

COMPETITION COMMISSION OF PAKISTAN

ENQUIRY REPORT
(Under Section 37(2) of the Competition Act, 2010)

**IN THE MATTER OF COMPLAINT BY SHAHBAZ GUL SHINWARI AGAINST
TEHSIL MUNICIPAL ADMINISTRATION KOHAT (TMA- KOHAT)**

Maliha Quddus | Aziz Ullah Nasir

Dated: 31st August, 2026

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BACKGROUND AND FACTS

(a) The Complaint

1. This Enquiry Report is prepared pursuant to a formal complaint under Section 37(2) of the Competition Act, 2010 ('the Act') lodged with the Competition Commission of Pakistan ('the Commission') by Mr. Shahbaz Gul Shinwari ('the Complainant'), on November 11, 2019 against Tehsil Municipal Administration ('TMA') Kohat through its Administrator the Tehsil Municipal Officer ('TMO'), Kohat ('the Respondent'). As per the complaint, the primary concern raised is that the Respondent has declined the Complainant's application for a license to operate its already operational fruit and vegetable market in Kohat and shops belonging to the Complainant have been sealed rendering all the people associated with this business jobless. (Complaint placed at Annex-A)
2. From the complaint, it is noted that the Complainant's private run *mandi* is the only competition to the Respondent's run '*Sarkari Mandi*' and through its actions the Respondent is allegedly forcing traders and *arthis* working at the Complainant's *mandi* to rent/purchase shops and conduct trade in the Respondent's *mandi*. The Complainant has impugned the following:
 - i. The Respondent's letter dated 24.10.2019 rejecting the request for grant of license for operating a private *mandi*. The letter cites various deficiencies in the application and non-fulfillment of various conditions laid down in the TMA Kohat Market Byelaws, 2015;
 - ii. TMA Kohat Market Byelaws 2015 particularly Clause 20(b) which states: "*No other market proposed to deal in a specific agricultural produce in the radius/ambit of 15 kilometers, where a market of the very same product already exists shall be allowed to trade nor entitled to be issued a License by TMA Kohat*".
 - iii. Agreement dated 21.09.2010 between the Respondent and certain private entities/government (associated with business of fruit and vegetables) including registered *arthis* through which various clauses disallow doing business with any private *mandi*.



3. The Complainant alleges that the Respondent has thus foreclosed the market for fruits and vegetables for everyone but the Government run entity under its own protection (the '*Sarkari Mandi*'), which constitutes a prima facie violation of Section 3 and 4 of the Act.

(b) The Complainant

4. The Complainant is a sole proprietor conducting various businesses in Kohat. Upon demand of local traders/*arthis* in Kohat in 2009, the Complainant constructed a market meant for the sale and purchase of fruits and vegetables at Bypass Road Kohat.

(c) The Respondent

5. The Respondent is an officer of the TMA, Kohat, the executive authority of which is vested in the Nazim of the Tehsil Council, Kohat. TMA Kohat is otherwise empowered, through Nazim, to inter alia, regulate markets and services, as well as issue licenses for various produce markets. The Respondent is also responsible for operating the Government-owned Fruit and Vegetable Market in Kohat.

(d) The Enquiry Committee

6. After receipt of the formal complaint filed by Mr. Shahbaz Gul Shinwari, an enquiry was initiated on 01.12.2019, in accordance with Section 37(2) of the Act read with Regulation 17(2) of the Competition Commission (General enforcement) Regulations, 2007 in respect of alleged violation of Section 3 and 4 of the Act by TMA, Kohat. In this regard an Enquiry Committee (EC) was constituted to investigate the matter for any possible violation of the Act, and to submit a report in this regard. The EC comprises following officers;

- i. Mr. Qasim Khan, then Joint Director (C&TA), now Sr. Joint Director (OFT)
- ii. Ms. Urooj Shafi, then Assistant Director (C&TA), now resigned.
- iii. Mr. Aziz Ullah, then Management Executive (C&TA), now Assistant Director (C&TA)

7. Pursuant to the transfer of Mr. Qasim Khan and the resignation of Ms. Urooj Shafi, the Enquiry Committee was reconstituted on November 2025, that includes the following officers;

- i. Ms. Maliha Quddus, Director (C&TA)
- ii. Mr. Aziz Ullah, Deputy Director (C&TA)



