



BEFORE THE
COMPETITION COMMISSION OF PAKISTAN

IN THE MATTER OF
SHOW CAUSE NOTICE ISSUED TO

M/S DAIRY & CATTLE FARMERS ASSOCIATION KARACHI (DCFA)
M/S DAIRY FARMERS ASSOCIATION KARACHI (DFAK)
M/S KARACHI DAIRY FARMERS ASSOCIATION (KDFA)

FOR INCREASE IN PRICES OF MILK IN KARACHI

(File No. 360/Milk-Karachi/C&TA/CCP/2021)

Date(s) of Hearing: 15.07.2021
10.09.2021
04.11.2021
14.11.2023
15.11.2023

Bench:

Dr. Kabir Ahmed Sidhu
Chairman

Mr. Abdul Rashid Sheikh
Member (C&TA)

Present on behalf
of the Respondents:



DCFA

DFAK

KDFA

Mr. Ghazi Khan
Advocate High Court
Mr. Fawaz Khan Advocate
Mr. Tayyab Malik
Advocate High Court
Mr. Sikandar Nagori

ORDER

1. This order shall dispose of the proceedings initiated by the Competition Commission of Pakistan (hereinafter the **Commission**) pursuant to the Show Cause Notices No. 27/2021, 28/2021 and 29/2021 dated 30.06.2021 (hereinafter the **SCNs**).
2. The SCNs issued to the undertakings listed below, for *prima facie* violation of Section 4 of the Competition Act 2010 (hereinafter the **2010 Act**):
 - (a) M/s Dairy & Cattle Farmers Association Karachi (hereinafter **DCFA** or the **Respondent No. 1**);
 - (b) M/s Dairy Farmer Association Karachi (hereinafter **DFAK** or the **Respondent No. 2**); and
 - (c) M/s Karachi Dairy Farmers Association (hereinafter **KDFA** or the **Respondent No. 3**)(collectively, referred to as **the Respondents** or **Respondent Associations**).

BACKGROUND FACTS

3. On 10.07.2020, the Commission observed multiple articles in various newspapers reporting hike in milk price on behalf of various associations in Karachi. Subsequently, media sources also confirmed that milk is being sold at Rs. 120 per liter.
4. On 20.07.2020, the Commission received correspondence from the Consumers Association of Pakistan (CAP), stating that Mr. Shakir Umer Gujjar, representing DCFA, announced a milk price hike to Rs. 120, contrary to the rates established by the Commissioner Karachi.
5. Number of videos were brought to the attention of the Commission, which indicated that Shakir Umar Gujjar, president of DCFAK is announcing the increase in price, in congregation among other dairy farmers.
6. The respondent associations mentioned in 2 (b) and 2 (c) also increased the prices simultaneously.

7. Based on the aforementioned information, the Commission found *prima facie* evidence indicated that Respondent Associations are involved in setting fresh milk prices in Karachi and nearby regions. The evidences indicated collusive practices among the participants in the local dairy market and hence prompting the need for further investigation.

ENQUIRY REPORT AND SCN

8. On 30.07.2020, the Commission authorized an Enquiry Committee (hereinafter **the Committee**) to investigate alleged violations of Section 4 of the Act by Karachi based dairy farmers. The Committee recorded statements from various stake holders, gathered further evidences and video footages and concluded its Enquiry Report (hereinafter **the Report**) on June 11.06.2021, in following terms:

“118. Based on findings of the paragraph 43-113 [of the Report], the [following] associations are involved in *prima facie* fixation of prices in the relevant market which is a violation of Section 4(1) read with Section 4(2)(a) of the Act:

- (a) Dairy Farmers Association Karachi
(b) Karachi Dairy Farmers Association
(c) Dairy & Cattle Farmers Association Karachi.”

9. The Report concluded that collusion by the Respondent Associations at different levels of the supply chain of fresh milk has resulted in an increase in the prices of fresh milk.
10. Milk is an essential commodity. Under Sindh Essential Commodities Price Control and Prevention of Profiteering and Hoarding Act, 2005 (hereinafter **the 2005 Act**), Commissioner Karachi was responsible for setting the milk prices.
11. This aforementioned collusion by the Respondent Associations in setting prices could potentially impact competition as well as exploitation of consumers and warranted to initiate proceedings under Section 30 of the 2010 Act.

