

COMPETITION COMMISSION OF PAKISTAN
Government of Pakistan

Enquiry Report

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

In the Matter of Alleged Price Fixing
In Violation of Section 4 of the Competition Act 2010 by
Pakistan Flour Mills Association and its Member Undertakings

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Dated: 1 August 2017

1. Introduction

- 1.1 Established under Section 12 of the Competition Act 2010 (the “**Act**”), the Competition Commission of Pakistan (the “**Commission**”) is mandated to ensure free competition in all spheres of commercial and economic activities to enhance economic efficiency and to protect consumers from anti-competitive behaviour.
- 1.2 Chapter-II of the Act expressly prohibits practices by undertaking(s) involving, among others, abuse of dominant position and agreements between undertakings or decisions adopted by the association of undertakings which have the object or effect of preventing, restricting or reducing competition within the relevant market.
- 1.3 Under Section 28(a) of the Act, the Commission is empowered to initiate proceedings in accordance with the procedures of the Act. Pursuant to Section 28(c) of the Act, the Commission’s functions include conducting enquiries into the affairs of any undertaking(s) as may be necessary for the purposes of the Act. Section 37(1) empowers the Commission, on its own, to conduct enquiries into any matter relevant to the purposes of the Act.

2. Background

- 2.1 Between 2015 and 2016, the Cartel and Trade Abuses (C&TA) department of the Commission noticed several news items appearing in different newspapers suggesting an unusual hike in the prices of wheat flour ("atta"/ "flour") on a regular basis across Pakistan. For reference purposes, relevant extracts of some of the news items are reproduced herein below:

a. 20kg flour bag price up by Rs. 30 (daily Dawn, 28 June 2015)

“On June 20, the Pakistan Flour Mills Association (PFMA) announced its first hike of Rs. 10 for each 20kg bag, citing increasing wheat prices. Barely two days after it, was the second raise of Rs. 10. On

June 25, came the third increase – on the same pretext – taking the bag price up from Rs. 710 on June 19 to Rs. 740 by June 25 ”

[Annex - I].

b. 20kg flour bag costlier by Rs. 15 (daily Dawn, 04 October 2015)

“The Pakistan Flour Mills Association (PFMA) on Saturday increased prices of the 20kg bag by yet another – seventh such increase in the last 10 weeks – raising prices by a total of Rs. 75 after Ramzan. First six increases were of Rs 10 each and the seventh one has been of Rs 15 per bag, taking the retail price from post-Ramzan Rs 695 per bag to current Rs 770. Though the PFMA called it “market correction,” but commoners thought it was killing – taking food inflation to new highs” [Annex - II].

c. PFMA increases 20kg flour bag price by Rs. 10 (daily Dawn, 08 June 2016)

“With the advent of Ramzan and its traditionally allied general price hike gripping the country, Pakistan Flour Mills Association (PFMA) on Tuesday made its contribution by increasing Rs. 10 per 20kg bag. The gram flour price was also increased by Rs. 50 per 84kg bag. The PFMA office – bearers insisted that the increase was necessitated because of the rising wheat price in the market. ‘In the last 10 days, it has increased from Rs 1,200 to Rs 1,260 per 40 kilos, forcing the millers to pass a part of it onto consumers,’ says Asim Husain of the association” [Annex - III].

2.2 After an initial probe, the C&TA department suspected the likelihood of anti-competitive practices by the Pakistan Flour Mills Association ("PFMA") and its member undertaking. On 04 October 2016, the Commission authorized a team of its officers to conduct an ‘enter and search’ inspection on 05 October 2016 to gather the necessary information and

evidence of the suspected violation, pursuant to Section 34 of the Act, of the central offices of PFMA located at Number 676, Shadman Colony 1, Lahore. During the inspection, the authorized officers impounded certain documents and materials.

2.3 In addition to the impounded documents, the C&TA department conducted a research on the flour milling industry. During the research period, PFMA requested for an opportunity to present before the Enquiry Committee its contentions on the issues involved in the matter. On 13 December 2016, the meeting with PFMA was held at the Commission's office, 7th Floor, ISE Towers, Blue Area in Islamabad, Pakistan. The analysis carried out on the basis of the discussion held with PFMA has been duly considered herein below. After the meeting, PFMA submitted further documentation which includes:

