



**BEFORE THE
COMPETITION COMMISSION OF PAKISTAN**

**IN THE MATTER OF
SHOW CAUSE NOTICE ISSUED TO PAKISTAN POULTRY ASSOCIATION (PPA)**

(FILE NO.42/PPA/C&TA/CCP/2015)

Date of Hearing

3 December, 2015

Adjudicating Members

Ms. Vadiyya Khalil
Chairperson

Dr. Shahzad Ansar
Member

Mr. Ikram Ul Haque Qureshi
Member

On behalf of PPA

Mr. Khalid Saleem Malik
Central Chairman PPA



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Registrar

Competition Commission of Pakistan
Government of Pakistan
Islamabad.

ORDER

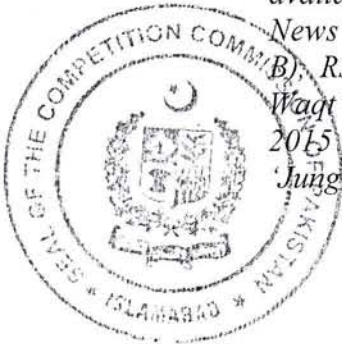
1. This order shall dispose of the proceedings initiated pursuant to show cause notice no.13/2015 dated 16 November, 2015 (the 'SCN'), issued to the Pakistan Poultry Association ('PPA' or the 'Respondent'). The SCN was issued pursuant to the Competition Commission of Pakistan (the 'Commission') taking *suo moto* notice of a series of newspaper advertisements regarding the rates of broiler chicken and chicken eggs under Section 37 (1) of the Competition Act, 2010 (the 'Act').
2. The main issue under consideration in this matter is whether PPA has taken anticompetitive decisions in terms of Section 4(1) of the Act by advertising the prices for broiler chicken and chicken eggs in newspapers, in *prima facie* violation of Section 4(1) read with sub-section (2) (a) of the Act.

FACTUAL BACKGROUND

3. The Commission took notice of several newspaper advertisements by PPA regarding the rates of a) live broiler chicken, b) broiler chicken meat (collectively 'broiler chicken') and c) chicken eggs. The advertisements appeared in the dailies 'Jang', 'The News' and 'Nawa-e-Waqt'.
4. The relevant portions of the SCN issued to the Respondent are reproduced below:

AND WHEREAS, PPA advertised the rates of live broiler chicken available nationally as Rs.89/kg on 06 October, 2015 in 'The News' (Annex A), Rs.97/kg on 07 October, 2015 in 'Jung'(Annex B), Rs.105/kg on 08 October, 2015 in 'The News' and 'Nawa-e-Waqt (Annexes C and D respectively)', Rs.95/kg on 09 October, 2015 in 'Jung' (Annex E) and Rs.100/kg on 12 October, 2015 in 'Jung' (Annex F);

AND WHEREAS, PPA advertised the rates of broiler chicken meat available nationally as Rs.129/kg on 06 October, 2015 in 'The News' (Annex A), Rs.140/kg on 07 October, 2015 in 'Jung'(Annex B), Rs.150/kg on 08 October, 2015 in 'The News' and 'Nawa-e-Waqt' (Annexes C and D respectively), Rs. 140/kg on 09 October, 2015 in 'Jung' (Annex E) and Rs.145/kg on 12 October, 2015 in 'Jung'(Annex F);



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AND WHEREAS, PPA advertised the rates of chicken eggs available nationally as Rs.86-87/dozen on 09 October, 2015 in 'Jung' (Annex E) and Rs.82-83/dozen on 12 October, 2015 in 'Jung' (Annex F);

AND WHEREAS, it appears that PPA has taken decisions with respect to fixing the selling prices of Poultry Products which prima facie have the object and effect of preventing, restricting or reducing competition within the poultry market, in contravention of Section 4 (1) of the Act read with Section 4 (2) (a) thereof;

SUBMISSIONS

5. Subsequently, a written response was submitted by PPA, and a hearing held on 3 December, 2015. The submissions made are summarized below:
- Advertisements were not issued nationwide but appeared only in Islamabad and Lahore;
 - Prices are not fixed by PPA but by the market committees of local governments;
 - Prices of broilers and broiler meat in Karachi fixed by Commissioner Karachi;
 - Poultry producers are subject to arbitrary price fixation by the administrations of many cities;
 - Poultry products are a generic perishable commodity, the demand and supply for which fluctuates substantially.

