

**COMPETITION COMMISSION OF PAKISTAN**

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**ENQUIRY REPORT**

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

**IN THE MATTER OF ALLEGED VIOLATION OF THE COMPETITION ACT,  
2010 BY ALL PAKISTAN CEMENT MANUFACTURERS ASSOCIATION AND  
ITS MEMBER UNDERTAKINGS**

**Noman Laiq | Irfan ul Haq | Aqsa Suleman | Sara Jamali |  
| Furqan Khan Khattak**

**Dated: December 15, 2020**

## **I. BACKGROUND & FACTS**

1. This report has been prepared in pursuance of the enquiry authorized by the Competition Commission of Pakistan (**the “Commission”**), under Section 37 (1) of the Competition Act, 2010 (**the “Act”**), on 18<sup>th</sup> May 2020 against suspected anti-competitive conduct by All Pakistan Cement Manufacturers Association (**APCMA**) and cement manufacturers in Pakistan.
2. Initiation of the enquiry is based on various media reports published, between April and May 2020, regarding increase in the price of cement (50 kg bag) by the cement manufacturers. Media reports alleged that increase in price of cement was due to cartelization by the manufacturers who held a meeting subsequent to which price increase in the range of Rs.45-55 per bag (50 kg) was announced. Regarding the aforesaid rise in price of cement, a report published quoted that on behalf of the Government in a meeting held with the members of All Pakistan Cement Manufacturers Association (APCMA) the cement manufacturers were urged to revoke the price hike due to its adverse impact on the construction industry. As per the news reports reasons given by the representatives of cement companies were that the price increase was due to surge in demand and the recent expansion drive adopted by many cement manufacturers. Also, it was asserted that lower demand in the first two months of the year 2020 have put pressure on the companies to keep the prices as low as Rs. 450/bag that were previously ranging between Rs. 550 to Rs. 600/bag. Furthermore, representatives of the cement industry maintained that the average inflation for cement in Pakistan is lower in comparison to other commodities with cement companies incurring losses and if such a situation continues it will result in closure of various plants. Former Chairman Association of Builders and Developers (ABAD) Mr. Hassan Bakhshi hinted upon the cement cartel in Northern region becoming active, post announcement of the construction package by the Government. A copy of referred news reports is attached as Annex-A1 (I to IV).
3. In order to ascertain whether the reasons provided by the representatives of the cement industry regarding increase in demand and price of cement are based on objectivity, a probe was conducted. From the information collected it was noted that during June - July 2019 a sharp increase was witnessed in cement price. Rate of cement during the

mentioned period for Islamabad, Lahore and Karachi increased by Rs. 63, Rs. 101 and Rs. 32 translating into hike of 11.4%, 18.6% and 5% respectively. Major reasons/factors reported behind increase in the price included:

- Sales Tax on FED (impact of Rs 25/bag)
- Axle Load Restriction on transportation (impact of Rs 30/bag)
- Increase in diesel price (20% increase per litre)
- Implementation of taxes on cement dealers and a charge on cement manufacturers for any sale of cement without any CNIC
- General inflation rose as high as 14%.
- Spending on Public and Private Infrastructure and housing remained subdued.
- High construction cost discouraged real estate developers.
- Double digit interest rates deterred investors to obtain bank loans to fund their operations.
- Devaluation of rupee pushed the cement prices down in international markets.

4. It is pertinent to note that as per figures available on APCMA website the local cement dispatches declined by 23.65% from 4.61 million tons in April 2019 to 3.52 million tons in April 2020 due to the effect of COVID 19 pandemic on domestic markets and construction activities in the country. Due to low demand the year 2020 started with low cement prices. An incentive package for construction industry was announced by the Prime Minister of Pakistan in the first week of April 2020 which slightly revived the cement demand in the local market. Table below summarizes the price trend of cement in major cities during the months of April and May 2020. In the month of April 2020, domestic dispatches in the North region reduced by 12.68% to 2.928 million tons (April 2019: 3.353 million tons) and in South region it decreased by 49.85% to 0.342 million tons (April 2019: 0.683 million tons).

<b>Table 1 : Weekly average price of cement in major cities (April- May 2020) (Rs./ 50 kg bag)</b>				
<b>Period (weekly)</b>	<b>Islamabad</b>	<b>Lahore</b>	<b>Peshawar</b>	<b>Karachi</b>
02-04-2020	496	493	480	705
09-04-2020	496	493	483	705
16-04-2020	496	493	490	705
23-04-2020	496	500	519	705
30-04-2020	516	550	509	705
07-05-2020	516	540	509	705
<b>Net % Increase/ Decrease (May/Apr)</b>	<b>4%</b>	<b>10%</b>	<b>6%</b>	<b>-</b>
<i>Source: Pakistan Bureau of Statistics</i>				

5. It was surprising to note that the increase in the price of cement came into effect at the time when:

- a) **Globally coal prices have dropped** due to excess supply and lower demand. Majority of the cement plants in Pakistan operate on coal which reflect significant portion of the input cost. Between March and June 2020 per ton coal price dropped by approximately 16%<sup>1</sup>. This decline in the price of coal should have had reflected in the price per bag of cement.
- b) **Oil prices reduced** considerably in the international market as well as in Pakistan. Between April and May 2020, the price of petrol and Diesel reduced by Rs. 15 and Rs 27<sup>2</sup> respectively. Total energy cost comprise of 50 – 55% of total cost of production of cement. Reduction in the energy cost should have had reduced the per bag price of cement.
- c) **Interest rates dropped to a single digit figure** as the State Bank of Pakistan revised its monetary policy and slashed the interest rates by 525 bps from 13.25% to 8%<sup>3</sup>.

<sup>1</sup> <https://www.indexmundi.com/commodities/?commodity=coal-south-african&months=60>

<sup>2</sup> <https://www.thenews.com.pk/print/652427-new-petroleum-prices-notified-petrol-to-sell-at-rs81-58-diesel-rs80-10-per-litre>

<sup>3</sup> <https://www.dawn.com/news/1557318/sbp-cuts-interest-rates-to-8pc-as-coronavirus-fallout-hits-economy>

6. Sudden rise in price by the cement manufacturers at a time when there was low demand compared to the installed capacity of the manufacturers and considering the reduction in input cost particularly coal, fuel, transportation and interest rates raised suspicion of collusive behavior among the cement manufacturers.
7. Based on the foregoing, the Commission on May 18, 2020 authorized an enquiry under Section 37(1) of the Act to ascertain whether there has been any prima facie violation of Section 3 and/or Section 4 of the Act on part of the cement manufacturers and submit a report in the matter. The Commission for the purpose of the enquiry delegated its powers under Section 33 and Section 36 of the Act to the enquiry committee.
8. Following officers were appointed as enquiry officers:
  - i. Mr. Irfan ul Haq (Deputy Director)
  - ii. Ms. Aqsa Suleman (Assistant Director)
  - iii. Ms. Sara Jamali (Assistant Director)
  - iv. Mr. Furqan Khan Khattak (Management Executive)
9. The Commission in its meeting held on November 13, 2020 reconstituted the Enquiry Committee by adding a senior officer to the team, as few of the enquiry officers fallen sick owing to the COVID-19.
  - i. Mr. Noman Laiq (Director General)
  - ii. Mr. Irfan ul Haq (Deputy Director)
  - iii. Ms. Aqsa Suleman (Assistant Director)
  - iv. Ms. Sara Jamali (Assistant Director)
  - v. Mr. Furqan Khan Khattak (Management Executive)  
(hereinafter the “Enquiry Committee”)
10. To understand reasons behind increase in the price of cement, the Enquiry Committee engaged with the cement manufacturers and All Pakistan Cement Manufacturers Association (APCMA) vide letters dated May 20, 2020 and August 12, 2020 and sought information and clarifications, in relation to July 2019 to May 2020 and subsequently for the period June – August 2020, on the following aspects:

- a. Weekly price data of all cement products/brands manufactured by the company in major cities including Islamabad, Lahore, Peshawar and Karachi;
- b. Weekly production, local and export dispatches (incl. total dispatches) of all cement products/brands manufactured by the company including total installed and utilized capacity;
- c. Objective reasons for each price increase/decrease. Explicitly mentioning the reasons behind price hike after the incentivized package announced by the Government of Pakistan for construction industry;
- d. Weekly ex-factory price data of all cement products/ brands manufactured by the company;
- e. Market share of the company based on installed capacity, production and dispatches; and
- f. Cost structure of cement (OPC only).

Detail of all correspondence is attached at (**Annex-A2**)

11. In response to the above letter, cement manufacturers provided cement price data, cost structure, reasons behind increase in price, capacity utilization and dispatch data of FY 2019-2020.

12. With respect to increase in price of cement, the cement companies provided various reasons. Broadly reasons provided by the cement companies are summarized below:

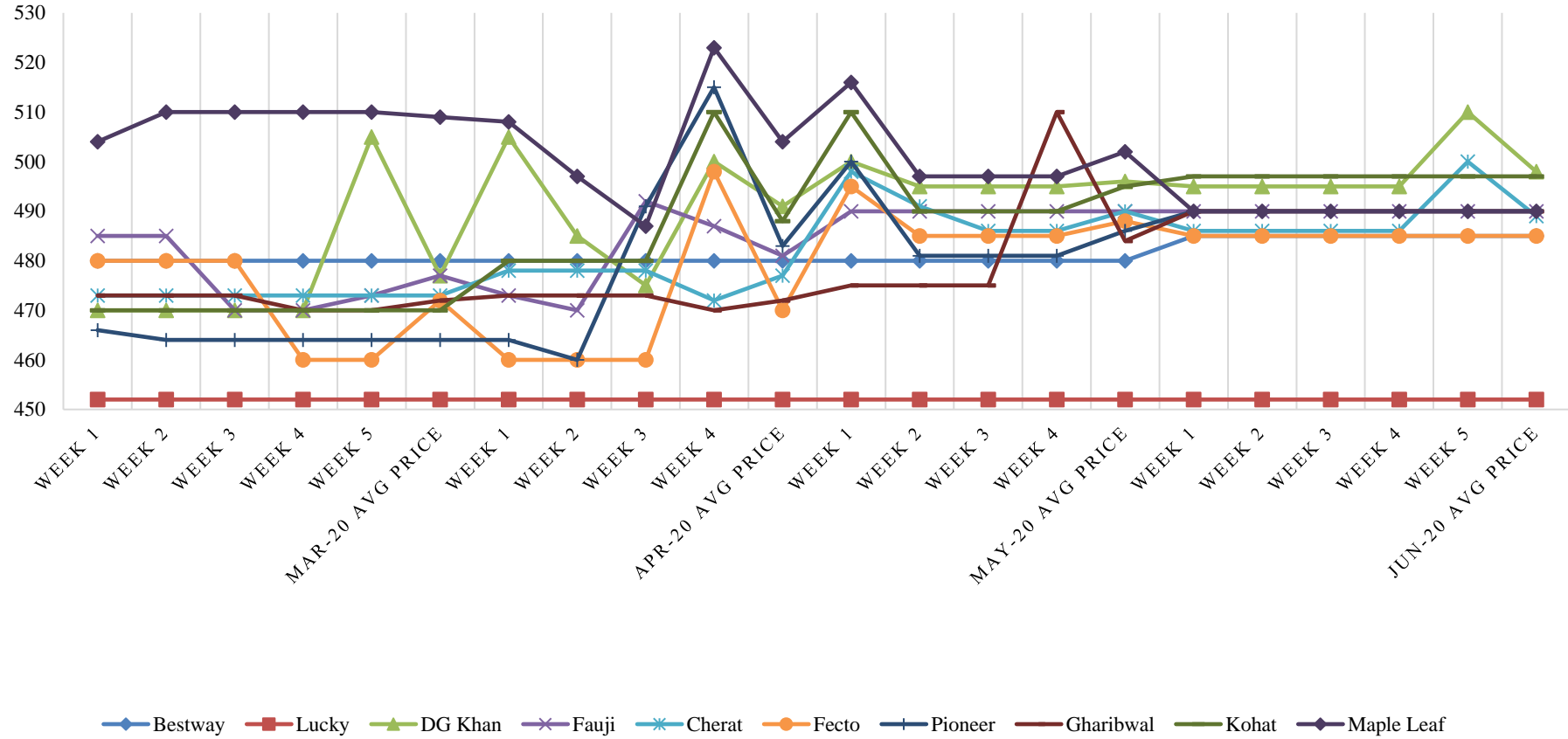
- a. FED increased by Government from Rs. 1,500 per ton to Rs. 2,000 (33.33% increase) w.e.f. July 01, 2019 led to an increase of Rs. 25 per bag. Since, cement is a third schedule item as per Sales Tax Act, 1990 and sales tax is applied on Maximum Retail Price (MRP). Therefore, increase in FED resulted in increase in the sales tax as well.
- b. Due to implementation of axle load limit, companies had to pay extra freight on transportation of coal and dispatch of cement which as per estimates amount to Rs. 30 per bag.
- c. The rupee depreciation against USD (\$) led to booking of exchange losses and increased the import bills of coals, stores, and spares.
- d. Shifting of coal handling from Karachi Port Trust (KPT) to Pakistan International Bulk Terminal (PIBT) as per the decision of Supreme Court

of Pakistan increased port charges on coal handling drastically as the charges are paid in USD (\$). Moreover, free storage days are also less with heavy demurrage/storage charges are paid to PIBT.

- e. After the decision of Supreme Court, Punjab Government departments started sending hefty water bills to cement manufacturers located in Punjab. No such bills are paid by companies in Sindh and KPK.
- f. Government of Punjab increased the royalty on limestone and clay by 100% w.e.f July 01, 2019.
- g. Kibor rates in most part of the FY 2019-20 remained on higher side resulting in increased operational and financial cost.
- h. The incentivized package announced by Government does not offer any direct benefit to cement industry and has certain tax benefits for builders and developers.
- i. Impact of rising inflation on all cost overheads of the companies.
- j. Changes in demand and supply along with seasonal fluctuations (monsoon, winter, Ramazan, etc.)

13. From the information gathered from the cement companies it was noted that reasons provided for the price increase pertained more directly to the period immediately after June 2019 i.e. after announcement of Finance Bill 2019/20 and at best could be relevant to argue and explain price hike in the said period when prices were increased by 11.4%, 18.6% and 5% in Islamabad, Lahore and Karachi respectively. However, the same grounds, such as increase in duties and taxes, axle load limit implementation etc. could not be considered as underlying factors for further enhancement in prices that occurred after 3rd week of April 2020. The graph presented below is a compilation of price data received from cement manufacturing companies in response to the letters issued by the Enquiry Committee in May and August 2020.

**GRAPH-1: WEEKLY CEMENT PRICES (NORTH REGION) MARCH-JUNE 2020**



Source: Data received from Cement Companies, analyzed by Enquiry Committee



14. The above graphical representation of data clearly indicates a pattern of price increase by the cement manufacturing companies.
15. In the letter dated May 20, 2020 sent to All Pakistan Cement Manufacturers Association (APCMA) the Enquiry Committee sought information related to: updated list of APCMA members; details of association meetings held during July-2019 to May-2020; decisions made and minutes of each meeting. APCMA in response submitted the list of its member companies; List of executive committee members of APCMA for the term 2019-20; approval of election schedule for electing Executive Committee members; and details regarding tax issues.
16. Profiles of APCMA office bearers highlighted that the Chief Executive Officers and senior representatives of major cement companies were also office bearers of APCMA's Executive Committee. Top representatives of APCMA among others included: (i) [REDACTED], Director of Lucky Cement who held the position of Vice Chairman APCMA; (ii) [REDACTED], Director DG Khan Cement who remained Senior Vice Chairman APCMA; and (iii) [REDACTED], Chief Executive of Cherat Cement occupied the position of Chairman APCMA.
17. In view of the above, the Enquiry Committee submitted a working paper to the Commission to authorize its officers under section 34 of the Act to conduct 'enter and search' inspections of premises of APCMA and those undertakings where the said office bearers are employed. From the information gathered it transpired that the price per bag of cement in South region remained unchanged and the likelihood of obtaining required evidence from premises of APCMA and cement companies present in the North region appeared to be high. Therefore it was proposed that 'Enter and Search' for companies situated in Karachi/South region i.e. Cherat Cement and Lucky Cement may be conducted at a later date.
18. The Commission on 22<sup>nd</sup> September 2020 authorized two teams of officers to conduct "enter and search" inspections of premises of APCMA and DG Khan Cement Limited. On 24<sup>th</sup> September 2020 teams of officers duly authorized by the Commission conducted inspection of the office of:

- a. APCMA office located at: 27-28 / 3A FCC, Gulberg-IV, Lahore; and
- b. DG Khan Cement located at 53-A, Lawrence Road, Lahore; (collectively referred to as **‘the Premises’**).