- Notification No.: SO (F-IV) 3-8/2016 by the Government of Punjab, Food Department dated September 27, 2016 [**Annex - IV**];
- Notification No.: SO (F-IV) 3-8/2015 by the Government of Punjab, Food Department dated October 5, 2015 [**Annex - V**];
- Notification No.: SO (F-IV) 2-2/2014 by the Government of Punjab, Food Department dated December 30, 2014 [**Annex - VI**];
- Notification No.: SO(F-IV)3-1/2013 by the Government of Punjab, Food Department dated September 4, 2013 [**Annex - VII**];
- A letter with subject: price of 20kg Atta (flour) bag, from the District Officer, Enterprise & Investment promotion, Sargodha to the Chairman, Pakistan Flour Mills Association, 676-Shadman Colony - I, Lahore [**Annex – VIII-A**];
- Notification from the Government of Punjab Food Department dated April 16, 2009 [**Annex – VIII-B**];
- Executive summary of the wheat industry in Pakistan, the price of wheat and a few suggestions. [**Annex - IX**].

2.4 In the aforementioned meeting, the following points were highlighted by the PFMA representatives:

- The Provincial Food Departments (PFDs) set a maximum retail price for flour;
- A formula for pricing was set in 2008 according to which the base input costs are plugged in and a margin for the flour millers is set to reach a maximum ex-mill and retail price. The price is still being set through the same mechanism;
- The flour millers procure wheat from the open market, as it is cheaper than the Government issued rate of wheat. When the prices increase in the open market as the supply depletes, the millers switch to the Government issued wheat as the issue rate becomes cheaper than the open market;
- Currently, there is a daily 280,000 tonnes installed capacity of producing flour across the country, whereas the daily demand is 40,000 tonnes, so many mills are not in production. Furthermore, if the Government does not stop other entrants, the industry will deteriorate further; and
- The provincial District Food Controller is mandated to communicate the government set maximum prices to the flour mills.

2.5 Thereafter, on 27 January 2017, in order to scrutinize the documents and examine the possibility of anti-competitive practices by PFMA, the Commission appointed an enquiry committee comprising of Ms Aleezay Khaliq, Ms Sophia Khan, Mr Arshad Javed, and Mr Zulfiqar Ali (the "**Enquiry Committee**") to present its report of findings. The documents and materials impounded at PFMA premises and those subsequently submitted to the C&TA department by PFMA were handed over to the Enquiry Committee for examination.

3. Wheat and Flour industry in Pakistan

3.1 The documents impounded during search and inspection of PFMA premises suggests that it has around 1171 registered member undertakings. Out of a total of 1171 member undertakings, approximately, 946 flour mills are located in the province of Punjab, 143 in Sindh, 50 in Khyber Pakhtunkhwa and 32 in Baluchistan.

Provincial breakdown of Flourmills in Pakistan:

Province	Punjab	Baluchistan	KPK	Sindh	Total
No of Mills	946	32	50	143	1171

* Source: Impounded documents of PFMA

- 3.2 Flour mills take up wheat (staple grain) as the raw material and process it into flour, which is constantly in growing demand being proportionate to the population growth. Pakistan is primarily an agricultural economy and the requirement for domestic consumption is catered through domestic production. The government purchases wheat produce from farmers at a support price. However, since the quantity of wheat produced is in millions of tonnes, a large portion of the procurement is done privately through middlemen and flour mills at lower than support price.
- 3.3 After grinding wheat, and in some cases fortifying it, it is sold by the flour mills at an ex-mill price depending on the quality of the product. The provincial governments set a maximum ex-mill and maximum retail price. The flour mills have a margin included in the ex-mill price after incurring all the direct and indirect costs of production.
- 3.4 Each province has its branch office of PFMA dealing with the provincial aspects of the flour mills, whereas at the national level the main head office of PFMA, which is based in Lahore, deals with the national issues in the industry. Presently, the open market price of flour is lower than the government prescribed maximum price as the millers are selling slightly below the government price. The Agricultural Price Commission (APCOM) announces minimum support prices for farmers every year before the harvest¹.

Government Role and flour milling industry:

¹ Information Memorandum by SMEDA, Ministry of Industries & Production GoP - "Pre-Feasibility Study - Flour Mill" - January 2011.

