COMPETITION COMMISSION OF PAKISTAN

ENQUIRY REPORT

ON

COLLUSIVE PRACTICES IN THE SUGAR INDUSTRY

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FACTS/BACKGROUND

1. Pakistan Sugar Mills Association (PSMA) is an association of sugar mills registered under the Companies Ordinance 1984 with its head office at 24-Mezzanine Floor, Rahid Plaza, Blue Area, Islamabad. PSMA is also licensed under the Trade Organization Ordinance, 2007.

2. PSMA has 81 active members, as per its own statement before the Supreme Court of Pakistan on 1 October 2009. The number varies from time to time due to the annual registration required of the member undertakings by the association.

3. PSMA is divided into three zones in the country i.e. PSMA Punjab Zone (PSMA PZ), PSMA NWFP Zone (PSMA NWFP) and PSMA Sindh Zone (PSMA SZ). Each zone has its own managing committee headed by a chairman. The secretariat of each zone is managed by a Secretary. At the Centre, there is a Central Executive Committee headed by a Chairman with members drawing from each zone. The central secretariat is managed by a Secretary General.

4. The search and inspection of the PSMA offices at Islamabad, Lahore and Karachi was authorized by the Competition Commission of Pakistan (the 'Commission) on the basis of news item appearing in the daily 'Business Recorder' dated 11.09.2009 reporting that PSMA had asked its Member Undertakings to release 1.2 million tons sugar stock to retire State Bank of Pakistan loans. The said item, *inter alia*, also reported that sugar mills had currently stocks of 1.2 million tons but were not releasing sugar in the aftermath of the decision of the Honourable Lahore High Court to ensure ex-mill price at Rs. 36/kg. Although, it was also stated therein that after the announcement of the Prime Minister the Sugar Mills had '*started releasing their stock to retire SBP loan*' and '*get advances from banks for crushing season 2009-10*'; the above mentioned news item persuasively indicated that the decisions by PSMA in this regard and the collective/collusive behavioral pattern of the sugar mills may entail violation of provisions of sections 3 and 4 of the Ordinance.

5. The Commission in view of a *prima facie* collective withholding of supplies and collective increase in price - which came across as collective tactics adopted by economic agents seeming to have the object or effect of preventing, restricting or reducing competition, deemed it proper to verify and substantiate such position, through search and inspection under Section 34 of the Competition Ordinance, 2007 (the 'Ordinance'). Accordingly, inspections of the three offices of PSMA in Islamabad, Lahore and Karachi were duly authorized and carried out. During these inspections various documents including valuable information was seized and impounded by the authorized officers of Commission.

6. The Commission appointed and entrusted the undersigned enquiry officers to examine objectively all material/documents impounded or collected during search of PSMA offices to determine whether any violation of Section 3 or Section 4 of the Ordinance has been committed. In this regard, we have been directed to prepare an enquiry report under Section 37 of the Ordinance within eight weeks positively, based on examination of the material collected from search and inspection of PSMA offices. Pending the preparation of final enquiry report, we were directed to submit a preliminary report, at the earliest but no later then September 30, 2009 which was duly submitted and subsequently finalized in terms of this enquiry report.

SUMMARY OF FINDINGS

7. The perusal of the documents, *prima facie,* indicates extensive institutionalization of collusive behavior in the refined sugar industry. The collusive behavior appears so extensive that the forum of the collusion i.e. the PSMA can no longer be called just a representative of the sugar mills but it seems to be functioning as a business decision making body for the latter. The association, by the approval of its members, has, *prima facie*, exceeded mandate that an association normally enjoys and it has almost morphed into an equivalent of the business 'trusts' of the United States back in the late 19th century.

8. It appears, that the sugar mills under the flag of PSMA are, *prima facie*, engaged in setting sugar cane price, territorial division for sugar cane procurement, bid rigging in TCP tenders, establishing entry barriers by advocating restrictions on the opening of new mills, setting sugar prices by making estimates and indulging in collective targeted/desired price negotiation.

9. PSMA and its members, *prima facie*, are in a serious and continuous violation of Section 4(1) of the Ordinance.

RELEVANT MARKET

PRODUCT MARKET- 'REFINED SUGAR'

10. This case concerns the violation of Section 4(1) of the Ordinance. According to the section, a prohibited agreement, *inter alia*, has the object or effect of reducing, restricting and prohibiting competition in the 'relevant market'. A determination of the relevant market, therefore, needs to be made. As per the definition of relevant market in Section 1(k) of the Ordinance, a relevant market comprises a product market and a geographic market.

11. A product market consists of all the products that are regarded by the consumer as interchangeable or substitutable due to characters, usage and prices. We believe that the product market in this is the refined sugar made from crushing sugarcane. Due to its intended usage, refined sugar can be differentiated from other forms of sugar – natural and unrefined. Most of the refined sugar is used in the commercial food and beverage industry as an input for value added sugar products. These consumers of refined sugar cannot substitute unrefined sugars as the latter are unsuitable for use in processed or confectionary items. Given the changing consumption patterns and needs, even domestic consumers, including those in the rural areas, rely more and more upon refined sugar to meet their dietary needs. Therefore, the relevant product market is that of refined sugar.

