

# Enquiry Report

(Under Section 37 of the Competition Ordinance, 2007)

## IN THE MATTER OF TYING OF DAP FERTILIZER WITH UREA

### 1. BACKGROUND

- 1.1 The Competition Commission of Pakistan (hereinafter referred to as the “Commission”) took *suo motto* notice of information sent by the Secretary Agriculture, Government of Sindh vide his letter dated June 20, 2009 showing his concern on the practice of certain fertilizer companies whereby, they tie-in the sale of Urea with that of DAP. Request was also made to the Commission in this regard to take action against such companies if such policy and practice of fertilizer companies was found to fall within the purview of clause (c) of sub-section (3) of Section 3 of the Competition Ordinance, 2007 (hereinafter referred to as the **Ordinance**).
- 1.2 Pursuant to the powers contained Section 37 read with Section 28 of the Ordinance, the Commission appointed Mr. Ikram Ul Haque Qureshi, Director General (Legal) and Ms. Shaista Bano, Director (Cartels) as the Enquiry officers vide its Resolution dated 22-06-09 to probe and examine the above mentioned alleged practice of tie-in by the fertilizer producers not only in Sindh but in other provinces as well and to submit its report recording the outcome of such probe along with its findings in respect of *prima facie* violations under the Ordinance (if any) for consideration of the Commission.

### 2. INTRODUCTION

- 2.1 Urea is the most commonly used fertilizer in Pakistan; it is a nitrogen fertilizer and it is being used most frequently and uniformly in all the agricultural lands of the world. The white, crystalline solid comprises of a proportionate compound mixture of more than one nutrient and contains 46% nitrogen. Farmers have

identified this chemical fertilizer *as a great ladder to huge success in agro revolution*<sup>1</sup>.

- 2.2 Extensively used as a chemical fertilizer, urea releases nitrogen into soil which is thereafter taken in by the plants. On a commercial basis, urea is available as prills or as a granulated fertilizer. The large granules are crystalline white and are highly resistant to moisture and thus facilitate long time storage as well. Today these granular shaped crystals of urea are blended with most of the fertilizers<sup>2</sup>.
- 2.3 In the production of DAP fertilizer, phosphate rock and sulfuric acid manufactured at the plant, or purchased, are combined to form phosphoric acid, which is then mixed with ammonia to produce DAP, a dry granular product. DAP fertilizer contains 46% P<sub>2</sub>O<sub>5</sub> and 18% N. More than 90% of Phosphate (P) is water soluble. It has a pH value of 7.33 and is a good source of P fertilizer for all crops. It is an equally good source on problem soils (saline sodic) with coarse texture. On an overall basis it suits to about 90% soils of the country.
- 2.4 Plants cannot survive without phosphorus. They must have a steady supply to complete healthy growth and produce a bountiful harvest. Phosphorus improves crop quality and protects plants against diseases. It helps overcome the effects of cold winter temperatures, drought, and other environmental stresses. Phosphorus also increases crop yields, so farmers can efficiently grow more.

### **3. OVERVIEW OF FERTILIZER SECTOR IN PAKISTAN**

- 3.1 Pakistan is an agro-based economy. Fertilizer is one of the main inputs in the agriculture sector and has a significant role in the productivity of crops. It is, therefore, extremely important that the fertilizers are available to the farmers on time at the affordable prices.

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<sup>1</sup> <http://www.agriculturalproductsindia.com/fertilizers/fertilizers-urea-fertilizer.html>

<sup>2</sup> <http://www.agriculturalproductsindia.com/fertilizers/fertilizers-urea-fertilizer.html>

3.2 According to official data, total installed capacity of urea in Pakistan is 4.2 million tonnes per annum while that of DAP was 0.650 million tonnes per annum, local demand of urea was 5.2 million tonnes per annum and of DAP is 1.4 million tonnes per annum, and local production of both the fertilizers is 4.8 million tonnes and 0.65 millions tonnes, respectively. At present, the following fertilizer producers operate in Pakistan.