- 3.5 The wheat industry is influenced by certain government regulations issued by the (Federal) as well as Provincial governments. The government procures around 70 percent of the marketable surplus through federal storage organizations and PFDs to maintain strategic wheat reserves and supplies to meet deficit(s) in different areas of Pakistan.
- 3.6 In general, the flour-milling industry in Pakistan is privately owned and operated. The millers procure wheat from the open market and from government agencies and process wheat flour for local as well as for export markets (mostly Afghanistan). Flour mills obtain most of their wheat from their respective PFDs based on a quota dependent on the flour mill's milling capacity. Wheat is not issued to flour mills during the time of the wheat harvest (June/July) when wheat is available in abundance in the markets. Wheat grain is provided to the flour millers at an "issue price" by PFDs, which price takes into consideration storage and other incidental costs².
- 3.7 Some of the responsibilities of the Ministry of Food Agriculture and Livestock (MINFAL), which was earlier empowered to decide procurement location of wheat for Federal and Provincial Food departments during harvest, were partially taken over by the Ministry of National Food Security and Research (MNFS&R), upon the former's devolution to the Provinces, consequent to the 18th amendment of the Constitution of Pakistan, 1973. MNFS&R is mainly responsible for policy formulation, economic coordination, and planning in respect of food grain and agriculture including wheat. Its functions include procurement of food grains, fertilizers, import price stabilization of agriculture produce, international liaison and economic studies for framing agricultural policies.
- 3.8 PFDs, on the other hand, are directly responsible for maintaining the business of food grains including purchases, storage, supply, distribution, sales, transfer and milling of wheat in the provinces under the Foodstuff (Control) Act, 1958. PFDs are also responsible to ensure attractive support prices for farmers. PFDs supply wheat to the mills on a quota basis to ensure adequate supplies and stable prices of wheat flour throughout the year. PFD

² Ibid.

in the province of Punjab, being the major wheat-producing province, supplies wheat to the deficit provinces as well.

3.9 The provincial governments through their respective PFDs are also empowered by legislation to issue orders through notifications for controlling the prices at which foodstuff including wheat and flour may be bought and sold. In pursuance thereof, they have been issuing Flour Milling Policies that amongst other things set the maximum ex-mill and maximum retail price of flour (usually per 20 kg bags).

3.10 According to the information provided by PFMA, the maximum price as notified by the Punjab Government remained unchanged between 2009 and 2013. An extract of the letter dated 16 April 2009 by the Government of Punjab food department, provided by PFMA is as follows:

“.....it may be ensured that the control rate of flour in all the regions should not exceed above Rs.500/- per 20 kg bag”.

3.11 The following table provides the Maximum Ex-Mill and Maximum Retail Prices of flour between 2013 and 2016 as set by the Punjab Food Department for the province of Punjab:

Milling Policy - Punjab Food Department	Maximum Ex-Mill Price	Maximum Retail Price
2013	765	785
2014	740	760
2015	750	770
2016	735	760

* Government of Punjab Food Department Milling Policy pursuant to Section 3 of Punjab Foodstuff (Control) Act, 1958.

3.12 It appears from the above data and the representations of PFMA that the provincial government did not issue any notification on prices between 2009 and October 2013.

4. ISSUE(S)

Whether the Pakistan Flour Mills Association and its member undertakings have violated Section 4(2)(a) of the Act by fixing the price of flour in Pakistan?

4.1 While examining Section 4 infringement(s), the Commission conducts assessment of the agreement(s) between undertakings and/or decision(s) taken by association of undertakings, to assess if such agreement(s) and/or decision(s) have the object or effect of preventing, restricting or reducing competition within the relevant market. The assessment process, *inter alia*, involves:

- i. *Identifying the undertaking(s) and/or association of undertakings;*
- ii. *Identifying the agreement(s) and/or decision(s);*
- iii. *Identify the relevant market(s);*
- iv. *Assessing whether the undertaking(s) or association of undertakings has entered into a agreement(s) or have made decision(s); and*
- v. *Assessing whether such agreement(s) or decision(s) have the object or effect of preventing, restricting, or reducing competition in violation of Section 4.*

5. Undertaking(s)/Association of Undertakings

5.1 Under Section 2(1)(q) of the Act, “Undertaking” means:

“any natural or legal person, the 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 of undertakings.”

5.2 The key consideration in assessing whether an entity is an undertaking for the purposes of the Act is if it is engaged in any commercial or economic activity, regardless of the legal status of the entity and the way in which it is financed. The formal structure of the

undertaking is not a factor in the identification of an undertaking or an association of undertakings for the purposes of the Act.

5.3 For the purposes of this Enquiry Report, the relevant undertaking is PFMA, which is a registered and representative trade association of the flour milling industry in Pakistan. PFMA is licensed under the Trade Organizations Ordinance, 2007. It is an association with approximately 1171 members nationwide, comprised of individual flour mills and has provincial chapters in all four provinces. The central office of PFMA is located in Lahore. The Chairman rotates on an annual basis from each province and the 'Central Executive Committee' makes the decisions that are then implemented by members of the association. Thus, for the purpose of this Enquiry Report, PFMA, is an "*association of undertakings*" as well as its member undertakings fall within the meaning and scope of Section 2(1)(q) of the Act.