GEOGRAPHIC MARKET

12. A geographic market comprises all the areas where the conditions of competition are homogenous. Given that the domestically produced bulk of refined sugar is supplied and consumed in within the provinces and territories of Pakistan and that the economic conditions for competition and the regulatory environment for all sugar mills are homogenous in the whole of Pakistan, so the territory of Pakistan is considered as a relevant geographic market. The relevant market, hence, is that of the refined sugar in Pakistan.

PSMA'S MANDATE

13. Under the Memorandum of the PSMA, the association lists a number of reasons for its own establishment. Firstly, it aims to promote and facilitate good accord and unity amongst mill owners on common grounds. PSMA also looks to attain uniform action amongst sugar mills to tackle problems facing the industry. It is also a stated representative organization for every sugar mill in the country. As the representative body for the sugar mills, the association represents all of its members in dealings with the Government—at every level—and regulatory authorities. This includes entering in to agreements with the Government, where the association deems it beneficial to its members.

14. The association also aims to 'regulate conditions of employment' within the industry, while also promoting charitable efforts for their employees, and for the general good. Additionally, PSMA looks to collect and compile information and statistics pertaining to the sugar industry, using this 'to advance and promote commercial and technical education' in the industry. Finally, the association also promotes the sugar mill owners financial interests, facilitates industrial procurement needs, aids smooth interaction between members, and supports members with legitimate legal grievances.

COLLUSION IN SUGARCANE PROCUREMENT – BUYER'S CARTEL IN FIXING OF PRICE AND TERRITORIAL ALLOCATION

15. To begin with there is ample documentation that shows the existence of a buyers' cartel in the industry. In other words the millers seem to have joined hands to develop a collective policy of buying sugarcane from the farmers

wherein territorial and pricing restriction have been placed on sugar cane purchase. According to the information gathered from such documents, PSMA Punjab ones has been sub-divided into five regions. Each of these regions has a coordinator who is responsible for calling meetings comprising all mills in that particular region and monitoring decisions taken in such meetings.

16. As per documents it appears that in Punjab, PSMA Punjab Zone first decides a base price of the sugar cane in the province. Then each regional committee meets regularly to determine the maximum price of various sugarcane varieties in its region along with the deductions to be made on certain 'unapproved' varieties.

17. Apart from setting the base price, PSMA Punjab Zone has also fixed an exclusive buying zone for each mill comprising a radius of 15km from each mill. No one apart from that particular mill can buy sugarcane from those regions. Any violation of this exclusive zone by a fellow member mill is adjudicated by the PSMA Punjab Zone or a regional committee.

18. To support the above contentions the following documents are relied upon:

    a. Minutes of Regional Meeting held on 28 January 2008 at Kashmir Sugar Mills Shorkot to '*discuss and finalize the Cane rates and other allied matters*.' The meeting was attended by Kashmir Sugar Mills, Kamalia Sugar Mills, Haq Bahu Sugar Mills, Shakarganj Sugar Mills, Chaudhry Sugar Mills and Tandianwala Sugar Mills. According to the minutes, the participants were told that the '*objective for convening this meeting was to reduce the sugar cane price due to following major factors: i) low recovery varieties, ii) effect of frost on improved varieties which was causing fall in recovery, iii) Decline in price of sugar.'* The Minutes indicate that '*it was decided that price should be reduced*' and '*final decision will be made in the Regional Meeting which will be held on 31/01/2008 at Kamalia Sugar Mills.*' [**Annex A**]

    b. Minutes of the Meeting held on 28 January 2008 at Usmania Hotel Faisalabad to '*discuss and finalize the cane rates and other allied matters.*' The meeting was attended by Ramzan Sugar Mills, Pahrianwali Sugar Mills, Huda Sugar Mills, Hussain Sugar Mills, Shakarganj Sugar Mills, Chaudhry Sugar Mills, Madina Sugar Mills, Haseeb Waqas Sugar Mills and Crescent Sugar Mills. The meeting decided the sugarcane purchase rates and decided to implement them after the general meeting to be held on 31 January 2008. [**Annex B**]

c. Letter from Ikram-ul-Haq, Group Director, Ramzan Sugar Mill Limited dated September 10, 2008 to Chairman PSMA PZ and 7 Sugar Mills calling for a regional meeting on the 13 of the same month. According to the letter, the meeting was called to '*discuss and finalize the Sugarcane Procurement Policy and to discourage the non approved variety SPF-238.*' [**Annex C**]

d. Minutes of the Regional Meeting dated 13 September 2008 mentioned in paragraph 1 indicating that decisions were taken to make gradual deductions of 25-50 percent on unapproved varieties, to start the crushing season between 15-20 November as per PSMA's decision and not to have cane procurement activity within 15 km of each mill. [**Annex D**]