- BACKGROUND OF THE CASE

8. The issue of operations of a private *mandi* in Kohat has been highly litigious with the Complainant moving the Courts for grant of license for operation of a private *mandi*. Various decisions in this regard, discussed in further detail below, concern the Respondent's refusal to grant such a license to the Complainant who has also impugned the Market Byelaws, 2015. The Respondent has contended that the Complainant's *mandi* does not meet the requisite licensing requirements (building superstructure etc.) to which the courts have observed that these objections should have been raised at the time of construction. Peshawar High Court (PHC) through its judgments passed in WP No: 1471-P/2016 and 648-P/2016 upheld the impugned Market Byelaws, extended the license until 30.06.2018 (for one year) and directed the Complainant to fulfill the licensing requirements.

SUBMISSIONS

9. In view of the submission made by the Complainant, the Enquiry Committee considered it pertinent to send a copy of the complaint to the Respondent to seek comments on the matter at hand. The respondent (TMO, Kohat), filed a reply against the complaint which is summarized below:
- i. That the Complainant has challenged the decision of the Respondent for cancelling the license in PHC, which has been dismissed by the Divisional Bench of PHC;
 - ii. The Complainant also challenged the Market Byelaws, 2015 before the PHC, and the Court in its judgment dated 18.10.2017 upheld that the byelaws are neither contradictory nor beyond the scope and theme of Khyber Pakhtunkhwa Local Government Act, 2013;
 - iii. That the Complainant was directed by the PHC as well as repeatedly informed by the Respondent to fulfill the terms and conditions of the license prior to its cancellation. The license was solely cancelled upon non-fulfillment of the terms and conditions mandatory as laid in Market Byelaws 2015;
 - iv. That the initial building plan never stated that it will be used as fruit and vegetable selling market;

- v. That the Complainant's market was substandard with low quality material used in the construction and did not provide the facilities as required under private fruit and vegetable Market Byelaws 2015;
- vi. That the alleged "prohibited agreement" of TMA with the *Aarthis* and the contractor is "after thought issue" and cannot be agitated at this point; and
- vii. That the amended Bye laws (2019) were not issued and notified in the Gazette Notification therefore suspended as well as recalled by the administrator of TMA authorized for Tehsil Council. (Annex B)
10. Meanwhile, the Enquiry Committee sent a letter to the Complainant in order to collect the missing information regarding the litigation referred to by the Complainant in Para- 13 of the Complaint including any other further pertinent information that he may wish to add.
11. The complainant on December 11, 2019, replied and submitted the following judgments of the PHC a brief explanation of which is reproduced below:
- a) The Judgment of the Honorable PHC dated 18.10.2017 in WP-1471-P/2017 whereby the petition was accepted and the time of license was extended to 30.06.2018 for the fulfillment of certain terms and conditions of the license mentioned in Market Byelaws-2015 of TMA, Kohat.
- b) The judgment of the PHC dated 25.09.2019 in WP-3422-P/2018 whereby the Complainant was directed to reapply/renew his license with TMA, Kohat and TMA, Kohat was directed to consider the Complainant's application under the applicable legal requisites.
- c) The judgment of the PHC dated 07.11.2019 in WP-5796-P/2019 whereby the petition of the complainant for the issuance of the license was dismissed for non-fulfillment of requirements of the Market Byelaws-2015 of TMA, Kohat. (Details of each case are placed at Annex C).

ISSUES

12. In view of foregoing, the Enquiry Committee has framed the following issues in the given matter:



- i. What is the relevant market in terms of Section 2(1)(k) of the Act? Whether the alleged anti-competitive conduct of the Respondent would have a spillover effect beyond provincial boundaries?
- ii. Whether TMA Kohat is an undertaking in terms of Section 2(1)(q) of the Act?
- iii. Whether the conduct of the Respondent in its refusal to grant license to the Complainant and the Market Byelaws also known as Tehsil Municipal Administration Kohat Market Byelaws 2015, framed by the Respondent contradict the provisions (Section 3 & 4) of the Act, as it restricts, reduces and limits the competition in the relevant markets by not allowing any private 'Sabzi mandi' falling within the radius of 15 Kilometers to the Respondent's *mandi* (Clause 20(b)). and;
- iv. Whether the Agreement dated 21.09.2010 between Respondent and certain private entities/government (associated with business of fruit and vegetables), registered *aarthis* contravenes the provision of Section 4 of the Act.

