BEFORE THE
COMPETITION COMMISSION OF PAKISTAN

IN THE MATTER OF SHOW CAUSE NOTICES ISSUED TO FERTILIZER MANUFACTURERS OF PAKISTAN ADVISORY COUNCIL (FMPAC) AND ITS MEMBER UNDERTAKINGS FOR VIOLATION OF SECTION 4 OF THE COMPETITION ACT, 2010

File No. 463/UREA/C&TA/CCP/2022

Dates of Hearing:	2nd July, 2024 9th July, 2024 10th July, 2024 31st December, 2024
Commission:	Dr. Kabir Ahmed Sidhu **Chairman** Mr. Salman Amin **Member**
Assisted by:	Barrister Ambreen Abbasi **Senior Legal Advisor** Hafiz Muhammad Naeem **Senior Legal Advisor** Moqeem ul Hassan **Legal Advisor** Yousaf Naeem **Legal Advisor**
Present on Behalf of:	
Fertilizer Manufacturers of Pakistan Advisory Council	**Ahmer Bilal Soofi & Co.** Mr. Ahmed Reza Mirza Advocate High Court

M/s Fatima Fertilizer Limited &	**Khalid Anwar & Co**
	Mr. Rashid Anwar
M/s Fatima Fertilizer Company Limited	Advocate Supreme Court
M/s Fauji Fertilizer Company Limited &	Mr. Saad Mumtaz Hashmi
	Advocate Supreme Court
M/s Fauji Fertilizer Bin Qasim Limited	
M/s Engro Fertilizer Company Limited	**Fazleghani Advocates**
	Mr. Ali Almani
	Advocate High Court
	Mr. Akber Sohail
	Advocate High Court
M/s Agritech Limited	**AXIS Law Chambers**
	Syed Sahab Qutub
	Advocate Supreme Court
	Muhammad Shafey Ali Khan
	Advocate High Court
	Mr. Tanveer Raza, Head of Sales & Marketing

SEAL OF THE COMPETITION COMMISSION OF PAKISTAN ★ ISLAMABAD ★

ORDER

1. Through this Order the Competition Commission of Pakistan (the **"Commission"**) shall dispose of the proceedings initiated under Section 30 of the Competition Act, 2010 (the **"2010 Act"**) vide Show Cause Notices No. 09/2024, 08/2024, 07/2024, 06/2024, 05/2024, 04/2024, and 03/2024 all dated 01st April, 2024 (the **"SCNs"**), issued to the below listed parties for *prima facie* violation of Section 4 of the 2010 Act.

2. The SCNs were issued to the following parties:

   (i) Fertilizer Manufacturers of Pakistan Advisory Council (hereinafter the "**FMPAC/Respondent No.1**")
   (ii) M/s Fatima Fert Limited (hereinafter the "**Fatima Fert/Respondent No.2"**)
   (iii) M/s Fauji Fertilizer Company Limited (hereinafter the "**FFCL/Respondent No.3**")
   (iv) M/s Fauji Fertilizer Bin Qasim Limited (hereinafter "**FFBL/Respondent No.4**")
   (v) M/s Fatima Fertilizer Company Limited (hereinafter the "**Fatima Fertilizer Company/Respondent No. 5**")
   (vi) M/s Engro Fertilizer Company Limited (hereinafter "**Engro/Respondent No.6**")
   (vii) M/s Agritech Limited (hereinafter "**Agritech/Respondent No.7**")

   FMPAC and the above Respondents/Urea Manufacturing Companies (the "UMCs") are hereinafter collectively referred to as the "**Respondents**".

UNDERTAKINGS

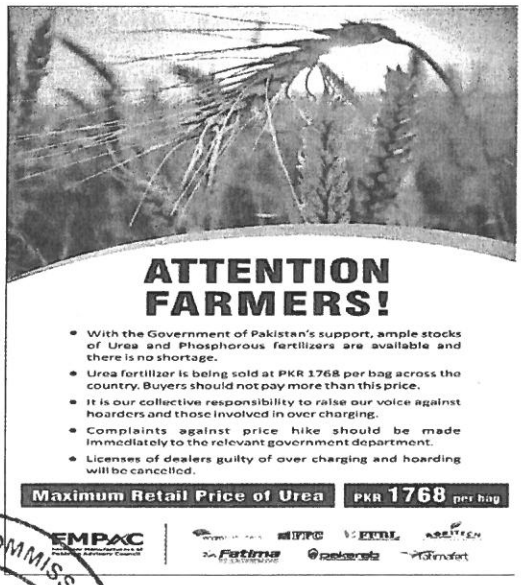
3. FMPAC is a collective forum of all the fertilizer manufacturers in Pakistan, as stated on its official website. It is a representative association of all UMCs operating in Pakistan and also participates in the meetings of Fertilizer Review Committee headed by the Minister for Industries & Production. Accordingly, FMPAC qualifies as an undertaking[1] pursuant to Section 2(1)(q) of the 2010 Act, by virtue of being an association of undertakings.

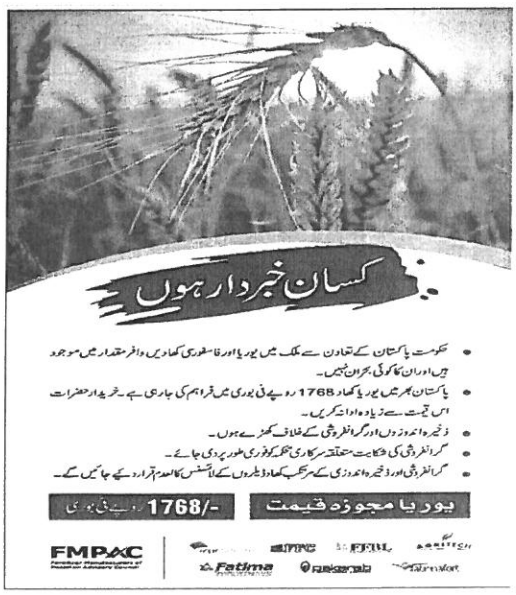
[1] "Undertaking" means any natural or legal person, governmental including a regulatory authority, body corporate, partnership, association; trust or other entity in any way engaged, directly or indirectly, in the production, supply, distribution of goods or provision of services and shall include an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

4. All UMCs, including Fatima Fert/Respondent No.2, FFCL/Respondent No.3, FFBL/Respondent No.4, Fatima Fertilizer Company/Respondent No.5, Engro/Respondent No.6 and Agritech/Respondent No.7, are engaged in the manufacturing and marketing of fertilizer products. Accordingly, each of these entities qualifies as an undertaking with the meaning of Section 2(1)(q) of the 2010 Act.

FACTUAL BACKGROUND

5. Brief facts of the case are that an advertisement was published in several widely circulated newspapers on 26th November, 2021 displaying the logos of the UMCs along with FMPAC. Through this joint advertisement, it was publicly announced that urea fertilizer is being sold at PKR1768/- per bag across the country, and buyers were advised not to pay more than this price. The advertisement, whilst stating about sufficient stock availability, explicitly mentioned the ongoing per bag sale price at PKR 1,768 and specified it as Maximum Retail Price ("MRP"). The copy of the press advertisement is reproduced below:





6. The Commission took *suo moto* notice of the Respondents' advertisement by initiating the proceedings under Section 37(1) of the 2010 Act on 01st July, 2022 and in exercise of the powers granted under Section 28 of the 2010 Act, the Commission appointed enquiry officers (collectively referred to as the "**Enquiry Committee**"). The Enquiry Committee was mandated to conduct a detailed enquiry as to whether there is any collusion/cartelization in the fertilizer sector, in contravention of Section 4 of the 2010 Act, and to submit its enquiry report to the Commission.

ENQUIRY AND SHOWCAUSE NOTICE

7. The Enquiry Committee submitted its Enquiry Report on 21st March, 2023 (the "**Enquiry Report**" or **"ER"**) to the Commission, which concluded as follows:

> *"86. In light of the above stated findings, the enquiry committee recommends that the Commission may consider initiating proceedings under section 30 for prima facie violation of Section 4(1) read with subsection 4(2)(a) of the Act against the following:*
>
> *a. Fatima Fertilizer Company Limited*
> *b. Fatima Fert Limited*
> *c. Engro Fertilizers Company Limited*
> *d. Fauji Fertilizer Company Limited*
> *e. Agritech Limited*
> *f. Fertilizer Manufacturers of Pakistan Advisory Council*
> *g. Fauji Fertilizer Bin Qasim Limited."*

8. Based on the findings of the Enquiry Report, the Commission initiated proceedings under Section 30 of the 2010 Act and issued the SCNs to the Respondents on 01st April, 2024, which broadly stated as follows:

(i) FMPAC and the UMCs collectively fixed and announced the price of urea in the relevant market, which *prima facie* had the object and effect of preventing, restricting or reducing competition in the relevant market, which *prima facie* constitutes violation of section 4 (1) read with section 4 (2) (a) of the 2010 Act.

(ii) The Respondents, jointly made a decision and entered into an agreement to announce and fix the prices of urea, with the object of preventing, restricting, and/or reducing fair and open competition in the relevant market (i.e. locally manufactured

urea fertilizer in prilled form, and in the case of FFBL, urea in granular form across Pakistan. Such conduct by the Respondents, *prima facie*, constitutes a violation of Section 4(1), read with Section 4(2)(a) of the 2010 Act.

SUBMISSIONS BY THE RESPONDENTS

9. The Respondents, vide SCNs, were directed to file their written replies within fifteen (15) days of the receipt of the notices and were provided the opportunities of hearing on 02nd July, 2024, 09th July, 2024, 10th July, 2024 and 31st December, 2024.

10. The majority of the submissions of the Respondents were similar, therefore, their responses are set out hereunder for sake of brevity. The oral and written submissions of the Respondents are summarised as under:

(i) The Respondents submitted that the Fertilizer Policy 2001, specifically the clause 5.1, empowers the Federal Government through Fertilizer Review Committee (**FRC**) to take appropriate actions to ensure free market forces prevail and the benefit of fertilizer market deregulation is passed on to the farmers.

(ii) That in line with the aforementioned mandate, the FRC, in its meeting held on 25th November, 2021 deliberated on the Prime Minister's directive to take serious action against dealers involved in hoarding, overcharging, and selling urea above the notified prices. During the referred meeting, the Minister for Industries & Production (**MoIP**) observed that urea was being sold above PKR 1,768 per bag. The Minister emphasized the need to launch a media campaign to raise awareness among farmers about the notified price of urea, therefore, the Advertisement was issued in line with the directions of the FRC.

(iii) That the nationwide advertisement was issued in compliance with the constitutional directions and compulsion of the Federal Government with the sole purpose of ensuring consumer welfare and awareness of farmers. Therefore, no decision was made on part of FMPAC nor the FMPAC is the originator of the said advertisement, hence, no violation of Section 4 of the 2010 Act occurred and thus, the SCN is liable to be set aside. Further, the said advertisement was aimed at curbing hoarding and overcharging by the dealers, wholesalers etc. Additionally, the advertisement was published to inform

the public that the notified price of urea was Rs. 1768/- per bag and the consumers were advised not to purchase urea at a price higher than the notified price. While taking a defense of state compulsion, the FMPAC relied on the case of ***Oil Companies Advisory Council (OCAC)*** reported as (**2019 CLD 1285**) and submitted that in this case the Commission applied the EU State Compulsion Test, which serves as a framework for evaluating whether a party's conduct was compelled by the state and, therefore, exempt from liability under competition law. The Respondent further argued that the factual circumstances in the OCAC case bear notable similarities to the instant matter, making the analysis particularly instructive.

(iv) That an action breaches competition law principles only when an undertaking initiates it independently ***European Communities and French Republic v. Ladbroke Racing Ltd.***[2], not when it's compelled by pressure from national authorities ***Polskie Gornictwo Naftowe i Gazownictwo S.A. v. European Commission***[3]. It is evident from the aforementioned proceedings of the FRC meeting that the urea manufacturers were under significant state pressure to address the crisis of overcharging and hoarding of urea swiftly and effectively.

(v) That the Enquiry Committee has completely ignored the context in which the advertisement was issued. In this regard reference was made to the case of ***O2 (Germany) GmbH & Co. OHG v. Commission of the European Communities***[4], wherein it was held that any allegation of concerted action has to be analysed in its commercial and legal context.

(vi) That the Enquiry Report and the SCNs admit that the alleged price fixing was being implemented from September 2021, however, the said advertisement was published in November 2021, and therefore, the advertisement clearly did not have the effect of preventing, restricting, or reducing competition.

(vii) That the Enquiry Committee, during the enquiry stages, did not obtain information from FMPAC nor did it take note of the context in which the advertisement was published and hence, committed a serious omission.