- Fauji Fertilizer
- Fauji Fertilizer Bin Qasim
- Engro Chemicals
- Dawood Hercules
- Azgard 9
- NFC
- Fatima Group (Pak-Arab Fertilizer)

3.3 Following types of fertilizer are produced by the above companies:-

**1-Fauji Fertilizer**

Sona Urea (Prilled)

**2-FFBL**

Sona Urea (Granular)

Sona DAP

**3-Engro Chemical**

Engro Urea

Engro DAP

Engro Zorawar

Engro Phosphate

Engro Zarkhez

Engro NP

Zingro

**4-Dawood Hercules**

Babar Sher Urea

**5-Azgard 9**

Tara Urea

Tara SSP

**6-Fatima Group**  
Pak Arab Nitrophos  
Pak Arab CAN

**7-NFC**  
SSP

### 3.4 Production Capacities of All Fertilizer Producers and Expansion Plans

Fertilizer Companies	Plants	Products	Prod Capacity	Capacity Expansion
			(in tonnes)	(in tonnes)
<b>Fauji Fertilizer</b>	Sadiqabad, RYK	Urea	1,330,000	-
	PakSaudi, Mirpur Mathelo	Urea	718,000	-
<b>FFBL</b>	Port Qasim	DAP	668,000	-
	Port Qasim	Urea	551,000	-
<b>Engro Chemicals</b>	Daharki, Sind	Urea	1,135,000	1,300,000
	Port Qasim	NPK	108,000	-
<b>Dawood Hercules</b>	Chichoki Malian, Sheikhupura	Urea	445,500	-
<b>NFC</b>	LCFL, Faisalabad	SSP	Plant closed	-
<b>Azgard 9</b>	PakAmerican, Daudkhel	Urea	346,000	121,100
	Hazara Fertilizer, Haripur	SSP	90,000	-
<b>Fatima Fertilizer</b>	Sadiqabad, RYK	-	-	-
	PakArab, Multan	Urea	340,000	-
		CAN	120,000	-
		NP	350,000	-

3.5 The company wise sales figures for all types of fertilizers during the year 2008 - 2009 were obtained from National Fertilizer Development Center (hereinafter to be referred as the 'NFDC') and the respective market shares of the companies in the market of Urea and in the market of DAP and its substitutes has been calculated on the basis of these figures.

S.No.	Name	Sale of Urea in 2008-09 in Mt	%age Share
1	FFC	3,023,018	52.51
2	Engro	913,232	16
3	NFML	793,947	13.8
4	Dawood Hercules	533,460	9
5	Fatima	106,099	1.8
6	Azgard 9	387,222	6.7
7	Total	5,756,978	100

3.6 Market Shares of fertilizer companies in the market of DAP and its substitutes like MAP, NP, TSP, SSP and NPK have been calculated as follows:

S.No.	Names of the Companies	Sales Figures for the year 2008-2009 (In Tonnes)						Total	Market Share in %age
		DAP	NP	MAP	TSP	NPK	SSP		
1	Fauji Fertilizer & Fauji Bin Qasim	567,155						567,155	32.64
2	Engro	154,919	27,901	29,773		61,618		274,211	15.78
7	NFML						33,306	33,306	1.92
3	Dawood Hercules	9,520						9,520	0.55
4	Fatima Fertilizer	123,747	371,461	3,205				498,413	28.68
5	Azgard Nine	117,348		836			32,621	150,805	8.68
6	Others (Including Importers)	117,558		784	10,689		75,336	204,367	11.76
	Total	1,090,247	399,362	34,598	10,689	61,618	141,263	1,737,777	100.00

3.7 As per the figures provided by NFDC, the province wise share in total sales of the fertilizer during the year 2007-2008 was 69.4% for Punjab, 21.3% Sindh, 6.2% NWFP & 3.1% Balochistan.

3.8 Urea is imported by Trading Corporation of Pakistan and is sold by the distribution network of National Fertilizer Marketing Limited (hereinafter to be referred as “NFML”) which is a government-owned company.

