



BEFORE THE
COMPETITION COMMISSION OF PAKISTAN

IN THE MATTER OF
SHOW CAUSE NOTICE ISSUED TO

M/S. PAKISTAN FLOUR MILLS ASSOCIATION (PFMA)
(F. No: 89/PFMA/C&TA/CCP/2016)

Date(s) of Hearing: 29-03-2018
20-08-2019
29-08-2019

Commission:

Ms. Vadiyya Khalil
Chairperson

Dr. Shahzad Ansar
Member

Dr. Muhammad Saleem
Member

Present:

Noman A. Farooqi
Director General (Legal)

Assisted by:

Ms. Shazia Ashraf
Sr. Joint Director (Exemptions)

Ms. Laila Leghari
Assistant Director (Legal)

Ms. Aish K. Khan
Management Executive (Exemptions)

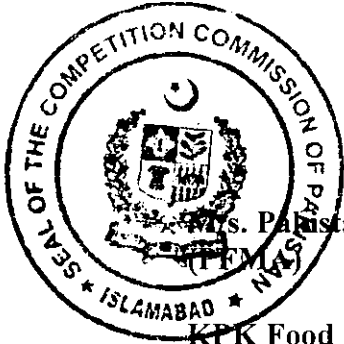
Mr. Hamood ur Rehman Awan
Advocate Supreme Court

Mr. Abdul Jalil
Director Food

Mr. Zahid Qaisar
Director Purchases

Nemo

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M/S. Pakistan Flour Mills Association

KPK Food Department

Punjab Food Department

Baluchistan Food Department

Sindh Food Department

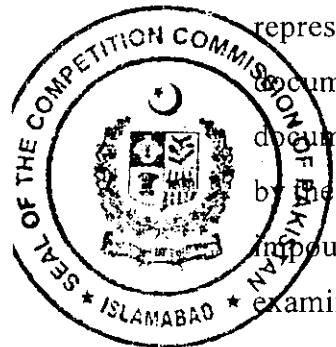
ORDER

1. This order shall dispose of the proceedings arising out of Show Cause Notice No. 12/2018 dated 22 February 2018 (the 'SCN'), issued by the Competition Commission of Pakistan (the 'Commission') under Section 30 of the Competition Act, 2010 (the 'Act'), to Pakistan Flour Mills Association (the 'PFMA' or 'Respondent'), for *prima facie* violation of Section 4 of the Act.

FACTUAL BACKGROUND

A. Enquiry and Show Cause Notice:

2. PFMA is a legal representative trade body of the flour mills. Previously, it was registered under Section 26 of the Companies Act, 1913 (VII of 1913) vide No. 42LR on 26 January 1961 by the Assistant Registrar, Joint Stock Companies, Lahore. Simultaneously, Ministry of Commerce issued them a license bearing No. 59 on 19th September 1961. Subsequent to the promulgation of Trade Organizations Ordinance, 2007 (Ordinance No. XXXI OF 2007), PFMA applied and was granted license No. 111 dated 03 November 2008 under the new Ordinance. PFMA is also affiliated with the Federation of Pakistan Chambers of Commerce Industry, Karachi.
3. The Commission took notice of the news items published in *daily Dawn* dated 28 June 2015, 4 October 2015 and 8 June 2016, suggesting an unusual price hike in the prices of '*wheat flour*' or '*wheat atta*' across Pakistan. After an initial probe, the Commission, in pursuance of Section 34 of the Act, authorized an inspection of the premises of PFMA. The search and inspection/dawn raid on the premises of PFMA was carried out on 4 October 2016 and documents were impounded from the premises of PFMA.
4. In addition to the search & inspection/ dawn raid, the Commission also carried out research on the wheat flour milling industry. A meeting was also held with the representatives of PFMA on 13 December 2016. PFMA submitted further documents and notifications of Punjab Food Department. In order to analyze the documents and examine the actual/possible/suspected/alleged violations of the Act by the PFMA, the Commission constituted an enquiry. The documents and materials impounded at PFMA premises and those subsequently submitted by PFMA were examined by the enquiry committee. The enquiry was concluded vide Enquiry



Report dated 01 August 2017 (the 'Enquiry Report'). For ease of reference, the conclusions of the Enquiry Report are reproduced herein below:

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.*

The Enquiry Report, based on the above conclusions recommended initiation of proceedings under Section 30 of the Act for *prima facie* violation of Section 4 of the Act, in the public interest. The Commission, after considering the conclusions and the recommendations of the Enquiry Report, initiated the proceedings under



Section 30 of the Act for *prima facie* violation of Section 4 of the Act by issuing the SCN to PFM. The SCN, for ease of reference, in succinct is reproduced herein below:

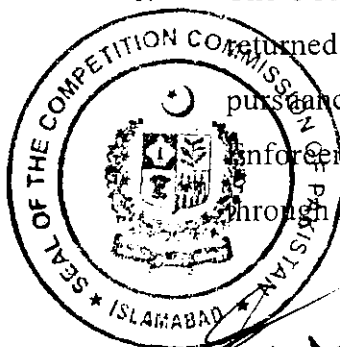
5. *WHEREAS, in terms of the Enquiry Report in general and paragraph 9.2 in specific, PFMA has been engaged in adopting decisions, whereby the prices of flour has been fixed and is also engaged in communicating the decisions with respect to increase in the flour prices by certain percentages/margins to its member undertaking for compliance, which is in, prima facie, contravention of clause (a) of subsection (2) of Section 4 of the Act;*

6. *WHEREAS, in terms of the Enquiry Report in general and paragraph 9.4 to 9.8 in specific, PFMA has been engaged in announcing and communicating, present and/or future retail and ex-mill flour prices through press releases to the public and local authorities and its member undertakings in prima facie contravention of clause (a) of subsection (2) of Section 4 of the Act;*

7. *WHEREAS, in terms of the Enquiry Report in general and paragraph 9.9 and 10.1 in specific, the Executive Committee of PFMA has regularly been meeting, exchanging commercially sensitive information and strategic data on flour prices and allocation of quantities between 2012 and 2014 and acting as a medium to facilitate coordination among its member undertakings, which has the object and effect of preventing, restricting and reducing free competition in the relevant market in prima facie violation of clause (a) and (c) of subsection (2) of Section 4 of the Act;*

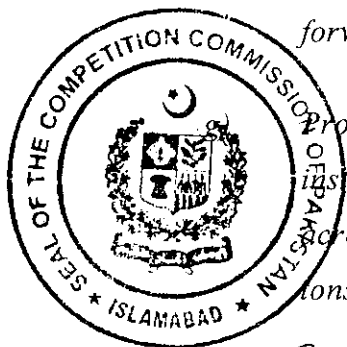
B. Written Reply to the SCN and Hearings:

6. The SCN was issued on 22 February 2018 through courier, however, courier/SCN returned undelivered on 28 February 2018. Thereafter, the Office of Registrar, in pursuance of Regulation 46(1)(a) of the Competition Commission (General Enforcement) Regulations, 2007 (the 'GE Regulations') got the SCN delivered through Process Server of the Commission on 06 March 2018.



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7. On first date of hearing i.e. 29 March 2018, the authorized representative requested for adjournment as the counsel has been recently engaged. The adjournment was allowed with the direction to the representatives of PFMA to file written reply to the SCN within a period of Seven (7) days which was extended for Ten (10) days at the request of the PFMA. The bench also directed to file the list of active Members of the Association along with the addresses.
8. PFMA filed written reply to the SCN on 09 April 2018, however, the list of active Members was not filed. PFMA was again directed to file the list of active Members vide letter dated 27 April 2018. The written Reply, for ease of reference, in brief is reproduced herein below:
 - a) *PFMA is not an undertaking as defined in Competition Act, 2010; since it is not in any way engaged directly or indirectly in the production, supply or distribution of goods or provision of services.*
 - b) *PFMA did not enter into any agreement prohibited under Section 4 of the Competition Act, 2010.*
 - c) *PFMA did not fix the purchase or selling price of wheat flour and PFMA was not involved in any other restrictive trading conditions.*
 - d) *Enquiry has been held in violation of basic principle of Article 10-A of constitution.*
 - e) *The Enquiry Committee failed to summon/associate the regulator of PFMA i.e. Provincial Governments/Food Departments.*
 - f) *Findings of the Enquiry Committee are based on text messages. Infact prices are fixed/regulated by Provincial Governments and PFMA only forwards this information through SMS to all its Members.*



Provincial Food Department set a maximum retail price of flour. The installed capacity of Flour Mills for production per day is 280,000 tons across Pakistan, whereas the daily demand of Wheat Flour is 40,000 tons.

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h) *The SCN fails to disclose any prohibited agreement in terms of Section 4 of the Act or any restrictive trading conditions imposed by PFMA on its member Flour Mills, or any details about the price control of wheat flour.*

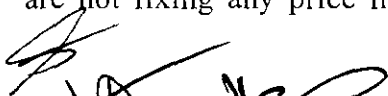
i) *SCN is not a casual tool to fish an enquiry against an undertaking. Accordingly, SCN was prayed to be withdrawn.*

9. A reminder was issued to PFMA to file the list of active Member Mills on 14 May 2018. PFMA vide its Counsel's letter dated 04 June 2018 filed a list of active PFMA Members.

10. Hearing was scheduled for 11 December 2018 vide notice dated 29 November 2018, but on the request of the PFMA Counsel the matter was adjourned for a date in office. Hearing was again scheduled for 21 March 2019 vide notice dated 11 March 2019 but the PFMA Counsel requested for an adjournment on the pretext of strike called by Pakistan Bar Council. The matter was again fixed for hearing on 30 July 2019 vide notice dated 08 July 2019 but was adjourned.