SEAL OF THE COMPETITION COMMISSION OF PAKISTAN ISLAMABAD

[2] ECLI:EU:C:1997:531
[3] ECLI:EU:C:2022:44
[4] ECLI:EU:C:2006:116

(viii) That FMPAC does not fall within the definition of an "undertaking" since it is not engaged in any "economic activity" and thus, does not fulfill the pre-condition imposed by Section 2 (1)(q) of the 2010 Act. FMPAC only functions as an advisory forum that conveys policy suggestions to the Federal and Provincial Governments which does not constitute any economic activity.

(ix) That under Section 4 (1), in case of an association of undertakings to constitute violation, there must be a decision made in respect of production, supply, distribution, acquisition, or control of goods or provision of services having an object or effect of preventing, restricting, or reducing competition within the relevant market. However, while framing the question, the Enquiry Committee restricted the question only to the extent of "decision made in respect of production, supply, distribution, acquisition, or control of goods or provision of services" completely omitting the statutory requirement that for such a decision to violate a Section 4 of the 2010 Act, it must also have the "object or effect of preventing, restricting, or reducing competition within the relevant market". Moreover, the Enquiry Committee erroneously concludes that the Advertisement is a 'decision' for the purposes of Section 4(1), however, the Advertisement was a result of a decision of the Federal Government and not a decision of the Respondents.

(x) That the Enquiry Report wrongly placed reliance on the Commission's order issued ***In the Matter of Show Cause Notice issued to Pakistan Poultry Association, 2019***; the instant matter is completely different from the aforesaid matter, since the advertisement in the instant case was issued on the directions of the Federal Government.

(xi) That even if it is assumed that the advertisement was anti-competitive, the same should be weighed against the pros and cons. The advertisement came in the context that the farmers were suffering at the hands of dealers who were hoarding and creating an artificial urea shortage in the market to charge higher prices from the farmers. In this context, the advertisement created awareness among the farmers, with respect to the notified price of urea and also highlighted that dealers who charge prices higher than the notified price should be reported to relevant Government authorities so legal action can be taken against them.

(xii) That the SCNs does not disclose the reasons for initiating the enquiry as required by ***Competition Commission of Pakistan v. Dalda Foods Limited*** reported as **2023 SCMR 1991** (the ***Dalda Case***). Besides, the Commission is required to form its independent opinion as to whether a violation of Section 4 of the 2010 Act occurred, however it seems that the SCNs were issued solely based on the Enquiry Report.

(xiii) That the Commission is not authorized to enquire into the fairness or reasonableness of the price of a commodity as established in ***DG Khan Cement Companies Ltd. v. Monopoly Control Authority*** reported as **2007 PLD Lahore 1** (the ***D.G. Khan Cement Case***). However, the Enquiry Report, rather than dealing with the core issue whether the advertisement had the effect of preventing, restricting, or reducing competition, ended up discussing profits earned by fertilizer companies and concluded that the price increase was unreasonable and anti-competitive. The price adjustments were driven by inflation and aligned with the parallel business behavior of competitors.

(xiv) That there is no evidence that the Respondents entered into any agreement or decision contravening Section 4(2)(a). Besides, the said section does not apply to a decision, it only applies to agreements and the onus to establish that such an agreement exists, lies upon the Commission.

(xv) That the Enquiry Report erroneously concluded that there is no government interference in urea price control. The government interferes by importing urea which reduces the price of urea in local market and the FRC constantly monitors the urea price.

(xvi) That the Enquiry Report relied on a previous order of the Commission passed in the case of ***Fauji Fertilizer Company v. Competition Commission of Pakistan*** reported as **2017 CLD 47** which was overturned by the Competition Appellate Tribunal and the case was remanded back to the Commission to be decided afresh. Therefore, until that matter was decided, the Commission could not have initiated this enquiry.

(xvii) That mere price parallelism, without plus factors is not violative of competition laws as established in the **2019 CLD 1152** (the ***Pharma Bureau case***). The term "plus factors" refers to economic circumstantial evidence of collusion above and beyond the parallel movement of prices by firms in an industry. Plus factors are the economic criteria that can assist with the diagnosis of collusion.

SEAL OF THE COMPETITION COMMISSION OF PAKISTAN ★ ISLAMABAD ★

(xviii) That the Enquiry Report erred in concluding that the publication of an advertisement by an association announcing the price of a product, per se amounts to price fixation. In this regard reference may be made to the case of ***A Ahlström Osakeyhtiö v. Commission***[5] ***(the Woodpulp case)***, in which the ECJ held that the parallelism of prices and price trends may be satisfactorily explained by the oligopolistic tendencies of the market and by the specific circumstances prevailing in certain periods. While the facts of the *Woodpulp case* and the present case are not identical, the issues involved are largely similar. In any event the *Woodpulp case* makes this much clear: that a simultaneous announcement of the same price by manufacturers does not per se amount to a collusive act to fix prices or enter into a prohibitive anti-competitive agreement; rather the Commission must examine the context in which the prices were announced, the nature of the market, the degree of market transparency and specific circumstances prevailing at the time. The aforesaid analysis ought also to a quarterly basis almost have been carried out in the present case, however the Enquiry Report fails to do so, and therefore, the inquiry report and the SCN are legally unsustainable.

(xix) That the Enquiry Report and SCN both erred in concluding that the price was fixed through the advertisement, each company had already fixed its price before that, and the prevailing price was common knowledge.

(xx) The Enquiry Report restricted the relevant market for the purpose of the enquiry to urea in prilled form. Therefore, the Enquiry Committee had no authority to conduct an enquiry against the Respondent No.4/FFBL when it conclusively admitted that the said Respondent produces urea in granular form, not prilled form. Resultantly, the Commission, relying on the Enquiry Report, had no authority to issue the SCN either.

(xxi) That the Enquiry Report admits that FFBL does not produce urea in prilled form which constitutes the relevant product market. The Enquiry Report fails to identify any evidence which even remotely connects FFBL to fixing of price of urea in prilled form. Simply because FFBL is a member of FMPAC and its logo appeared on the advertisement, does not establish any involvement of FFBL in fixation of price of urea in prilled form.

[5] ECLI:EU:C:1988:447

(xxii) That FFBL was making a loss in the financial year 2021 and 2022 contrary to the findings of the Enquiry Report that all fertilizer companies were making profit in those years.

(xxiii) While discussing the price setting for urea (granular), the counsel for Respondent No.4/FFBL stated that there is no connection between the price of urea (granular) and the price for urea (prilled) being set by other producers, including its associated company Respondent No. 3/FFCL.

(xxiv) That the Enquiry Report relied on price similarity patterns to allege collective price fixing. Urea is a homogenous commodity, which is sold at standard prices, like sugar or wheat. Despite variations, the manufacturers are forced to sell at similar prices and when a major manufacturer increases its price, the dealers start selling the products of other manufacturers at the same high price for making profits. Thus, at times, this price change is led by market forces and a vacuum is created which the manufacturers fill by bringing their price similar to one another.

(xxv) The advertisement was not an executive decision but merely a public awareness announcement of the price already printed on the urea bags.

(xxvi) That the Oil and Gas Regulatory Authority (OGRA) sets the gas price. The cost of production is not same for every urea manufacturer and Respondent No. 5/Fatima Fertilizer Company does not receive the subsidy, it's the farmers who are receiving the subsidy. The Respondent No.5 passes that benefit of lower cost to the farmers.

(xxvii) The manufacturer does not sell urea directly to the end consumers, it sells to dealers and retailers and therefore, has no control over the price at which end consumers buy their urea.

(xxviii) That despite the fertilizer industry being deregulated under Fertilizer Policy 2001, the Government of Pakistan has in the past intervened by fixing the price of fertilizer in the market. An example of this is detailed in SRO 607(I)/2022, however, this SRO was later

SEAL OF THE COMPETITION COMMISSION OF PAKISTAN ★ ISLAMABAD ★

withdrawn, and price was again revised through Industries and Production Division's order.

(xxix) The deregulated fertilizer market, operates on the dynamics of demand and supply in determining the market prices. The Respondent No.6/Engro refrains from maximizing profit through high prices, instead, its prices are determined by factors such as gas costs, inflation, currency devaluation, interest rates, packaging costs, freight costs, and warehousing costs.

(xxx) That the Enquiry Report, also acknowledges differences in prices and referred to them as minor. Even slight variations signifies that the prices are not identical. The similarity in prices could be due to factors such as costs and demand / supply patterns.

(xxxi) That Uniform pricing and price parallelism in an oligopoly is not unusual and is not in itself a violation of Section 4 of the 2010 Act as the Commission established in the *Pharma Bureau case*. The Commission held in the said order that price parallelism alone is not enough to establish violation of competition laws unless there are "plus factors" present. The Enquiry Report presents no evidence of a conspiracy or a reciprocal exchange of information hence, no plus factors were identified.

(xxxii) That the Enquiry proceedings were conducted without involving Respondent No.7/Agritech at any stage and was never confronted with the data obtained by the Enquiry Committee from various sources nor was any comment solicited from the urea manufacturers during the enquiry proceedings, which is contrary to the Commission past practice. In this regards the Respondent No.7 relied on the case ***Urea Manufactures case***.[6]

(xxxiii) That the Commission, in forming an opinion to initiate an enquiry has to apply its mind and proceed under section 37 to conduct an enquiry on the basis of sufficient facts and *prima facie* evidence. In this case, advertisement did not constitute sufficient basis to initiate an enquiry. In support of this contention, reliance was placed on ***National Feeds***

[6] Urea Manufacturers: In the matter of show cause notices issued to Urea Manufacturers (F.No.01/UREA/C&T/CCP/2010)

Limited v. Competition Commission of Pakistan reported as (**2016 CLD 1688 Islamabad**).

(xxxiv) The Enquiry Report commits an error in applying the holing of the ***Pakistan Poultry Association*** case reported as **2016 CLD 976** to the advertisement. The advertisement does nothing more than to inform and educate the buyers not to buy urea at a price higher than the price announced by each of the urea manufacturers independently several month prior to the advertisement.

(xxxv) That the SCNs allege a decision was made but contradicts itself as it says that the uniform price was being implemented from at least September 2021 and then says that advertisement published in November 2021 constitutes a decision. The question is whether the decision was made in September 2021 or November 2021 with the publication of the advertisement and the SCNs in this regard, contradict itself.

(xxxvi) That the Respondent No.6/Engro publicly announced its price of PKR. 1768/- per bag in August 2021 hence it was already in public knowledge and even the competitors knew about it which is a natural phenomenon in an oligopoly.

(xxxvii) That the relevant market for prilled urea should have included imported urea (particularly CAN) as well since both the products are interchangeable and substitutable by the consumer based on their characteristics, prices, and intended usage. Further, the Enquiry Report defines the whole of Pakistan as the relevant market but has picked pricing data from Punjab only.

(xxxviii) In response to a question by the Bench whether any discussion or consultation took place before the publication of the advertisement as to what maximum price should be advertised, the counsel for the Respondent No.6/Engro submitted that there was a discussion with the government in the FRC meeting. The counsel submitted that it is assumed that FMPAC would have asked Engro and others about the maximum price to be published in the advertisement and asking someone about their price is not a plus factor in price parallelism.

SEAL OF THE COMPETITION COMMISSION OF PAKISTAN ISLAMABAD

Directions given to the Respondents during the hearings to submit further information

11. During the hearings, the Commission directed the Respondents to submit certain additional information in view of their submissions and arguments. While discussing price setting by the Respondent No.6/Engro and considering the Counsel's explanation on upward price change of urea by Engro from 10th Jan, 2021 onwards, the Bench directed the counsel to submit the following information for consideration of the Bench:

> *"...*
>
> *(i) What were the factors that prompted Engro to increase the per bag urea price in short intervals i.e. 10.01.2021, 01.08.2021 and 18.03.2022, raising it from Rs. 1,718/- to Rs. 1,768/- and then to Rs. 1,918 respectively, particularly in the context that the Engro (Respondent No. 6), being the major supplier in relevant market, was specifically asked in the Fertilizer Review Committee (FRC) meeting, held in between the same period on 25.11.2021to correct its supply patterns.*
>
> *(ii) Was there any significant change in the weighted average gas price (feedstock gas) for both plants of Engro during the period January 2021 to March 2022 in view of the recurrent price increases during this span.*
>
> *(iii) Actions, if any, taken by Engro to address the FRC concerns contained in the Para 14 (i) and (ii) of the minutes of the meeting held on 25.11.2021."*

12. Responding to the above questions, the Respondent No.6/Engro submitted that these questions are beyond the scope of the subject proceedings. However, the Respondent No.6/Engro submitted that Engro's price increase was driven by inflation, higher production costs, increased gas prices, the devaluation of the Pakistani Rupee, and higher packaging costs, along with anticipated significant capital expenditures factored into its pricing. This increase was unrelated to the FRC's observations regarding Engro's supply patterns in Sindh, which highlighted an over-supply in Sindh due to early sowing and an under-supply in Punjab. Engro took measures to improve supply in Punjab, including /initiating a new dealer induction process and temporarily suspending supply to 16 dealers to enhance distribution efficiency.