ISSUE-I: RELEVANT MARKET

13. As per Section 2(1)(k) of the Act, a Relevant Market is;

"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 conditions of competition are sufficiently homogenous and which can be distinguished from neighboring geographic areas because, the conditions of competition are appreciably different in those areas".

14. In order to better understand the nature of the relevant market, on March 10 2020, the Enquiry Committee sent a set of questions to the Complainant as well as to the Respondent. The questions and the responses of both the parties are noted below:

- I. Number of other private owned or government owned (if any) Fruit and Vegetable Market(s) operate in Kohat.



Complainant: There are no other private fruit and vegetable markets except that owned by the Government and operational fruit and vegetable market, situated on Banu, road Kohat.

Respondent: There is no private *mandi* in the Tehsil Kohat while one Government owned fruit and vegetable market which is operating under the control of TMA, Kohat.

II. Apart from fruit *mandi*, what other means are available to *aarthi*s to sell fruits and vegetables?

Complainant: *Aarthi*s can sell fruits and vegetables only at the fruit and vegetables market called '*Sabzi Mandi*'.

Respondent: Apart from the *Mandi* cited above, the District Administration Kohat on the direction of Provisional Government Khyber Pakhtunkhwa has established Farmer's Market at Tehsil level of District Kohat. In the said market the farmers can sell their food items directly to the consumers without the role of middleman or *aarhi*. These Markets have been established one at Dhoda, Tehsil Kohat and one at old jail road Kohat city under the supervision of Agriculture Department Kohat.

III. What is the business arrangement of the Complainant as well as the arrangement of the Respondent with regard to the Fruit *Mandi*? Profit sharing or other, if other, please specify.

Complainant: The Complainant has its own land where he has established a market of Fruit and Vegetables. The Complainant only charges rent from the *arthis* for his shops and there is no share from profit or sales etc.

Respondent: That it is an entity discharging its functions as part of the provisional establishment of Khyber Pakhtunkhwa and there is no profit-sharing concept in the Fruit and Vegetable market established by TMA, Kohat. The TMA, Kohat charges nominal rent for each shop from the allottee/ *Aarhi* i.e. PKR2,800

IV. Whether the market could be set up outside the radius of 15 kilometers. If, so what are its advantages and disadvantages. (Q. No. 4 - for Complainant only).



Complainant: Market for selling Fruits and Vegetables cannot be set up outside the radius of 15 km as the civil court Kohat is the center of Kohat. It would effectively take the Complainant outside the radius of Tehsil Kohat which makes no commercial viability for the establishment of 'Sabzi Mandi.' (Correspondence with Complainant & Respondent is attached as Annex-D).

15. Based on the responses above, the instant matter pertains to the provision of rental space to *aarthis* for a fruits and vegetables *mandi*. The Government owned *mandi* operated by TMA Kohat has no share in the profit of the business conducted, however, a uniform rent of PKR2,800 is charged from each shop/*aarthi* conducting business within the *mandi* premises. Analyzing the working model of the Complainant, the same mechanism has been followed in which the Complainant charges rent from the *aarthis* and has no share in the profit or sales from the businesses conducted in his privately owned fruit and vegetable market/*mandi*. Both the mandis operate in the jurisdiction of Kohat with the Respondent's *mandi* located at new bus stand and the Complainant's *mandi* located at Bannu Road. Both are governed by the byelaws of TMA Kohat therefore, the relevant geographic market for the purpose of this enquiry is Kohat. Since both mandis operate on similar model it can be said that they are close substitutes of each other.
16. Hence, based on the above, the relevant market in terms of Section 2(1)(k) of the Act is the market for provision of rental space to *aarthis* for a fruits and vegetables *mandi* in Kohat.

Spillover Effect

17. On 26.10.2020, the Honorable Lahore High Court's (LHC) through its judgment in *LPG Association of Pakistan vs. Federation of Pakistan etc. (W.P 9518/2009)* held that CCP could take cognizance of an anti-competitive activity if it affected inter provincial trade.
18. Relevant excerpts of the judgement are reproduced below:

"In law Spillover Effect may be referred to a situation where laws, regulations or policies of one governing unit effects the people outside its territorial limits. In the instant case if anticompetitive behaviour is not affecting the trade and commerce of another Province, it does not come with the phrase 'interprovincial trade and commerce', as used in Entry 27 and discernible in Article 151. Conversely, if any act or omission, between anticompetitive behaviour, committed within geographical boundaries of a Province, has its effect beyond such territorial limits, would be subject of a federal legislation and within its executive competence".