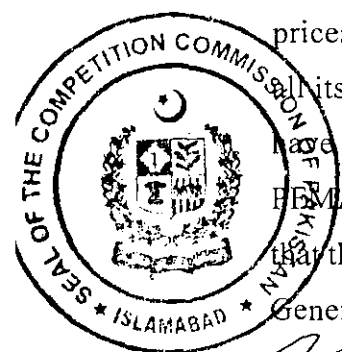
11. The matter was again fixed for hearing on 20 August 2019. The authorized representative of PFMA requested for adjournment due to prior engagement of their lead counsel before Honorable Supreme Court of Pakistan. He also presented a cause list along with his request for an adjournment. The hearing was adjourned with the direction to the Registrar to intimate PFMA about the next date of hearing i.e. 29 August 2019, with a caution that in case of non-appearance through an authorized representative, we shall be constrained to proceed *ex-parte* in pursuance of Regulation 26(2)(e) of the GE Regulations. The Registrar was also directed to issue notices to all the Provincial Food Departments for the next date of hearing requiring them to produce the relevant notifications issued between 2013 till issuance of SCN. Lastly, the hearing was fixed for 29 August 2019. The counsel for PFMA along with the representative of Punjab Food Department and KPK Food Departments appeared before us. The notices were also served to the Sindh Food Department and Baluchistan Food Department but no one appeared on behalf of them.

On 29 August 2019 the Counsel appearing on behalf of PFMA submitted that they are not fixing any price in fact they are only communicating the price which is



notified by the Government. He also submitted that the material available on the record, which is not questioned, clearly provides that they are merely acting as a forum to exchange the information *vis-à-vis* the price determined by the Government. He further made submissions which are already highlighted and summarized in their written reply. The representative of Punjab Food Department submitted that the Government of Punjab through the Food Department regulates the wheat in pursuance of the provisions of the Foodstuff Control Act, 1958. He placed on record various notifications from 2009 till 2016 whereby the issue price of wheat to functional flour mills, the maximum ex-mill price of wheat flour and the maximum retail price of wheat flour is determined and communicated to various stake holders.

13. The Director General (Legal) in attendance highlighted that the Counsel appearing on behalf of PFMA has accepted that the forum of association was used to communicate the prices of the Wheat Flour to all the functional flour mills. He referred to a US Supreme Court decision of **United States vs. Socony-Vacuum Oil Co., 310 U.S. 150 (1940)** and submitted that market's price-setting mechanism is the central nervous system of the economy and it was held by the US Supreme Court in the afore-referred decision that any agreement among competitors having the purpose and effect of raising, depressing, fixing, pegging or stabilizing prices was unlawful *per se*. He placed reliance on **Catalano, 446 U.S. at 648, Cement Inst., 333 U.S. 683, Sugar Inst., vs. United States 297 U.S. 533 (1936), and Plymouth Dealers Ass' n., 279 F.2d at 132 and Arizona vs. Maricopa Cty. Med. Soc'y 457 U.S. 332 (1982)** and submitted that the *per se* rule has been applied to a variety of agreements among association members that indirectly controlled or affects prices, including agreements to use standardized method of quoting prices, to adhere to previously announced prices, to limit price, to use uniform list prices as a starting point for negotiation with purchasers. The *per se* rule has also been applied to agreements amongst competitors that fixed maximum prices as well as those fixed minimum prices. Director General (Legal) submitted that the PFMA is fixing the prices of Wheat Flour and maintaining the uniform prices by circulating the price to its members. This is a decision which is considered to be one which will always have an anti-competitive object. No document on the record has been denied by PFMA. Rather, in a manner they have taken a state compulsion defense indirectly, that the prices determined by the Government were circulated by them. The Director General (Legal) placed reliance on one of our fairly recent orders: **Order dated 20**



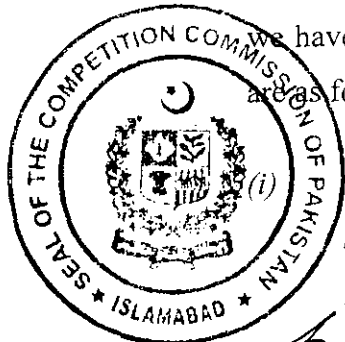
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June 2019 in the matter of Show Cause Notice issued to Oil Companies Advisory Council and reported as 2019 CLD 1285 and submitted that the plea taken by PFMA does not fulfill the criteria laid down in the said judgment of which inter alia are (i) that the state must have made certain conduct compulsory: mere persuasion is insufficient; (ii) the defense is available only where there is a legal basis for this compulsion; and (iii) there must be no latitude at all for individual choice as to the implementation of the governmental policy. He explained that the Government has only determined the maximum limit, and the Flour Mills are at liberty not to cross that threshold and may sell their product i.e. Wheat Flour at any price to the consumers. However, PFMA in the instant matter is not requiring the Flour Mills to comply with Government notified prices, rather, they are encouraging uniform prices across its members and that too at a higher or maximum level. Hence, they cannot take advantage of state compulsion test as well. He referred to Article 113 of the Qanoon-e-Shahadat Order, 1984 and submitted that PFMA has made admissions during the hearing and while deciding the instant matter their admissions must be considered, in particular, the communication of prices/ fixing of prices uniformly at certain levels in addition to other violation which have not been denied. He submitted that the Bench may consider imposing the maximum penalty on PFMA for playing with the central nervous system of the economy by setting the wheat flour prices which is a basic commodity used by every person in their daily use. Director General (Legal) also submitted that in terms of plain and unambiguous language of Section 2(1)(q) of the Act, if the association is that of undertakings then it is considered an undertaking. Admittedly all the Members of PFMA are engaged in production of wheat flour and its subsequent sale to the consumers; hence are undertakings, therefore, PFMA is an association of undertakings.

ISSUES AND ANALYSIS

14. Based on the material available on the record and the submissions made by the Parties, we have identified certain issue which require deliberation in the instant matter, they are as follows:

(i) *Whether the Enquiry is conducted in violation of principles of natural justice or in particular Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973?*



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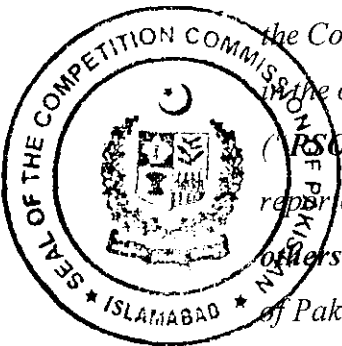
- (ii) Whether PFMA is an association of undertakings in terms of Section 2(1) (q) of the Act?
- (iii) Whether PFMA has violated the provisions of Section 4 of the Act?

15. We shall now examine the aforementioned issues in light of the written reply filed by the Respondent and the submissions made by the Parties and the Director General (Legal), in seriatim.

ISSUE NO. (I): Whether the Enquiry is conducted in violation of principles of natural justice or in particular Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973?

16. PFMA's Counsel has objected in its written reply as well as during the hearing that the Enquiry Report, the SCN, and the instant proceedings are unilateral and unfair violating the principles of natural justice and the fair/ due process of law in terms of Article 10A of the Constitution of Islamic Republic of Pakistan, 1973 (the '**Constitution**'). It has also been contended that the Enquiry Committee during the course of enquiry failed to summon or invite the comments of PFMA's regulator i.e. the Provincial Food Departments, therefore, the enquiry process and the Enquiry Report and the instant proceedings cannot sustain in the eyes of law.
17. Earlier, the Commission in one of its Orders i.e. **Order dated 29th December 2017 passed by the Commission in the matter of Show Cause Notice issued to Ms/ Vision Developers (Pvt.) Limited, reported as 2018 CLD 350**, has deliberated on somewhat similar issue. We deem it appropriate to reproduce the relevant passages from the aforesaid Order, which is as follows:

38. In regard to the principles of natural justice and due process of law, the Commission has deliberated on in detail, in **JJVL-LPG Order** and **the order of Pakistan State Oil Company Limited dated 29.11.2016 (PSO Order)** for deceptive marketing practices. In the case reported as **2006 PTD 2502**, titled **Commissioner of Income Tax and others Vs. M/s Media Network and others**, the August Supreme Court of Pakistan has observed that



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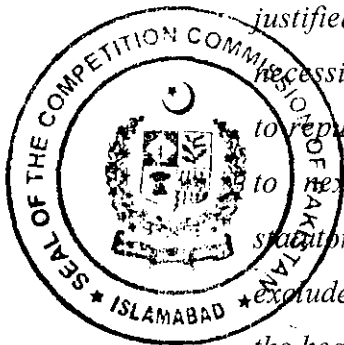
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“the natural justice is not cast in a rigid mould and that depending on the facts and circumstances of each case, there is not a mandatory requirement of natural justice that in every case the other side must be given a notice before preliminary steps are taken.”

39. Thus, as per the Honourable Supreme Court, it would suffice if the reasonable opportunity of hearing is granted to a person before an adverse action or order is made against him. Support can also be gleaned from the following precedents from the United Kingdom and the United States:

a). In *Rees and others* [1994] 1 All E.R. 833 at page 842-845, it was held by the Privy Council that

“there were many situations in which natural justice did not require that a person must be told of the complaint made against him and given a chance to answer them at a particular stage in question...Essential features leading the Courts to that conclusion had included the fact that the investigation was purely preliminary; that there will be a full chance adequately to deal with the complaint later; that the making of the enquiry without observing the audi alteram partem maxim was justified by urgency or administrative necessity; that no penalty or serious damage to reputation was inflicted by the proceeding to next stage without hearing, that the statutory scheme purely constructed and excluded such as right to know and to reply at the hearing stage.”



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b). *In Regina Vs. Saskatchewan College of Physicians and Surgeons [1996] 58 D.L.R. (2nd) 622.52*, the Court held that:

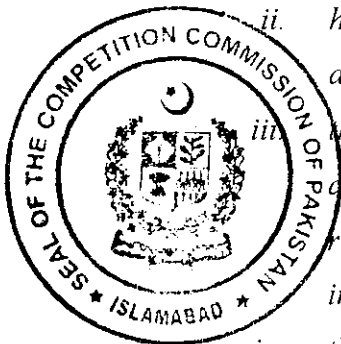
“the preliminary enquiry committee had no power to decide whether a doctor had been guilty of misconduct; it had no power to affect any of his legal rights in any way whatsoever, and it had no power to impose any penalty or obligation upon him. Hence, the requirements of natural justice did not apply.”

c). *In Pary Jones Vs. Law Society and others [1969] 1 Ch Division 1* at pp. 8 and 10, held by the Court of Appeal that:

“Where the only [e]nquiry was as to whether there was prima facie evidence, natural justice did not require that the party should be given notice of it.”

d). In regard to due process or procedural fairness, reference is made to the case reported as *1998 SCMR 1863* titled *Aftab Shaban Mirani Vs. President of Pakistan*, wherein the Honourable Supreme Court of Pakistan has summarized the concept as follows:

- i. a person shall have notice of proceedings which affect his rights.
- ii. he shall be given reasonable opportunity to defend.
- iii. that the Tribunal or Court before which his rights are adjudicated is so constituted as to give reasonable assurance of his honesty and impartiality.
- iv. that it is a Court of competent jurisdiction.