19. The authorized teams impounded all the pertinent material including inter alia: smartphone devices, documents and other computer stored data. Copies of the respective authorization and inventory list are attached as (**Annex-A3, I-IV**)
20. 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 digital forensic analysis to retrieve the digital evidences as per the requirement of the Enquiry Committee. Scope of the digital forensic analysis was to analyze evidentiary items relating to: phone calls made and received, SMS messages, messages/conversations including media on app based communication, email accounts, and retrieval of information with regard to key words (**Annex A-4-I**). FIA report attached as (**Annex A-4-II**) whereas the relevant evidence mentioned in enquiry provided by FIA is attached as (**Annex A-5**).
21. The information received from cement companies and evidence gathered from “enter and search” form an integral part of this enquiry report.

## **II. OVERVIEW OF THE CEMENT INDUSTRY**

22. The Enquiry Committee finds it pertinent to provide an overview of the industry to contextualize the TOR’s of the enquiry report i.e. possible violation of Section 3 and 4 under the Act.

### **A. IMPACT OF CEMENT INDUSTRY ON PAKISTAN ECONOMY**

23. Cement is among the key sectors of Pakistan’s economy and is also vital for its economic development. Its significance can be determined from the fact that it affects more than 40 other allied industries of which major industries include: steel, chemicals, wood, sanitary, marble, tiles, glass and glazing, aluminum, copper wire, bricks, stone crush, heavy transport, architecture and design, electric appliances etc.

24. The cement is a sub-sector of Large Scale Manufacturing (LSM) which constitutes 9.5% of the Gross Domestic Product (GDP) of Pakistan<sup>4</sup>. Cement industry plays an important role in providing employment to both skilled and unskilled workforce and contributes more than 3% of the total people employed in Pakistans<sup>5</sup>. Any impact on the cement sector disrupts the infrastructural development and the buying power of ordinary consumer. The total local cement dispatches in Pakistan during FY 2019-20 were approximately 40 million tons (40 billion kilogram)<sup>6</sup> therefore an increase of Rs. 01 per kilogram (Rs. 50 per bag) will result in financial impact of approximately Rs. 40 billion per annum.
25. The significance of cement industry has further enhanced due to the commencement/launch of mega construction, development and energy projects in the recent past under China Pakistan Economic Corridor (CPEC). Furthermore announcement of Naya Pakistan Housing Scheme and construction of at least five million units for the low income segment of the society has further increased the demand of cement in particular. In order to boost economic activity and to provide employment to maximum number of unskilled and skilled people in the post Covid-19 period the government has also announced a special package for construction industry thereby intensifying the demand of cement.
26. The total production of cement in Pakistan during FY 2019-20 is 47.8 MMT (Local; and Export). Whereas the per capita consumption of cement in Pakistan is 175kg which is lowest when compared with other countries such as: China- 1,737kg, India - 200kg, Afghanistan - 200kg, Thailand - 440kg.
27. Pakistan's cement exports were valued at USD 261 million in 2019-20 that accounted to approximately 1.1 percent of Pakistan's total exports. Pakistan's cement exports have declined steadily since 2015 when its export value was USD 345 million. Total world cement exports in 2019 were USD 11 billion and Vietnam is the largest exporters (11.5 percent share) followed by Turkey (7.7 percent), Thailand (6 percent)

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<sup>4</sup> PAKISTAN ECONOMIC SURVEY 2019-20

[http://www.finance.gov.pk/survey/chapter\\_20/03\\_Manufacturing\\_and\\_Mining.pdf](http://www.finance.gov.pk/survey/chapter_20/03_Manufacturing_and_Mining.pdf)

<sup>5</sup> The Impact of Cement Manufacturing on Economic Development of Pakistan: The Analysis of Cement Industry [https://www.researchgate.net/publication/306379908\\_The\\_Impact\\_of\\_Cement\\_Manufacturing\\_on\\_Economic\\_Development\\_of\\_Pakistan\\_The\\_Analysis\\_of\\_Cement\\_Industry](https://www.researchgate.net/publication/306379908_The_Impact_of_Cement_Manufacturing_on_Economic_Development_of_Pakistan_The_Analysis_of_Cement_Industry)

<sup>6</sup> Data gathered from APCMA website

and Canada (4.8 percent). Pakistan's share in world exports of cement in 2019 was 2.3 percent and was ranked as the 11th largest exporter in the world<sup>7</sup>.

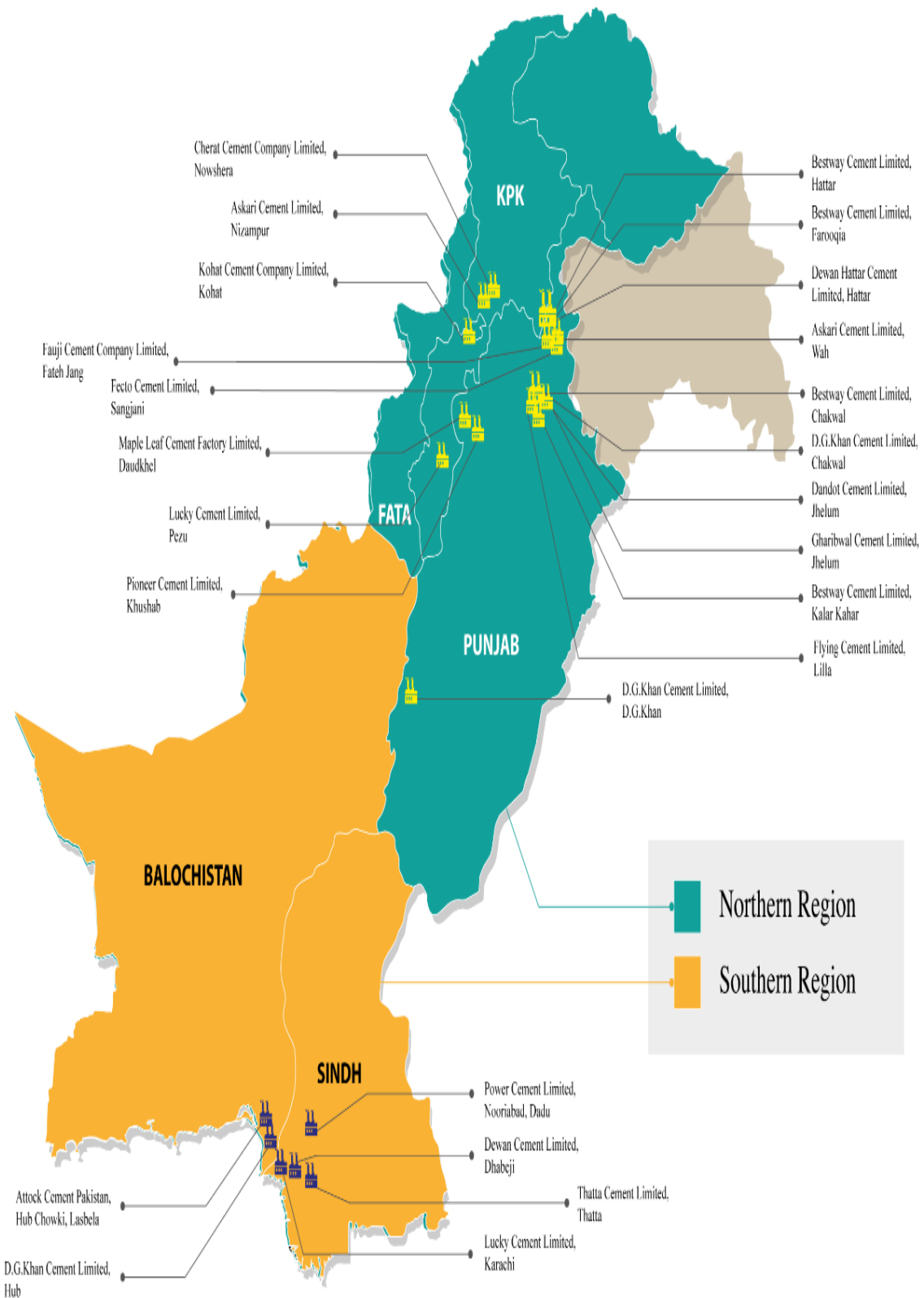
28. In terms of export destinations, Afghanistan is the largest export market for Pakistani cement accounting for approximately 34 percent of all exports followed by Bangladesh with a 29 percent share, Sri Lanka 17 percent. Exports to India remain suspended however, previously sizeable amount of exports were made to it. Another major export destination was South Africa however, exports to this destination remained subdued on account of anti-dumping duty imposed which has been lifted this year.

## **B. MARKET STRUCTURE**

29. The Cement industry in Pakistan comprises of total 19 companies of which 16 companies and 24 plants are operational and are divided into two regions - North and South. North region includes areas of Punjab, KPK, and AJK, consisting of 18 cement manufacturing plants. Installed capacity of North region in FY 2019-20 is 76% of the total capacity of cement manufacturers in Pakistan. South Region includes areas of Sindh and Balochistan, comprising 06 cement manufacturing plants having a share of 24% in the total capacity of the industry<sup>8</sup>. The highest concentration in the North region is due to the availability of raw material. Plant wise location of cement companies located in the North and South region is as under.

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<sup>7</sup> Calculations based on ITC Trademap



30. Of the 16 operational cement companies in Pakistan, 10 are located and operational exclusively in North region while three (03) are exclusively located and operational in the South region which includes: Attock Cement, Power Cement and Thatta Cement. Whereas three (03) companies namely: D.G Khan Cement, Lucky Cement and Dewan Cement have presence in both regions. List of all cement companies, along with their market shares across Pakistan is as under:

Sr. #	Cement Companies	FY 2018-19			FY 2019-20		
		Share in Local dispatches	Share in Export dispatches	Share in Total dispatches	Share in Local dispatches	Share in Export dispatches	Share in Total dispatches
1	Lucky Cement	15%	29%	17%	14%	27%	16%
2	Bestway Cement	18%	11%	17%	13%	23%	15%
3	D.G Khan Cement	13%	15%	14%	17%	4%	15%
4	Fauji Cement	7%	3%	7%	12%	2%	11%
5	Maple Leaf Cement	8%	5%	7%	7%	6%	7%
6	Attock Cement	5%	21%	7%	7%	3%	6%
7	Askari Cement	5%	4%	5%	3%	22%	6%
8	Kohat Cement	6%	2%	5%	5%	4%	5%
9	Cherat Cement	5%	5%	5%	6%	1%	5%
10	Gharibwal Cement	4%	0%	4%	4%	0%	4%
11	Dewan Cement	4%	2%	4%	4%	0%	3%
12	Pioneer Cement	3%	1%	3%	2%	1%	2%
13	Dandot Cement	1%	0%	1%	1%	6%	2%
14	Fecto Cement	2%	1%	1%	1%	1%	1%
15	Flying Cement <i>(Non operational since March 2020 onwards)</i>	2%	0%	1%	1%	0%	1%
16	Power Cement	1%	0%	1%	0%	0%	0%
17	Thatta Cement	1%	0%	1%	0%	0%	0%

*Source: Impounded data analyzed by Enquiry Committee*

31. Whereas, in terms of market share region wise top five companies in the North region include Bestway cement, Maple Leaf Cement, D.G. Khan Cement, Lucky Cement, Cherat Cement that have a respective market share of 20%, 14%, 12%, 10% and 9% (collective share: 65%). Whereas in South region most of the share is owned by 03 companies and include Lucky Cement, Attock Cement and DG Khan Cement that respectively own a share of 33%, 22% and 20% (collective share: 75%).

### **C. COST STRUCTURE AND PRICE TRENDS**

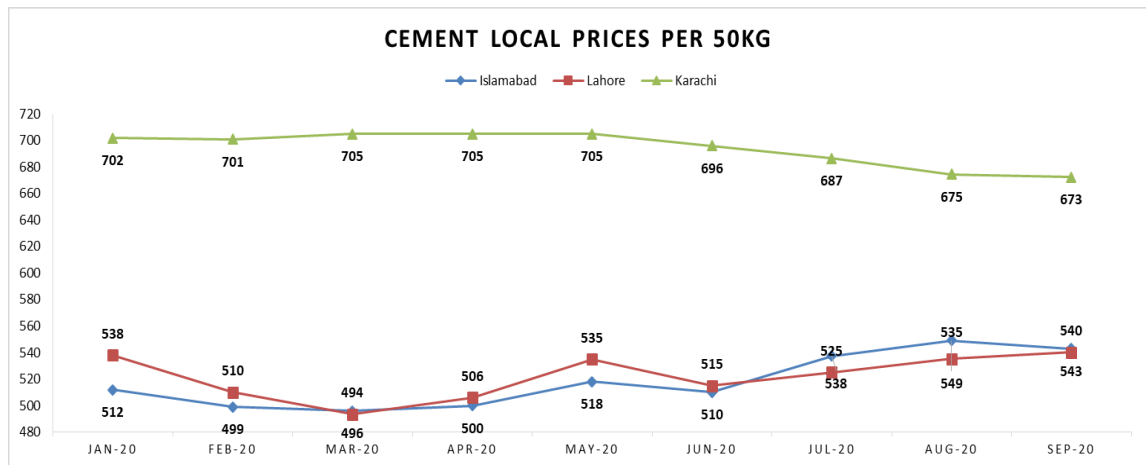
32. The cement industry is highly energy-intensive. There are different kinds of cement plants that operate either on coal, gas or electricity while companies have also introduced solar plants to bring energy efficiency. Energy costs are directly linked to the cost of production which affect all producers differently.
33. The capital expenditure on the installation of the cement plants generally require funding which cement companies raise through Initial Public Offerings (IPOs) or through loans from the financial institutions. Once the capital investment has been made comes the process of manufacturing of cement which begins with the processing of raw material and ends with packaging and distribution of cement. In the production of cement, Ex-factory price includes raw material, power and fuel cost and packaging. Fuel is the major cost factor in the production of cement and accounts to approximately 50-55 percent of the total production cost. The main cost heads along with their percentage in a cost of production are provided in table 3 below:

<b>Table 3: Cost heads of Cement Production</b>	
<b>Cost head</b>	<b>Percentage share in Cost of sales</b>
Cost of Raw Material (limestone, gypsum, clay, sand, iron ore)	20%-22%
Fuel and Power cost	50%- 55%
Freight cost (transportation through sea, rail and road)	15%-17%
Direct labor and Factory overheads (plant depreciation/insurance/repairs)	10%-12%
Other cost (finance cost, marketing, admin and selling cost)	5%-6%
<i>Source: Annual Financial Statements of Cement Companies</i>	

34. The price of cement started to increase from the month of April 2020 and continued to increase till June 2020. After March 2020 (the lowest point in time of cement prices), the highest increase in the cement prices is recorded in the first quarter of the FY 2020-21 i.e. July 2020 – September 2020 with an average increase of 8 – 9% in Islamabad and Lahore. During the FY 2019-20 and FY 2020-21 the price trend of

cement in major cities i.e. Islamabad, Lahore and Karachi gathered from Pakistan Bureau of Statistics is illustrated below:

**Graph-2:**



Source: Pakistan Bureau of Statistics

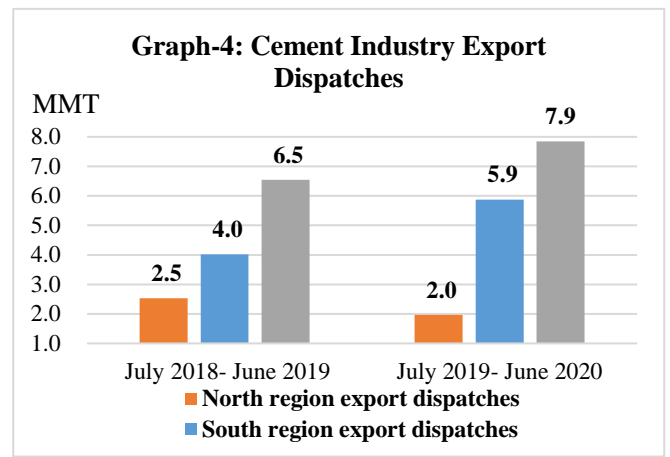
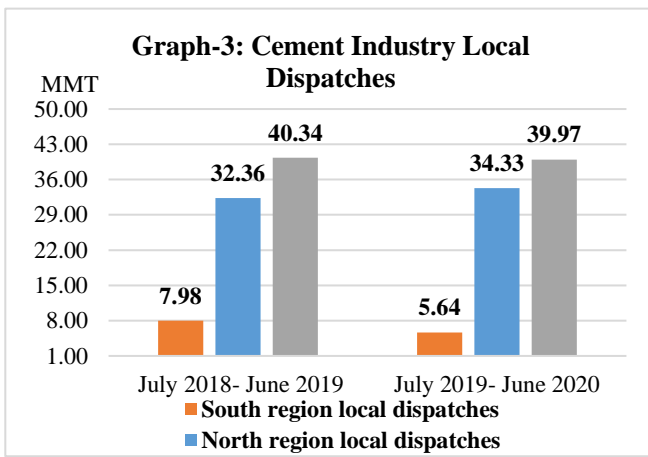
#### **D. PRODUCTION AND PERFORMANCE**

35. The total installed capacity of cement manufacturers as on June 2020 is recorded at 69.2 MMT that as on June 2019 was 56.0 MMT recording an increase of 23.5%<sup>9</sup>. Considerable increase in the installed capacity took place in the plants located in the North region where capacity increased to 52.7 MMT as on June 2020 from 42 MMT in June 2019. The increase in installed capacity by cement manufacturers is due to expansionary drive adopted keeping in view the upcoming CPEC and other mega projects in the country.

