THE COMPETITION APPELLATE TRIBUNAL, ISLAMABAD.

Before: Mr. Justice Sajjad Ali Shah, Chairman
Dr. Faiz Illahi Memon, &
Mr. Asim Akram, Members Technical – I & II, respectively

Appeal No. 01 of 2023

Date of Hearing 24-06-2025
Date of Judgment. 11-08-2025

Appellant:	Pakistan Flour Mills Association
Respondent:	Competition Commission of Pakistan (CCP)
For the Appellant	Dr. Muhammad Raheem Awan Advocate
For the Respondent	Mr. Haider Afzal Khan, Advocate along with Hafiz Naeem, Legal advisor for the CCP
	Mr. Mazhar Hussain, Assistant Director, Foods Department, Government of Punjab

JUDGEMENT

Dr. Faiz Illahi Memon, Member Technical-I:- Through the present appeal filed under Section 42 of the Competition Act, 2010 **("the Act")**, the Appellant , Pakistan Flour Mills Association **("Appellant ")**, has challenged the order dated 13.12.2019 **("Impugned Order")**, passed by the Competition Commission of Pakistan **("the Commission")**, whereby a penalty of PKR 75 million was imposed upon it for contravention of Section 4 of the Act. Aforesaid proceedings were set in motion on the basis of news items published in newspaper on various dates suggesting unusual hike in wheat flour across Pakistan.

FACTUAL BACKGROUND

2. The Appellant is an association representing flour mills covering Pakistan. The Commission first conducted an inspection of the premises of the Appellant, following which a formal enquiry under Section 37 of the Act was conducted. The enquiry concluded vide its report dated 01.08.2017 suggesting that the Appellant had engaged in anti-competitive conduct, specifically the fixing of prices in violation of Section 4 of the Act, and recommended initiation of proceedings under Section 30.

3. Pursuant thereto, a Show Cause Notice dated 22.022018 was issued to the Appellant. In response, reply was submitted by the Appellant on 09.04.2018. Thereafter, the Commission afforded adequate opportunity of hearing to all parties concerned, including representatives of the Food Departments of Punjab and Khyber Pakhtunkhwa.

4. After considering the material on record and hearing the parties, the Commission passed the Impugned Order concluding that the Appellant had violated Section 4 of the Act and imposed a penalty of PKR 75 million.

5. The primary contentions raised by the counsel of the Appellant are that the flour sector is governed by provincial price control mechanisms, and no violation of competition law arises where an industry body merely facilitates coordination between the members of the Appellant.

6. That no agreement within the meaning of Section 4 existed, and the Commission mischaracterized PFMA's advisory/facilitation role as anti-competitive conduct.

7. That the Impugned Order is vitiated by lack of jurisdiction, procedural irregularities, and disproportionate penalty.

8. The counsel for the Appellant submitted that the Commission had failed to consider the regulatory realities of the sector and did not give due weight to the absence of any intent to restrict competition or derive financial benefit. It was argued that any alleged conduct was undertaken in good faith and that the imposition of a heavy penalty was excessive and unreasoned in the circumstances.

9. The learned counsel for the Commission submitted that the Appellant, being an association of undertakings, engaged in acts that had the objective and effect of fixing prices in the market in contravention of Section 4(1) read with Section 4(2)(a) of the Act. It was contended that the Appellant issued directives and circulars to its members communicating ex-mill flour prices thereby curbing independent price-setting behavior by individual mills. It was further contended that the circulars and messages issued by the Appellant were mandatory in nature, and that individual members were not at liberty of setting their own prices, thereby disturbing whole paradigm of free choice and indulging in price fixation violating section 4 of the Act.

10. The counsel for the Commission further argued that such conduct, regardless of whether the prices were above or below the officially notified rates, eliminated intra-brand price competition and deprived consumers of the benefit of price variation. It emphasized that competition law is concerned not only with price increases, but also with collusive behavior that reduces market freedom. The issuance of binding price guidance by the Appellant displaced the autonomy of individual members, constituting a per se violation of Section 4(2)(a) of the Act.

POINTS FOR DETERMINATION

11. The following issues arise for determination:

(a) Whether PFMA's conduct constitutes an agreement or decision by an association of undertakings within the meaning of Section 4(1) and (2) of the Act; and

(b) Whether the penalty imposed is disproportionate to the contravention.

FINDINGS

12. Section 4(1) of the Act prohibits agreements that have the object or effect of preventing, restricting or reducing competition within the relevant market. Sub-section (2) further deems certain conduct, including price fixing and market allocation, to be inherently anti-competitive.

13. The term "agreement" under the Act vide section 2 (1)(b) is broadly defined to include "any arrangement, understanding or practice" between undertakings, including "decisions by associations of undertakings." There is no requirement that such arrangements be formal or written; implied coordination suffices.