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Above are the basic requirements of the doctrine of “due process of law” which is enshrined, inter alia, in Article 4 of the Constitution. It is intrinsically linked to the right to have access to justice which is a fundamental right. This right, inter alia, includes the right to have a fair and proper trial and a right to have an impartial Court or Tribunal in terms of Article 10A of the Constitution. A person cannot be said to have given a fair and proper trial unless he is provided a reasonable opportunity to defend the allegations made against him (New Jubilee Insurance Company Vs. National Bank of Pakistan, PLD 1999 Supreme Court 1126).

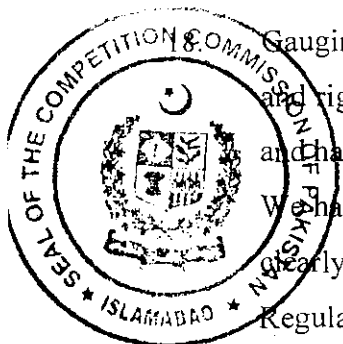
e). *In the context of enquiry process, the Commission in its JJVL-LPG Order observed that:*

“Traditional notions of due process do not attach in adjudicative, fact-finding investigation.” [U.S. Georator Corp Vs. Equal Employment Opportunity Commission, 590 F. 2d (4th Cir. 1979)]

f). *On the same point, the Commission in its JJVL-LPG Order has also noted that,*

“...the full panoply of due process safeguards need not necessarily be afforded to the individual during the investigative, as opposed to adjudicative, phase of an administration of justice.” [U.S. Tolbert Vs. McGriff, 434 F. Supp. 682 (M.D. Ala. 1976)]

Gauging from the above precedents, we are of the firm view that the right to fair trial and right of hearing or opportunity of hearing are cardinal principles of natural justice and have to be read into every statute, even if they are not provided specifically therein. We have also reviewed the provisions of the Act as well as the GE Regulations, which clearly provides for an opportunity of hearing under Section 30 of the Act and in Regulations 26 of the GE Regulations. In the instant matter, it is on record that the



representatives of PFMA met with the Enquiry Committee and various documents were provided by them during the course of enquiry, which were considered and have been brought on record by the Enquiry Committee.

19. We also would like to refer to the **Order dated 16th March 2010 in the matter of Appeal filed by M/s Fecto Belarus Tractors (Pvt.) Limited**, wherein it was held:

11. We must make a distinction that when an enquiry results into initiation of proceedings under Section 30 of the Ordinance, the Ordinance statutorily provides an opportunity of hearing; hence an opportunity of hearing during the enquiry is not mandatory. (emphasis added)

20. With reference to the objection of PFMA that the regulator i.e. Provincial Food Departments were not engaged in the process of enquiry, we note that it is nowhere alleged in the Enquiry Report or stated by PFMA that their conduct was actually influenced by the Provincial Food Department, hence, the involvement of Provincial Food Departments was not required or mandatory. Despite the foregoing, we summoned the representatives of Provincial Food Departments in the instant matter and any or all submissions *vis-à-vis* the violation of Section 4 of the Act would be considered while disposing off the matter.

21. It is on the record that the Search and Inspection/ Dawn Raid of the PFMA premises was carried out on 4 October 2016 and on the request of PFMA, a meeting was also arranged *inter se* the investigation team and the PFMA representatives on 13 December 2016. In addition to the above, the enquiry committee also carried out the research based upon which the various documents which *inter alia* include the notifications issued by the Provincial Food Departments and the press releases highlighting statements made by the PFMA office bearers at different points in time were also collected. During the enquiry, the enquiry committee regularly interacted with the representatives of PFMA in order to seek clarifications of the documents available on the record.

It is deemed it appropriate to review the timelines of the matter and assess whether any request of PFMA was turned down or they were not given sufficient opportunity which is fair and reasonable. The SCN in the matter was issued on 22 February 2018 through courier, however, courier/SCN returned undelivered on 28 February 2018. Thereafter, the Office of Registrar, got the SCN delivered through Process Server



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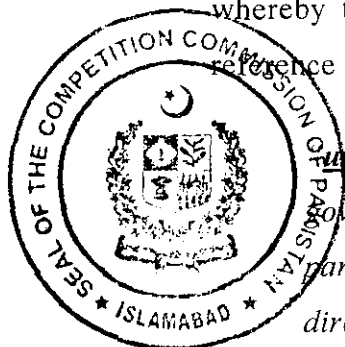
of the Commission on 06 March 2018 in accordance with law. First hearing in the matter was scheduled for 29 March 2018, and on the request of PFMA, hearing in the matter was adjourned. In addition, PFMA was also given an opportunity to file written reply, although the prescribed limitation to file reply had expired. Second hearing in the matter was scheduled for 11 December 2018, but again on the request of the PFMA the matter was adjourned. Hearing again was fixed for 21 March 2019 and adjourned on the request of PFMA. The matter was again fixed for hearing on 30 July 2019 and adjourned. Hearing was rescheduled for 20 August 2019, however, again on the request of PFMA the hearing was adjourned and rescheduled for 29 August 2019. In the final hearing, apart from representatives of PFMA the representatives of Punjab and KPK Food Department also attended the hearing and made submissions before us.

23. From the above chronology, we are of the firm view that the enquiry committee during the enquiry proceedings and this Bench during the proceedings under Section 30 of the Act have fulfilled the requirements of due process and natural justice principle in light of the afore-cited provisions of the Constitution and the Act as well as the established case law on the subject. Therefore, the objection of PFMA having no force or backing of evidence is turned down.

ISSUE NO. (ii): Whether PFMA is an association of undertakings in terms of Section 2(1) (q) of the Act?

24. Another objection raised by PFMA through their written reply as well as oral submissions is that the Act is applicable to ‘undertakings’ and PFMA is neither an ‘*undertaking*’ nor an ‘*association of undertakings*’, hence, the SCN issued in the matter may be recalled and withdrawn.

25. We deem it appropriate to refer to the provisions of Section 2(1)(q) of the Act, whereby the legislature has defined the term ‘*undertaking*’, which for ease of reference is reproduced herein below:

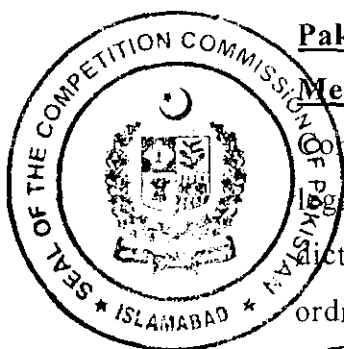


“undertaking” means any natural or legal person (emphasis added),
governmental body including a regulatory authority, body corporate,
partnership, association, trust or other entity in any way engaged,
directly or indirectly, in the production, supply, distribution of goods

or provision or control of services and shall include an association of undertakings (emphasis added);

26. While addressing the objection raised by PFMA and giving our findings on whether PFMA is an undertaking or not, we consider it appropriate to review all the Orders of the Commission whereby this aspect i.e. 'association of undertakings' is discussed and decided.

- a) **Order dated 11 March 2009 passed in the matter of appeal filed by Institute of Chartered Accountants of Pakistan**, reported as **2009 CLD 638**, wherein the Commission after reviewing the dictionary meaning of the term 'association' and the kind of functions performed by ICAP, CCP termed ICAP as an association of undertakings.
- b) **Order dated 18 March 2009 in the matter of appeal filed by M/s Karachi Stock Exchange (Guarantee) Limited the Commission**, reported as **2010 CLD 454**, the Appellate Bench while referring to the earlier Order reported as 2009 CLD 638, held that stock exchange include offering a platform used for maintaining or providing a market place through brokers of a stock exchange who are its members. As per the Securities and Exchange Ordinance, 1969: "Broker" means any person engaged in the business of effecting transactions in securities for the account of others. Hence, Karachi Stock Exchange (G) Ltd. was held to be an association of undertakings.
- c) **Order dated 10 January 2013 in the matter of Show Cause Notice issued to Institute of Chartered Accountant of Pakistan**, reported as **2013 CLD 1184**, wherein the Commission after reviewing the dictionary meaning of the term 'association' and the kind of functions performed by ICAP, CCP termed ICAP as an association of undertakings.
- d) **Order dated 10 April 2015 in the matter of Show Cause Notice issued to Pakistan Automotive Manufacturers & Dealers Association and its Member undertakings**, reported as **2016 CLD 289**, wherein the Commission while referring to 2009 CLD 638, held that in the absence of a legal definition of the term 'association' in any statute, it is the ordinary dictionary meaning of the word that is referred to. It further provided that an ordinary meaning of association includes 'a gathering of people for a



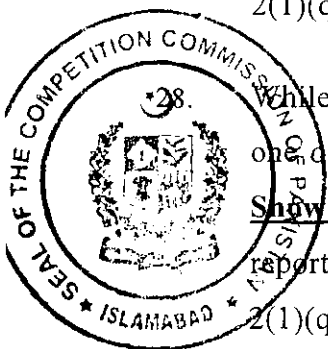
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common purpose'. The form and purpose of such a gathering is not relevant for the purposes of the Act. Accordingly, it was held that on the basis of the evidence available, the PAMADA falls clearly under the de jure definition of 'association of undertakings'.

- e) **Order dated 20 April 2016 in the matter of Show Cause Notice issued to Pakistan Engineering Council**, reported as **2017 CLD 229**, the Commission, while discussing the functions and powers of Pakistan Engineering Council (the 'PEC') under the Pakistan Engineering Council Act, 1976 and the earlier Order reported as 2009 CLD 638, held that *the actions under review does not fall within the purview of public functions and the this particular aspects makes PEC an association of undertaking in terms of Section 2(1)(q) of the Act.*
- f) **Order dated 20 June 2019 in the matter of Show Cause Notice issued to Oil Companies Advisory Council (OCAC)**, reported as **2019 CLD 1285**, the Commission while placing reliance on 2016 CLD 289, held that OCAC was an association of undertakings.
- g) **Order dated 6 August 2019 in the matter of Show Cause Notice issued to Pharma Bureau**, reported as **2019 CLD 1152**, while placing reliance on 2016 CLD 289, a similar view was taken.