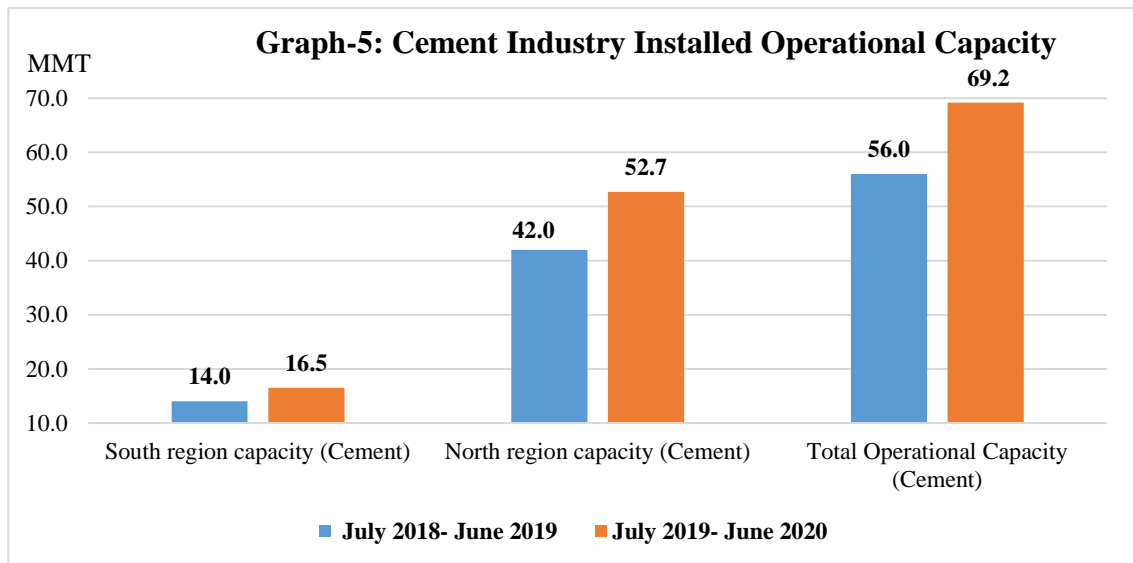
36. In terms of cement dispatches in the FY 2019-2020, North region contributed 86% to the local dispatches while South catered 14%. Although North region has higher share in terms of local dispatches, the South region dominates in export of cement with the share of 75%. Region wise comparative statement of the local dispatches for the FY 2018-19 and FY 2019-20 of the cement manufacturing companies in the North and South region are as under:

<sup>9</sup> Data derived from impounded data, APCMA website [https://www.apcma.com/data\\_monthly1920.html](https://www.apcma.com/data_monthly1920.html).





Source: Impounded data and APCMA's official Website (Data analyzed by Enquiry Committee.)



Source: Impounded data and APCMA's official Website (Data analyzed by Enquiry Committee.)

37. Despite the fact that the FY 2019-20 ended at low profits for the cement companies, the cement industry gained momentum during the first quarter of FY 2020-21. During the quarter ended September 2020, the cement companies posted exponential growth in their declared profits as compared to the same quarter in the preceding year. Similarly, during the quarter ended September 2020, the cement companies recorded an increase in earnings per share as compared with the same quarter of the preceding year. The profit trend of cement companies is as under:

**Table 4: Profits of Cement Companies in the Quarter-ended September 2020**

Cement Companies	Quarter ended on Sep-20	Quarter ended on Sep-19	% Change	Quarter ended on Sep-20	Quarter ended on Sep-19	% Change	%Growth in EPS
	Gross Profit (Rs. in billions)			Net profit (Rs. in billions)			
Lucky Cement	3.90	1.4	+179%	2.20	0.94	+57%	133%
Bestway Cement	2.72	0.75	+263%	1.70	0.30	+496%	502%
D.G Khan Cement	1.01	-0.53	+287%	-0.35	-1.42	+75%	75%
Maple Leaf Cement	1.23	-0.21	+600%	0.30	-1.30	+124%	115%
Fauji Cement	1.18	0.59	+100%	0.69	0.29	+138%	138%
Cherat Cement	1.11	0.19	+484%	0.31	-0.33	+194%	191%
Attock Cement	0.97	1.29	-25%	0.11	0.36	-69%	-67%
Kohat Cement	0.95	0.115	+726%	0.51	0.08	+538%	473%
Pioneer Cement	0.30	0.033	+809%	0.04	-0.19	+121%	79%
Gharibwal Cement	0.57	-0.003	+16119%	0.26	-0.23	+213%	212%
Dewan Cement*	-0.08	0.08	-200%	-0.12	-0.06	-90%	-85%
Fecto Cement	0.06	0.01	+425%	-0.39	-0.05	+26%	26%
Flying Cement**	0.33	0.044	+650%	-0.4	0.02	-2005%	-292%
Dandot Cement***	-0.04	-0.05	-20%	-0.11	-0.12	+8%	15%
Power Cement****	0.67	-0.096	+794%	-0.17	0.007	-2529%	-2529%
Thatta Cement	0.19	0.36	-46%	0.007	0.011	+34%	33%

\*Dewan Cement is non operational

\*\*Flying Cement is non operational

\*\*\* Dandot Cement made no sales during quarter ended Sep 2020

\*\*\*\*Power Cement begins production in July 2020

Sorted by Market share.

Source: Financial Statements of Cement Companies, analyzed by Enquiry Committee.

38. Among the top 10 cement manufacturing countries in the world, China has the highest production share i.e. 2,500 MMT. India and the USA round out the top three (03) at 280 and 83.3 MMT of cement produced annually. China produces more cement than 2nd to 10th ranking countries combined. Some of the top international cement manufacturing companies have increased their cement production capacity due to an expected increase in future market demand. Currently, global cement consumption volume is expected to reach 4.42 billion tons in 2021, growing at a Compound Annual Growth Rate (CAGR) of 2.96% by 2021. List of top ten cement producing countries is given below:

<b>Table 5: Top 10 Cement Producing Countries</b>		
<b>Ranking</b>	<b>Country</b>	<b>Cement Production (MMT)</b>
1.	China	2,500
2.	India	280
3.	USA	83.3
4.	Iran	75
5.	Turkey	75
6.	Brazil	72
7.	Russia	69
8.	Saudi Arabia	63
9.	Vietnam	60
10.	Indonesia	60
<p><i>Source: Available at: Top 10 cement companies in the world in 2020</i></p> <p><a href="https://datis-inc.com/blog/top-10-cement-companies-in-the-world-in-2020/">https://datis-inc.com/blog/top-10-cement-companies-in-the-world-in-2020/</a></p>		

39. The cement sector in Pakistan has history of being alleged of collusive activities and has also been penalized in the past to an amount of collectively more than Rs. 6.3 billion on account of violation of Section 04 of the Act by the Commission. In 2012 the Commission again initiated enquiry against cement companies, however the same could not be proceeded further due to stay order granted to cement companies by the Lahore High Court. Due of its very nature and characteristics cement industry world over has always been prone to cartelization. A mere review of the cases of a few international and regional jurisdictions highlighted that cement industry in countries

like India, Turkey, Germany, Poland were penalized for involvement in anti-competitive conduct. Some of the most common features seen in the cartels are that:

- a. They agree on some type of quantity and/or price allocation mechanism with regard to sale of cement. Quotas on quantity allocation based on historical market shares or perhaps existing market shares depending on the jurisdiction;
- b. The role of association appeared to be strong in facilitating commercially sensitive information between the cartel participants.
- c. A common pattern among cartel participants is simultaneous increase in prices.

### III. ISSUES

40. In relation to the TORs, the Enquiry Committee has addressed the following issues:

- i. The **relevant market** in terms of Section 2(1) (k) of the Act?
- ii. Whether any cement manufacturing company holds a **dominant position in the relevant market** in terms of Section 2(1) (e) of the Act? If yes, whether the conduct of **dominant player is abusive** in terms of Section 3 of the Act?
- iii. Whether APCMA or cement manufacturing companies have **acted collusively in respect of *inter alia* production, supply, distribution and price control** of cement in violation of Section 4 of the Act?

**ISSUE – i: What is the relevant market in terms of Section 2(1) (k) of the Act and whether any cement manufacturing company holds a dominant position in the relevant market in terms of Section 2(1) (e) of the Act? If yes, whether the conduct of dominant player is abusive in terms of Section 3 of the Act?**

### UNDERTAKING

41. Section 2(1)(q) of the Act defines an undertaking as:

*“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;”*

42. As per the above definition, cement manufacturing companies registered under the laws of Pakistan are engaged in production, supply and distribution of various kinds of cement and are therefore undertakings in terms of Section 2(1) (q) of the Act. Following is the list of such undertakings:

<b>Table 6: List of Undertakings</b>	
<b>Sr. No</b>	<b>Cement Manufacturing Companies in Pakistan</b>
1.	Askari Cement Ltd (North)
2.	Bestway Cement Ltd (North)
3.	D.G. Khan Cement Ltd (North & South)
4.	Fauji Cement Ltd (North)
5.	Gharibwal Cement Ltd (North)
6.	Lucky Cement Ltd (North & South)
7.	Pioneer Cement Ltd (North)
8.	Thatta Cement Ltd (South)
9.	Attock Cement Ltd (South)
10.	Cherat Cement Ltd (North)
11.	Dewan Cement Ltd (North & South)
12.	Fecto Cement Ltd (North)
13.	Kohat Cement Ltd (North)
14.	Maple Leaf Cement Ltd (North)
15.	Power Cement Ltd (South)
16.	Flying Cement Limited (North) <b>Non operational</b>
17.	Dadabhoy Cement Industries Limited (South) – <b>Non operational</b>
18.	Zeal Pak Cement Limited(South) <b>Non operational</b>
19.	Dandot Cement (North)

*Source: APCMA's Official Website*

43. APCMA is a registered body of cement manufacturers in Pakistan incorporated on September 14, 1992 under section 42 of the Companies Ordinance 1984 (Now Companies Act 2017) and is licensed under Trade Organization Ordinance 2007 issued by the Ministry of Commerce. There are 19 cement manufacturing companies in Pakistan out of which 15 are APCMA member companies. Non member companies of APCMA include: Flying Cement Limited (North), Dadabhoy Cement Limited (South), Zeal Pak Cement Limited (South), Dandot

Cement (North). In view of foregoing, APCMA being association of undertakings is an undertaking in terms of Section 2(1) (q) of the Act.

## **RELEVANT MARKET**

44. Section 2 (1) (k) of the Act defines the “Relevant Market” as:

*“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’ 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, in particular, the conditions of the Competition are appreciably different in those areas;*

In light of the above definition, relevant market consists of a relevant product market and a relevant geographic market.

Considering the relevant product market first, in Pakistan following types of cement are commonly manufactured:

- i. Ordinary Portland Cement ('OPC'),
- ii. Sulphur Resistant Portland Cement ('SRPC')
- iii. Low Alkali Cement (a variety of Portland cement) and
- iv. Portland Blast Furnace Slag Cement ('PBFSC')

45. In terms of the production data received from the cement manufacturing companies, most common type of cement is Ordinary Portland Cement (OPC) also known as “grey cement”. OPC is widely used for general construction, reinforced concrete buildings and bridges, pavements, heavy and large structures etc. Based on the production data provided by the cement companies, the OPC accounted for 86% of the total cement production. As OPC is the primary product being produced by all cement manufacturing companies which cannot be substituted with other kinds of cement with reference to price, characteristics and intended uses therefore for the purpose of this enquiry relevant product market is the Ordinary Portland Cement.

46. As regards the relevant geographic market, cement companies are primarily engaged in the supply of cement in Pakistan and outside Pakistan i.e. exports, therefore the relevant geographic market for the purpose of this enquiry may be divided into two categories i.e. cement produced and supplied within the territory of Pakistan and cement produced in Pakistan and supplied outside Pakistan.
47. As per data gathered from APCMA cement manufacturing companies in terms of their geographical locations are divided in two regions i.e. North and South region. North region comprise mainly of Punjab and KPK whereas South region includes areas of Sindh and Baluchistan. The conditions of competition with respect to production, sale and supply within the territory of Pakistan are sufficiently homogenous with respect to regulatory framework and there is no restriction on interprovincial supply of cement i.e. cement produced in one part of Pakistan can be marketed, supplied/transported in any other part of Pakistan without any restrictions, therefore, for the purposes of this enquiry one relevant geographic market is the market of whole of Pakistan. The other relevant geographic market to be considered is the market of cement supplied outside Pakistan i.e. exports. Cement is exported to various destinations, such as African countries, Middle East countries, Afghanistan etc. using various routes and transportation modes.
48. Based on the foregoing for the purposes of this enquiry one relevant market is the market of OPC produced and supplied within Pakistan and the other relevant market is the market of OPC produced in Pakistan and supplied outside Pakistan.

### **Abuse of Dominant Position**

49. 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.”*

50. For an abuse of dominance by an undertaking to take place, it has to be established at the very outset that the undertaking alleged of the same is deemed to have a dominant position in the relevant market. As per the Act, an undertaking is deemed to have a dominant position, if it has the ability to behave to an appreciable extent independently of its competitors, consumers and suppliers or it is presumed to be dominant if its market share exceeds 40% in the defined relevant market.

51. The dominance of an undertaking is to be established by analyzing the market shares in the relevant market i.e. the quantity of cement sold in Pakistan and quantity of cement exported outside Pakistan by the cement companies. The market share of the Cement Companies are as under:

<b>Table 7: Market Share of Cement Companies</b>			
<b>S.R #</b>	<b>Cement Companies</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>
		Total Dispatches*	Total Dispatches*
1	Lucky Cement Pvt Ltd	17%	16%
2	Bestway Cement Ltd	17%	15%
3	D.G. Khan Cement Ltd	14%	15%
4	Maple Leaf Cement Ltd	7%	11%
5	Fauji Cement Ltd	7%	6%
6	Cherat Cement Ltd	5%	7%
7	Attock Cement Ltd	7%	6%
8	Kohat Cement Ltd	5%	5%
9	Askari Cement Ltd	5%	5%
10	Pioneer Cement Ltd	3%	4%
11	Gharibwal Cement Ltd	4%	3%
12	Dewan Cement Ltd	4%	2%
13	Fecto Cement Ltd	1%	1%
14	Flying Cement Ltd	1%	1%
15	Dandot Cement Ltd	1%	0%
16	Power Cement Ltd	1%	2%
17	Thatta Cement Ltd	1%	0%

*Source: Impounded data from the premises of D.G Khan Cement, analyzed by Enquiry Committee*  
*\* Includes local dispatches and exports.*

52. From data presented above it appears that no individual undertaking holds dominant positioning in terms of its market share in the relevant market in Pakistan and in relevant market of exports.