13. The Bench also directed the counsel for the Respondent No.7/Agritech to submit the following information:

What are the market dynamics / forces due to which Respondent No. 7 had to match the prices, particularly upwards, as periodically determined / notified by other Urea producers in the relevant market?

14. The Respondent No.7/Agritech submitted its response to the above question and stated as follows:

(i) Urea being a trade commodity, is sensitive to market forces / dynamics which include varying costs of raw material and production, regulatory and policy changes, government levies, gas price, inflation, and global market influences. However, Agritech still absorbed the inflationary pressure and only passed a nominal impact on to the consumers through price increase.

(ii) Agritech is a price follower which follows the lead of the price setter in the market thus it only has acted in a commercially sensible manner to stay competitive in the market. In an oligopoly, a price reduction would attract the customers of the competitors, and a unilateral price increase would result in customers deserting the higher price product thus, the rivals in such a market are interdependent matching each other's marketing strategy.[7]

(iii) If a large market shareholder increases the price, the market perceives that the price of urea has been raised by all manufacturers. In that context, if Agritech had set its own product's price arbitrarily by disregarding the price set by the largest market entities (benchmark price), it would have risked illegal profiteering by the dealers who would have also sold Agritech product in the market at the highest price set by large market shareholder. Therefore, Agritech had to increase the price to bridge the gap upward.

15. The Bench also directed the Counsel for the Respondent No.3/FFCL and Respondent No. /FFBL, to submit the following information:

a. *The justification for periodic upward matching of urea prices by the Respondent No. 3 with the other producers, particularly in the context that FRC in the meeting held on 22.11.2021 and 25.11.2021 had raised serious*

7 Whish, R., & Bailey, D. (2012). *Competition Law* (7th edition). Oxford: Oxford University Press. Pg. 561

concerns to address the supply and distribution aspects of urea and rising prices therein.

b. Provide updated comparative data of price notified for urea-prilled and urea-granular, respectively since 01.01.2021 to date.

16. In response to the above, the Respondent No.3/FFCL and Respondent No.4/FFBL denied any involvement in fixing urea prices and asserted that the price increase was due to market factors such as hoarding and profiteering, rather than company's decisions. They explained that price fluctuations in the fertilizer sector were influenced by factors like production costs, currency devaluation, and inflation. Respondents also maintained that market price parallelism was not inherently anti-competitive without evidence of collusion. Regarding the provision of comparative price data for urea-prilled and granular, the Respondents submitted that the Commission has no authority to seek such data.

17. Subsequent to another hearing held on 31st December, 2024, the Commission vide letter dated 06th January, 2025 directed the Respondent No.7/Agritech to submit the following information:

" i. A comparative table of the price of feedstock gas borne (per MMBTU) by the Respondent, with gas price borne by other fertilizer manufacturers in Pakistan during the period from January 2021 to February 2022;
ii. Consumption of gas during each month from January 2021 to February 2022 against the allocation.
iii. Monthly plant capacity percentage for the period January 2021 to February 2022."

18. In response to the aforementioned queries, the Respondent No.7/Agritech submitted that for the period between January 1st, 2021, and February 28th, 2021, no feedstock gas was supplied to Agritech. From March 1st, 2021, to February 28th, 2022, Respondent No.7/Agritech paid Rs 805.00 per MMBTU and from October 1st, 2021, to February 28th, 2022, the price increased to Rs. 839.00 per MMBTU. Respondent No.7/Agritech also clarified that they do not have independent data regarding the price of feedstock gas for other manufacturers, but provided a table from the Ministry of Energy's (Petroleum Division) letter dated 15th February, 2023.

19. In addition, Respondent No.7/Agritech provided a table detailing its consumption of feedstock gas from January 2021 to February 2022. The table shows the quantity of gas consumed in MMBTU for each month. Moreover, Respondent No.7/Agritech provided a table showing the availability of feedstock gas and a separate table providing a breakdown of plant capacity utilization from January 2021 to February 2022. Respondent No.7/ Agritech submitted that its plant utilization is dependent on the availability of feedstock gas and that it strives to operate at its optimal potential whenever gas feedstock is available. However, during period of unavailability of gas operations are impacted despite Agritech's readiness to operate at optimal capacity.

ISSUES

20. Keeping in view the findings of the Enquiry Report, the SCNs, the verbal and written submissions, arguments of the Respondents, the material / evidence placed on the record, and the applicable law in the matter, the following issues are framed for the purpose of deliberation and determination:

Substantive Issues:

(I) Whether the Enquiry Report and SCNs identified the relevant market correctly?
(II) Whether the FMPAC is an undertaking in terms of Section 2 (1) (q) of the 2010 Act?
(III) Whether the Respondents are protected under the State Action Doctrine?
(IV) Whether the Respondents, by publishing advertisement dated 26th November, 2021, violated Section 4 of the 2010 Act?
(V) Whether the Respondents are merely engaged in price parallelism or there are plus factors present in the instant matter?
(VI) Whether the parallel price increase in Granular Urea by FFBL violates Section 4 of the 2010 Act?

Procedural Issue

(VII) Whether the Commission was bound to provide a gist of reasons in compliance with *Dalda* case and was it bound to provide an opportunity of hearing to the undertakings during the enquiry?

ANALYSIS

I. Whether the Enquiry Report and SCNs identified the relevant market correctly?

21. Before analyzing the conduct of the Respondents in this matter, the Bench considers it appropriate to first determine the "relevant market," as it forms the foundation for assessing potential anti-competitive behavior. The Respondents argue that the relevant market for prilled urea should also include imported urea, particularly Calcium Ammonium Nitrate (**CAN**). They submit that both products are interchangeable and substitutable from the perspective of consumers.

22. The term "relevant market" comprises two components: the relevant product market and the relevant geographic market. Section 2(1)(k) of the 2010 Act defines these components as follows:

> *"**Relevant Market** means the market which shall be determined by the Commission with reference to a product market and a geographic market and product market comprises all those products or services which are regarded as interchangeable or substitutes by the consumer by reason of the products' characteristics, prices and intended uses. A geographic market comprises the area in which the undertakings concerned are involved in the supply of products or services and in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring geographic areas because, in particular, the conditions of competition are appreciably different in those areas."*

23. To determine the "relevant product market", the first step is to identify the relevant products or services that are interchangeable or substitutable with those at issue. The Enquiry Report identified prilled urea as constituting the relevant domestic market. The Respondents however objected as to why imported urea was not included in the relevant product market. In this regard, it is important to note that the Enquiry Report clearly states that domestic urea production is sufficient to meet local demand. The Government resorts to imports only occasionally, mostly through government-to-government (**G2G**) agreements, depending on the demand and supply conditions of each cropping season. Over the past five years, the average demand during the Kharif

season stood at 3.1 million tons, while average imports amounted to only 0.02 million[8] tons (20,200 tons), accounting for just a fraction of 0.6% of the total urea demand. During the Rabi season, the average demand was 3.03 million tons, with imports averaging 0.041 million tons (41,000 tons), representing a mere 1.4% of the total demand. It is also relevant to consider that urea imports have been slightly higher during the Rabi season due to reduced gas supply to fertilizer plants during the winter months.

24. Pursuant to section 2(1)(k) of the 2010 Act, products are considered interchangeable or substitutable in a relevant market based on their characteristics, prices and intended uses. Despite similarities in characteristic and intended use, it is evident that domestic and imported urea are not substitutable due to the significant price difference. As of March 2023, the price gap between imported and domestic urea ranged from Rs. 2,597 to Rs. 3,200 per 50 kg bag, rendering imported urea an impractical substitute of locally manufactured urea for the farmers. This conclusion is further substantiated by the quantity of imported urea during the Kharif and Rabi season accounting for mere 0.65%[9] and 1.4% respectively, of the total demand.

25. Unlike Di-Ammonium Phosphate (**DAP**) and other fertilizers, private sectors entities usually do not import urea due to its financial unviability, stemming from the disparity between international and local prices. Instead, the Trading Corporation of Pakistan (**TCP**) imports urea, as and when required.

26. Furthermore, the Government neither operates as a commercial player competing with domestic manufacturers, nor does it seek to earn profits through the import of urea. Its primary objective is to ensure the availability of urea for agricultural use in order to prevent any adverse impact on the national economy since agriculture sector is a major contributor to the national GDP. The Government imports urea solely to address supply shortages in the domestic market and does not intend to compete with the UMCs.

27. In light of the foregoing, the Bench holds that the Government, as an importer of urea, cannot be considered a competitor to domestic UMCs by any measure or purpose. Therefore including imported urea within the definition of the relevant market, for the

[8] https://www.finance.gov.pk/survey/chapter_22/PES02-AGRICULTURE.pdf
[9] https://www.finance.gov.pk/survey/chapter_22/PES02-AGRICULTURE.pdf

purpose of competition analysis in the present case, would be inaccurate and misleading, besides, negligible too.

28. Regarding the relevant geographic market, the Bench concurs with the findings of the Enquiry Report which indicates free inter-provincial movement of urea, and homogenous conditions of competition across the country. Additionally, data on demand, supply, and import of urea show that domestically produced urea is generally sufficient to meet national demand, with imports averaging approximately 1% of total demand. Urea exports are also restricted, demonstrating that the majority of urea is utilized within Pakistan. Accordingly, the relevant geographic market encompasses the entire country.

29. In view of the above, the Bench concludes that the relevant market in the instant matter is the domestic market for urea fertilizer manufactured within Pakistan. In the case of urea in granular form, which is exclusively produced by Respondent No.4/FFBL, the relevant market is defined more narrowly as granular urea, given its distinct form and exclusive production by FFBL for nationwide supply. The issue of price parallelism between granular and prilled urea is addressed separately in this Order.

II. Whether FMPAC is an undertaking in terms of Section 2(1)(q) of the 2010 Act?

30. The Respondent FMPAC contended that FMPAC does not qualify as an undertaking under Section 2(1)(q) of the 2010 Act, as it does not engage in any economic activity—namely, the production, supply, or distribution of goods or services, either directly or indirectly. It further argued that since FMPAC is not a registered entity, it cannot be considered an undertaking within the meaning of the 2010 Act.

31. To address this contention, it is first necessary to refer to the definition of "undertaking" provided in Section 2(1)(q) of the 2010 Act, which provides as follows:

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

32. The definition of the term *"undertaking"* under Section 2(1)(q) of the 2010 Act explicitly includes *"association of undertakings"* within its scope. Since, the 2010 Act does not define the term "association," Section 2(2) of the 2010 Act provides that undefined terms shall carry the meanings assigned under the erstwhile Companies Ordinance, 1984 (now the **Companies Act, 2017**). However, the term "association" remains undefined in the Companies Act as well. In the absence of a statutory definition, it is appropriate to refer to the plain and ordinary meaning of the term as provided in Black's Law Dictionary, 7th edition, which defines "association" as follows:

> *a)* ***A gathering of people for a common purpose; the persons so joined.***
> *b) An unincorporated business organization that is not a legal entity separate from the persons who compose it.*
> *c) If an association has sufficient corporate attributes, such as centralized management, continuity of existence, and limited liability, it may be classified and taxed as a corporation. – Also termed unincorporated association; voluntary association."*
>
> ***(Emphasis added)***

33. On its official website, the Respondent No.1/FMPAC is described as a *"collective forum representing all fertilizer manufacturers in Pakistan"*[10]. The objectives outlined on its official website further qualify FMPAC as an association as it actively defends and advocates for the interests of fertilizer industry in Pakistan. FMPAC's charter also highlights its role in maintaining communication with farmers and fertilizer dealer associations, demonstrating and confirming its active involvement in the commercial aspects while also dealing with stakeholders on the regulatory and allied aspects of the fertilizer sector.

34. Furthermore, the advertisement under consideration prominently displays FMPAC's logo alongside those of other member undertakings. This clearly indicates that FMPAC functions as an association while its members, each engaged in the production and marketing of fertilizer products, qualifies individually as an undertaking under the 2010 Act. FMPAC, thus, cannot dissociate itself from the activities pertaining to the supply, pricing and other allied matters within the sector particularly considering, its participation in various meetings with stakeholders on all these aspects. Accordingly,

[10] https://fmpac.com.pk/

the Bench is of the view that FMPAC, as a collective forum of the fertilizer companies and undertaking, constitutes an "association of undertakings" within the meaning of the 2010 Act.