- 3.9 The demand and supply situation of Urea and DAP fertilizer is reviewed on monthly basis by the Fertilizer Review Committee (hereinafter to be referred as “FRC”) of the Ministry of Food and Agriculture (hereinafter to be referred as “MINFA”). The FRC is comprised of fertilizer producers, importers and representatives of the MINFA. According to the outcome of the meetings, suggestions are sent to the TCP for import of Urea in the quantities estimated during the meeting.
- 3.10 Apart from discussing the availabilities of Urea and DAP, general issues of the industry are also discussed in the FRC meetings as evident from the minutes of FRC meetings. The fertilizer producers have stressed the Government to subsidize potash fertilizer and provide incentives to the farmers to use potash and phosphatic fertilizer. The fertilizer companies also suggested the Government to allow import of Urea by private parties. FFC and Engro also indicated that the shortage of Urea is due to the problems in distribution system i.e. involvement of NFC. The leading fertilizer producers also showed concerns over the hoarding and smuggling of Urea, which in their opinion was causing shortage of Urea in the country. The MINFA appears to take cognizance of the matter by asking the Ministry of Interior to stop take effective steps to control smuggling of Urea.
- 3.11 It is pertinent to note that the meetings of FRC only involve the producers and importers of Urea and DAP. It does not include any representation from growers and fertilizer dealers who are important stakeholder and perhaps can contribute importantly in giving right estimates for timely import of fertilizers in appropriate quantities. Particularly, when despite over utilization of capacity by the local producers there is a shortage of Urea supply to meet the demand and generally growers and dealers would revert using imported Urea not as a preferred option. This is primarily keeping in view its non- availability at the time of need.
- 3.12 The government does not fix the price of Urea, however, it has granted subsidy to the fertilizer producers in the form of feedstock gas which is a basic raw material to produce Urea. The feedstock gas is provided to the fertilizer companies at a

reduced rate by the Government and the fertilizer companies are required to pass on the subsidy to the consumers by keeping the prices of Urea lower.

3.13 Price of Urea is higher in the international market as compared to the local market, therefore, imported Urea is expensive as compared to the locally produced Urea, but the Government distributes it through NFML's distribution network at a price equal to the price of local producers by subsidizing the cost.

3.14 As explained earlier the estimates of short fall are made in consultation with the fertilizer producers and importers in the FRC meetings on monthly basis and Urea is imported through TCP.

#### **4. INFORMATION RECEIVED RELATING TO TIE-IN PRACTICE**

4.1 On 20-06-2009, Secretary Agriculture, Government of Sindh forwarded information based on the following communication between him and DCOs of various districts in Sindh:

- A letter dated 03-06-09 from District Officer Agriculture, Extension Khairpur addressed to the DCO, while referring to a meeting held on May 28, 2009 clearly states that the representatives of FFC during the meeting had stated that **as per policy of the company, fertilizer dealers are bound to purchase 4 bags of Urea with one bag of DAP Fertilizer, and the same policy is imposed upon growers by the Dealers and it is fact that at this stage of Kharif Season and due to high price of phosphatic fertilizer the growers are not able to purchase phosphatic fertilizers.** The officer requested the concerned authorities to take appropriate action in the matter.
- A letter dated June 16, 2009 from District Coordination Officer (DCO) Ghotki @ Mirpur Mathelo stating that the Sindh Abadgar Board and other growers as well as fertilizer dealers have called upon the district government and had

pointed out that they were being supplied DAP fertilizer unwarrantedly along with Urea Fertilizer which they stated was a burden on them as there was no need of DAP fertilizer after cotton sowing. The officer also forwarded relevant complaints in Sindhi language from Sindh Abadgar Board and Fertilizer Dealers Association Ghotki.

- A letter from District Coordination Officer Jacobabad dated June 17, 2009 stating therein that he called a meeting of representatives of Fertilizer companies, fertilizer dealers and growers on June 10, 2009. Growers were concerned on artificial shortage, higher prices and non availability of fertilizer, whereas the dealers complained that the fertilizer companies impose condition to buy one bag of DAP with three bags of Urea, they give the delivery late, FFC delivers in 60 days and Engro in 100 days and quota fixed by Fertilizer Companies in unjustified and creates artificial shortage. The officer along with other recommendations stated that the dealing of fertilizer companies and dealers may be documented to have a check on them.
- A letter dated June 16, 2009 from DCO Dadu stating therein that he conducted a series of meetings with fertilizer dealers who complained against the practice of fertilizer producing companies to tie-in the sale of Urea with DAP. They also stated that in turn the dealers have no choice but to impose the same policy to the growers.
- A letter dated June 17, 2009 from DCO Sanghar stating that he has received a report from EDO Agriculture that FFC and Engro have imposed a condition on the fertilizer dealers to buy one bag of DAP for three bags of Urea, otherwise they refuse to supply the dealers. Consequently black marketing and hoarding of fertilizer is increasingly prevalent.
- A letter dated June 16, 2009 from DCO Badin wherein he forwarded a complaint from Fertilizer Dealers of Badin stating that **FFC and Engro have**