53. OPC is a homogeneous product although it is available in different brands however one brand can be easily substituted with the other brands of OPC most of the cement manufacturing companies have excess installed capacities compared to the current demand of cement. Therefore, the market of OPC is not a captive market and none of the companies are in a position to behave independent of its customers, consumers or suppliers.
54. The criteria for determining whether undertakings enjoy ‘Collective Dominance’ requires the establishment of ‘economic links’ or as per more recent jurisprudence ‘connecting factors’ between undertakings.
55. Collective dominance occurs usually in an oligopoly market structure where there are a limited number of competitors with few large producers occupying the market. To be precise, a dominant position is held collectively when the undertakings are commercially linked in such a way that they adopt a common policy without explicitly agreeing on a certain market/conduct.
56. Although cement industry can be viewed to have an oligopoly structure with few players occupying large market shares, the evidence presented in the preceding paras clearly indicates towards the existence of an explicit engagement of member undertakings of APCMA on various accounts including: price fixing, output restrictions etc. Therefore the analysis of anti-competitive conduct with respect to collective abuse of dominance is not applicable for the case at hand.

**ISSUE – II: Whether APCMA or cement manufacturing companies have acted collusively in respect of *inter alia* production, supply, distribution and price control of cement in violation of Section 4 of the Act?**

57. Section 4 of the Act defines the prohibited agreement as follows:

*“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;”*

58. During the “enter and search” inspection of premises of DG Khan Cement and APCMA smartphone device of Official No 1, Secretary APCMA and Official No 20, Marketing official, D.G. Khan Cement along with certain documents were impounded. Computer stored information on smartphone device of Official No 20 (Marketing department official of D.G. Khan Cement) highlighted the presence of a whatsapp group titled “**APCMA Marketing Officials**” (hereinafter referred to as **the “Whatsapp Group<sup>10</sup>”**) which was created on 15th November 2018 by Official No 1, Secretary APCMA. Relevant excerpts of the chat/posts/messages sent between the representatives of the cement manufacturers is attached as (**Annex-A6**). Details of the participants of the aforementioned Whatsapp group duly verified from Pakistan Telecommunication Authority (PTA) is attached as (**Annex- A7**).

#### **A. EVIDENCE IN RELATION TO FIXING OF PRICE**

59. Analysis of the impounded documents, emails, whatsapp conversations, text messages and other computer stored information indicates that at various instances cement manufacturing companies have collectively discussed and decided cement prices and agreed on changes in price levels. In terms of the evidence instances come specifically in the year 2019 and 2020 wherein collective decisions pertaining to price fixing have been taken by the cement companies for the North and South region separately and have been notified for compliance by all members through whatsapp chats, text messages and emails.

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<sup>10</sup> Names of officials appearing in whatsapp chat have been hidden and reflected as codes as referred in **Annex – A7-I**.

60. One of the extracts of the Whatsapp Group chat retrieved from the mobile phone of Official No 20, DG Khan Cement is a message sent by Official No 1, APCMA on 12th May 2020 to the participants of the Whatsapp Group suggesting price changes in per bag of cement which were termed highly confidential and strict adherence to the price changes was sought. The suggested price changes were meant to be effective from 12th May 2020 which also coincided with the date of the message. Relevant message along with the proposed rate sheet is reproduced below in Figure 1. In terms of the impounded materials such mutually agreed price levels have been communicated to the cement manufacturing companies through Whatsapp group participated by all members with effective dates for compliance purposes.

Official No 1, APCMA:

*“Proposed MRP changes Highly – confidential”.*

*“Rates effective from today. Highly confidential. Please ensure strict adherence”.*

*“No compensation allowed”.*

**Figure 1:**

<b>Maximum Retail Price / Bag</b>			
Cement Units	Maximum Retail Price/Bag		
	22-Apr-20	24-Apr-20	12-May-20
Askari Cement (Wah)	485	490	490
Askari Cement (Nzp)	485	490	490
Bestway Cement (Hattar)	480	480	488
Bestway Cement (Faruqia)	480	480	488
Bestway Cement (Chakwal)	480	480	488
Bestway Cement (Kalar Kahar)	485	485	493
Cherat Cement	472	498	491
Dandot Cement	-	-	-
DG Khan Cement (DG Khan)	475	500	495
DG Khan Cement (Kalar Kahar)	475	500	495
Fauji Cement	470	490	490
Fecto Cement	460	498	485
Flying Cement	-	-	-
Gharibwal Cement	475	510	490
Kohat Cement	480	510	490
Lucky Cement	452	452	485
Maple Leaf Cement	487	521	497
Pioneer Cement	458	515	490

Source: Impounded data (message sent by Official No 1, Secretary APCMA in Whatsapp group on 12<sup>th</sup> May, 2020)

The above figure contains MRP's for 22<sup>nd</sup> April, 24<sup>th</sup> April and 12<sup>th</sup> May 2020 and shows that there was an increase in cement prices in the range of Rs. 05 to Rs. 57 between 22<sup>nd</sup> April and 12<sup>th</sup> May 2020 in the North region. It is worth noticing that maximum retail price levels for each plant located in the North region has been notified by the Secretary APCMA for strict compliance by the member undertakings along with an effective date. Interestingly an article appearing in Dawn on 02<sup>nd</sup> May, 2020 "Govt takes note of cement price hike" quotes the Association of Builders and Developers: "Cement cartel in North is again active to cash in soaring demand in view of upcoming rising construction activities after government's construction package, he said urging PM to take strict action against cement cartel and also steel bar makers for raising prices". This news report corresponds with the discussions/decisions reproduced above. The relevant news report is attached as (Annex-A8).

61. In a private conversation on whatsapp (separate from the Whatsapp Group) the officials of DG Khan Cement, Official No 4 sent messages to Official No 20 of DG Khan Cement on 18<sup>th</sup> June 2020 regarding the proposed rates of cement for cement plants located in the North region that were to be made effective from 22<sup>nd</sup> June 2020 onwards. Information exchanged regarding the rates is mentioned in figure 02 below,

**Figure 2:**

Sr. No.	Units	Current MRP	Proposed MRP	Proposed Date
1	Askari (Wah)	490	525	25-Jun-20
2	Askari (Nzp)	490	525	25-Jun-20
3	Bestway (Hattar)	485	520	24-Jun-20
4	Bestway (Fauqia)	485	520	24-Jun-20
5	Bestway (Chakwal)	485	520	24-Jun-20
6	Bestway (PakCem)	490	525	24-Jun-20
7	Cherat	485	520	23-Jun-20
8	Dandot	-	-	
9	Dewan			
10	D.G Khan (DG Khan)	495	525	22-Jun-20
11	D.G Khan (Chakwal)	495	525	22-Jun-20
12	Fauji	490	525	25-Jun-20
13	Fecto	485	520	27-Jun-20
14	Flying	-	-	
15	Gharibwal	495	525	26-Jun-20
16	Kohat	490	520	23-Jun-20
17	Lucky	480	520	24-Jun-20
18	Maple	497	525	22-Jun-20
19	Pioneer	490	520	26-Jun-20

Source: Impounded data (message sent by Official No 4, D.G Khan Cement to Official No 20, D.G Khan Cement on 18<sup>th</sup> June, 2020)

62. Based on Figure-2 above a price increase of Rs.30-40 per bag, which amounts to a range of 5.63-8.33%, as calculated below, appears to have been agreed upon by all members to be made effective from 22<sup>nd</sup> June onwards.

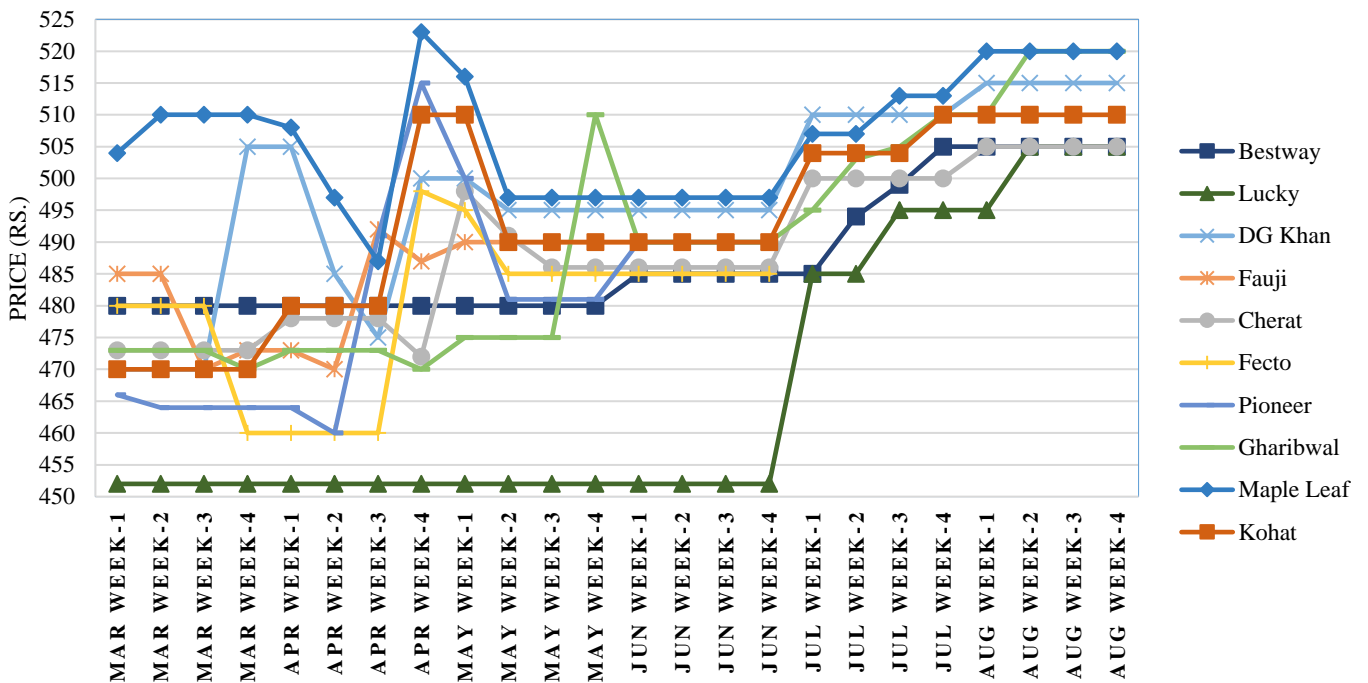
<b>Table 8: Price increase on account of rise in diesel prices</b>					
<b>Sr.</b>	<b>Units</b>	<b>Current MRP</b>	<b>Proposed MRP</b>	<b>Change PKR</b>	<b>Change %</b>
1	Askari Cement (Nzp)	490	525	35	<b>7.14%</b>
2	Askari Cement (Wah)	490	525	35	<b>7.14%</b>
3	Bestway – Hattar	485	520	35	<b>7.22%</b>
4	Bestway – Chakwal	485	520	35	<b>7.22%</b>
5	Bestway – Farooquia	485	520	35	<b>7.22%</b>
6	Bestway – PakCem	490	525	35	<b>7.14%</b>
7	Cherat Cement Co.	485	520	35	<b>7.22%</b>
8	Dandot Cement Ltd.	0	0	0	<b>0.0%</b>
9	Dewan Hattar Cement	0	0	0	<b>0.0%</b>
10	DG Khan Cement	495	525	30	<b>6.06%</b>
11	DG Khan Cement (CHK)	495	525	30	<b>6.06%</b>
12	Fauji Cement Co.	490	525	35	<b>7.14%</b>
13	Fecto Cement	485	520	35	<b>7.22%</b>
14	Flying Cement	0	0	0	<b>0.0%</b>
15	Gharibwal Cement	495	525	30	<b>6.06%</b>
16	Kohat Cement Co.	490	520	30	<b>6.12%</b>
17	Lucky Cement Ltd.	480	520	40	<b>8.33%</b>
18	Maple Leaf Cement Ltd.	497	525	28	<b>5.63%</b>
19	Pioneer Cement Ltd.	490	520	30	<b>6.12%</b>
<i>Source: Impounded data from the premises of D.G Khan Cement, analyzed by Enquiry Committee.</i>					

63. Data obtained from PBS indicates that the price increase decisions were actually implemented by the cement manufacturing companies. The table below shows that between 16<sup>th</sup> April and 29<sup>th</sup> July per bag prices in Islamabad (ISB), Lahore (LHR) and Peshawar (PWR) increased by Rs. 57, Rs.47 and Rs. 17 on average respectively.

<b>Table 9: PBS data regarding price of cement in Islamabad (ISB), Lahore (LHR) and Peshawar (PWR)</b>			
<b>Period (Weekly)</b>	<b>ISB</b>	<b>LHR</b>	<b>PWR</b>
16/04/2020	496	493	490
23/04/2020	496	500	519
30/04/2020	516	550	509
7/5/2020	516	540	509
14/05/2020	516	540	507
21/05/2020	520	530	499
28/05/2020	520	530	503
4/6/2020	520	530	503
11/6/2020	520	510	497
18/06/2020	500	510	497
25/6/2020	500	510	493
2/7/2020	520	510	497
9/7/2020	530	530	506
16/7/2020	547	530	510
23/7/2020	553	530	510
29/7/2020	553	540	507
<b>Net Increase/ (decrease)</b>	<b>57</b>	<b>47</b>	<b>17</b>
<i>Source: Pakistan Bureau of Statistics, analyzed by Enquiry Committee.</i>			

64. The rising trend in the price of cement is also verified by the data submitted by cement companies for the FY 2019-20 to the enquiry committee. From the analysis of the data it is noted that price of cement followed an overall upward trend between April 2020 and August 2020. Price pattern of various cement companies operating in the North region of Pakistan is presented in the following graph.

**GRAPH-6: CEMENT PRICES IN MARCH-AUGUST 2020**



Source: Data received from cement companies, analyzed by Enquiry Committee

65. In another private whatsapp conversation Official No 4 DG Khan Cement also Senior Vice Chairman APCMA on 17th August 2020 forwards a thread of conversation to Official No 20, DGM- Marketing of DG Khan Cement, held between the representatives of different companies wherein apprehensions were expressed regarding downward pressure on prices due to Muharram and the Monsoon rainfalls. In the same conversation it has been suggested that in order to arrest this drop companies should reduce their quotas. Another important point to note is that discussion indicates that pricing decisions are made at the highest forum involving CEOs, Chairpersons and other senior officials including directors on the board of the companies’ thus ensuring compliance (**Annex-9**). Following conversation was forwarded to Official No 20.

Official No 13, Lucky Cement:

“AoA. Prices are sliding on a fast track in Pindi, GT road, Lahore and south. I will share the wholesale prices of these areas soon”.