27. The crux of the above precedents is that term 'association' is not defined anywhere and the ordinary dictionary meanings would be taken by Commission while interpreting the term. Accordingly, it has been held in all the above Orders that the word 'association' used in Section 2(1)(q) of the Act, any association of natural or legal person engaged in some form of economic activity are considered 'association of undertakings'. After reviewing all the Orders on the subject, we deem it appropriate to clarify the concept of 'association of undertaking' in terms of Section 2(1)(q) of the Act.

While interpreting the provisions of Section 2(1)(q) of the Act, we are guided by one of our earlier orders i.e. **Order dated 15 December 2017, in the matter of Show Cause Notice issued to Utility Stores Corporation of Pakistan (Pvt.) Ltd.**, reported as **2018 CLD 292**, wherein while interpreting the provisions of Section 2(1)(q) of the Act, the Commission held:

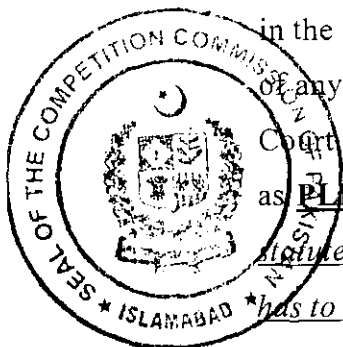


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28. While interpreting the definition of an 'undertaking' we are guided by the judgment of the August Supreme Court reported as Zahid Iqbal vs. Hafiz Muhammad Adnan and others, 2016 SCMR 430, wherein while interpreting the provisions of section 27 of the Punjab Local Government Act, 2013, it was held that "Courts do not legislate but interpret the statutes according to their ordinary and plain meaning and do not import and or supply words or provisions from any other law, no matter how laudable and desirable it may it may appeal to be". We are also guided by the a judgment of the Indian Supreme Court reported as London Rubber Co. Ltd., vs. Durex Products Limited, AIR 1963 SC 1881, wherein it was observed that "the duty of the Court is to give full effect to the language used by the Legislature. It has also no power either to give the language a wider or narrower meaning than the literal one, unless the other provisions of the Act compel it to give such other meaning." With the foregoing in view, we now proceed with interpreting the definition of 'undertaking' under clause (q) of subsection (1) of Section 2 of the Act, in the subsequent paragraphs.

29. It is a fact that the term 'association' or 'association of undertakings' is not defined in the definition clause of the Act. In the definition clause of 'undertaking' the legislature in all its wisdom has referred to almost every type of entity there can be. However, the only condition placed upon by the legislature for any entity to be an undertaking is that it must be involved or engaged in the activity of provision of goods or services. We note that the legislature has used the word 'association' in Section 2(1)(q) of the Act, however, at the same time in the same clause the legislature in all its wisdom has also used the words 'association of undertakings' independent of the earlier use.

30. In all the previous Orders of the Commission referred in Para 26 above, the fact that in the same provision two different words are used i.e. (i) '*association*' independent of any prefix or suffix and (ii) '*association of undertakings*'. The August Supreme Court in East and West Steamship Co. v. Queensland Insurance Co., reported as PLD 1963 SC 663, held that "It is not permissible for us whilst interpreting a statute to hold that any part thereof or any word therein is surplusage. Every word has to be taken into account and a meaning given to it." This principle was followed

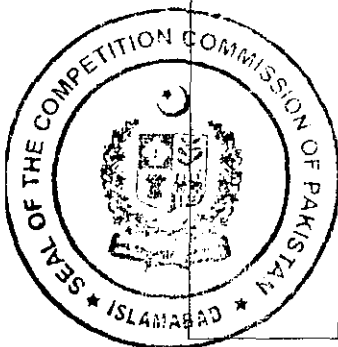


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again in University of Punjab v. Mst. Samea Zafar Cheema, reported as 2001 SCMR 1506. Being mindful of the foregoing precedents of the August Court, that the words ‘association’ and ‘association of undertakings’ are not the same and cannot be interchangeably used while interpreting the provisions of Section 2(1)(q) of the Act. While reaching this conclusion we are also inclined by the principle laid down by the August Court in Muhammad Masud vs. Ikramullah Khan, reported as PLD 1994 SC 409, wherein it was held that “*when in the same section tow analogous words susceptible of different connotations in relation to same subject are used, unless a different intention is spelt out from the language of the statute, the Court can legitimately presume that these are intended to be employed to convey different meanings.*” Similarly, in Cooperative Insurance Society of Pakistan Limited vs. State Life Insurance Corporation of Pakistan, reported as 1999 SCMR 2799, wherein it was held that “*It is trite law that use of 2 terms/words separately in a provision of the concerned enactment cannot but be given full effect to for the simple reason that redundancy in that behalf cannot be presumed/countenanced.*”

31. We have also reviewed the Act in detail and it appears that in total the word ‘association’ is used six (6) times throughout the Act, the detail whereof is as follows:

Sr. No.	Provision of the Act
01.	<p>Section 2 (1) (q)</p> <p>“undertaking” means any natural or legal person, governmental body including a regulatory authority, body corporate, partnership, association, trust or other entity in any way engaged, directly or indirectly, in the production, supply, distribution of goods or provision or control of services and shall include an association of undertakings; and,</p>
02.	<p>Section 4(1)</p> <p>4. 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.</p>

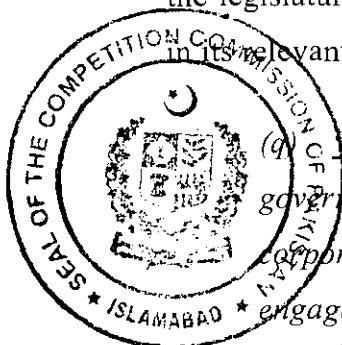


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03.	<p>Section 30(4)</p> <p>(4) An order made under sub-section (1) shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force or in any contract or memorandum or <u>articles of association</u>.</p>
04.	<p>Section 37 (2)</p> <p>(2) Where the Commission receives from an undertaking or a registered <u>association of consumers</u> a complaint in writing of such facts as appear to constitute a contravention of the provisions of Chapter II, it shall, unless it is of opinion that the application is frivolous or vexatious or based on insufficient facts, or is not substantiated by prima facie evidence, conduct an enquiry into the matter to which the complaint relates.</p>

32. We have observed that the word ‘association’ is used only once independently in the Act in Section 2(1)(q). However, in all other instances it is used in conjunction with the other words giving a different meaning. In Section 4(1) the word association is used in conjunction with ‘of undertakings’. In Section 30 (4) the word is used with ‘articles of’, in Section 37(2) the word is used with ‘of consumers’. From this and being guided by the afore-referred judgments of the August Court i.e. **PLD 1992 SC 409** and **1999 SCMR 2799**, we are of the considered view that the words ‘association’ or ‘association of undertakings’ used in Section 2(1)(q) of the Act, *ex facie*, are capable of different connotations and the intentions of the legislature is not to put them in one bucket.

33. Bare perusal of the definition of ‘undertaking’ reveals that the legislature has imposed a condition on legal and natural person mentioned in Section 2(1)(q) of the Act which is that they must be engaged in provision of goods or services in any manner. Whereas, for ‘association of undertakings’ no such condition is imposed by the legislature. At this juncture we deem it appropriate to reproduce the provision in its relevant part:



(q) “undertaking” means any natural or legal person, governmental body including a regulatory authority, body corporate, partnership, association, trust or other entity in any way engaged, directly or indirectly, in the production, supply,

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*distribution of goods or provision or control of services **and shall include an association of undertakings** (emphasis added); and,*

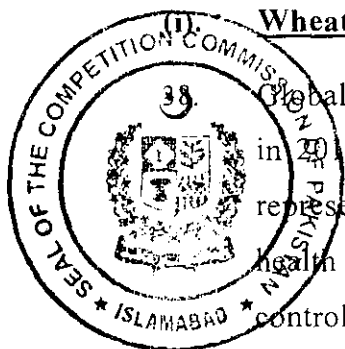
34. The 'association' can be of natural or legal persons for social cause or economic purpose, however, for an 'association' to be an undertaking, it must be performing economic function i.e. it is engaged in provision of goods or services. Whereas, for an 'association of the undertakings' the legislature has not prescribed any condition, rather, the plain and ordinary language of the afore-referred provision unambiguously provides that it should be an association of '**undertakings**' i.e. where the members are 'undertakings' within the meaning of Section 2(1)(q) of the Act, it will be deemed to be an association of undertakings.
35. Based on the discussions in the preceding paragraphs, we are of the firm view that PFMA is an association of Flour Millers, who are undertakings i.e. engaged in the production and supply of Wheat Flour and all other products which are extracted from the grinding of wheat. Hence, PFMA is an 'association of undertakings' and is therefore, an undertaking in terms of Section 2(1)(q) of the Act.

ISSUE NO. (iii): Whether PFMA has violated the provisions of Section 4 of the Act?

36. The subject matter of the instant matter/ in this case/ is the decisions taken by PFMA *vis-à-vis* the retail price of Wheat Flour, exchange of commercially sensitive information as well as taking decisions on the quota to be produced by its Member undertakings i.e. Flour Mills.
37. Before we deliberate on this issue based on the document/evidence available on record and the submissions and admissions made during hearing, we deem it appropriate to discuss in brief the importance of this Sector as well as the overview of the Wheat Flour Sector in Pakistan.

