Enquiry Report under relevant product market in terms of the interchangeability or substitutability of the services, if any. A relevant product market is to be defined in terms of guidelines provided in clause (k) sub-section (1) of Section 2 of the Act, which reads as follows:

“relevant market”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’ characteristic, prices and intended uses.....;

24. In order to determine the relevant product market, the first step is to identify the relevant products/services that are interchangeable or substitutable with the products/services at issue. The product/services which are at issue are services available electronic banking mode, that are:

Cash withdrawal services;

Utility Bills Payment Services (UBPS);

Inter-bank Fund Transfers (IBFT), online inter-bank payments between the customers of two different banks.

25. Enquiry Report mentions that an Automated Teller Machine (ATM) is a computerized telecommunications device that allows the customer/clients of a bank in Pakistan to conduct financial transactions such as cash withdrawal, non-financial transactions (balance enquiry) and other services (UBPS or IBFT) at any time in a public space without the need for a cashier, human clerk or bank teller.

All that a customer/client has to do is to insert a plastic ATM card that contains a unique card number and some security information and enter a personal identification number for the processing of a transaction to be carried out.

26. Transactions made on ATMs are shown as distinct in nature as compared to conventional banking by virtue of following characteristics/advantages:
- ATM is a self-service equipment with simple and quick operations. With the use of a bank card and typing in password and other relevant information with the keyboard, one can easily accomplish transactions with complete confidentiality;
 - ATMs provide round the clock service. The customer can carry out a transaction up to a certain limit during any time of the day;
 - ATMs provide convenience to the customers. These are located at convenient places and not necessarily at the bank's premises. They provide mobility in banking services;
 - ATMs reduce the work pressure on bank's staff and avoid queues in bank premises;
 - ATMs are of great help to travelers. They need not carry large amount of cash with them. They can make transactions across the country with the help of an ATM.
27. It is pertinent to mention here that ATM cash withdrawal service, in particular, is not only available at the network of one's own bank but also one can make transactions on an ATM of a bank that is not their own by means of a switch/network that provides interconnectivity between acquirer and issuer bank.
28. Therefore, a cash withdrawal transaction done through an ATM can not be said to be substitutable with cash withdrawal transaction at bank teller for the reason and convenience of ATM transaction described above. Thus one of the relevant product markets is cash withdrawal at ATM.

UBPS

29. The second sub-set of relevant product market is that of UBPS. 1-Link's website claims² that UBPS is an electronic bills presentment and payment system that enables banks to deploy bill presentment and payment service through their electronic delivery channels including ATM. UBPS eliminates the inconvenience encountered during the bill payment procedure by submitting bills in traditional banking hours, or standing in long queues, as the service will enable the customers to pay their utility bills through delivery channels including ATM.

IBFT

30. The third sub-set of relevant product market is the IBFT services. 1-Link's website claims³ that this service enables card holders of a bank to transfer funds instantaneously from their account to any of the millions of accounts of other banks network across the country through delivery channels made available by the switch and eliminates the hassle of writing cheques, making demand drafts etc. and also reduces the cost of transaction significantly. The IBFT service is available round-the-clock.
31. During the course of hearing it was argued by Mr. Mandviwalla that other branchless options like Omni EasyPaisa should also be considered in terms of substitutability. Omni services as we understand is being offered by only one bank i.e. United Bank Limited (UBL). Omni services enable a UBL account holders to open a UBL Omni bank account at any UBL Omni Dukaan of their choice, by using their CNIC number and mobile phone number which effectively becomes the bank account number. UBL Omni account holder by using this service can deposit and withdraw cash, make utility bill payments, send or receive money etc. However, it may suffice to precisely highlight the differences which can quite clearly distinguish and establish why Omni is not a substitute. As per the information available at UBL's website, Omni service is restricted to only account holders of UBL in limited hours and days and for lesser amount limit. Hence, it follows that Omni service is not substitutable in terms of availability of

² <http://www.1link.net.pk/?services=ubps-2>

³ <http://www.1link.net.pk/?services=ibft-2>

- 24 hours service as it is capped by limitation of hours, days as well as quantum/amount of withdrawal/transfer and importantly restricted to only UBL account holders.
32. Similarly, EasyPaisa offers services in respect of sending/receiving money or payment of utility bills, easy load and donations etc.. However, we have not found that it offers withdrawal of cash from customers' bank accounts. The modalities are also quite distinct. Therefore, the substitutability of ATM cash withdrawal with such services is not comprehensible and the counsel made no effort in substantiating his viewpoint. Even in case of utility bill payment or funds transfer, this service lacks the essential features of delivery channels available in case of a network like 1-Link switch.
33. In view of above, services of ATM cash withdrawal, UBPS and IBFT have distinct features and conventional/ traditional banking services are not comparable to them in terms of interchangeability and substitutability. Even otherwise services provided by banks through a network/switch has been consistently recognized and dealt with in other jurisdictions as a distinct relevant market. Therefore, we hold that the relevant product market defined in the Enquiry Report is correct.

ISSUE No. 2

What is the role of SBP with respect to fee charged to customers for (i) ATM cash withdrawal transaction and (ii) UBPS?

34. Let us first examine the various components ATM cash withdrawal transaction charges and UBPS charges. ATM cash withdrawal transactions are of two types (1) On Us and Off Us. It is the latter, which is at issue in the case at hand. In case of Off Us/inter-bank ATM cash withdrawal transactions, carried out by a cardholder of a bank on other bank's ATM, the fee has three components; (i) interchange fee; (ii) settlement fee; and (iii) switch fee. Switch fee is charged by 1-Link for its switch services, settlement fee is charged by Faysal Bank for settlement of amounts due as a result of switch operations. Interchange fee is a component which is paid to the acquirer bank (the bank whose ATM is used for cash withdrawal transaction) by the issuer bank (the account holder's bank).

35. Further, in case of UBPS transaction the fee has three components of (i) bill payee bank fee; (ii) settlement fee; and (iii) switch fee. Switch fee is charged by 1-Link for its switch services, settlement fee is charged by Faysal Bank for settlement of amounts due as a result of switch operations. Bill payee bank fee is the fee charged by the bank which receives the bill amount on behalf of a utility company.
36. We consider it relevant to add that as for IBFT customer charges, during the hearing it was clarified and explained that the source bank has discretion to charge for IBFT service for its own prescribed per day limit of amount to be transferred and in practice it has been implemented. As banks are competing as per their business dynamics in charging their customers for IBFT transactions, therefore, with respect to IBFT customer charges the concern of the Commission stands addressed.
37. Following is the ‘Schedule of Charges’ issued by 1-Link to its member banks in 2011 which gives details of ATM cash withdrawal, IBFT and UBPS charges:

1-Link Schedule of Charges 2011

| PER TRANSACTION DISTRIBUTION | | Product | Particulars | Debit(Rs.) | Credit(Rs.) |
|------------------------------|----------------------------------|--------------------------------------|-------------|------------|-------------|
| Intra Switch | Cash Withdrawal | Issuer Bank (Customer Account) | | 15 | |
| | | Acquirer Bank (ATM Used) | | | 11.61 |
| | | Switch Fee (1LINK) | | | 2 |
| | | Settlement Fee (Faysal Bank) | | | 1.39 |
| Intra Switch | Balance Inquiry (1LINK on 1LINK) | Issuer Bank (1LINK Customer Account) | | No Charge | |
| | | Acquirer Bank (ATM Used) | | | No Charge |
| | | Settlement Fee (Faysal Bank) | | | No Charge |
| Inter Switch | Cash Withdrawal | Issuer Bank (1LINK Customer Account) | | 15 | |
| | | Acquirer Bank (ATM Used) | | | 15 |
| | | Issuer Bank (1LINK Customer Account) | | 5 | |
| Inter Switch | Balance Inquiry (MNET on 1LINK) | Acquirer Bank (ATM Used) | | | 4 |
| | | Settlement Fee (Faysal Bank) | | | 1 |
| | | Sending Bank | | 15 | |
| Inter Switch | IBFT | Beneficiary Bank | | | 11.61 |
| | | Switch Fee (1LINK) | | | 2 |
| | | Settlement Fee (Faysal Bank) | | | 1.39 |
| Inter Switch | Credit Card Bill Payment | Source Bank | | 3.39 | |
| | | Switch Fee (1LINK) | | | 2 |
| | | Settlement Fee (Faysal Bank) | | | 1.39 |
| Inter Switch | UBPS | Utility Company | | 8 | |
| | | Bill Payee Bank | | | 5.61 |
| | | Switch Fee (1LINK) | | | 1 |
| | | Settlement Fee (Faysal Bank) | | | 1.39 |

**1LINK does not charge any membership fee for UBPS; However TPS may charge for their licensing.
**1LINK does not charge any per transaction fee for VISA Debit Service. Please note Faysal Bank charges 0.2% for the settlement.