Official No 13, Lucky Cement:

*“High volumes are putting a lot of pressure on volumes, though we are able to resist the price drop from industry but won't be possible if the downward trend continues”.*

Official No 16, Cherat Cement:

*“Dear Zahir Shah please advise areas where u r facing problem and the units. We can then speak to the concerned. Coz honestly my dealers r not talking about it anywhere”.*

Official No 16, Cherat Cement:

*“Dear Zahir Shah in Lahore Office Zone and in Faisalabad your own rate and Pioneer is 513 and Maple 521. BW and Cherat is 500 and DG 505. In Sheikhpura no brand is less than 505. In Lahore no Rate is below 500. For Cherat please send Akbar to my office and I will show him my exact landed rate. In Sahiwal we have not dispatched in last 2 months. In Multan office region my landed is 495 and 497 and rebate is Rs. 6-8 per bag so 480 is not possible. In Sialkot and Gujranwala your rate is 500+ and not 495. No brand except Pioneer is below which has improved today to 495. In KPK there is a drop of 2-3 rupees but we r under no pressure to decrease. Also BW dropped last Friday and increased back today. As for Cherat I should be happy that your rates r equal to us. It should be encouraging for u 😊 on serious note please note that we have not dropped a penny in last two months. I don't have info of Upper Punjab right now. We have not increased quantity during this week only due to Lucky's request.”*

Official No 5, Lucky Cement:

*“Shoaib Sb, thank you for the clarity. Actually most of the shop keepers and dealers are telling the same story which is slipping of prices in different areas by different brands like u mentioned by yourself. This is not good for those brands who are not changing their brand's prices downwards. If bestway type brands have dropped their prices no matter for few days and that too with such huge quantities then it is enough for dealers to exploit.”*

Official No 16, Cherat Cement:

*“We need to keep discussing the rates to avoid ambiguity. I spoke to BW and requested them not to drop unilaterally again. We need to stand our ground to keep the system going. We will discuss further in our meeting.”*

Official No 5, Lucky Cement:

*“I will suggest a proper price increase @ pkr 10 at least in next couple of days to kill uncertainty which is prevailing in the market”.*

Official No 16, Cherat Cement:

*“That is for the CEOs and Chairman to decide.”*

Official No 13 Lucky Cement:

*“True”*



Official No 13 Lucky Cement:

*“If we could only maintain the prices at this time that would. Specially in this month where couple of things got together like Eid, 14th August, rains and now Muharram. I believe that the pressure is going to remain till the end of this month. Therefore I suggest either to reduce little quota or keep the current quota least intact for this month or whenever the demands get better.”*

Official No 4, DG Khan Cement:

*“We will discuss in detail tomorrow and will fix quota by consensus. Thanks”*

Official No 4, DG Khan Cement::

*“Please bring your price lists as it differs from what I have. Thanks”*

Official No 13, Lucky Cement:

*“Thanks sir, when we will have the meeting sir”*

66. The above conversation clearly shows that the officials of Lucky Cement, Cherat Cement, DG Khan Cement are collectively deliberating, deciding and agreeing upon the quantum of price increase and final price to be charged by the cement companies from the customers. The aforesaid cement manufacturing companies appear to have been monitoring the compliance of the agreed price levels by all.

67. Another instance highlighting mutual discussion and agreement on prices is a conversation dated 16th November 2018 on the Whatsapp Group shows how companies are discussing wholesale rates in KPK. It reads as follows:

Official No 16, Cherat Cement shares the file of “KPK Rates.XLSX” in the Whatsapp Group:

*“The state of WS Rates in KPK for your info please. We need to address/arrest the situation before it gets out of hand. Likewise is the position in South Punjab.”*

Official No 6, Askari Cement:

*“Shoaib sb, lets do it during next meeting at Fecto on Monday, Pindi too is sliding.”*

68. Apart from the above, from the impounded documents it is also noted that cement companies monitor retailers so that cement at retail level could be sold in accordance with pre agreed rates between the cement manufacturers. In this regard a whatsapp chat of Official No 20, D.G Khan Cement with Official No 15 Maple

Leaf Cement dated 20th July 2020 is mentioned below. A complete chat is attached  
**(Annex-9A)**

Official No 20, DG Khan Cement:

*“We have asked Muzammel to have a combined visit of Multan market tomorrow  
pls you may also advise him to have a market visit with our office official so that  
our ealer (black sheep) may be pointed out thanks  
Our dealer selling at low rate may be pointed out”*

69. In terms of the evidence provided in para 59 to 68 above for the North region plant wise maximum retail price per bag of cement is discussed, decided and notified through Whatsapp Group by Secretary APCMA for compliance by the member undertakings.

70. In view of the above it clearly appears that APCMA member companies operating in North region are involved in the collective decision making with respect to Maximum Retail Price (MRP) of cement for each and every plant located in the North region and also effective date of such prices. Such price fixing decisions, taken by highest level officials of the companies involved are duly notified for strict compliance and adherence. In terms of evidence reproduced above, instances of deliberation and decision on price fixing specifically took place on 12th May 2020, 18<sup>th</sup> June 2020, 20<sup>th</sup> July 2020, 17<sup>th</sup> August 2020, 16<sup>th</sup> November 2018. The above activities amount to cartelization for fixing prices and constitute prima facie violation of Section 4(1) read with Section 4(2)(a) of the Act on part of member undertakings of APCMA operating in the North region. The list of such Undertakings is attached as **(Annex-10)**.

## **B. FIXING OF PRICES ON BASIS OF INCREASE IN COST COMPONENTS**

71. Scrutiny of the impounded evidence indicates that representatives of cement companies using the platform of APCMA collectively discuss the changes in different cost components of cement and with mutual agreement decide their impact on the retail price of cement.

72. A conversation dated 27<sup>th</sup> – 29<sup>th</sup> June, 2020 on freight rates based on fuel prices and imposition of axle load limit held between APCMA and its member companies in the North region in the Whatsapp Group is reproduced below:

Official No 1, APCMA:

“Increase in oil prices, decision will be taken on Monday with consensus whether to increase ex factory or absorb the current price. Please do not take solo flight”.

Official No 16, Cherat Cement:

*“Dear friends. In my personal opinion we have two options:*

*#1 Absorb the effect of fuel and then once the budget is passed by the Assembly, we meet immediately (secretly of course ☺) within 1-2 days and decide the whole way-forward in one sitting. This includes adjustment of excesses and price rationalization.*

*#2 Everyone increases the freight by (say) Rs. 5 to 6 pb from Monday (after proper calculation of impact and also taking into account the coal freight from Karachi) and let the landed rate increase in all Markets from whatever rates we r currently operating at, and then do the fine-tuning in our Meeting. This would probably be easy as different markets have different problems from different units. Lastly it would require trust in each other (going down now-a-days)”.*

*“As for the excess till 30<sup>th</sup> June Cherat would not like to dispatch excess at low retention. We would rather dispatch at higher retention after excise duty decrease”.*

Official No 13, Lucky Cement:

*“So you are proposing a meeting on 1<sup>st</sup> June or 2<sup>nd</sup>” (Typo corrected later as July)  
“And we need to meet in person please”.*

Official No 6 Askari Cement:

*“July”*

*“Sooner the better,”*

Official No 4, DG Khan Cement:

“Sure. We will be meeting on 1<sup>st</sup> or 2<sup>nd</sup> there are too many issues cropping up and requesting everyone not to make decisions in isolation. We will strive for a consensus. Meeting will discuss all issues. Also lot of complaints coming from Karachi that North is selling huge quantities in South at very cheap prices. Please desist from doing this. We must honour their prices in South. Thanks”.

Official No 7, Fauji Cement:

*“As we discussed earlier we have a meeting on Monday. Please keep discussion focused on agenda points. We can reach consensus”.*

Official No 11, Pioneer Cement:

*“It’s always preferred to have a discussion face to face”.*

*“Furthermore, please share as if we are increasing freights for cement dispatch from today?? Passing the impact or absorbing it is a different issue..”*

Official No 4, DG Khan Cement:

*“We are waiting for consensus on freight.”*

Official No 13, Lucky Cement:

*“I believe we should discuss freight in the 2<sup>nd</sup> meeting as well”.*

Official No 4, DG Khan Cement:

*“Yes of course”.*

Official No 10, Gharibwal Cement:

*“Ali Nasir sb, market confirms that Pioneer has increased freight for GT Road 12.93% effective today. We are all trying to hold the freight till, we develop consensus”.*

Official No 5, Lucky Cement:

*“Please don't increase till meeting”.*

Official No 16, Cherat Cement:

*“Those who r short in current month will have a problem as they r entitled to dispatch on Sunday.”*

Official No 10, Gharibwal Cement:

*“Pioneer already announced increase in frieght effective today”.*

Official No 11, Pioneer Cement:

*“Pioneer is short and will be dispatching on Sunday”.*

*“Yes that's the case with us.”*

Official No 10, Gharibwal Cement:

*“We used to follow these instructions.”*

Official No 11, Pioneer Cement:

*“One of the companies which was short has also increased from today.”*

Official No 16, Cherat Cement:

*“It is okay of anyone has increased today as long as we agree firmly that we will not increase our base ex-factory so the landed in market would increase for all evenly. PLEASE COMMENT ON THIS THAN ANYTHING ELSE.”*

Official No 16, Cherat Cement @ 923008414531 Official No 1, APCMA:

*“Please advise impact per bag on average.”*

Official No 1, APCMA:

*“Impact of diesel price increase is ranging between Rs15 to Rs20 per bag. As diesel is being used in cement transportation, coal transportation and mining activity”.*

Official No 3, Pioneer Cement:

*“Yes, we have increased freight in order to recover shortfall on Sunday. Regarding increase of rs. 20/- p/b be increased on Monday after consensus”.*

Official No 1, APCMA:

*“AOA due to increase in diesel prices the cost on account of cement/coal transportation and mining operations has increased and we are constrained to increase our prices therefore, please increase MRP and wholesale prices by Rs14 per bag effective tomorrow. Please specify that this increase is due to costs having gone up due to increase in diesel price. Please announce today. Thanks. Please increase prices according to impact on your company ranging from Rs12 to Rs14. Please share your current MRP”.*

Official No 1, APCMA:

*“Please increase prices according to impact on your company ranging from Rs. 12 to Rs 14.”*

Official No 1, APCMA changed this group's settings to allow all participants to send messages to this group.

Official No 1, APCMA:

*“AoA. Please share your current MRP.”*

Official No 8, Kohat Cement:

*“Kohat current MRP 490. New MRP 504.”*

Official No 1, APCMA:

*“Bestway 485. Pakcem 490.”*

Official No 7 Fauji Cement:

*“Current MRP 490. Will increase to 505 or 500. In a meeting”*

Official No 5, Lucky Cement:

*“480”*

Official No 16, Cherat Cement:

*“486 and increasing today by 14 to go to 500.”*

Official No 12, Fecto Cement:

*“Our 485”*

Official No 11, Pioneer Cement:

*“Current Rs.488/- to Rs.503/-”*

Official No 12, Fecto Cement:

*“Our new MRP from tomorrow would be 500”*

Official No 16, Cherat Cement:

*“PLEASE HAMMER THIS INCREASE TO THE MARKET IN LIEU OF COAL AND CEMENT TRANSPORTATION AND MINING OPERATIONS. A FACT IN ITSELF.”*

@923008414531 (Official No 1, APCMA):

*“It was agreed that some will do 14 and some 12 and 13 as impact to everyone will differ. Please manage that. Should not be uniform please.”*

Official No 1, APCMA:

*“FED reduced by Rs. 500 per ton.”*

Official No 5 Lucky Cement:

*“Good news. It should not affect our price change decision which is due to increase in diesel prices.”*

73. The above conversation took place in the backdrop of Budget Speech (June 12, 2020) and an expected upward increase in diesel prices (which subsequently did take place at the end of June 2020) wherein companies tried to develop a consensus on freight rates (which is an important element in the MRP) and quantum of adjustments in MRP since diesel also has an impact on cost of production of cement. This communication shows deliberation by the cement manufacturing companies on the Whatsapp Group on the increase in various cost factors. i.e. the price of fuel and agreed with mutual consent on the quantum of price increase.

74. Another conversation thread reproduced below is a discussion carried out regarding the implementation of freight rates revision in lieu of axle load limit implementation limit. The conversation calls for a collective decision regarding the freight rates and equivalent implementation of the same across the board in the North region. The following excerpts from Whatsapp Group conversation dated 9<sup>th</sup> June 2019 between cement manufacturers reveals collective decision making between manufacturers in terms of the freight rates.

Official No 1, APCMA:

*“Sir. AoA. Please inform about axle load implementation status on your dispatches. Have you increased freight rates or not”.*

Official No 21, Fauji Cement:

*"Mixed trend witnessed in the market. Will be cleared tomorrow"*

Official No 16, Cherat Cement:

*"Shehzad no dispatches possible beyond Sang Jani on the GT Road"*

*"This needs a collective decision tomorrow. The Budget can be taken care of in 12th June meeting."*

Official No 2, Bestway Cement:

*"Sir same is here we are loading trucks at per axle load limits yes collective freight revisions is benefit for the industry"*

Official No 7, Fauji Cement:

*"Yes. We need a collective decision. Freight has to be kept uniform by all."*

Official No 16, Cherat Cement @923008414531 (Official No 1, APCMA):

*"I would propose an early VC (may be at 10:30am) to discuss only this and decide increase in freight."*

Official No 2, Bestway Cement:

*"Sir Bestway Agee with the proposal"*

Official No 7, Fauji Cement:

*"Agreed Raja Sahib. In your presence I cant afford to disagree 😊😊😊😊"*

Official No 2, Bestway Cement:

*"Sir*

*You are respected to me*

*Thanks"*

Official No 16, Cherat Cement: @923008414531 (Official No 1, APCMA):

*"As some of the friends r not responding please speak to Farid Sb and others to decide."*

Official No 11, Pioneer Cement:

*"Due to Eid holidays, there were hardly any dispatches, and where dispatches were made, we didn't get any issue. However, we need to have a collective decision on this at the earliest."*

Official No 12, Fecto Cement:

*"Agreed sir my open cheque with all, what ever decided  
Let's save this forum"*

Official No 16, Cherat Cement:

*"This is temporary. Sooner or later everyone is gonna be affected."*

Official No 1, APCMA:

*“Sir, can you please ask your staff to manage vc tomorrow at 10:30 am at your Lahore and Islamabad offices.”*

75. In an instance similar to the above, a message dated 9th June 2019 was sent in the Whatsapp Group by Official No 17, representative of the Dewan Cement, Karachi informing about the decision regarding increase in the rates based on axle load limit indicating the presence of a prima facie collusive activity by cement companies in the South region. Relevant message sent by Official No 17 of Dewan Cement, Karachi is reproduced below:

Official No 17, Dewan Cement, Karachi to Official No 1, APCMA dated 9<sup>th</sup> June 2019

*“Shahzad ASAK*

*Regarding Axle weight, We have had a meeting in south on last Saturday and temporarily worked out (Approx 95% correct.) Finally all are agreed to Increase Rs.25/= per Bag (Rs.500/= per ton)*

*Increased in whole sale price w.e.f 01-06-2019 by absorbing against transport Axle weight.*

*Adil*

*Dewan*

*Karachi south”*

76. In terms of the evidence reproduced in paras 71 to 75 above, it clearly appears that the officials of –Fauji Cement, Bestway Cement, Pioneer Cement, Fecto Cement, Cherat Cement, Lucky Cement, Kohat Cement, Askari Cement, DG Khan Cement- and of APCMA have deliberated on changes in various underlying cost factors of cement including fuel price, axle load, government taxes and have collectively agreed on and decided on quantum of impact to be passed on in the retail price of cement. This was on Whatsapp Group of which all the cement companies in North Region are participants with active role, on this aspect, being played by the above undertakings. Such instances of discussions and subsequent agreement on price changes took place on 9<sup>th</sup> June, 2019, and 12<sup>th</sup> June 2020 and are a prima facie violation of Section 4(1) read with Section 4(2)(a) of the Act.



### **C. DIVISIONS OF MARKET BY TERRITORY**

77. In a conversation dated 27-29<sup>th</sup> June 2020 (already quoted in Para 72 above and reproduced here for reference purposes) cement companies located in the North region were directed not to distribute cement in South region. The relevant message states:

*Official No 4, DG Khan Cement:*

*“Sure. We will be meeting on 1<sup>st</sup> or 2<sup>nd</sup> there are too many issues cropping up and requesting everyone not to make decisions in isolation. We will strive for a consensus. Meeting will discuss all issues. Also lot of complaints coming from Karachi that North is selling huge quantities in South at very cheap prices. Please desist from doing this. We must honour their prices in South. Thanks”.*

78. From the above excerpts it appears that the cement manufacturing companies in the North and South region have an arrangement whereby each agrees not to compete in each other’s respective territory. The companies in the North region are not allowed to sell in the South region apparently due to different price levels and quota arrangement discussed in detail later.