(i) Wheat Flour Importance:

38. Globally, wheat flour market reached a consumption volume of 385 Million Tons in 2018, registering a CAGR of 1.3% during 2011-2018. Wheat flour currently represents one of the most popular food ingredients used across the globe. It offers health benefits such as lowering cholesterol levels, improving metabolism, controlling obesity and regulating blood sugar levels. Wheat flour is used



extensively owing to the presence of gluten, a protein that provides strength and elasticity to the dough as well as adds to the texture of baked products. Factors such as population growth, increasing disposable incomes, rising consumption of bakery products and changing lifestyles have further added to the global demand for wheat flour.¹

39. Wheat flour is used as the main ingredient in several bakery and fast food products such as bread, noodles, pasta and breakfast cereals. Growth in the demand for these products has led to an escalation in the overall sales of wheat flour across the globe. Moreover, wheat flour is inexpensive as compared to the flour made from other grains on account of which it is easily available to consumers belonging to all socio-economic groups. Manufacturers have also introduced vitamin-A fortified wheat flour to cater to the nutritional needs of the population. Apart from this, wheat flour is now also being used for producing bioplastics, adhesives, paper, shampoos and conditioners, and other products. Owing to these factors, IMARC Group estimates that the consumption volume of wheat flour will reach nearly 411 Million Tons by 2024, at a projected CAGR of around 1.2% during 2019-2024.²

(ii). **Wheat Crop in Pakistan:**

40. In Pakistan, wheat is the most important staple food and forms the foundation of the national diet. Government wheat policy in Pakistan attempts to balance the competing interests of producers and consumers. On the production side, the policy is aimed at increasing wheat productivity (yields) and output, as well as supporting farmer incomes. Increased wheat production has also been seen as part of an overall national food security strategy of reducing dependence on food imports.

41. Wheat is Pakistan's largest food grain crop, and accounts for a large proportion of the total area under cultivation (about 40%)³ during the winter or Rabi season. This crop alone contributed about 10 percent of value added in agriculture and 2.1 percent of the country's gross domestic product (GDP) in 2015. Probably 80% of farmers in Pakistan cultivate wheat. Pakistan ranks within the top 10 (ninth) of the world's wheat producers⁴ with the majority of wheat grown in the province of Punjab. The



¹ Wheat Flour Market: Global Industry Trends, Share, Size, Growth, Opportunity and Forecast 2019-2024

² *Ibid.*

³ <https://www.agrochart.com/en/news/2289/pakistans-2016-17-wheat-crop-is-forecast-at-25-3-mmt.html>

⁴ Food and Agriculture Organization stats as on 12-08-2018 (<http://www.fao.org/pakistan/en/>)

agriculture land in Pakistan is best suited for cultivation of wheat as it possesses world's largest canal irrigation system.

(iii). **Wheat Storage measures:**

42. It is estimated that over 50 percent of total wheat produced in Pakistan is stored at the farm, often in open in the field. Smaller farms generally keep most of their grain for self-consumption. It is estimated that a very negligible quantity of wheat enter into commercial channels from farms below 4.5 hectares in size⁵. Overall about 30 percent of wheat production is retained for own-consumption.⁶ These facts further illustrate the point that much of wheat farming is essentially for sustenance.

43. In the Public Sector grain storage facilities in the country are mostly horizontal sheds called house type godowns. There are also *binishells* (temporary emergency stores – about 70 percent of capacity), hexagonal bins and a few silos. There are probably no modern storage systems in the public sector and consequently losses in public sector godowns are due to inadequate covered storage space as well as shortage of trained manpower to manage proper procurement, warehousing and the pest control operations. Basic quality parameters affecting storage such as moisture content of grains, segregation of lots according to the age of the stocks and biological cleanliness of the warehouse are not followed. The result is that serious losses take place quite often. Taking into account deterioration of the grain and inefficient harvesting (by hand) a conservative immediate post-harvest loss would be about 5 percent.⁷

(iv). **The Wheat Flour Milling Industry:**

44. We are conscious of the fact that wheat grain in and of itself is of no use. This statement may be surprising for the non-agribusiness specialist. Wheat grain is analogous to crude petroleum oil; a barrel of crude must be changed into useable elements before it achieves a real value to the consumer. In the industrialized world, wheat milling yields flour and mill feed. Before milling, the grain is cleaned and the moisture content of the grain is increased to easily separate the bran (the outer portion of the kernel called seed coat plus the aleuron layer) and the germ from the

⁵ Pakistan Agricultural Research Council www.parc.gov.pk

⁶ Wheat Markets and Price Stabilisation in Pakistan: An Analysis of Policy Options Dorosh, Paul and Salam, Abdul Pakistan Institute of Development Economics: The Pakistan Development Review 47 : 1 (Spring 2008) pp. 71-87

⁷ *Ibid.*



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endosperm. The milling process yields generally 72 to 74 percentage flour. The rest is mill feed. The advanced milling process yields wheat bran, semolina, wheat germ and wheat germ oil as the main secondary and derived products. The step-wise details are as follows⁸:

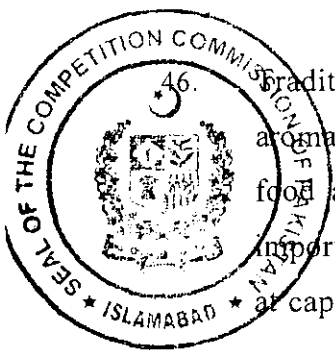
- (a). *The first milling by-product is bran. Bran includes the coarse outer covering of the seed and lesser amounts of flour. Nutritionally, bran primarily contains fiber and protein.*
- (b). *The second milling by-product is flour. Flour is fine in texture. Flour primarily consists of the gluten and starch. The crude fiber content of flour is low.*
- (c). *The third by-product is germ meal. Recall, the germ is the embryo of the seed. The germ is high in lipids and protein. Germ meals are classified as protein sources.*
- (d). *The next grain milling by-product is grain screenings. Grain screenings are a mixture of dust, chaff, weed seeds, broken grains, unsound grains, and all other materials separated during cleaning and processing.*

From the above, it is clear that, in order to gain value, wheat grain must be milled into flour, which itself is an intermediate product to be made into bread, cakes and other consumable items.

45. Of course wheat grain can be sold outside Pakistan just as crude oil is exported, however, in this case the value-added by milling is transferred to other economies. In principle, agricultural raw materials should be processed close to where they are grown. The reason for this is that the value to weight ratio alters dramatically as one progresses along the value chain. Pakistan is not to be congratulated when it exports wheat or indeed flour; for every ton of flour exported the country loses against the value added elsewhere.

Traditionally Atta is made by stone grinding, a process that imparts a characteristic aroma and taste to the bread. The high bran content of Atta makes it a fiber-rich food and a healthy and essential part of the diet. These technical features are important to note by policy-makers. The number of “mini flour mills” grinding atta at capacity of less than 5 tons /day is estimated to be 8,000 or more. It is said that

⁸ <https://www.myagriguru.com/Bestpractices/detail/5885dda050987>



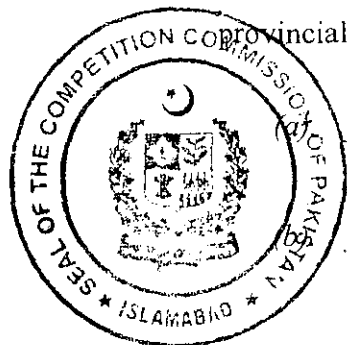
most consumers prefer to use their own wheat after getting it milled individually. Ninety percent of the mini mills are located in rural areas. As for small and medium flour mills there may be 700 or more with a capacity of 5 – 20 tons/ day.

47. Pakistan's wheat milling industry is privately owned. There are about 1,000 flour mills in Pakistan, out of which; as per the submissions of PFMA only 493 Mills are operational, which meet the consumption needs of about 40 percent of the population, with the balance met by on-farm consumption. The disbursement of government-owned wheat to flour mills is managed in an effort to ensure that sufficient wheat is available throughout the year. In Pakistan there are very few large-scale mills having the capacity of perhaps 200 tons/day, which is quite small when compared with US or EU standards. The companies that manage these mills are located close to major cities or towns. Few flour mills are equipped with imported milling equipment as low cost local manufactured plants are available. There is no foreign direct investment in Pakistan's milling sector.

48. The Flour Mills have the option of purchasing the wheat from open market or from the government at a subsidized rate. Majority of the Millers procure wheat from the Government in order lower their costs and maximize their profits for a simple reason that the quality of wheat procured from Government and privately are the same and the flour produced also remains the same. The fact that mills are far below their profitable output yet are still extant all over the country is a direct indication that they are collecting sizeable economic rents, by selling subsidized wheat on the open market or smuggling wheat out of the country to sell at an even higher profit.

(v). **Government Regulation of Wheat and Wheat Flour Sector:**

49. Wheat and Wheat Atta are defined as foodstuff in terms of Section 2(a) of the Foodstuffs (Control) Act, 1985 (hereinafter the 'FCA 1958'). Under the FCA, the provincial governments are empowered to do any of the following:



for regulating by licences, permits or otherwise the manufacture of any article of food from any foodstuffs,
for controlling the prices at which any foodstuffs may be bought or sold;

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- (c). *for regulating by licences, permits or otherwise, the storage, transport, distribution, disposal, acquisition, use or consumption of any foodstuff;*
- (d). *for prohibiting the withholding from sale of any foodstuff ordinarily kept for sale;*
- (e). *for requiring any person holding stock of any foodstuff to sell the whole or a specified part of the stock to such persons or class of persons or in such circumstances as may be specified in the order;*
- (f). *for regulating or prohibiting any class of commercial or financial transactions relating to any foodstuff which, in the opinion of the authority making the order is, or is likely to be, detrimental to public interest;*
- (ff). *for levying fees or charges to meet the expenses incurred by Government on the administration of this Act;*
- (g). *for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters;*
- (h). *for requiring persons engaged in the supply or distribution of, or trade or commerce in, any foodstuffs, to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such information relating thereto as may be specified in the order; and*
- (i). *for any incidental and supplementary matters including, in particular, the entering and search of premises, vehicles, vessels and aircraft, the seizure by a person authorised to make such search of any articles in respect of which such person has reason to believe that a contravention of the order has been, is being, or is about to be committed, or any records connected therewith, the grant or issue of licences, permits or other documents, and the charging of fees therefor.*

Based on the above wide powers, the Provincial Government determines the supply of wheat to flour mills and then also determines the maximum ex-mill rate and maximum retail price of the flour produced by the flour mills. Although, having a higher export price of wheat should encourage farmers to grow wheat, however, at the same time it creates a heavy financial burden on the country's finances. It is also pertinent to

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highlight at this juncture that the support price of wheat remained unchanged for over five years @ Rs. 1300 which was revised in 2018-2019 to Rs. 1350.