6. **Agreement(s) and/or Decision(s)**

6.1 Section 2(1)(b) of the Act defines "**agreements**" to include:

"[...] any arrangements, understandings, or practices, whether or not it is in writing or intended to be legally enforceable."

6.2 In terms of the above definition, the application of Section 4 of the Act is not limited to formal contracts. Rather, it may also apply to cooperation achieved through informal agreement(s) between undertaking(s) or decision(s) adopted by an association of undertakings. The term "agreement" has a wider connotation and includes either legally enforceable or non-enforceable agreements, whether verbal or in writing. An agreement may be reached through a physical meeting or through the exchange of strategic data or commercially sensitive information (whether through telephonic calls, exchange of emails, or any other mode of communication). To constitute a *prima facie* violation of Section 4 of the Act, the Commission looks into whether the parties have arrived at a consensus on the practice(s) that the undertakings will or will not adopt.

7. The Relevant Market

7.1 This Enquiry is concerned with the violation of Section 4 of the Act, according to which price fixing with the object or effect of reducing, restricting and preventing competition in the 'relevant market' is prohibited. Therefore a determination of the relevant market is required.

7.2 The definition of a relevant market comprises of two dimensions: *the relevant product market*, and *the relevant geographic market*, which is defined under Section 2(1)(k) of the Act as:

“...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 homogeneous and which can be distinguished from neighbouring geographic areas because, in particular, the conditions of competition are appreciably different in those areas.”

7.3 In terms of the above definition, a relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer by reason of the products' characteristics, prices, and intended use. A relevant geographic market comprises the area in which the firms concerned are involved in the supply of products or services and in which the conditions of competition are sufficiently homogeneous.

7.4 Based on the impounded documentary evidence and the research conducted by the Enquiry Committee, for the purposes of this Enquiry Report, the relevant product under consideration is flour/atta which is produced by the flour-miller members of PFMA and is a homogeneous product. In a report regarding the wheat industry of Pakistan, it was observed that “‘atta’, is a staple, supplying 72% of calorific energy in the average diet... per capita, wheat consumption is estimated at around 124 kilograms a year, which is among the highest in the world”³. It is clear that atta is the staple food of Pakistan, primarily used to prepare various types of Pakistani bread such as chapati, roti, naan, paratha etc. It is an essential commodity as the majority of Pakistani food contains flour. Atta is produced from wheat grain along with other by-products such as maida, rawa and sooji⁴. Taking into account the dietary habits of the consumers in the Pakistan, atta is not interchangeable with maida, sooji, rawa or any other product and neither are there any substitutes available for atta. The demand for atta is fairly inelastic at the household level as well as for commercial purposes. Therefore, the Enquiry Committee believes that due to all the above factors, which are integral to defining the relevant market, the production of "atta" by flour millers has been identified as the relevant product market for the purposes of this Enquiry.

7.5 While atta is an essential commodity and available all across Pakistan, there exist slight variations in terms of regulation, policy, and dynamics of the industry in the four different provinces of Pakistan i.e. Punjab, Sindh, KPK and Baluchistan. The agricultural land and other factors of production are varied in each of the provinces as well. Therefore, the relevant geographic market might be sub-segmented into four provincial markets. However, given that the domestically produced flour is within the four provinces of Pakistan and that the economic conditions are fairly competitive with no restrictions on the movement of atta from one province to another, it can be concluded that the geographic market stretches across the country. Hence, for the purposes of this Enquiry, the relevant geographic market has been identified as Pakistan.

³ Focus On Pakistan, Chris Lyddon, 9 March 2012, <http://www.world-grain.com/Departments/Country-Focus/Country-Focus-Home/Focus-on-Pakistan.aspx>

⁴ Punjab Foodstuffs Control Act, 1958

7.6 Therefore, the relevant product market consists of "atta" and the relevant geographic market comprises all of Pakistan.

8. Prohibited Agreements

8.1 Section 4(1) of the Act prohibits undertakings from entering into any agreement(s) and associations of undertakings from making decision(s) in respect of the price fixing, 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.