DELIBERATION & ANALYSIS

6. The Respondent is an undertaking in terms of Section 2(1) (q) of the Act. It is an association of undertakings engaged in the poultry business, and is comprised of members from across Pakistan.
7. We proceed now to address the issue at hand. The SCN has alleged that the Respondent is in *prima facie* violation of Section 4 of the Act. It is therefore reproduced here for reference:

Prohibited agreements .— (1) No undertaking or association of undertakings shall enter into any agreement

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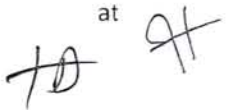

or, in the case of an association of undertakings, shall make a decision in respect of the production, supply, distribution, acquisition or control of goods or the provision of services which have the object or effect of preventing, restricting or reducing competition within the relevant market unless exempted under section 5.

8. Subsequently, we have to see if the Respondent has, as an association, taken decisions in respect of the production, supply, distribution, acquisition or control of goods. PPA has notified the prices of three different products in two distinct relevant markets, i.e. the markets for a) broiler chicken and b) chicken eggs, which *prima facie* constitutes a decision for the purposes of the Act.
9. The subjective intention of parties is not a requisite consideration for the determination of liability under this provision. The term 'object' has been interpreted, through various decisions of the Commission, to hold a meaning distinct from 'effect'.¹ Any form of conduct between undertakings which assists the coordination of commercial behaviour, especially related to pricing, production and sale is treated as importing the object of preventing, restricting or reducing competition.
10. PPA has in its defence submitted that the rates of poultry products are set by the market committees of local governments and therefore there is no liability on it. We find this defence untenable. Actions of trade associations are scrutinized for competition concerns because of the ease with which legitimate objectives can spill over into illegal coordination. Correspondingly, while discussions between undertakings regarding the role of government over a specific industry would not fall within the ambit of anti-competitive behaviour, the discussion, approval or advertising of prices by an association of undertakings clearly does. The role of associations has been clearly and repeatedly demarcated by the Commission through multiple decisions, including a previous order

¹In the matter of Show Cause Notice dated 24th December 2007 for Violation of Section 4, ('Banks Order'), available at: <http://www.cc.gov.pk/images/Downloads/Final%20PBA%20Order%2010.06.09.pdf>, most recently upheld in In The Matter Of Show Cause Notices Issued To Pakistan Automobile Manufacturers Authorized Dealers Association (PAMADA) & Its Member Undertakings, available at [http://www.cc.gov.pk/images/Downloads/show cause notice issued to pamada.pdf](http://www.cc.gov.pk/images/Downloads/show%20cause%20notice%20issued%20to%20pamada.pdf)



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against the Respondent **In The Matter Of Show Cause Notice Issued To M/S Pakistan Poultry Association**² dated 16 August 2010. The relevant extract is reproduced below for reference.

95. *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.*

96. *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 coordinate business policy. Ensuring that every, or even one, member has a profitable business is not the job of an association.*

11. Similarly, as was previously provided by the Commission in its **Order in In The Matter Of Show Cause Notices Issued To Pakistan Automobile Manufacturers Authorized Dealers Association (Pamada) & Its Member Undertakings**, the European Court of Justice has in a recent judgement in the case of **Dole Food and Dole Fresh Fruit Europe v Commission**³ reaffirmed its position with regards to the exchange of commercially sensitive information amongst competitors, stating that :

² Available at http://www.cc.gov.pk/images/Downloads/ppa_order_16_august_2010.pdf

³ Available at <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-286/13>



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With regard to the exchange of information between competitors, it should be recalled that the criteria of coordination and cooperation necessary for determining the existence of a concerted practice are to be understood in the light of the notion inherent in the Treaty provisions on competition, according to which each economic operator must determine independently the policy which he intends to adopt on the common market [...]