35. The Respondents' second contention that FMPAC is not a registered entity and therefore cannot be considered an undertaking is also without merit. In this regard, the Bench holds that an association of undertakings, whether constituted formally or informally, falls within the ambit of the 2010 Act. Proceedings before the Commission are not equivalent to civil litigation, and therefore cannot be equated with a party being 'sued' in a traditional court of law. Hence, for the broader purposes of its mandate, the Commission is not only concerned with the legal formalities of an organization, or an association, but also with its *de facto* nature and the *de facto* actions it undertakes. Reliance is placed on the Commission's order ***In the Matter of Show Cause Notice issued to Pakistan Automobile Manufacturers Authorized Dealers Association (PAMADA) & its Member Undertakings*** **2016 CLD 289** (the ***PAMADA case*****).**

36. In view of the foregoing, the Bench finds that FMPAC qualifies as an "undertaking" under Section 2(1)(q) of the Competition Act, 2010, as it functions as an association of undertakings. FMPAC represents and coordinates the actions of fertilizer manufacturers, engages in advocacy and communication within the industry, and participates in matters relating to supply and pricing of urea. Its activities demonstrate economic engagement, irrespective of its registration status. In line with the Commission's decision in the *PAMADA case*, the 2010 Act applies to both formal and informal associations based on their *de facto* conduct. Therefore, FMPAC falls within the scope of Section 2(1)(q) of the 2010 Act.

III. Whether the Respondents are protected under the State Action Doctrine?

37. In defense of the publication of the impugned advertisement, the Respondents have invoked the State Action Doctrine, asserting that they acted under the direction and compulsion of the Federal Government. To support this claim, they submitted that the Government instructed the undertakings to launch a media campaign aimed at raising awareness among farmers regarding urea fertilizer pricing.

38. The Commission has previously addressed the legal principles governing state compulsion and governmental direction in its jurisprudence. In particular, the Bench draws guidance from an earlier decision of the Commission ***In the Matter of Karachi Stock Exchange, Lahore Stock Exchange and Islamabad Stock Exchange*** **2010 CLD 1410** wherein the Commission analyzed the "state compulsion" doctrine as developed in the European Union, and the "implied immunity" doctrine, as recognized under U.S. antitrust jurisprudence. These doctrines provide valuable and persuasive interpretive guidance in assessing the applicability of state involvement as a defense. The relevant portion of the aforesaid order is reproduced hereunder:

> *"60. In the E.U., to plead the defense of state compulsion successfully, the party claiming the defense must satisfy the following three points:*
>
> *i. That the state must have made certain conduct compulsory: mere persuasion is insufficient;*
> *ii. That the defense is available only where there is a legal basis for this compulsion; and*
> *iii. That there must be no latitude at all for individual choice as to the implementation of the governmental policy.*
>
> *61. The position in the United States is as follows:*
>
> *"[W]hen Congress by subsequent legislation establishes a regulatory regime over an area of commercial activity, the antitrust laws will not be displaced unless it appears that the antitrust and regulatory provisions are plainly repugnant"; and "[r]epeal is to be regarded as implied only if necessary to make the [regulatory act] work, and even then only to the minimum extent necessary." The Court has also professed an unwillingness to grant immunity "absent an unequivocally declared congressional purpose to do so."*
>
> *62. The standard for repealing antitrust laws by implication, in the U.S., is "clear incompatibility" or "plain repugnancy between the antitrust and regulatory provisions." In order to ascertain sufficient incompatibility to warrant an implication of preclusion, the Courts have frequently employed the following four point test:*
>
> *i. the existence of regulatory authority under the securities law to supervise the activities in question;*
> *ii. evidence that the responsible regulatory entities exercise that authority;*
> *iii. a resulting risk that the securities and antitrust laws, if both applicable, would produce conflicting guidance, requirements, duties, privileges, or standards of conduct; and*

SEAL OF THE COMPETITION COMMISSION OF PAKISTAN ★ ISLAMABAD ★

iv. *the possible conflict affected practices that lie squarely within an area of financial market activity that securities law seeks to regulate."*

39. Accordingly, for the Respondents to successfully plead the defense of state compulsion in the present case, they must satisfy the Commission that:

(i) the government, through a legal mandate, compelled FMPAC and its member undertakings to publish the impugned advertisement, including the display of all Respondents' logos, and to announce a uniform price collectively; and

(ii) the Respondents had no discretion or individual choice in implementing this directive, and it was obligatory for them to comply with the governmental direction, and such direction was under a policy framework.

40. Moreover, antitrust law only allows the defense of *state action doctrine* where the state has acted in its sovereign capacity to regulate its economy by displacing competition. Non-state actors engaged in anti-competitive activities can obtain state action immunity where their conduct is clearly articulated and affirmatively expressed as state policy and is also actively supervised by the state.[11] Mere acquiescence or passive knowledge on the part of the state does not suffice to shield private actors from liability under competition law. The Respondents are not qualified to invoke *state action doctrine* unless their conduct automatically qualifies as that of a state's sovereign power by virtue of a legislation. An anti-competitive conduct, to be *ipso facto* immune from antitrust law, must have been provided for under a legislation and even in that case it is not unbounded, and it does not always extend to non-state actors carrying out state's regulatory work.[12]

41. The Respondents' by invoking the defense of *State Action Doctrine* do impliedly admit that all the undertakings were engaged in anti-competitive conduct. For instance, in the case of ***Nazir Ahmed through Legal Heirs v. Mohammad Rafiq and others*** **2016 MLD 1926**, the Lahore High Court held that an admission made before the court acts as an estoppel against the party making it. The court emphasized that facts admitted need not be proved, especially when such admission has been made before the court of law. This

[11] *Cranney v. Attorney General*, 494 Mass. 262 (2024); *Parker v. Brown*, 317 U.S. 341 (1943); *North Carolina State Bd. of Dental Examiners v. F.T.C.*, 574 U.S. 494 (2015); and *In the matter of PIA Hajj Fare*, 2009.

[12] *Claiborne v. Harris County Bail Bond Board*, S.W.3d (2024).

principle suggests that when a party acknowledges certain facts or circumstances in their defense, they may be estopped from denying them later. While the invocation of the State Action Doctrine may not constitute a direct admission, it does amount to an implied acknowledgment of participation in coordinated conduct, thereby shifting focus to whether the Respondents were lawfully compelled and actively supervised by the State in accordance with established antitrust principles.

42. The Bench thus examines whether there was any immunity granted to the Respondents or whether the government had vested any powers or authorization in the Respondents with active and close supervision through any legislation and allowed or compelled the Respondents to collectively fix and announce prices.

43. Clause 5.1 of the Fertilizer Policy, 2001 explicitly states that the selling price of fertilizer shall remain deregulated, and the manufacturers shall allow the market forces to prevail so that the benefit of lower fertilizer prices is passed on to the farmers. A Fertilizer Review Committee (FRC) was established to inter-alia ensure this objective under the aforementioned policy.

44. The Respondents have argued that the government acts through the FRC but they have grossly mischaracterized the work and mandate of FRC. The FRC was established to monitor and ensure that the Policy objectives are upheld and neither sets nor approve prices. FRC, therefore, does not regulate the urea fertilizer price, whereas the question we are dealing with here relates specifically to price fixing. The fertilizer companies give their urea prices to the provincial governments to notify the same, and this has already been confirmed at the enquiry stage without being disputed by the Respondents, hence, it is an admitted fact. The Enquiry Committee wrote letters to the federal and provincial governments to confirm whether they had any involvement in the urea price fixing. All the governments, provincial or federal, confirmed that they do not dictate or set the urea rates.

45. Furthermore, with regard to the intervention of the Federal Government through the FRC, the Bench observed that the Minutes of the FRC meeting dated 25th November 2021 reveal that the Federal Government had instructed fertilizer manufacturers to initiate an awareness campaign encouraging farmers regarding urea price. The intent behind this directive was clearly to protect farmers being exploited by unauthorized

dealers and hoarders. However, the Respondents took advantage of this direction and used it as a tool to fix the price in due coordination among themselves and jointly announced the uniform price for the urea buyers/consumers. This conduct transcended the purpose of the government's directive and instead served the Respondents' own commercial interests by suppressing price competition. Such coordinated communication and promotion of a uniform price amounts to price fixation, which is expressly prohibited under Section 4 of the 2010 Act. The Respondents' actions, under the pretext of complying with government instructions, effectively undermined market forces and distorted competitive pricing mechanisms.

46. The Bench also deemed it appropriate to draw a distinction between price notification and price determination. A price notification merely reflects the price at which a manufacturer intends to sell its product and it is a unilateral declaration which does not involve any regulatory or authoritative process for determining the price of a product. In contrast, price determination involves a structured and formal process governed by a legal framework under which a regulatory body sets or approves the price based on objective criteria, cost structures, and public interest considerations.

47. In this context, it is pertinent to note that neither the Federal Government nor any Provincial Government has established a price setting framework or mechanism for the determination of urea prices. Unlike sectors such as petroleum (regulated by the Oil and Gas Regulatory Authority) or pharmaceuticals (regulated by DRAP), where statutory price determination mechanisms exist with relevant price setting regulatory rules in place too, the fertilizer sector operates under a deregulated regime with no legal provision authorizing government-directed price setting.

48. Therefore, the Bench is of the view that the Respondents themselves determined and fixed the price of urea, however, they have wrongly attributed price fixation to the Government. Such practices of coordination among competitors to fix prices is in violation of Section 4 of the 2010 Act.

49. The argument that Government imports urea does not support the Respondents' position. These imports serve to stabilize supply during shortages and represent only a

negligible share of total demand (0.65% to 1.4%). The Government neither participates as a market competitor nor does it displace competition.

50. The Respondents have also relied on a portion of the Competition Commission of Pakistan's Competition Assessment Study of the Fertilizer Sector in Pakistan, specifically paragraph 4 on page 53, which notes that, due to government regulation of domestic gas prices, urea prices may be deemed "indirectly regulated". This reliance is misplaced. The study in question is an economic analysis and not a binding legal authority. When read in its entirety, particularly at pages 65 and 73 – 75, it explicitly acknowledges the fertilizer sector's susceptibility to collusive conduct. Moreover, the governing policy i.e. the Fertilizer Policy, 2001, under Clause 5.1 unambiguously provides that fertilizer prices are to remain deregulated, allowing market forces to prevail. The explicit policy language overrides any economic inference to the contrary. Further, the Respondents' selective citation of an isolated paragraph while disregarding the broader findings of the study reflects a self-serving and legally unsound approach and amounts to misapplication of secondary evidence in the face of clear primary policy directives.

51. The Respondent's argument is further weakened by the fact that, not all UMCs are receiving the gas at the same cost or from the same production or supply source. The Enquiry Report, as per the information received from the Petroleum Division, establishes that type of gas allocations also vary for every urea manufacturer. Some UMCs receive gas from dedicated gas production field while others receive it from Sui Companies which may supply local or imported gas, both of which have different notified prices. In light of these variabilities of gas supply and gas price, the uniform Maximum Retail Price (MRP) advertised for urea by all UMCs raises serious concerns regarding a coordinated uniform price. Therefore, the assertion that urea prices are 'indirectly regulated' lacks both factual and legal merit. As already established above, under the Fertilizer Policy, 2001, urea prices are deregulated, and thus any claim of direct or indirect price regulation stands refuted.

52. The directions issued by the FRC during its meetings held on 22.11.2021 and 25.11.2021 consistently urged UMCs to manage the supply situation effectively in order to prevent any price escalation. The Minutes of the meeting dated 22.11.2021 reflects that the Minister (Energy) stated that if UMCs cannot control their dealers, then gas

SEAL OF THE COMPETITION COMMISSION OF PAKISTAN ISLAMABAD

being supplied to the fertilizer units may be diverted to other sectors. This was further augmented in the meeting dated 25.11.2021 where the FRC directed that new dealers to be supplied with the product (urea) for discouraging hoarding by few dealers. These instructions clearly indicate that the FRC was focused on addressing supply-side dynamics to ensure price stability also, instead of farmers being exposed to artificial increase in urea prices caused by short supply or hoarding in the market. Such clear and repeated directions by FRC, focused on improving availability and supply of urea cannot be construed as instructions to fix or to coordinate prices.

53. Upon careful consideration of the Respondent's arguments and the available record, the Bench finds no evidence of direct or indirect governmental compulsion that would justify the Respondents' conduct of joint price fixation under the State Action Doctrine. Neither the submissions made nor the facts on record satisfy the legal threshold required to invoke this defense. The Bench concludes that the Respondents acted on their own volition, without any binding directive or legal mandate from the government, in publishing the advertisement **announcing a uniform urea price**. The Respondents' conduct, therefore, cannot be justified under the guise of state action and remains in violation of Section 4 of the Competition Act, 2010.