8.2 Section 4(2) of the Act provides a non-exhaustive list of agreement(s) and/or decision(s) that by their object or effect or both are prohibited. These agreement(s) and/or decision(s), may include:

- i. 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 provisions of any services;*
- ii. 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;*
- iii. fixing or setting the quantity of production, distribution or sale with regard to any goods or services sold or by any other means;*
- iv. limiting technical development or investment with regard to the production, distribution or sale of any goods or the provisions of any services;*
- v. collusive tendering or bidding for sale, purchase or procurement of any goods or services;*
- vi. applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a disadvantage; and*

- vii. *making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to usage, have no connection with the subject of the contract.*

9. Documents Impounded at PFMA Premises

9.1 From all the documents impounded at the premises of PFMA, the enquiry committee is of the considered view that for the purposes of this Enquiry, the following are some of the documents that point towards a prima facie violation of section 4 the Act:

Decisions & Discussion by PFMA on Pricing

A. SMS Notifications on pricing by PFMA (Annex - X):

1. Dated: 18.11.2011

“Dear Miller, Thella atta 20 kg in next aitwar bazaar (18-11-2011) will be sold at Rs. 560/- per thella. Tahir Hanif Malik (Vice Chairman)”

2. Dated: 09.07.2011

“Dear Millers of Lahore & Sheikhpura, 20 kg Thella atta will be sold @ Rs.530/- per thella in Aitwar Bazars on Sunday dated.10-07-2011.Mian Muhammad Riaz Vice Chairman”

3. Dated: 08.03.2011

“Dear Miller of Lahore, The Ex-Mills rate of 20kg thella atta will B Rs.565 thella and retail price of 20kg thella will be Rs.578 per thella...”

4. Dated: 01.03.2011

“Dear Millers of Lahore and Sheikupura, Please increase Rs.3 in the transportation of 20kg thella and Rs.10 in maida & Fine Bags immediately as price of diesel & petrol have increased. Thanks, Mian Muhammad Riaz (Vice Chairman)”

5. Dated: 27.01.2011

“Dear Millers of Lahore, 20 kg Thella atta will be sold @ Rs.563/- per thella in Aitwar Bazars on Sunday (30-01-2011). Mian Muhammad Riaz Vice Chairman”

6. Dated: 15.01.2011

“Dear Millers of Lahore, 20 kg Thella atta will be sold @ Rs.565/- per thella in Aitwar Bazars on Sunday (16-01-2011). Mian Muhammad Riaz Vice Chairman”

7. Undated:

*“The rate of 20kg thella atta is mutually agreed after a meeting with Punjab Food Department as under: Ex-Mill price of 20kg Thella Atta Rs.565
Retail price of 20kg Thella Atta Rs.575, Chairman”*

8. Undated

“of Lahore & Sheikupura, Kindly add Rs. 100 in existing price of Maida & Fine from today.”

9. Undated

“D/Millers, Rate of atta 4 sale points & Aitwar Bazars wil B Rs.400 per 20kg wheat price will be Rs.710 & rate of atta in open market will be Rs.420 delivered & Rs.425 retail & rate of wheat wil B Rs.750 per 40kg. As per previous practice your Association has reduced Rs.5/- per thela 4 Ramazan.....Liaquat Ali Khan Chairman PFMA(Punjab)”

10. Undated

“Dear Millers, [...]Rate of 20kg thella will be 415/-ex-mill & Rs.425/- Retail[...] Liaquat Ali Khan Chairman”

11. Undated

Dear Millers, As per your demand subsidized wheat will be issued for Ramzan. Rate of 20kg thella will be Rs.415/- ex-mill & Rs.425/- Retail for the month of Ramzan. At sale points & Aitwar Bazars 20kg thella will be sold at Rs.400/- in Ramzan. Liaquat Ali Khan Chairman PFMA(PB)

12. Undated

Dear Millers, Subsidized Wheat will be issued for Ramzan, Rate of 20kg Thella Atta will be Rs.425/- for the month of Ramzan. At sale points & Aitwar Bazars 20kg thella atta will be sold at Rs.400/- in Ramzan. Liaquat Ali Khan Chairman PFMA(PB)

13. Undated

Dear Millers, The Interim rate of atta is Rs.550 per 20kg ex-mill till 8th Jan 10. On 8th Jan the high power price committee will meet to announce next price due 2 increase of electricity & Bran loss. Chairman Liaquat Ali Khan

14. Undated

Good News Regular Quota will B issued from tomorrow AlHamdolillah Quota wil issued from Atock 2 RY.Khan on equal body basis.Rate of 40kg wheat wil B Rs.975 & 20kg atta wil B Rs.535 X-Mill C/Man Asim Raza