e. Letter from secretary PSMA Punjab Zone dated 29 November 2008 to all sugar mills in Punjab delineating zones A to E, setting coordinators for each zone and asking coordinators to organize regional meetings by 2 December 2008 as per the General Body's decision. [**Annex E**]

f. Letter titled '*Price War*' from Mohammad Naeem Khan, General Manager (Agri) Ramzan Sugar Mills to Deputy General Manager (Cane) of Madina Sugar Mills dated 13 January 2009 stating that cane staff of Madina Sugar Mills was violating the territorial divisions and purchasing cane from within 2-3 km of Ramzan Sugar Mill and asked for a meeting to overcome this problem. The letter was copied, among others, to Chairman PSMA Punjab Zone. [**Annex F**]

g. Letter from Secretary PSMA Punjab Zone dated January 17, 2009 to all sugar mills delineating zones A to E in Punjab, setting coordinators for each zone and asking them to organize meetings on January 19, 2008 to deliberate upon '*sugar cane prices having a benchmark of Rs. 90 per 40 kg as Mill's Gate price*' and to immediately report back the outcome to PSMA. [**Annex G]**

h. Letter from Secretary PSMA Punjab Zone dated January 19, 2009 to all member mills stating that mills have decided to '*implement gate rate at Rs. 90 and base rate for depot at Rs. 85 as well as TPT charges as per schedule i.e. 3.75 for first 10 miles plus paisa 14 for every subsequent mile.*' The letter asks all the mills to implement the above rates from 20 January 2009 at 0800 hours. [**Annex H**]

i. Letter from Project Director of Chaudhry Sugar Mills dated 20 January 2009 to Mr. Mian Rashid Sahib, Chairman Zonal Committee complaining that '*reference to the fax from Shakargang Mills dated 20-1-2009 regarding the decision of PSMA for the reduction of cane rate. We have implemented the decision of PSMA with effect from 20-1-2009 at 8:00 AM, while as Shakarganj Mills has not implemented it in our area.*' [**Annex I**]

j. Letter titled '*Violation of Cane Procurement Rates in Punjab Zone – A*' dated 21 January 2009 from Maqsood Anwar Qureshi General Manager Kamalia Sugar Mills Limited to Secretary PMSA Punjab Zone stating that as per the decisions made in the regional meeting on 19-01-09 Kamalia, Shakarganj and Channar Sugar Mills have implemented the decision whereas five other mills in the zone had not. The letter detailed the violations and asked PSMA to instruct them to not violate the 'agreement'. [**Annex J**]

k. Letter from Deputy General Manager (cane), Madina Sugar & Chemicals to Mr. Ikram-ul-Haq Group Director of Sharif Group dated 22 January 2009 stating that that many sugar mills were violating the decision of PSMA. [**Annex K]**

l. Minutes of Regional Meeting held on 27 January 2009 at Hotel Real Taste arranged by the management of Chaudhry Sugar Mills to '*decide the cane rates as per PSMA decision.*' Decisions taken that Chaudhry

Sugar Mills would not purchase sugar cane from Mr. Muhammad AShraf Wiglana Purchasing Centre in Wiglana Mouza District Jhang and the Shakarganj Mills would immediately close its Purchasing Centres at Murad Shah. The letter also carried a table of L.P rates to be applicable in the area. The meeting was attended by Shakarganj Mills, Ramzan Mills, Madina Mills, Tandianwala Mills, Chanar Sugar Mills, Gojra Sugar Mills, Crescent Sugar Mills, Hunza Sugar Mills, Kamalia Sugar Mills. [**Annex L**]

m. Letter from Secretary PSMA Punjab Zone dated 2 February 2009 to 38 sugar mills stating that '*it has been decided that mills will follow rates with effect from 0800 hours 3 February 2009 as under:- 1. Gate Rate Rs. 107 per 40 kg, 2. Depot Rate Rs. 100 per 40 kg.*' [**Annex M**]

n. Letter from Cane Commissioner Sindh dated 1 November 2007 to all sugar mills in Sindh stating that '*Government of Sindh had notified 1 October 2007 as date of crushing, but you did not start the sugar mill on the pretext that Pakistan Sugar Mills Association Sindh Zone had fixed 1 November as date of crushing.'* [**Annex N]**

o. Letter dated June 02, 2009 No. PSMA-Cir/065/2009 in which the sugar mills were instructed to take the following stance in a meeting with Cane Commissioner of Sindh '*In case sugarcane price for 2009-10 season is discussed in the meeting, please also advise your representative to strictly stick to the price of Rs. 101/40 Kg and not more than that, as Punjab has fixed the price @ Rs. 100/40 Kg.*

