BEFORE THE
COMPETITION COMMISSION OF PAKISTAN

PHASE II REVIEW

IN THE MATTER OF MERGER OF M/S. PAKARAB FERTILIZERS LIMITED WITH AND INTO M/S. FATIMA FERTILIZER COMPANY LIMITED.

CASE: 1367/Merger-CCP/2023

Date of Hearing	**June 13, 2023**
Commission	Ms. Rahat Kaunain Hassan ***Chairperson*** Mr. Ahmed Qadir ***Director General (Policy)***
On Behalf of: **Fatima Fertilizer Company Limited**	Mr. Asad Murad - Chief Operating Officer, Mr. Kashif Mustafa - General Manager Finance, Mr. Muhammad Afzaal - Senior Manager Finance.
Pakarab Fertilizers Limited	Mr. Muhammad Musharraf Khan - Chief Financial Officer

ORDER

1. The Competition Commission of Pakistan (the "**Commission**") is mandated under the Competition Act, 2010 (the "**Act**") read with the Rules and Regulations framed thereunder, to ensure free competition in all spheres of commercial and economic activity, to enhance economic efficiency, protect consumers and related market players from anticompetitive behaviour including abuse of dominance, deceptive marketing practices and mergers which may substantially lessen competition.

2. In the subject matter Order concluding the Phase I review was passed by the Bench on June 1, 2023 ("**Phase I Order**"). Based on information presented to it, the Bench passed the Phase I Order , under Section 11(5) read with Section 31 of the Act, wherein the relevant product market in this case was identified as "**Production and Sale of Fertilizers – UREA, NP, CAN and DAP**" while the relevant geographic market was Pakistan.

3. Moreover, Phase I review revealed the following facts:

   i. M/s. Fatima Fertilizer Company Limited ("**FFCL**") and M/s. Pakarab Fertilizers Limited ("**PFL**") (hereinafter collectively referred as **Merger Parties**) are currently the dominant providers of Calcium Ammonium Nitrate (CAN) and Nitrophosphate (NP) fertilizers in Pakistan.

   ii. The Merger Parties are associate companies of each other and do not have a parent-subsidiary relationship.

   iii. After the proposed merger transaction, FFCL will be the sole manufacturer of CAN and NP Fertilisers in Pakistan.

4. In terms of Phase I Order as the proposed transaction would result in strengthening the dominant position, in the identified relevant market of CAN and NP, in terms of Section 3 of the Act, it required a more detailed assessment in a Phase II Review thereby initiating the same .

5. In review of the application, it was noted that FFCL had already acquired the plant of PFL, under Plant Sale and Purchase Agreement ("PSPA") of December 1, 2018, and a Supplemental Plant Sale and Purchase Agreement ("SPSPA") of December 24, 2018. This transaction had been consummated without seeking and soliciting the Commission's necessary approval. A hearing was held on June 13, 2023, under Section 11(12) of the Act. On June 16, 2023, PFL submitted a pre-merger application ("Application 2") to the Commission.

6. This Order has been passed after giving opportunities of hearing to the undertakings concerned. It concludes the Phase II Review of the pre-merger applications in the matters of the merger of PFL with and into FFCL and FFCL's acquisition of assets (including plant) from PFL.

7. By way of background, FFCL, the post-merger surviving entity, was incorporated in Pakistan on December 24, 2003, as a public company under the repealed Companies Ordinance, 1984 (now the Companies Act, 2017). The company is listed on Pakistan Stock Exchange. The principal activity of the company is manufacturing, producing, buying, selling, importing and exporting fertilizers and chemicals. The registered office of the company is situated at E-110, Khayaban-e-Jinnah, Lahore Cantt. The

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manufacturing facilities of the company are located at Mukhtargarh - Sadiqabad, Khanewal Road - Multan and Chichoki Mallian - Sheikhupura, Pakistan.

8. M/s. Fatimafert Limited ("**FFL**"), M/s. Fatima Cement Limited ("**FCL**") and M/s. Pan-Africa Fertilizers Limited ("**PAFL**") are wholly owned subsidiaries of FFCL. FFL and FCL are incorporated in Pakistan under the Companies Act, 2017 and PAFL is incorporated in Kenya.