HEARINGS AND SUBMISSIONS

Pursuant to Section 30 of the 2010 Act, the Commission initiated proceedings by issuing Show Cause Notices (SCNs) to the Respondent Associations, whereby they were



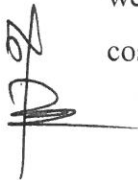
instructed to attend hearings and provide written responses. The hearings were conducted on 15.07.2021, 10.09.2021, 04.11.2021, 14.11.2023 and 15.11.2023.

A. Respondent No. 1 – Dairy and Cattle Farmers Association (DCFA)

The Counsel representing, DCFA and Mr. Shakir Umer Gujjar, raised various objections to the SCN which are summarized below:

13. The counsel cited Article 18 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter the **Constitution**), which protects the Respondent's fundamental right to freedom of trade, business, or profession. He also cited Article 25 of the Constitution, which ensures equal protection of the law to all citizens. When the State imposes reasonable restrictions that violate a citizen's fundamental right, it must provide evidence justifying these restrictions. If the restrictions are arbitrary or excessive, the court must strike down the regulations.

14. Based on the above, it was argued that the price limits set by the Commissioner Karachi were too low and unreasonable, especially considering inflation and pandemic-related costs. In addition, it was asserted that:



(a) the parallel price increase by other market participants, such as farmers, suppliers, and retailers was a result of increased input costs rather than collusive practices facilitated by them;



(b) negating the alleged collusion due to parallel behavior, the counsel emphasized the lack of "plus factors"¹ and proof of coordinated practices;



the data on production costs, indicated a significant increase over the years, which justified higher milk prices by milk producers;

¹ The Commission notes that the 'Plus factor' in competition law refers to additional evidence supporting collusion beyond parallel conduct, strengthening anticompetitive behavior allegations. However, plus factors are not necessary when direct evidence of collusion is present in competition law cases.

(d) as an essential commodity, the dairy market is regulated. Despite that the Commissioner Karachi has been vested with the authority to set prices; he had failed to revise prices for three consecutive years.


15. Discrepancies in milk prices between districts were highlighted and it was argued since the neighboring districts had higher prices, it was impractical for Karachi dairy farmers to adhere to substantially lower prices. The Association's efforts to address dairy farmers' challenges through correspondence with government officials were also emphasized.

16. There was no evidence showing concurrence of will or meeting of minds regarding price fixation by different dairy farmers, nor were such prices adopted by other dairy farmers. Therefore, the facts did not establish the existence of a so-called cartel or violation of Section 4(1) and Section 4(2)(a) of the Act.

17. The Counsel for the Respondent No.1 also informed the Commission that Mr. Shakir Umer Gujjar is himself retailing five thousand (5,000) liters of milk per day, including two thousand (2,000) liters from his own farm.


B. Respondent No. 2 – Dairy Farmers Association Karachi (DFAK)

18. The Counsel representing, DFAK and Mr. Haji Akhtar Gujjar, responded to the SCN, and attended hearings.


19. He claimed that DFAK was a welfare association unrelated to the alleged price increase and is, therefore, incorrectly implicated in the instant proceedings.

20. He also stated that there is no evidence, like videos or official notices, connecting DFAK to any agreement or decision to raise prices together. Additionally, he argued that DFAK is not involved in producing or selling milk, though his family members produce and sell cattle feed.


Finally, he asserted that DFAK is not engaged in the production, supply and distribution of fresh milk, hence, it cannot not be considered an undertaking under clause (q) of section 2(1) of the Act.



C. *Respondent No. 3 – Karachi Dairy Farmers Association (Haji Sikandar Nagori)*

22. KDFA, represented by Mr. Haji Sikandar Nagori, did not provide any written reply to the SCN, however, attended the hearing and made the following submissions.
23. The increase in milk prices in Karachi is due to similar production costs, including cost of buffalo, feed and water charges.
24. The Commissioner Karachi's in-action in failing to give an upward price revisions/adjustments for fresh milk has led to price increase by the Respondent Association.
25. His entire family, including sons and brothers, collectively owned 1500 cattle with an average of 200 cattle per person, resulting in approximate milk yield of 12,000 liters.
26. As to his conduct of following Mr. Shakir Umer Gujjar's prices, he indicated that they primarily follow Mr. Haji Akhtar Gujjar. Regarding membership of the association, he stated that the association has been non-functional and comprised only of himself.


ISSUES AND ANALYSIS

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- I. Whether the Respondent Associations are undertakings under Section 2(1)(q) of the Act?
- II. Whether the Respondent Associations have contravened Section 4(1) and Section 4(2)(a) of the Act?
- III. Whether failure of Commissioner Karachi legally enabled the Respondent Associations to assume the role of the price-setter collectively?