19. Considering the above judgment, the Enquiry Committee deemed it appropriate to put the matter on hold and to seek legal opinion regarding spillover and whether it could take cognizance of the matter since it involved a tehsil/district in one province i.e. KPK. The Commission has filed an appeal against the aforesaid LHC judgment in the Supreme Court however, the matter is pending adjudication. Therefore, as the aforesaid judgment is in field, the Commission is constrained to consider the spillover effect in its proceedings.
20. Considering the relevant market is limited to Kohat Tehsil the requirement of spillover will be restricted to the geographical territory of tehsil Kohat or at most to its neighboring areas in KPK province. Therefore, the requirement of spillover effect across provincial boundaries is not met.

ISSUE-II: UNDERTAKING

21. As per Section 2(1)(q) of the Act, an Undertaking is;

“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 production, supply, distribution of goods or provision or control of services and shall include an association of undertakings”.

22. To qualify as an undertaking under Section 2(1)(q) of the Act, an entity's form is not important rather it is engagement in an economic activity that must be ascertained. To determine whether TMA is an undertaking, a determination must be made on whether it is involved in: (a) an exercise of its public powers; or (b) it is carrying on an economic activity of a commercial nature¹.
23. In the instant matter, there are two *mandis* operating in the relevant market i.e. the '*sarkari mandi*' operated by the Respondent and the private *mandi* operated by the Complainant. What is important to note here is that both *mandis* are essentially competing with each other for business in the relevant market. Both the *mandis* operate on a similar model whereby rent is charged to shops/stalls and there is no share in profits. Therefore, the operation of a market in and of itself constitutes an economic activity of a commercial nature.

¹ The judgment in *Commission v Italy* [Case 118/85], European Court of Justice.



24. Having said this we now look at the regulatory role of the Respondent. TMA Kohat is the creation of KPK Local Government Act, 2013, and operates under KPK Tehsil & Municipal Administration Rules of Business 2015. Under both these laws, the TMA provides for inter alia the following functions to be performed by the Tehsil Government:

- i. prepare spatial plans for the tehsil including plans for land use and zoning and disseminate these plans for public enquiry;
- ii. through the Tehsil Local Administration regulate markets and services including cattle fairs and cattle markets, issue licenses, permits, grant permissions and impose penalties for violation thereof;

25. Whereas, operation of a *mandi* may be deemed an economic activity, the role of regulating activities within such markets such as issuing licenses to *aarthi*s, and setting rules for conduct of auctions etc. falls within the statutory purview of the Respondent.

26. Based on the above, operation of a *mandi* and collecting rent from participants is an economic activity and therefore, in the instant matter the Respondent falls within the scope of an undertaking in terms of Section 2(1)(q) of the Act.

ISSUE-III Whether the conduct of the Respondent in its refusal to grant license to the Complainant and the Market Byelaws also known as Tehsil Municipal Administration Kohat Market Byelaws 2015, framed by the Respondent contradict the provisions (Section 3 & 4) of the Act, as it restricts, reduces and limits the competition in the relevant market by not allowing any private 'Sabzi mandi' falling within the radius of 15 Kilometers to the Respondent's mandi

27. The Enquiry Committee analyses the relevant provisions of the Tehsil Municipal Administration Kohat Market Bye Laws 2015 to ascertain whether they stifle competition and create entry barriers for other players like the Complainant who wish to set up private *mandis*.

28. It is noted that the KPK Government has issued "*Model Bye Laws for Establishment and Regulation of Private Fruit & Vegetable Markets by Tehsil Municipal Administration or Tehsil Local Government, 2021*" framed under Section 113(2) of KPK LGA 2013. These model bye laws have replaced the impugned Tehsil Municipal Administration Kohat Market Bye Laws 2015. Section 4(3)(f) of which states:



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"The distance between an existing and proposed fruit and vegetable market shall not be less than two (02) km to avoid urban congestion and give fair business opportunities to both".