9. FFCL was set up as a joint venture between the Arif Habib Group ("**AHG**") and the Fatima Group (**"FG"**), as a Greenfield fertilizer complex. After its incorporation, it was informed that FFCL became subsidiary of PFL on September 21, 2009, this fact has been disclosed in PFL financial statements in the following manner;

"On September 21, 2009, the company acquired ordinary shares of Fatima Fertilizer Company Limited (FATIMA), out of which ordinary shares were distributed as specie dividend to the company's members, thereby resulting in company's holding in FATIMA to the extent of % as of that date. Furthermore, on the same date, other members of FATIMA holding % ordinary shares by virtue of an agreement, have also surrendered their voting rights in favour of the company thereby enabling it to exercise % voting rights of FATIMA. Consequently, as of September 21, 2009, FATIMA has become a subsidiary of the company as the company has the control to govern the financial and operating policies of FATIMA"

10. Presently FFCL and PFL are associated companies of each other.

11. As per the submitted consolidated financial statements as at December 31, 2022 total assets of FFCL stood at PKR while sales were PKR

12. The composition of board of directors of FFCL's is exhibited in the following table:

Name	Position in Board	Relationship
Mr. Arif Habib	Chairman	AHG
Mr. Fawad Ahmed Mukhtar	Chief Executive Officer	FG
Mr. Fazal Ahmed Sheikh	Executive Director	FG
Mr. Faisal Ahmed Mukhtar	Non-Executive Director	FG
Ms. Malika Nait Oukhendou	Independent	-
Mr. Tariq Jamali	Independent	-
Mr. Muhammad Kashif Habib	Non-Executive Director	AHG

13. We note that PFL, the post-merger dissolved entity, was incorporated on November 12, 1973, by joint venture between the Government of Pakistan and Abu Dhabi National Oil Company Limited (ADNOC) and that it shall cease to exist after the proposed merger. Subsequent to the joint venture, The Pakistan Industrial Development Corporation (PIDC) assigned % of its shares to National Fertilizer Corporation (NFC) of Pakistan and ADNOC assigned % of its shares to the International Petroleum Investment Company, with a paid-up capital of PKR

PFL was privatized on July 14, 2005, under the privatization policy of Government of Pakistan, at a cost of Rs. It was acquired by a consortium of Fatima Group and Arif Habib Group. The address of the registered office of the company is B-110, Khayaban-e-Jinnah, Lahore Cantt, while its operations facility is in Multan.

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15. On June 6, 2023, after the issuance of the Phase I Order, a letter was sent to the Merger Parties for a Hearing before the Commission to help it develop a wider perspective of the industry and, more specifically, the dynamics of the subject transaction. In addition, a letter on the same date was also dispatched to the Merger Parties for the proceedings falling under Section 11(12) of the Act and correspondingly a hearing to be convened.

16. On June 12, 2023, a letter was sent to the Merger Parties for a requisition of information to assist in assessment of likely impact of the intended transaction on the fertilizer market in Pakistan. The reply was received on June 15, 2023.

17. On June 13, 2023, the Bench conducted hearings at the office of the Commission and Representatives from the Merger Parties made preliminary submissions and explained the rationale behind the transaction, the relevant market, and if the transaction would substantially lessen competition in the relevant market.

18. The Merger Parties presented information related to the fertilizer industry and types of fertilizers being used in the country (Paras 33-36 below), market shares of the players (Para 47 below), formation of Merger Parties and their shareholder and board composition (Para 53 a, b, c, below), brands used by Merger Parties (Para 53 e), PFL's operations and allocation of gas (Para 53 h, i), and also informed the bench that merger is envisaged to achieve benefits that include (i) ease of doing business, (ii) tax benefits (iii) cost savings (iv) and synergies.

19. While explaining reasons for non-submission of merger application in the matter of the *consummated transaction*, the Merger Parties informed that it was consummated on September 01, 2020, by which FFL acquired assets including a plant from PFL for a transaction consideration of PKR in accordance with the PSPA dated December 1, 2018, and SPSPA dated December 24, 2018 [Para 5 above].