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38. From the above scanned schedule of charges, it is clear that Inter- change fee is fixed at PKR 11.61 for Off Us ATM cash withdrawals which, if added to switch fee of PKR 1.39 and settlement fee PKR 2 sets the total charges as PKR 15. Whereas in case of UBPS bill payee bank fee is fixed at PKR 5.61 and the total UBPS charges are PKR 8 with switch fee of PKR1 and settlement fee of PKR 1.39.

ATM Cash Withdrawal Charges from Customers

39. All the parties before us have taken the plea that whilst the SBP has not issued any circular/regulations regarding the setting of inter-change fee and specifically Off Us ATM cash withdrawal fee, it has in its capacity, as regulator, taken decisions or issued clear instructions to 1-Link and the banks and prescribed a ceiling for the same. These instructions have been complied with consistently and none of the parties has ever contested the SBP's regulatory jurisdiction in relation thereto.
40. We will address the above mentioned argument advanced by the parties in light of the chronology of events presented by 1-Link and relied upon by the parties and also the correspondence between SBP and the Commission regarding the issue at hand. First we will refer to documents heavily relied upon by the all the parties.

Serial No. 1: Circular No.2 issued by the Banking Policy Department, SBP dated 05 August 2002

“Mandatory Connectivity to two ATM Switches”
.....to bring efficiency in the payment system of Pakistan's financial sector, as also to facilitate the consumers by providing them access to their funds through the existing two ATM Switch Network, operated and managed by Muslim Commercial Bank (M-Net) and ABN Amro Bank (Shared ATM Switch Network).

.....it has been decided that all scheduled banks, which are not currently connected to either of the two switches should join or come to an agreement with any of the two switch systems latest by December 31, 2002.

These two switches are in the process of being connected to each other, which will subsequently allow their mutual customers and their existing member bank customers to have access to over 250 ATMs throughout Pakistan.

Serial No. 3: Meeting between representatives from SBP, 1-Link, MNet and ABN Amro dated 06 February 2004

“ATM Switch Interconnectivity”

In the previous meeting it was decided that both the service providers would continue to charge bank-to bank fee of Rs.15 for inter-switch transaction till end of the year 2004. On top of this bank may charge additional service fee from their customers. However, more clarification is required and, inter-switch charge and service charges (bank to customer) are to be discussed with BPD-SBP.

Serial No. 8: Minutes of 1-Link Board Meeting dated 08 April 2005

The Board of Directors also discussed the inter-switch operations and noted that the inter-switch transaction charge of Rs. 15 per transaction was applicable upto December 31, 2004 as per decision of the State Bank of Pakistan. The Board after deliberation recommended and resolved that “the charge be increased from Rs.15 to Rs.20 on inter-switch transactions with effect from July 01, 2005 and asked 1-Link to take up with SBP and MNet for implementation.

SBP’s Minutes of Meeting dated 15 April 2006

Decision: After deliberation, Director PSD decided to continue with the standardized charges of Rs. 15 for inter-switch and intra switch local currency transaction on all ATMs of both the switches for the present. The switch operators may however, approach SBP after December 31 2006 for review if necessary.

Serial No. 13: Circular No. 3/2006 issued by Payment System Department, SBP

Now the State Bank of Pakistan, in consultation with banks & switch operators, has decided to offer facility of utility bill payment across ATM network in phases. In the first phase by January 31, 2007 the bank will provide this service through their own ATMs and in the second phase

utility can be paid through any ATM linked to any of the switches. All banks will, however be hooked through their respective switch for centralized account maintenance& payment to utility bill companies.

Serial No. 36: SBP's letter dated 18 April 2012

The capping of ATM charges is one such instance where this Department intervened in fixing the upper limit of ATM transaction charges in the larger interest of the banking customers as evidenced by the minutes of the meeting held on 15 April 2006 at SBP. Likewise, in the interest of IDPs, flood affectees (Watan card holders) and beneficiaries of BISP program, SBP advised banks and 1-Link to waive charges on such cash withdrawals..... it is, therefore, obvious that the issue was not of lower or higher level standardization of ATM charges but capping the charges at an affordable level for the consumers while also being sufficiently remunerative for the banks and switch operators including 1-Linkj to cover their costs.

41. These documents quoted above, in particular, the wording used in the text underlined, raised ambiguity/inconsistency as to instructions of SBP with respect to Off Us ATM cash withdrawal charges and, therefore required clarification. The Bench discussed, therefore, each of these documents with the parties during the hearing. It is pertinent to mention here that the Commission sought clarification from the SBP vide its letter dated 22 May 2012 (before the last date of hearing) regarding its role as regulator particularly, with respect to Off Us ATM cash withdrawal charges from customers. SBP was also informed regarding the next date of hearing in the event SBP desires to send a representative to further clarify this aspect. SBP sent a representative at the final hearing and also filed a written reply. Before reverting to their response in writing and submissions made during the hearing we deem it appropriate to discuss the above documents relied upon.
42. Minutes of meeting between the representatives from SBP, 1-Link, MNet and ABN Amro dated 06 February 2004 at serial no. 3 of chart of events (chronology) raised a challenging interpretation issue in terms of "bank-to bank fee of Rs.15 for inter-switch transaction" and also the statement that "on top of this bank may charge additional service fee from their customers." The Bench asked whether

- PKR 15 was referred by SBP as ‘bank to bank fee’ or ‘total transaction charges’ and further what it means by allowing banks to charge ‘additional service fee from their customers?’
43. The parties during the first hearing held on 03 May, 2012 emphasized that in the light of understanding of these documents relied upon, PKR 15 is being charged uniformly by the banks for the reason that their regulator, SBP, has prescribed it. Further, that they are only charging the cost of transaction where they could have easily charged extra service fee to customer on top of PKR 15 prescribed by the SBP.
44. The Joint Director, Banking Policy & Regulation Department, representing State Bank of Pakistan clarified that these are only minutes of meeting and do not reflect the decision of the SBP in terms of circular/directive or guidelines. Nevertheless, at that time PKR 15 was considered as final transaction charges and it should not be confused with the amount that issuer bank has to pay to acquirer bank; the ceiling of PKR 15 included any charges be it bank to bank or bank to customer. The distribution of these charges amongst the banks or its passing on to the customers or bank’s option to absorb these charges were not regulated by the SBP. With respect to ‘additional service fee from customer’, the Joint Director stated that there was no decision in this regard. Therefore, PKR 15 was the final maximum amount that a bank could charge with respect to Off Us ATM cash withdrawal transaction.
45. Next, wordings that require interpretation were ‘standardized charge’ and ‘capping of charges’ used in respect of Off Us ATM cash withdrawal transactions, particularly, in documents at serial Nos 8 and 36. Parties interpreted it as uniform/universal charges set by the SBP. On the contrary we would like to refer to replies filed by the SBP to the Enquiry Committee and the Commission’s queries and also the letter written by 1-Link to the SBP after the Show Cause Notice was issued to it in this matter.

46. First, we deem it appropriate to refer to letter sent by 1-Link to the SBP on 29 March 2012. This letter was apparently written to inform SBP regarding the proceedings initiated by the Commission against 1-Link and its member banks and also to seek clarification from the SBP as its role to regulate the interchange fee for Off Us ATM cash withdrawals. However, from the excerpts quoted below it appears that purpose of this letter was much more than mere seeking clarification:

Request to Clarify

We believe that SBP should continue to standardize ATM cash withdrawal fees for off-us transactions, or at least prescribe a price ceiling, as this is in the best interest of Pakistan' ATM payment system as a whole. A standardized/capped ATM cash withdrawal fee is essential to enable interoperability between the ATM networks of different banks. This is because the absence of a standardized/capped ATM cash withdrawal fee would have the following effects on the ATM payment system.