   The PSMA- Sindh Zonal Committee has already agreed with Secretary, Agriculture Department and Government of Sindh for Rs. 101/40 Kg only.
   Your representative may also agitate on the minutes of the sugarcane Control Board Meeting held on May 05, 2009 in which sugarcane price was written as Rs. 103/40 Kg.' [**Annex O**]

p. Letter addressed to the Chairman PSMA –SZ from Secretary General PSMA –SZ titled Internal dated July 17, 2008, stating therein '*Cane* *price payable has been worked out on the basis of different ex-factory sugar prices. This may be considered and if considered appropriate be circulated to members for comments.'* [**Annex P]**

q. Letter addressed to the Chairman PSMA –SZ from Secretary General PSMA –SZ titled '*Internal*' dated July 8, 2008 '*on the basis of actual average recovery of sugar and molasses during the season 2007-08, I have calculated cost of production which is enclosed for information….80% of production has already been sold at these prices till 30 June 2008 resulting in losses of billions of rupees to Sindh industry. If agreed these figures may be discussed in the meeting and be provided to Secretary Agriculture. Cane price at the wholesale price of Rs. 24,440 works out at Rs. 49.22 per 40Kg. Calculation enclosed. Average whole sale prices as reported till June 2008 remained at minimum Rs. 24,440 and maximum Rs. 24,980 per Ton.*' [**Annex Q]**

r. Letter dated May 05, 2008 No. PSMA-Cir/092-A/2008 addressed to all members of PSMA- Sindh Zone stating that '*to discuss decisions of Sindh Government as conveyed by the Secretary, Agriculture Department, Government of SIndh to the PSMA-SZ ...Please come to this important meeting in time along with the details of sugarcane procurement, procurement price, payments made, balance of payments and schedule of payments for balance etc.*' [**Annex R]**

s. Letter dated May 02, 2008 No. PSMA-Cir/091/2008 addressed to all members of PSMA- Sindh Zone stating that '*A desired by the chairman, PSMA-Sindh Zone, you are requested to urgently fax of bring with you in today's meeting 1) Date of full payment of sugarcane price to growers for the past 5- years. 2) Sugar sales figures fo the past 5- years, specially showing last date of sales. This is required for making comparison with this year's excessive sugar production.*' [**Annex S**]

t. Document titled '*Sindh Sugar Industry Situation*', as at April 30,2008, season 2008-09 stating therein '*The price assessed was meant to hold minimum sugarcane price at Rs. 63/40 kilo, due to the year being of elections, making not reduce sugarcane price announced by provincial governments.*' [**Annex T]**

u. Notice from PSMA SZ stating that '*From Saturday, January 19, 2008 Sugarcane Rate to be Rs. 57/- per Maund It will be reduced by further Rs. 5/- per Maund if sugar price does not improve.*' [**Annex U**]

v. Letter dated November 28, 2007 No. PSMA-Cir/187/2007 addressed to all members of PSMA SZ stating that '*Sugarcane Cushing season 2007-08 has commenced. The federal ministries, Provincial Departments and other government offices have asked PSMA to supply information on sugarcane crushing, sugar production, recovery %, lifting and stock of the Sindh sugar mills on daily and fortnightly basis. This information is being regularly supplied to Cane Commissioner Office.*

   In order that the PSMA can give precise information, as it is asked for, we reiterate our request to provide data of your mills to PSMA- Sindh Zone everyday, preferably by fax/email. This will support our presentations of problems and seeking solution with the relevant ministries and departments. This information is provided on the following format everyday and cumulative at the number of days you been functional till November 20, 2007.' [**Annex V**]

w. Letter dated November 06, 2007 No. PSMA-145/2007 addressed to all members of PSMA SZ stating that '*For this, it was decided that sugar mills make district wise groups, engage jointly one competent advocate, provide input, have interaction which leads to the desired results'*. [**Annex W**]

19. The evidence obtained from PSMA documents needs to be looked at holistically rather than merely individually. Communication between sugar mills and between PSMA and various government departments presents a

complete picture whereby the mills have colluded to ensure a collective sugarcane pricing and purchasing policy. Importantly PSMA appears to have a lead role in making policy decisions, ensuring coordination and implementing such decisions amongst the sugar mills constituting a buyers' cartel in particular, vis-à-vis price fixing and territorial allocations in respect of purchase of sugarcane. Accordingly, the sugar mills that are member undertakings of PSMA appear to have charted out exclusive buying zones (territorial allocations) and fixed maximum sugarcane purchase prices for at least, if not more, than past two seasons. These actions, *prima facie*, constitute a violation of Section 4(1) read with Sections 4(2)(a) & (b) of the Ordinance.

COLLUSION IN PRODUCTION AND SALE OF SUGAR – SELLERS' CARTEL FOR PRICE FIXING

20. PSMA, *prima facie*, appears to operate a sellers' cartel on behalf of its member sugar mills. A number of documents show that PSMA is actively involved in fixing sugar prices, proposing and allocating quotas and engaging in collective negotiations for price**.** The documents show that PSMA acts as a parental figure for the sugar industry, making sure that there is no meaningful competition between its members. It proposes to use TCP to its advantage by proposing the government to stock up its reserves and export when a high supply of sugar in the market depresses the price and to import only raw sugar which would give mills an alternative to home grown cane.