20. On June 16, 2023, PFL filed the pre-merger application ("**Application 2**") for *consummated transaction* and submitted that at the time of acquisition, clearance was not sought as the omission was inadvertent on part of the management and was not intentional. Nevertheless, the Merger Parties are committed to complying with the provisions of the Act in future and requested the Bench to take a lenient view in light of the written commitments submitted to this effect.

21. When asked why the merger was taking place now and why the Merger Parties were kept as separate legal entities previously, it was explained that in 2018, the PFL's members approved the sale of the company's production and operating plants including Ammonia, Urea, Nitric Acid, Nitro-Phosphate, Calcium Ammonium Nitrate (CAN) and Clean Development Mechanism along with installed catalysts and any other related or ancillary equipment (**Assets**) to FFCL, at a price of PKR in their Extraordinary General Meeting of November 19, 2018. Resultantly, the PSPA and 'Services and Supplies Agreement,' both dated December 1, 2018, were entered into with FFCL for sale of these Assets along with all costs and benefits associated with gas supply arrangement with M/s. Mari Petroleum Company Limited ("**MPCL**") available with the company. Thereafter, an amendment was made to the aforesaid agreement via a SPSPA [Para 5, above] wherein the sale would occur subject to confirmation and entry of appropriate agreements with Sui Northern Gas Pipelines Limited (SNGPL) and other regulatory authorities to ensure supply of natural gas to the Plant and any other conditions considered necessary or appropriate by FFCL.

22. On why the Merger Parties kept themselves as separate legal entities earlier, it was informed that FFCL had initially only purchased PFL's plant located in Multan for PKR in 2018, and not the whole company as, at that time, the balance sheet of PFL was burdened with external liabilities of PKR which, at that time could negatively impact FFCL's balance sheet, which is a listed company in which the general public also holds shares. The Bench was also informed that the external liabilities of PFL had been reduced to PKR PFL's Multan plant was non-operational for a consecutive 786 days from November 2017 to December 2019. In 2018, PFL got gas allocation from MPCL and subsequently, a pipeline project to use natural gas supplied by MPCL to the Multan Plant was started. This was completed in December 2019 with FFCL's investment of PKR and is fully operational.

23. In 2020, the company received gas supply from MPCL and manufactured fertilizer up to the date of sale of the above Assets *i.e.*, September 1, 2020. When queried on the gas allocation process, the Bench was informed that gas is allocated by the Economic Coordination Committee (ECC) of the Cabinet following a certain procedure. The discovery of gas is disseminated to the relevant authority by the oil and gas exploration companies under Rule 26 "declaration of commercial discovery" of Pakistan Onshore Petroleum (Exploration and Production) Rules, 2013. After the announcement of discovery, interested parties can approach the gas exploration company to procure this discovered gas. After the interested parties and gas exploration company reach an agreement, a summary is prepared by Ministry of Energy (Petroleum Division) or Ministry of Industries (as the case may be) on the request of the interested party for gas allocation and circulated to all the relevant Ministries for comments before placing the summary to the ECC of the Cabinet for Approval. As a listed company, MPCL is also required to publicly disseminate material information under Section 96 of the Securities Act, 2015. The final summary with all the comments is reviewed by the ECC and approved as per Government's priorities. Explaining the gas allocation to the PFL plant, the Bench was told that that FG had approached MPCL in response to its declaration of gas discoveries from its SML/SUL gas fields. It was an off-spec gas and required substantial Capex for processing. FG agreed to make this investment and thus, the gas was allocated to the plant. The Bench was also informed that the allocated reserves were estimated at 83,000 MMcf and the estimated supply to PFL was estimated at 57 MMcf/d. This meant that the allocated gas reserve would last for 1,456 days, approx. 4 years.

