

COMPETITION COMMISSION OF PAKISTAN

ENQUIRY REPORT

(Under Section 37(1) of the Competition Act, 2010)

**IN THE MATTER OF ALLEGED ANTI-COMPETITIVE ACTIVITIES IN THE
SUGAR INDUSTRY**

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Dated: October 21, 2020

BACKGROUND & FACTS

1. The Competition Commission of Pakistan ('the Commission') in its meeting held on 19th December 2019 authorized an enquiry, under Section 37(1) of the Competition Act, 2010 ('the Act') into "Possible anti-competitive activities in the Sugar Industry". Following officers of the Commission were appointed as the Enquiry officers:
 - a. Mr. Shahzad Hussain, Director General (Finance & Admin)
 - b. Ms. Aqsa Suleman, Assistant Director (C&TA)
 - c. Mr. Azizullah, Management Executive (C&TA).
2. The approved ToRs of the enquiry were to review the sugar industry in terms of clause (b) and (c) of sub-section (1) of Section 28 read with Section 37 of the Act and to ascertain the state of competition in the sugar industry while taking into account various aspects which include inter alia the cost of production of sugar.
3. The enquiry committee, vide letter(s) dated 27th January 2020, requested 82 sugar mills to provide following information.
 - a. Cost audit reports and other information as per the proforma for the FY 2016-17, 2017-18 & 2018-19.
 - b. Quarterly Sugar Stock Position (In and Out Details) as maintained by the Sugar Mills starting from the FY 2016-17 to date.
 - c. Average monthly Ex-Mill Prices of Sugar starting from the FY 2016-17 to date.
 - d. Audited Financial Statements for the financial years 2016-17, 2017-18 and 2018-19. (List of mills to which letters were sent and copy of letter attached as Annex 'A1').
[All the annexures from, A-1 to F-3, form an integral part of this enquiry report].
4. On 8th April 2020 first reminders were sent to 20 sugar mills that did not provide the information in the stipulated time period and on 17th June, 2020 second reminders were sent to companies that did not response. Complete information from 52 sugar mills was received, 17 sugar mills have provided incomplete information whereas no information was received from 13 sugar mills. It is proposed that 13 mills that did not respond to the call for information (Annex 'A2') may be proceeded under relevant provisions of the Act for non-supply of information.
5. While the aforesaid enquiry was underway a new working paper was presented to the Commission highlighting the emergent crisis like situation in the sugar industry with a

proposal to add to amend the ToR's of the said enquiry to also cater for the emergent issues.

6. The Commission in its meeting held on 07th September 2020, amended the ToRs by adding the following:
 - i. Whether any industry players(s) is prima facie dominant in the terms of Section 2(1)(e) of the Competition Act, 2010 ('the Act'). Assess individual as well as collective dominance as per the law.
 - ii. Did major players in the Sugar Industry collectively decide to cease crushing of sugarcane during crushing season 2019-20, thereby affecting production of sugar in prima facie violations of Section 4 (Prohibited Agreement/Cartelization) and or 3 (Abuse of Dominant Position) of the Act.
 - iii. Whether there has been any collective decision by sugar mills for not supplying sugar to tenders floated by Utility Stores Corporation ('USC') or any form of bid rigging in prima facie violation of Section 4(2) (e) of the Act.
 - iv. Whether there is collusion behind recent price hike or current shortage/crisis.
 - v. Any other anti-competitive conduct that may be identified during the course of the investigation.
7. The enquiry committee was also reconstituted and following officers were appointed as enquiry officers:
 - a. Mr. Shahzad Hussain, Director General (Finance, Admin & HR)
 - b. Mr. Noman Laiq, Director General (C&TA)
 - c. Ms. Maliha Quddus, Joint Director (C&TA)

Hereinafter referred to as (the **"Enquiry Committee"**)

8. The enquiry committee also wrote a letter dated 5th October 2020 to FBR asking it to provide information on month-wise quantity of sugar dispatched (local and exports) for the year 2018-19 and 2019-20. FBR vide letter dated 14th October 2020 provided information on export dispatches only (Annex 'A3')

Enter and Search Inspections

9. The Commission authorized a team of officers on 11th September, 2020 of the Commission to conduct, the Commission 'enter and search' the two premises occupied by Pakistan Sugar Mills Association ('PSMA'). Since facts available on record suggested

that the conduct of PSMA/sugar mills *inter alia* included possibility of collective/collusive decisions on stoppage of crushing season in 2019-20, rise in prices and refusal to supply sugar to USC and appeared to be commercial decisions taken by the association which could be a *prima facie* violation of Section 4 of the Act. The enter and search inspections were conducted on the following locations:

- a. Office No. 102, Mohammad Gulistan Khan House, Fazal-e-Haq Road, Blue Area, Islamabad; and
- b. Unit No. 2, Happy Homes, 38-A, Main Gulberg, Lahore.

10. The authorized officers conducted the enter and search inspection on 14th September 2020, and impounded a number of evidentiary material during these inspections which *inter alia* included documents/files, computer & computer stored data including smart phones (Copies of respective authorizations and inventory lists are attached as Annex 'A4'). The information received from sugar mills and evidence gathered from enter and search inspections form an integral part of this enquiry report.
11. In order to access information stored on impounded smartphone devices, the Commission sought assistance from the Federal Investigation Agency ('FIA'), under provisions of Section 53 of the Act, for a forensic analysis. The digital forensic analysis reports in the matter was promptly provided by FIA on 25th September 2020 and 07th October 2020 (Annex 'A5').
12. The enquiry committee on examination of impounded data and record noted that Mr. Muhammad Rafique Group Director Finance of the JDW Group, was nominated by PSMA in its AGM dated 21st October, 2012 as the focal person for coordinating sugar stock positions, with email records showing that he has been actively involved with sharing/receiving information in this regard. His involvement in this role has continued at least till July 2020 as per evidence of his participation in the Whatsapp group. This compilation, consolidation and distribution of sensitive commercial information (i.e. mill-wise, region-wise sugar stock positions, sales, ex-mill prices etc.) on the platform of the association constituted a *prima facie* violation of Section 4 of the Act. It appeared that Mr. Muhammad Rafique, an employee of JDW Group, may possibly be in possession of further important information in this regard particularly on his computer including laptop, smartphone device and computer stored information;
13. Keeping in view the facts stated in Para 12 above the enquiry committee was of the view that reasonable grounds existed for conducting enter & search of premises under use of JDW Sugar Mills Limited requiring the occupiers also therein to cooperate. Therefore,

an enter and search inspection of the JDW Sugar Mills (JDW Group's Sugar Division) was authorized vide authorization dated 23rd September 2020 which was carried out by duly authorized officers on 25th September 2020.

ISSUES

14. In light of the ToRs assigned to the enquiry committee by the Commission, following issues are addressed in this enquiry report:
- I. Overview of the sugar industry in Pakistan and its state of competition
 - II. Whether any industry player(s)/undertaking is prima facie dominant or there exists collective dominance in the relevant market in terms of Section 2(1)(e) of the Act. If yes, has there been any abuse in terms of Section 3 of the Act.
 - III. With respect to Section 4 whether there has been any prima facie violation on account of:
 - a. Collusive/collective decision making behind the sugar shortage/crisis and price hike.
 - b. Any other anti-competitive conduct identified during the course of the investigation.
 - c. Any collusion or collective decision by sugar mills for not supplying sugar to tenders floated by USC or any form of bid rigging.
 - d. Major players in the sugar industry collectively deciding to cease crushing of sugarcane during crushing season 2019-20.

ANALYSIS AND FINDINGS

I. INDUSTRY OVERVIEW - STATE OF COMPETITION IN SUGAR INDUSTRY

15. The sugar industry of Pakistan consists of around 90 mills out of which 45 mills are located in the province of Punjab, 38 in Sindh and 7 in Khyber Pakhtunkhwa. Out of these 90 mills approximately 78 mills are currently operational (40 in Punjab, 6 in KPK, 32 in Sindh). The growth in the sugar industry started in the late 1960s as before this period there were only few sugar mills in Pakistan. Total installed annual crushing capacity of operational sugar mills is approximately over 70 million tons. The industry employs more than 1.5 million people directly and also creates jobs for more than 9 million indirectly.

Its share in national GDP is around 0.7 % ¹and it constitutes 4.2% of the manufacturing sector.

16. Sugarcane is the primary raw material for production of sugar as the use of beetroot is very limited in Pakistan (approximately 1% is produced from beet). Sugar mills purchase the sugarcane, as the main raw material and process it to make sugar and other by-products (molasses, bagasses & mud cake).
17. Due to the establishment/shifting of major sugar mills in the southern Punjab district of Rahim Yar Khan the cotton crop of this region has been affected as the last decade has witnessed cane cultivation making serious inroads in Rahim Yar Khan District. The southern Punjab was once considered heartland of Punjab's cotton belt. About sixty hectares of land has shifted to sugarcane after 2008 which is highest for any region in the Punjab province. The shifting of sugarcane from central Punjab to the southern Punjab has witnessed some gains in the form of increase in per hectare yield of sugarcane which has increased from 55 tons per hectare to 64 tons per hectare. However, the total gain of sugarcane even inclusive of gains for rice and maize, which have also occupied some of the cotton growing area, do not add up to the loss of acreage witnessed by cotton.
18. The overall area under cultivation for sugarcane has not increased but has rather decreased over the years as in shown from the Table 1 below. However, the shift from arable land to the fertile belt of southern Punjab has been witnessed over the last decade. The main reason for shift in cropping pattern is the result of better returns from sugarcane due to Minimum Support Price, presence of sugar mills in the area and low profitability of the cotton crop.

Table 1: Area under cultivation 000 hectares- sugarcane				
Years	Punjab	Sindh	KPK	Total
2015-16	826.5	354.3	151.7	1332.5
2016-17	854.4	374.5	149.6	1378.5
2017-18	879.3	390.6	141.3	1411.3
2018-19	724.1	365	140.1	1229.2
2019-20	701.1	332	136.2	1169.3

Source: *Suparco*

19. The millers generally procure sugarcane directly from the farmers, however, in some circumstances they also use middlemen to procure the cane. The sugar produced by mills is then dispatched to wholesalers either directly or through company owned distribution

¹ Economic Survey of Pakistan

network which is further sold to retailers for everyday consumption by individual consumers. Some large retailers such as USC, Cash & Carry Stores and industrial consumers such as Biscuit & Confectionary Manufacturers buy sugar from the mills by means of direct procurement.

20. Sugarcane cultivation and sugar production has increased over the past few years with increased and relatively stable Minimum Support Price which remained at Rs.180/182 from 2014-15 to 2018-19 and was increased to Rs.190/192 for 2019-20 for Punjab & Sindh respectively. During the year 2016-17, Pakistan witnessed a record production of 75.482 million tons of sugarcane and 7.080 million tons of sugar as shown in Table 2 below. Sugarcane pricing is a provincial subject and the provincial governments are responsible for setting the Minimum Support Price of sugarcane. Due to consistent surplus globally and locally and uniform sugarcane support prices, the sugar prices have remained relatively stable except for the year 2019 and 2020 when the price of refined sugar started increasing.

Crushing Season	Sugarcane Cultivation (Million hectares)	Sugarcane Production (Million Tons)	Sugarcane Crushed (Million Tons)	Sugar Produced (Million Tons)
2015-16	1.131	65.482	50.056	5.123
2016-17	1.218	75.482	71.247	7.080
2017-18	1.343	83.333	65.669	6.617
2018-19	1.102	67.174	49.768	5.203
2019-20	1.040	67.151	48.23	4.879

Source: Economic survey of Pakistan, FBR and PSMA

21. Pakistan is the 5th/6th largest producer of Sugarcane in the world with an average area under cultivation in excess of 1.1 million hectares. The average sugarcane yield in Pakistan is around 62 tons per hectare which is considerably lower than the world average of about 70 tons per hectare. Most of the area under cultivation is in Punjab (68%) followed by Sindh (23%) and KPK (9%). Sugarcane is primarily used for the production of refined sugar, however, a considerable share (approximately 25%) is used for production of Gur, as animal feed and for raw consumption. The relatively low sugarcane yield per hectare has resulted in higher costs for sugarcane production which when coupled with low sucrose content adding grounds for Pakistan being not internationally competitive.
22. Approximately 75 percent of the total sugarcane produced is purchased by sugar mills as the main raw material for production of refined sugar and other by-products (molasses,

bagasses & press mud). Pakistan is primarily an agricultural economy and the sugarcane production over the years has been sufficient to cater for the domestic consumption. Domestic consumption of refined sugar has remained between 4.9 - 5.3 million tons per annum over last few years with most of it being produced locally using the sugarcane and beetroot.

23. Based on the data presented in the Sugar Advisory Board (SAB) meetings two estimates of domestic consumption have been calculated:
 - a. Ministry of National Food Security and Research (MNFS&R) estimates an annual per capita consumption of 25 kg which translates into total annual consumption of approximately 5.5 million metric ton (MMT).
 - b. In SAB meeting held on 18th March 2020, it was decided that the total annual consumption would be 5.3 MMT.
24. Admittedly a major portion of domestic consumption i.e. approximately 70 % is by industrial consumers such as beverages, confectioners etc. whose cost of production has increased due to higher sugar prices adversely impacting their global competitiveness.

Table 3: Sugar Stocks, Production, Exports, Consumption				
Financial Year	Opening Stock (Million Tons)	Sugar Produced (Million Tons)	Exports (Metric Ton)	Domestic Consumption (Million Tons)
2015-16	1.344	5.123	293,541	4.900
2016-17	0.950	7.080	307,348	5.100
2017-18	1.973	6.617	1,469,802	5.200
2018-19	2.425	5.203	691,994	5.196
2019-20	1.397	4.879	72,611	5.300

Source: Economic Survey of Pakistan, PSMA, FBR

25. Sugar is notified as an essential commodity its maximum retail price is fixed by the respective district magistrates on the basis prices in the wholesale market and reasonable profit margin for the retailers. The three main by-products of a sugar industry; bagasses, molasses and press mud, which constitute about 40 per cent of the total cane crushed lack proper and economic utilization in Pakistan, which if utilized properly can reduce the cost of production of sugar to some extent. Bagasse is not only a source of energy fuel for sugar industry which is used to fire boilers for juice heating, it is also used for making Medium Density Fibre Board at some industries which is a substitute for natural wood. Over the years, the utilization of sugar by-products has not received much attention in Pakistan as compared to other countries of the world which have developed

their by-products in such a way that the cost of production of sugar has witnessed a drastic reduction.