21. Various circulars and pieces of correspondence from PSMA to its members prima facie indicate involvement of the association in controlling the supply of sugar in the market, price fixing of sugar and collusion to maintain price levels of sugar in the market. It prima facie appears that PSMA, based on the data provided by its member undertakings, decides the targeted price of sugar for each of its zones which is prohibited under Section 4(1) of the Ordinance. This is also reflective of the collective price fixing mechanism in practice by PSMA's member undertakings. Some of these documents are mentioned below:

    a. Letter No. PSMA-Cir/095-FS/2009 dated September 4, 2009 from Mr.Ahmed A. Bawany, Member Zonal Committee of PSMA Sindh

Zone addressed to Chief Executive of PSMA Sindh Zone and all member sugar mills titled 'lifting of sugar from the mills by the dealers' stating therein '*You are requested to ask your sugar dealers/ buyers to immediately lift the sugar, purchased by them, from your mills god owns/ premises. In case of any action by the government, the mills will not take any liability nor it will be responsible for any damages*.' [**Annex X]**

b. PSMA letter dated July 01, 2009 addressed to the Chief Executives of Member Sugar Mills of PSMA Sindh Zone stating therein '*PSMA-SZ has now compiled cost of sugar production of 15- quoted sugar mills of Sindh for the year ended September 30, 2007. Earlier the compilation was sent to the concerned sugar mills for their comments/corrections etc. only one member suggested some amendments…. It is now being circulated for members' information.*' [**Annex Y**]

22. PSMA prima facie appears to fix the start date of crushing season, the target date for payment to sugar cane growers, the targets crushing rates, targeted output of sugar in order to sustain the desired price level of sugar in the market. Various minutes of meeting of PSMA Sindh Zone indicate such behavior:

a. PSMA Sindh Zone, Minuets of Extraordinary General Meeting held on October 27, 2008 stating that '*There were, however, reports that a few mills are planning to start earlier even from the date notified by Government. It was considered by members present that appropriate time of start of crushing should be between 15th to 20th November, 2008. If any mill starts earlier as being reported other mills should keep patience and start when reasonable supply of matured cane is ensured.*' In another para of the minutes it is stated that '*Government was sympathetic to the proposal of import of raw sugar through quota to be allotted by PSMA only through sugar mills. An initial import of 400,000 tons was suggested.*' [**Annex Z]** *b.* Minutes of the Extraordinary General Meeting held on September 25, 2008 containing the texts as '*He also referred to calculations and expected crushing targets of all mills circulated to members during July 2008**. Realistic targets achievable without involving in price war should be planned by all mills**. He also suggested that zonal meetings of members may be held to arrive at consensus of date of start of crushing and crushing rate and targets. Following decisions were taken by members:-*

1. Boilers to be lit up on 10 November, 2008 by a few mills to be followed by others.

2. Base line date of crushing be fixed as 25 November, 2008 to be staggered within 10 days.

Chairman once again emphasized to fix realistic targets in view of availability of cane, not to indulge in price war and not to waste the achievement of fixation of price with quite concentrated efforts.' [**Annex AA**]

c. PSMA Sindh Zone Minutes of Extra Ordinary General Meeting dated July 21, 2008 stating '*Chairman also asked members to advise the price of cane to be fixed for season 2008-09 in view of expected price of sugar during next year and prices of other commodities.*' [**Annex AB**]

d. PSMA Sindh Zone Minutes of Extra Ordinary General Meeting dated July 14, 2008 state that '*In view of increase in diesel price and expected further increases lifting cane from long distance will not be financially viable. Association has requested members to provide figures of cane in their area of operations which may be provided so that expected crushing by each mill may be assessed.*' It further states that '*Fixation of minimum price of cane for 2008-09 was also discussed.*' [**Annex AC**]

e. PSMA Sindh Zone Minutes of the Extraordinary General Meeting held on May 7, 2008 stating that '*After detailed discussions among the* *members it was decided desirable that the members pay dues of sugarcane supplies up to February 2008 (at procurement price being paid, in most of the cases rs.57/40 Kilo)within the next days ,i.e. by May 14, 2008.*' [**Annex AD**]

f. PSMA Sindh Zone Minutes of Extraordinary General Meeting dated May 2, 2008 stating that '*sugarcane price of Rs. 67/40 kilo by the first notification dated October 20,2007 and subsequently revised to Rs.63/40 kilo by second notification dated January 21, 2008 were in context with sugar price to be held stable at Rs.29/= per kilo….Sugar price on average end –April 2008 being Rs.22.66 per kilo, sugar industry has suffered colossal losses… it was not manageable due to a record sugarcane crushing and sugar production at the highest cost contrasted by very low prices fetched on sugar sales by over supply.*' [**Annex AE**]