14. The PFMA falls squarely within the definition of "association of undertakings" under Section 2(1)(q). The Impugned Order demonstrates that PFMA issued circulars and made collective decisions on pricing and output restrictions, accompanied by internal enforcement mechanisms against non-compliant members. Such decisions materially influenced market behavior and affected independent decision-making of members.

15. The core of the Appellant 's defense is that it merely communicated prices notified by the provincial government and did not act independently to fix or enforce prices in violation of Section 4 of the Competition Act, 2010. This position, however, is not supported by the material available on record. The inquiry report and accompanying annexures establish that the Appellant engaged in two distinct forms of prohibited conduct: first, by unilaterally issuing price directives in the absence of government-notified rates; and second, by prescribing uniform prices even when government rates were in effect, thereby suppressing competitive discretion among members.

16. In 2011, Appellant issued pricing instructions to its member mills (at a time when no official ex-mill price could be produced by the

Appellant) via extensive messages/instructions to sell 20 kg wheat flour bags at Rs. 530 and Rs. 560 respectively, while the last government-notified rate was Rs. 500 as per para 62 of the Impugned Order and the Government of Punjab notification dated 16.04.2009. These directives were issued without lawful authority and the issuance of such binding pricing instructions, in the face of regulatory silence, amounts to price fixation by an association of undertakings in violation of Section 4. The to and fro movement of messages by the Appellant has not been denied or rebutted at all by the Appellant.

17. From 2012 to 2016, PFMA continued to issue circulars instructing its members to sell flour at specific prices, even where government-notified maximum prices existed. Although the instructed rates were not above the notified maximums, the association's directives left no room for independent pricing decisions. This effectively eliminated intra-brand competition and deprived consumers of the opportunity to benefit from natural price variation which is one of the central objects of the competition law.

18.During the course of multiple hearings before this Tribunal, the Appellant on 07.06.2023 was directed to implead the food departments of Punjab, KPK, Sindh and Balochistan. Permission to this effect was given to Appellant on 16.06.2022. Whereafter, all the four provinces filed their comments and appeared for hearing. The gist of provincial feedback may be summarized as follows:

a. Punjab: The written comments suggest that 20% of wheat is purchased by the government from growers, whereas the remaining wheat is purchased by millers directly from growers through an open market mechanism.

b. Balochistan: The provincial govt purchases 6.57% from growers and the rest i.e., 93.43% is procured by the flour mills themselves and prices are fixed by them.

c. Sindh: The reply does not dwell upon any percentages but is generalised in contents.

d. KPK: The reply conveys that 25% of wheat is procured by the government and the rest by flour mills.

19. Although, the provincial food departments have conveyed that they maintain proper vigil over the wheat prices yet, what we observe is that the oversight leave much to be desired and most of the time, the bureaucratic/administrative complicity does exist. These remarks are considered apt to be recorded since the matter at hand is that of wheat flour, a lifeline for citizens of the country and where nearly 46% of them live below poverty line. Any collusion, negligence or laxity has thus, enormous consequences for vast majority of population more so, when it comes to wheat flour. The flurry of price fixation messages from the platform of the Appellant, therefore does not fall within the ambit of facilitation between its members but the intent and the conduct squarely violate section (4) (1) read with section 4 (2) (a) of the Act. The Appellant attributes these messages to facilitatory

medium between members, however the intent does not seem to be that virtuous or noble.

20. The Commission therefore, rightfully concluded that PFMA's conduct falls within the ambit of Section 4(1) and 4(2)(a) of the Act, which prohibit any agreement or decision between undertakings including associations that have the object or effect of fixing prices. The repeated and structured issuance of price instructions by the Appellant, both in the absence of official rates and under the cover of them, displaced the commercial autonomy of individual mills. Such conduct constitutes a horizontal agreement with anti-competitive object.

21. The Commission's penalty under Section 38 of the Act falls within the statutory limits as prescribed under the Act. The influence of PFMA and the scale of market affected by its directions magnifies the adverse competitive effects, however it is imperative to note that other than the year 2011, in the subsequent years when the prices were communicated to the members by the Appellant, the same were within the price set by the government which indeed warrants that the penalty imposed upon the Appellant by the Commission should be at par with the degree of violation committed and not above for the rationale behind imposition of penalty is corrective and not punitive.

22. In view of the foregoing, we are satisfied that the Impugned Order has correctly interpreted and applied the law. The Appellant 's actions constituted a decision by an association of undertakings which

resulted in restriction of competition and directly affected pricing mechanism of flour, including the uniform price fixation which was communicated to members in the subsequent years which erodes the concept of an independent market.

23. Giving adequate consideration to arguments advanced by the counsel of the Appellant, the Commission and after perusing documents and associating details, the Appeal is hereby partly allowed in lieu of discussion above; we accordingly reduce the penalty imposed on the Appellant by the Commission from PKR 75 million to PKR 35 million. The remaining findings of the Commission are upheld.

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REGISTRAR
Competition Appellate Tribunal
Islamabad
Dated: 12-08-2025

Competition Appellate Tribunal Islamabad
Dated: 11th August 2025.

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