26. In Pakistan the sugarcane crushing season lasts three months from mid-November to end January or beginning of February depending on climatic conditions. The sugar sector is therefore cyclical in nature as production is undertaken in 03 months whereas it is sold over a period of 12 months.
27. The value chain – from the purchase of sugarcane from the growers to the sale of refined sugar to retail consumers is relatively long and involves a number of players which can create opportunities for the forces of competition to operate at different points. However, the determination of price is not being done through the forces of demand and supply because throughout the supply chain economically and politically connected families are present which tend to hamper the presence of free competition in the sector.
28. With the presence of a large number of mills (about 90) the sector could have expected to have intense competition both in the purchase of sugarcane and the sale of refined sugar ideally pushing prices down. This should have been the case despite the homogeneous nature of the product and the prices of sugar in the wholesale and retail market moving in tandem. Since the Minimum Support Price of sugarcane are also fixed by the respective provincial governments, the mills tend to purchase the cane at about the support price. Also, the start and close of crushing seasons are decided by the provincial governments which leads to a regulated environment yet sugar mills have the latitude and the ability to act independently in the sphere of making payments to the growers above the support price and setting the ex-mill price and/or quantity to be sold or product/byproducts development or any branding. In this regard they are also free to compete *inter alia* on the basis of efficiencies and economies of scale.
29. The Agriculture Policy Institute, an attached department of the Ministry of National Food Security and Research gives non-binding recommendations to the provincial governments for determination of the price floor (Minimum Support Price). The sugarcane boards with varying constitution depending on the province is tasked with determining the price floor for sale of sugar cane to the millers. Provincial cane commissioners or director level officers in the provincial food department are an essential part of the said board in each province. Provincial cane commissioners are also then responsible for the operational details and implementation aspect of the government determined support price and other policies. For example, it is the job of the cane commissioners to ensure that the farmers are paid the price floor agreed upon for a given

year. It is also among the responsibilities of a provincial cane commissioner to ensure that the sugar cane crushing season is initiated by the millers within permitted schedule. The provincial cane commissioners may also play an essential role in any dispute resolution between the farmers and the millers in respect of any government policies in this regard.

30. The basic legal framework governing the sugar sector is contained in the Sugarcane Act, 1934 and provincial Sugar Factories Control Act, 1950 (the 'Sugar Acts') which are in force in all provinces with minor differences. These Acts, among other things, defines the crushing period, and permits the provincial governments to fix minimum price of sugar cane to be paid by millers and reserve areas of sugarcane for particular mills. The overall legal framework is embodied in the following laws:
 - a. Punjab Sugar Factories Control Act, 1950
 - b. Punjab Sugar Factories Control Rules, 1950
 - c. Punjab Finance Act, 1964
 - d. Punjab Sugar Cane Development Cess Rule, 1964
 - e. The Punjab Industries (Control on Establishment and Enlargement) Ordinance 1963
 - f. Sugar Factories Control Act (Sindh Amendment), 2009 & Sugar Factories Control rules thereunder
 - g. Sindh Sugar Factories Control Act, 1950
 - h. KPK Sugar Factories Control Rules 1950:
 - i. KPK Price Control and Prevention and Profiteering & Hoarding Act, 2020
31. It appears that that there is no barrier to obtaining a license for setting up a sugar mill in Pakistan as in the past sugar mills have been established and capacity enhancement has been carried out despite a ban on enlargement or establishment of Sugar Mills in Punjab. The CCP through a policy note had recommended the provincial government to withdraw notification no. AEA-III.3-5/2003(Vol-III) dated 06-12-2006 to encourage manufacturers to be more efficient, to better respond to the needs of the consumers, to innovate, to initiate, to venture for the benefit of the end consumers through better prices, quality goods and more choices.
32. It is, however, observed, that most of the sugar mills established in early 1950s and 1960s are still operational despite outdated technology, low recovery ratio and showing very high cost of production. This shows that mills are not competing on the basis of efficiency and better technology rather each mill appears being somehow compensated through a managed operations of industry through the platform of its association which keeps even the most inefficient mill in the business.

33. The CCP has been giving policy level recommendations time and again for a better, more efficient and competitive sugar sector in Pakistan. The CCP through its Policy Notes and Opinions has recommended that the practice of setting a Minimum Support Price, that too based on weight, be abolished and the market forces of demand and supply be allowed to determine the purchase/sale price of sugar cane. The price of cane be determined based on its sucrose content to encourage the farmers to use better varieties of sugar cane. The role of government to be limited to policy formulation and monitoring the implementation of those policies with maintaining a strategic reserve through the TCP to deal with crises like situations. The subsidies, if any be given directly at the farmer level or the end consumer level. The Provincial Governments to review the legislative framework (the Sugarcane Act 1934 & West Pakistan Sugar Factories Control Act 1950) under which the sugar sector operates. Any restrictions on exports or imports be removed and the market be allowed to function under the demand and supply forces, this will help in achieving a sugar price which is more sustainable and based on international price trends.
34. The government of Punjab, in 2013 in order to address some of the policy level loopholes, issued a notification making purchase of sugarcane dependent on both the weight and sucrose content. The policy would have addressed the issue of low sucrose content in the varieties being grown in Punjab, however, both the millers and growers challenged the new system and to date the matter is in the superior courts.
35. In a meeting of Sugar Advisory Board ('SAB') held on 29th October 2019 it was decided that Ministry of National Food Security and Research ('MNSFR') and Ministry of Industries and Production ('MoIP') will review costing models of sugar as shared by PSMA. The costing analysis undertaken by the enquiry committee in the paragraphs below shows that since large variations exist between costs of each mill, generalized costing information could not be relied upon, while setting retail prices, since it rewards inefficient mills at the expense of consumers who end up paying a higher price.
36. From analysis of costing information received from sugar mills it is observed that cost of production varies from mill to mill due to various factors which include inter alia: different cost of production of sugar due to different recovery ratios, economies of scale, conversion cost and purchase price of sugarcane. Even mills located in the same area have different cost structures. The analysis of cost of production of sugar for the year 2018-19, shows that within Punjab province, the manufacturing cost varies between Rs. 43.61/ kg to Rs.78.60/kg. In Sindh, the cost varies between Rs.47.20/ kg to Rs.66.74/ kg.

The total manufacturing cost per kg of KPK Sugar mill i.e. Khazana Sugar Mills is Rs.55.57/kg as is shown in the tables below.

Factors		Khazana Sugar Mills	
Sugar Recovery %age		9.57%	
Molasses Recovery %age		4.19%	
Bagasses Recovery %age		2.91%	
Mud Recovery %age		3.00%	
Sale value of Bagasses Rs./kg		3.75	
Sale Price of Molasses Rs./Kg		14.47	
Sale value of Mud Rs/ kg		0.63	
1	Price of Sugarcane (Raw Material Cost)	Rs. Per 40Kg	184.00
2	Sale of Molasses (40KG*4.19%*14.47)	Rupees	24.25
3	Sale of bagasses (40KG*2.91%*3.75)	Rupees	4.37
4	Sale of Mud (40KG*3%*0.63)	Rupees	0.73
5	Net Cost of Raw Material	Rupees	154.65
6	Development Cess	Rupees	1.50
7	Marketing Committee Fee	Rupees	0.30
8	Freight	Rupees	2.00
9	Total Cost of Raw Material	Rupees	158.45
10	Sugar obtained from 40kg of Cane	Kgs	3.83
11	Cost of Raw Material per kg of Sugar	Rs./kg	41.39
12	Processing cost & other overheads	Rs./kg	14.18
13	Total Manufacturing Cost	Rs./Kg	55.57

Factors		AlAbbas	Mehran	Ranipur
Sugar Recovery %age		10.88%	11.44%	9.35%
Molasses Recovery %age		4.76%	4.73%	4.79%
Bagasses Recovery %age		2.91%	2.91%	2.91%
Mud Recovery %age		3.00%	3.00%	3.00%
Sale value of Bagasses Rs./kg		3.75	3.75	3.75
Sale Price of Molasses Rs./Kg		14.47	14.47	14.47
Sale value of Mud Rs/ kg		0.63	0.63	0.63
1	Price of Sugarcane (Raw Material Cost)	Rs. Per 40Kg	191.00	191.00
2	Sale of Molasses	Rupees	27.55	27.72

3	Sale of bagasses	Rupees	4.365	4.365	4.365
4	Sale Of Mud	Rupees	0.756	0.756	0.756
5	Net Cost of Raw Material	Rupees	158.33	158.50	158.15
6	Development Cess	Rupees	1.5	1.5	1.5
7	Marketing Committee Fee	Rupees	0.3	0.3	0.3
8	Freight	Rupees	2	2	2
9	Total Cost of Raw Material	Rupees	162.13	162.30	161.95
10	Sugar obtained from 40kg of Cane	Kgs	4.352	4.576	3.74
11	Cost of Raw Material per kg of Sugar	Rs./kg	37.25	35.46	43.30
12	Processing cost & other overheads	Rs./kg	9.95	17.73	23.44
13	Total Manufacturing Cost	Rs./Kg	47.20	53.20	66.74

Table 6: Estimated cost of sugar production from Sugarcane Punjab Sugar Mills (2018-19)					
Factors			JDW	Shakarganj	Macca
Sugar Recovery %age			11.29%	10.13%	9.03%
Molasses Recovery %age			4.08%	5%	6%
Bagasses Recovery %age			2.91%	2.91%	2.91%
Mud Recovery %age			3.00%	3.00%	3.00%
Sale value of Bagasses Rs./kg			3.75	3.75	3.75
Sale Price of Molasses Rs./Kg			14.47	14.47	14.47
Sale value of Mud Rs/ kg			0.63	0.63	0.63
1	Price of Sugarcane (Raw Material Cost)	Rs. Per 40Kg	184.00	184.00	184.00
2	Sale of Molasses	Rupees	23.62	26.97	32.42
3	Sale of bagasses	Rupees	4.365	4.365	4.365
4	Sale of Mud	Rupees	0.756	0.756	0.756
5	Net Cost of Raw Material	Rupees	155.26	151.91	146.46
6	Development Cess	Rupees	1.50	1.50	1.50
7	Marketing Committee Fee	Rupees	0.30	0.30	0.30
8	Freight	Rupees	2.00	2.00	2.00
9	Total Cost of Raw Material	Rupees	159.06	155.71	150.26
10	Sugar obtained from 40kg of Cane	Kgs	4.516	4.052	3.612
11	Cost of Raw Material per kg of Sugar	Rs./kg	35.22	38.43	41.60

12	Processing cost & other overheads	Rs./kg	14.05	34.61	53.57
13	Total Manufacturing Cost	Rs./Kg	49.27	73.04	95.17

37. For calculating the cost of productions of sugar for the crushing season 2018-19 three different types of mills, highly efficient, moderately efficient and inefficient mills from each of the province i.e. Punjab and Sindh have been taken. The highly efficient mills are the ones with maximum recovery ratio and other economies of scale due to larger capacity and better technology. The inefficient mills are the ones with obsolete technology, low recovery ratio and high conversion cost.
38. Since the cost of production is dependent on many factors i.e. sugar recovery ratio – depends on mills technology and sugarcane variety, production processes and economies of scale.
39. The cost of sugarcane plays a vital role in the overall cost of production of sugar as is evident from the Table 7 below. In Pakistan the cost of cane varies from 65% to 96% of the cost of production of sugar for different mills, which demonstrates an excessively high share of sugarcane - often with low sucrose content – in the final price of sugar. It is noteworthy, too, that the sugar mills comprising the industry show considerable variation in terms of obtaining cane yield levels and value addition. This indicates the latent potential of the industry as well perhaps its excessive expansion over the years that has manifested itself in camouflaging high levels of inefficiency in the sector as a whole:

Companies	Crushing capacity (metric tons)	Cost of sugar per kg	Recovery %	Cost of cane per kg	Component of cane in total cost
Noon Sugar Mills	1,400,000	56.95	10.01%	43.95	77%
Jahurabad	672,000	57.85	10.39%	45.02	78%
Adam Sugar Mills	826,000	66.41	8.91%	51.62	78%
Pattoki Sugar Mills	68,964	56.95	8.21%	54.81	96%
Macca Sugar Mills	1,485,000	97.27	9.03%	49.84	51%
Sheikhoo Sugar Mills	16,000	55.01	10.29%	44.52	81%
JDW Sugar Mills	4,620,000	46.96	11.29%	40.08	85%
Thal Industries	2,208,000	64.86	10.19%	45.14	70%
Fatima Sugar Mills	10,83,28	56.84	10.74%	43.51	77%
Al Moiz Industries	2,290,000	57.06	10.60%	42.21	74%
Chanar Sugar Mills	768,000	65	9.50%	50.29	77%
Shakaranj Sugar Mills	1,268,000	67.76	10.13%	44.42	65%
Al Abbas sugar mills	7,500	54	10.88%	47.10	86%
Faran Sugar Mills	10,500	55	11.01%	46.04	83%

Khairpur sugar mills	980,000	55	9.81%	46.38	84%
Sindh Abadghar Sugar Mills	1,280,000	54.32	10.78%	45.71	84%
DaryaKhan Sugar Mills	56,161	54	10.29%	43.75	81%
Hamza Sugar Mills	2940,000	49.29	10.82%	41.58	84%
Ranipur Sugar Mills	12,500	67.76	9.35%	50.08	74%
Sanghar Sugar Mills	85.00	50.70	10.76%	39.26	77%

40. Table 8 below gives average yield levels of sugarcane in the major cane producing countries during last few years. It shows that average yield level in Pakistan increased from 57.89 tons per hectares to 64.31 tons per hectare with an overall average of 61 tons per hectare. Despite substantial improvement in the average yield levels over the years Pakistan is still below the world average of about 70 tons per hectare. This, in part, reflects significant levels of inefficiency in the production of cane in Pakistan. The increased cost of sugarcane production was attempted to be counterbalanced by maintaining or increasing minimum support prices of cane fixed by the provincial governments annually. As a result, the cost of sugar production increased substantially over time. Currently, sugarcane accounts for over 78 percent of the total cost of sugar production as is shown in Table 7 above.

Year	World Average	Pakistan	India	Brazil	China	Thailand
2015-16	74.23	57.89	78.8	76.9	-	67.0
2016-17	72.52	61.97	77.95	72.6	-	67.0
2017-18	74.52	62.05	76.06	72.5	-	75.0
2018-19	72.24	60.95	88.40	72.23	-	76.0
2019-20	70.25	64.31	78.00	76.0	67.4	60.0

41. Table 9 below gives information on the five major sugarcane producing countries in the world during the year 2019-20 in terms of average sugarcane yield, total production, total consumption and average yield levels. In the case of area under cultivation, Pakistan ranked fifth in the world during, whereas in terms of cane yield per hectare and sugar recovery percentage, Pakistan stands at 4th position during the year 2019-20.

Countries	Area under Cultivation (Mln/Hc)	Cane Yield T/h	Sugar Production (MMT)		Sugar Consumption (MMT)		Sugar Recovery	
			2018	2019	2018	2019	2018	2019
Brazil	9.1	76.0	29.500	29.925	10.600	10.650	13.75%	13.0%
India	5.0	78.0	34.300	28.900	27.500	27.000	10.60%	10.84%

Thailand	1.39	60.0	14.581	8.250	2.480	2.400	10.20%	10.50
Pakistan	1.1	64.3	6.617	5.203	5.200	5.196	10.02	10.30
China	5.25	67.4	10.760	10.200	15.800	15.200	9.15	9.15

42. The capacity indicator of crushing cane i.e. TCD (tons per day) varies significantly ranging from a low as 1500 to about 10,000 TCD. Currently with over 80 operational mills producing sugar with an average crushing capacity of around 6,000 TCD shows that the industry lacks economies of scale. The analysis of data received from different sugar mills reveals that mills with larger crushing capacity have lower per kg cost whereas mills having smaller crushing capacity have very high per kg cost of sugar.
43. The technology in producing sugar from cane has developed considerably over years internationally. The newly established mills use latest technologies whereas in Pakistan more than 30 mills were established before 1990 which are using old technology. This has resulted in high conversion costs and low recovery rates of sugar also sugar mills resorting to obtaining subsidies to enable them to export their surplus.
44. Production figures for Pakistan for the crushing season 2018-19 & 2019-20 are presented in Table 10 below which shows that production of sugar in 2019-20 declined from the previous year by 06% due the decline in sugarcane which fell by 0.6%.