79. In another conversation on 12<sup>th</sup> May, 2020 on the Whatsapp Group, Official No 1, APCMA posted cement rates for various cities of North region for the month of May 2020 after which he shared a document regarding proposed MRP (Maximum Retail Price) rate sheet named as “highly confidential”. The relevant messages regarding the rate change are reproduced hereunder:

Official No 1, APCMA:

*“Proposed rate sheet highly confidential”*

**Figure 2**

<b>Cities</b>	<b>Premium brands</b>	<b>Others</b>
Khyber-Pakhtunkhawa - Peshawar	Cherat & Kohat - Rs. 485 Askari, Bestway, Fauji & Lucky - Rs. 482	Rs. 480
Nowshera	Cherat & Askari - Rs. 485 Kohat, Lucky, Fauji & Bestway - Rs. 482	Rs. 480
Swabi	Cherat & Askari - Rs. 485 Kohat, Lucky, Fauji & Bestway - Rs. 482	Rs. 480
Charsada, Mardan	Cherat & Askari - Rs. 485 Kohat, Lucky, Fauji & Bestway - Rs. 482	Rs. 480

Mingora & Temergarrah	Fauji, Cherat & Askari - Rs. 495 Kohat, Bestway & Lucky - Rs. 492	Rs. 490
Kohat, Karak, Hangu	Kohat - Rs. 485 Cherat, Lucky, Fauji & Bestway - Rs. 482	Rs. 480
Meer Ali, Miran Shah, Parachanar	Kohat & Lucky - Rs. 495 Fauji, Cherat - Rs. 492	Rs. 490
D.I.Khan, Bannu, Lucky Marwat, Tank	Maple, Lucky & Kohat - Rs.485 Cherat, Fauji, Bestway - Rs. 482	Rs. 480
Haripur	Askari & Fauji - Rs. 485 Bestway - Rs. 482	Rs. 480
Abbotabad	Fecto, Askari & Cherat - Rs. 490 Fauji, Bestway - Rs. 487	Rs. 485
Mansehra	Fecto, Askari & Fauji - Rs. 495 Bestway - Rs. 492	Rs. 490
Muzafarabad	Askari, Fauji - Rs. 505	Rs. 500
Mirpur, (For Kotli add freight)	Askari, Fauji - Rs. 485 Bestway - Rs. 482	Rs. 480
Rawalakot, Bagh	Fauji, Fecto - Rs. 510	Rs. 505
Islamabad-Rawalpindi	Fauji - Rs. 485 Askari, Fecto, Bestway - Rs. 482	Rs. 480
Attock	Fecto & Askari - Rs. 485 Bestway - Rs. 482	Rs. 480
Chakwal & Talagang	DG Khan, Bestway & Maple - Rs. 485	Rs. 480
Gujarat, Jehlum, Mandi, Dena	Fecto & Fauji - Rs. 485 Bestway & Gharibwal - Rs. 482	Rs. 480
Gujranwala	Fauji & Askari - Rs. 490 Gharibwal & Bestway - Rs. 482	Rs. 480
Sialkot	D.G. Khan, Fauji & Askari - Rs. 490 Gharibwal & Bestway - Rs. 482	Rs. 480
Sheikhpura	Maple, DG Khan - Rs. 485 Pioneer, Cherat, Bestway - Rs. 482	Rs. 480
Lahore, Shahdra	Maple - Rs. 495 D.G. Khan - Rs. 492 Pioneer, Bestway & Lucky - Rs. 485	Rs. 480
Kasur	D.G.Khan, Maple - Rs. 495 Bestway, Lucky, Paidar - Rs. 485	Rs. 480
Okara, Sahiwal, Pakpattan	D.G.Khan & Maple - Rs. 495 Bestway, Lucky, Paidar - Rs. 485	Rs. 480
Faisalabad, Jhang	Maple Leaf - Rs. 495 D.G.Khan - Rs. 492 Lucky, Bestway & Pioneer - Rs. 485	Rs. 480
Sargodha, Khushab, Mianwali	Maple Leaf - Rs. 495 Bestway, Lucky, Pioneer - Rs. 490	Rs. 485
Bhakkar, Layyah	Maple Leaf - Rs. 490 Bestway, Lucky, Pioneer - Rs. 485	Rs. 480
Multan, Bhawalpur, Bhawalnagar, D.G.Khan, Rajan Pur	D.G.Khan - Rs. 495 Maple Leaf - Rs. 492 Lucky - Rs. 488	Rs. 485
R.Y.Khan, Sadiq abad	Maple, DG Khan, Lucky -Rs. 490	Rs. 485
<i>Source: Impounded data from Whatsapp group</i>		

80. The above document is a proposed rate sheet for the cement manufacturers located in the North region. From the mentioned rate sheet it appears that the North region is further divided into major cities and for each city some companies are designated as ‘premium brands’ which allows them to sell at a higher MRP

whereas all ‘others’ sell at a price lower than the premium brands. For example, in Islamabad-Rawalpindi – Fauji cement will sell at MRP of 485, Askari cement, Fecto cement, Bestway cement at Rs.482 whereas ‘others’ will sell at Rs. 480. The very fact of an APCMA official releasing such a price list ostensibly tantamount to mutual agreement between cement manufacturers to sell their brands at prices thus decided.

81. Based on the evidence reproduced in the above para 77 to 80 it appears that the member undertaking of APCMA are dividing market for sale/supply of cement into different territories/ zone in the North region. Furthermore, plants located in the North region are restricted from supplying cement in the South region.

82. In view of the above it clearly appears that APCMA member companies have mutually agreed to divide market in two region i.e. North and South region whereby companies in the North region are barred from distributing cement in the South region. Further evidence produced in para 79 above suggests that North region is subdivided into different territories wherein brands are classified as ‘premium’ and ‘other’ brands. Such instances of agreement on allocation of territories for sale/supply of cement appear to have been taken on 27-29<sup>th</sup> June 2020 and 12<sup>th</sup> May 2020. Such activity tantamount to collusive activity and constitute prima facie violation of Section 4(1) read with Section 4(2)(b) of the Act.

#### **D. FIXING OF DISPATCH QUOTA**

83. The analysis of the evidence impounded from the offices of APCMA and DG Khan Cement clearly indicates the existence of collusive arrangement between the cement manufacturers of North region to control production and supply of cement in the relevant market for domestic sales.

84. In the North region supply is being controlled through fixing dispatch quantities of cement. One such document impounded from the premises of DG Khan Cement is reproduced below (Figure -3).

Sr. No.	Name Of Unit (North Zone)	Cement Rated Capacity	Established Capacity as on May 11, 2018	Market Share	Addition in Plant Capacities	Increased Capacity	Market Share	Share at Daily Dispatch of: 100,000	Adhoc Relief (3,000)	Revised Share at Daily Dispatch of: 100,000
1	Askari Cement (Nzp)	1,575,000	1,575,000	3.86%	126,000	1,701,000	3.12%	3,117	(115)	3,002
2	Bestway - Hattar	1,228,500	1,291,686	3.17%	-	1,291,686	2.37%	2,367	(87)	2,279
3	Bestway - Chakwal	3,600,000	3,616,154	8.87%	-	3,616,154	6.63%	6,626	(245)	6,381
4	Bestway - Farooqia	1,086,750	1,265,244	3.10%	1,890,000	3,155,244	5.78%	5,782	(214)	5,568
5	Bestway - PakCem	2,520,000	2,630,041	6.45%	-	2,630,041	4.82%	4,819	(178)	4,641
	<i>Bestway Total</i>	<i>8,435,250</i>	<i>8,803,125</i>		<i>1,890,000</i>	<i>10,693,125</i>	<i>19.59%</i>	<i>19,595</i>	<i>(724)</i>	<i>18,871</i>
6	Cherat Cement Co.	2,425,500	2,425,500	5.95%	2,110,500	4,536,000	8.31%	8,312	(307)	8,005
7	Kohat Cement Co	2,677,500	2,671,536	6.55%	2,340,000	5,011,536	9.18%	9,183	(339)	8,844
8	Lucky Cement Ltd	4,200,000	4,206,647	10.32%	2,520,000	6,726,647	12.33%	12,326	(456)	11,871
9	Maple Leaf Cement	3,370,500	3,807,959	9.34%	2,299,500	6,107,459	11.19%	11,192	(414)	10,778
10	Pioneer Cement Ltd	2,030,250	1,897,676	4.66%	2,520,000	4,417,676	8.10%	8,095	(299)	7,796
11	D.G.Khan Cement	2,110,500	2,539,969	6.23%	-	2,539,969	4.65%	4,654	(172)	4,482
12	D.G.Khan Cement (CHK)	2,110,500	2,558,682	6.28%	-	2,558,682	4.69%	4,689	(173)	4,515
	<i>DG Khan Total</i>	<i>4,221,000</i>	<i>5,098,651</i>			<i>5,098,651</i>	<i>9.34%</i>	<i>9,343</i>	<i>(345)</i>	<i>8,998</i>
		<b>28,935,000</b>	<b>30,486,094</b>		<b>13,806,000</b>	<b>44,292,094</b>	<b>81.16%</b>	<b>81,163</b>	<b>(3,000)</b>	<b>78,163</b>
13	Askari Cement (Wah)	1,102,500	1,133,093	2.78%	-	1,133,093	2.08%	2,076	331	2,407
14	Dandot Cement Ltd.	504,000	505,168	1.24%	-	505,168	0.93%	926	147	1,073
15	Dewan Hattar Cement	1,134,000	1,135,364	2.79%	-	1,135,364	2.08%	2,080	331	2,412
16	Fauji Cement Co	3,433,500	3,717,511	9.12%	-	3,717,511	6.81%	6,812	1,085	7,897
17	Fecto Cement	819,000	819,000	2.01%	-	819,000	1.50%	1,501	239	1,740
18	Flying Cement Ltd	1,197,000	899,137	2.21%	-	899,137	1.65%	1,648	262	1,910
19	GharibWal Cement	2,110,500	2,070,634	5.08%	-	2,070,634	3.79%	3,794	604	4,399
		<b>10,300,500</b>	<b>10,279,907</b>			<b>10,279,907</b>	<b>18.84%</b>	<b>18,837</b>	<b>3,000</b>	<b>21,837</b>
	<b>Total North Zone</b>	<b>39,235,500</b>	<b>40,766,001</b>	<b>100.00%</b>	<b>13,806,000</b>	<b>54,572,001</b>	<b>100.00%</b>	<b>100,000</b>	<b>(0)</b>	<b>100,000</b>

Source: Impounded data from DGKCC

85. Figure 3 above apparently pertains to year 2018 and divides dispatch quantity over each of the 19 plants comprising the North region on the basis of their installed capacity. Figure further suggests that that cement companies held discussions amongst themselves and subsequently agreed to a certain level of total daily dispatches. This total dispatch quantity is then divided over each of the 19 plants comprising the North region on the basis of the agreed upon formula i.e. percentage share in the established capacity. For instance, the total installed capacity for the North region (after taking into account the capacity expansion drive in 2018-19) is 54,572,001 MT. The installed capacity for example, of Askari Cement (Nizampur plant) is 1,701,000 MT therefore, Askari's capacity divided by total installed capacity of North region  $(1,701,000/54,572,001)*100$  comes to a share of 3.12%. Once the daily dispatch quantity for the North region is agreed upon i.e. 100,000MT (indicated at head of column 9 and 11) Askari's Nizampur plant's daily dispatch quantity works out to be 3,117 MT  $(3.12\% * 100,000\text{MT})$ .

The above mentioned evidence has a column titled 'ad hoc relief' of 3,000 MT which essentially further adjusts quantities on situational basis. An instance similar to the one being discussed above is reproduced below. Whereas other similar documents are attached as (Annex-A11).

MRP

**Adhoc relief distribution based on established cement capacity - (Askari Wah, Fauji & Charibwal)**

Sr. No.	Name Of Units	Established Capacity		Market Share	Addition in Capacity	Established Capacity		Market Share	New proposal			
		Before Expan	After Expan			Market Share	Daily Quantity		Adhoc relief	Revised Daily Qty.	Market Share	
1	Askari (Nzp)	1,575,000	1,701,000	4.07%	126,000	3.25%	3,247	(47)	3,200	3.20%	19885	
2	Bestway - Hattar	1,291,686	1,291,686	3.34%	-	2.47%	2,466	(52)	2,414	2.41%	2078	
3	Bestway - Chakwal	3,616,154	3,616,154	9.35%	-	6.90%	6,903	(146)	6,757	6.76%	971	
4	Bestway - Farooqia	1,265,244	3,155,244	3.27%	1,890,000	6.02%	6,023	(127)	5,896	5.90%	2404	
5	Bestway - PakCem	2,630,041	2,630,041	6.80%	-	5.02%	5,021	(106)	4,915	4.91%	1068	
6	Cherat	2,425,500	4,536,000	6.27%	2,110,500	8.66%	8,659	(183)	8,476	8.48%	1424	
7	Dewan Hattar	1,135,364	1,135,364	2.94%	-	2.17%	2,167	(46)	2,122	2.12%	162855	
8	D.G.Khan	2,539,969	2,539,969	6.57%	-	4.85%	4,849	(102)	4,746	4.75%	2513	
9	D.G.Khan (CHK)	2,558,682	2,558,682	6.62%	-	4.88%	4,884	(103)	4,781	4.78%	2116	
10	Kohat	2,671,536	5,011,536	6.91%	2,340,000	9.57%	9,567	(202)	9,365	9.36%	179908	
11	Lucky	4,336,941	6,856,941	11.21%	2,520,000	13.09%	13,090	(276)	12,813	12.81%	28395	
12	Maple Leaf	3,807,959	6,107,459	9.85%	2,299,500	11.66%	11,659	(246)	11,413	11.41%	9174	
13	Pioneer	1,897,676	4,323,176	4.91%	2,425,500	8.25%	8,253	(174)	8,079	8.08%	43966	
Sub Total		31,751,752	45,463,252	82.10%	13,711,500	86.79%	86,788	(1,810)	84,978	84.98%		
1	Askari (Wah)	1,133,093	1,133,093	2.93%	-	2.16%	2,163	287	2,450	2.45%	12118	
2	Fauji	3,717,511	3,717,511	9.61%	-	7.10%	7,097	1,053	8,150	8.15%	34262	
3	CharibWal	2,070,634	2,070,634	5.35%	-	3.95%	3,953	469	4,422	4.42%	615	
Sub Total		6,921,238	6,921,238	17.90%	-	13.21%	13,212	1,810	15,022	15.02%		
Total North Zone		38,672,990	52,384,490	100.0%	13,711,500	100.0%	100,000	-	100,000	100.0%		

Fecto

500

505

505

505

505

510

510

504

495

507

502

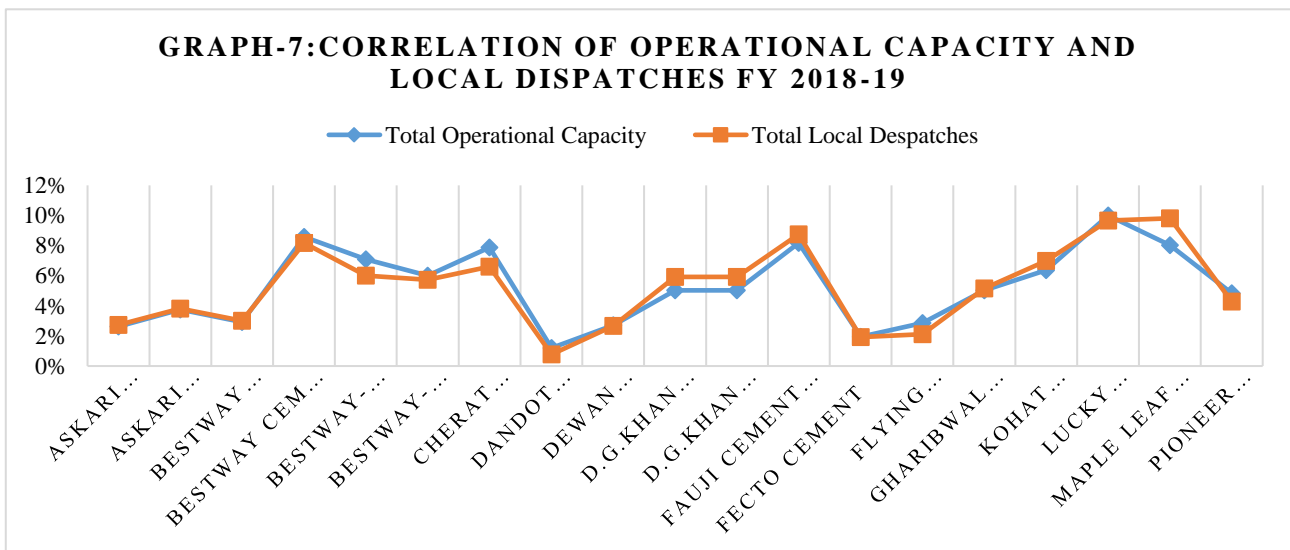
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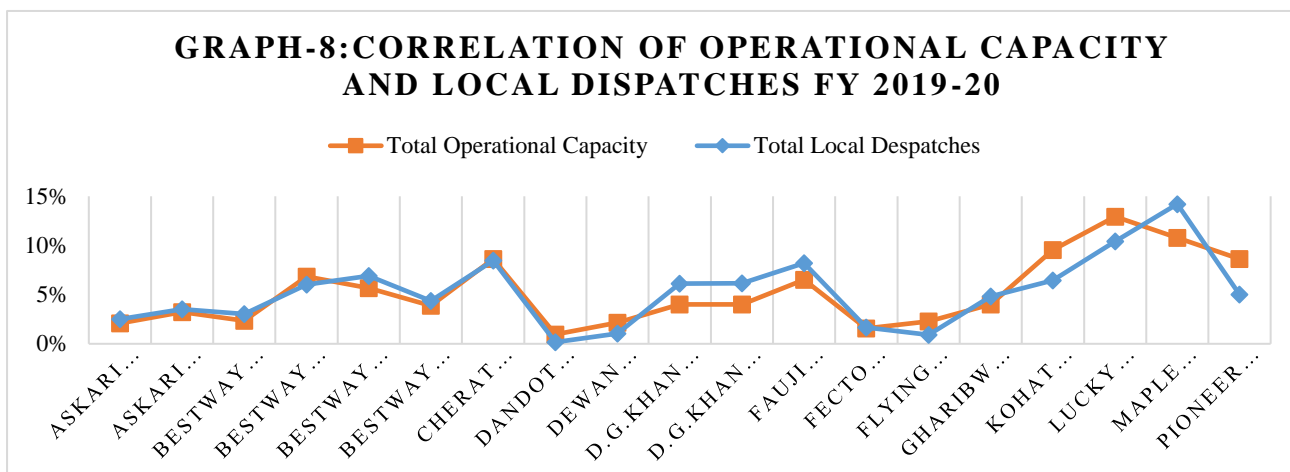
Source: Impounded data from DGKCC