24. After the sale of Assets, PFL was providing manpower services for their operations and maintenance to FFCL, along with sale of materials and supplies under the 'Services and Supplies Agreement of December 31, 2018. The land and buildings retained by the company have been licensed to FFCL for use from September 01, 2020, onwards under a **'License Agreement'** of December 01, 2018. The utilities plant and other infrastructure retained by the company has been leased out to FFCL from September 01, 2020, onwards under a **'Lease Agreement'** of December 01, 2018, and a **'Supplemental Lease Agreement'** of August 31, 2020.

25. In March 2021, PFL entered into a Toll Manufacturing Agreement with FFCL, effective from April 1, 2021, for producing fertilizers using the gas allocated from MPCL to it. Thereafter, an amendment was made to the aforesaid agreement through a Supplemental Toll Manufacturing Agreement ("Supplemental Agreement") of November 01, 2021, wherein it was agreed that FFCL would submit monthly invoices under toll manufacturing agreement. The scope of toll manufacturing services under

these agreements is (i) manufacturing fertilizers using natural gas provided by the PFL, (ii) Power generation for the production facility, (iii) sourcing of raw materials and other input items including stores, spares, and catalyst, (iv) hiring third party contractors for plant-related services, (v) packaging and labelling (vi) storage and warehousing and (vii) marketing and distribution.

26. As per the submitted special purpose unconsolidated financial statements of PFL for the six-month period ended June 30, 2022, its total assets were valued at PKR while its revenue was

27. The composition of board of directors of PFL is exhibited in the following table:

Name	Position in Board	Relationship
Mr. Arif Habib	Chairman	AHG
Mr. Fawad Ahmed Mukhtar	Chief Executive Officer	FG
Mr. Fazal Ahmed Sheikh	Executive Director	FG
Mr. Faisal Ahmed Mukhtar	Non-Executive Director	FG
Mr. Rehman Naseem	Non-Executive Director	FG
Mr. Abdus Samad	Non-Executive Director	AHG
Mr. Muhammad Kashif Habib	Non-Executive Director	AHG
Mr. Nasim Beg	Non-Executive Director	AHG

28. PFL intends to merge with and into FFCL according to the Arrangement. Post merger, FFCL will be surviving entity whereas PFL will be defunct entity.

29. As per the Arrangement, FFCL would issue Redeemable Class A & B shares (value of PKR 10 each) to the holders of PFL and capital contributors. The following table represents the value of the shares that will be issued:

Name of Shareholder	PFL Share Capital	Other Capital Contributory	Class A Shares	Class B Shares
M/S Arif Habib Corporation limited				0
M/S Arif Habib Equity (Private) Limited				
Mr. Arif Habib				
Mr. Abdus Samad				
Mr. Muhammad Kashif Habib				
Mr. Nasim Beg				
Nida Ahsan				
Sharmin Shahid				
Arif Habib Group (A)				
M/s Fatima Trading Company (Pvt.) Ltd				0
M/s Fatima Management Company Ltd				0
M/s Farrukh Trading Company Ltd				0
M/s Fazal Holdings (Pvt.) Limited				0
Mr. Fawad Ahmed Mukhtar				
Mrs. Ambreen Fawad				
Mr. Fahd Mukhtar				

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Mr. Ali Mukhtar				
Mr. Abbas Mukhtar				
Miss Meraj Fatima				
Mr. Fazal Ahmed Sheikh				
Mr. Faisal Ahmed Mukhtar				
Mr. Rehman Naseem				
Mr. Muhammad Yousuf Amir				
Mr. Abdullah Amir Fazal				
M/s Fatima Holding Limited				
Fatima Group (B)				
Grand Total (A+B)				

30. Considering the Arrangement, the total transaction value is PKR (Pak Rupees only).

31. The Merger Parties submitted responses to the Commission's queries for a detailed review of the transaction vide email of June 15, 2023. The Merger Parties were directed to provide additional information via email dated July 03, 2023. Their responses were received via emails of July 03, 3023, July 04, 2023, and July 13, 2023.

32. It is pertinent to mention that Fertilizer sector is classified as Large-Scale Manufacturing (LSM), contributing % to the LSM sector and % to Pakistan's overall GDP.[1] It is predominantly driven by the agriculture, particularly crops, segment of the economy.