Table 10: Sugar Production Crushing Season 2018-19			Qty MMT
	2017-18	2018-19	2019-20
Punjab	3.865	3.103	3.057
Sindh	2.281	1.669	1.459
KPK	0.470	0.430	0.363
Total Production	6.617	5.203	4.879
Carryover stocks from previous year	0.541	1.524	0.506
Total sugar stocks	7.158	6.727	5.352

Source: Collected from SAB minutes

45. The sugar industry in Pakistan has not been able to achieve much success in creating a competitive environment whereby it can aim at achieving higher levels of technical and price efficiencies through economies of scale and development and utilization of by-products. With below average sugarcane yield, low sucrose contents and outdated technology, its financial viability depends mostly on ensuring low prices of sugarcane which are also not determined on a competitive basis.
46. It also appears that the main reason for the current situation is that the sugar industry has not strived to establish a dynamic, competitive structure conducive to improving productivity and commercial efficiency and has therefore, not been able to respond to the

challenges/opportunities. Despite being the fifth or sixth largest country in terms of the area under cultivation for the sugarcane, Pakistan, is far from being a regular competitive exporter.

47. The situation has not changed since 2009 when the CCP unearthed cartelization in the industry using the platform of PSMA. The PSMA seems to still actively pursue a policy of protectionism where even the most inefficient seems to get a due share in the production and sales. Also other aspects associated with the industry cannot be ignored over past decades. There is consensus that each unit in the industry provides livelihood to around 100,000 people consequently political choices may play important role in shaping the industry.
48. With the presence of a large number of mills (about 90) the sector could have expected to have intense competition both in the purchase of sugarcane and the sale of refined sugar ideally pushing prices down. This should have been the case despite the homogeneous nature of the product and the prices of sugar in the wholesale and retail market moving in tandem. Since the minimum support price of sugarcane are also fixed by the respective provincial governments, the mills tend to purchase the cane at about the support price. Also the start and close of crushing seasons are decided by the provincial governments which leads to a regulated environment yet sugar mills have the latitude and the ability to act independently in the sphere of making payments to the growers above the support price and setting the ex-mill price and/or quantity to be sold or product/byproducts development or any branding. In this regard they are also free to compete *inter alia* on the basis of efficiencies and economies of scale.

II. Whether any industry player(s)/undertaking is prima facie dominant or there exists collective dominance in the relevant market in terms of Section 2(1)(e) of the Act. If yes, has there been any abuse in terms of Section 3 of the Act.

49. For purposes of dominance it is important to first define the relevant market in which any possible abuse is realized. Secondly, it is important to establish the presence of dominant position of an undertaking or group of undertakings within the relevant market. It is only if the answer is in the affirmative there will be need to identify the specific practices which as a result of dominance are deemed harmful to competition in terms of Section 3 of the Act.
50. Section 2 (1) (k) of the Act defines the “Relevant Market” as:

“The market which shall be determined by the Commission with reference to a product market and a geographic market and a product market comprises of all those products or services which are regarded as interchangeable or substitutable by the consumers by reason of the products’ 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 competition are sufficiently homogenous and which can be distinguished from neighboring geographic areas because, in particular, the conditions of competition are appreciable differing in those areas”.

51. Sugar produced by crushing sugarcane is widely used by domestic and industrial consumers in food products and beverages. However, the product has other variants such as brown sugar (partially refined, made from the mixture of refined sugar and molasses) and jaggery/gur (unrefined, obtained from concentrated sugarcane juice). The aforementioned variations of sugar differ on the basis of their manufacturing process through alterations made in the amount of molasses, moisture content and heating value. The most commonly used type of sugar in the country is ‘*refined white sugar*’. It has many by-products/associated products which include: molasses, bagasse, mud and ethanol. White refined sugar can be differentiated from the other forms of sugar such as brown sugar and gur in terms of physical characteristics, price and intended usage. Consumers, particularly processed food industry which in terms of usage is the biggest consumer, cannot easily substitute white refined sugar with other varieties. Therefore, the relevant product market is that of refined white sugar.
52. In light of the discussion above, in terms of relevant geographic market, there is no bar on interprovincial transportation of refined sugar and the laws and conditions of competition are sufficiently homogenous over Pakistan. Also given that refined white sugar is supplied and consumed within the territories of Pakistan and that economic conditions and regulatory environment remains essentially the same for all sugar mills. Therefore, the relevant geographic market for refined white sugar is whole of Pakistan.
53. Based on the foregoing for purposes of this issue as well as the enquiry the relevant market comprises of white refined sugar as product market and the whole of Pakistan as the geographic market. However, it is stated that if, as in the present case the matter at hand pertains to prima facie anti-competitive activities by an association of undertakings,

covered under Section 4 of the Act, the delineation of relevant market is for reference purposes only.

UNDERTAKINGS

54. Section 2(1)(q) of the Act. Section 2(1)(q) of the Act defines an 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 or undertakings;”

55. PSMA is an association of sugar mills in Pakistan registered under the Companies Ordinance 1984 (Now Companies Act) and also licensed under the Trade Organization Ordinance, 2007 and now Trade Organizations Act 2013. PSMA’s membership currently comprises of 84 mills divided into three zones i.e. PSMA Punjab Zone (PSMA PZ), PSMA KPK Zone (PSMA KPK) 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. Number of PSMA’s member mills can be classified province wise as follows:

- a. Punjab –45 mills;
- b. Sindh—33 mills;
- c. KPK—6 mills.

56. Sugar mills including members of PSMA are involved in the production and sale of refined white fine sugar in Pakistan and therefore, fall within the definition of undertaking in terms of Section 2(1)(q) of the Act.

57. PSMA’s membership consists of undertakings involved in the production and sale of refined white sugar, which in terms of section 2(1)(f) falls within the purview of goods. Also, PSMA being an association of undertakings is an undertaking in terms of Section 2(1)(q) of the Act.

58. Section 2 (1) (e) of the Act defines the dominant position as follows:

“Dominant position of one undertaking or several undertakings in a relevant market shall be deemed to exist if such undertaking or undertakings have the ability to behave to an appreciable extent independently of competitors,

customers, consumers and suppliers and the position of an undertaking shall be presumed to be dominant if its share of the relevant market exceeds forty percent.”

59. The sugar industry in Pakistan comprises of approximately 90 mills spread across Punjab, Sindh and KPK and vary in crushing capacities. Some mills are part of larger group companies that own multiple sugar milling units. The large sugar groups and their constituent units along with respective market shares are identified in Table 12 below show that these five groups have 40% share in the total production of sugar in Pakistan.

Table 11: Sugar Groups		
Group	Constituent Mills	Market shares
Almoiz/Thal	Almoiz I	7 %
	Amoiz II	
	Layyah	
	Safina	
	Baba Farid	
JDW	JDW I	16%
	JDWII	
	JDW III	
	Imperial Colony II (<i>Non operational</i>)*	
	JK Colony I	
	Deharki	
Tandlianwala	Tandlianwala I	5%
	Tandlianwala II	
	Tandlianwala Zamand	
Shakarganj	Shakarganj I	5%
	Shakarganj I	
Omni Group	Ansari	1%
	Bawany	
	Chamber	
	Khoski	
	Larr	
	Naudero	
	New Dadu	
RYK Group	RYK	6%
	Alliance	
	SW (Chishtia)	

**Imperial Mill (Colony Mandi Bahauddin) has been non-operational since the last 09 years and was bought by JDW Group in 2019-20.*

60. In order to identify the industry structure the share of each sugar company/group in total production is calculated. It is observed that JDW group has the highest share in terms of production i.e. 16 %, followed by Almoiz group which has a share of 7%, RYK group 6%, Tandlianwala and Shakarganj with a share of 5% each. Other notable group

companies include the Omni group which had a large presence in Sindh, however currently has 1% of the market share in terms of production. (Table 12 below)

Table 12: Market shares based on Sugar Production 2018-19									
(Qty Tons)									
Sr	Company Name	Cane Crushed	Production	Share (%)	Sr	Company Name	Cane Crushed	Production	Share (%)
1	JDW (I,II,III, JK, Deharki)	7740130	858306	16%	32	Husein	491278	48251	1%
2	Almoiz Group	3451428	354231	7%	33	Sindh Abadgar	431457	46634	1%
3	RYK	3001884	322806	6%	34	Jauherhabad	431121	44776	1%
4	Tandlianwala (I,II)	2707488	255375	5%	35	Popular	443872	44508	1%
5	Shakarganj (I,II)	484762	250229	5%	36	Tharparkar	416815	39593	1%
6	Hamza	2133725	231006	4%	37	Kashmir	411811	37824	1%
7	Etihad	1619284	183332	3%	38	Sakrand	335136	36865	1%
8	AKT	1586707	182076	3%	39	Huda	362203	35775	1%
9	Chashma (I,II)	1562413	166252	3%	40	Dewan	333105	35485	1%
10	Sheikhoo	1425138	146505	3%	41	Chanar	381801	35320	1%
11	Two star Kamalia	1356644	131553	2%	42	Adam	363306	32402	1%
12	Hunza (I,II)	1286946	123095	2%	43	Army welfare	292113	31895	1%
13	Madina	1184524	112610	2%	44	Kiran	331768	30818	1%
14	Fatima	997082	107116	2%	45	Haq Bahu	294838	29670	1%
15	Indus	937805	102522	2%	46	Darya Khan	259113	26603	0.5%
16	Alnoor	894494	94825	2%	47	Bandi	255172	25540	0.5%
17	Ashraf	859389	87879	2%	48	Ranipur	268835	25137	0.5%
18	Habib	771864	83910	2%	49	Digri	229405	23103	0.4%
19	Mehran	702259	80331	1%	50	Rasool Nawaz	226412	22346	0.4%
20	Ramzan	821787	78348	1%	51	Al Arabia	668962	68545	1%
21	Shahtaj	750786	74585	1%	52	Abdullah	171562	16680	0.3%
22	Faran	670581	73696	1%	53	Premier	154414	16317	0.3%
23	SGM	666793	72797	1%	54	Khazana	135715	12975	0.2%
24	Khairpur	663365	68714	1%	55	Pattoki	73898	6033	0.1%
25	Mirpurkhas	577396	64935	1%	56	Macca	37535	3389	0.1%
26	Noon	630929	63098	1%	57	Abdullah Shah Ghazi	24778	1755	0.0%
27	Shahmurad	500270	55425	1%	58	Mirza	0	0	0.0%
28	Matiari	509624	54947	1%	59	Najma	0	0	0.0%
29	Sanghar	490932	52799	1%	60	Pangrio	0	0	0.0%
30	Alabbas	467829	50892	1%	61	Seri	0	0	0.0%
31	Omni	487431	49529	1%	62	Tando M Khan	0	0	0.0%

61. For assessing dominance in terms of provisions of the Act, any individual player with a share of 40% or above is presumed to hold a dominant position. However, for the sugar milling business in Pakistan no single company or single group of companies seems to meet the threshold for dominance. Another test for dominance is to assess whether any undertaking is capable of acting independently of its competitors, consumers or suppliers. From evidence available on the record it appears that neither an individual undertaking nor a single group of companies can be termed as having acquired a dominant position. This is on account of the following reasons:

- a. No individual undertaking has the capacity to meet the large domestic consumption approximated at 5.2MMT per annum alone. The market of white refined sugar is also not a captive market since overall installed production capacity is estimated at more than 7 MMT and does not exceed estimated average consumption/demand. Therefore, no market player appears to be in a position to behave independent of its customers, competitors and suppliers.
- b. Sugar is a homogenous product with little or no branding by mills so the market power arising out of a particular brand is not present in this case.
- c. The other mills are sufficiently large in number so as to exert significant competitive pressure on any firm trying to act independently or exert any market power.

62. However, the Act envisages that a dominant position may be held by two or more economic entities legally independent of each other provided that they have economic linkages and they present themselves or act together in a particular market as a collective entity. Essentially the essence of collective dominance is parallel behavior within an oligopoly, that is to say tacit coordination. Generally factors that are considered for a finding of collective dominance include:

- a. Whether economic links exist among undertakings that enable them to act independently of their competitors and consumers. This requires specific examination of the links, if any, and factors which give rise to a connection between undertakings.
- b. Assessment of the structure of the market (generally this sort of coordination seems to occur in oligopolistic markets).

63. In the instant matter, the market does not appear to have an oligopolistic structure, secondly the enquiry committee has found no evidence on record that seems to suggest that a few large groups have economic linkages (common directorship between the major

groups identified above as mentioned in Table: 12, common investment, joint ventures or parent subsidiary or associated relationship) or that they have acted as a distinct group by virtue of any arrangement.

64. Therefore, based on the above, it appears that no mill/group of companies holds a dominant position individually or collectively in terms of Section 2(1)(e) of the Act.
65. Generally, two broad types of business conducts have been recognized in Section 3 of the Act as abusive: i). Exploitative abuses where firms take advantage of market power by charging excessively high prices to its customers, discriminating among customers paying low prices to suppliers or through related practices and ii) Exclusionary abuses in which an undertaking attempts to suppress competition by refusing to deal with a competitor raising cost of entering the market or charging predatory price.
66. Based on the available facts and given circumstances in the absence of any individual or collective dominant position in the relevant market the question of abuse of dominance in terms of Section 3 of the Act for the purpose of this enquiry does not arise.

III. (a) With respect to Section 4 whether there has been any prima facie violation on account of Collusive/collective decision making behind the sugar shortage/crisis and price hike.

67. It would be pertinent here to reproduce the language of Section 4 of the Act *vis a vis*. type of conduct by an association of undertakings that is considered to be prohibited under the Act. For this purpose relevant provisions of Section 4 are reproduced herein below:

“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.