We therefore respectfully request the SBP to confirm our understanding to the CCP that it does prescribe a ceiling in respect of ATM cash withdrawal fee for Off Us transactions. In the alternative, we respectfully request the SBP to consider regulating ATM cash withdrawal fee going forward.

47. The above quoted contents of 1-Link letter make it clear that 1-Link which is purportedly writing to seek clarification is in fact making an application to SBP to seek endorsement of the present arrangement with its member banks regarding Off Us ATM cash withdrawal charges.. However, in view of the SBP's response dated 29 May 2012 to the Commission's request, SBP specifically stated:

As clarified in PSD's subject letter, the limit of Rs.15 per transaction is not to be misconstrued as fixed rather as a ceiling and the banks may charge an amount upto the upper limit of Rs.15 based on their transaction costs and other associated factors. Accordingly, a number of banks are charging Rs.15 while a few do not pass the cost to bank's priority banking customers. A number of banks who were previously not charging any fee on ATM transactions have also recently opted for a fee.

48. The above excerpts taken from the SBP's response in writing to the Commission and also the clarification by the representative of SBP during the hearing make it abundantly clear that SBP has only fixed PKR 15 as upper ceiling for ATM cash withdrawal charges . The distribution of these charges was entirely left to 1-Link to the extent of bank-to-bank fee whereas banks were free to charge or not to

charge and to determine the quantum of charges payable by their customers. As even admitted in the pleadings PKR 15 was a “prescribed ceiling” and not the prescribed fee. Hence, if PKR 15 was a ceiling price/fee in terms of its ordinary meaning as given in Black’s Law Dictionary, 7th Edition, that ceiling price is “the highest price allowed by a government agency or by some other regulatory institution.” Therefore, by no stretch of imagination the word ‘ceiling’ can be construed as a fixed fee.

49. We would also like to point out here that we do not agree with 1-Link and member banks that only ‘cost’ of ATM transaction is being charged through the impugned arrangement between the parties and no additional fee is charged to the customers. Dynamics among the banks in terms of volumes, number of ATMs, diversity of services offered on ATMs, variation in cost on installation of every new ATM cannot possibly be same for all the banks. Limit of PKR15 per transaction includes transaction costs and other associated factors as SBP has reiterated in its above quoted letter. We would also like refer again to SBP’s letter dated 18 April 2012 at serial no. 36 quoted above that

*“ it is, therefore, obvious that the issue was not of lower or higher level standardization of ATM charges but capping the charges at an affordable level for the consumers while also being **sufficiently remunerative for the banks and switch operators including 1-Link to cover their costs.**”*

50. In concluding our findings on regulatory defense, we believe it is pertinent to mention here that during the course of hearing the Bench asked the Chief Executive Officer, 1-Link how the limit of PKR15 was arrived at for ATM cash withdrawal transaction. He replied that at the time of interconnectivity of 1-Link and Mnet, banks on both switches were charging different fee. Mnet banks charged PKR40 and 1-Link PKR15. To have a harmonized fee structure and reach at amicable fee beneficial to consumers, the SBP took PKR15 as the bench-mark, which was already prevalent in the market and was being fixed and charged by 1-Link and its member banks. No doubt, subsequently the same amount was decided by SBP to operate as an upper ceiling. In this regard, it is relevant to add

that prior to this submission of 1-Link as to how PKR 15 was arrived at; SBP's position stated in this regard was that it was the figure that came from the banks during consultation with the stakeholders. In our view, the submissions of 1-Link only substantiates SBP's stance.

51. From all the excerpts quoted above and discussions with the parties and the representative of the SBP, three important elements have emerged with respect to Off Us ATM cash withdrawal charges and the role of the SBP in this regard. What SBP did was just to fix the ceiling of PKR 15 considering it affordable for consumers and sufficiently remunerative for banks. The interpretational issues particularly in respect of words "standardized" or "capping of charges" or "additional charges" caused ambiguity for the Bench and not for the parties which now in any case stand resolved. The banks and 1-Link during the conclusion of the proceedings, acceded to the understanding that the prescribed PKR 15 was the upper ceiling and the banks were free to charge an amount upto PKR 15 to their customers. However, it was maintained by all banks that PKR 15 being the permissible ceiling was passed on uniformly to the customers in good faith and without any collusion. This issue is dealt with separately below.

UBPS Charges from Customers

52. Now coming to fixation of UBPS charges, there is enough evidence which establish that the SBP has played a significant role in fixing the UBPS charges and also the modality of its collection.

Serial No. 11: Record notes of meeting of officials of concerned ministries, Pakistan Post Office, Directorate of National Saving, Pakistan Post Office, Bank and Utilities Companies & their regulators held on 08-06-06 at SBP, Karachi.

As regards collection of per bill charges the Governor stated that the banks have calculated the same between Rs. 14.91 to Rs.58.55.

However, in the year 2000, the banks and utility companies jointly agreed to conduct a study through a consultant (Chartered Accountant firm) for calculation of per bill collection costs of bank. She reiterated that as agreed in the meeting held on 31/5/2006 at Islamabad, the calculation of average per bill collection costs of banks given by the above consultant at Rs.5.93 would be taken as benchmark. Therefore, keeping in view the impact of inflation and other factors in the past five years, she proposed Rs.8 per bill collection charges w.e.f. July 01, 2006 with the revision of the same after every two years. The participants agreed to the above proposal.

Serial No. 14: SBP's Minutes of Meeting dated 15-01-2007

It was again clarified that the centralized data base will be established at switch level and the settlement will be done in the same way as being by ABN Amro Bank for 1-Link Switch and MCB for Mnet Switch and these two banks will be responsible to pay to the utility companies the amount they collected on behalf of each of their respective switch. In that scenario the question of individual bank agreement with utility companies does not exist. Utility companies may have detailed agreement with Switches and Switched will enter into a single page agreement with individual banks.

53. Above excerpts reveal that the SBP has played a role in fixing and regulating UBPS service and its charges post *suo moto* action taken by the Supreme Court regarding payment of utility bills through banks in 2006. The SBP has not only proposed PKR8 per bill collection but also advised that the utility companies may have detailed agreement with Switches and Switches will enter into a single page agreement with individual banks.

Issue No.3

Whether fixing of inter-change fee in respect of Off Us ATM cash withdrawal and IBFT services is *per se* violation of Section 4 of the Act or qualifies for exemption in terms of Section 5 read with Section 9 of the Act?

54. The term 'prohibited agreement' is applied to a wide range of practices whereby competitors coordinate among themselves to prevent, restrict or reduce competition in the market. The most glaring example of prohibited agreement is coordination among the competitors to fix the price. Such anti-competitive agreements aim to reduce price competition, raise price or effect price in a

favorable way for the undertakings involved and certainly has the object and effect of reducing competition in the market. Section 4 of the Act explicitly proscribes such agreements in the following words:

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 their object or effect of preventing, restricting or reducing competition within the relevant market unless exempted under section 5 of this Ordinance.*

(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;*

55. However, Section 4 also states such prohibited agreements may also be exempted under Section 5 of the Act. To seek exemption under Section 5, an agreement has to fulfill the criteria/conditions laid down in Section 9 of the Act. Section 9 essentially raises the question that whether there are efficiency gains of a competition restrictive agreement and benefits are passed on to the consumers or whether its pro-competitive benefits outweigh its anti-competitive harms. We would like to refer to Section 5 read with Section 9 of the Act which lay down the criteria on which parties may seek exemption if the agreement falls within the purview of Section 4 of the Act.

Section 5: Individual Exemption:- *The Commission may grant an exemption from section 4 with respect to a particular practice or agreement, if a request for an exemption has been made to it by a party to the agreement or practice and the agreement is one to which section 9 applies.*

Section 9: The Criteria for Individual and Block Exemptions:- (1) *The Commission may grant individual or block exemption in respect of an agreement, which substantially contributes to—*

(a) *Improving production or distribution; or*

(b) *Promoting technical or economic progress, while allowing consumers*

a fair share of the resulting benefit; or

(c) *The benefits of that clearly outweigh the adverse effect of absence or lessening of competition.*

(2) The onus of claiming an exemption under this Act shall lie on the undertaking seeking the exemption.