29. Therefore, the impugned law and its prima facie restrictive condition of disallowing operation of any market within a 15 km radius no longer exists. In terms of licensing requirements, as directed by the courts through various judgements, the Complainant should fulfill these requirements and rectify any defects therein for which relief has been granted to him in the form of extension of license period. (Copy of enacted Byelaws is attached as **Annex-E**).
30. Further, as per market sources contacted by the Enquiry Committee, the Complainant's private *mandi* is currently operational in Kohat. Therefore, the main issue at hand has been resolved.

ISSUE IV. Whether the Agreement dated 21.09.2010 between Respondent and certain private entities/government (associated with business of fruit and vegetables), registered aarthis contravenes the provision of Section 4 of the Act.

31. The Complainant has provided copy of an agreement dated 21.09.2010 between the Respondent, President of the fruit and vegetable aarthis in Kohat and the Contractor for the construction of new *sarkari sabzi mandi* (on Build Operate Transfer basis). The Agreement mandates that the aarthis will not participate in any private mandi and ensure the success of the new *sarkari mandi*. It is uncertain what duration this agreement is for however, it appears that this agreement is not in field as the Complainant's private mandi is operational as of date. Therefore, no violation of Section 4 of the Act is made out.

CONCLUSION & RECOMMENDATION

27. **Relevant Market:** Based on the findings of paragraphs 13 to 16 above, the relevant market in terms of Section 2(1)(k) of the Act is the market for provision of rental space to *aarthis* for a fruits and vegetables *mandi* in Kohat.
28. **Spillover:** Based on the findings of paragraphs 17 to 20 above, the spillover effect will only be restricted to the geographical territory of tehsil Kohat or at most to its neighboring areas in KPK province. Therefore, the requirement of spillover effect across provincial boundaries is not met.
29. **Undertaking:** Based on the findings of paragraphs 21 to 26 above, operation of a *mandi* and collecting rent from participants is an economic activity and therefore, in the instant

matter the Respondent falls within the scope of an undertaking in terms of Section 2(1)(q) of the Act.

30. **Violation of Section 3 and/or 4 of the Act:** Based on the findings of paragraphs 27 to 30 above following points are concluded:

- i. The impugned Market Byelaws 2015 which were alleged to be restrictive of competition by preventing operation of any *mandi* within a 15km radius of existing government mandi has been replaced by Model Bye Laws for Establishment and Regulation of Private Fruit & Vegetable Markets by Tehsil Municipal Administration or Tehsil Local Government, 2021 framed under Section 113(2) of the Khyber Pakhtunkhwa Local Government Act, 2013 (KPK LGA 2013). These laws reduce the distance between two (02) *mandis* to two (02) kms.
- ii. Secondly, meeting the terms and conditions of the license by the Complainant cannot be deemed restrictive and must be complied with by all licensees. A point which has also been stressed by the Courts in various judgments in this matter.
- iii. Thirdly, the Complainant's private mandi is currently operational in Tehsil Kohat. Therefore, no *prima facie* violation of the Act is made out in the current matter.
- iv. Further, the agreement executed between TMA Kohat and the registered *aarthis* of the Fruit & Vegetable Mandi, Kohat, provided that the *aarthis* would conduct their business exclusively within the mandi established at New Bus Stand, Bannu Road, Kohat, and would not carry out business in any other mandi. However, the said arrangement does not appear to be in force in the field, as both the Private Fruit & Vegetable Market/Mandi and the other mandi are presently operational, and the *aarthis* are conducting their business in both mandis. This position appears to have resulted from mutual understanding/negotiations between TMA Kohat, the mandi owners and the *aarthis*.
- v. Moreover, the Model Bye-Laws for Establishment and Regulation of Private Fruit and Vegetable Market by Tehsil Municipal Administration or Tehsil Local Government, 2021, framed under Section 113(2) of KPK LGA 2013, have reduced the prescribed distance restriction from 15km to 2km for establishment of another mandi.
- vi. In view of the above, although the earlier agreement remains on record, its restrictive provisions do not appear to be implemented in the field. Therefore, in



the prevailing circumstances and under the applicable regulatory framework, no violation of Section 4 of the Competition Act, 2010 appears to be established.

31. **Recommendation:** Based on the above, the requirement of spillover effect is not met, no violation of Section 3 and/or 4 of the Act is made out and the Complainant's issue has been resolved as his *mandi* is currently operational. The matter is therefore, recommended for closure.


Maliha Quddus
Enquiry Officer


Aziz Ullah Nasir
Enquiry Officer