IV. Whether the Respondents, by publishing advertisement dated 26th November, 2021, violated Section 4 of the 2010 Act?

54. Section 4 of the 2010 Act, prohibits cartelization and collusive conduct of undertakings which has the object or effect of preventing, restricting or reducing competition in the relevant market. Relevant extract of the said provision is reproduced herein below for ease of reference:

> *"4. **Prohibited agreements**: (1) No undertaking or association of undertakings shall enter into any agreement or, in the case of an association of undertakings, shall make a decision in respect of the production, supply, distribution, acquisition or control of goods or the provision of services which have the object or effect of preventing, restricting or reducing competition within the relevant market unless exempted under section 5 of this Ordinance.*
>
> *(2) Such agreements include, but are not limited to-*

SEAL OF THE COMPETITION COMMISSION OF PAKISTAN ★ ISLAMABAD ★

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

55. As evident above, the core principle of Section 4(1), read together with Section 4(2)(a) of the 2010 Act is the prohibition of anti-competitive agreements and decisions between individual undertakings, and/or by an association of undertakings. This provision targets both direct agreements, coordinated conduct and/or informal understandings between the undertakings. In this regards, the Commission ***In the Matter of Show Cause Notices issued to Del Electronics (Pvt.) Limited and another*** **2022 CLD 670** held that an agreement could be an arrangement, understanding, or practice whether legally enforceable or not. It is not even required to be in writing. Further, such an agreement or decision should be about selling price, purchase price, or restrictive conditions relating to the production, supply, distribution, acquisition, or control of goods having the object or effect of preventing, restricting, or reducing competition in the relevant market.

56. Section 4 of the 2010 Act is in congruity with Article 101 of the Treaty on the Functioning of the European Union (the **Treaty**) (formerly Article 81 of the EC Treaty). The European Commission has categorized prohibited conduct under Article 101 of the Treaty as either being in the form of an 'agreement' or a 'concerted practice'. Additionally, the UK Competition Markets Authority (**CMA**) in the ***Tobacco Manufacturers Case No. CA98/01/2010/Case CE/2596-03*** (the ***Tobacco Manufactures Case***), aptly summarized the principles enunciated by the European Commission, General Court and European Court of Justice (**ECJ**) decisions on the matter and their application on UK competition law infringements as follows:

> *"An agreement does not have to be a formal written agreement to be covered by the Chapter I Prohibition.* ***It may be constituted simply by way of an 'understanding, even where there is nothing to prevent either party going back on, or disregarding, the understanding****. The Chapter I Prohibition is intended to catch a wide range of agreements, including oral agreements and 'gentlemen's agreements' as, by their nature, anti-competitive agreements are rarely in written form.*
>
> *There is no requirement for an agreement to be legally binding, or for it to contain any enforcement mechanisms.* ***An agreement may be express or inferred from conduct of the parties, including conduct that appears to be unilateral.*** *An agreement may consist not only of an isolated act,*

SEAL OF THE COMPETITION COMMISSION OF PAKISTAN ★ ISLAMABAD ★

*but also of a series of acts or a course of conduct. As held by the General Court, for an agreement to exist: **'[I]t is sufficient if the undertakings have expressed their joint intention to conduct themselves on the market in a specific way'**.*

An agreement within the meaning of the Chapter I Prohibition exists in circumstances in which there is a concurrence of wills, in that a group of undertakings intend to adhere to a common plan that limits, or is likely to limit, their commercial freedom by determining the lines of their mutual action, or abstention from action.

Although it is essential to show the existence of a joint intention to act on the market in a specific way in accordance with the terms of the agreement, it is not necessary to establish a joint intention to pursue an anti-competitive aim as such. The form in which the parties' intention to behave on the market is expressed is irrelevant.

*An **agreement can also come into existence through tacit acquiescence**. Tacit acquiescence requires an express or implied 'invitation' from one party to the other party **to fulfil an anti-competitive goal 'jointly, which may be inferred from conduct.** The fact that a party does not abide fully by an agreement which is anti-competitive, does not relieve that party of responsibility for it.*

*A **concerted practice does not require an actual agreement (whether express or implied) to have been reached**... Rather, as the ECJ held... the object is to bring within the prohibition of that Article [101] a form of coordination between undertakings which, without having reached the stage where an agreement properly so called has been concluded, knowingly substitutes practical co-operation between them for the risks of competition.*

*The **concept of a concerted practice must be understood in light of the principle that each economic operator must determine independently the policy it intends to adopt on the market**."*

[Emphasis added]

57. Relying further on ECJs decision in the *Tobacco Manufacturers case*, the CMA observes that:

> *"It is not necessary, for the purpose of finding an infringement, to characterize conduct exclusively as an agreement or as a concerted practice. The concepts of agreement and concerted practice are not mutually exclusive and there is no rigid dividing line between the two. They are intended: 'to catch forms of collusion having the same nature and are only distinguishable from each other by their intensity and the forms in which they manifest themselves."*

58. In the case of ***T-Mobile Netherlands BV** v. **Raad van bestuur van de Naderlandse Mededingingsautoriteit Case C 8/08*** the ECJ held that:

*"With regard to the assessment as to whether a concerted practice is anti-competitive, close regard must be paid in particular to the objectives which it is intended to attain and to its economic and legal context. ...**in order for a concerted practice to be regarded as having an anti-competitive object, it is sufficient that it has the potential to have a negative impact on competition**. In other words, the concerted practice must simply be capable in an individual case, having regard to the specific legal and economic context, of resulting in the prevention, restriction or distortion of competition within the common market."*

[Emphasis added]

59. With regard to the 'decisions by an association of undertaking', the European Commission, the General Court and/or the ECJ generally deduce whether the object or effect of the decision, regardless of its form, influences or coordinates the conduct of the members of the association. Through jurisprudence developed in that part of the world, the decisions by associations of undertakings, in particular, pertaining to information exchange, exist in different forms such as letters, orders, instructions, protocols, forecasts, recommendations, verifications, etc. In fact, in case of ***Re Nuovo CEGAM, 1984, OJ L 99/29, CMLR 484***, the European Commission initiated the case as a result of an investigation into the insurance industry where the object of the foundation of the Italian association of engineering insurers and the effect of its activities was *prima facie* found to restrict or distort competition within the common market for the class of insurance concerned. The European Commission found that the founding documents of the Association constituted an "agreement between undertakings and the activities of the Association are based on decisions by its organs, which constitute decisions by an association of undertakings." Mere recommendations by associations with no binding effect have also been held to be a 'decision' by the ECJ.[13]

60. This Commission ***In the Matter of Pakistan Jute Mills Association and its Member Mills***[14] (the ***Pakistan Jute Mills Case***) held that the term agreement used in section 4 of the 2010 Act has a very wide scope. As per the definition given in section 2(1)(b) of the 2010 Act, the term agreement can refer to any arrangement, understanding or practice. Moreover, the Commission in the aforesaid case held that, due to the wide

[13] Decision of the Court of Justice of the EU under Case 8/72 Vereeniging van Cementhandelaren v Comission, ECR 977.

[14] https://appadmincp.cc.gov.pk/ccporders/2011a5a4-861d-4d8f-a9bb-2c6b55cdd2f8/_pjma_order_3%20feb_2011.pdf

scope of the said definition, an agreement can take a variety of forms and does not have to conform to the usual notion of a standardized written, binding or legally enforceable instrument. In line with this definition, a practice that has continued over a period of time in a particular market or industry qualifies to be an "agreement" and such an agreement can be scrutinized by the Commission.

61. With regard to the term 'decision', the Commission in the ***Pakistan Jute Mills case***, elaborated the scope of the term broadly, applying the wide interpretation developed in the EU, as stated above, where even rules, recommendations and co-ordination of an association falls within the purview of the same. In this context, the Commission was guided by the case of ***V/27.958 National Sulphuric Acid Association [80/917/EEC]***, where the rules adopted by the said association were decisions of that association and the case of ***C-96/82 IAZ International Belgium NV v. Commission [1983] ECR 3369*** where, with regard to the activities of an association named `Anseau', it was held that:

> *"19. In the first place, Anseau observes that there can be no question of an `agreement between undertakings' within the meaning of the above-mentioned provision. Anseau is an association of undertakings which does not itself carry on any economic activity. Article 85(1) of the Treaty is therefore applicable to it only in so far as its member undertakings are legally bound by the agreement. In fact they are not since, under both the agreement and the statutes of Anseau, the latter is empowered only to make recommendations.*
>
> *20. As the court has already held... **Article 85(1) of the Treaty applies also to associations of undertakings in so far as their own activities or those of the undertakings affiliated to them are calculated to produce the results which it aims to suppress.** It is clear particularly from the latter judgment that a recommendation, even if it has no binding effect, cannot escape Article 85(1) where compliance with the recommendation by the undertakings to which it is addressed has an appreciable influence on competition in the market in question."*
>
> ***[Emphasis added]***

62. The Commission has also held, *inter alia*, in its previous orders that:

(i) A decision of an association reflects an understanding between the member undertakings of an association and, if implemented/acted upon by the member undertakings, results in an agreement between the association and the member undertakings.[15]

[15] Banks Order dated 10th April, 2008 available at https://appadminccp.cc.gov.pk/ccporders/e801c0bc-0f14-490e-b242-066685f0f504_Order_of_Banks.pdf

(ii) By being a member of an association, an undertaking is deemed to have accepted its constitution and to have empowered the association to undertake obligations on its behalf. Consequently, even where a member has not expressly approved an anti-competitive agreement concluded by the association but has not expressly opposed it, the member may be held to have acquiesced to the agreement.[16]

(iii) The prohibition contained in section 4 of the 2010 Act pertains to 'entering' into a prohibited agreement and the implementation of the same is not required to be established for the purposes of violation being committed.[17]

(iv) The term 'agreement' as conceived under the 2010 Act is very broad and encompasses the 'entering into' any/or all practices, arrangements and understandings that come within the purview of section 4(1) of the 2010 Act. When this section is read with the definition of 'agreement' in the 2010 Act contractual elements like offer and acceptance, free consensus of parties, lawful consideration or for that matter enforceability of the agreement itself, are not relevant factors in determining the fact whether any 'agreement' has been entered into. The prohibition under section 4 of the 2010 Act pertains to all agreements whether these are legally enforceable or not, with or without consideration or entered voluntarily or involuntarily.[18]

63. As established above, the scope of the term 'agreement' as defined under the 2010 Act is very wide and in the instant case whether the advertisement published by FMPAC is characterized as a 'decision' or an 'agreement' it would fundamentally remain and fall in the prohibited category so far as it has the object or effect of preventing, restricting or reducing competition within the relevant market in terms of Section 4(1) of the 2010 Act.

64. A plain reading of the advertisement, particularly the reference to a uniform MRP, not only indicates a decision taken by Respondent No.1/FMPAC, it also indicates an

[16] All Cement Manufacturers Association and its Member Undertakings Order dated 27th August, 2009 available at https://appadminccp.cc.gov.pk/ccporders/efeffd5b-8f95-4ede-a67e-cef48b7049a4_Cement%20(final%20order)%2027-08-2009.pdf

[17] ibid

[18] In the Matter of Show Cause Notice Issued to Institute of Chartered Accountants of Pakistan, 2009 CLD 63

agreement of FMPAC and other Respondents/UMCs to implement this maximum price across the country. Besides the joint advertisement could not have been published in the newspaper unless there was an agreement among the Respondents. As discussed in the preceding paragraphs, the term agreement, as defined in Section 2(1)(b) and read with Section 4(1), has a broad and inclusive meaning, encompassing all forms of coordination whether written or unwritten, binding or non-binding. Contractual elements such as offer, acceptance, consideration, or enforceability are not required to establish the existence of an anti-competitive agreement under the 2010 Act.

65. The Bench also addresses the objection raised by the Respondents concerning the language used in SCNs. The Respondents argue that the SCNs refers to a "decision" taken by FMPAC and the other undertakings collectively, and contend that the prohibition on "decisions" under Section 4(1) and 4(2)(a) of the 2010 Act applies only to associations of undertakings, not to individual undertakings. On this basis, they asserted that only FMPAC, being an association, could be proceeded against under this provision, and that Respondents No. 2 to 7 (the individual UMCs) fall outside its scope. The Respondents further argued that since the Enquiry Report also frames the issue with reference to a "decision," no allegation of an agreement was properly raised against the individual undertakings.

66. In view of the aforesaid contention of the Respondents, the Bench notes that the wording in paragraph 7 of the SCN issued to FMPAC, and paragraph 8 of the SCNs issued to the UMCs, clearly states that the MRP was collectively announced by the Respondents, which denotes a coordinated action amounting to an agreement among undertakings. Moreover, the SCNs explicitly invoke Section 4(2)(a), which specifically pertains to agreements that directly or indirectly fix the purchase or selling price. Therefore, while FMPAC may have made a decision as an association of undertakings, the coordinated participation of the Respondent UMCs to publish a uniform urea price also constitutes an agreement among undertakings under the 2010 Act. As explained earlier, the term "agreement" under the 2010 Act is broad and includes arrangements, understandings, or practices, even where not legally enforceable. Thus, the conduct of the Respondents fall squarely within the scope of Section 4 of the 2010 Act, and the issuance of separate SCNs to all Respondents was appropriate and legally justified.