g. PSMA Sindh Zone Minutes of the Extraordinary General Meeting held on April 09,2008 stating that '*Mr.Shunaid Qureshi, Chief Executive , Al-Abbas Sugar Mills Ltd., and Chairman PSMA Centre, Informed the house that he had a feeling that the new Government , due to shortage of foodstuff, might restrict sugar exports, which were moving slow. Sugar production of the current 2007-08 season will be about 4.30 mln tons. With half a million ton of carry forward stocks, sugar availability may surpass 4.80 mln tons. It means a surplus situation enabling export offload at about 500,000 tons. The industry may give a profound thought to it more so as exports fetch Rs.23/= per kg. of sugar, being more that domestic net price being below Rs.20./= per kg. about 200,000 tons exports have taken pace. It was time to reduce load of inventory, so as to fetch better price in domestic market.*' [**Annex AF**]

h. PSMA Sindh Zone Minutes of Extra Ordinary General Meeting held on January 17, 2008 stating that '*Mr. Shunaid Qureshi informed the house that the Sindh Government after deliberations finalized recommendations or the Federal Government to solve problems of the*

Sindh sugar industry. Minutes of the meeting have been circulated. Decision part of it has been as follows:

1. Sale of sugar including Indian sugar by Trading Corporation of Pakistan should be stopped forthwith.

2. Trading Corporation of Pakistan should lit additional 0.500 mln tons of sugar of export. This quantity should be in addition to 0.500 mln tons of buffer stock.

3. there is no sales tax on food items. Therefore, the sales tax currently being charged by the government should be abolished.

4. The Federal Government should come out with a via media to ensure that the sugar prices are kept around Rs.29/kg.

The House after discussion was of a consensus that at current price of sugar at Rs.20.75 per kg inclusive of sales tax and CED, sugarcane price payable was Rs.54/40 kgs. At price of Rs.67/40 kgs. Loss of Rs.13/40 kgs of sugarcane crushing was being incurred, just on raw material account. It meant loss of Rs.3.73 per kg or sugar attributable to sugarcane alone. Other manufacturing cost and operating expenses of Rs.8/kg of sugar cost of sales was additional. It means collapse of the industry in no time. The house decided to convey this crucial situation to the authorities … following ad text was approved… Appeal to Sindh Government. At the current sugar price with its declining trend, Sindh sugar mills have suffered colossal losses and are not in a position to continue further operations. Consistent efforts by PSMA since the star of season to resolve the problem of the highest cost of production and the lowest sugar price have not been fruitful. These constraints will compel the Sindh sugar mills to close down immediately. Immediate help by Sindh Government can save sugarcane farmers and sugar industry from collapse.' [**Annex AG**]

i. PSMA Sindh Zone Minutes of Extraordinary General Meeting held on December 19, 2007 stating that '*The Government of Pakistan seemed* *not prepared to reduce sugarcane minimum price for various reasons. The industry is not in a position to bear the brunt of very high sugarcane prices contrasted b very low sugar prices. He asked the members as how to bring reasonable equation in sugarcane vis-à-vis sugar price….Deliberating various options possible to amend the situation, non was found as feasible, except that the sugar prices must improve to Rs.29/kg ex-factory, to avert defaults in paying to the sugarcane suppliers and the banks…As the sugar price was considered to be the single option to be exercised to save the situation, it was decided that sugar may be offered at a reasonable(uniform) price to tenders being floated and unwarranted competition be avoided. Similarly to protect the industry from collapse, it was deemed imperative that the PSMA-SZ members following decision by the Zonal Committee and general body.*' [**Annex AH**]

23. Review of the impounded documents reveal that PSMA seems to collect and maintain industry wide costing data and makes regular internal prices estimates of what level of sugar prices would be acceptable to the industry as a whole. PSMA also regularly negotiates on behalf of the industry to offer collective prices in the month of ramazan and for the reserve stock of TCP. The recommendations on part of PSMA pertaining to collective start of crushing seasons, crushing targets and avoidance of price wars reflects decisions being taken in meetings of PSMA which are prima facie in violation of the letter and spirit of Section 4(1) of the Ordinance,. These are business decisions which are required to be taken independently and competitively by its member undertakings.