56. Attach to the Enquiry Report is the Master Agreement which was found in the documents impounded from the premises of 1-Link. This agreement was executed in 2003 by and among founding members of 1-Link namely; ABN AMRO Bank N.V., Allied Bank of Pakistan Limited, Askari Commercial Bank Limited, Bank Alfalah Limited, Bank Al-Habib Limited, Habib Bank Limited, National Bank of Pakistan, PICIC Commercial Bank Limited, Soneri Bank Limited, United Bank Limited and Union Bank Limited (hereinafter referred to a “1-Link Agreement”).
57. The 1-Link Agreement lays down the procedure to become a founding member (owner) of 1-Link and also provide a procedure for new institutions to join 1-Link as a member. Schedule “C” to the Agreement provides a form of accession memorandum wherein any bank who becomes member of 1-Link will be bound by the terms and conditions given in the 1-Link Agreement.
58. Among other terms and conditions, the 1-Link Agreement fixes the ‘Service Fee’ (interchange fee) in respect of Off Us ATM cash withdrawal transactions carried out at member banks’ ATMs in the following words:

Clause 2.2

(f) For each transaction conducted at the ATM of a Network Party through 1Link Network, a service fee of Rs. 13/- (Rupees Thirteen), (the “Service Fee”) shall be payable to the said network party by the network party whose customers use such ATM. The corresponding debits and credits relating to the Service Fee shall be posted by ABN directly to the Settlement Accounts of the relevant Network Parties.

59. In respect of UBPS, 1-Link has signed “Bills Payment Agreements” with different DISCOs, Telecom Companies and natural Gas Companies on behalf of its member banks. A Bill Payment Agreements determines the terms and conditions between the utility company and each bank that accedes to the Bill Payment Agreement from time to time by executing the Participation Memorandum attached at its Schedule 1-A. Among other terms and conditions the most important is the fixation of fee of PKR8 paid by the utility companies to 1-Link

members as a commission for each UBPS transaction. A sample Bill Payment Agreement along with a Participation Memorandum is given below:

BILLS PAYMENT AGREEMENT between 1 LINK (Guarantee) LTD & Hyderabad Electric Supply Company entered into on 23 Feb, 2011.

8. Responsibilities of HESCO

8.1 HESCO shall pay a Commission of Rs. 8/- per transaction (“Commission”) for each Transaction that is validly executed by Customers, to Acceding Parties (see article 11 below for Commission details).

9. Responsibilities of Acceding Parties

9.1 Each Acceding party shall be responsible, inter alia, for ensuring that;

- i. It pays a Switch fee of Rs.1/- per Transaction to 1LINK and Settlement Fee of Rs.2/- per Transaction to FBL for each Transaction that is validity executed by Customers.*

As per 1-Link Schedule of Charges given above (scanned document) PKR 5.61 is the amount that each member bank retains out of PKR 8 for providing the facility of bill payment.

60. Similarly, in respect of IBFT there is an agreement signed among 1-Link, TPS Pakistan (Private) Limited and ABN AMRO Bank N.V. which lays down the basic terms and conditions in respect of IBFT transactions carried out by 1-Link member banks. This agreement also provides for a Participation Memorandum for each bank that accedes to the main IBFT agreement from time to time by executing the participation Memorandum. As per 1-Link Schedule of Charges given above PKR 11.61 is the interchange fee paid to each member bank which acts as the beneficiary bank in IBFT transaction.
61. During the hearing the parties, 1-Link and its member banks, pleaded before the Bench to grant them exemption in respect of fixed Off Us ATM cash withdrawal interchange fee, IBFT interchange fee; and UBPS fee under Section 5 read with Section 9 of the Act. 1-Link subsequently submitted applications in respect of 1-Link Agreement, IBFT Agreement to seek exemptions. 1-Link made following submissions in respect of its exemption claims:

- i. According to 1-Link the free rider effect would induce a race for profit maximization among the members of the network resulting in higher ATM fees. People in the lower income brackets would be particularly sensitive to these price changes as higher fees would translate to higher prices that may no longer be affordable to them.

In the Case of IBFT if there is absence of a standardized MIF the members of the network that receive a greater volume of transfer will have the incentive to upward revise their inter-bank charges leaving the sending banks at a relative disadvantage. This would reduce the incentive for banks to enter into IBFT arrangement threatening the survival and integrity of the system and leaving customers with fewer options to choose from.

- ii. As per 1-Link another detrimental effect and again at the cost of the banks with scarce deployment of ATMs would be that customers of the smaller operations would have an incentive to move their account to a bank that has a high negotiating power in terms of fixing the ATM interchange fee so that they can avail the free on us transactions of a bank whose ATMs are much more widely deployed. In the wake of a uniform ATM fee customers would be indifferent to where they hold an account allowing banks to compete on other services. This shifting of accounts would result in a less competitive deposit market hurting growth in the banking sector and thereby hurting economic progress.
- iii. 1-Link argues that the fact the same fee is charged on an ATM transaction throughout the country allows the following benefit to 11 million customers across the country. Convenience of knowing that fee is same at all the ATMs and thereby saving them time and transportation costs of looking for a cheaper ATM.
- iv. As per 1Link higher transaction costs would be the outcome of higher settlement costs resulting from more complicated settlement process catering to varying ATM usage fees among network members. Furthermore interfaces would have to be developed at ATMs across the country to intimate customers of the charges they are to pay at an ATM.
- v. In the absence of a collectively agreed MIF each of the 30 network parties would have to negotiate bilaterally. The excessive negotiations and agreements would result in higher cost for all the network parties and create barriers to entry for smaller banks seeking ATM interoperability. This would invariably result in more costly off us transactions and a less competitive deposit market. Therefore the current fee structure ensures technical efficiency and cost savings. It offers financial certainty and encouragement to potential new entrants and encourages competition within the banking sector.

62. In our considered view, collaboration of 1-Link member banks to the extent of ATM network (1-Link) presents a scenario where banks agree to permit their customers to use their cards at other member banks ATMs. For that banks that are otherwise economically independent competitors pool their capital and invest in

deploying ATMs to expand services to e-banking and develop new products and they share the risks of loss as well as the opportunity of profit as a joint venture. Co-operation is the lynchpin of the value added by a joint venture and joint venture is considered as a single entity. Our research also reveals that per se rule is justified where the restraint has manifestly anti-competitive effects and lacks any-redeeming virtue. Therefore, a price fixing agreement, albeit has been declared unreasonable restraint, may be considered under rule of reason when parties collaborate like a joint venture for creating significant and beneficial efficiencies that could not otherwise be accomplished.

63. To better understand better whether to apply the ‘rule of reason’ we rely on a decision *in re ATM Fee Anti-Trust Litigation* on March 24, 2008, United States District Court of N.D. California. This was a case where interchange fee was fixed by a non-proprietary ATM network (Star Systems, Inc) for Off Us ATM transactions. The District Court held that:

This case concerns a joint venture that-although not economically integrated-is highly integrated in the sense that members create a new market by fusing complementary resources. Because the Star network is a valid joint venture-rather than a mere cartel cloaked in the guise of a joint venture-one would expect that it is responsible for creating significant and beneficial efficiencies that could not otherwise be accomplished. Under the circumstances, it seems inappropriate to the Court to subject a venture’s conduct to a per se analysis.....”

The District Court further goes on to state that the fixed interchange fee was reasonably ancillary to network’s legitimate cooperative aspects warranting rule of reason review. The Court concludes:

that Plaintiffs’ challenge to defendants’ setting of a fixed interchange fee must be analyzed under the rule of reason for two reasons, both of which are individually sufficient: (1) Plaintiffs have challenged a “core activity” of the defendants’ joint venture, Dagher, 547 U.S. at 7, 126 S.Ct. 1276; and (2) the interchange fee is reasonably ancillary to the legitimate cooperative aspects of a joint venture that requires horizontal restraints if the venture’s product is to be available at all, NCAA, 468 U.S. at 101, 104 S. Ct. 2948; Freeman, 322 F.3d at 1151.

64. Now that we are convinced that the ‘rule of reason’ should be applied in this case we move on to exemption criteria given in the Section 9 of the Act and examine

the agreements submitted for exemption to determine whether they fulfill the requirements given therein.