Accordingly, the argument advanced by the Respondents is found to be misplaced, devoid of legal merit, and is therefore rejected by the Bench.

67. In consideration of the foregoing and the legal principles established under Section 4 of the 2010 Act, the Bench is of the view that the Respondents, through their collective conduct, including the joint advertisement displaying uniform pricing, entered into an agreement and/or in case of FMPAC, made a decision, within the meaning and scope of Section 4 of the 2010 Act. This agreement, whether formal or informal, written or unwritten, amounts to a concerted practice with the object or effect of preventing, restricting, or reducing competition in the relevant market. Accordingly, the Respondents' actions falls within the prohibitions set out under Section 4 of the 2010 Act.

68. The Respondents also argued that the Advertisement does not have the ***'object or effect of preventing, restricting or reducing competition within the relevant market'*** as covered under section 4 (1) of the 2010 Act, therefore there is no violation of the 2010 Act. The Bench is of the view that prices are determined by free market forces i.e., supply, demand, and rivalry among competitors and not through a formal or informal coordinated action, between market participants. Price competition is a fundamental mechanism by which markets operate efficiently to benefit consumers and economy at large. Any act, especially by an association or a group of undertakings, that influences or sets price parameters, even indirectly, undermines this fundamental mechanism. In particular, the public announcement or promotion of prices by an industry association or representative body is inherently suspected under competition law. Such joint announcement serve as a signal to the consumers and more importantly, to competitors to facilitate a tacit or express alignment of pricing strategies, thus reducing independent pricing behavior in the market defying benefits to the economy and consumers.

69. The Respondents including FMPAC, under the guise of conducting an awareness campaign/advertisement, have effectively fix the price of urea across the country. Such conduct goes beyond the bounds of lawful information dissemination and enters into the realm of anti-competitive behavior. By specifying a uniform price, the Respondents have engaged in conduct that has the *object or effect* of preventing, restricting, or distorting competition in the relevant market, a clear contravention of Section 4 of the

2010 Act. The so-called "awareness campaign" in question does not constitute neutral information dissemination. Instead, by specifying a uniform price level for urea, the Respondents have effectively engaged in price signaling, which is a classic form of anti-competitive coordination. Whether or not such a recommendation is binding or is actually implemented is immaterial under the 2010 Act, rather what matters is whether the conduct facilitates a meeting of minds or mutual expectations among competitors, thereby restricting their independence in determining pricing.

70. It would be useful to add here that the term object does not refer to the subjective intention of the parties, but to the objective meaning and purpose of the agreement. An agreement deemed to have the 'object' of restricting competition (like price fixing agreement) infringes Section 4 without having to establish its effect.

71. Therefore, the Respondents' conduct is not merely informational but constitutes an impermissible attempt to orchestrate market-wide pricing uniformity. This undermines the core objective of competition law i.e. to provide free competition, enhance economic activity and to protect consumers from anti-competitive behavior.

72. The Respondent No.1/FMPAC also contended that it does not have any role in price fixing of urea, however, the Commission, while considering the content of the advertisement, observes that FMPAC played an active role and cannot be absolved from its responsibilities and its involvement in price fixing. In this regard, the official website of FMPAC demonstrate its significant influence and involvement in several key areas. [19] For instance, FMPAC serves as a representative for fertilizer manufacturing companies in front of governmental bodies and relevant regulatory agencies, aiding in the development and implementation of optimal policies to address various challenges facing the industry, FMPAC gathers, organizes, and disseminates crucial data on fertilizer and agriculture to its members and the Federal and Provincial Governments, provide advisory services to the Government of Pakistan to prevent unnecessary imports and maintains a balance between fertilizer supply and demand through domestic production. Moreover, as per the charter of the FMPAC and the advertisement under consideration, it conducted itself along with the member organizations, despite knowing the fact that as per its charter, *FMPAC has an obligation to strictly avoid any*

[19] https://www.fmpac.com.pk/about/fmpac/

activities, discussions, or information sharing that could constitute or be interpreted as a breach of any law, including the Competition Act, 2010.[20]

73. Additionally, the FRC minutes of the meeting held on 21.09.2021, reveals FMPAC's active participation in discussions on various aspects of the relevant market including the industry's projected demand (3.1 million metric tons) and the allocation of RLNG resources. This reinforces its involvement in key decision-making processes. Therefore, despite its claim of publishing the price-fixing advertisement under government compulsion, FMPAC's actions cannot be viewed in isolation. FMPAC's extensive role in advocacy, information management, industry coordination, and stakeholder engagement makes it implausible for it to deny responsibility for its role that influences market dynamics and potential anti-competitive practices.

74. The Ministry of Industries and Production (MoIP) explicitly asked the manufacturers in the FRC meeting dated 25.11.2021 to correct and sort out their own supply pattern which clearly established that the supply issues lay with the manufacturers and the distributors that have been appointed by UMCs themselves. Accordingly, the Bench dismisses the Respondents' argument that the advertisement was in response to a dealer-created shortage and the same is misplaced and without merit.

75. Respondent No.7/Agritech contented that when a large market shareholder increases its urea price, the market perceives it as a price increase by all manufacturers. Therefore, Agritech also increases its urea price to match the price set by the large market shareholder so that the dealers cannot exploit the price gap and make profit for themselves. The Bench is of the view that the aforesaid argument of the Respondent No.7 is without any merit as fixing the market dynamics is not a responsibility of UMCs. Prosecuting the hoarders is the responsibility of the Government and not UMCs. Moreover, it raises concerns as the production cost for Respondent No.7/Agritech is substantially higher and yet it agreed to follow MRP set by UMCs, apparently to its disadvantage. Such conduct leads to a conclusion that UMCs consent to go along with any price increase by competitors, despite it not being commercially viable, leads to a restrictive competition.[21]

SEAL OF THE COMPETITION COMMISSION OF PAKISTAN * ISLAMABAD *

[20] https://fmpac.com.pk/

[21] European Commission. (2023). Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements. *Official Journal of the European Union*. Para 432

76. The Respondents also argued that the SCNs allege in para 8 that the undertakings/UMCs implemented the uniform price of PKR 1768/- from September, 2021 to February, 2022. However, in para 7, the SCN alleges the decision to collectively announce the maximum retail price occurred in November, 2021 with the publication of the advertisement. In this regard, the Bench notes that although the prices were already moving in parallel among the UMCs prior to the advertisement, the publication of the advertisement in November 2021 served to formalize and publicly endorse the uniform pricing pattern in the relevant market. This act solidified the existing price alignment and marked a clear expression of collective intent by FMPAC and its member undertakings. Such conduct is clearly in violation of section 4 of the 2010 Act.

77. In addition to the above analysis, it is pertinent to note that the Respondents, by publicly announcing a uniform price for urea, effectively fixed the price not only for the immediate period but also for an indefinite future. Such an announcement removes any scope for competitive price-setting in the market and sends a clear signal to all market participants that the price has been predetermined and will remain so unless jointly altered. This conduct eliminates competitive pricing, which is a key element of competition, and thereby reinforces the anti-competitive nature of the agreement.

78. In view of the foregoing, the Bench holds that the Respondents, by jointly announcing and adhering to a uniform price for urea, were in agreement and they engaged in a concerted practice that undermines the essence of competitive market dynamics. Such coordinated conduct, regardless of its formal structure or enforceability, effectively fixed prices and curtailed independent decision-making, in violation of Section 4 of the 2010 Act. The predictability and permanence conveyed through their public announcement further entrenched anti-competitive behavior, leaving no room for doubt that the Respondents acted in concert to distort market forces, defying benefits for the consumers and the economy, which could have accrued under a fair competition in the relevant market. Accordingly, the Bench finds the Respondents in violation of section 4 of the 2010 Act for engaging in anti-competitive conduct.

C. Whether the Respondents are merely engaged in price parallelism or there are plus factors present in the instant matter?

SEAL OF THE COMPETITION COMMISSION OF PAKISTAN ★ ISLAMABAD ★

79. The Respondents argued that it is a well-established principle in competition law that price parallelism alone does not amount to price fixing conspiracy. It is only when price parallelism is accompanied by 'plus factors' that it becomes concerted behaviour. The key issue before the Bench, therefore, is whether the price parallelism among Respondents, starting from September 2021, was reinforced by the advertisement in November 2021, thereby constituting a *plus factor*. Needless to mention, the advertisement in November 2021 is a uniform price announcement by the Respondents, which is violative of competition law anyway.

80. 'Price parallelism' or 'conscious parallelism' refers to a situation where competing firms adjust their prices in an identical or nearly identical manner, and at the same or nearly the same time. While such conduct alone does not establish a violation of competition law, it may raise concerns where it is accompanied by additional factors, commonly known as 'plus factors' which indicate coordination or a departure from independent business decision-making.

81. The Bench notes that in oligopolistic markets, competitors often adopt price parallelism as a strategic tool to maintain or to grow their market share. For instance, as per Economic Survey of Pakistan (2021-22)[22], in Pakistan's urea market, domestic demand stands at approximately 6,364 thousand tons annually. Local manufacturers meet 86% of this demand, while imports contribute only 14%. In the last five years, import levels remained negligible at just 0.6% in the Kharif season and 1.4% in the Rabi season. This illustrates that the production capacity of key market players is sufficient to meet domestic demand, leaving little room to expand market share through increased output. As such, price parallelism in this context serves more to preserve status quo rather than to enable any competitive advancement.

SEAL OF THE COMPETITION COMMISSION OF PAKISTAN ★ ISLAMABAD ★

[22] https://www.finance.gov.pk/survey/chapter_22/PES02-AGRICULTURE.pdf

Table 3

Fertilizer Supply Demand Situation (000 Tonnes)

Description	Kharif (Apr-Sep) 2021		Rabi (Oct-Mar) 2021-22		Kharif (Apr-Sep) 2022	
	Urea	DAP	Urea	DAP	Urea	DAP
Opening Stock	298	55	116	353	294	255
Imported Supplies	0	733	100	385	0	30
Domestic Production	3,106	444	3,272	443	3,214	420
Total Availability	3,404	1,232	3,489	1,181	3,508	705
Offtake/Demand	3,258	889	3,195	933	3,364*	907
Write on/off	-29.8	9	0	7	0	0
Closing Stock	116	353	294	255	144	-202

*: Offtake projections are based on demand received from Punjab province and three-year average offtake for rest of the provinces.
Source: National Fertilizer Development Centre

82. In a saturated market, where the production capacities of each manufacturer complement the demand, like the one under discussion, firms often lack the opportunity to expand their market share through increased production along with competitive price. Instead, price parallelism becomes a tool for influencing market dynamics, to deter new entrants or prevent existing players from altering the market equilibrium either through competitive price or by expanding production. By aligning prices, firms avoid aggressive price competition that could erode margins for few market players. When market shares are predominantly determined by production capacity, the incentive to parallel prices no longer stems from competitive rivalry but reflects a shift toward implicit collusion. In a market where demand is stable and price elasticity is minimal, maintaining uniform prices can prove more profitable for those limited players, instead to compete on price. Such alignment, absent formal agreement, nonetheless dampens competitive pressures and signals a coordinated strategy designed to sustain elevated pricing and mutual benefit.

83. In the instant case, considering the market dynamics, it is safe to state that price parallelism is not being driven by competitive forces but is instead indicative of a tendency towards collusion among the Respondents. The alignment of prices, lacking any credible market-based or cost based justification, points to a coordinated strategy that undermines independent decision-making. Where market share is effectively determined by production capacity and competition for market share is minimal or non-existent, the use of uniform pricing cannot be explained by ordinary competitive behaviour. In such a scenario, price alignment operates less as a competitive response and more as a mechanism for implicit coordination under the guise of price parallelism.

84. In light of the above, the Bench notes that the advertisement jointly issued by all UMCs and FMPAC, prominently featuring a uniform MRP of PKR 1,768/- per bag alongside their respective logos, goes well beyond mere price parallelism. In a market where each undertaking's production capacity and market share are matters of common knowledge, such a coordinated disclosure cannot be viewed as incidental or competitively benign. Rather, the joint announcement constitutes an overt manifestation of concerted conduct. The public dissemination of a uniform price through a common platform serves as a 'plus factor' evidencing a shared intention to fix prices. This action does not reflects an independent commercial decision-making rather a pattern of coordinated act to align market behaviour which is prohibited under the 2010 Act.