ISSUE - I

Section 2(1)(q) of the Act defines 'undertaking' as:

"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;

28. The Commission, in its order dated 13.12.2019, **In the matter of Show Cause Notice issued to M/s Pakistan Flour Mills Association**, reported as **2020 CLD 433**, has clarified distinction between an association and association of undertakings as follows:

“29. [...] the legislature has used the word ‘association’ in Section 2(1)(q) of the [2010] Act, however, at the same time in the same clause the legislature in all his wisdom has also used the word ‘association of undertakings’ independent of the earlier use.

34. the association can be a natural or legal person for social cause and economic purpose, however, for an association to be an ‘undertaking’, it must be performing economic functions i.e., it is engaged in provision of goods and services.

Whereas for an ‘association of undertaking’ the legislature has not prescribed any condition, rather, plain and ordinary language of the afore-referred provisions unambiguously provides that it should be the association of ‘undertaking’ i.e., where members are ‘undertaking’ within the meaning of Section 2(1)(q) of the [2010] Act, it will deem to be an association of undertakings.”

29. With regard to the membership of the association of undertakings, the Commission, **In the matter of Show Cause Notices Issued to Pakistan Automobile Manufacturers Authorized Dealers Association (PAMADA) and its Member Undertakings**, reported as **2016 CLD 289**, has clarified that:

“19. ...the Commission is not concerned with the legal formalities of an organization, or association thereof, but rather its de facto nature and the de facto actions being carried out by it.

20. [Moreover] the question of formal membership for the purpose of violations under the Act is irrelevant. The Act refers to association of undertakings, which as per our understanding is a gathering of undertakings for a common purpose, whether it is structured as a society, alliance, forum or similar. So as long as undertakings group together for common purpose [whether by consent or conduct] they are for all practical purposes members of an association.”



30. In light of the foregoing, formal membership of an association of undertakings is not required for the application of the 2010 Act. Agreements, understandings, or acquiescence to decisions of an association of undertakings that aim to restrict free market competition shall fall within the ambit of Section 2(1)(b) read with Section 4 of the 2010 Act. Emphasis is placed on the substance of the arrangement and its effect on competition, rather than formal membership of an association of undertakings.
31. The bench finds that the definition of undertaking and association of undertakings provided above is clear. An association of undertakings howsoever established and whether or not it has formal membership, will fall within the ambit of Section 2(1) (q) of the 2010 Act even without being directly involved in economic activities.

ISSUE – II

32. Before examining the alleged violations of Section 4 of the 2010 Act, the bench finds it appropriate to first analyze the relevant market structure of the fresh milk in Karachi, and then the role of the association in setting up the milk prices.

Structure of the Fresh Milk Market

33. The fresh milk industry in Karachi features a diverse market structure and complicated vertical relationships. This includes small-scale dairy farmers and large undertakings engaged in the business of production, storage, and sale of fresh milk. In fresh milk market, dairy farmers rear cattle and buffaloes to produce fresh milk. Besides processed milk, fresh milk is supplied by large corporations after pasteurization, homogenization, and packaging. Distribution occurs through various channels, including supermarkets. Most consumers obtain fresh milk from retail outlets and traditional delivery systems.
34. The supply chain consists of producers, wholesalers, and retailers ensuring that milk travels from dairy farm to consumers. This vertically integrated structure encompasses several key stages, beginning with production on dairy farms, followed by collection by the wholesalers and then sold to retailer where the milk is made available to consumers.
35. The costs associated with producing fresh milk are expenses for animal feed, veterinary care, labor, and transportation of milk to processing facilities. Additionally, there are costs for equipment maintenance, packaging materials, and adherence to quality and safety



regulations. Ancillary expenses include utilities such as electricity and water for milking operations, as well as overhead costs for administrative functions. According to Para 18 of the ER, milk in Karachi is produced within peri-urban production systems, with the main supplies originating from various cattle colonies located on the city's outskirts.

36. The primary colonies are:

(a) **Cattle Colony/Bhains Colony Karachi:** This colony spans 300 acres and houses approximately 350,000 animals, kept in sheds accommodating between 25 to 500 animals each. About 90 percent of the animals in the colony are buffaloes, with the remaining 10 percent comprising cows and other animals. The colony's total daily milk production is approximately 3.2 million liters.