Improving Production and Distribution

65. We are of the considered view that in the absence of a collective agreement to standardize interchange fee, some of the members may find incentives to increase their fee while also expecting others to keep their fee low. In this situation of free riding while their customers continue to enjoy ATM cash withdrawal services at cheaper rates, the customers of other banks generate greater revenue for them in lieu of a higher fee. If this trend continues, every bank who owns large ATM network would find it in its interest to raise its fee at par with others in order to avoid the situation where free riding is taking place at its expense. Thus, free riding would threaten the very existence of the network by reducing demand for such services and could result in fees much higher than that which is collectively set by the members.
66. We are of the view that a trend of upward fee would alter the balance between banks by putting banks with wider coverage and a greater number of transactions per ATM at an advantage over banks with smaller ATM network. This would likely render the fee prohibitive for banks with smaller network resulting in lack of demand for their services as passing on costs would discourage usage to the detriment of both the bank and the ATM card holders. This may also in turn create barriers to entry and in the wake of decreased usage jeopardizing the coverage of the entire system. Thus we see that individually negotiated interchange fee may have the effect of hampering production and distribution while also apparently threatening the failure of a system that contributes to economy.
67. We are also conscious of the fact that in the absence of fixed interchange fee, network parties will have to enter into bilateral agreements. Bilateral negotiation among 30 network members could translate into 870 agreements only with respect to ATM cash withdrawal. This exercise would involve significant

transactional costs in terms of negotiation time and verification costs. Further increase in transaction cost would lead to reduction of network size and would deter market entry on the basis that prospective entrants would be faced with potentially prohibitive transactional costs. New entrants would have little bargaining power when negotiating bilateral agreements and would also face higher costs as a result of having lower transaction volumes. Likely administrative and timing difficulties in any changes would lead to systemic problems and ultimately reduce the overall effectiveness of the 1-Link network. Lastly, looking at the fact that 1-Link provides cardholders belonging to any bank even very small ones access to a very large network of ATMs falling within 1-Link serves to improve distribution of a service.

68. We are of the view that the issue of charging customer fee should be treated separately than the interchange fee among banks. While we agree that a high *interchange* fee on the part of larger operations would create barriers to entry and negatively impact the existing smaller operations and possibly hurt economic progress as a result, we do not see how a change in the interchange fee automatically translates to a higher customer fee. It should be noted that the Commission is there to ensure that pricing in either tier are treated as different subjects and change in one should not be automatically assumed as change in the other.

Promoting Technical or Economic Progress, while Allowing Consumers a Fair Share of the Resulting Benefit

69. 1-Link plays important role in the provision of branchless banking facilities. Its member banks are able to provide these facilities from a wide network of ATMs owned by the banks where their cardholders do not have their accounts. Further, customers/cardholders can make transaction round the clock and anywhere in the country. In particular it allows smaller banks to provide their customers with access to a large network of ATMs without having to incur the cost of setting up such network themselves.

70. By providing universal access to card holders 1- Link spreads the costs of provision of ATM services across a large number of users. This means that they are able to increase the number of ATMs that can be used by cardholders without significant costs. Spreading the cost of provision of ATM services also helps to lower the cost of provision of network services to the 1-Link members. Since members will not be prevented to compete over charges (or interest paid) to their customers these benefits can be expected to be passed on to cardholders through competition in retail banking.
71. All the cost savings resulting from technical efficiency arising from a uniform interchange fee, such as avoidance of high transaction cost by avoiding excessive bilateral negotiations, adjustments in settlement etc. and spread of cost as a result of greater distribution are all benefits that if not directly but are indirectly being passed on to the consumers.

Benefits Outweigh the Effect of Reduced or Absent Competition

72. It can be seen in the light of international trends that majority of the ATM transactions are ‘On us’ transactions. This is also true in the case of 1-Link. In such a scenario some of the members that have their own extensive network of ATMs put a competitive constraint on 1-Link’s ability to set prices at highly uncompetitive levels. Also the Agreements of 1-Link do not prohibit any of its members to join the other ATM network operating in Pakistan.
73. We are of the considered view that requiring the network parties to have bilateral agreement for the sake of competition would come about at the cost of technical efficiency, higher costs, impediment to growth in the banking industry and benefits to consumers both in terms of affordability and wide access to ATMs.
74. The above discussion/evaluation correlates key findings from the Decision⁴ of the Director General of OK Office of Fair Trading (OFT) made on October 16, 2001

⁴ Decision of DG Fair Trading, Oct 16, 2001, pg 12- 15,
http://www.offt.gov.uk/shared_offt/ca98_public_register/decisions/link.pdf

granting exemption to Link Interchange Network Limited for setting a universal Multilateral Interchange Fee for ATM cash withdrawal transactions. Therefore, in the light of the foregoing we are of the view that the fixation of interchange fee under the 1-Link Agreement and IBFT Agreement submitted by 1-Link is capable of meeting the exemption criteria set out in section 9 of the Act.

ISSUE No.4

Whether fixing charges for UBPS is per se violation of Section 4 of the Act or qualifies for exemption in terms of Section 5 read with Section 9 of the Act?

75. 1-Link has entered into UBPS agreements with utility companies to fix PKR 8 as bill collection charges for each of its member bank which accedes to this UBPS agreement by signing a memorandum of accession. Such arrangement of 1-Link entering into agreements on behalf of its member banks with utility companies to fix the terms and conditions including the UBPS fee appears to be in violation the Competition Act in terms of price fixing.
76. However, we understand that UBPS Agreements were entered into subsequent to the decision of the committee formed by the Supreme Court in pursuance of *suo moto* action taken in 2006 by the Supreme Court on procedure and arrangement for the payment of utility bills. Purpose of this *suo moto* action by the Supreme Court seemed to introduce improvement in the existing system for utility bill payment. Member banks of 1-Link accede to a UBPS Agreement with a given utility company and 1-Link to enable their customers to pay their bills through a number of different channels made available by 1-Link.
77. UBPS facility has provided a swift solution to bill payment problems existing at that time. Now this facility is available round the clock and payment can be made instantaneously. Therefore, we have no cavil to say that UBPS has introduced new technology and brought in more efficiency for both utility companies and the consumers.

78. As for the UBPS fee charged to customers the SBP itself has intervened and played a vital role in determining the amount to be charged as UBPS fee. Record notes of meeting of officials of concerned ministries, Pakistan Post Office, Directorate of National Saving, Pakistan Post Office, Bank and Utilities Companies & their regulators held on 08-06-06 at SBP, Karachi show that “as regards collection of per bill charges the Governor stated that the banks have calculated the same between Rs. 14.91 to Rs.58.55. However, in the year 2000, the banks and utility companies jointly agreed to conduct a study through a consultant (Chartered Accountant firm) for calculation of per bill collection costs of bank. She reiterated that as agreed in the meeting held on 31/5/2006 at Islamabad, the calculation of average per bill collection costs of banks given by the above consultant at Rs.5.93 would be taken as benchmark. Therefore, keeping in view the impact of inflation and other factors in the past five years, she proposed Rs.8 per bill collection charges.”
79. Further, we have also noted that modality of UBPS arrangement was also discussed in a meeting of SBP with 1-Link and Mnet held on 15 January, 2007, it was mutually agreed between the parties that the centralized data base will be established at switch level and the settlement will be done in the same way as being by ABN Amro Bank for 1-Link Switch and MCB for Mnet Switch and these two banks will be responsible to pay to the utility companies the amount they collected on behalf of each of their respective switch. It was also agreed in the meeting that “in that scenario the question of individual bank agreement with utility companies does not exist. Utility companies may have detailed agreement with Switches and Switches will enter into a single page agreement with individual banks.”
80. In view of forgoing, we are of the considered view that UBPS facility introduced under the direction of the Supreme Court and regulation of SBP has proved beneficial for utility companies by increasing their bill collection at a reasonable fee charged to them and also providing relief to consumers by providing them different delivery channels without bearing any cost. In this regard we also

appreciate SBP's role as sector regulator to recommend/determine the amount of PKR8 collection charges per bill based on an independent evaluation of costing. Therefore, keeping in view the facts and circumstance involved, we consider it a fit case for exemption.