**imposed a condition on dealers to buy DAP Fertilizer or Zorawar along with Urea fertilizer, otherwise they would refuse to supply .The dealers are forced to buy expensive DAP from these companies which is otherwise available at much cheap rate in the market.**

- A letter dated June 16, 2009 from DCO Matiari wherein he forwarded various complaints from the fertilizer dealers of Engro and FFC about the policy of the company to tie-in the sale of Urea with DAP and other fertilizers. The FFC dealer stated that they have to buy 200 bags of DAP for 800 bags of Urea whereas the dealers of Engro stated that they have to buy 200 bags of DAP for 600 bags of Urea.
- Copies of the above mentioned letters are attached as **Annex ‘A’**.

4.2 In view of the information received relating to tie-in practice by fertilizer producers and given the scope of this enquiry the following two issues are required to be addressed.

## 5. **ISSUES**

- 5.1 Whether the fertilizer companies, individually or collectively, are in a dominant position?
- 5.2 Whether *prima facie* fertilizer companies have contravened the provisions of clause (d) of sub-section (3) of Section 3 of the Ordinance by imposing supplementary obligation on the dealers/distributors to purchase DAP fertilizer with Urea?

## **6. Analysis and Findings:-**

### **6.1 Dominant Position**

6.1.1 Dominant position is defined in clause (e) of sub-section (1) of Section 2 of the Ordinance, as following:-

*“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;*

6.1.2 The term “Undertaking” as used in the above section has been defined under clause (p) of sub-section (1) of Section 2 of the Ordinance, as following:-

*“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;*

6.1.3 In terms of the above definition all the fertilizer producing companies namely FFC, Engro, Dawood Hercules ,Azgard 9 and Fatima Fertilizer are undertakings.

6.1.4 Dominant position is analyzed in context of a ‘relevant market’ which is defined under clause (k) sub-section (1) of Section 2 of the Ordinance in the following words;

*“relevant market” means 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’ characteristic, 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, in particular, the conditions of the Competition are appreciably different in those areas;*

- 6.1.5 From the above definition it is clear that the market has to be defined in two dimensions (i) Product market and (ii) geographic market.
- 6.1.6 Urea is consumed mainly by the farmers/grower of wheat, sugarcane, rice, cotton. Urea is considered as a straight nitrogen fertilizer. Urea has locally manufactured substitutes, including Calcium ammonium nitrate (CAN) and Ammonium sulfate (AS)—these are also nitrogen fertilizers. However, the local supply of AS has diminished considerably because of its rising costs. Similarly, CAN is not generally preferred by farmers as a substitute of Urea owing to the fact that, it contains less Nitrogen per Kg( 26%) and its expensive as well. Fertilizer companies also prefer to produce Urea, as its raw material i.e. Natural Gas is readily available at the rates subsidized by the Government. Moreover, Urea contains 46% Nitrogen and is generally considered as a high rated fertilizer, therefore, companies prefer to produce it.
- 6.1.7 On the supply side there are five producers of Urea in Pakistan and total installed capacity of urea is 4.2 million tonnes per annum. Local demand of urea is about

5.2 million tonnes per annum and local production was 4.8 million tonnes during the year 2008-09. About 10% of total demand of Urea has to be met through imports despite the fact that all the fertilizer producers are operating at more than 100% capacity utilization. So, there appears to be no supply side substitutability in the market.