(2) Such agreements include but are not limited to-

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

(b) dividing or sharing of markets for the goods or services, whether by territories, by volume of sales or purchases, by type of goods or services sold or by any other means;

(c) fixing or setting the quantity of production, distribution or sale with regard to any goods or the manner or means of providing any services;”

68. For the purpose of this issue it would be useful to summarize and reiterate some of the relevant business dynamics and regulatory conditions of the sugar supply chain in the country factually as stated in Issue I above, sugar production is highly cyclical in nature with crushing undertaken in three months and sales made over a period twelve months. Respective provincial Sugar Factories Control Acts stipulate that payments for cane purchased by mills from growers be made within a specified time period which means careful cash flow management by mills since sale proceeds would be realized throughout the year. At the commencement of crushing season (which typically begins from mid-November and may extend till end of February or beginning of March) mills have a certain amount of sugar stocks leftover from the previous year to which its production is added to give total sugar quantity available with the mill for sale. As sales are made they are subtracted from total sugar quantity to give a figure for balance stock. This may be summarized through a simple accounting formula:

[Opening stock + Sugar produced] – Sales = Balance/closing stock

69. In terms of the evidence provided below mills have been found to coordinate their production and stock figures based on which decisions on export quantities are made. It is a general economic principle that price is a function of demand and supply. It is observed that sugar consumption/demand is fairly constant, as has been observed from consumption data over the years presented above, hence it is the supply situation which actually effects price of sugar in the market. Moreover, sugar cannot be produced throughout the year which makes stock positions crucial for determining supply and price in the market. Perusal of impounded evidence it appears that sugar mills using the platform of PSMA constantly strived to limit supply of sugar in the market, thereby attempting to achieve desired price levels in the relevant market. For this purpose, at numerous occasions they have collectively deliberated upon excess supply situation and reached consensus on measures to control sugar supply in the relevant market as explained in detail below.

70. The communication record through email account of Mr. Arif Manager Admin (Lahore Office) was impounded during the inspection. In an email sent from his email address m.arif@psma.pk to om@psma.pk title ‘follow up’ dated 19.04.2017 contains a

PowerPoint presentation. Subject of the presentation is “EMERGENT GENERAL MEETING OF THE PSMA “PZ” 19TH APRIL, 2017”. The presentation begins with figures of production, consumption and surplus/deficit of sugar for the period 2016-17 and then based on these figures, quantities to be exported have been calculated (relevant slide no 4 as reproduced below) (Also refer to Annex ‘B1’ containing complete presentation)

	(Million Tons)
Surplus	1.87
Already Exported	0.425
Balance Available	1.445
Further Export Required	1.000
Net Balance	0.445
13 th Month Consumption	0.425
Carry Forward to Next Year	0.02

71. In the next slide (slide no 7) titled ‘strategy’ it appears to have been decided that “*the Government may be requested to allow export of one million tons of sugar on immediate basis and export may be allowed without any time restrictions*”. In the subsequent meeting of SAB held on May 19, 2017 an export of 1.2 MMT of sugar was allowed without making it time bound.
72. From the above it appears that the association keeping in view the supply situation is collectively deciding on export quantities based on the stock positions of individual mills. Although pursuing a general policy for exports could be justified for the association however, in this case it appears that such pursuance is only with the objective of controlling the supply and to maintain price levels in the relevant market as would be supported by the evidence produced below.
73. The impounded documentary evidence also reveals that the collective decision making on limiting supply was initiated in 2012 when there was a situation of over-supply in the

domestic market. In minutes of its 47th Annual General Meeting ('AGM') held on 03rd November 2012 the Chairman made the following remarks:

"The higher production of sugar in 2011-12 and carry forward stock of 1.1 million tons created a glut in the sugar market and the sugar prices remained under pressure. Therefore, timely steps were taken to persuade the government to ask TCP for purchase of sugar from the mills and also allow export of sugar to off load surplus and to enable the sugar industry to pay off the growers dues.

The sugar production for the year 2012-13 may exceed the production level of 2011-12 and a sizeable quantity of surplus sugar may be available for exports" (Annex 'B2')

74. This issue of exports to achieve desired domestic price levels has also featured as an important agenda item in PSMA's AGM for example, in its 49th AGM held on 21st October 2014 the Chairman stated:

"Chairman PSMA Mr. Iskander M Khan while concluding the meeting showed his concern over the plunging sugar prices at local/international level due to accumulated sugar stock position. He said that low ex-mill price, high cost of production and low international prices were the major impediments in our export.

...The present level of sugar stock was also discussed and it was observed that the current year carry forward stock would be up to 0.4 mln tons over last year's carry forward. Therefore if it is not exported it would be another dilemma for our industry." (Annex 'B3')

75. In its 51st AGM, held on 20th October 2016, the Chairman in his address noted:

"Thus a carry forward inventory of 1.7 million tons is expected in 2016-17. This is likely to be a clear surplus of a mln (sic) tons which must be off loaded in the global market. Therefore we would seek permission and convince the Federal Government to allow export of a mln (sic) tons. This would not only keep the price stable in the domestic market but would also help to improve mills liquidity to pay off growers dues expected at a level of about 260 blns in 2016-17. In this regard we would appreciate cooperation of the member's mills to provide reliable data and production figures" (Annex 'B4').

76. In its 52nd AGM, held on 02nd January 2018, after discussion on production, consumption and surplus stock, export figures were presented and reference was made of the SAB

meeting of May 2017 and the permission to export further one million tons of sugar. Relevant excerpts are reproduced below:

“PSMA continued its efforts and the Ministry of Industry & Production (MOIP) arranged a SAB meeting in May 2017 and in consultation with all participants determined 1.884 million tons surplus at the end of the crushing season and recommended 1.2 million tons for export without making it time bound” (Annex ‘B5’).

77. In a letter addressed to the Secretary Food Punjab by PSMA Punjab Zone dated 04th August 2017, the association states:

“Under the circumstances we foresee that current stocks will last until February 2018 and it will not be possible either to start crushing season on time and to pay to the farmers the support price if the present glut like situation continues to prevail. ...

We request that Provincial Government should take up the matter with Federal Government to facilitate exports so that the industry can start crushing on time. At the current market price of sugar it will be impossible to pay more than Rs. 120/40 kg to sugarcane farmers. We are fore-warning the government to take remedial steps to save the growers and the industry, failing which it will result in a serious law and order situation”.

78. **In its 53rd AGM, held on 11th October 2018, the Chairman PSM presented that the Association was trying its best to get permission for sugar export in order to “offload the surplus stock as well with some incentives in order to be competitive in the world market. With the above measure in place the sugar industry was able to export and cleared the farmer dues” (Annex ‘B6’).**

79. In its 54th AGM held on 18th December 2019, the Chairman PSMA stated:

“The average retail price of sugar during calendar year 2017 was Rs. 57.71/kg and dropped to Rs. 53.85/kg in calendar year 2018. Given the cost of production of Rs. 63.52/kg and sugarcane indicative price of Rs. 180/40kg for Punjab, KPK and Rs. 182/40 Kg for Sindh for the year 2018-19, losses to sugar millers were inevitable.

However, in late 2019 price structure improved after export. The average month wise ex-mill rate of sugar in Punjab and Sindh during the start of the sugar year (Oct-2018) was Rs. 48.9/kg and ended at Rs. 69.26/kg by Sep-2019, up by 41.64%. Similarly the whole sale price improved from Rs. 51.41 to Rs. 70.91, a 37.91% increase. The year average ex-mill price of sugar in 2018-19 was Rs. 59.05/kg, average whole sale price was Rs. 60.94/kg and average retail price was Rs. 64.27/kg” (Annex ‘B7’).

80. These AGM's had representation from mills located all over Pakistan. The minutes of AGM's cited above along with list of participants is attached as Annex 'B2-B7'. The foregoing evidence demonstrates that sugar mills using the platform of PSMA have developed a collective strategy or concerted practice whereby, based on an assessment of stock positions, export quantities are agreed upon. The Federal Government is then lobbied for export permission and freight subsidy on the pretext that payment to growers would not be possible without such an allowance. Permission for export leads to two pronged benefits for sugar mills (i). Export earnings (along with freight subsidy) and (ii) a stabilization or upward movement in domestic prices of sugar due to a reduction in remaining stocks of sugar. Therefore, even smaller mills that cannot participate in export, may derive benefits of an increase or stability in domestic prices.
81. Export data obtained from FBR and price data from PBS shows that export decision has always resulted in a rise in domestic sugar price. As appears from the Table 13 below whenever significant quantity of sugar is exported, the domestic price of sugar witnessed an increase. This is especially notable from consecutive four months from March to June 2019 when per kg price was increased by Rs 3 per kg also accounting the fact that these exports were made in the mid-season.

Table 13: Export & Domestic price levels			
Months	Export Qty (MT)	Retail Price (Rs. Per kg (Avg).	Change in Retail Price (Rs. Per kg
Feb-19	32,252	60	1
Mar-19	62,254	63	3
Apr-19	166,207	66	3
May-19	164,707	69	3
Jun-19	15,289	71	3
Jul-19	25,887	73	1
Aug-19	93,502	75	3
Sep-19	48,569	76	1

No exports in significant quantities have been made post September 2019

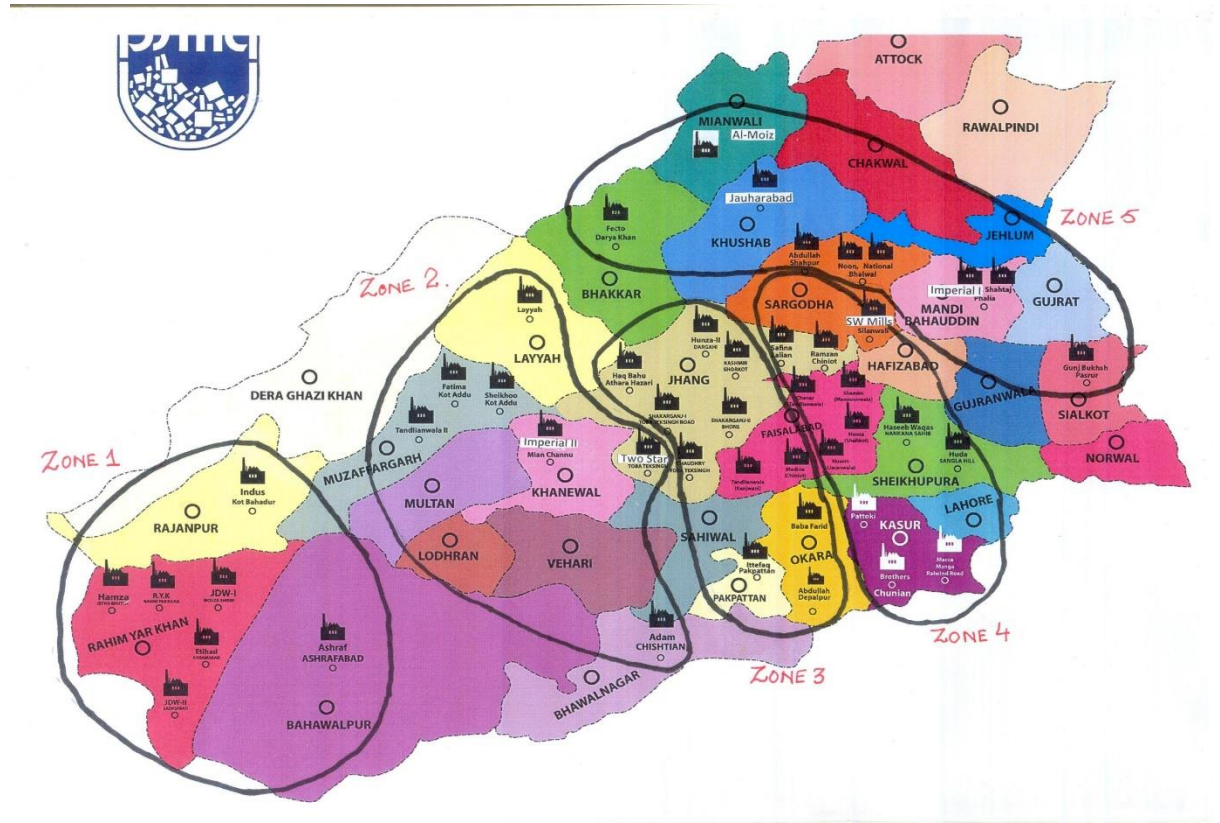
82. The table above clearly indicates that the exports have always resulted in domestic price hike so much so that during 2019 only, the price hike was collectively PKR 18/kg. Normally, if individual mills had taken this decision, there would have been no issue as far as competition law is concerned. However, the sugar mills are using the PSMA platform to take a collective decision to use exports as a means of sustaining or controlling prices or ‘keeping it stable’ in the relevant market which raises serious competition concerns. This collective strategy and the resultant price hike in the relevant market (domestic market) raises questions as to whether the quantities exported were over actual surplus thereby affecting supply in the relevant market. It is important to highlight that an increase in price by Rs. 1/kg results in gain of Rs 450 Million (approx.) in a month to the mills based on average monthly consumption of 0.45MMT of sugar. Whereas as per the table sugar witnessed an increase in price of Rs 18/kg during the period Feb-19 to Sep-19 which amounts to approx additional gain of Rs 40 Billion in revenue for sugar mills.
83. Based on the foregoing analysis, it appears that starting from 2012 to date, the conduct of PSMA and all its members vis-à-vis collective discussion on stock positions leading to a decision on the quantity to be exported is tantamount to fixing or setting/controlling supply within the relevant market this has resulted in price hike that is not based on actual/available supply and demand. Hence a prima facie violation of Section 4(1) read with Section 4(2)(c) of the Act. Furthermore, this reduction in domestic stocks/supplies leads to an increase in or maintenance at desired price level in the relevant market, as admitted by PSMA through evidence presented above, which constitutes a prima facie violation of Section 4(2)(a) of the Act by PSMA members.

III. (b) With respect to Section 4 whether there has been any prima facie violation on account of any other anti-competitive conduct identified during the course of the investigation.

Zonal divisions by PSMA Punjab Zone

84. During enter and search of PSMA premises in Lahore record of email account of Mr. Arif Manager Admin (Lahore Office) was obtained. In an email sent from his email address m.arif@psma.pk to om@psma.pk title ‘follow up’ dated 19.04.2017 contains a PowerPoint presentation. Subject of the presentation is “EMERGENT GENERAL

MEETING OF THE PSMA “PZ” 19TH APRIL, 2017”. The presentation. Slides 5 and 6 (reproduced below) appear to divide the territory of Punjab into five ‘zones’ based on the presence of sugar mills. It is noted that the territorial division not based on simple geography. As the map shows the geographical boundaries of Jhang district has nine sugar mills however, Jhang is not a zone instead these nine mills are carved up to be part of three separate zones i.e. Zones 2, 3 and 4. The same is the case for Faisalabad and Sargodha districts.



Zone 1	Balance (M.Ton)	Zone 2	Balance (M.Ton)	Zone 3	Balance (M.Ton)	Zone 4	Balance (M.Ton)
Hamza	178,051	Layyah	114,922	Haq Bahu	4,532	Safina	70,978
Indus	102,125	Fatima	127,187	Hunza II	50,287	Ramzan	68,185
R.Y.K	150,921	Shaikhoo	161,643	Kashmir	65,045	Chanar	50,948
JDW-I	268,246	Tandlianwala II	115,438	Shakarganj I	604	Hunza I	63,884
JDW-II	177,192	Two Star	164,650	Shakarganj II	14,044	Husein	27,747
Etihad	138,185	Ittefaq	30,486	Tandlianwala	46,330	Huda	47,350
Ashraf	138,781	Chaudhary	40,677	Madina	114,161	Haseeb Waqas	266
Total Balance	1,158,501	Adam	53,317	Baba Farid	8,284	Macca	160
		Total Balance	808,320	Abdullah I	156	Rasool Nawaz	28,126
				Total Balance	303,443	Pattoki	42,215
						Total Balance	399,859
Zone 5	Balance (M.Ton)						
Darya Khan	22,129						
Jauharabad	53,552						
Al-Moiz II	55,651						
Noon	75,912						
Popular	45,235						
Shahtaj	59,316						
Total Balance	311,795						

85. Slide 6 supra provides list of mills in each zone and the quantity of sugar in stock/available in each mill in the respective zone. From Slide 7 titled 'strategy' discusses it appears that for the purposes of local sales, a territorial division is made in Punjab i.e. five zones based on location of mills in that zone. This territorial division is accompanied with the formation of sales committees that include one member from each zone who will meet periodically. Apart from coordinating local sales, it appears that mills are also coordinating the start-up date for the next crushing season.