15. Undated

Dear Milers, We highly appreciate the efforts of Riaz Ullah Khan Assit. Vice Chairman RWP Tariq Farooq Sethi & Kh.Rehan Anjum made 4 maintaining rate of thela ata Rs.530/ for Aitwar Bazar of RWP/ISB. All Vice Chairmen should follow the example. Chairman Asim Raza &Dr.Bilal Sufi

16. Undated

Dear Millers, Rates of Atta/Maida/Fine and Suji are to be increased @ Rs.2/- per kg

Chairman Asim Raza Ahmad

17. Undated

“Dear Millers, As per....Rate of 20kg thella will be 415/-ex-mill & Rs.425/- Retail.....Liaquat Ali Khan Chairman”

18. Undated

“ Hum Flour Mills Malkan Pakistan Flour Mills Association Tahir Hanif Malik aur Mian Muhammad Riaz kay mashkoor hain jinhoon nay attay kay rate ko barnay ka faisla kia. Jis ki wajah say market main aatay k rates mazboot howay. Humain umeed hai kay Association kay platform say ainda bhi is hi tarhaan kay faislay kiyae jain gay jo industry ki falah k leeyae hoon gay Flour Mills Malkan”

19. Undated

“Dear Friends your Association HAS BEEN SUCESSFUL IN achieving a reasonable rate of atta on account of electricity and other expenses which is Rs.557/- per 20 kg Ex-Mill with immediate effect congratulations Liaquat Ali Khan Chairman”

Analysis of the Impounded Documents:

9.2 From the above evidence, it is apparent that PFMA has been engaged in fixing and communicating the price of flour to its member millers in Punjab. Out of 19 SMSs, 6 are dated in the year 2011. As per the paragraph no. 3.10 above, the Punjab Government has issued no price notification between 2010 and 2013. However, from the documents impounded at the premises of PFMA, it appears that since at least 2011, PFMA has actively been engaged in communicating to its members, through SMS, the prices at which atta is to be sold. Therefore, the above quoted SMSs in the year 2011 and many undated SMSs appear to point towards the association fixing and communicating its own price to its member

millers for compliance. In some of the SMSs, for example, No. 4, 8 & 16 above, PFMA is asking the millers to increase prices by a certain percentage/margin on different prices. For example, in SMS No. 4, the Vice Chairman of PFMA, is asking the millers of Sheikupura and Lahore to increase the price by PKR 3 per 20kg thella of atta and add 100 rupees in the price of maida. These instances are collectively and individually in prima facie violation of Section 4(2)(a) of the Act, as apparent price fixing.

B. Correspondence by PFMA on Pricing and Quantity

9.3 The following are the extracts (translated from Urdu to English) from the correspondence and agenda of the meetings of the Executive Committee of PFMA (Punjab Branch) with the date:

1. (Annex - XI)

Press Release Dated: 6/09/2016

PFMA Press Release (Urdu Translated into English)

“....20kg thella atta retail is set at Rs./-770, whereas in the market it is being sold at much less than that. Even now the price of atta is much lower than the government rate. Top quality atta is being sold at Rs./-740 per bag in the market.”

2. (Annex - XII)

Letter Dated: 15-03-2012, From: PFMA Chairman (PUNJAB Branch)

Addressed To The District Coordination Officers, Sargodah

“Dear Sir,

It is brought to your kind notice that 20kg thella atta is being sold @ Rs.560/- thella at Aitwar Bazars in Lahore..... it is pointed out that the approved Government rates of 20kg thella atta are as under:-

20 kg thella atta Ex-Mill price: 565

20 kg thella atta Retail price: 575”

3. (Annex - XIII)

Dated: 01-07-2011 From: PFMA Vice Chairman (PUNJAB Branch)

Addressed To The District Coordination Officers, Lahore

Subject: RATE OF THELLA ATTA

“Dear Sir,

..... As early indicated that the price of thella atta is fixed by the Punjab Government as Rs.568/-. We reduced the price of thella atta in a good gesture keeping in view the low prices of wheat in the open market.....”

4. (Annex - XIV)

Dated: 02-07-2011; From: PFMA Vice Chairman (PUNJAB Branch)

Addressed To The District Coordination Officers, Lahore

Subject: SELLING RATE OF ATTA IN AITWAR BAZARS

“Dear Sir,

It is submitted that for next Sunday i.e. 03-07-2011, the selling rate of atta in Aitwar Bazars will be Rs.535/- per thella of 20kg.