33. Fertilizers are nutrients essential for the growth of plants and crops. There are three main types of fertilizer used by the agricultural sector and are classified into three categories according to their element (nutrient) structure:

i. **Nitrogen** (N): Increases the protein content of plants, gives them colour, and accelerates growth. It supports plants' rapid growth and encourages the healthy development of foliage and fruits. Fertilisers, Urea and CAN fall in this category. In Pakistan, Urea usage accounted to almost % while CAN has % offtake for the year 2022.

ii. **Phosphorous** (P): Promotes strong, healthy root development and helps plants mature more rapidly and thus aids in blooming and seed formation. It is critical for the synthesis of energy regulating substances in plants. Fertiliser type DAP belongs to this category. In the sector, DAP usage accounted to only % for the year 2022.

iii. **Potassium** (K): Raises the resistance of plants to diseases and promotes growth from root to stack. It increases the plumpness of grains and seeds and provides winter hardiness to legumes and other crops. Vital for proper growth and reproduction of plants. In this category, NP type fertiliser is included and its offtake in Pakistan was 9% for the year 2022.

34. Natural Gas is the primary and key essential input for fertilizer manufacturing. This is allocated by government at subsidized rates under the Fertilizer Policy 2001, to set-up

[1] pacra.com/sector_research/Fertilizers - PACRA Research - Jan'23_1676028125.pdf

a new fertilizer plant. Capacity utilization is dependent on the availability of natural gas. Separate plants are used for manufacturing UREA, DAP, CAN, and NP.

35. FFCL (post-merger surviving entity) has a dominant position in the production NP and CAN and as per applicant, its current market shares in relevant product market of CAN and NP are % and % respectively. PFL (post-merger defunct entity) currently holds a dominant position; as per the applicant, its current market shares in relevant product market of CAN and NP are % and % respectively.

36. Therefore, the Merger Parties are currently the only providers of CAN and NP fertilizers in Pakistan. Its means that FFCL will further strengthen its present dominant position in the relevant markets of CAN and NP and post-transaction, the FFCL will be the sole provider.

37. Importantly, the Merger Parties submitted before the Bench that while both FFCL and PFL are separate legal entities, both were formed by two business groups *i.e.*, AHG and FG through a joint venture. The FG group is acting <u>both</u> as an investor and the technical partner whereas AHG is acting as an investor partner only. The day-to-day business affairs of both companies are being managed by FG and both the Merger Parties are associated companies and managed by board of directors appointed/nominated by AHG and FG.

38. It is submitted that since 2011, both Merger Parties are using "SARSABZ" and "BUBBER SHER" brand to market their products. For instance, FFCL is selling its urea under both brands whereas NP and DAP of both companies sold under "SARSABZ" brand through common marketing, sales, distribution, and dealer network.

39. For the purposes of the Phase II Review under this Order on whether or not the proposed merger situation is likely to substantially prevent or lessen competition, the following concerns emerge:

a) Whether the proposed merger will substantially lessen competition, in particular by creating or strengthening a dominant position in the relevant markets of CAN and NP.
b) Whether the post-merger situation, by eliminating competitive constraints, provides an opportunity to FFCL to abuse its dominant position in the relevant markets of CAN and NP (unilateral effects).
c) Whether the nature of competition is likely to change post-merger in such a way that undertakings that previously were not coordinating their behaviour, are now significantly more likely to coordinate and raise prices or otherwise harm effective competition (coordinated effects).

40. To address the above concerns and in assessing the strength of competition in the relevant market or the substantial lessening thereof, the Bench may refer to factors (*i.e.*, failing firm, entry barriers, the dynamic characteristics of the market, level of import, level of concentration and history of collusion, countervailing power and vertical integration, and elimination of effective competitors) as listed in Merger Regulation 10. It is important to mention that the applicant has not taken the failing firm defence, therefore, this concept would not be applicable in case of the proposed merger.