81. We also consider it pertinent to mention here that UBPS fee is distinguished from ATM cash withdrawal charges as UBPS fee is charged to utility companies which are getting the service of collection of their bills whereas ATM cash withdrawal fee is the amount charged to customers who already maintain accounts with the banks. The fact that banks apart from thriving on the deposits save the cost of servicing customer at banks' counters by deploying ATMs and also facilitate each other's customers on reciprocity basis through ATM network can not be undermined.
82. 1-Link in its pleadings has requested the Commission to grant block exemption or in alternative the individual exemption in respect of its agreements. Keeping in view the peculiar facts and circumstances involved in this case in terms of uniform practice of banks to pass on the charges to customers which is not in tandem with the international practice. As we have observed that in other jurisdictions, where multilateral fee/interchange fee has been challenged under anti-trust law was given immunity for the reason that the charges were not passed on the customers. Also, such agreements to fix the interchange fee have been granted individual exemption. Moreover, this is the case of first instance before us, and we are of the considered view that these agreements should be granted individual exemption. However, at the time of renewal of exemption, if the Commission considers appropriate may grant block exemption.
83. In view of foregoing, the 1- Link Agreement entered into by and between founding members in respect of interchange/bank to bank fee for ATM cash withdrawal and IBFT Agreement entered into by and between 1-Link and TPS Pakistan (Private) Limited and ABN AMRO Bank N.V. (now known ass Faisal Bank Limited), submitted by 1-Link are hereby granted individual exemption. However, we consider that parties can avail the benefit of exemption in template

form to avoid unnecessary work load for businesses as well as to lawfully reduce the cost.

84. We also note that 1-Link has not yet submitted the UBPS Agreement, which as discussed above also meets the criteria of exemption discussed above. Therefore, 1-Link is directed to seek exemption in respect of UBPS Agreement in the light of this Order. 1-Link is directed to file exemption application with respect to UBPS within 30 days of issuance of this order, failing which would result in imposition of penalty in the sum of Rs. 1 Million of each day delay cause.
85. While no anti-competitive effects have resulted from the multilateral arrangement of banks with 1-Link and the parties have come forward to seek exemption, we are not imposing any penalty for not seeking timely exemption. Further, exemption in respect of all three agreements be granted for five years with effect from the date of promulgation of the competition law i.e. 02 October, 2007.
86. Section 5(2) of the Act requires the Commission to grant conditional exemption where it deems appropriate in the following words:

Section 5: Individual Exemption:- The exemption under Sub-section (1) may be granted subject to the conditions as the Commission considers it appropriate to impose and has effect for such period as the Commission considers appropriate.

87. Keeping in view the peculiar facts and circumstances involved in this case and discussed above, the Commission shall grant individual exemption subject to the following condition:

During the course of hearing 1-Link and member banks were required to submit a precedent of a proprietary network/switch. We have not come across so far of any example where network parties have the ownership of entity functioning as network/switch. Either it has been found in the form of not for profit association or non-proprietary network. Notwithstanding any instance of proprietary network/switch, we are of the considered view that the network parties/member banks should have non-proprietary structure or at least have a corporate model which does not allow owner banks to have influential decision making rights by virtue of Board Directorship. We hereby direct 1-Link to

submit within a period of 06 months from the date of issuance of this Order an appropriate corporate model in line with international practice for its implementation within next 06 months for clearance from the Commission on competition aspects of such structuring.

ISSUE NO.5

Whether the ATM cash withdrawal transaction fee of PKR 15 uniformly charged by 1-Link member banks to their customers for inter-bank transactions amounts to a prohibited agreement to fix the price or is merely a parallel behavior?

88. During the hearing, the Bench required the parties to address the issue whether uniform practice of banks to charge their customers a uniform fee of PKR 15 for ‘Off Us’ cash withdrawal transactions is violation of Section 4 of the Act. The banks maintained that there is no collusion amongst them in this regard. 1-Link took the stance right from the beginning that it has fixed the interchange fee inter se banks but it has no role in fixing the second limb of ATM charges i.e., charges paid by the customers/accountholders for ‘Off Us’ transactions to their banks. We note contradiction in light of the submissions made by the parties, documents presented during the hearing, evidence provided in the Enquiry Report and the statements made by the legal representative of 1-Link on behalf of member banks.
89. 1-Link appears to be blowing hot and cold at the same time. We do not see any reason why the counsel for 1-Link submitted during the hearing to file exemption application in respect of ‘Off Us’ cash withdrawal charges when admittedly 1-Link has no role to play in this regard. When there is no agreement and no fixed fee, as maintained by the competing banks, why would the question of exemption arise?
90. Similarly, the submissions by the banks that if required, exemption application will be filed vis-à-vis uniform practice of charging PKR 15 for ‘Off Us’ cash withdrawal transactions is not understandable.

91. Furthermore, it is important to point out that exemption provisions for a horizontal price fixing agreement can not be invoked except in the case of a joint venture that too where fee is not fixed vis-à-vis customers and exemption is granted on distinct grounds of efficiency as discussed above. It is a settled principle that price fixing in horizontal agreements is viewed as having the object of preventing, restricting and reducing the competition and treated as *per se* anti competitive.
92. Banks have also taken different stance during the hearing. On one hand, banks claimed that fee of PKR 15 for ‘Off Us’ ATM cash withdrawal transactions charged uniformly by the banks is a *bona fide* practice and that they are charging customers only to recover the cost of ATM cash withdrawal transaction. On the other hand, they contend that PKR 15 charged to customers for ‘Off Us’ ATM cash withdrawal has been standardized by the SBP. However, as clarified during the hearings there was no confusion amongst the banks with respect to PKR 15 fee operating as upper ceiling prescribed by the SBP and not as a fixed fee.
93. It is pertinent to mention SBP’s perspective in its letter dated 18 April, 2012 in this regard, as it expressly states that the given ceiling of PKR 15 was prescribed considering it:
- (a) Affordable for consumers; and
 - (b) Sufficiently remunerative for banks and switch operators including 1-Link.
94. Thus the SBP fixed the upper ceiling and the banks were free to charge their customers an amount upto PKR 15. It is also worthy to mention that as per SBP response that some banks which were previously not charging have now joined the other banks in their practice of charging PKR 15 and as per our record only two banks (HSBC and Citibank) are not currently charging their customers for their ATM cash withdrawal transactions.
95. It is worth highlighting that the action in concert between the parties to these proceedings is supported in this particular case by various factors, which

substantiate absence of independent economic decision-making on their part and collective dictate/decision-making on part of 1-Link; an entity operating and acting beyond its mandate and more as an association for its member banks. We find support from the following:

- i. ‘Misconception’ and ‘good faith’ apart, as purported by the banks; none of the banks placed any Board decision with respect to passing on PKR 15 on its customers and/or any deliberation and reasoning (at whatever level) in respect thereof. What evidently surfaces from such conduct is the fact that the documents on record demonstrate the absence of independent decision making and 1-Link’s active role in imposition of PKR 15 on ‘Off Us’ ATM cash withdrawal transaction by its member banks on their customers leading to such collective behavior;
- ii. Adoption and implementation by the banks of the schedule of charges issued by 1-Link which provides for the charges to the customers. Position taken by 1-Link during the hearing that it has no role with respect to the charges imposed by the banks on the customers but contradicting that stance, 1-Link on record has urged SBP (in its letter dated 29 March, 2012) not only to standardize the bank to bank fee but the entire focus and persuasion on its end is on standardization of ‘Off Us’ ATM cash withdrawal fee, and arguing such standardization beneficial for the cardholder and smaller banks;
- iii. As for the ground taken by the banks of acting in ‘good faith’ and taking the upper ceiling as prescribed ceiling and passing it on to the customers, we refer to the letter mentioned in the Enquiry Report with respect to the rationale given by banks regarding uniform practice vis-à-vis PKR 15 for the customers, which stated that *“to enable its customers to use the ATMs of all banks country wide it joined ‘1-Link’ network and that after joining 1-Link, they had to comply with the schedule of charges devised by 1-Link.”* As per record this letter was written by the National Bank of Pakistan and parties were asked to comment on this

aspect during the hearing and the schedule of charges sent by NBP along with its letter which was made part of the Enquiry Report provided for and mentions PKR 15 to be deducted from the customers' account.

In this regard, we are not convinced with the argument taken by 1-Link that "Customers' Account" mentioned in 1-Link Schedule of Charges (as shown below) means 1-Link member bank account and does not refer to its customers in the sense of cardholders.