85. The Bench further notes that despite significant variations in input costs, all Respondents are charging an identical price for urea. Urea production is highly dependent on natural gas, and the cost of this critical input varies considerably based on the source. Urea plants operating on domestically produced gas enjoy lower costs, whereas those reliant on imported RLNG incur substantially higher expenses. Furthermore, local gas prices vary as per the gas production and supply sources across provinces. For example, the Respondent No.6/Engro has been allocated dedicated gas supply from production field also and is not reliant only on gas from Sui Companies network, thereby enjoying a cost structure distinct from other producers. In a competitive market, such disparities in input costs would ordinarily result in differentiated pricing strategies. The uniformity in the price charged by all UMCs, despite these substantial input cost differences, raises serious concerns. It suggests not a convergence driven by competitive forces but a coordinated strategy to align prices and suppress competition. The table below shows the different gas prices each plant pays for feedstock and fuel, which makes it hard to believe that all producers can charge the same price, unless they were coordinating with each other.

SEAL OF THE COMPETITION COMMISSION OF PAKISTAN ★ ISLAMABAD ★

Table 11 : Plant wise feedstock and fuelstock gas price details						
Plant	**Supplier**	**Allocated Volume**	**Type of Gas**	**Description tariff**	**Tariff (Rs./mmbtu)**	
					Feedstock Rate	**Fuelstock Rate**
Agritech	SNGPL	41	RLNG	Subsidised RLNG tariff	839	839
Fatimafert Ltd	SNGPL	29	RLNG			
FFC Plant 1	MPCL (dedicated)	184	NG	Indigenous gas tariff	302	1023
FFC Plant 2	MPCL (dedicated)		NG			
FFBL	SSGC	63	NG			
FFC Old plant 3	MPCL (dedicated)	95.5	NG			
Fatima Fertilizer Limited	MPCL (dedicated)	110	NG			
Engro Enven Plant II	MPCL (dedicated) + SNGPL	116	NG	Concessionary gas tariff	USD0.70	1023
Pakarab Fertilizer	MPCL (dedicated)	58	NG	Petroleum Policy, 2012 Price	USD6.1	USD6.1
		70	NG		USD6.1	USD6.1
Engro Plant I	OGDCL (dedicated)	6	NG		-	USD6.1 less 10% discount

86. In view of the foregoing, the Bench holds that the uniform pricing adopted by the Respondents cannot be attributed to mere price parallelism. In a market with stable demand, where each undertaking's production capacity and cost structure are well known, such alignment, despite significantly different input costs, strongly indicates implicit collusion. The absence of price variation, particularly where economic rationale would dictate otherwise, renders the uniform MRP unjustifiable and reflective of coordinated conduct in potential violation of the 2010 Act.

87. As reflected from the annual audited financial statement, it was duly admitted by the Respondent No.4/ FFBL and the Respondent No.7/Agritech that they have incurred losses. However, they failed to justify as to how they match or agreed to a MRP that lacked commercial prudence, particularly when such a price could not be substantiated considering their individual financial circumstances and input cost structures. The Bench is of the view that FFBL and Agritech followed the price of urea set by others despite significantly different cost structures and financial positions, which defies the commercial logic and spirit of fair competition, rather indicates additional underlying

factors and coordination, including those which are anti-competitive. Such price patterns and behavior points to the possibility of implicit collusion, wherein undertaking act in concert to similar prices without threatening the respective market shares, regardless of their individual cost structures or financial performance.

88. Based on the review of available data, it is observed that in the referred market, companies with significant market shares[23] typically set the price for urea, which is then followed by other UMCs. Despite these cost differences, the alignment of prices by UMCs with higher input costs to match those with lower costs points to potential coordination rather than fair independent competition. This consistent pricing behavior reflects a pattern of collusion, where firms collectively maintain market shares through price fixing, undermining fair competition and raising significant concerns regarding anti-competitive practices.

89. In the above mentioned consistent price setting behaviors by UMCs, it is imperative to note that the Fertilizer Policy, 2001 explicitly deregulates the selling price of fertilizer, allowing it to be determined by market forces. However, by collectively setting and announcing a uniform price through the FMPAC, the UMCs have undermined this policy. Such coordinated behavior replaces the competitive dynamics intended by the policy with a fixed pricing structure that does not reflect the principles of supply and demand or account for the substantially varying input costs of manufacturers. This uniform pricing not only contradicts the objectives of the Fertilizer Policy but also raises serious concerns about anti-competitive conduct. It suggests that the UMCs are prioritizing collective profitability in a stable demand environment and defined market shares, to the detriment of the farmers and ultimately consumers of Pakistan.

90. The perusal of the record also reveals that, beyond the issue of uniform pricing, the Respondents mismanaged the supply of urea in a manner that resulted in artificial scarcity and price escalation, ultimately benefitting them financially with periodic increase in sale price, despite no fundamental changes in the input costs during the same time. Notably, during the hearing, Respondent No.4/Engro admitted that more urea was supplied to Sindh than to Punjab and that was right before the peak time of sowing the

SEAL OF THE COMPETITION COMMISSION OF PAKISTAN ★ ISLAMABAD ★

[23] Fauji Fertilizer Company (39%), Engro Fertlizer (36%), Fatima Fertilizer Company & FatimaFert Limited (13%), Fauji Fertilizer Bin Qasim Limited (8%) and Agritech Limited (4%) (Para 4 of the Enquiry Report)

wheat crop. This disparity was also flagged by the Fertilizer Review Committee (FRC), which specifically instructed Engro to improve the supply situation. Despite these directives, the uneven distribution persisted, reflecting a clear disregard for regulatory guidance. However, the urea prices continued to rise and the situation was further exacerbated by the lack of firm action against distributors, which allowed price increases to burden end consumers, particularly during the critical Rabi season, thus compounding the anti-competitive effects of the Respondents' conduct.

91. Now after looking at the ground reality and the background of the matter in continuing trend of rising prices in parallel, let us evaluate the law and legal principles related to price parallelism and *plus factors*. The local jurisprudence in this area has been developed by two landmark cases: ***D.G. Khan Cement Co. Ltd.*** *v.* ***MCA*** **PLD 2007 Lahore 1** (the ***DG Khan Cement case***) and Order passed by the Commission ***In the Matter of Show Cause Notice issued to Pharma Bureau*** **2019 CLD 1152** (the ***Pharma Bureau case***).

92. The *DG Khan Cement case* relies on landmark American and Indian cases to elaborate on price parallelism and *plus factors*. The case also elaborates on the threshold of permissible inference and extends the circle of competition beyond the immediate and actual market participants while defining the term 'competition'. It places the onus on the Commission to establish the existence of anti-competitive activities. It acknowledges that due to the very nature of anti-competitive conspiracy agreements, they are '*born in darkness and remain shrouded in secrecy*' and therefore, they can be established indirectly, i.e. through circumstantial evidence. Such agreements can be '*inferred from the facts and circumstances*' of the particular situation being examined. It requires the Commission to identify the nature of agreement, parties to the agreement, and the methodology of establishing the agreement through circumstantial evidence. It adds that the agreement does not need to be in writing or be legally enforceable and states that the mere existence of such an agreement is sufficient to condemn it.

93. In this regard, the Bench finds the case of ***Kieffer Stewart Co.*** *v.* ***Joseph E. Seagram & Sons*** **340 US 211 (1951)** instructive, which holds that any price fixing agreement including that of raising, decreasing, or stabilizing the price, is illegal *per se*. Similarly, in the case of ***United States*** *v.* ***New York Coffee and Sugar Exchange*** **263 US 611**

(1924), it was held that evidence of an agreement is necessary to be established and while quoting ***Theatre Enterprises Inc. v. Paramount Film Distributing Corp*** **346 US 537 (1954)**, it stated that an agreement can be tacit or express, however, a mere conscious parallelism such as parallel increase in price is not illegal. The cases of ***Matsushita Electric Industrial Co. ltd. v. Zenith Radio Corp, 475 US 574 (1986) and Monsanto Co. v. Spray Rite Service Corp.*** **465 US 725 (1984)** further elaborate the threshold of permissible inference and establish that the circumstantial evidence must 'exclude the possibility' that the respondent acted independently. Additionally, the case of ***Brooke Group Ltd. v. Williamson Tobacco Corp*** **509 US 209 (1993)** highlights that a pattern of parallel behavior should be established and the same should be corroborated with at least one *plus factor* to infer an anticompetitive conspiracy or an agreement.

94. While quoting ***In re Baby Food Antitrust Litigation*** **166 F.3d 112 (1999)**, the *DG Khan Cement Case* defines *plus factors* as "*the additional facts or factors required to be proved as a pre-requisite to finding that parallel action amounts to a conspiracy.*" It adds that *plus factors* may include:

- the action of a respondent contrary to their economic interests, and
- a motivation to enter into a price fixing conspiracy.

95. The *Pharma Bureau Case* establishes that 'no violation of the antitrust laws occurs where firms independently raise or lower prices, but that a violation can be shown when 'plus factors' occur, such as firms being motivated to collude and taking actions against their own independent economic interests'. It defines plus factors as '*economic circumstantial evidence of collusion above and beyond the parallel movement of prices by firms in an industry*'. *Pharma Bureau Case,* while relying on the case of ***Imperial Chemical Industries Ltd. v. Commission of the European Communities*** **(ECR 1972 Page 619),** stated that a concerted anticompetitive practice by its very nature does not have all the elements of a contract but it may arise of coordination which becomes apparent from the behavior of the parties. It adds that a *"parallel behavior may itself not be identified with a concerted action, but it may amount to a strong evidence of such a practice if it leads to conditions of the competition which do not correspond to the normal conditions of the market, having regard to the nature of products, the size, and number of undertakings, and the volume of the said market".*

SEAL OF THE COMPETITION COMMISSION OF PAKISTAN * ISLAMABAD *

96. The American courts have expanded the concept and definition of plus factors, while stating that "Plus factors" provide circumstantial evidence / proofs that undertakings came together and exchanged "assurances of common action" or adopted a "common plan". It does not require proving that a meeting or conversation took place, or any documents were exchanged among the undertakings.[24]

97. An anti-competitive behavior could be inferred from parallel conduct and that an agreement would have been collectively beneficial to the undertakings; no direct agreement is needed to be proved.[25] Generally, the plus factors are:

(a) a shared motive to conspire;
(b) action against self-interest;
(c) market concentration; and
(d) a substantial amount of inter-company communication in conjunction with the parallel conduct.[26]

98. Furthermore, parallel pricing and participation in a trade association, linked with the conduct, can also raise an inference of anti-competitive conduct and be a plus factor.[27] Any non-economic evidence suggesting that there was an "actual manifest agreement" among the undertaking not to compete, may imply a traditional anti-competition conspiracy and hence, would be considered a plus factor.[28] Simply put, circumstantial evidence of conscious commitment to a common anti-competitive scheme is enough.[29] A meeting of minds towards a common design, purpose, or understanding is circumstantial evidence as well. Further, a "complex and historically unprecedented changes in pricing structure made at the very same time by multiple competitors, and made for no other discernible reason" is also a plus factor.[30]

99. In the light of the law elaborated above, the Bench finds that there are number of evidences which amount to *plus factors*. Firstly, the undertakings announced the urea price of PKR 1768/- and agreed to and display of their logos in the advertisement. The Bench infers that there was some discussion and agreement among the competitors

[24] *In re Chocolate Confectionary Antitrust Litigation*, 801 F.3d 383 (2015).
[25] *First Nat. Bank of Ariz. v. Cities Service Co.*, 391 U.S. 253 (1968).
[26] *In re Pork Antitrust Litigation*, 495 F.Supp.3d 753 (2020).
[27] *Persian Gulf Inc. v. BP West Coast Products LLC*, 324 F.Supp.3d 1142 (2018).
[28] *In re Titanium Dioxide Antitrust Litigation*, 959 F.Supp.2d 799 (2013).
[29] *Monsanto Co. v. Spray-Rite Service Corp.*, 465 U.S. 752 (1984).
[30] *In re Disposable Contact Lens Antitrust Litigation*, F.Supp.3d, WL 3337686 (2024).

before the advertisement and beyond the FRC meetings. Secondly, the FRC minutes of the meeting dated 25.11.2021 simply urged the undertakings to launch a media campaign for awareness of the farmers regarding to the urea price. Thirdly, all the undertaking have different market shares, economies of scale and production capacity. All of this cannot translate into similar priced final product.

100. The publication of an advertisement by FMPAC, a trade association, announcing a single collective price declaring that the "urea fertilizer is being sold at PKR 1,768/- per bag" infers that there has been a discussion and agreement to announce the uniform price of PKR 1,768/- and display of each manufacturers' logo to own and support the same price for consumers. In that sense, the advertisement is a plus factor in itself. It is not possible that the FMPAC, on its own, announced a single price and published every manufacturers' logo without first discussing and agreeing with them and this fulfils the requirement to establish the plus factor.