6.1.8 The complaints regarding the practice of tie-in of the sale of Urea with DAP and its substitutes, were received by the Province of Sindh, which were forwarded to CCP by the Secretary(Agriculture) Government of Sindh , expressing concerns on such practices. Keeping in view the fact that Sindh only consumes about 21.3% of total fertilizer produced and imported in Pakistan, the enquiry was expanded to the whole of Pakistan, in particular, Punjab which consumes almost 70% of the total fertilizers produced and imported in the country. The remaining approximately 9% of the fertilizer is utilized in other two provinces i.e. NWFP and Balochistan, that is catered for by the fertilizer producers in Punjab and Sindh. So, the relevant geographic market is the market of whole of Pakistan. Thus, for the purpose of this enquiry, the product market is the Urea Fertilizer, as there is no demand or supply side substitutability and the geographical market is the whole of Pakistan. Accordingly, the relevant market for the purpose of this enquiry is Urea fertilizer in Pakistan.

6.1.9 As per the market structure provided above, FFC and FFC Jordan( FFC Jordan is a wholly owned subsidiary of FFC and both companies use a joint distribution network for distribution of fertilizer) are dominant players by having collective market share of 52.7% in the market of Urea. Even otherwise owing to the fact that all the fertilizer producers cannot meet the total demand of Urea in the country despite efficient utilization of capacity and the fact that only meager 10% of total requirement has to be imported, clearly exhibits the fertilizer producer's ability to behave to an appreciable extent independently from customers, consumers and suppliers. Hence each of these producers may be deemed to have

dominant position owing to the captive market<sup>3</sup> they enjoy, as the fertilizer market is a seller's market<sup>4</sup>. Also, as mentioned above despite shortage of Urea supply to meet the demand, generally growers and dealers do not revert to using imported Urea as preferred option - keeping in view its non- availability at the time of need.

## 6.2 Practice of Tie-in

6.2.1 For the purposes of this enquiry a meeting was arranged by us with the fertilizer dealers, growers and Executive District Officer Agriculture (EDO) Ghotki @ Mirpur Mathelo on 9-9-09. The meeting was facilitated by the DCO and EDO Agriculture of District Ghotki.

In light of this meeting and information made available the undersigned submit the following:-

- During the meeting, it was alleged by growers that the practice of tie-in by fertilizer producing companies is being continued since last three seasons of crops growing. Although there is no direct evidence of establishing the exact length of the period in which the tying took place, it appears clear that Urea and DAP are being tied together by fertilizer producer companies. This is supported by the fact that the growers, dealers and even the district and provincial government have brought to light the prevalence of this practice.
- It appears in light of the information made available that growers who cannot afford DAP are not able to buy Urea fertilizer either. Also the prices of Urea have increased rapidly over the last few months. The price

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<sup>3</sup> **Captive markets** are [markets](#) where the potential [consumers](#) face a severely limited amount of competitive [suppliers](#); their only choices are to purchase what is available or to make no purchase at all. Captive markets result in higher prices and less diversity for consumers.<sup>[1]</sup> The term therefore applies to any market where there is a [monopoly](#) or [oligopoly](#).

<sup>4</sup> A seller's market can refer to any type of market for goods or services where demand exceeds supply. A [market](#) which has more [buyers](#) than [sellers](#)

of one bag of Urea was Rs.654 last year at the start of the season which now has gone up to Rs.800 inclusive of margin of dealers and rent.

- The companies always increase prices of Urea and DAP fertilizer simultaneously, however, as per statement made by the dealers, most of the times Engro is the first to increase prices. However no direct evidence of collusion as far as prices are concerned was brought to our attention. While in this enquiry report no violation of Section 4 of the Ordinance is subject of scrutiny or any related evidence has come to our notice, one cannot, however, rule out the possibility of collusive behavior in this industry keeping in view its peculiar features where there is oligopoly and price parallelism and more importantly, the demand is more than the supply.
- As pointed out by the growers of Sindh, there is a difference in the price and quality of DAP sold by fertilizer producers and the one available in open market from the importers. The price of one bag of DAP in the open market is around Rs.1800, while the price of DAP per bag sold by fertilizer companies through their dealers is around Rs.1980. the growers also submitted that the quality of DAP supplied by local companies is not good when compared with the imported DAP.
- In light of the information made available by dealers and grower of Sindh, it appears that FFC sells fertilizer in the ratio of 4 bags of urea and one bag of DAP while Engro sells in the ratio of three bags of Urea with one bag of DAP. This is supported by the statements filed by the dealers and growers of Sindh attached in **Annex 'B'**.
- A letter from Sindh Abadgar Board was received on 17-09-09 stating that growers are facing serious problems due to the abusive policies and practices of fertilizer companies. They are forced to buy Urea and DAP