Strategy

Local Sales:

- Mills Be Divide Into Five (05) Zones.
- Sales Committee, Comprising Of One Member From Each Zone, To Meet Periodically.
- Start Up Date For Mills To Be Coordinated For Next Crushing Season.

Exports:

- Government May Be Requested To Allow Exports Of 1.0 M Tons Of Sugar On Immediate Basis.
- Exports May Be Allowed Without Any Time Restrictions.

86. Presence of the five-zonal division is also corroborated by evidence seized from the premises of PSMA Lahore and JDW Sugar. An email dated 13th October, 2018 sent from the account of Mr. Muhammad Arif (Manager Admin & Accounts) PSMA Lahore, addressed to All Members PSMA Punjab Zone is reproduced below (Annex 'C1'):

"All Members,

PSMA (Punjab Zone)

Chairman PSMA (Punjab Zone) has constituted a co-ordination committee considering the location of mills situated in Punjab Zone.

Details of Division and its vicinity mills, along with name of coordinator is attached.

We hope the designated person from respective mills will make coordination with each other".

87. The email above, is forwarded to Mr. Muhammad Rafique of JDW Group and further states:

"Dear Rafique Sb.

As discussed on telephone.

Please review the following DFA and advise further in this matter.

Regards,

M.Arif"

An attachment with the email is titled "Division Coordinators" and divides Punjab into following five zones:

- a. Bahawalpur-09 mills
- b. DG Khan—06 mills
- c. Faisalabad—14 mills
- d. Lahore/Multan/Sahiwal –07 mills
- e. Sargodha/Gujranwala – 09 mills

88. Division coordinator(s) belonging to different mills are assigned to each zone. It is noted that this list documents also divides Punjab into five zones albeit with a different composition of mills than the one assigned in the slides mentioned above.

PSMA Punjab Zone Co-ordination Committee				
No. of Mills	Division	Name of Coordinator	Sugar Mills	
9.	Bahawalpur	Mr. Munir Hussain RYK Sugar	1.	Ashraf
			2.	Ittefaq
			3.	Adam
			4.	Hamza
			5.	JDW I
			6.	JDW II
			7.	Etihad
			8.	RY Khan
			9.	Chaudhri
6.	D. G. Khan	Mr. Abdul Sattar Qureshi Indus Sugar	1.	Layyah
			2.	Fatima
			3.	Sheikhoo
			4.	Tandlianwala II
			5.	Haseeb Waqas
			6.	Indus
14.	Faisalabad	Mr. Ihsan ul Haq Kashmir Sugar	1.	Haq Bahu
			2.	Kashmir
			3.	Shakarganj I
			4.	Shakarganj II
			5.	Hunza II
		Mr. Wasif Mahmood Layyah Sugar	1.	Madina
			2.	Ramzan
			3.	Safina
			4.	Two Star
		Mr. Wasim Saleem Husein Sugar	1.	Channar
			2.	Rasool Nawaz
			3.	Hunza I
			4.	Husein
			5.	Tandlianwala I
7.	Lahore/Multan/Sahiwal	Mr. Sohail Azam Khan Macca Sugar	1.	Brothers
			2.	Macca
			3.	Pattoki
			4.	Huda
			5.	JKS

			6.	Abdullah I
			7.	Baba Farid
9.	Sargodha / Gujranwala	Mr. Sohail Khokher Noon Sugar	1.	Al arabia
			2.	Sillanwali
			3.	Popular
			4.	Noon
		Mr. Waqar Ahmed Shahtaj Sugar	1.	Imperial I
			2.	Shahtaj
			3.	Darya Khan
			4.	Jauharabad
			5.	Almoiz II

89. Another email dated 06th November, 2018 titled 'FW: Co-Ordination Committee' originally sent from email address of Muhammad Rafique [mrafique@jdw-group.com] addressed to designated members of coordination committees reads as follows:

'Dear All,

Please find enclosed revised list of Coordination Committee in which Huda Sugar Mills has been transferred from Group 6 to Group 5 on the request of the Huda Sugar Mills. Secondly it was decided by the Executive Committee in a meeting on 31st October, 2018 to appoint Mr. Sohail Khokhar as Chief Coordinator for follow up with all the Coordination Committee on all issues to be passed on to it. FYI & record please.

Thanks & Regards,

Muhammad Rafique' (Annex 'C2')

90. An excel sheet titled 'Co-ordination Committee-PSMA Punjab Zone' lists 05 zones as opposed to the 06 zones mentioned in the email text by Mr. Muhammad Rafique. It is interesting to note that with the zonal classification the list also contains a column mentioning 'share in sugar production %age'.

CO-ORDINATION COMMITTEE				
PSMA - PUNJAB ZONE				
No. of Mills	Region	Share in sugar production %age	Name of Coordinator	Sugar Mills
9	Bahawalpur	40%	Mr. Munir Hussain RYK Sugar (1)	1 Ashraf
				2 Ittefaq
				3 Adam
				4 Hamza
				5 JDW-I
				6 JDW-II
				7 Etihad
				8 R.Y.Khan
				9 Chaudhri
6	D.G.Khan	19%	Mr. Abdul Sattar Qureshi Indus Sugar (2)	1 Layyah
				2 Fatima
				3 Sheikho
				4 Tandlianwala-II
				5 Haseeb Waqas
				6 Indus
14	Faisalabad	23%	Mr. Ihsan ul Haq Kashmir Sugar (3)	1 Haq Bahu
				2 Kashmir
				3 Shakarganj-I
				4 Shakarganj-II
				5 Hunza-II
			Mr. Wasif Mahmood Layyah Sugar (4)	1 Madina
				2 Ramzan
				3 Safina
				4 Two Star
			Mr. Wasim Saleem Husein Sugar (5)	1 Channar
				2 Rasool Nawaz
				3 Hunza-I
				4 Husein
				5 Tandlianwala-I
7	Lahore / Multan / Sahiwal	5%	Mr. Sohail Azam Khan Macca Sugar (6)	6 Huda
				1 Brothers
				2 Macca
				3 Pattoki
				4 JKS
				5 Abdullah-I
9	Sargodha / Gujranwala	13%	Chief Coordinator Mr. Sohail Khokher Noon Sugar (7)	6 Baba Farid
				1 Al Arabia
				2 Sillanwali
				3 Popular
			Mr. Waqar Ahmed Shahtaj Sugar (8)	4 Noon
				1 Imperial-I
				2 Shahtaj
				3 Darya Khan
				4 Jauharabad
5 Al-Moiz-II				

91. A series of documents impounded from premises of JDW Group titled 'Co-ordination Committee PSMA-Punjab Zone' indicate that these committees were formed for periodically coordinating stocks and sales positions. The documents reproduced herein below, show the monthly stock positions of mills. It is noted that these documents also divide Punjab into five zones which corresponds to the zonal compositions from the email documents (Annex 'C3').

CO-ORDINATION COMMITTEE
PSMA -PUNJAB ZONE

No of Mills	Division	Share in Sugar Production % age	Name of Coordinator	Sugar Mills	Stock as on 31-08-2019	Stock as on 30-09-2019
9	Bahawalpur	40%	Mr. Munir Hussain RYK Sugar	1 Ashraf	61,000	54,000
				2 Ittefaq	-	-
				3 Adam	20,519	13,000
				4 Hamza	50,000	24,000
				5 JDW-I	247,601	184,500
				6 JDW-II	13,460	10,000
				7 Etihad	76,000	48,550
				8 R.Y.Khan	80,000	63,000
				9 Chaudhari	-	-
6	D.G.Khan	19%	Mr. Abdul Sattar Qureshi Indus Sugar	1 Layyah	22,200	17,700
				2 Fatima	54,570	42,839
				3 Sheikhoo	36,100	24,000
				4 Tandlianwala-II	28,500	15,000
				5 Haseeb Waqas	-	-
				6 Indus	19,295	9,900
14	Faisalabad	23%	Mr. Ihsan Ul Haq Ramzan Sugar	1 Haq Bahu	-	-
				2 Kashmir	-	-
				3 Shakarganj-I	-	-
				4 Shakarganj-II	2,000	-
				5 Hunza-II	6,000	-
			Mr. Wasif Mahmood Layyah Sugar	6 Madina	17,500	7,500
				7 Ramzan	40,208	40,208
				8 Safina	15,647	12,750
				9 Two Star	85,000	75,000
			Mr. Wasim Saleem Husein Sugar	10 Channar	12,000	7,000
				11 Rasool Nawaz	-	-
				12 Hunza-I	-	12,000
				13 Husein	7,472	5,334
				14 Tandlianwala-I	700	-
7	Lahore /Multan / Sahiwal	5%	Mr. Sohail Azam Khan Macca Sugar	1 Brothers	-	-
				2 Macca	-	-
				3 Pattoki	2,000	500
				4 JK Sugar	24,884	19,000
				5 Abdullah-I	-	-
				6 Baba Farid	-	-
9	Sargodha/ Gujranwala	13%	Mr. M. Sohail Khokhar Noon Sugar	1 Al-Arabia	18,928	16,000
				2 SW Sugar	28,000	20,000
				3 Popular	17,500	-
				4 Noon	27,900	23,000
			Mr. Waqar Ahmed Shahtaj Sugar	5 Imperial	-	-
				6 Shahtaj	11,000	5,000
				7 Darya Khan	-	-
				8 Jauharabad	7,178	-
				9 Al-Moiz-II	23,210	18,000
				10 Huda	14,552	9,000
TOTAL					1,070,924	764,781

757,781

Sug: 750,000 Tons

92. From the evidence presented above, it appears that since 2017 PSMA Punjab Zone has:
- a. Created zonal divisions for the purposes of coordination among respective mills on local sales as the phrase ‘Sales committee comprising of one member from each zone to meet periodically’ indicates. Share of each zone vs total production in Punjab is mapped out which shows that the coordination in sales is based on share in production.
 - b. Stock positions of each mill in each zone are mapped out on a monthly basis.
 - c. Mills are also coordinating for start of crushing activity in the respective zones.

This zonal division and coordination on sales, stock positions and production quota appears to be none other than monitoring the position with respect to each mill to control local sales and quantity to be sold which is a prima facie violation of Section 4(1) read with Section 4(2)(a) of the Act.

Monitoring of production/consolidation of stocks--Sharing of sensitive commercial information to limit supply in the market

93. Although sugar is a partially regulated sector and is notified as an essential commodity therefore, its production, sales and stock positions are closely monitored by the government at the level of SAB who receive information from provincial cane commissioners. Similarly, FBR gathers stock positions for purposes of tax collection.
94. As stated earlier, stock position of each mill is highly sensitive in nature, since it allows sugar mills to assess and coordinate on future sales volumes and pricing strategies. It appears that sugar mills are using the platform of PSMA to share highly sensitive stock information in order to control supply of sugar in the market and are acting visibly in concerted and coordinated manner.
95. There are a number of documents/communications made whereby stock positions were collected and collated by PSMA. In PSMA’s AGM held on 10th December 2012, Mr. Muhammad Rafique of JDW Sugar Mills was nominated as the head of a committee constituted to collect data from mills, relevant extracts are reproduced below:
- “PSMA fortnightly report was also discussed and after detailed deliberation on the subject a committee was constituted headed by Mr. Muhammad Rafique of JDW Sugar Mills ltd, to collect data from the mills and supply it to the PSMA centre office for compilation of fortnightly reports on regular basis and its further distribution to the*

quarters concerned. It was also agree that the sugar mills may loose its membership in case it did not provide the production data”.

Representatives from 37 sugar mills attended the abovementioned meeting. Minutes of meeting alongwith list of attendees is attached as Annex ‘B2’.

96. The examination of email account of Mian Muhammad Arif (Manager Admin & A/C m.arif@psma.pk and secretary@psma.pk) PSMA Lahore, shows numerous email correspondence whereby individual mills send PSMA (Punjab Zone as well as PSMA Secretariat in Islamabad) fortnightly reports. In an email dated 03rd January 2016 sent from m.arif@psma.pk to Zahid Zulfiqar Rana Manager (IT), Jauharabad Sugar Mills Limited wherein the latter shares the fortnightly report for his mill notes:

“Our email id mail@psma.pk is a mailing list id only.

For your official correspondence and sending reports you must use following email ids.

Secretary secretary@psma.pk

Media Manager media.manager@psma.pk

General Info info@psma.pk

Manager Admin & A/cs. admin@psma.pk OR m.arif@psma.pk”

97. Similarly, various mills send their stock positions for compilation of fortnightly report by PSMA some examples are reproduced below:

“From: Javed Shah [<mailto:Javed.Shah@fatima-group.com>]

Sent: Wednesday, January 13, 2016 3:13 PM

To: psma_punjab@yahoo.com

Cc: Muhammad Amjad

Subject: stock report as on 31.12.2015

*The Secretary,
Pakistan Sugar Mills Association.
Punjab Zone.*

Subject: Stock of Sugar As on 31-12-2015

<i>2015-2016</i>	<i>M.ton</i>
<i>Crushing</i>	<i>316,843.52</i>
<i>Production</i>	<i>29712.50</i>
<i>Recovery</i>	<i>9.73</i>

Stock 29712.5

2014-2015

Sugar Stock 5,173

*Best Regards,
Javed Shah (Sales Manager)
Fatima Sugar Mills Limited”*

“From: Hunza Sugar [<mailto:hunzasugar.headoffice@gmail.com>]
Sent: Tuesday, February 23, 2016 4:30 PM
To: Psmaz Ashfaq; psmapz@gmail.com; psma.punjab; Shams ul Arifeen/Admin Officer/psma.pk; psma_punjab@yahoo.com
Subject: Fortnightly Stock Report

Sir,

Please find attach here with”

(The email contains an attachment with stock positions for Hunza Sugar Mills)

“From: Ittefaq Sugar [<mailto:ittefaqsugar@hotmail.com>]
Sent: Saturday, December 10, 2016 4:41 PM
To: PSMA LHR; Sameem
Subject: FORTNIGHTLY ENDING REPORT 30-11-2016

Dear Sir,

Kindly find an attached herewith sugar stock report of the fortnight ending 30-11-2016 for your kind information please.

Thanking you, we remain.

*AGM(Finance)
Ittefaq Sugar Mills Limited
Shafiabad - Channi Goth”*

“From: Ahsan Latif [<mailto:coo@jsml.com.pk>]
Sent: Monday, January 23, 2017 3:03 PM
To: m.arif@psma.pk

Cc: Ahsan Latif; secretary@psma.pk

Subject: Re: Millwise Crushing & Sugar Stock position As on 20-01-2017

Arif sb,

Do you have figures from other divisions of Punjab? Kindly send.