51. Having reviewed the overview of the Wheat and Wheat Flour in Pakistan, we now proceed to address the core issue in the instant matter i.e. whether PFMA by their actions have violated the provisions of Section 4 of the Act or not.
52. The principal issue in the matter is violation of Section 4 of the Act, however, in order to determine this, we deem it appropriate to refer to the prohibition provided in Section 4 of the Act, which for ease of reference is reproduced herein below:

“4. 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;”

53. From bare perusal of the aforesaid provision, certain elements are to be established in order to reach a just conclusion viz., violation of Section 4 of the Act. These are:

- (a). Undertaking or Association of undertakings,*
- (b). Relevant Market*
- (c). Agreement or decision in respect of the production, supply, distribution, acquisition or control of goods which have the object or effect of preventing, restricting or reducing competition*

We now proceed to deliberate upon each ingredient, *in seriatim*, based on the evidence available on the record and the submissions made before us by the representatives.



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a). **Undertaking or Association of undertakings:**

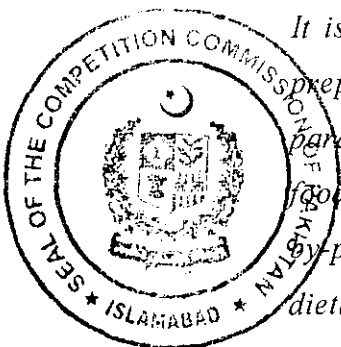
55. From the bare reading of Section 4(1) of the Act, it is clear that either it's the 'undertakings' or the 'association of undertakings' who have made an agreement or a decision in respect of the production, supply, distribution, acquisition or control of goods which have the object or effect of preventing, restricting or reducing competition in the relevant market. In issue No. (ii), we have already deliberated upon the status of PFMA and have held that it is an 'association of undertakings', therefore, this ingredient being deliberated upon needs no further emphasis.

b). **Relevant Market:**

56. The second element in order to determine whether Section 4 of the Act is violated or not, we need to ascertain the relevant market. The relevant market is to be determined in terms of its definition as provided in Section 2(1)(k) of the Act. 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. The relevant market determined in the Enquiry Report is reproduced herein below for ease of reference:

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".

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 sooji. Taking into account the dietary habits of the consumers in the Pakistan, atta is not



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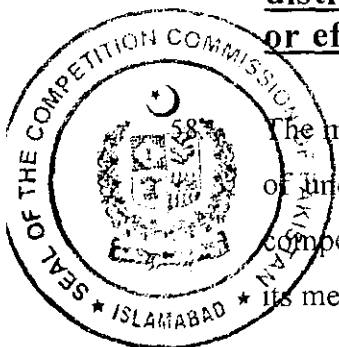
interchangeable with maida, sooji, rawa or any other product and neither are there any substitutes available for atta. The demand for atta is fairly inelastic at the household level as well as for commercial purposes. Therefore, the Enquiry Committee believes that due to all the above factors, which 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.

57. PFMA in their submissions have not disputed the above determination and analysis viz., relevant market. Hence, in terms of *Qanun-e-Shahadat Order, 1984*, precisely, under Article 113, fact admitted need not be proved, accordingly, we are of the considered opinion that relevant market for the purposes of the instant matter is that relevant product is Wheat Flour and the relevant geographic market is Pakistan and the relevant market is production of wheat flour/atta in Pakistan.

c). **Agreement or decision in respect of the production, supply, distribution, acquisition or control of goods which have the object or effect of preventing, restricting or reducing competition:**

The matter in question as per the Enquiry Report is the involvement of an association of undertakings, in leaving no room for flour millers to set their price to promote competition. Rather PFMA is transmitting communications and imposing decisions to its member undertakings i.e. flour mills regarding prices and quota fixation. However,



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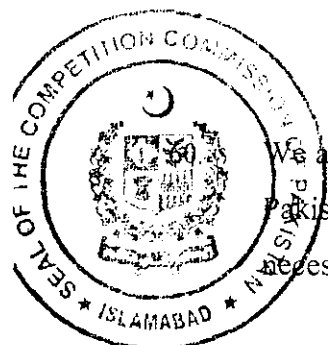
the determinations of the Enquiry Report are not ultimate and post issuance of SCN the concerned parties were given the opportunity to present their defence and to place the documents in their support.

59. Before we proceed, an important factor which cannot be ignored needs appreciation. In Wheat Flour Sector, the Provincial Governments issue a notification from time to time, whereby the issue price of wheat, maximum ex-mill price and maximum retail price is determined and communicated and circulated by the relevant government departments throughout the province. This factum has also been endorsed by the representatives of Punjab and KPK present during the hearing. We draw guidance from one of our Opinion issued back in 2008-2009 under the caption **Opinion on Fixing of Minimum Price in the Cigarette Industry**, wherein it was observed that:

34. The printing of a maximum retail price on cigarette packs would have a three-fold advantage;

- firstly, it would not in any manner impact FBR's attempt to plug the loopholes in the current tax collection system as FBR can continue to prescribe the minimum retail price for the purposes of levying and collecting tax. In fact, if a provision is made in the law as is in the EU that the tax would be levied at the maximum retail price it would ensure higher tax revenues for the government.*
- Secondly, it would prevent retailers from overcharging consumers because the price would be capped at the maximum retail price. Consumers would be free to bargain for a price lower than the maximum retail price; enabling retailers to discount the product in order to spur sales.*
- Lastly, if at all placing the maximum price has an impact on pushing prices up that may help in deterring and discouraging consumers from use of cigarettes, thus catering for consumer protection as well as addressing Health Ministry concerns.*

We acknowledge that in terms of Article 38 of the Constitution of Islamic Republic of Pakistan, 1973, the State is responsible to ensure the provisions of food and basic necessities at fair prices along with other social and economic benefits to its citizens.



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The fixing of maximum retail price of wheat flour has its advantages as Wheat is Pakistan's dietary staple. Pakistan has a variety of traditional flat breads, often prepared in a traditional clay oven called a tandoor. The tandoori style of cooking is common throughout rural and urban Pakistan. Wheat flour currently contributes 72 percent of Pakistan's daily caloric intake with per capita wheat consumption of around 124 kg per year, one of the highest in the world. Hence, the government intervention *vis-à-vis* the maximum price of the wheat flour, ensures that lower prices for consumers, as competition on price is below the prescribed level and to this extent it protects consumers from anti-competitive behavior.

61. We deem it appropriate to refer to the evidence available on the record from the year 2009 to 2016, along with the submissions made by the representatives in order to analyze the conduct of PFMA under question as well as the regulatory defence taken by them in their submissions.
62. According to notifications issued by the Punjab Food Department vide S.R.O. No. (F-IV)3.8/2009 dated 24 August 2009, the flour mill will be bound to sell *atta* at the maximum ex-mill price of Rs. 535/- per 20 kg *atta* bag and retail price will be fixed by the respective District Coordination Officers in their capacity as Controller General Price. It has been noted in the Enquiry Report that from the year 2010-2013 no new notification was provided by PFMA or Food Departments. However, in one of the correspondence exchanged between PFMA and Punjab Food Department dated 16 April 2009 it is provided that “....it may be ensured that the control rate of flour in all the regions should not exceed above Rs.500/- per 20 kg bag”.
63. Further there are multiple SMS exchanged from the platform of PFMA to its Member Flour Mills whereby the prices are communicated for sale of Wheat Flour, they are reproduced herein below:

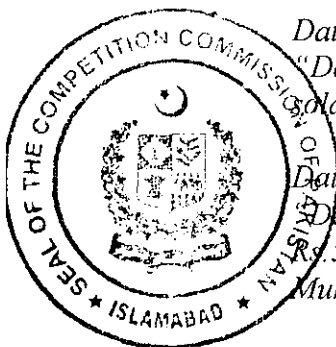
(a). **Annexure-X of Enquiry Report**

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)”

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”



[Handwritten signatures]

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..."

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)"

Dated 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"

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"

(b). Annex XIII of Enquiry Report

Letter 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....."

(c). Annex XIV of Enquiry Report

Dated: 03-07-2011; From: PFMA Vice Chairman (PUNJAB Branch)
Addressed To the District Coordination Officers, Lahore
Subject: SELLING RATE OF ATTA IN AITWAR BAZARS

"Dear Sir,

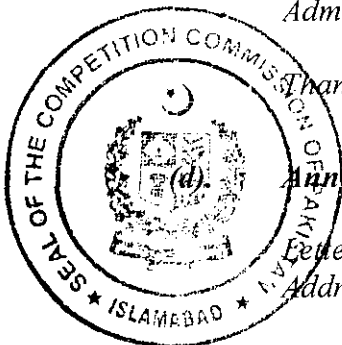
It is submitted that for next Sunday i.e. 03-07-2011, the selling rate of atta in Aitwar Bazars will be Rs.535/- per thella of 20kg.

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

Thank you,"

Annex XII of the Enquiry Report

Letter Dated: 15-03-2012, From: PFMA Chairman (PUNJAB Branch)
Addressed To The District Coordination Officers, Sargodah



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“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”

(e). Annex – XXIII of the Enquiry Report:

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.

(f). Annex – XXIV of the Enquiry Report

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

(g). Annex – XXVI of the Enquiry Report

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

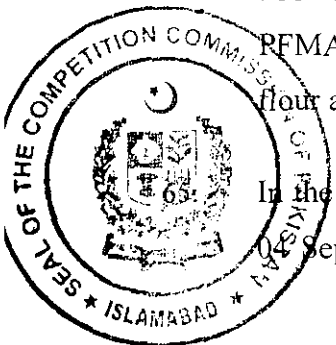
(h). Annex – XXIX of the enquiry report

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.

64. From the above evidence which remained un-rebutted during the proceedings, it is clear that the PFMA remained actively involved in discussing and setting the prices for the sale of wheat flour. Further, no notification is produced by PFMA that the price circulated by them was determined or fixed by the Punjab Food Department in the year 2011-2012. On the contrary, from the material available on the record it is clear that PFMA discussed the prices and artificially fixed and maintained the prices of the wheat flour as a result of decisions taken in the meetings held at PFMA Office.