1-Link Schedule of Charges 2011

| Product | Particulars | Debit(Rs.) | Credit(Rs.) |
|-----------------|--------------------------------|------------|-------------|
| Cash Withdrawal | Issuer Bank (Customer Account) | 15 | |
| | Acquirer Bank (ATM Used) | | 11.61 |
| | Switch Fee (1LINK) | | 2 |
| | Settlement Fee (Faysal Bank) | | 1.39 |

We have examined various documents to find clarification on the use of the term "Customer". We examined the 1-Link Agreement which is the master agreement to establish 1-Link and working of cash withdrawal charges. We observed that member banks in the 1-Link Agreement have been referred to as "Network Parties".

Further more, if we examine discussion/deliberation of 1-Link Board in reverse chronology order particularly minutes of meetings of 1-Link Board in 2005:

**Annex F, Enquiry Report
1 Link Board Meeting, September 29, 2005**

To seek approval/confirmation of charges

Schedule of Charges

Shared ATM Network

Following flat cash withdrawal transaction charges from ATMs have been mutually agreed among all member banks.

- Intra-switch Transactions

The member bank (or member bank's customer) will be charged for Rs. 15/= per transaction, the charges distribution details are as follows:

| | |
|-----------------|--------|
| Acquirer Bank | Rs. 11 |
| Issuer Bank | Rs. 0 |
| 1 LINK | Rs. 2 |
| Settlement Bank | Rs. 2 |
| <hr/> | |
| TOTAL | Rs. 15 |

The above quoted minutes state “**the member bank (or member bank's customer)** will be charged for Rs.15 per transaction.....” It becomes obvious that words “Customer” and “Member Bank” were used in different context. Hence we hold that both words are not interchangeable and “Customers Account” used in Schedule of Charges refers to the cardholders account.

- iv. We now refer to other documents quoted in the Enquiry Report, which were impounded from 1-Link's office during search and inspection.

Annex M, Enquiry Report

Email From: Najeeb Agrawalla (member Board of Directors 1-Link) To: Khayyam Mahmood Butt (CEO 1-Link)
Subject: Minutes/Resolution of the Board Meeting held on 8th April 2005
Sent on 29 April, 2005

Dear All,

I concur to the minutes of the meeting attached.

Reference to the section highlighted in yellow regarding the increase of inter switch charge for M-NET & 1Link from Rs. 15 to Rs. 20/- all member banks should remember to make it a part of their schedule of charges for the period Jul-Dec 2005. Therefore, CEO 1Link to ensure all approvals /information to regulator and MNET are in place by May 15.

Reference to the section highlighted in pink on page 6 regarding the justification for charging a higher fee to the customers for using an

offsite ATM, we will provide a proposal within a week in light of the feedback given by ILink Member Banks.

Annex N, Enquiry Report

Minutes of the meeting of the Board of Directors- Business Development Committee held on July 27, 2011 at 9:30 AM, Park Towers, Clifton Karachi.

To Discuss and Review the Status of Various Projects

1. ILINK PRICING

The chairman presented before the committee the current schedule of charges including one time membership fee, monthly fee and per transaction fee of various services offered by 1-Link to its member banks.

The committee was informed that these charges have been in place since 2000 and now a review of pricing is required related to the significant cost incurred to enable these services.

The committee discussed and reviewed the pricing and argued that balance inquiry charges for both intra-switch (1-Link on 1-Link) and inter-switch (MNET on 1-Link) may be revised as these transactions utilize the same infrastructure as that of cash withdrawal transaction.

The committee was informed that MNET is also charging Rs.5.00 on balance inquiry on their network.

After some discussion, the committee recommended that Rs. 5.00 may be charged on both intra-switch (ILink to ILink) and inter-switch (MNET on ILink) balance inquiry transaction.

The chairman also informed the committee that the standard fee of Rs.15.00 per cash withdrawal may also be revised to Rs. 20.00 from Jan 2012. The committee discussed and noted that SBP approval is required to make this revision. The committee advised to discuss this issue with MNET and once finalized both switches may go to SBP for the necessary approval.

We understand that 1-Link provides an electronic switch facility to its member banks for their various e-banking products. The Board of 1-Link decides on matter pertaining to its business including membership fee, monthly fee and per transaction fee of various services offered by 1-Link to its member banks. However, we fail to understand why matters which are purely in respect of services requiring independent economic decisions on part of banks are discussed and decided by 1-Link Board. As it is obvious from the excerpts quoted above wherein 1-Link is requiring its member banks to incorporate the decision made in its Board meeting regarding increase of off-us ATM cash withdrawal charges PKR.15 to PKR. 20/- in their own schedule of charges issued to their

customers biannually. Similarly, 1-Link Committee is making recommendation that PKR5.00 may be charged to customers for balance inquiry transaction by its member banks. Whether such decisions were subsequently, implemented or not is not that critical. It is sufficient to establish the role and function discharged by the 1-Link.

- v. Finally, we believe that letter sent by 1-Link to SBP on 29 March 2012 to seek clarification from SBP is critical to highlight 1-Link's role. It demonstrates how 1-Link assumes the role of front runner acting more as association for banks and doing advocacy on their behalf before the regulator with respect to a concern which admittedly does not fall within its purview. It helps in placing things in context.

Apart from the fact the letter confirms understanding with respect to a prescribed ceiling for 'Off Us' ATM cash withdrawal fee its insistence and persuasion for a standardized fee on account of removing uncertainty for customers is manifest in terms of the following:

*With a standardized interchange fee, 11 million cardholders pay the same fee across over 4,500 ATMs anywhere in 216 villages, town and cities across Pakistan.
Cardholders therefore benefit from the convenience of certainty in knowing the fee is consistent at every ATM in Pakistan, regardless of the value of the cash withdrawal.....*

The subject letter to SBP which 1-Link terms as 'de facto' regulator, highlights 1-Link's role and its *de facto* management of the affairs particularly vis-à-vis the uniform imposition of charging PKR15 by the banks to their customers for 'Off Us' transactions.

Also it is interesting to note that the efficiency grounds taken by 1-Link in its exemption applications before the Commission in respect of fixed interchange fee *inter se* banks have also been taken before SBP as justifications for having a 'standardized' fee in a uniform manner by the banks for 'Off Us' ATM cash withdrawal transactions.

It also worth mentioning that the use of the word ‘standardized’ along the word ‘capping’ gives a different connotation i.e., in the sense of upper ceiling whereas urging the standardized fee alone conveys a meaning in terms of a fixed, uniform, identical, equal, harmonized fee as urged by 1-Link in the paragraph preceding the conclusion in the subject letter.

96. The above quoted contents leave no room for doubt that 1-Link has been behind the imposition of such uniform charge of PKR 15 on the customer/account holders by its member banks. 1-Link in the guise of seeking clarification in fact has requested the SBP to allow banks to continue to have a fixed and uniform fee in the garb of request for standardized fee.
97. In view of the foregoing, we are of the considered view that 1-Link has gone beyond its mandate. Its Board has deliberated, discussed and resolved on commercial aspects such as customer/cardholder’s charges. We note that in terms of its activities and decisions taken 1-Link has acted more as an association of its member banks and provided a forum, particularly to those who are represented on the Board to discuss, review/revise on matters of common interest and then the member banks acceding to 1-Link Agreement who implement the deliberations undertaken by the Board. We are of the view that such conduct of 1-Link and collective behavior of banks of charging uniform fee for ‘Off Us’ ATM cash withdrawal transactions fall in prohibited category in terms of Section 4(1) read with Section 4(2)(a) of the Act and thus the violation has been committed on part of parties concerned.
98. There are some other relevant aspects that we would also like to highlight. With respect to the query raised by the Bench whether there is any guideline from SBP for banks to charge or not to charge their customers with respect to cash withdrawn from their own ATMs termed as ‘Us-on-Us’ ATM cash withdrawal transactions .The answer was that neither a fee is charged (as it would otherwise have been against the universal practice all over the world) nor SBP has issued any guideline in this regard. It is interesting to note that ‘Us-on-Us’ transactions

are roughly estimated to constitute 2/3 of total volume of ATM cash withdrawal transactions. We believe if banks can absorb the cost of 'Us-on-Us' transactions (keeping in view that it does not involve switch and fee for switch facility) there should at least be some room for each of the banks to decide independently whether to absorb or not to absorb the cost of 'Off Us' transactions carried out by their cardholders/customers. It will enable them to offer their customers a choice /option in this particular product market.