(b) **Other Colonies:** Other cattle colonies, include Nagori Cattle Colony, Al-Momin Cattle Colony, Surjani Cattle Colony, and Bilal Cattle Colony. Together, these colonies are estimated to have a cattle population of 400,000 animals, resulting in a daily production of approximately 3.2 million liters of milk².

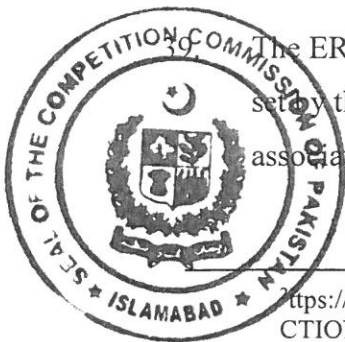
37. Para 19 of the Report notes that the population of Karachi is approximately 16.093 million people, and the estimated daily demand for milk ranges from 5 to 7 million liters³. Milk demand in Karachi, as in other parts of Pakistan, follows a seasonal pattern, with peak demand occurring during the summer months and decreasing during the winter.

38. It is also observed that on an average approximately PKR 78 crore (PKR Seven Hundred and Eighty Million) worth of fresh milk is being sold and consumed in Karachi per day at the time of this inquiry, with the current figure likely to be significantly higher.

The ER in paras 60 – 72 also indicates that the individuals cannot deviate from the prices set by the dairy farmers associations. The aforementioned paragraphs highlights how few associations collude at different levels of supply chain and manipulate the milk prices.

https://www.researchgate.net/publication/322083853_ECONOMIC_ANALYSIS_OF_MILK_PRODUCTION_IN_DIFFERENT_CATTLE_COLONIES_OF_KARACHI

³ <https://www.thenews.com.pk/print/639051-milk-demand-declines-50pc-amid-lockdown>



40. As per the statements recorded by the Enquiry Committee, and para 53 of the Report, both wholesalers and retailers are bound to follow the rates fixed by the Respondent Associations. The wholesaler cannot afford to go against the rates set by the Respondent Associations, as the latter will stop the milk supply to them. Similarly, if retailers refuse to purchase milk at the rate given then they are threatened by the wholesalers to stop their supply of milk. Moreover, these Associations also create an artificial shortage of milk by hoarding it in ice factories and then selling that milk in interior Sindh.
41. Despite these findings of the Report in para above, the bench is not fully convinced of the element of coercion since no compelling evidence was place on the record to substantiate the findings. Respondent No. 3, however, admitted during the hearing that they primarily follow Mr. Haji Akhtar Gujjar.
42. It can be seen that the Respondent Associations, directly or indirectly, at different stages, exercise significant influence on the fresh milk market supply chain. The evidence of significant influence and setting prices is proven from the videos and press conferences reported in paras 92-113 of the Report. Price data from PBS confirms that prices of milk in Karachi rose from Rs.108 in June 2020 to Rs. 120 in July 2020 which shows that the increases announced by the associations were implemented. These rate announcements by the association are found to be in *prima facie* violation of Section 4 of the Act.

Role of the Respondent Associations in Setting Prices

43. The legitimate role of any association is to serve as a link between the traders and the government by representing their interest and assisting in favorable policy formulation and its implementation. It plays a pivotal role in standardization, supporting growth and development of particular sector and benefit to the public in the longer run.

44. With regard to legitimate functions of an association of undertakings, the bench notes that In the Matter of Show Cause Notice issued to M/s. Pakistan Poultry Association, reported as 2011 CLD 42, the Commission has stated that:

45. We believe that trade associations can play an important role in the development of the sector they represent. The Commission has already observed in its ICAP final order that most important aim of association




is to develop consensus amongst its members regarding public policies that affect the sector. Associations also engage in activities that increase awareness of standards and technologies in the industry. At other times, associations may also serve as a platform to share useful information about the sector such as historical pricing data. Such activities are beneficial since they promote competition and competitiveness.

96. However, associations must also be extremely careful about what sort of activities may violate competition law. Discussion, deliberation, and decisions regarding purely business concerns like current and future pricing, production and marketing are anti-competitive and should be avoided at all costs by the associations. Associations have a responsibility to ensure that their forum is not used a platform for collusive activities. The rule of thumb is not to allow discussion, deliberations or sharing of sensitive commercial information that may allow members, who are competitors, to co-ordinate business policy. Ensuring that every, or even one, member has a profitable business is not the job of an association."

45. Regardless of their social, welfare or economic character, the associations can also contribute to standardization, self-regulation, and market research. To maintain credibility, associations must operate transparently and within legal boundaries, avoiding to engage in price setting process.