In the year 2013, Punjab Food Department vide S.R.O. No. SO(F-IV)3-1/2013 dated September 2013, determined the release price of wheat @ Rs. 1330 per 40 k.g.



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without wheat bags. The maximum ex-mill price of Wheat Flour was determined to be Rs. 765 per 20 k.g. and the maximum retail price was determined to be Rs. 785 per 20 k.g. bag. The idea behind determining the maximum retail price is highlighted in Para 61-62 above. However, PFMA vide various SMS and correspondence again manipulated the market by determining their own price for compliance by the Flour millers. The details are as follows:

(a). Annex XV of the Enquiry Report

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[...]

(b). Annex – XXV of the Enquiry Report

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

(c). Annex – XXVII of Enquiry Report

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.

(d). Annex – XXVIII of Enquiry Report

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 re-evaluate the price in the light of rate of wheat in the open
market.

66. From the above it is clear that PFMA is not requiring its Members to comply with the maximum cap determined by Government. In fact, PFMA is fixing one price for all the millers and circulating it for compliance.. By giving the instructions to sell the wheat flour at a fixed price, PFMA primarily took away the bargaining power from the retailers and the consumers' *vis-à-vis* the sale and purchase of wheat flour independently. Consequently, the choice of different prices was not made available to the end consumers and accordingly the competition in the relevant market was distorted. From the correspondence referred above, in particular, Annexure-XXV,



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XXVII and XXVIII, it is clear that the PFMA platform was also used to discuss sensitive information *vis-à-vis* the prices and supply of wheat Flour in the open market in the year 2013 as well.

67. The Punjab Food Department vide SO. (F-IV)3-1/2014 dated 25 October 2014 determined the release price of wheat @ Rs. 1330 per 40 k.g. without wheat bags. The Maximum ex-mill price of Wheat Flour was determined to be Rs. 765 per 20 k.g. and the maximum retail price was determined to be Rs. 785 per 20 k.g. bag. The aforesaid price was revised vide S.O.(F-IV)2-2/2010 dated 30 December 2014 and revised the release price of wheat to Rs. 1280 per 40 k.g. with effect from 31-12-2014. The Maximum ex-mill price of Wheat Flour was revised to Rs. 740 per 20 k.g. and the maximum retail price was revised to Rs. 760 per 20 k.g. bag. The documents impounded from the premises of PFMA and collected during the enquiry are detailed as follows:

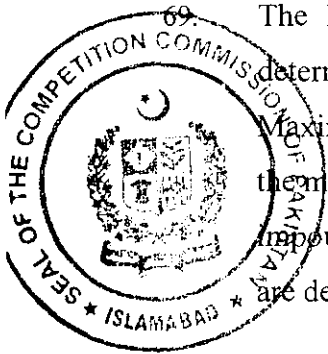
(a). ***Annex – XXII of the Enquiry Report***

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.

68. Although the prices were determined by the Punjab Government in 2014 as well, the notice of meeting of Executive Committee clearly indicates that PFMA is engaging its Members in order to formulate a uniform policy *viz.*, the availability i.e. production quotas and the pricing to be fixed by them. During the hearing PFMA did not deny the holding of aforesaid meeting and discussions with reference to price and quota. This further solidifies the collusive behavior on part of PFMA and its Members *vis-à-vis* the fixing of prices of Wheat Flour and determining the quota by sharing sensitive information.

69. The Punjab Food Department vide SO (F-IV) 3-8/2015 dated 05 October 2015 determined the release price of wheat @ Rs. 1300 per 40 k.g. without wheat bags. The Maximum ex-mill price of Wheat Flour was determined to be Rs. 750 per 20 kg. and the maximum retail price was determined to be Rs. 770 per 20 kg. bag. The documents impounded from the premises of PFMA and collected during the enquiry for this period are detailed as follows:



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(a). **Annex – XIX of the Enquiry Report**

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.

(b). **Annex – XX of Enquiry Report**

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.

(c). **Annex – XXI of the Enquiry Report**

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.

70. Although the prices were determined by the Punjab Government in 2015 as well, the notice of meeting of Executive Committee clearly indicates that PFMA is engaging its Members in order to formulate a uniform policy viz., the availability i.e. production quotas and the prices to be fixed by them.

71. The Punjab Food Department vide SO (F-IV) 3-8/2015 dated 05 October 2015 determined the maximum ex-mill price of Wheat Flour to be Rs. 750 per 20 kg. and the maximum retail price was determined to be Rs. 770 per 20 kg. bag. The documents impounded from the premises of PFMA and collected during the enquiry for this period are detailed as follows:

(a). **Annex – XI of the Enquiry Report**

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.”



Copy of the Press Release, issued by PFMA is reproduced below:



پریس ریلیز

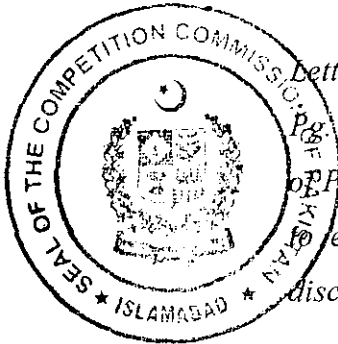
تھیلا آٹا کے سرکاری نرخوں میں گزشتہ تین سالوں میں کوئی ردوبدل نہیں کیا گیا۔
 مارکیٹ میں تھیلا آٹا سرکاری نرخوں سے کم قیمت میں فروخت ہو رہا ہے۔
 اوپن مارکیٹ میں گندم کی قیمتوں میں اتار چڑھاؤ کے پیش نظر تھیلا آٹا کے نرخوں کا تعین کیا جاتا ہے
 عاصم رضا احمد

لاہور۔ پاکستان فلور ملز ایسوسی ایشن کے راہ نمائند عاصم رضا احمد نے کہا ہے کہ تین سال قبل 20 کلوگرام کے تھیلا آٹا کا تعین کیا گیا۔ جو
 جوں کے توں ہیں ان میں کسی قسم کا کوئی ردوبدل نہیں کیا گیا۔ 20 کلوگرام کے پرچوں نرخ 770 روپے فی تھیلا مقرر ہیں۔ جبکہ
 گزشتہ تین سالوں سے مارکیٹ میں تھیلا آٹا سرکاری نرخوں سے کہیں کم قیمت میں فروخت ہو رہا ہے۔ اس وقت بھی مارکیٹ میں تھیلا
 آٹا حکومتی نرخوں سے کم قیمت پر دستیاب ہے۔ اعلیٰ کوالٹی کا تھیلا آٹا مارکیٹ میں 740 روپے فی تھیلا فروخت ہو رہا ہے۔
 تاہم اوپن مارکیٹ میں گندم کے نرخوں میں اتار چڑھاؤ کے پیش نظر تھیلا آٹا کے نرخوں میں معمولی ردوبدل کیا جاتا ہے۔ جو کہ کسی
 صورت میں بھی سرکاری نرخوں سے زائد نہیں ہوتا۔

سیکرٹری

مورخہ 06 ستمبر 2016
 برائے۔ نیوز ایڈیٹر / کامرس رپورٹر

(b). Annex – XVI of the Enquiry Report



Letter Dated: 23.07.2016

Pg. 20 of 25 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.

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(c). *Annex – XVII of the Enquiry Report*

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.

(d). *Annex – XVIII of Enquiry Report*

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.

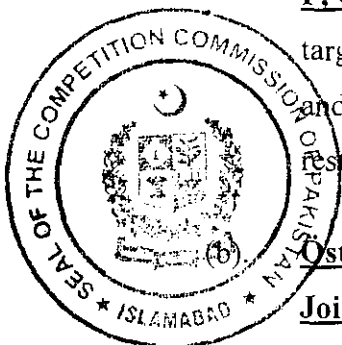
72. A similar situation is emerged in the year 2016, as in the previous years, from the documents available on the record. Although the prices were determined by the Punjab Government in 2016, the notice of meeting of Executive Committee clearly indicates that PFMA is engaging its Members in order to formulate a uniform policy viz., the availability i.e. production quotas and the prices to be fixed by them.

73. We are cognizant of the fact that restrictions whereby competitors agree to fix prices of products which they sell or buy are, as a matter of principle, restrictions by object. It is not necessary that the agreement expressly or directly fixes the selling or purchasing price. We deem it appropriate to refer to the relevant jurisprudence from the EU in this regard:

(a). **Imperial Chemical Industries plc (ICI) vs. Commission for European Communities Joined Cases C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C252/99 P and C-254/99 P**: A case in which target prices and

target quotas were fixed, and there were concerted initiatives to raise price levels and monitor the operation of the collusive arrangements. This was held to be restrictions by object.

Osterreichische Volksbanken v Commission for European Communities, Joined Cases C-125/07 P, C-133/07 P, C-135/07 P and C-137/07 P: A case in



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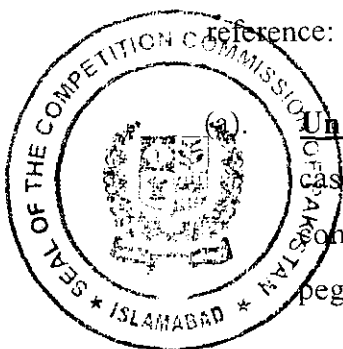
which banks fixed deposit and lending rates and the restriction was termed to be restriction by object.

- (c). **Coop de France Betail et Viande (formerly Federation Nationale de la Cooperation Betail et Viande (FNCBV)) v Commission of the European Communities (C-101/07 P) [2008] E.C.R. I-10193 (ECJ (3rd Chamber))**, In this matter various Agreement(s) concluded by federations representing farmers and federations representing slaughterers aimed at fixing minimum prices for the purchase of cows by slaughterers and suspending beef imports were held to be restrictions by object.
- (d). **Case 38549 Architectes Belges (the Belgian Architects case)**: National Association of Architects recommended minimum fees (i.e. recommended minimum prices). It was held in this case that like fixed prices, recommended prices reduce competition because they facilitate price coordination which was termed to be restriction by object.
- (e). **Case Comp/AT.39847-E-BOOKS**: E-books Coordination between publishers and a distributor, to jointly switch from a wholesale model, in which retail prices were determined by retailers, to agency contracts, as part of a common strategy aimed at raising retail prices for e-books or preventing the introduction of lower retail prices on a global scale. This was also determined to be restriction by object.
- (f). **Case AT.39398 — Visa MIF**: In this matter joint setting by banks of so called Multilateral Interchange Fees (MIFs) in the payment card market was considered price fixing and a restriction by object.