*(Ahsan Latif)
Chief Operating Officer
JSML, Jauharabad.*

Reply: Muhammad Arif to COO Juaharabad Sugar Mills.

Sir, This is complete list containing all Punjab Mills.

*Regards,
Muhammad Arif”*

98. The information received from mills is compiled into fortnightly reports which are circulated amongst member mills. An email dated 09th September 2016 sent from m.arif@psma.pk to nadia.sarwar@chanarsugar.com is titled ‘Fortnightly Report As on 09-09-2016’ and states:

“Plz find upto date report of Stock position of Sugar.

*Regards,
Muhammad Arif
Manager Admin & A/c
PSMA(PZ)”*

The email attachment contains the consolidated fortnightly reports.

99. Another email dated 20th March 2018 sent from m.arif@psma.pk to coo@jsml.com.pk (Chief Operating Officer Jauharabad Sugar Mills) subject ‘Sugar Crushing & Stock position as on 19-03-2018’ contains an attachment titled ‘Sugar Crushing and stock position 2017-18’.

100. Email dated 22nd May 2018 sent from m.arif@psma.pk to 'cfo@jsml.com.pk' subject ‘Production reports’

“Dear Sir,

Plz find attached following for your doing the needful.

1. *Crushing Season 2017-18.xls = (Punjab Production)*

2. *Centre fortnightly report.xls= Sheet 30-4-2018 (for Data of KPK & Sindh)*

*Regards,
Muhammad Arif*

101. Email dated August 24, 2019, From: mrafique@jdw-group.com to m.arif@psma.pk on the subject “*RE: Stock Position of sugar as on August 22, 2019*” reads:

“Arif,

After today’s meeting we will send similar email to all our members in Punjab to give us closing sugar stock position as on 25th August.

*Best Regards,
Muhammad Rafique
Group Director Finance
JDW Group”*

102. A typical fortnightly report contains mill wise information of following elements:

- a. Cane crushed;
- b. Sugar produced;
- c. Total lifting (this refers to the total volume of sales to date).
- d. Balance stock (this is the quantity of sugar that remains with the mill i.e. production minus sales).
- e. Percentage of balance production (this figure is the balance/remaining stock divided by total production i.e. percentage of production that is available with the mill for future sales).

103. An email dated 28th June 2019 sent from m.arif@psma.pk to sabir@jdw-group.com subject: ‘DFA OF AGENT FOR TOMORROW'S MEETING’ (reproduced below) is a post-budget meeting and shows that PSMA Punjab zone is discussing not only availability of sugar stocks in the country but also impact of the budget on the sugar sector wherein sales tax on sugar was enhanced from 8% to 17% with an impact of Rs. 3.60 per kg as quoted in the Budget speech². These are sensitive commercial issues and could be a prima facie violation of Section 4 of the Act, specifically stock positions since these have a direct bearing on future prices. (Please refer to Annex ‘D1’ for emails)

² http://www.finance.gov.pk/budget/budget_speech_english_2019_20.pdf



Pakistan Sugar Mills Association
PUNJAB ZONE

MOST IMMEDIATE

No.PSMA/2019/006.PZ.
Dated: 28th June, 2019

AN EMERGENT MEETING OF PAKISTAN SUGAR MILLS
ASSOCIATION (PUNJAB ZONE)
WILL BE HELD ON
SATURDAY 29TH JUNE 2019 AT 11:00AM

An emergent meeting of the Association will be held on **Saturday 29th June, 2019** at **11:00AM** at PSMA (Punjab Zone) Office Premises 2-Happy Homes, 38-A, Main Gulberg Lahore, to transact the following business;

- 1) To review and discuss impact of proposed changes in federal budget 2019-20 relating to sugar industry and sugar trade.
- 2) To get mandate from house to work on more export of sugar to China to avail full quota of 300,000 tons of sugar.
- 3) To discuss about availability of sugar stocks in the country.
- 4) Any other point with the permission of the chair.

104. Moreover, forensic analysis of smartphone device obtained from Mr.Inayatullah Khan, Secretary General, PSMA shows the presence of a WhatsApp group titled 'PSMA PZ³ (Official)'. Sugar mills of the Punjab Zone use this group to exchange information on sugar stocks and prices. In a conversation thread dated 18th July 2020 a message following message is posted on the group:

"All Members are requested to share sugar stock balance(s) of your respective mill(s) at day end today (Saturday 18/07/2020)"

92308388888@s.whatsapp.net (92308388888@s.whatsapp.net)
7/18/2020 - 1:57:37 PM

105. The minutes of the SAB Meeting held on 11th May 2020 were shared on the group and Mr. Rafique from JDW posts the following message:

"Calculation of monthly consumption for the period from Dec 19 to June 20 i.e for 7 months: Opening stock as start of the season 506,000 tons Add: Sugar production 4,846,000 minus current closing stocks. 1,900,000 tons = 3,452,000 tons sugar actually consumed divided by 7 months = 493,142 tons per month.

³ PZ stands for Punjab Zone

923218461083@s.whatsapp.net (923218461083@s.whatsapp.net)

7/18/2020 - 4:58:10 PM

Members comments are invited on monthly consumption of 493k as against 442k assumed by the SAB. During period from mid March to mid June 20 ie for 3 months monthly sugar consumption was hardly 30 per cent due to COVID 19.

923218461083@s.whatsapp.net (923218461083@s.whatsapp.net)

7/18/2020 - 5:04:22 PM

Current stocks given by members should those which are physically available . This aspect should be rechecked before next SAB meeting being held on coming Wednesday.

923218461083@s.whatsapp.net (923218461083@s.whatsapp.net)

7/18/2020 - 5:08:09 PM

Yay jo aaj stock samnay aye iska matlab pehlay stock ghalat thay ya kahin hum say ghalti hui hai.

Media/WhatsApp Images/IMG-20200718-WA0016.jpg

923008427701@s.whatsapp.net (923008427701@s.whatsapp.net)

7/18/2020 - 5:08:58 PM

We need to recheck current stocks once again.

923218461083@s.whatsapp.net (923218461083@s.whatsapp.net)

7/18/2020 - 5:10:17 PM

Then total consumption is 3,552,000 for 7 1/2 months and monthly consumption works out to be 473,600 per month.

923218461083@s.whatsapp.net (923218461083@s.whatsapp.net)

7/18/2020 - 5:13:07 PM

According to this calculation remaining stocks are hardly sufficient for 4 months and remaining period to season is 4 1/2 months from mid July to end Nov.

This seems correct. As 1.1 mln ton stock

923008633666@s.whatsapp.net (923008633666@s.whatsapp.net)

7/18/2020 - 5:18:31 PM

Need a very careful calculation and review of data before giving any suggestion to the Govt.

923218461083@s.whatsapp.net (923218461083@s.whatsapp.net)

7/18/2020 - 5:19:20 PM

Can confirm each mill

923008633666@s.whatsapp.net (923008633666@s.whatsapp.net)

7/18/2020 - 5:19:50 PM

This is followed by various sugar mills stating their stock positions:

Closing stocks as July 17, 2020. JDWI 121,694 tons. JDW2. 32,028 tons and JKI (Mianchanu). 17,510 tons.

923218461083@s.whatsapp.net (923218461083@s.whatsapp.net)

7/18/2020 - 5:29:56 PM

Closing stock at Indus on 17/7 is 64150 m.ton (Annex 'D2' for relevant extract of chat obtained from FIA forensic report).

106. From the Whatsapp and email communication presented above, PSMA members identified some sort of discrepancy in the consumption and stock positions collected by cane commissioners which were presented in the SAB meeting of 11th May, 2020 which meant that the sugar stocks would be insufficient to meet requirements till the new crushing season in November 2020. It is interesting to note that during the SAB meeting of 11th May 2020 the PSMA representative had endorsed the government's calculation of sugar stocks. The relevant portion of the SAB minutes is as follows:

“Para 4. Provincial cane commissioners and Pakistan Sugar Mills Association (PSMA) endorsed the stocks position. Meanwhile, cane commissioner Punjab informed that due to Covid-19 the consumption of sugar declined in this span of time, PSMA and other members also endorsed this statement.

Para 9: After consulting all the stakeholders, it was concluded unanimously by the Sugar Advisory Board (SAB) that:

f. Currently sugar stocks are satisfactory and therefore no need to import sugar at this stage by the government. However, there is a need of constant monitoring through SAB meetings.

g. Provincial cane commissioners should develop their independent data source they might involve FBR to recheck the actual production figures. There is a need to reform the production figures”. (Annex 'D3')

107. **The said discrepancy in stock figures came to the fore in the next SAB meeting held on 22nd July 2020. Relevant extract from the minutes of the meeting is reproduced below:**

“Para 4. While the comparison was being drawn between current stocks and stocks in the last SAB meeting it was pointed out that during the previous meeting it was agreed that stocks were sufficient to last till December 2020. However, the current stock position shows that stocks will last only till mid-November 2020. The Chair further elaborated that as per the data presented, the offtake/consumption pattern of Punjab was drastically higher in last 20 days as compared to offtake/consumption in May and June. Mr. Javed Kayani, senior member, Pakistan Sugar Mills Association (PSMA) said that the reasons why the figures show such a high offtake was because of an error in reporting the previous figures wherein for certain sugar mills more stocks were shown than were actually available. PSMA also clarified that stock data was collected directly from sugar mills by Cane Commissioner Offices without any involvement of PSMA. The Chair highlighted that previously stocks data was confirmed as correct by PSMA representatives in last SAB meeting. The Chair expressed serious concerns on this offtake/consumption pattern in last 20 days in Punjab and directed Cane Commissioner Punjab to explain the stock collection process.

...

Para 7. The Chair expressed that maybe erratic stock position had been presented by Provincial cane commissioners in previous SAB meetings as they got data from Mills. This may be due to change of data sources or whatsoever but in current scenario it was estimated that due to non-availability of strategic reserves some forces may manipulate the market in the month of November to exploit this situation”. (Annex ‘D4’)

108. Price data obtained from PBS shows that this pressure on stocks was reflected on prices which witnessed a marked upward trend between July and August 2020.

Cities	20-Jan	20-Feb	20-Mar	20-Apr	20-May	20-Jun	20-Jul	20-Aug	20-Sep
Peshawer	77.56	82.45	82.56	84.03	84.22	83.34	86.45	98.15	98
Islamabad	80.57	84.96	85.41	87.05	85.51	85	87.29	98.68	98.32
Lahore	75.97	81.66	82.27	84.28	84.28	81.16	83.83	95.51	95.7
Karachi	74.63	80	81.64	82.72	82.39	82.74	84.7	96.35	95.18

Source: PBS

As shown in Table 14 above, between July and August across all major cities prices rose by 13 percent.

109. From as far back as 2012 to July 2020 there has been continuous involvement of PSMA in collection and coordination of stock positions amongst its member mills.

It appears that these positions are then used to control supply and price of sugar in the market. The coordination of stock positions is also used to influence policy decisions regarding allowance of exports (in case of surplus stock) and import decisions (in case of an impending shortage). In a meeting of SAB held on 11th May 2020, stock positions were presented by provincial cane commissioners which indicated that sufficient sugar was available till commencement of next crushing season based on which it was decided that there was no need to import at this stage. It is pertinent to mention here that PSMA representatives present during the meeting endorsed the stock figures presented therein. Later on when the minutes of aforementioned SAB meeting were shared in a PSMA Whatsapp group the anomaly in stock positions was pointed out. In the next SAB meeting, held on 22nd July 2020, stock positions presented revealed in a large discrepancy between the positions presented in the previous meeting which meant that stocks were not sufficient to meet requirements till next crushing season. When discrepancy in stock positions was pointed out, PSMA stated that it had no role in collection of stock data as this was done by cane commissioners directly from mills. The enquiry committee observes that this statement is incorrect as PSMA has been sharing stock positions between member mills since 2012 to date. During the same meeting the Kissan Board also alleged that mills had misreported their stock positions to provincial authorities. It is observed that it would take at least two to three months for imported sugar to reach the market i.e. by end October early November 2020. Therefore, pressure on stock positions on account of misreporting by PSMA and or its members resulted in an average price increase of Rs. 11.6/kg across major cities of Pakistan (between July to September 2020), the benefits of which gain were accrued to the sugar mills.

110. The price of any commodity is a function of demand and supply and typically a cartel can increase or maintain price levels by controlling supplies. Sharing of sensitive commercial information would be violation of competition laws if it reduces uncertainty vis a vis the market in question with the result that competition between undertakings is restricted. Given the cyclical nature of sugar production which involves crushing over a 03 month period with sales made during the remainder of the year makes stock positions vitally important for controlling current and future price levels. The trend in prices will thus be determined on the basis of or sentiment of the market vis a vis availability of

stocks in the market till the next crushing season. If individual sugar mills are cognizant of the sugar stocks of their competitors they can make decisions about their own future prices and stocks. For example, if stocks are running low versus expected consumption then mills know that their prices of their competitors will rise and therefore, they can also profitably raise their prices without losing business. On the contrary, if there are sufficient stocks mills will know that prices will face a downward pressure since mills would have to offload stocks to meet cash flow requirements. It is observed that when faced with such a scenario, since they are aware of each other's stock position, sugar mills lobby for export permission so as to offload stock and avoid a fall in domestic prices.

111. From the foregoing and the evidence available, it appears that since 2012 onwards, the platform of PSMA is being used by its member mills in Punjab Zone to share stock information amongst themselves which is considered as sensitive commercial information and such information having a direct bearing on the current and future price of sugar thereby used to control prices and restrict and distort competition in the relevant market in prima facie violation of Section 4(1) read with Section 4(2)(a) of the Act.

Issue III (c) With respect to Section 4 whether there has been any prima facie violation on account of Any collusion or collective decision by sugar mills for not supplying sugar to tenders floated by USC or any form of bid rigging.

112. During the course of the enquiry a letter was written to USC dated 04th June 2020, to provide information regarding sugar tender floated by it (from 2016 to 2020) in order to ascertain whether there was any collective refusal to supply by sugar mills for the last five years. USC vide its reply dated 01st July 2020, provided a summary of the participants, price quoted by each, winning party(ies) and the quantities supplied by each. Based on this information, it appears that between 2016 to date there was participation by various sugar mills in USC's tenders. Therefore, the enquiry committee did not make out any finding of a prima facie collective refusal to supply on this count. However, during the course of the enquiry other prima facie anti-competitive activities pertaining to PSMA and its dealings with USC were identified. Evidence from a tender floated in March 2019 and for a tender

floated in March 2010 PSMA took a collective decision on quantity to be supplied by its member mills. The details of both these tenders are discussed below:

113. An email sent from secreatry@psma.pk dated 18th April 2019 sent to 'psma mailing list' on the subject "AN EMERGENT MEETING ON FRIDAY 19TH APRIL 2019 AT 03:30PM". Attached with this email are agenda items for the meeting of which item number 3 pertains to Utility Stores tender (image pasted below Annex 'E1'):



Pakistan Sugar Mills Association
PUNJAB ZONE

MOST IMMEDIATE

No.PSMA/2019/006.PZ.
Dated: 18th April, 2019

AN EMERGENT MEETING OF PAKISTAN SUGAR MILLS
ASSOCIATION (PUNJAB ZONE)
WILL BE HELD ON
FRIDAY 19TH APRIL 2019 AT 03:30PM

An emergent meeting of the Association will be held on Friday 19th April, 2019 at 03:30PM at PSMA (Punjab Zone) Office Premises 2-Happy Homes, 38-A, Main Gulberg Lahore, under the chairmanship of Mr. Nauman Ahmed Khan, Chairman, PSMA 'PZ' to transact the following business:

- 1) Discuss Sugar Scenario.
- 2) Ramzan Bazars Sugar quota.
- 3) Utility Stores Tenders.
- 4) Any other point with the permission of the chair.