ANALYSIS

46. After carefully examining the evidence, the bench concludes that the Respondents have the ability to influence fresh milk prices in Karachi. Video evidence and testimonies support the claim that the Respondent Association exert substantial influence over *bandhi* rate, mandi rates, wholesale rate and in turn retail prices of the milk.

-  47. The exercise of the above control as well as the evidence of coordination among the Respondents Association is glaringly obvious.

48. The Bench notes that had other parties not adhered to the prices set by the Respondents, there would have been some price competition among the milk producers and retailers operating across various districts of Karachi. This suggests that the Respondents actions effectively suppressed natural equilibrium in the absence of Commissioner Karachi's price setting role and hindered the emergence of competition among dairy farmers.



49. In view of the above, the bench concludes that the Respondents have colluded on pricing mechanism of the sale of fresh milk which is a contravention of Section 4(1) and 4(2)(a) of the 2010 Act.

ISSUE - III

50. During the proceedings, the Commissioner Karachi's role in dairy market was highlighted, in terms of setting prices pursuant to Sindh Essential Commodities Price Control and Prevention of Profiteering and Hoarding Act, 2005 (hereinafter **the Essential Commodities 2005 Act**).

51. The Respondents also argued that their input costs increased significantly during the relevant period however, the Commissioner Karachi failed to adjust prices to reflect inflationary pressures despite multiple appeals. Consequently, the dairy farmer associations had no other option available but to raise prices and other dairy farmers followed suit.

52. The Bench is of the opinion that despite failure of Commissioner Karachi to fix the prices in alignment with inflationary pressures under the Act, in normal market settings, each dairy farmer would have fixed its own prices taking in account demand and supply, costs incurred and economies of scale in case of bigger dairy farmers. Contrary to this, the videographic evidence indicates that Respondent association colluded, coordinated and congregated a crowd of farmers before manipulating the milk prices.

53. The Bench placed heavy reliance upon the videographic evidence showing key representatives of the Associations announcing prices for fresh milk which highlights direct involvement by the Associations in price setting mechanism. This indicates manipulation of market dynamics to profit and exploit consumers.

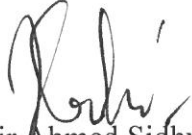
54. The bench further notes that no legal or regulatory framework should be manipulated to hinder competition or harm consumers. Associations are obligated to adhere to competition law. In case of uncertainty, they are encouraged to seek guidance from the Commission. Any attempt to misuse regulations to conceal anti-competitive behavior to undermine market mechanism may constitute violation of the 2010 Act.

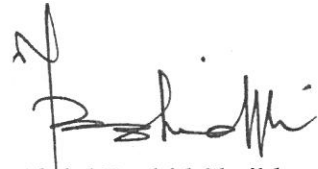


REMEDIES/PENALTIES

55. Having reviewed the video evidence and documentation presented, the bench determines that representatives of the Respondent Associations have engaged in anticompetitive activities by making decisions that set the prices of fresh milk in Karachi, in violation of Section 4(1) read with Section 4(2)(a) of the 2010 Act.
56. The bench, however, in levying penalties, has taken in account the failure of administrative role by Commissioner Karachi, envisaged under the 2005 Act. Therefore, the bench is inclined to take a lenient view by levying following penalties on each Respondents:
- Mr. Shakir Umer Gujjar of DCFA is imposed a financial penalty in the amount of Rs. 1,000,000/- (Rupees one million only).
 - Mr. Haji Akhtar Gujjar of DFAK is imposed a financial penalty in the amount of Rs. 500,000/- (Rupees five hundred thousand only).
 - Mr. Haji Sikandar Nagori of KDFA is imposed a financial penalty in the amount of Rs. 500,000/- (Rupees five hundred thousand only).
57. The Respondent Associations are also directed to submit a written commitment to the Registrar of the Commission within forty five (45) days from the date of issuance of this order, that they will refrain from engaging in any form of market abuse, manipulation and any other anticompetitive practices prohibited under the 2010 Act.
58. If any of the Respondent(s) fails to comply with the directions given above within 30 days and continue to contravene the 2010 Act in any manner in whatsoever capacity, an additional penalty of Rs. 5,000 (Rupees five thousand only) per day, from the date of passing this order will become payable.

59. It is so ordered.


Dr. Kabir Ahmed Sidhu
(Chairman)


Mr. Abdul Rashid Sheikh
(Member)



MAHABAD THE 19th DAY OF DECEMBER 2024