74. Similarly, we would also like to refer to the jurisprudence from US *viz.*, the price fixing aspects under competition law. The same was highlighted by the Director General (Legal) in his submissions and we would like to reproduce the same for ease of

reference:

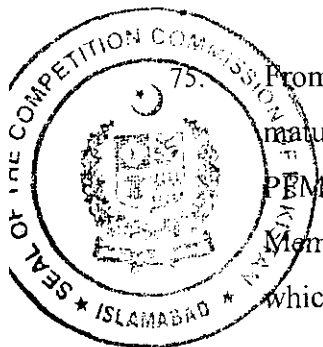
United States vs. Socony-Vacuum Oil Co., 310 U.S. 150 (1940), in the said case it was held by the US Supreme Court that any agreement among competitors having the purpose and effect of raising, depressing, fixing, pegging or stabilizing prices was unlawful per se.



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- (b). **Catalano, 446 U.S. at 648 (1980)**: The US Supreme Court held that an alleged agreement among respondent wholesalers to eliminate short-term trade credit formerly granted to beer retailers and to require the retailers to make payment in cash, either in advance or upon delivery, is plainly anticompetitive as being tantamount to an agreement to eliminate discounts, and thus falls squarely within the traditional antitrust rule of *per se* illegality of price fixing, without further examination under the rule of reason.
- (c). **Cement Inst., 333 U.S. 683 (1948)**: The complaint charged: (1) that respondents had engaged in an unfair method of competition in violation of § 5 of the Federal Trade Commission Act by acting in concert to restrain competition in the sale and distribution of cement through use of a multiple basing point delivered-price system, which resulted in their quoting and maintaining identical prices and terms of sale for cement at any given destination, and (2) that this system of sales resulted in price discriminations violative of § 2 of the Clayton Act, as amended by the Robinson-Patman Act. The price fixing arrangement was termed *per se* violation.
- (d). **Plymouth Dealers Ass' n. vs. US, 279 F.2d at 132 – US Court of Appeals Ninth Circuit**: It was a case where the combination and conspiracy to stabilize the retail prices of Plymouth motor cars and accessories in the San Francisco Bay Area by the Dealers was termed *per se* violation.
- (e). **Arizona vs. Maricopa Cty. Med. Soc'y 457 U.S. 332 (1982)**: In this case Maricopa County Medical Society, by agreement of their member doctors, established the maximum fees the doctors may claim in full payment for health services provided to policyholders of specified insurance plans. The US Supreme Court held that the maximum fee agreements, as price-fixing agreements, are *per se* unlawful under Section 1 of the Sherman Act.

From the analysis of the evidence in paragraphs 62-72 and the review of case laws from mature jurisdictions of competition law, we are of the firm opinion that the conduct of PEMA viz., the communication of fixed prices, conducting regular meetings of its Members to discuss the prices and quantities to be supplied and other relevant matters which falls squarely within the purview of preventing, restricting or reducing



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competition within the relevant market and is in violation of Section 4(1) of the Act read with Section 4(2)(a) thereof.

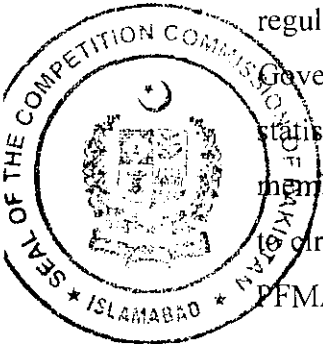
76. PFMA has submitted that they have not done anything wrong and they were only circulating the prices determined by the Punjab Food Department. No intimation is given to the PFMA members that the maximum limit is prescribed by the Government and the Millers may determine their retail prices independently, keeping in view their costs and profitability. On the contrary the Millers have been forced through the association platform to sell wheat flour at a certain fixed rate and from the evidence available on the record, such conduct of PFMA has also been lauded by its Members. The text which is **Annexure-X of the Enquiry Report** is reproduced below:

ہم فلور مل مالکان، پاکستان فلور ملز ایسوسی ایشن، طاہر حنیف ملک اور میاں محمد ریاض کے مشکور ہیں جنہوں نے آٹے کے ریٹ کو بڑھانے کا فیصلہ کیا۔ جس کی وجہ سے مارکیٹ میں آٹے کے ریٹس مضبوط ہوئے۔ ہمیں امید ہے کہ ایسوسی ایشن کے پلیٹ فارم سے آئندہ بھی اس طرح کے فیصلے کیے جائیں گے جو انڈسٹری کی فلاح کے لئے ہوں گے۔

An English Translation of the above is as follows:

"We Flour Mill Owners are thankful to Pakistan Flour Mills Association, Tahir Hanif Malik and Mian Muhammad Riaz, who decided to increase the rate of flour. Because of this decision the rates of flour were strengthen in the market. We expect that in future, similar decisions will be made from the Association platform for the benefit of the industry."

77. From the above and the evidence discussed in the preceding paragraphs we agree with the submissions of Director General (Legal) that the state compulsion doctrine or regulatory conduct defense is not available to PFMA; as it is not the actions of the Government which have been circulated, rather the prices are determined by sharing statistics and other factors on the platform of PFMA and subsequently circulated to its member mills for compliance. Further, nowhere the Government has compelled them to circulate the prices to Flour Mills. Accordingly, we are constrained to hold that the PFMA has violated the provisions of Section 4 of the Act.



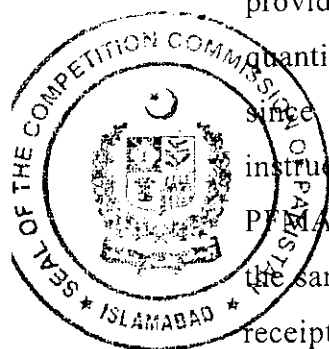
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REMEDIES/ ORDER

80. Foregoing in view, we hereby hold that PFMA by fixing the price of Wheat Flour, providing a platform to share commercially sensitive information and fixing the quantities of production of wheat flour which has the object of preventing, restricting or reducing competition within the relevant market and is to be condemned *per se* is illegal and violative of Section 4 of the Act.

81. In terms of section 38 of the Act, the Commission is empowered to impose such financial penalties upon the contravening party(s), as deems fit in the circumstances which may be up to 75 million or 10 % of the annual turnover of undertakings concerned. In the instant matter we cannot ignore the importance of the Wheat Flour Sector which has been discussed in detail in Paragraphs 38-50 and the crux whereof is that *"in Pakistan, wheat is the most important staple food and forms the foundation of the national diet. Wheat is Pakistan's largest food grain crop, and accounts for a large proportion of the total area under cultivation (about 40%) during the winter or Rabi season. This crop alone contributed about 10 percent of value added in agriculture and 2.1 percent of the country's gross domestic product (GDP) in 2015. Probably 80% of farmers in Pakistan cultivate wheat. Pakistan ranks within the top 10 (ninth) of the world's wheat producers with the majority of wheat grown in the province of Punjab."* Further, *"wheat flour is used as the main ingredient in several bakery and fast food products such as bread, noodles, pasta and breakfast cereals. Growth in the demand for these products has led to an escalation in the overall sales of wheat flour across the globe. Moreover, wheat flour is inexpensive as compared to the flour made from other grains on account of which it is easily available to consumers belonging to all socio-economic groups."*

82. We are also cognizant of the fact that this practice of fixing the price of Wheat Flour, providing a platform to share commercially sensitive information and fixing the quantities of production of wheat flour by PFMA through its platform is continued since 2009 under the impression that they are only following the Government instructions. Hence, we are constrained to impose the maximum fixed penalty on PFMA to the tune of PKR 75 Million Only, with the direction to PFMA to deposit the same with Registrar of the Commission within sixty (60) days from the date of receipt of this Order.

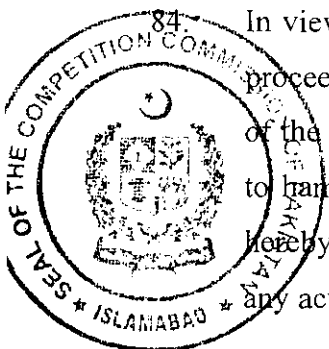


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83. We deem it appropriate to provide some guidelines *vis-à-vis* the future conduct of associations and in this regard refer to one of earlier orders i.e. **Order 29 February 2016 in the matter of Show Cause Notice Issued to M/s. Pakistan Poultry Association**, wherein it was stated that:

"We believe that trade associations can play an important role in the development of the sector they represent. The Commission has already observed in its ICAP final order that the most important aim of association is to develop consensus amongst its members regarding public policies that affect the sector. Associations also engage in activities that increase awareness of standards and technologies in the industry. At other times, associations may also serve as a platform to share useful information about the sector such as historical pricing data. Such activities are beneficial since they promote competition and competitiveness. However, associations must also be extremely careful about what sort of activities may violate competition law. Discussion, deliberation and decisions regarding purely business concerns like current and future pricing, production and marketing are anti-competitive and should be avoided at all costs by the associations. Associations have a responsibility to ensure that their forum is not used a platform for collusive activities. The rule of thumb is not to allow discussion, deliberations or sharing of sensitive commercial information that may allow members, who are competitors, to co-ordinate business policy. Ensuring that every, or even one, member has a profitable business is not the job of an association."


84. In view of the above, we hereby direct PFMA and all other parties of the instant proceedings which *inter alia* include Provincial Food Departments, to be mindful of the above broad guidelines/directions while conducting future business, and not to hamper the competition in the relevant market. PFMA is reprimanded and is hereby directed to refrain from following, adopting, implementing or carrying out any activity, which constitutes a violation of the Act.





85. The Office of Registrar is directed to forward a copy of this Order to the Ministry of National Food Security and Regulation and all the Provincial Food Departments for information.

86. In terms of the above, the SCN is hereby disposed of.

87. Ordered accordingly.


(Vadiyya Khalil)
Chairperson


(Dr. Muhammad Saleem)
Member


(Dr. Shahzad Ansar)
Member



ISLAMABAD THE 13th DAY OF DECEMBER 2019