Chief Executives / Directors are requested to attend please.


Secretary

114. During enter and search inspection of PSMA premises in Lahore data impounded from computer of Mr. Arif reveals the presence of a letter addressed to USC reproduced below (Annex 'E2'):

“REF: PSMA/2019/USC
2019

25th April

Mr. Zulqiurnain Ali Khan,
Chairman
Utility Stores Corporation
Islamabad

SUB: SUGAR TENDER DATED 23RD APRIL 2019

Dear Sir,

Please refer to the tender for sugar opened on dated 23-04-2019, following mills are pleased to match the lowest price of Rs.63/-Kg (inclusive of 8% Sales Tax) for 15 Days payment by Local L/C.

<i>Sr. NO.</i>	<i>Name of Mills</i>	<i>Qty (M. Tons)</i>
<i>1</i>	<i>Indus</i>	<i>1000</i>
<i>2</i>	<i>Shakarganj</i>	<i>1000</i>
<i>3</i>	<i>Shahtaj</i>	<i>1000</i>
<i>4</i>	<i>Thal Industries</i>	<i>1000</i>
<i>5</i>	<i>Almoiz Industries</i>	<i>1000</i>
<i>6</i>	<i>Ashraf</i>	<i>1000</i>
<i>7</i>	<i>JDW</i>	<i>1000</i>
<i>8</i>	<i>Huda</i>	<i>1000</i>
<i>9</i>	<i>Fatima</i>	<i>1000</i>
<i>10</i>	<i>Pattoki</i>	<i>1000</i>
<i>11</i>	<i>Etihad</i>	<i>1000</i>
<i>12</i>	<i>Two Star</i>	<i>1000</i>
<i>13</i>	<i>Sheikhoo</i>	<i>1000</i>
<i>14</i>	<i>Hunza</i>	<i>1000</i>
<i>15</i>	<i>RYK</i>	<i>1000</i>
	<i>Total..</i>	<i>15000</i>

Willing to increase Quantity

Subject to settling pervious payment issues.

For Pakistan Sugar Mills Association (Punjab Zone)''

115. A perusal of USC's tender archive shows that it had floated a tender for procurement of 20,000 MT of sugar the closing date of which was 28th March 2019. USC tenders for commodities such as sugar and pulses etc. are for large quantities to be supplied all over Pakistan. It usually happens that the lowest bidder cannot supply the entire quantity and so USC, gives an opportunity to other participating bidders to match the price of the lowest bidder however, it is noted that this is a business decision to be made by individual mills who can decide what quantity they are willing to offer. In the current matter however, we can observe that PSMA Punjab Zone, subsequent to its meeting held 19th April 2019 where the tender was deliberated upon, made a collective decision

whereby each of the abovementioned mills would supply 1000 MTs of sugar (matching price of the lowest bidder). From information received from USC, it appears that the quantity of this tender was eventually divided equally between JDW I, JDW II, Al moiz and Thal for 2000 MT each (names of all of these were mentioned in the aforementioned document impounded from PSMA). Out of the total quantity required of 20,000 MT, only 8,000 was fulfilled. It appears that through this collective decision mills of PSMA Punjab Zone are fixing or setting the quantity of production, distribution or sale with regard to any goods or the manner or means of providing any services which constitutes a prima facie infringement of Section 4(1) read with Section 4(2)(c) of the Act. (Annex 'E3')

116. It may relevant to point out that such behavior/ practice of sharing of market was in vogue also 2010. A letter written by Secretary General PSMA dated 26th March 2010 and retrieved from PSMA's premises in Islamabad is addressed to the Managing Director of USC on the subject "Tender dated March 20, 2010 for 100,000 tonnes of Sugar". Its text is reproduced herein below:

"We have been informed that the tender has been allotted to few participants who have quoted large quantity at minimum rate.

We document that this is extremely unfair, the law requires that all parties that have participated in the tender to be asked to match the lowest established rate. Specially, as the purpose of this tender and forthcoming 200,000 tons of sugar tender is to facilitate farmer's outstanding payments across the board, not for the benefit of few individual mills to dispose off their entire holdings".

In another letter dated 29th March 2010 on the same subject:

"Further to our letter dated March 26, 2010 where we requested that all parties that have participated the 'Sugar Tender for Utility Stores Corporation (USC) on March 20, 2010" be asked to match the lowest offered price to ensure transparency in distribution on pro-rata offered basis to enable the mills release pending payments to sugarcane growers instead of favouring a few.

We hope you will consider our request which is in vogue with procurement policy of TCP in past failing which we reserve the right to challenge the award of tender in the court of law". (Annex 'E4')

117. It is also noted that the letter sent on 29th March 2010 is copied to PSMA Zonal offices. Another document from the same file, faxed to PSMA Secretary General from Premier Sugar Mills shows the bid rates for parties participating in the tender. It shows that the lowest bidder is a sugar dealer followed by and two sugar mills. From the foregoing it appears that PSMA has taken a collective decision on quantity to be supplied which is a prima facie violation of Section 4(1) read with Section 4(2)(c) of the Act.

118. In terms of its dealings with USC following conclusions are drawn:

- a. For tender of 20,000 MT of sugar (closing date of which was 28th March 2019) it appears that mills of PSMA Punjab Zone took a collective decision to fix and divide the quantity of sale, among the members mills who participated in the tender, thus prima facie violating Section 4(1) read with Section 4(2)(c) of the Act.
- b. For tender dated March 20, 2010 for 100,000 tons of sugar, it appears that vide its letters, dated 26th and 29th March 2010, to USC, PSMA and its members have taken a collective decision on dividing and sharing quantity to be supplied which is a prima facie violation of Section 4(1) read with Section 4(2)(c) of the Act.

Issue III (d) With respect to Section 4 whether there has been any prima facie violation on account of Major players in the sugar industry collectively decide to cease crushing of sugarcane during crushing season 2019-20

119. During the crushing season 2019-20 (end November 2019 till beginning March 2020) press reports suggested that sugar mills using the platform of PSMA had made a collective decision to cease crushing. Moreover, in a presentation made by Cane Commissioner Punjab to the provincial Cabinet which also suggests that in Punjab 15 sugar mills were closed on the call of PSMA. Evidence impounded from PSMA indicated that between 24th December 2019 and 10th February 2020 PSMA Punjab Zone held 11 back to back meetings with the agenda item of sugarcane procurement. Details of these evidences are presented hereunder:

120. An article published in The News on 31st December 2019 with the headline “*Sugarcane crisis deepens: Most Punjab mills keep doors shut of farmers*” states:
“*Sugarcane crushing crisis has deepened in Punjab province as most mills continued to shut their doors on farmers on the second consecutive day.*”

Following secretly agreeing with each other, sources said, most members of All Pakistan Sugar Mills Association (PSMA) closed down their mills as purchase price jumped to Rs210 to Rs230 per maund against official rate of Rs190. The main reason for price war among sugar mills had been stated to be a cut-throat competition in attracting farmers amid reports of reduction in sugarcane production”.

121. Another news appearing in Business Recorder on 01st January 2020 titled: “Sugarcane crushing crisis deepens in Punjab” notes:

“The representatives of sugar mills and secretary food Punjab held a meeting on Tuesday wherein different issues being faced by the industry came under discussion. The secretary food was of the view that sugar mills should issue permits and Cane Purchase Receipts (CPR).

However, industry’s representatives were of the view they were ready to issue CPRs to the growers at the rate of Rs 190 per 40 kg but not at Rs. 260”.

122. The Punjab Food Department (PFD) was in discussions with mill owners to end the strike: “According to an official of Punjab Food Department, the provincial government is in contact with the sugar mill owners in this regard. He expressed the hope that mills would start crushing from Monday (today)”⁴

123. The Cane Commissioner during this period presented figures to the Punjab Cabinet which specifically mention the status of crushing for different mills in Punjab from 4th January 2020 to 06th January 2020. For its report dated 04th January 2020 quotes that 26 mills were closed out of which 15 were closed on call of association whereas 11 were non-functional because of no cane or less cane. In 05th and 06th January 2020. The 15 mills that ceased operations on call of PSMA are as follows:

a. Chanar	b. Tandlianwala I
c. Hunza I	d. Hunza II
e. Husein	f. JK
g. JK	h. SW
i. Haq Bahu	j. Huda
k. Layyah	l. Safina
m. Shakarganj II	n. Two Star
o. Baba Farid	p. Madina

(Annex ‘F1’)

Based on their respective shares, approximately 20% of production was impacted as a result of this strike.

⁴ “Farmers in a fix as millers stop sugarcane crushing in Punjab”, The News, 30th December 2019

124. The reports in the press and the presentation of the figures by Cane Commissioner Punjab suggesting that the strike was called by PSMA is corroborated by emails from the account of secretary@psma.pk that during the period 24th December 2019 to 15th January 2020, i.e. at the peak of the crushing season. The evidence shows that multiple meetings of PSMA Punjab Zone were held with the agenda item of discussion on ‘Sugar and Sugarcane scenario’.

125. An email from secretary@psma.pk to psma mailing group dated 23rd December 2020 titled: “AN EMERGENT MEETING ON TUESDAY 24TH DECEMBER , 2019 AT 11:30AM” states:

“An emergent meeting of the Association will be held on Tuesday 24th December, 2019 at 11:30AM at PSMA (Punjab Zone) Office Premises 2-Happy Homes, 38-A, Main Gulberg Lahore, to transact the following business;

- 1) *Sugar & Sugarcane Scenario.*
- 2) *Any other point with the permission of the chair.”*

126. Another email from secretary@psma.pk to psma mailing group dated 27th December 2020 titled “AN EMERGENT MEETING ON SATURDAY 28TH DECEMBER , 2019 AT 15:00H” states:

“An emergent meeting of the Association will be held on Saturday 28th December, 2019 at 15:00HRs at PSMA (Punjab Zone) Office Premises 2-Happy Homes, 38-A, Main Gulberg Lahore, to transact the following business;

- 1) *Sugar & Sugarcane Scenario.*
- 2) *Any other point with the permission of the chair”.*

127. Another email from secretary@psma.pk to psma mailing group dated 30th December 2020 titled: “AN EMERGENT MEETING ON MONDAY 30TH DECEMBER , 2019 AT 15:00HRS” states:

“An emergent meeting of the Association will be held on Monday 30th December, 2019 at 15:00HRs at PSMA (Punjab Zone) Office Premises 2-Happy Homes, 38-A, Main Gulberg Lahore, to transact the following business;

- 1) *Sugar & Sugarcane Scenario.*
- 2) *Any other point with the permission of the chair”.*

128. Another email from secretary@psma.pk to psma mailing group dated 1st January 2020, titled “AN EMERGENT MEETING ON THURSDAY 2ND JANUARY , 2020 AT 13:00HRS” states:

“An emergent meeting of the Association will be held on Thursday 2nd January, 2020 at 13:00HRs at Golf Bunker Hall No. 1, LAHORE GYMKHANA, The Mall, Lahore, followed by LUNCH.

Agenda:

1) Sugar & Sugarcane Scenario.

2) Any other point with the permission of the chair”.

129. Email from secretary@psma.pk to psma mailing group dated 03rd January 2020, titled: “AN EMERGENT MEETING ON SATURDAY 4TH JANUARY , 2020 AT 11:00HRS states:

“An emergent meeting of the Association will be held on Saturday 4th January, 2020 at 11:00HRs at PSMA (Punjab Zone) Office Premises 2-Happy Homes, 38-A, Main Gulberg Lahore.

Agenda:

1) Sugar & Sugarcane Scenario.

2) Any other point with the permission of the chair”.

130. Email from secretary@psma.pk to psma mailing group dated 04th January 2020, titled: AN EMERGENT MEETING ON SUNDAY 5TH JANUARY , 2020 AT 16:30HRS “states:

“An emergent meeting of the Association will be held on Sunday 5th January, 2020 at 16:30HRs at PSMA (Punjab Zone) Office Premises 2-Happy Homes, 38-A, Main Gulberg Lahore.

Agenda:

1) Sugar & Sugarcane Scenario.

2) Any other point with the permission of the chair”.

131. Email from secretary@psma.pk to psma mailing group dated 05th January 2020, titled: “AN EMERGENT MEETING ON MONDAY 6TH JANUARY , 2020 AT 16:00HRS” states:

“An emergent meeting of the Association will be held on Monday 6th January, 2020 at 16:00HRs at PSMA (Punjab Zone) Office Premises 2-Happy Homes, 38-A, Main Gulberg Lahore.

Agenda:

- 1) Sugar & Sugarcane Scenario.*
- 2) Any other point with the permission of the chair”.*

132. Email from secretary@psma.pk to psma mailing group dated 07th January 2020 titled: “EMERGENT MEETING AT SERENA HOTEL FAISALABAD ON 09-01-2020 AT 12:00HRs” states:

*“An emergent meeting of the Association will be held on **Thursday 9th January 2020 at 12:00PM at Kehkashan Hall, Faisalabad Serena Hotel, Club Road, Faisalabad. (041-111-133-133), followed by lunch, to transact the following business;***

- 1. Sugarcane procurement scenario.*
- 2. Any other point with the permission of the Chair.*

CEO/Directors & HODs (Cane) of Member Mills are requested to attend please”.

133. Email from secretary@psma.pk to psma mailing group dated 13th January 2020 titled: “EMERGENT MEETING AT SERENA HOTEL FAISALABAD ON 15-01-2020 AT 13:00HRs” states:

*“An emergent meeting of the Association will be held on **Wednesday 15th January 2020 at 13:00Hrs (followed by Lunch) at Kehkashan Hall, Faisalabad Serena Hotel, Club Road, Faisalabad. (041-111-133-133), Chaired by Mr. Nauman Ahmed Khan, to transact the following business;***

- 1. Sugarcane procurement scenario.*
- 2. Any other point with the permission of the Chair”.*

CEO/Directors & HODs (Cane) of Member Mills are requested to attend please”.

134. Email from secretary@psma.pk to psma mailing group dated 31st January 2020 titled: “AN EMERGENT MEETING ON SATURDAY 11ST FEBRUARY , 2020 AT 11:30HRS”

“An emergent meeting of the Association will be held on Saturday 1st February, 2020 at 11:30HRs at PSMA (Punjab Zone) Office Premises 2-Happy Homes, 38-A, Main Gulberg Lahore.