24. The following documents are also extremely important in coming to the same conclusion:

    a. Table titled Cost and Price Estimate of Sugar Per Kilo, Season 2009-10 dated 17 August 2009. The table shows the breakdown calculations on how to arrive at the price of sugar given the various rates of sugarcane. [**Annex AI**]

b. Working paper titled Punjab – Cost of Sugarcane versus cost of Sugar at 8.5 % recovery and Rs. 8 /Kg Processing Cost. The table is followed by a note which reads: '*This is the Governments calculation. By extrapolating they concluded that in order to pay the farmer Rs. 60 per 40 kg the ex-mill sugar price should be Rs. 30/kg. We negotiated an average sugar retail price in the country of Rs. 34 per kg.'* This note is followed by two pages working out the averages for Punjab and NWFP. Those in turn are followed by a note titled *'BOTTOM LINE'* which states in capitalized letters that: *'If the government wants the growers to be paid minimum support price and the government wants to charge sales tax on sugar then consumers will have to pay Rs. 34 per 1 kg of sugar at Retail.*' [**Annex AJ**]

c. Fax dated 6 August 2009 by PSMA courtesy of Shah Taj Sugar Mills with subject '*Ramzan Package Offer by PSMA for Domestic Consumers*' which states that '*PSMA shall provide sugar at Rs. 45 to the specified sales points/Ramzan Bazars established by governments and the rate maybe lowered to Rs. 40 in case sales tax plus SED is exempted.*' [**Annex AK**]

d. Letter dated August 17, 2009 by Secretary General PSMA to national and zonal PSMA representatives to assemble for a pre-meeting consultation at 1 pm on 18 August 2009 prior to the meeting with Minister of Industries and Production at 5 pm. [**Annex AL**]

e. Letter by Secretary General PSMA to Minister for Commerce dated August 18, 2009 asking the minister to direct TCP to buy 400,000 tons of sugar to enable millers to clear their financial obligations. [**Annex AM**]

f. Letter by Cost Accountant, Ministry of Industries and Production to PSMA dated 12 March 2008 containing working paper considered by Sugar Advisory Board. PSMA in the working paper had advocated complete ban on establishment of new sugar mills or expansion of existing ones. Hand notes with the signature of Secretary General

PSMA indicate that the Sugar Advisory Board agreed to recommend that TCP lift sugar from mills at Rs. 29.50 to its reserve stock and export and to ban new sugar mills in the country. [**Annex AN**]

g. Letter from Secretary General PSMA to Minister of Finance dated December 19, 2007 stating that due to the high levels of stock, the mills are being forced to sell sugar at low prices. The letter proposed that TCP should immediately export 500,000 to enable sugar mills to meet their liabilities and to stabilize the market and buy a further 500,000 tons of sugar from the mills. The letter further proposed that Indian sugar with TCP maybe refined by sugar mills at cost price instead of its sale at cheaper prices which destabilizes the market. [**Annex AO**]

h. Letter from Secretary General PSMA to Secretary Food and Agriculture dated 28 November 2007 proposing that TCP purchase 500,000 tons of sugar from mills with each tender being for 100,000 tons with a minimum price of Rs. 29.50. [**Annex AP**]

i. Letter from Secretary General PSMA to Minister of Finance dated November 28 2007 proposing that purchase quotas of TCP should be increased and that TCP should buy sugar from the mills at the agreed price of Rs. 29.50 through quotas set by PSMA instead of calling tenders. [**Annex AQ**]

25. Once again, the overarching picture emerging from the individual and collective interpretation of the evidence is that PSMA sugar mills appear to have been engaged in fixing price of sugar at a level which collectively suits them, deciding collectively the terms of production and supply of sugar in the market, manipulating the actions of TCP in their favor, thereby, *prima facie*, violating Section 4(1) read with Sections 4(2)(a) & (c) of the Ordinance.

COLLUSIVE BIDDING

26. PSMA has taken decisions, communicated to member undertakings through its circulars, exhibiting its involvement in collusive bidding, inter alia, by

insisting member undertakings to offer a uniform price to TCP. For the purpose of sale of refined sugar.. This is prima facie in violation of Section 4(1) read with Section 4(2)(e) of the Ordinance as substantiated by the following::

a. PSMA-Cir/155/2007 dated December 19, 2007 addressed to Chairmen/Managing Directors/Chief Executives of PSMA-Sindh zone Member Sugar Mills stating that '*An extra ordinary general meeting of the Pakistan Sugar Mills Association Sindh-Zone held today dated December 19,2007 unanimously decided that the members shall abide by the decisions of PSMA for its smooth working to be in the interest of the industry… this also applies to participation in the tenders of Trading Corporation of Pakistan for purchase of sugar procurement, which is subject to certification of being member of the Pakistan Sugar Mills Association.*' [**Annex AR**]

b. PSMA-Cir/197/2007 dated December 19, 2007 addressed to Chief Executives of PSMA-Sindh zone Member Sugar Mills stating therein '*An extraordinary general meeting of the Pakistan Sugar Mills Association-Sindh Zone held today , December 19,2007, unanimously decided:*

A uniform Sugar Price be offered in participation of Trading Corporation of Pakistan tenders.
In order to implement this, it has been decided that TCP tenders be finalized at the PSMA-SZ.
PSMA-SZ will give its covering letter of membership to the mills, complying with this procedure.
Any members not complying with it will not be deemed as a member, by which he will not be eligible to participate in the tender.
This policy is being adopted to protect economic interest.' [**Annex AS**]

c. Letter dated December 4, 2007 addressed to the Chairman Trading Corporation of Pakistan from Chairman PSMA Sindh Zone stating therein '*Please provide us details of bids finalized by the Trading Corporation of Pakistan for purchase of sugar from the sugar mills.*