41. Overall, the fertilizer sector is capital intensive, high capital cost of plant development, limited supply of major raw material (*i.e.*, natural gas) and strong dealer network requirements are major entry barriers. It is important to note that last expansion of an

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41. Overall, the fertilizer sector is capital intensive, high capital cost of plant development, limited supply of major raw material (*i.e.*, natural gas) and strong dealer network requirements are major entry barriers. It is important to note that last expansion of an existing or establishment of a new plant were carried out in the 2000s. Therefore, entry barriers exist in the relevant market.

42. The fertilizer industry in Pakistan is an oligopolistic one, consisting of few major players (i.e., Fauji Fertilizer Company Limited, Engro Fertilizers Limited, Fauji Fertilizer Bin Qasim Limited, Agritech Limited and both Merger Parties) who collectively account for almost % of the overall market. However, overall market share of PFL is below nine percent. Further, 14,000 MT of NP fertilizer were imported only in January-February 2018 and January-February 2019.

43. Past actions of the Commission in fertilizer sector includes (i) Commission's Order dated July 23, 2010, wherein it was held that no pattern emerged which could establish tie-in of the sale of DAP linked with the sale of Urea on part of the undertakings concerned. It was also held that even though no empirical evidence exists for tying however, FFC' dealership agreements have a clause which empowers suppliers to tie-in different products, therefore, such anomaly should be removed in the continuing agreements. (ii) The Commission has also imposed a substantial penalty vide its Order dated April 1, 2013, whereby two urea manufacturers were held responsible for their alleged abuse of dominance in the market through unreasonable price increases, which is under judicial review. In July 2023, an enquiry on price fixing *i.e.*, a *prima facie* violation of Section 4 of the Act has also been concluded. However, no collusive activity has been so far noted so far in NP and CAN fertilizers.

44. The Bench also considered as to what extent fertilizers' customers ("farmers") will be in a position to counter the increase in market power that a merger would otherwise be likely to create. In case of proposed merger, the manufacturer/importer sells product to distributors who then sell it to the farmers (the end users). Apparently, there is no countervailing power of the farmers in the market. The fertilizer companies give fertilizers to distributors who then sell it to farmers. However, the distribution network in case of Merger Parties is not exclusive and fertilizer generally is not used as raw material in any other industry.

45. In our considered view, the principal concern in the proposed merger situation is *whether the merger situation will result in the removal of an effective competitor*. To address this critical issue, the Bench would look into the following aspects; relevant market(s) and its characteristics, existing market shares of the merging parties, post-merger market shares, present state of competition between Merger Parties in view of the parties particular background and peculiar circumstances , and the likely effects of the proposed transaction on competition.

The relevant market and its characteristics

46. The reportable **product market** in this case has been identified as "Production and Sale of Fertilizers – UREA, NP, CAN and DAP" and the relevant **geographic market** is "Pakistan". The characteristics of the market has discussed in the details in Para 33 (above) of this Order.

Existing market shares of Merger Parties

47. Based on the information available with the Commission, FFCL has a market share of 44.87% in the UREA segment while PFL has only %. For the DAP segment, FFCL

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holds % stake while PFL has %. Further, the Merger Parties are currently the only providers of CAN and NP fertilizers in Pakistan. FFCL (post-merger surviving entity) has present market shares of % and % in CAN and NP respectively whereas PFL (post-merger defunct entity) has present market shares of % and % in CAN and NP respectively.

Post-merger market shares of merging parties

48. Post-transaction, the market shares of PFL will be absorbed into FFCL. Hence, the post-merger market shares of FFCL (surviving entity) in the relevant markets would be % in UREA, % in DAP and % in both CAN and NP.

49. Its means that FFCL will further strengthen its present dominant position in the relevant market of CAN and NP and post-transaction, the FFCL will be the sole provider.