86. A document impounded from the premises of DG Khan titled: “Statement of production capacity and clinker/cement Dispatches July 2019 to June 2020” shows the consolidated position of plant-wise dispatches (bifurcated along local and export) and capacity utilization of plants in the North region. For detailed figures please refer to **(Annex-A12)**.

87. To verify the basis of quota allocation the Enquiry Committee conducted correlation analysis of share of a plant’s capacity in the total installed capacity of North region and its share in local dispatches in North region. For this purpose plant wise dispatch data extracted from the impounded documents was used, the analysis of which showed a perfect positive correlation between share of a plant capacity in the total installed capacity of North region and its respective share in the local dispatches for the North region. Correlation analysis is presented in the Graph-7 and Graph-8 below for year 2018-19 and 2019-20.



Source: Impounded data from DGKCC analyzed by Enquiry Committee



Source: Impounded data from DGKCC analyzed by Enquiry Committee

88. From the perusal of the impounded evidence it is noted that the agreed quota allocation is routinely communicated by the Secretary APCMA member to member companies of the North region for strict compliance and adherence. The messages sent by Official No 1, APCMA to the Whatsapp Group are reproduced below:

**07<sup>th</sup> May, 2020**

*“Today 85,000”*

**08<sup>th</sup> May, 2020**

*“Sir today 90,000”*

**09<sup>th</sup> May, 2020**

*“AOA. Sir today 100,000”*

**16<sup>th</sup> May, 2020**

*“AOA. May 17<sup>th</sup> is allowed with 70,000 quantity in lieu of May 23 last working day before Eid”.*

**19<sup>th</sup> May, 2020**

*“AOA. Dispatches will remain off from May 22 to May 27 during Eid holidays announced by Government”.*

**21<sup>st</sup> May, 2020**

*“AOA. 50% of 110,000 is allowed for dispatches on May 27<sup>th</sup> 2020”.*

**29<sup>th</sup> May, 2020**

*“AOA. From today domestic is 105,000”.*

**30<sup>th</sup> May, 2020**

*"From today domestic is 110,000".*

**02<sup>nd</sup> June, 2020**

*"5 % of daily quantity from agreed backlog is allowed effective today".*

**04<sup>th</sup> June, 2020**

*"AOA. From today domestic is 115,000".*

**05<sup>th</sup> June, 2020**

*"AOA. From today domestic is 123,000".*

**06<sup>th</sup> June, 2020**

*"AOA. Tomorrow Sunday is a full working day. Tomorrow Sunday is allowed with 70 percent. Please ignore the previous message".*

**09<sup>th</sup> June, 2020**

*"AOA. Domestic quantity from today is 123,000".*

**15<sup>th</sup> June, 2020**

*"AOA. Domestic from today is 126,000".*

**19<sup>th</sup> June, 2020**

*"AOA. From today domestic is 123,000".*

**20<sup>th</sup> June, 2020**

*"AOA. For Sunday, 40 % of 123,000 is allowed".*

*"AOA. For Sunday quantity is revised to 30% of 123,000 is allowed. Please ignore previous message".*

**23<sup>rd</sup> June, 2020**

*"From today domestic is 120,000".*

**25<sup>th</sup> June, 2020**

*"AOA, from today domestic is 130,000".*

89. From the text messages retrieved from smart phone of Official No 20, DG Cement, it is noted that APCMA is in the practice of fixing quota for its member undertakings in the North region since 2014. A complete trail of SMS thread between Official No 20, DG Khan Cement to Official No 1 APCMA for the years 2014-2016 is attached at (Annex-A13). Some of these messages read as follows:

**22<sup>nd</sup> December 2014**

Official No 1, APCMA:

*"Sir, From today Domestic quantity is 70000"*



**6<sup>th</sup> February 2015**

Official No 1, APCMA:

*"From today domestic quantity is 85000"*

**9<sup>th</sup> February 2015**

Official No 1, APCMA:

*"From today domestic quantity is 95000"*

**16<sup>th</sup> February 2015**

Official No 1, APCMA:

*"From today domestic quantity is 80000"*

**15<sup>th</sup> February 2016**

Official No 20, DG Khan Cement:

*"Excess dispatch from DGK was due to some technical reasons. It will be adjusted today.  
Thanks Shoaib"*

Official No 1, APCMA:

*"Ok no issue."*

**13<sup>th</sup> October 2016**

Official No 20, DG Khan Cement:

*"Enhance quota to 105,000 from today...."*

Official No 1, APCMA:

*"No way"*

**14<sup>th</sup> October 2016**

Official No 1, APCMA:

*"Sir from today domestic quantity is 102000"*

**10<sup>th</sup> December 2016**

Official No 20, DG Khan Cement:

*"Any good news about quota enhancement?"*

**13<sup>th</sup> December 2016**

Official No 1, APCMA:

*"Sir, meeting tomorrow at 11am at Fecto office pindi."*

90. A conversation on the Whatsapp Group dated 06<sup>th</sup> July 2020 gives important insight into how negotiations on fixation of dispatch quantities takes place between the companies wherein they are fully cognizant of the resultant impact on prices. The conversation between Official No 1 APMCA and other cement companies

including Cherat Cement, Lucky Cement, Pioneer Cement, Fecto Cement, Gharibwal Cement, Bestway Cement and Askari Cement wherein information regarding retail price of cement was exchanged. After sharing of retail prices by the members following conversation takes place:

**06<sup>th</sup> July 2020**

Official No 6, Askari Cement:

*“AA Mkts r getting dried up since there is hardly any cement aval in the shops. Suggest we increase the qty to 125-130 for two to three days else it can create alarm and invite authorities’ atn.”*

*“Secondly once prices are not being taken upward lets sell the quantities”.*

Official No 10, Gharibwal Cement:

*“Brig sb why cant we move towards little increase by 5 to 6 Rs”.*

Official No 6, Askari Cement:

*“You know the reason Sir the players who hv got huge qtys without any ???”*

**07<sup>th</sup> July 2020**

Official No 1, APCMA:

*“Domestic from today is 125,000”*

91. From the above conversation it appears that cement companies are having a discussion on increase in cement production quota and supply in the market. A member, official no 6, Askari Cement suggests that supply of cement has dried up in the market which would resultantly drive up prices thus potentially inviting scrutiny from the relevant authorities. Another member suggests an increase in prices by Rs. 5 to 6 however, it appears that this suggestion is rejected on the reason that some big players have quantities to offload. In the end of the discussion the decision intimated by Official No 1 Secretary APCMA is a quantity of 125,000 MT of cement which appears to be the quota of supply in the market agreed upon by the members.

92. Another older conversation on the Whatsapp group dated 15 November 2018 shows how companies are fixing quotas in order to reduce downward pressure on prices. It reads as follows:

**15<sup>th</sup> November 2018**

Official No 1, APCMA:

*“Sir, for Friday and Saturday domestic quantity is 110,000.”*

*Sir, meeting will held on Monday at 10:30 am at Fecto office Pindi.”*

Official No 9, Lucky Cement:

*“Prices are under pressure since last few days – if quantities are not decreased I feel that prices will fall. Is this what we want please?”*

Official No 6, Askari Cement:

*“Totally endorse Kalim sb’s view point?*

*Prices at Rwp, Haripur, Bannu already showing negativity,*

*Prices will go down if we try to increase sale. Please adhere to quota.*

*There is a demand for next two or three weeks. More winters may effect demand in north.”*

Official No 1, APCMA:

*“Sir, for Friday and Saturday domestic quantity is 110,000.-*

*Sir, meeting will held on Monday at 10:30 am at Fecto office Pindi.”*

Official No 19, Dewan Cement:

*“Ok thanks.”*

Official No 8, Kohat Cement:

*“Ok.”*

Official No 12, Fecto Cement:

*“Ok sir.*

Official No 3, Pioneer Cement:

*“J.I Noted. Thanks”*

93. Another document impounded from the premises of DG Khan Cement dated June 15, 2016 indicates that in addition to fixing dispatch quantities in the North region cement companies in the South region are also fixing dispatch quantities. Figure 04 below is an assessment of each of the five plants located in the South region with respect to quota allocation (month-wise from April 2015 to June 2016). The words ‘excess’ refer to plants which have exceeded their quota/dispatch quantities and ‘short’ refers to those that have not met their assigned quota/dispatch quantities. (DG Khan Cement which currently operates in the South region as well was not operational there during this period).

**Figure 4****Statement of Local Excess/(Short) upto June 15, 2016**

North Zone																
S. No.	Name of Unit	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16	Feb-16	Mar-16	Apr-16	May-16	Jun-16
		Excess/ (Short)	Excess/ (Short)	Excess/ (Short)	Excess/ (Short)	Excess/ (Short)	Excess/ (Short)	Excess/ (Short)	Excess/ (Short)	Excess/ (Short)	Excess/ (Short)	Excess/ (Short)	Excess/ (Short)	Excess/ (Short)	Excess/ (Short)	Excess/ (Short)
1	Askari (Wah)	7,359	5,967	(3,413)	(18,217)	(5,197)	797	1,524	1,685	9,490	2,583	(38)	9,146	6,076	13,531	17,697
2	Askari (Nzp)	(3,971)	(5,653)	(28,622)	(45,712)	(24,690)	(14,032)	(1,155)	(213)	7,987	8,067	2,596	7,542	(557)	13,121	11,062
3	Bestway-Hat	(5,456)	122	(1,283)	(16,395)	(6,432)	(5,225)	(16,992)	(1,194)	6,196	7,477	9,894	11,259	5,283	1,113	14,061
4	Bestway-Chak	(4,298)	(206)	13,895	4,857	16,465	5,057	(4,381)	(3,237)	(12,689)	(7,514)	(6,604)	(1,765)	(28,031)	(19,812)	(23,481)
5	Bestway-Faroq	(1,281)	(14)	(948)	(16,360)	(5,736)	660	13,059	5,410	9,076	13,627	13,549	11,110	3,662	228	8,070
6	Bestway-PakC	57,564	27,936	28,088	8,802	11,082	7,591	5,605	3,309	(6,395)	(7,502)	(11,645)	(3,383)	(22,165)	(30,795)	(13,730)
7	Cherat	3,052	559	(8,866)	(23,381)	(12,875)	(10,027)	1,063	1,079	(596)	(17)	(2,611)	424	1,230	5,965	4,373
8	Dandot	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
9	Dewan-H	4,382	(793)	(9,279)	(27,723)	(23,273)	(19,342)	(13,271)	2,685	2,244	198	(2,741)	(434)	901	3,023	5,226
10	D.G.Khan-D.G	4,776	98	10,328	1,109	7,726	3,982	8,850	2,606	3,056	394	143	6,930	111	272	4,910
11	D.G.Khan-Chak	101	94	8,516	1,296	6,847	2,848	203	80	(1,938)	114	67	2,472	(2,447)	83	9,979
12	Fauji	(3,370)	1,013	10,853	(21,820)	1,725	1,288	13,028	4,614	15,278	5,596	3,947	(1,633)	10,177	6,264	(34,925)
13	Fecto	(7,767)	(115)	(1,034)	(9,412)	-	(1,048)	2,388	1,528	134	(2,307)	(5,865)	(14,414)	(17,838)	(14,122)	(11,315)
14	Flying	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
15	Gharibwal	(633)	127	9,602	1,832	4,346	(4,033)	(3,757)	(2,771)	(15,979)	(50,753)	(55,786)	(50,985)	50,225	(46,535)	(43,421)
16	Kohat	(130,564)	(115,294)	(137,348)	(170,636)	(140,244)	(129,681)	(113,843)	(115,461)	(135,945)	(147,861)	(157,452)	(156,996)	(149,617)	(185,269)	(224,055)
17	Lucky-Pezu	5,338	76	5,637	176	11,683	3,554	7,802	80	(5,954)	68	(740)	6,519	(838)	(2,098)	(1,201)
18	Maple	3,429	982	1,660	1,810	10,180	2,405	3,459	1,384	(4,945)	(8,527)	(4,280)	546	41	1,831	3,281
19	Pioneer	(6,001)	(2,263)	2,419	4,769	2,878	309	784	631	(8,411)	(9,815)	(16,801)	(8,437)	(16,050)	(15,950)	(18,097)
		(77,340)	(87,364)	(99,795)	(325,005)	(145,515)	(154,897)	(95,634)	(97,785)	(139,391)	(196,172)	(234,367)	(182,099)	(159,837)	(269,150)	(291,566)

South Zone																
S. No.	Name of Unit	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16	Feb-16	Mar-16	Apr-16	May-16	Jun-16
		Excess/ (Short)	Excess/ (Short)	Excess/ (Short)	Excess/ (Short)	Excess/ (Short)	Excess/ (Short)	Excess/ (Short)	Excess/ (Short)	Excess/ (Short)	Excess/ (Short)	Excess/ (Short)	Excess/ (Short)	Excess/ (Short)	Excess/ (Short)	Excess/ (Short)
1	Attock	2,499	4,748	1,563	4,586	618	2,719	10,805	9,646	17,007	8,570	2,830	2,472	6,701	14,072	20,421
2	Dewan	5,361	8,392	(351)	(9,305)	(16,862)	(29,126)	(31,559)	(35,971)	(40,126)	(55,969)	(65,506)	(66,871)	(73,174)	(58,394)	(43,585)
3	Lucky	(9,421)	9,858	5,818	6,895	1,697	679	16,069	38,588	56,332	55,718	42,049	35,854	21,560	30,154	40,283
4	Power	(1,696)	(5,654)	(11,131)	(16,450)	(12,896)	(15,509)	(34,683)	(39,163)	(46,586)	(44,692)	(36,081)	(34,915)	(29,706)	(26,340)	(27,972)
5	Thatta	(5,606)	(5,087)	(5,822)	(7,472)	(8,125)	(7,770)	(4,093)	1,283	3,545	4,432	4,277	3,206	2,745	5,337	7,980
		(8,863)	12,257	(9,923)	(21,746)	(35,568)	(49,007)	(43,461)	(25,617)	(9,828)	(31,941)	(52,431)	(60,254)	(71,874)	(35,171)	(2,873)

Source: Impounded data from the premises of D.G Khan Cement

94. Furthermore, from the scrutiny of the impounded evidence it appears that APCMA has deputed monitoring staff on the premises of its member companies to ensure compliance of agreed allocated dispatch quotas. The deputed monitoring staff communicates dispatch report of APCMA office on routine basis. A trail of messages noted in this regard are reproduced below:

**Whatsapp Chat of APCMA Marketing Officials Group in May-June 2019**

24<sup>th</sup> May 2019

Official No 1, APCMA:

*“Sir, it has been decided that daily dispatch report will not be prepared nor any unit will send dispatch report to APCMA office. Regarding monitoring staff deputed at factory, I have instructed them not to prepare report and sit at their rooms till further notice.”*

**21<sup>st</sup> June 2019**

Official No 1, APCMA:

*“AoA. Sir, please ask the monitoring staff deputed at your factory to stop/discontinue reporting and revert back to their employer company for further instructions.”*

95. Further evidence to this effect is a document shared between Official No 4, DG Khan Cement who is Senior Vice Chairman APCMA with Official no 20, DG Khan Cement titled: “Statement of Dispatches for the Month of March 2020” that contains daily dispatch quantities from 21st to 30th March 2020 for each company in North and South region.