It is requested that concerned officials of Food Department/District Administration may kindly be intimated according.

Thank you,”

5. (Annex - XV)

Letter Dated: 18.12.2013

From: PFMA Chairman (Punjab Branch)

Addressed to: Floor Mills Owners

[...]20 kg thella atta Ex-Mill price will be Rs.765/- per bag and Rs.785/- thella atta Retail per bag[...]

6. (Annex - XVI)

Letter Dated: 23.07.2016

The letter is addressed to the member of the Executive Committee of PFMA (Punjab Branch) calling for an emergent meeting held on 30.07.2016 to examine the availability/price of atta in the open market and detailed discussion on atta pricing and future course of action.

7. (Annex - XVII)

Letter Dated: 07.03.2016

The letter is addressed to the member of the Executive Committee of PFMA (Punjab Branch) calling for a meeting to be held on 15.03.2016 to discuss the new crop of wheat and purchase related suggestions.

8. (Annex - XVIII)

Letter Dated: 05.01.2016

The letter is addressed to the member of the Executive Committee of PFMA (Punjab Branch) calling for a meeting to be held on 13.01.2015 to examine the availability/price of atta in the open market and detailed discussion on atta price and future course of action.

9. (Annex - XIX)

Letter Dated: 28.10.2015

The letter is addressed to the member of the Executive Committee of PFMA (Punjab Branch) calling for a meeting to be held on 07.11.2015 to examine the availability/price of atta in the open market and detail discussion on *atta price and future course of action.*

10. (Annex - XX)

Letter Dated: 08.09.2015

The letter is addressed to the member of the Executive Committee of PFMA (Punjab Branch) calling for a meeting to be held on 12.09.2015 to examine the availability/price of atta in the open market and detail discussion on *atta price and future course of action.*

11. (Annex - XXI)

Letter Dated: 09.01.2015

The letter is addressed to the member of the Executive Committee of PFMA (Punjab Branch) calling for a meeting to be held on 17.01.2015 for detailed discussion on availability and *pricing of atta in the province*.

12. (Annex - XXII)

Letter Dated: 05.03.2014

The letter is addressed to the member of the Executive Committee of PFMA (Punjab Branch) calling for a meeting to be held on 11.03.2014 for detailed discussion on availability and *pricing of atta in the province*

13. (Annex - XXIII)

Letter dated: 22.11.2012

The letter is addressed to the member of the Executive Committee of PFMA (Punjab Branch) calling for a meeting held on 29.11.2012 for a detailed discussion on, among others things, atta prices.

14. (Annex - XXIV)

Letter dated: 17.09.2012

The letter is addressed to the member of the Executive Committee of PFMA (Punjab Branch) calling for a meeting held on 22.09.2012 to a detailed discussion on, among others things, atta prices.

15. (Annex - XXV)

Letter Dated: 15.07.2013

The letter is addressed to the member of the Executive Committee of PFMA (Punjab Branch) calling for a meeting to be held on 18.07.2013 to *analyze prices of atta in open market and future course of action*.

16. (Annex - XXVI)

Letter dated: 19.05.2012

The letter is addressed to the member of the Executive Committee of PFMA (Punjab Branch) calling for a meeting held on 31.05.2012 for a detailed discussion on, among others, atta prices and future course of action.

17. (Annex - XXVII)

Letter Dated: 15.05.2013

The letter is addressed to the member of the Executive Committee of PFMA (Punjab Branch) calling for a meeting to be held on 22.05.2013 for a detailed discussion on supply and current *pricing of atta*.

18. (Annex - XXVIII)

Letter Dated: 02.04.2013

The letter is addressed to the member of the Executive Committee of PFMA (Punjab Branch) calling for a meeting to be held on 13.04.2013 to *analyse prices of atta and reevaluate the price in the light of rate of wheat in the open market*.

19. (Annex - XXIX)

Letter Dated: 12.03.2012

The letter is addressed to the member of the Executive Committee of PFMA (Punjab Branch) calling for an emergent meeting held on 20.03.2012 to discuss the (atta) prices and future course of action.

Analysis of Impounded documents

9.4 From the Press release dated 06 September 2016, it can be observed that PFMA is claiming that top quality atta is being sold at Rs./-740 per bag in the market and that it is much lower than the government rate of Rs./-770. The claim of the association in terms of market price appears to be a price fixed by them. If the prices were not fixed collectively than the

association may have provided a range in between which the atta was being sold and it would be hard to determine with such certainty the market price of atta as different suppliers and retailers would be selling at their own prices in a competitive way.