when it is not even their requirement, maintaining that, the extra financial burden in the form of forced sale of Urea and DAP does not let the farmers to flourish economically. It is asserted that policy of tying up should be stopped immediately and the losses suffered by the farmers due to these policies should also be investigated. The Sindh Abadgar Board in another letter also highlighted the fact that due to higher prices of fertilizer the farmers are suffering losses as they are not able to get the appropriate prices for the crops. The statements are attached in **Annexure 'B'**.

- A letter was received from Fertilizer Dealers Association of District Ghotki on 16-09-09 stating that due to the policy of the fertilizer companies to tie -in sale of Urea with DAP the dealers have to suffer huge losses and they have to maintain the same tie up arrangement during the sale of the fertilizer. The letter is attached as **'Annex C'**.

6.2.2 In order to verify the practice of tie-in by fertilizer producers in Punjab a meeting was also organized with Punjab Fertilizer Dealers Association (PFDA) at Taj Palace Hotel Sialkot on 10-08-09 .The meeting was largely attended by the fertilizer dealers across Punjab. All the dealers were having agency/dealership of multiple fertilizer producers including NFC which distributes imported Urea. In light of this meeting with PFDA and evidence made available by PFDA the inquiry committee submits that:

6.2.3 From the meetings it transpired that all the fertilizer producing companies are tying up sale of Urea with DAP including the companies having small market shares. Urea is being tied up with DAP or any other fertilizers available with the fertilizer producers. This practice has been confirmed not just by the government authorities but also by those directly involved in the supply chain, i.e. PFDA and growers. Duly signed Statements of fertilizer dealers in this regard are attached as **Annex 'D'**.

6.2.4 It appears that although almost all major fertilizer producing companies are engaging in the practice of tie-in, the ratio of the tie-in differs from company to

- company . For instance, as per the statement of fertilizer dealers, FFC provides 4 bags of Urea with one bag of DAP, Engro 3 bags of Urea with one bag of DAP and small companies like Dawood Hercules sell at the ratio of 1 bag of Urea with 1 bag of DAP or some other fertilizer produced by them.
- 6.2.5 If the dealers refuse to buy Urea as per the tie-in arrangement, than either they are kept on waiting or are not provided with any Urea.
- 6.2.6 Based on the information made available to us, it appears that the fertilizer companies have cancelled the dealership of some of the dealers who refused to buy Urea with DAP. When dealers were asked to provide the copies of dealership agreements they submitted that the dealership agreements are kept by the company, the dealers are mostly uneducated and they do not understand the terms and conditions written in the dealership agreements which is always in English language. However even in absence of dealership agreements being available there arises serious concern about the practice of major fertilizer producers.
- 6.2.7 We were further informed by the dealers that the fertilizer companies do not entertain booking orders for Urea alone and ask the dealers to book the proportionate amount of DAP or other fertilizers. Please refer to the statements attached as **Annex 'D'**. These companies also seem to have devised a way of flouting collection of evidence in this regard. As per the information made available to us by the dealers, the companies take booking for Urea and DAP jointly, however, invoice is issued only for the Urea fertilizer and invoice for DAP fertilizer is issued at later stage so that the tie-in in the sale of DAP and Urea cannot be traced
- 6.2.8 There is a significant delay in the delivery of orders by fertilizer companies. Sometimes the companies take as many as two months to deliver the order. This has been verified by PFDA and its members.