While it is correct to say that this requirement of independence does not deprive economic operators of the right to adapt themselves intelligently to the existing or anticipated conduct of their competitors, it does, none the less, strictly preclude any direct or indirect contact between such operators by which an undertaking may influence the conduct on the market of its actual or potential competitors or disclose to them its decisions or intentions concerning its own conduct on the market where the object or effect of such contact is to create conditions of competition which do not correspond to the normal conditions of the market in question, regard being had to the nature of the products or services offered, the size and number of the undertakings involved and the volume of that market [...][Emphasis supplied]

It follows that the exchange of information between competitors is liable to be incompatible with the competition rules if it reduces or removes the degree of uncertainty as to the operation of the market in question, with the result that competition between undertakings is restricted [...]⁴

12. Coming back to the matter at hand, PPA can through such advertisements, influence the pricing trend in the overall markets. Its standing as an association ensures a certain authority which has the implicit effect of manipulating the behaviour of players in the relevant markets. It also constitutes the exchange of data which encourages more uniform prices than might otherwise exist.

13. At the same time, even if we were to accept the Respondents' defence to the extent that the rates have been set by local governments, by advertising prices under its own name, the

⁴ This judgment confirms the ECJ's longstanding stance with regards to sharing of information which was first set down in the cases of Suiker Unie v Commission, John Deere v Commission and T-Mobile Netherlands and Others.

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Respondent is still signalling⁵ to both consumers and undertakings in the poultry market that these prices have the approval of PPA, and constitute an optimum rate to be followed.

14. We, therefore, find that PPA is in violation of Section 4(1) read with Section 4(2) (a) of the Act in each of the two relevant markets.
15. During the course of the proceedings, PPA submitted an undertaking essentially stating that it had nothing to do with the fixing of poultry prices. The undertaking cannot in any manner be construed as an offer of a commitment to remedy the violations that have taken place. The undertaking has no admission on behalf of PPA and does not provide any substantial remedy to remedy the violation. Therefore, there is no reason for the Commission to consider it.

REMEDY & PENALTY


16. The Commission in its previous order against the PPA had strictly reprimanded the Respondent and ordered it to '*desist from taking any decision, even if merely suggestive in nature, regarding pricing, production and sale of poultry products*'.⁶ The Respondent was also warned that the Commission would not take a lenient approach in the future if any anti-competitive behaviour were to be detected.
17. In view of the above, we find the Respondent's actions to be in violation of Section 4(1) read with sub-section 4(2) (a) of the Act with respect to two distinct relevant markets. The penalty imposed is as follows:

⁵ Recent enforcement actions in the EU and the USA both point towards a stricter policy towards unlawful exchange of information by public announcements or similar mechanisms. In November 2013 the European Commission announced that it had opened formal proceedings against a number of container liner shipping companies concerning regular public announcements about their price increase intentions, through press releases on their websites and in the specialised trade press. The investigation is currently underway.

The Federal Trade Commission has similarly brought complaints against instances of price signaling in In the Matter of Valassis Communications, Inc., and In the Matter of U-Haul International, and AMERCO. Both cases were settled through issuance of consent orders.

In The Matter Of Show Cause Notice Issued To M/S. Pakistan Poultry Association, available at:
http://www.cc.gov.pk/images/Downloads/ppa_order_16_august_2010.pdf



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- a. Fifty Million Pakistani Rupees (PKR 50,000,000) for the violation in the market for broiler chicken;
- b. Fifty Million Pakistani Rupees (PKR 50,000,000) for the violation in the market for chicken eggs;

The Respondent is therefore liable to pay a total penalty amounting to Hundred Million Pakistani Rupees (PKR 100,000,000).

18. PPA is also ordered to immediately cease and desist from advertising the rates of poultry products as an association.
19. PPA is further directed to file a compliance report with the Registrar of the Commission within two (02) months of the issuance of this order.
20. SCN No.13/2015 is hereby disposed of.
21. Order accordingly.



(Vadiyya Khalil)
Chairperson




(Dr. Shahzad Ansar)
Member



(Ikram Ul Haque Qureshi)
Member



ISLAMABAD 29th February, 2016

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