50. It was informed that although Merger Parties are the sole suppliers of CAN and NP products, however, in the overall fertilizer market, the share of CAN is approx. % and NP approx. %. UREA accounts for ~ % of the country's total fertilizer offtake followed by DAP (~ %). The remaining fertilizers constitute the rest. Therefore, post-merger FFCL stake in overall fertilizers market would be approximately % (*i.e.*, % in UREA, % in DAP, % in CAN and % in NP)

Present state of competition between Merger Parties

51. The crucial question before the Bench is to assess the level of competition between Merger Parties keeping in view the facts and circumstances, in particular, their formation, investments, present corporate structure, board composition and the ability to exercise influence on each other's strategic business decisions. It is obvious from the information provided that both Merger Parties are a joint venture of AHG and FG.

52. AHG is mainly active in cement, steel, real-estate fertilizer, energy and financial services. The key sponsor of AHG is Mr. Arif Habib (**"AH"**) his descendants and companies with their majority investments namely Arif Habib Equity (Pvt) Limited ("**AHEL**"), % owned by AH and Arif Habib Corporation Limited ("**AHCL**"), listed entity, % owned by Mr. Arif Habib. AHG holds % shares in PFL (i.e., AHCL holds % and AH holds %). AHG holds % shares in FFCL (*i.e.*, AHCL holds %, AH holds %, and his two sons Mr. Samad Habib and Mr. Kashif Habib hold % and % respectively and Arif Habib Limited, a subsidiary of AHCL, holds %). Further % of the board members of PFL belongs to AHG (*i.e.*, four out of total eight board members). % of the board members of FFCL belongs to AHG (i.e two out of seven board members). It is important to note that two AHG board members are common on both Merger Parties board of directors. Further it was informed that AHG has participated as investment partner in both joint venture (i.e., formation of both Merger Parties).

53. It was submitted that FG is mainly active in fertilizer, energy, and textile sectors. The key sponsors of FG are three brothers namely Mr. Fawad Ahmed Mukhtar, Mr. Fazal Ahmed Sheikh, and Mr. Faisal Ahmed Mukhtar (herein after referred as **sponsors**), their family members, and companies with their majority investments. FG holds % shares in PFL (*i.e.*, sponsors hold %, their family member and relatives hold 13.18% and three group companies jointly hold %). FG holds % shares in FFCL (i.e., sponsor hold %, their family member and relatives hold % and eight group companies jointly hold %). A further % of the board members of

board of directors. The Bench was also informed that FG has participated as investment and technical partner in both joint venture (*i.e.*, formation of both Merger Parties).

Role of AHG & FG in formation of FFCL and FPL

a. It was informed that PFL was privatized on July 14, 2005, at a cost of Rs. 14.125 billion. It was acquired by a consortium of AHG and FG. Subsequently, in 2006, both groups entered into another joint venture in FFCL which was incorporated earlier by FG group on December 24, 2003, and started operations in 2006. It means that both of merging parties are joint ventures of AHG and FG Group where FG is also managing operational matters of both merging parties whereas Arif Habib Group contributed as investor.

Shareholding, board structure of FFCL & PFL

b. Regarding the shareholding structure, the Bench was informed that AHG holds % and % shares in PFL and FFCL respectively whereas FG holds % and % shares in PFL and FFCL respectively. The shareholding pattern indicates that both groups jointly hold control over both Merger Parties. As far as composition of board of directors is concerned, it was noted that PFL board consists of eight directors and both groups have 50% representation on PFL's board. In case of FFCL, board of directors consists of seven directors, out of which two are independent, three [%] belongs to FG group whereas two [%] belongs to AHG. It is also pertinent to mention that total five directors of both groups are common. It means that the control of board of directors also rest with these two groups.

c. As far as legal relationship under corporate law is concerned both Merger Parties are associate due to common directorship and 20% shareholding (directly and indirectly) of AH in both companies as defined under section 2(1) 4 of the Companies Act, 2017.