9.5 From the letter dated 15 March 2012, it is again observed that the price of atta in Aitwar bazaar is Rs 15 lower than the government set rate. The fact that a single price which is not the Maximum Retail price set by the government is mentioned by a central body appears to be an act of fixing the rate rather than millers and retailers setting their own price.

9.6 Also, in the letter dated 01 July 2011 to the DCO Lahore it is stated that “We reduced the price of thella atta...” which is apparently indicative of price fixing on part of PFMA.

9.7 In the letter dated 02 July 2011 to the DCO Lahore, from the Vice Chairman PFMA Punjab branch that “the selling rate of atta in Aitwar Bazars will be Rs.535/- per thella Rs 20kg.” again indicates a price being fixed by the association and communicated the DCO Lahore as the price is being communicated before time.

9.8 In a letter to the member flour millers of the PFMA Punjab Branch as seen above, it appears that the price being communicated is that of fixed retail and Ex-Mill price. The prices mentioned happen to be the Maximum Ex-mill and retail prices set through the Punjab Government notification dated October 2013. However, there is no mention of communicating the prices as maximum price instead the letter states that the price “will be” Rs.765/- Ex-mill and Rs.785/-Retail. This appears to be another instance of price fixing on part of PFMA and it happens to be via a letter to all its flour millers in Punjab.

9.9 Moreover, the documents analyzed show that the executive committee of PFMA has regularly been meeting, exchanging information and strategic data on prices and quantities and discussing/deciding the price of atta between 2012 and 2016 and apparently acting as a medium to facilitate cooperation among millers to fix prices, which has the object and effect of preventing, restricting and reducing free competition in the relevant market. Even though the government does take into account the input of stakeholders with regards to the input

costs for flour and processing charges and transportation to set a maximum price for both retail and ex-mill, it appears that PFMA through its members of the executive committee have been discussing and deciding on fixing the prices of atta, which is then communicated to its members and adopted by them across the board. All the instances mentioned above individually and collectively prima facie amount to violation of Section 4(2) (a) of the Act.

10. Summary of Analysis

10.1 Regardless of the fact whether it is lower than the government prescribed maximum price or not, the observation that the association appears to be fixing prices for the various flour mills in the Punjab province, leaves no room for competition on price amongst the competing millers. It is not the functions of the association to coordinate and decide upon and communicate prices to its member undertakings. Such decisions and communications leave no room for the millers to set their own price and compete amongst the industry players on price. Therefore, it appears that the practice of PFMA in fixing price and possibly the quantities for its member millers is in violation of Section 4(1) read with Section 4(2) (a) and 4(2)(c) of the Act.

11. Conclusion

11.1 In view of the above, it appears that the issues of pricing and quantities have been amongst the most important agenda items of the PFMA and its member undertakings in all of its Executive Committee meetings going as far back as 2011.

11.2 The role that 'associations of undertakings' may play in cartels is explicitly recognized under Section 4 of the Act by the adoption of the decision by an association of undertakings that have the object or effect of preventing, restricting, or reducing competition within the relevant market. A decision by an 'association of undertakings' may take various forms. An agreement entered into by an association's members might also be a decision. Moreover, information exchange of commercially sensitive information or strategic data and recommendation made by an association with respect to pricing and quantities, among

other things, may amount to a decision. The fact that the recommendation is not binding upon its members does not prevent the application of Section 4 prohibition, neither that it is not unanimously accepted by all the members. It also appears from the documents reproduced above that on several occasions; PFMA Punjab Branch has violated Section 4 of the Act.

11.3 In view of the foregoing, PFMA has, on several counts from time to time and continuously, prima facie violated Section 4 of the Act. It appears that the anti-competitive practices adopted by PFMA and endorsed by its member undertakings have violated Section 4(1) read with Section 4(2)(a) and Section 4(2)(b) of the Act. This may be viewed in light of competition law jurisprudence, which contemplates, *inter alia*, that even a single instance of price fixing or production limitation or distribution, is sufficient to constitute a violation of Section 4 of the Act.

12. Recommendations

12.1 Based on the above, it is proposed that the Commission may consider initiating proceedings against PFMA and its member undertakings for *prima facie* violation of Section 4 of the Act under section 30.

Aleezay Khaliq
Enquiry Officer

Arshad Javed
Enquiry Officer

Sophia Khan
Enquiry Officer

Zulfiqar Ali
Enquiry Officer