101. The Respondents have admitted that their conduct is simply the case of price chasing and Respondent No.7/Agritech even admitted that they follow the price set by the large market shareholders despite of its fundamentals odd to other UMCs with different operational and financial fundamentals of production. It is pertinent to note that the UMCs were selling the urea earlier at lower price and by not chasing the price of larger UMCs, they had the suitable opportunity to capture more market share since they could be offering a "standardized product" at a better price. However, they simply let that opportunity go and repeatedly *acted against self-interest* and matched the price of other UMCs which proves another *plus factor*.

102. Usually in price parallelism, the Undertakings have a *conscious commitment to a common anti-competitive scheme* where they have provided *assurances of common action* and there exists a tacit agreement to *adopt a common plan*, and *a shared motive to conspire,* all of which are *plus factors* as explained above. Besides, the assurance of price chasing by others, opens door for *unilateral invitation to collude* as described in the European Guidelines discussed above and hence, such a behavior is restrictive of competition as well.

103. The Bench further notes that the uniform price announcement was disseminated by UMCs along with FMPAC, a trade association representing fertilizer manufacturers. It

is a settled principle in competition law that trade associations are established to serve as representative bodies for their respective sectors, not as vehicles for coordinating commercially sensitive decisions of its member undertakings. Matters such as pricing, output, and market allocation lie squarely within the domain of individual undertakings and not that of trade associations. Any involvement by a trade association in facilitating or endorsing similar pricing decisions of its member undertakings constitutes a violation of Section 4 of the 2010 Act.

104. In this case, the participation of FMPAC in issuing a uniform price announcement, bearing the logos of all UMCs, cannot be treated as a passive act of communication. Rather, it served as a central platform through which coordinated pricing was formalised and presented to the consumers. This use of a common trade body to publicly disseminate a fixed price represents an additional plus factor, reinforcing the inference of concerted practice. Unlike simultaneous but independent price announcements by individual undertakings, a single coordinated publication through a trade association excludes the possibility of independent decision-making and points instead to collective intent and execution. Such conduct, therefore, falls afoul of the prohibitions under the 2010 Act.

105. The Commission in its earlier order ***In the Matter of Show Cause Notice issued to Institute of Chartered Accountants of Pakistan*** **2009 CLD 638** while relying upon ***Architects' Association EU Commission's Decision*** **24 June, 2004** held as follows:

> *"As a preliminary, it is settled case law that the fixing of a price, even one which merely constitutes a target or recommendation, affects competition because it enables all participants to predict with a reasonable degree of certainty what the pricing policy pursued by their competitors will be, especially if the provisions on target prices are backed up by the possibility of inspections and penalties.*
>
> *The Court of Justice has also held that, even though fixed prices might not have been observed in practice, the decisions fixing them had the object of restricting competition."*

106. The Bench further notes that the fertilizer market is highly concentrated, with a handful of players that control and manage production, supply and pricing decisions, making it more prone to collusion. The case of ***Todd*** ***v. Exxon Corp., 275 F.3d 191, 208 (2d Cir.***

2001) highlighted that such markets are more susceptible to anticompetitive behavior. Additionally, the significant barriers to entry, such as high capital costs and regulatory hurdles, shield existing firms from competition, further encouraging collusion. The demand for fertilizers like urea is inelastic, as they are essential for agricultural activities, meaning that price increases do not lead to significant reductions either in its demand or consumption. This condition is conducive to cartel formation, as noted in ***United States v. Alcoa, Inc., No. CIV. A.2000–954 (RMU, 2001 WL 1335698 at 12 (D.D.C. June 21, 2001)***. The standardized nature of the product also simplifies price coordination among competitors, as emphasized in ***In re High Fructose Corn Syrup Antitrust Litigation*, 295 F.3d 651, 657 (7th Cir. 2002)**.

107. Issuance of an advertisement with defined MRP implies that FMPAC served as a platform for information exchange, enabling coordination on pricing among competitors. Rather than advancing legitimate objectives such as equitable supply or addressing distribution concerns, the association facilitated a form of public signaling that reinforced alignment on pricing strategy. Public messaging through coordinated advertisements also played a key role in signaling pricing intentions among manufacturers. Such coordinated public messaging can serve as a mechanism for conveying pricing intentions and expectations among competitors, thereby reducing uncertainty and fostering an anti-competitive environment. ***In re Coordinated Pretrial Proc. in Petroleum Prods. Antitrust Litigation 906 F.2d 432, 446–47 (9th Cir. 1990).*** it was affirmed that public price announcements facilitate collusion by signaling intentions. Furthermore, the aggregation of sensitive data, such as production and pricing details, allows competitors to monitor adherence to agreed-upon prices.

108. In view of the foregoing analysis and evidence on record, the Bench finds that the totality of circumstances, taken together and not in isolation, leads to a compelling inference of collusion among the Respondents. The legal principle, as established in ***Continental Ore Co. v. Union Carbide & Carbon Corp., 370 U.S. 690, 699 (1962)***, mandates that such evidence must be assessed holistically, considering all circumstantial factors together rather than in isolation. In this case, the combination of parallel pricing, despite markedly divergent cost structures; the coordinated public announcement of a uniform MRP through a trade association; the role of FMPAC in centralizing and broadcasting this uniform price; the misalignment with economic

logic; and the lack of credible, market-based or cost-based justifications, together constitute strong circumstantial evidence of a concerted practice. This pattern of conduct is incompatible with the premise of independent decision-making and indicative of collusive behavior in contravention of Section 4 of the 2010 Act.

109. The issuance of the advertisement by FMPAC jointly branding and announcing the fixed price of PKR 1,768 per bag on behalf of Respondents No. 2 to 7, constitutes not merely a public communication but a "decision of an association of undertakings" on part of FMPAC and agreement *inter se* Respondents No.2 to 7, as defined under Section 4 of the 2010 Act. This collective act, arrived at through coordination, and supported by the "plus factors" set forth above, reflects an agreement whose object and effect is to restrict, distort, and ultimately suppress competition in the relevant market. It thereby falls squarely within the ambit of the prohibition contained in Section 4. Accordingly, the Bench concludes that the Respondents have engaged in anti-competitive conduct, in violation of section 4 of the 2010 Act, warranting appropriate enforcement action.

VI. Whether the parallel price increase in Granular Urea by FFBL Violates Section 4 of the Competition Act, 2010?

110. The Bench notes that Respondent No.4/FFBL is the sole manufacturer of granular urea among the Respondents. FFBL sets its prices based on the prices of prilled urea, which is produced by other UMCs. The consistent pricing alignment with prilled urea reveals that FFBL is not acting independently in determining the price of its unique product. The Enquiry Report also highlighted that granular urea is typically priced at Rs.20 more per bag than prilled urea and FFBL uses price of prilled as a base price to determine its price for granular urea. This fixed differential, maintained irrespective of input cost, market demand, or product characteristics, raises concerns about the independence of FFBL's pricing decisions.

111. The review of price revisions implies that FFBL does not determine its prices independently based on its unique market position, input costs, or consumer demand for granular urea, rather, it appears to follow the pricing lead of prilled urea producers, indicating a broader pattern of coordinated conduct. If granular and prilled urea serve different market segments, yet price difference between the two remain uniformly pegged without variation, it undermines competitive pricing logic. This supports the

SEAL OF THE COMPETITION COMMISSION OF PAKISTAN * ISLAMABAD *

view that market discipline including the price is neither competitive nor based on input cost fundamentals, rather managed through coordination, which violates the 2010 Act.

VII. Was the Commission bound to provide a gist of reasons in compliance with *Dalda case* and was it bound to provide an opportunity of hearing to the undertakings during the enquiry?

112. The Respondents have argued that the Commission acted in violation of *Competition Commission of Pakistan v. Dalda Foods Ltd.* **2023 SCMR 1991** (the ***Dalda case***) by not providing a "gist of reasons" to the Respondents before initiating the enquiry. The *Dalda case* requires the Commission to provide the undertakings with a gist of reasons when it initiates an enquiry and seeks information.

113. Firstly, the *Dalda Case* judgement came in September, 2023 after the Enquiry Report was concluded and it did not set aside any of the enquiries already concluded by the Commission. Secondly, *Dalda Case* established the requirement to provide the "gist of reasons" because in that case, information was being sought from the undertaking and the wisdom for this requirement is to provide the undertakings with the opportunity to formulate an appropriate response when asked for information for the purpose of an enquiry by the Commission. In the instant matter, the action was taken on the basis of public information where the advertisement with fixing the MRP by all UMCs was in itself a naked manifest of an implied agreement. Besides, the Enquiry Committee had duly corresponded with the federal and provincial governments to obtain necessary information to ascertain associated aspects of the directions and observations made in the periodic meetings of FRC. Likewise Enquiry Committee also sought related information on input cost particularly gas allocation and gas pricing for each UMC.

114. The *Dalda Case* acknowledges that the Commission is entitled to even dispense with the enquiry altogether if the Commission is satisfied with the information available with it. There is no mandatory legal requirement for the Commission to obtain information and explanation from the undertakings during the enquiry. However, the undertakings reserve the right to defend themselves in the proceedings including through response to the SCNs and also during the hearings held at the Commission. Where needed, the Commission also sought further information and clarification from the Respondents in view of their certain arguments made during the proceedings. In the instant matter, the

Commission thus had sufficient and corroborative information from relevant forums and other stakeholders to proceed with the matter.

DECISION

115. Considering all the circumstances and evidence, it is clear that the Respondents engaged in anti-competitive behavior by publishing an advertisement announcing a uniform price for urea fertilizer through FMPAC, in violation of section 4 of the 2010 Act. The parallel price increases over time coupled with the advertisement, are clear evidence of coordinated action among the Respondents. The Respondents' arguments, including that the price increases were independent or in response to the market conditions, are hereby rejected by the Bench. Additionally, the failure to address supply issues, despite FRC's directives, highlights "plus factors" supporting tacit collusion among the Respondent UMCs. In view of the foregoing, the Bench holds that the Respondents have acted in contravention of Section 4 of the 2010 Act by entering into an agreement and/or engaging in a concerted practice to fix the price of urea fertilizer. Moreover, Respondents' conduct substantially restricted competition in the relevant market, resulting in adverse effects on the economy, farmers and end consumers. Accordingly, the Commission determines that the Respondents are liable for violation of Section 4 of the 2010 Act and decides to impose penalties as prescribed under the 2010 Act.

PENALTY/DIRECTIONS

116. The Bench, while determining the quantum of penalty, has duly considered Guidelines on Imposition of Financial Penalties. These Guidelines state that policy objective of any fine is to create deterrence as well as to reflect seriousness of the infringement. Moreover, the quantum of penalty depends upon the seriousness of the infringement, duration thereof, aggravating or mitigating factors etc. The anti-competitive conduct in the fertilizer sector effects the whole economy and is exploitation of farmer and consumers in Pakistan. The Government intention to provide subsidy in the form of cheap gas to the UMCs was to provide fertiliser at competitive prices to the farmers. Fertilizer is used in every crop used either for human consumption or for agriculture products used as raw material for the industries. It impacts the competitiveness of country for potential exports in the highly competitive international market. Therefore, considering the seriousness, broad economic impact, and duration of the violation, the

Bench hereby determines the penalty to be imposed on the Respondents to deter against similar conduct in the future.

117. The Bench, having carefully considered the findings of the Enquiry Report, the responses, arguments and other submissions made by the Respondents, finds that the Respondents have acted in contravention of the Section 4 of the 2010 Act by entering into an agreement and/or engaging in an evident concerted practice to fix the price of urea fertilizer and publish it in newspapers.

118. The Bench hereby imposes a penalty in the sum of PKR 50,000,000/- (Rupees Fifty Million only) each of the Respondent Nos. 2 to 7. As the Respondent No.4/FFBL has now merged into the Respondent No.3/FFCL, therefore, the Respondent No.3/FFCL will also be responsible to pay the penalty imposed upon the Respondent No.4/FFBL.

119. In addition to the above, the Bench imposes a penalty of PKR 75,000,000/- (Rupees Seventy Five Million Only) on the Respondent No.1/FMPAC for letting its platform used for a coordinated uniform price in the relevant market, in contravention to the provisions of the 2010 Act.

120. The Respondents are also hereby directed to restore and ensure the deregulated market dynamics in accordance with Fertilizer Policy 2001 and desist from such concerted practices of uniform price fixation despite of established different operational and financial dynamics, particularly the input costs.

121. The Respondents should deposit the penalty amount within thirty (30) days from date of this Order. Failure to comply shall render each Respondent individually liable to a further penalty of PKR 100,000/- (Rupees One Hundred Thousand only) per day from date of issuance of this Order and initiation of criminal proceedings against each Respondent pursuant to Section 38 of the 2010 Act.

122. In the above terms, the above referred SCNs are hereby disposed of.

123. It is so ordered.

(Dr Kabir Ahmed Sidhu)
Chairman

(Salman Aslam)
Member

ISLAMABAD, THE 2nd OF JUNE, 2025.