- 6.2.9 It is also pertinent to point out that the booking order is subject to price change and if the price is changed during the lag time from booking to delivery the dealer has to pay the difference.
- 6.2.10 Once the dealers buy the tied in product from the companies, they have to sell to the farmers in the same ratio which is extremely difficult, as the demand for Urea and DAP fertilizers are at different points in time during the year. Urea is required for the growing up crops while other fertilizers are required at the start of the sowing season.
- 6.2.11 Dealers submitted that they have to suffer heavy losses due to this policy of the fertilizer companies, and they try to make up for their losses by selling Urea at higher prices and subsidize the prices of DAP. Even if dealers made profits and the fertilizer companies engaged in tying even then the culpability for contravention of the law would remain.
- 6.2.12 Subsequent to the meeting, FDAP also submitted a written statement on 20-08-09 and provided various documents to substantiate the pleas taken by them in the meeting. Few important documents are a copy of the booking order, letters written by FDAP to various Government authorities on issues pertinent to the fertilizer situation.
- 6.2.14 **Taking all the above facts and circumstances into account there clearly appears to be a practice on part of the fertilizer producers of tie –in in the sales of Urea with DAP.**

### **6.3 Imposition of Supplementary obligations by fertilizer producers:-**

- 6.3.1 As a result of the tie-in practice prima facie another violation is made out on part of fertilizer companies that they are making the conclusion of contracts for sale of Urea subject to acceptance by other parties of supplementary obligations i.e. sale of DAP, which by its nature, or according to its commercial usage have no

connection with the subject of the contract for Urea. This *prima facie* constitutes a violation of Section 3(3) (d) of the Ordinance.

6.3.2 The companies are selling Urea with DAP which are two totally different products having different usage and are required for growing of crops during different points in time during the year. DAP is used by the growers at the start of sowing season in order to maintain and improve fertility level of soil, whereas, Urea helps proper growth of crop and is used at the growth stage of crops. While DAP certainly helps to improve the crop, however, it's the farmer's choice to use it or not and most of the time the farmers do not use DAP due to its high price. Hence, the same cannot be mandatorily imposed on the dealers and/or the growers.

6.3.3 Fertilizer dealers of Punjab and Sindh pointed out that Urea is not being sold by the fertilizer producers as a stand- alone product, instead it is sold with DAP or other fertilizers and the price charged for such DAP is significantly higher than the prevalent market price of DAP available with importers. This practice of Urea producers results in diluting the impact of subsidy provided by Government of Pakistan on Urea, as the farmers suffer the same amount of loss on purchase of DAP. Furthermore, it *prima facie* appears that the practice of tie-in sale of Urea with DAP is foreclosing the market for importers of DAP who intend to sell it on stand alone basis, as the farmers and dealers are bound to buy DAP from Urea suppliers.

6.3.4 In this regard, it is further added that a letter was received from Mr. Zulfiqar Ali who was a dealer of Engro and was doing his business under the name of Maqbool Traders in Hasil-Pur. Mr. Zulfiqar when refused to buy DAP fertilizer along with Urea from Engro; the company cancelled his dealership and returned him the security deposit submitted by him for the dealership. A copy of the cheque returned by the company was also attached with the letter and is attached

as **Annex ‘E’**. The documents provided by Maqbool Traders are also indicative of such practice.

## **7. CONCLUSION & RECOMMENDATIONS:-**

7.1 Various documents provided during the enquiry by the fertilizer dealers and growers *prima facie* indicate abuse of dominance by the fertilizer producers through following practices:-

- tie-in
- late delivery to the dealers (giving rise to more demand facilitated by less supply), thus imposing an unfair trading condition on the dealers including subjecting the dealers to the unilateral change in price from the booking to delivery time and blocking the funds of the dealers during the time period for which delivery is not made.

7.2 Since the dealers purchase tied in products from the fertilizer producers, they are constrained to sell the tied in products to the growers who then suffer heavy losses by buying the products which are not required by them.

Agriculture is the backbone of our economy. Our farmers generally have little financial resources to buy expensive fertilizer for their lands and crops. The increase in the prices of fertilizer directly impacts the price of various essential commodities like wheat, rice, sugar, corn etc and has an effect on the lives of general people, as is evident from the rising prices of these commodities.

7.3 It is, therefore, recommended that proceedings may be initiated against the fertilizer, producing companies for *prima facie* violations of clause (a), (c) and clause (d) of sub-section 3 of Section 3 of the Ordinance.

Ikram ul Haq Qureshi  
Director General (Legal)

Shaista Bano Gilani  
Director (Cartels)