Agenda:

- 1) Sugar & Sugarcane Scenario.*
- 2) Any other point with the permission of the chair”.*

135. Email from secretary@psma.pk to psma mailing group dated 02nd February 2020 titled: “AN EMERGENT MEETING ON MONDAY 10TH FEBRUARY , 2020 AT 15:30HRS”

“An emergent meeting of the Association will be held on Monday 10th February, 2020 at 15:30HRs at PSMA (Punjab Zone) Office Premises 2-Happy Homes, 38-A, Main Gulberg Lahore.

Agenda:

- 1) Sugar & Sugarcane Scenario.*
- 2) Any other point with the permission of the chair. (Annex ‘F2’)*

136. From the foregoing emails it is observed that during the crushing season 2019-20, back to back meetings of PSMA Punjab Zone were held to discuss sugarcane procurement. From the emails above, these meetings were held on the following dates:

- a. 24th December, 2019
- b. Saturday 28th December, 2019
- c. 30th December, 2019
- d. Thursday 2nd January, 2020
- e. 4th January, 2020
- f. 5th January, 2020
- g. 6th January, 2020
- h. 9th January 2020
- i. 15th January 2020
- j. 1st February, 2020
- k. 10th February, 2020

137. From the evidence above, it appears that during the crushing season 2019-20, PSMA Punjab Zone ceased to crush sugar from 30th December 2019 to 11th January 2020. As evident from the data received from the Cane Commissioner Punjab, this closure was a collective decision on part of PSMA Punjab wherein 15 mills appear to have ceased

crushing on the call of the association. Evidence impounded from PSMA indicates that during this period PSMA Punjab held back to back meetings with the agenda of sugarcane procurement. The purpose of holding these meetings appears none other than to coordinate on taking decision on crushing and procurement of sugar cane as merely procurement is a commercial decision and does not appear to hold relevance for collective deliberation using the association platform. Therefore, prima facie PSMA Punjab Zone particularly the 15 units named by the Cane Commissioner Punjab, are taking a collective decision on procurement in violation of Section 4(1) read with Section 4(2)(a) of the Act.

SUMMATION OF FINDINGS AND CONCLUSION

138. Without prejudice to the generality of the foregoing, the summation of the findings of the enquiry committee are:

Issue I Overview of the sugar industry in Pakistan and its state of competition

139. Based on the findings of paragraphs 15 to 48, it appears that:
- a. The PSMA seems to still actively pursue a policy of protectionism where even the most inefficient seems to get a due share in the production and sales.
 - b. With the presence of a large number of mills (about 90) the sector could have expected to have intense competition both in the purchase of sugarcane and the sale of refined sugar ideally pushing prices down.
 - c. Since the minimum support price of sugarcane are also fixed by the respective provincial governments, the mills tend to purchase the cane at about the support price.
 - d. Costing analysis reveals that large variation exists between different mills. Setting of retail prices based on generalized costing information could not be relied upon, since it rewards inefficient mills at the expense of consumers who end up paying a higher price. The enquiry committee's analysis shows that cost of production varies from mill to mill due to various factors which include inter alia: different cost of production of sugar due to different recovery ratios, economies of scale, conversion cost and purchase price of sugarcane. Even mills located in the same area have different cost structures. The calculation of cost of production of sugar for the year 2018-19, shows that within Punjab

province, the manufacturing cost varies between Rs. 43.61/ kg to Rs.78.60/kg. In Sindh, the cost varies between Rs.47.20/ kg to Rs.66.74/ kg. The total manufacturing cost per kg of KPK Sugar mill i.e. Khazana Sugar Mills is Rs.55.57/kg

- e. Apart from the harm to ordinary consumers, high sugar prices also adversely impact cost of production and competitiveness of industrial consumers i.e. beverages, confectionary etc.
- f. Other aspects associated with the industry cannot be ignored over past decades. There is consensus that each unit in the industry provides livelihood to around 100,000 people consequently political choices may play important role in shaping the industry.
- g. The role of government to be limited to policy formulation and monitoring the implementation of those policies with maintaining a strategic reserve through the TCP to deal with crises like situations. Any restrictions on exports or imports be removed and the market be allowed to function under the demand and supply forces, this will help in achieving a sugar price which is more sustainable and based on international price trends.
- h. With minimum support price and also the fact that the start and close of crushing seasons are decided by the provincial governments which leads to a regulated environment yet sugar mills have the latitude and the ability to act independently in the sphere of making payments to the growers above the support price and setting the ex-mill price and/or quantity to be sold or product/byproducts development or any branding. In this regard they are also free to compete *inter alia* on the basis of efficiencies and economies of scale.
- i. The sugar industry in Pakistan has not been able to achieve much success in creating a competitive environment whereby it can aim at achieving higher levels of technical and price efficiencies through economies of scale and development and utilization of by-products.

Issue II Whether any industry player(s)/undertaking is prima facie dominant or there exists collective dominance in the relevant market in terms of Section 2(1)(e) of the Act. If yes, has there been any abuse in terms of Section 3 of the Act;

140. Based on the findings of paragraphs 49 to 64 above, in the relevant product market of white refined sugar and relevant geographic market is Pakistan, companies with the highest market shares, in terms of production, are: (i)JDW group 16 %; (ii) Almoiz group 7%; (iii) RYK group 6%; (iv)Tandlianwala 5% and (v)Shakarganj 5%. Based on these figures no single company or single group of companies seems to meet the 40% threshold for dominance as prescribed under Section 2(1)(e) of the Act. Furthermore, based on factors such as demand, supply and market structure, no company or group of companies is capable of acting independently of its competitors, consumers or suppliers. Therefore, neither an individual undertaking nor a single group of companies can be termed as having acquired a dominant position in terms of Section 2(1)(e) of the Act.

141. The Act also envisages that dominant position may be held by two or more economic entities legally independent of each other provided that they have economic linkages and they present themselves or act in the market as a collective entity. In the instant matter, no evidence was found to show that the large sugar groups have any economic linkages. It is also noted that the sugar market does not have an oligopolistic market structure which is one of the pre-conditions for collective dominance to thrive. Therefore, it appears that no mill/group of companies holds a dominant position individually or collectively in terms of Section 2(1)(e) of the Act.

142. From the findings of paragraphs 65-66, based on the available facts and given circumstances in the absence of any individual or collective dominant position in the relevant market the question of abuse of dominance in terms of Section 3 of the Act for the purpose of this enquiry does not arise.

Issue III (a) With respect to Section 4 whether there has been any prima facie violation on account of Collusive/collective decision making behind the sugar shortage/crisis and price hike.

143. Based on the analysis and findings of paragraphs 67 to 83 above, the enquiry committee notes that since sugar production is cyclical in nature, stock positions are a crucial determinant of prices in the relevant market. Evidence available shows that from 2012 to date, PSMA devised a collective strategy to reduce domestic sugar stocks through exports with the purpose to achieving desired domestic price levels. Whenever exports were allowed, price of sugar in the market increased. This is especially notable in the consecutive four months from March to June 2019 when as a consequence of sizeable export volumes, per kg price of sugar increased by Rs 3 per kg each month. Overall during 2019 the cumulative price hike was Rs. 18/kg.

144. Therefore, that it appears that starting from 2012 to date, the conduct of PSMA and all its members *vis-à-vis* collective discussion on stock positions leading to a decision on the quantity to be exported is tantamount to fixing or setting/controlling supply within the relevant market this has resulted in price hike that is not based on actual/available supply and demand. Hence a *prima facie* violation of Section 4(1) read with Section 4(2)(c) of the Act. Furthermore, this reduction in domestic stocks/supplies leads to an increase in or maintenance at desired price level in the relevant market, as admitted by PSMA through evidence presented above, which constitutes a prima facie violation of Section 4(2)(a) of the Act by PSMA members.

Issue III (b) With respect to Section 4 whether there has been any prima facie violation on account of any other anti-competitive conduct identified during the course of this investigation.

145. Zonal divisions by PSMA Punjab Zone: Based on the findings of paragraphs 84-92 it appears that since 2017 PSMA Punjab Zone has:

- a. Created zonal divisions for the purposes of coordination among respective mills on local sales as the phrase ‘Sales committee comprising of one member from each zone to meet periodically’ indicates. Share of each zone

vs total production in Punjab is mapped out which shows that the coordination in sales is based on share in production.

- b. Stock positions of each mill in each zone are mapped out on a monthly basis.
- c. Mills are also coordinating for start of crushing activity in the respective zones.

This zonal division and coordination on sales, stock positions and production quota appears to be none other than monitoring the position with respect to each mill to control local sales and quantity to be sold which is a *prima facie* violation of Section 4(1) read with Section 4(2)(a) of the Act.

146. Monitoring of production/consolidation of stocks--Sharing of sensitive commercial information to limit supply in the market: Based on the findings of paragraphs 93-111 it appears that from as far back as 2012 to July 2020 there has been continuous involvement of PSMA in collection and coordination of stock positions amongst its member mills. It appears that these positions are then used to control supply and price of sugar in the market. The coordination of stock positions is also used to influence policy decisions regarding allowance of exports (in case of surplus stock) and import decisions (in case of an impending shortage).
147. The recent hike in sugar prices appears to be the direct result of misreporting in sugar stock positions (of which PSMA was aware of) that led to a decision to delay sugar imports. When the issue of mismatch in stock positions was raised, at SAB, PSMA denied that it collects stock information however, we find evidence to the contrary. The enquiry committee observes that the decision not to import in a timely manner caused a rise in sugar prices between July to September 2020 by Rs. 11.6 per kg.
148. The enquiry committee therefore finds that since 2012 onwards, the platform of PSMA is being used by its member mills in Punjab Zone to share stock information amongst themselves which is considered as sensitive commercial information and such information having a direct bearing on the current and future price of sugar thereby used to control prices and restrict and distort competition in the relevant market in *prima facie* violation of Section 4(1) read with Section 4(2)(a) of the Act.

Issue III (c) With respect to Section 4 whether there has been any prima facie violation on account of Any collusion or collective decision by sugar mills for not supplying sugar to tenders floated by USC or any form of bid rigging.

149. Based on the findings of paragraph 112 above, the enquiry did not find any evidence of a collective refusal by sugar mills to supply/participate in USC tenders over the last five years (2016 to 2020). However, in terms of paragraphs 113 to 118 following other prima facie anti-competitive activities pertaining to PSMA and its dealings with USC were identified:

- a. For tender of 20,000 MT of sugar (closing date of which was 28th March 2019) it appears that mills of PSMA Punjab Zone took a collective decision to fix and divide the quantity of sale, among the members mills who participated in the tender, thus prima facie violating Section 4(1) read with Section 4(2)(c) of the Act.
- b. For tender dated March 20, 2010 for 100,000 tons of sugar, it appears that vide its letters, dated 26th and 29th March 2010, to USC, PSMA and its members have taken a collective decision on dividing and sharing quantity to be supplied which is a prima facie violation of Section 4(1) read with Section 4(2)(c) of the Act.

Issue III (d) With respect to Section 4 whether there has been any prima facie violation on account of Major players in the sugar industry collectively decide to cease crushing of sugarcane during crushing season 2019-20,

150. Based on the findings of paragraphs 119 to 137, it appears that during the crushing season 2019-20, PSMA Punjab Zone ceased to crush sugar from 30th December 2019 to 11th January 2020. As evident from the data received from the Cane Commissioner Punjab, this closure was a collective decision on part of PSMA Punjab wherein 15 mills appear to have ceased crushing on the call of the association. Evidence impounded from PSMA indicates that during this period PSMA Punjab held back to back meetings with the agenda of sugarcane procurement. The purpose of holding these meetings appears none other than to coordinate on taking decision on crushing and procurement of sugar cane as merely procurement is a commercial decision and does not appear to hold relevance for collective deliberation using the association platform. Therefore,

prima facie PSMA Punjab Zone particularly the 15 units named by the Cane Commissioner Punjab, are taking a collective decision on procurement in violation of Section 4(1) read with Section 4(2)(a) of the Act.

151. It appears that using the platform of PSMA, sugar mills have taken various decisions which have the object and effect of restricting competition in the relevant market. This ties up with findings of the Commission's previous enquiry report into the sector (October 2009) which found multiple evidences and instances wherein the association indulged in collective decisions in matters of purchase of sugarcane, production of sugar and sale or trade of sugar. In the instant matter the enquiry committee observes that from 2010 to date PSMA seems to have exceeded its legitimate mandate and continued indulging in anti-competitive activities albeit with different modus operandi. Whereas in the past it had focused on directly fixing prices in the instant matter it appears that it has sought to keep prices stable, which also amounts to price fixing and such prices are kept 'stable', by controlling supply of sugar available in the relevant market.
152. Reiterating the general economic principle that price is a function of demand and supply, with the demand for sugar remaining fairly constant, as evidenced by consumption patterns, the supply of sugar becomes a key determinant of price. Since sugar production is undertaken in three months its supply cannot be increased throughout the remainder of the year thus making stock positions crucial for determining domestic prices of sugar.
153. It appears that PSMA has managed to adopt a strategy whereby based on coordination of stock positions calculations on export quantities were made. Evidence reveals that PSMA and its member mills were cognizant that exports would lead to two pronged benefits for them: (i) export earnings and subsidy payments; and (ii) achieving/maintaining desired price levels in the domestic market. Policy makers/ Government were then pursued to allow exports (along with subsidy) on the pretext that mills would be unable to pay sugarcane growers unless they were allowed to do so. Price data suggests that whenever the exports were made domestic prices faced an upward pressure. Calculations show that the benefit accrued to mills on account of rise in domestic prices due to exports alone was approximately Rs 40 Billion in revenue during the period Feb-19 to Sep-19. It would be relevant to add that an amount Rs 29.22 billion was also paid as subsidy⁵.

⁵ Subsidy paid during 2015 to 2018. Refer to Annex 'F3'

154. Despite the depressed picture of the industry portrayed by PSMA financial statements of various companies suggest that they were making profits. Published accounts of a sample of 16 sugar mills, from 2017 to 2019, reveal that the sugar mills were earning profits from their operations. Average gross profit margins were 11%, 8% and 13% in 2017, 2018 and 2019 respectively. Average net profit margins were 2.8%, 0.4% and 2.4% respectively. From the commission's perspective it is not about the profit margin but more with the manner and conduct involved in making such profits.

RECOMMENDATIONS

155. Sugar being the essential commodity is an important item in the consumer basket of goods however, despite abundant supply it is not available to end consumers at an affordable price. Also it cannot be ignored that the related industries such as beverages, confectionaries etc. being the largest consumers of sugar are also affected due to lack of competition in the sugar industry affects their international competitiveness as well on account of higher cost of production as well as prices.
156. To ensure its availability to consumers at a reasonable price, large amount of public money is spent on subsidizing sugar through USC, Ramzan bazars and imports. As per findings of this enquiry report, there is a huge disparity in the cost structure of the efficient and inefficient sugar mills however due to existence of cartel the inefficient mills have been protected and the benefits of the efficiencies are not being passed to the end users.
157. Therefore, it is in the public interest to initiate proceedings under Section 30 of the Act for the afore-stated violations in terms of the finding of this report.

Shahzad Hussain
Enquiry Officers

Noman Laiq
Enquiry Officers

Maliha Quddus
Enquiry Officers