Management of day-to-day affairs of both companies

d. It was also informed that both Merger Parties have same chief executive officer ("CEO") who is representative of FG. It is necessary to mention at this stage the statutory role of CEO under section 2(1) 4 of the companies Act, 2017, CEO is an individual, subject to control and directions of the board, is entrusted with whole, or substantially whole, of the powers of management of affairs of the company. Therefore, presence of same CEO who is also sponsor of FG, in both Merger Parties is also an indication of decisive influence.

e. It was also informed that that both companies are using "SARSABZ" and "BUBBER SHER" brand to market their products through common marketing, sales, distribution and dealers which corresponds to unified goals and strategies.

f. Further, FFCL, as disclosed in its financial statements for the year ended December 31, 2022 (director's report, page 36), provides services relating to sale and distribution of the fertilizers and for the collection of sale proceeds of the products from the customers of PFL under the aforesaid toll manufacturing agreement. As per the terms of the arrangement for providing such services, the Company is entitled to retain/use the sale proceeds during the retention period for its own benefit and is also entitled to use any profits earned on such proceeds.

g. FFCL also recognizes revenue earned from sales of fertilizers manufactured by PFL under the toll manufacturing agreement. The revenue includes profit earned by

FFCL under toll manufacturing agreement. The revenue recognized by FFCL under toll manufacturing agreement is the cost incurred under the same agreement by PFL. As per note 28 of the FFCL's FS for the year December 31, 2022, the total revenue of FFCL was Rs. out of which % earned through toll manufacturing agreement.

Toll manufacturing agreement and dependency of PFL on FFCL

h. In this regard, Merger Parties informed that FFCL currently has three plants located in Sadiqabad, Sheikhupura, and Multan. It is important to note that Multan plant was acquired by FFCL from PFL on September 01, 2020. In its FY2022 financial statements, FFCL disclosed this acquisition in following manner "Acquisition of production and operating plants from an associated company, resulting in 2.57 million MT combined production capacity of three plants" that FFCL has achieved 2.57 MT its combined production facility now the plant is operated under toll manufacturing agreement dated March 29, 2021.

Natural Gas Allocation to PFL plant belongs to FFCL

i. It was informed that the PFL's Multan plant remained non-operational for consecutive [786] days during the period from November 2017 to December 2019. It was also informed that in 2018, Economic Coordination Committee ("**ECC**") allocated 57 MMCFD gas for PFL from Mari Petroleum Company Limited ("MPCL"), for this purpose PFL was required to lay down 24 km gas pipeline. This project was completed at the cost of Rs. 10 billion and financed by FCCL and the first gas molecule was transferred through this pipeline in January 2020. It means that production of fertilizer at Multan plant is already largely dependent on FFCL as FFCL own that plant and it has made huge investments to laydown pipeline whereas PFL has gas allocation which is primary raw material.

Proposed transaction and its likely effect on competition

j. In the light of above deliberation and detailed assessment of information provided, the Bench is of the view that the information provided cumulatively suggests that there cannot be any lessening of competition as both groups have decisive influence over both the Merger Parties. Both the companies are being managed by common CEO, the same brandings and common distribution network, there is dependency of PFL operations on FFCL's assets and finances as well as profit sharing by PFL to FFCL on its production. While the product lines of NP and CAN are being offered by two separate companies, the ultimate controlling groups of these entities are same, therefore, the AHG and FG are the sole producers of the NP & CAN fertilizers and both groups have decisive influence over the operations of Merger Parties. Therefore, post-merger scenario will simply see the Merger Parties consolidated their operation on paper in the form of the surviving entity (FFCL) and post-merger risk of elimination of competitive constraints does not arise.

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54. Competition law is concerned with the behaviour of an undertaking and conduct between undertakings that would ordinarily have had pursued an economic aim that is separate from that of its competitors (and would thereby have been in competition with each other), which is not the case in the instant matter. The proposed transaction and the consummated transaction are hereby authorized under Section 31(1)(d)(i) of the Act.

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55. This Order shall also dispose of the proceedings against the Merger Parties under Section 11(12) of the Act, as discussed in Para 19-20 (above) of the Order.

56. In the subject transaction, matters which may fall outside the scope of the Commission's purview, remain subject to applicable laws.

57. It is so ordered.

(Ms. Rahat Kaunain Hassan)
Chairperson

(Mr. Ahmed Qadir)
Director General

SEAL OF THE COMPETITION COMMISSION OF PAKISTAN ISLAMABAD

Islamabad the July 13th **, 2023.**