This required in order facilitating coordination between sugar mills and TCP by PSMA'. [**Annex AT**]

d. A fax message from Mehran Sugar Mills Ltd to PSMA Sindh Zone Secretary showing TCP-Purchase of White Refined Sugar, TenderNO.SSP-P29/08 dated July 18, 2008. The fax contains hand written notes of Secretary PSMA Sindh Zone addressing to the Chairman and stating '*In view of response of 29th tender, no better results can be expected. Price of Rs.28,500 means Rs.31,860 with S.Tax which I believe is the open market price.*' [**Annex AU**]

ENTRY BARRIERS

27. The documents reviewed and referred herein below reveal that *prima facie* PSMA has time and again decided and advocated such pronouncements by insisting the closure of the relevant market for new entrants, unless it benefits its own members. The aim of this appears to control the number of players in the market. When there is a possibility of an influx of potential competitors who wish to establish sugar mills, PSMA appeals for a ban on new mills. The competition on price war in purchasing sugarcane and the lack of sugarcane produce is cited as the mail reasons for not allowing new sugar mills. Reliance in this regard is placed on the letter from Secretary General PSMA to Chief Minister Punjab on May 30, 2006 stating that establishment of new sugar mills will have a negative effect on the economy. The letter reads: '5. *We understand that there is expectation of mushroom growth in the establishment of new mills and these sponsors might start installation without even obtaining the required NOC from the Punjab Government. Without reasonable increase in the availability of sugarcane, the establishment of new sugar mills will further intensify competition among the mills to purchase maximum quantity of sugarcane. This will result in the price war for sugarcane.*' [**Annex AV**]

28. In another letter dated July 21 2007 to Ministry of Industries and Production titled '*Proposal for setting up of sugar syrup plants*', the Secretary General wrote: '*Establishment of sugar syrup plants in the vicinity of existing sugar mills would rather be an obstruction bringing an undesirable procurement*

situation for the mills. Such projects in general are established in countries where the sugarcane supplies are much greater than the utilization capacity of the mills… We therefore do not see a positive role of such sugar plants.' [**Annex AW**]

29. However, then there are times when PSMA advocates lifting the ban contending that many areas of sugarcane growth are without sugar mills. To the contrary in a letter to the Prime Minister of Pakistan, dated 5 January 2009, Secretary PSMA PZ states: '*There are still certain places where sugarcane is in abundance and growers are giving extreme difficulty for timely disposal of their crops in the absence of sugar mills. The installation of new mills in these areas is not possible because of existing ban by the government of Punjab. It would be most appropriate if the Chief Minister of Punjab is advised to review the ban and allow setting up of new sugar mills to harness the agricultural resources*' [**Annex AX**]

30. Keeping in mind the dichotomy of views, a prima facie rational conclusion would be that PSMA decides and attempts to control who enters the market and the above correspondences are manifestations of such decisions which are in violation of Section 4(1) of the Ordinance as it has the object and effect of restricting competition in the relevant market by creating barriers to entry. Perhaps this enables PSMA to manage the business interests of its members in a secure manner. It also highlights the fact that PSMA has effective regulatory capture mechanism in place whereby it tries to influence government policies in its own interest.

CONCLUSION

31. The documents indicate that *prima facie* under the auspices of PSMA the sugar mills, rather than competing in the open market prefer a closed and protected market which is managed collusively and collectively by PSMA. PSMA apart from being in breach of its mandate appears to be acting in violation of Section 4(1) of the Ordinance by r acting as a front runner for a cartel in the sugar industry.

32. The sugar mills which are member undertakings of PSMA appear to pursue policies which reduce competition at various levels *inter alia* in matters of purchase of sugarcane, production of sugar, sale or trade of sugar. Their actions, as supported by the plethora of documents impounded from the search and inspection of PSMA offices mentioned hereinabove and attached as annexes to the report, *prima facie*, establish violations on part of PSMA and its member undertakings under Section 4 of the Ordinance, in particular Section 4(1) read with Section 4(2) (a), (b), (c) and (e) of the Ordinance.

RECOMMENDATIONS

33. Refined sugar is an essential commodity used by the food and beverages industry as an input and by the domestic consumers for home use. Consumers in Pakistan are currently witnessing a crisis of non- availability and price hike of this essential commodity ... *Prima facie*, there appears to be existence of a cartel in the relevant market. Given the grave nature of cartelization which indicates serious violations of Competition Ordinance, 2007, in terms of Section 4 as stated in this Enquiry Report. Therefore, it is in the public interest to initiate proceedings under Section 30 of the Ordinance and to proceed as deemed appropriate by the Commission in accordance with law in this regard.

(Shaista Bano Gilani)
Enquiry Officer

(Syed Umair Javed)
Enquiry Officer