99. Also, we have before us an example of switch/network where member banks have acted independently in charging their customers for Off-Us ATM cash withdrawal transaction. For example in Canada, there is only one switch/network with the name of Interac Association- a not-for-profit organization operating on a cost-recovery basis- fee sufficient to cover operating costs. Issuer banks independently charge their card holders for inter bank transactions. Similarly, acquirer bank i.e. ATM service provider bank to customers of other banks may also charge independently fee called surcharge/convenience fee. Since number of banks operating in Canada is much less than in Pakistan. Over there the inter-bank fee is not an issue. Further, Interac Association maintains strict rules to ensure that these charges are properly disclosed on ATMs (ABMs) when used by the customers.
100. Despite the financial liberalization and de regulation measures of banking sector of Pakistan the efficiency of banking sector is far below the banking sector of some of the developed countries and even the banking sector of countries like India and Bangladesh. In this regard key indicators taken from the World Bank Annual Reports show that the commercial banks of Pakistan have the:
- highest lending rate
 - highest banking spread
 - highest capital to asset ratio
 - lowest credit depth of information index
 - highest percentage of total loans to central government
 - highest percentage of non-performing loans &
 - lowest percentage of domestic credit to GDP

Based on the source taken from the latest available World Bank Reports a table details below the above mentioned aspects for ease of reference:

| <i>S.no</i> | <i>Country</i> | <i>Lending rate</i> | <i>Banking Spread</i> | <i>Capital to asset ration</i> | <i>Credit depth of Information Index (CDII)</i> | <i>% Age of total loans to central government</i> | <i>% Age of non performing loans to total loans</i> | <i>Domestic Credit provided (% Age of GDP)</i> |
|-------------|--------------------------------|---------------------|-----------------------|--------------------------------|---|---|---|---|
| | | A* | B | C | D | E | F | G |
| 1 | United States | 3.30% | 1.30% | - | 6 | 0.60% | 5% | 231% |
| 2 | United Kingdom | 0.50% | - | 5.4 | 6 | 2.90% | 4% | 223% |
| 3 | Japan | 1.60% | 1.10% | 4.8 | 6 | 2.80% | 2% | 326% |
| 4 | Italy | 4.00% | 1.50% | 9.3 | 5 | - | 8% | 155% |
| 5 | Greece | 5.98% | 3.98% | 6.9 | 5 | - | 10% | 146% |
| 6 | Germany | 4.96% | 3.96% | 4.3 | 6 | - | 0% | 132% |
| 7 | France | 3.37% | 1.87% | 4.4 | 4 | - | 4% | 134% |
| 8 | India | 10.17% | 0.92% | 7.1 | 4 | 5.30% | 2% | 71% |
| 9 | Bangladesh | 13% | 5.90% | - | - | 2.70% | | 66% |
| 10 | Pakistan | 14.00% | 8.12% | 9.8 | 4 | 10.90% | 15% | 46% |

Note:

A*: Rate at which loans are provided to borrowers.

B: Banking spread is difference between lending rate and borrowing rate

C: Bank capital to assets is the ratio of bank capital and reserves to total assets. Capital and reserves include funds contributed by owners, retained earnings, general and special reserves, provisions, and valuation adjustments

D: CDII measures rules affecting the scope, accessibility, and quality of credit information available through public or private credit registries. The index ranges from 0 to 6, with higher values indicating the availability of more credit information

E: Claims on central government (annual growth as % of broad money).

F: Bank nonperforming loans to total gross loans are the value of nonperforming loans divided by the total value of the loan portfolio (including nonperforming loans before the deduction of specific loan-loss provisions)

G: Domestic credit provided by the banking sector includes all credit to various sectors on a gross basis, with the exception of credit to the central government

101. Also, profit of 29 commercial banks after tax is reported as PKR 91billion in the financial year of 2010 at the website of Pakistan Banking Association. The top five banks namely; National Bank of Pakistan, Habib Bank Limited, United Bank Limited, Muslim Commercial Bank and Allied Bank Limited having market share approximately 50.8% contribute PKR 70 billion in this total amount of profits. The above mentioned facts and statistics speak volumes regarding the cozy margin and the comfort zones that the banks are operating in. This is an indicator that banks need to adopt modes and modalities to foster competitive environment that would lead to efficient allocation of resources.

102. Notwithstanding the above, in this particular case, we are of the considered view that amount of PKR 15 may or may not be a higher charge for customers and more likely it appears to be reasonable rather than unreasonable in terms of international trends. Though the question of such practice and its effect on competition in the relevant market in terms of economic value may be limited; nonetheless, we note that between the period of December 2004 and November 2010, the number of ATMs on 1-Link network increased from 475 to 4040 showing a remarkable growth of 741% since 2004. We find merit in the assertion made in the Enquiry Report that increasing trend in the number of ATMs, number of card base, volume of transactions in terms of economy of scale imply the cost effectiveness of a financial transaction on a 1-Link ATM and accruing benefits must have increased significantly over this period. It is perhaps also relevant to add that the penetration of these cash withdrawal machines is largely in major cities and not to the far-flung areas or smaller cities.
103. In our considered view, it is the horizontal fixing of uniform charges amongst the competitors which has the object of preventing, restricting and reducing the competition. Here we need not apply the rule of reason for establishing its anti-competitive effects and it is for this reason it has not been considered a case even eligible for exemption. What is important to appreciate is the fact that our intervention is with respect to the aspect of behavior of banks who have acted in a collective manner to charge uniformly their customers for ‘Off Us” ATM cash withdrawal transactions without any effort to take an independent economic decision vis-a-vis a particular product market thus resulting in market fixing. Such conduct is perhaps symbolic in terms of reflecting a pattern and a behavioral trend that does not make this industry competitive vis-a-vis various banking product/services markets. In banking regulation, competition issues seem to have been neglected or overlooked and such behavioral trends prevent more efficient systems to emerge in the banking industry.

V. PENALTY & REMEDY

104. In view of the above and recognizing that the Commission has the responsibility of endeavoring to prevent or eliminate anti-competitive behavior on the part of economic agents that adversely impacts the rights of the general public and to which any economy with multilayered business interests is vulnerable. We consider such practice calls for imposition of penalty, however, owing to the limited scope of the economic impact in the relevant market, we are withholding ourselves and imposing a fixed penalty only in the sum of
- a. PKR 50 million on 1-Link;
 - b. PKR 50 million on each founding members namely; National Bank of Pakistan, Allied Bank Limited, Habib Bank Limited , Bank Al-Falah Limited, Askari Bank Limited, Soneri Bank Limited, NIB Bank Limited, United Bank Limited, Standard Chartered Bank Pakistan Limited, Faysal Bank Limited and Bank AL Habib Limited; and
 - c. PKR 10 million on each non-founding members namely; Albaraka Bank Pakistan Limited, Burj Bank Limited, Meezan Bank Limited, Bank Islami, Khadim Ali Shah Bukhari Bank Limited, Habib Metropolitan Bank Limited, The Bank of Khyber, Dubai Islamic Bank Pakistan Limited, JS Bank Limited, Silk Bank Limited, The Bank of Punjab, Samba Bank Limited, Sindh Bank Limited, Barclays Bank PLC, Pakistan Limited, Tameer Microfinance Bank Limited, Kashf Micro Finance Limited and Summit Bank Limited excluding Citi Bank which has not followed the collective behavior of charging uniform fee for Off Us ATM transaction.
105. It needs to be appreciated that the banking sector being the jugular vein of all commercial and economic activity; if such behavioral trends are not condemned or deterred, it would have far reaching impact on our vulnerable economy.

106. 1-Link and above mentioned member banks are further directed to cease and desist from conduct of collective decision making or behavior with respect to charging a uniform fee from customers for ‘Off Us’ ATM cash withdrawal transactions and to hold their Board meetings for deliberation and independent decision making with respect to such imposition of fee/charge from their customers. They are required to file a copy of these minutes of the meetings with the Commission within 45 days of issuance of this Order and the deliberation must address the reasons for the amount determined and the factors taken into account for such determination.
107. The Show Cause Notices issued to 1-Link and its member banks are disposed of in terms of this Order.

(RAHAT KAUNAIN HASSAN) (ABDUL GHAFAR) (DR. JOSEPH WILSON)
CHAIRPERSON MEMBER MEMBER

Islamabad the June 28, 2012