Statement of Cement Despatches for the Month of March 2020  
North Zone

S. No.	Name of Unit	21st	22nd	23rd	24th	25th	26th	27th	28th	29th	30th	TOTAL DESPATCHES FOR DATE
1	Askari Cement (Wab)	6,724	-	2,296	743	2,439	-	476	2,047	-	1,431	67,117
2	Askari Cement (Nag)	6,030	-	4,262	2,202	4,114	-	1,831	4,371	-	4,656	114,275
3	Beauway Cement Ltd	1,847	3,621	2,959	-	-	-	-	-	-	-	85,666
4	Bestway Cement (C/O)	9,371	7,692	8,320	-	-	-	-	-	-	-	177,131
5	Bestway-Farooqia	4,808	7,234	3,264	1,316	-	870	387	2,094	4,240	9,040	181,754
6	Bestway-PakCem	5,584	6,644	3,194	-	-	-	-	-	-	-	121,267
7	Cherat Cement Ltd	9,276	-	136	8,850	7,845	7,756	3,534	-	6,250	9,214	227,457
8	Dewan Cement Ltd	-	-	-	-	-	-	-	-	-	-	-
9	Dewan Hajar Ltd	368	-	-	224	196	-	-	-	-	-	7,860
10	D.G.Khan Cement Ltd	9,519	-	-	4,638	-	-	128	427	425	171	138,974
11	D.G.Khan Cement (C/O)	16,029	-	7,667	2,660	546	-	-	-	-	-	158,111
12	Fauji Cement Ltd	16,745	8,419	9,330	3,324	1,897	3,291	1,830	1,327	243	6,314	204,333
13	Feeco Cement Ltd	2,564	-	2,017	1,294	-	-	-	-	-	-	39,130
14	Ghazi Cement Ltd	-	-	-	-	-	-	-	-	-	-	-
15	Gharbwal Cement Ltd	6,313	5,358	6,311	1,678	1,849	2,042	865	2,383	3,054	-	140,989
16	Kohat Cement Ltd	10,656	5,705	6,319	4,260	4,811	5,599	2,633	3,218	4,653	3,063	194,578
17	Lucky Cement Ltd	13,913	12,930	6,183	9,616	9,038	6,244	-	4,137	7,755	8,037	335,748
18	Maple Leaf Cement	14,600	9,572	11,772	2,954	2,744	4,100	2,880	3,836	4,877	4,560	341,842
19	Pioneer Cement Ltd	8,660	-	-	5,866	1,681	1,983	1,349	2,183	-	-	137,279
	<b>Sub Total</b>	<b>136,136</b>	<b>65,212</b>	<b>74,435</b>	<b>49,748</b>	<b>31,203</b>	<b>29,959</b>	<b>13,980</b>	<b>28,510</b>	<b>30,885</b>	<b>65,693</b>	<b>2,664,781</b>

South Zone

S. No.	Name of Unit	21st	22nd	23rd	24th	25th	26th	27th	28th	29th	30th	TOTAL DESPATCHES FOR DATE
20	Anoek Cement Ltd	3,058	-	-	745	120	631	192	2,669	-	1,627	91,398
21	Dewan Cement Ltd	1,200	-	-	1,881	-	-	799	1,083	-	-	56,655
22	D.G. Khan Cement	7,665	283	-	1,531	2,137	971	682	742	424	1,318	86,463
23	Lucky Cement Limited	5,760	4,656	1,969	1,285	1,338	1,694	991	1,192	1,517	1,426	140,667
24	Power Cement Ltd	2,854	461	337	434	496	466	442	672	472	1,372	66,585
25	Thama Cement Ltd	1,141	-	-	401	247	83	158	258	-	664	17,973
	<b>Sub Total</b>	<b>23,679</b>	<b>5,401</b>	<b>2,306</b>	<b>6,277</b>	<b>4,337</b>	<b>3,846</b>	<b>2,265</b>	<b>6,621</b>	<b>2,413</b>	<b>6,206</b>	<b>454,222</b>
	<b>Grand Total</b>	<b>159,815</b>	<b>70,612</b>	<b>76,741</b>	<b>56,025</b>	<b>45,541</b>	<b>33,805</b>	<b>17,244</b>	<b>35,132</b>	<b>33,298</b>	<b>71,899</b>	<b>3,123,003</b>

Exports during the month of March, 2020

Askari Cement (Wab)	-	-	-	-	-	-	-	-	-	-	-	4,771
Askari Cement (Nag)	-	-	-	-	-	-	-	-	-	-	-	13,169
Anoek Cement Ltd	68	-	-	-	-	-	1,652	24	168	-	-	78,345
Bestway Cement Ltd	-	-	-	-	-	-	-	-	-	-	-	3,529
Beauway Cement (C/O)	-	-	-	-	-	-	-	-	-	-	-	90
Bestway-Farooqia	-	-	-	-	-	-	-	-	-	-	-	12,402
Bestway-PakCem	-	-	-	-	-	-	-	-	-	-	-	876
Cherat Cement Ltd	-	-	-	-	-	-	-	-	-	-	-	24,461
Dewan Cement Ltd	84	-	-	-	-	-	-	-	-	-	-	84
Dewan Hajar Ltd	-	-	-	-	-	-	-	-	-	-	-	-
D.G.Khan (D.G. Khan)	-	-	-	-	-	-	-	-	-	-	-	-
D.G.Khan (K.K.)	-	-	-	-	-	-	-	-	-	-	-	-
D.G.Khan (Hub)	-	-	-	502	6,399	6,403	5,494	7,983	12,049	12,913	-	1,603
Fauji Cement Limited	-	-	-	-	-	-	-	-	-	-	-	13,603
Feeco Cement Ltd	-	-	-	-	-	-	-	-	-	-	-	3,034
Gharbwal Cement	-	-	-	-	-	-	-	-	-	-	-	-
Kohat Cement Limited	-	-	-	-	-	-	-	-	-	-	-	9,724
Lucky ---- Pezu	-	-	-	-	-	-	-	-	-	-	-	8,478
Lucky ---- Karachi	4,846	5,667	6,186	4,832	896	-	-	-	-	-	-	171,074
Maple Leaf (Cement)	-	-	-	-	-	-	-	-	-	-	-	9,838
Pioneer Cement Ltd.	-	-	-	-	-	-	-	-	-	-	-	1,054
Power Cement	-	-	-	-	-	-	-	4,646	2,418	5,277	7,170	24,855
Thama Cement	-	-	-	-	-	-	-	-	-	-	-	-
	<b>4,998</b>	<b>5,667</b>	<b>6,186</b>	<b>5,334</b>	<b>7,295</b>	<b>8,055</b>	<b>10,168</b>	<b>10,570</b>	<b>17,326</b>	<b>20,093</b>	<b>-</b>	<b>491,097</b>

Source: Impounded data, WhatsApp message sent from Official 4 to Official 20 of DGKCC

96. Based on the findings of para (83-95) above it appears that cement companies in the North and South region have entered into an arrangement/agreement to control supply of cement in the relevant market by allocating dispatch quotas on the basis of installed production capacity. In terms of the evidence the daily dispatch quantities are routinely announced by Secretary APCMA for the North Region on the Whatsapp Group.
97. Evidence suggest that daily dispatch quantities were shared specifically in the years 2014-16, year 2018, April 2015 - June 2016 and also on 15<sup>th</sup> November 2018, 24<sup>th</sup> May 2019, 21<sup>st</sup> June 2019, 21<sup>st</sup> - 30<sup>th</sup> March 2020, 07<sup>th</sup> May - 25<sup>th</sup> June 2020, 06 - 07<sup>th</sup> July 2020 for compliance by the APCMA member undertakings in the North Region. Such practice of entering into an agreement to limit supply of Cement in the market by allocation of dispatch quotas amounts to *prima facie* violation of Section 4(1) read with Section 4(2)(b) and 4(2)(c) of the Act.

#### **IV. SUMMATION OF FINDINGS AND CONCLUSION**

##### **Issue I- What is the relevant market.**

98. Based on the findings of paragraphs (44-48) the relevant product market is Ordinary Portland Cement (OPC) more commonly known as Grey Cement. Whereas relevant geographic market defined for the purposes of this enquiry includes: (i) OPC produced and supplied within Pakistan; and (ii) OPC produced in Pakistan and supplied outside the territory of Pakistan i.e. exports.

##### **Issue II- Whether any cement manufacturing company holds a dominant position in the relevant market in terms of Section 2(1) (e) of the Act? If yes, whether the conduct of dominant player is abusive in terms of Section 3 of the Act?**

99. In view of the discussion in para (49-52), no individual undertaking holds dominant position in terms of its market share or its ability to behave independent of its competitors, customers, consumers and suppliers in the relevant market.
100. With respect to collective dominance the Enquiry Committee observes in para (54-56) above that although cement industry can be viewed to have an oligopoly

structure with few players occupying large market shares, the evidence presented in the preceding paras clearly indicates towards the existence of an explicit engagement of member undertakings of APCMA on various accounts including: price fixing, out put restrictions etc. Therefore the analysis of anti-competitive conduct with respect to collective abuse of dominance is not applicable for the case at hand.

**Issue III Whether APCMA or cement manufacturing companies have acted collusively in respect of *inter alia* production, supply, distribution and price control of cement in violation of Section 4 of the Act?**

**(a) Fixing of price**

101. Based on the findings of para (59-70) it appears that that APCMA member companies operating in North region are involved in the collective decision making with respect to Maximum Retail Price of cement for each and every plant located in the North region and also effective date of such prices. Such price fixing decisions, taken by highest level officials of the companies involved are duly notified for strict compliance and adherence. In terms of evidence reproduced above, instances of deliberation and decision on price fixing specifically took place on 12th May 2020, 18th June 2020, 20th July 2020, 17th August 2020, 16th November 2018. The above activities amount to cartelization for fixing prices and constitute prima facie violation of Section 4(1) read with Section 4(2)(a) of the Act.

**(b) Fixing of price based on increase in cost components**

102. Based on findings of para (71-76) above it appears that the officials of Fauji Cement, Bestway Cement, Pioneer Cement, Fecto Cement, Cherat Cement, Lucky Cement, Kohat Cement, Askari Cement, DG Khan Cement under the platform of APCMA have deliberated on changes in various underlying cost factors of cement including fuel price, axle load, government taxes (FED, GST) and have collectively agreed on and decided on quantum of impact to be passed on in the retail price of cement. Such instances of discussions and subsequent agreement on



price changes took place on 9th June, 2019, and 12th June 2020 and are *prima facie* violation of Section 4(1) read with Section 4(2)(a) of the Act.

**(c). Division of market by territory and volume of cement**

103. Based on the findings of para (77-82) above it appears that APCMA member companies have mutually agreed to divide market in two region i.e. North and South region whereby companies in the North region are barred from distributing cement in the South region. Furthermore evidence suggests that North region is subdivided into different territories wherein brands are classified as ‘premium’ and ‘other’ brands. Such instances of agreement on allocation of territories for sale/supply of cement appear to have been taken on 27-29<sup>th</sup> June 2020 and 12<sup>th</sup> May 2020. Such activity tantamount to collusive activity and constitute *prima facie* violation of Section 4(1) read with Section 4(2)(b) of the Act.

**(d). Fixing of dispatch quota**

104. Based on the findings of para (83-97) above it appears that cement companies in the North and South region have entered into an arrangement/agreement to control supply of cement in the relevant market by allocating dispatch quotas on the basis of installed production capacity. In terms of the evidence the daily dispatch quantities are routinely announced by Secretary APCMA for the North Region on the Whatsapp group.

105. Evidence suggest that daily dispatch quantities were shared specifically in the years 2014-16, year 2018, April 2015 - June 2016 and also on 15<sup>th</sup> November 2018, 24<sup>th</sup> May 2019, 21<sup>st</sup> June 2019, 21<sup>st</sup> - 30<sup>th</sup> March 2020, 07<sup>th</sup> May - 25<sup>th</sup> June 2020, 06 - 07<sup>th</sup> July 2020 for compliance by the APCMA member undertakings in the North Region. Such practice of entering into an agreement to limit supply of Cement in the Market by allocation of dispatch quotas amounts to *prima facie* violation of Section 4(1) read with Section 4(2)(b) and 4(2)(c) of the Act.

## V. CONCLUSION

106. Without prejudice to the generality of the foregoing and the findings of the enquiry report, briefly the conclusions are as follows. The cement industry of Pakistan has had a long history of cartelization dating back to 1992 when the erstwhile Monopoly Control Authority ('MCA') found that cement companies had formed a cartel to take advantage of the re-construction work that began after the devastating floods that year. This pattern of cartelization recurred in 1998, 2003, 2007 and in 2009 when CCP fined a total of Rs. 6.3 billion on account of involvement in the prohibited agreements in violation of Section 04 of the Act. In the instant matter, it appears that the same pattern of anti-competitive behavior has continued in the cement industry with APCMA playing a lead role in organizing and facilitating collusive activity through its platform. In the instant matter evidence points towards collusive behavior whereby cement companies have discussed and agreed upon prices and dispatches of cement unanimously using the platform of APCMA which is an act of blatant cartelization.

107. The prima facie violations of Section 4 made out in this enquiry report come at a time when projects under the CPEC umbrella continue to gain momentum and wide ranging incentives have been announced by the Government for the construction industry under the Naya Pakistan Housing Programme. This programme is aimed at stimulating economic activity, which had been subdued due to the COVID-19 pandemic, and the provision of affordable housing for the common man. All these activities contribute to a rise in the demand for cement with market sources estimating that cement constitutes approximately 15-20% of the construction cost of an average low-income home. Unfortunately, cement manufacturers through their cartelization have taken undue advantage of the situation and appear to have sabotaged efforts for the wider public good for their private gain.

108. The decisions to increase MRP by the cartel in April 2020 alone resulted in an estimated increase in price per bag (50 Kg) of cement of Rs. 50 (collectively in Islamabad, Lahore and Peshawar). If we multiply this increase with local dispatches for the year 2019-2020 the economic impact as a result of price increase alone amounts to approximately Rs. 40 billion annually. The mentioned loss amount is

computed by using a conservative approach and is based on the evidence of fixing MRP alone. If we take into account price increase at each point in time and damages borne by consumers as a result of price fixing, quota fixation, division of markets and other anti-competitive practices through concerted activities i.e cartelization would be much higher. The loss to the consumer is the gain for the cartel members generally the key reason why companies begin cooperating and hurting competition.

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## **VI. RECOMMENDATIONS**

109. Cement is one of the most important component in the construction industry and any increase in price of cement has a knock on effect on construction and related industries such as steel, glass, timber and wood. Lack of competition in the cement industry has resulted in higher prices to the detriment of consumers at large and the economy as a whole.

110. The Government's efforts to boost the economy by offering incentivized package to the construction industry and promoting ease of doing business in order to uplift the socio-economic conditions have been thwarted as a result of collusion by the cement companies using the platform of APCMA.

111. Therefore, it is in the public interest the Enquiry Committee recommends that the Commission may consider initiating proceedings under Section 30 of the Act against the APCMA and its member Undertakings in terms of the findings of the enquiry report.

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