



**BEFORE THE  
COMPETITION COMMISSION OF PAKISTAN**

**In The Matter Of Show Cause Notice Issued To  
M/s. PAKISTAN POULTRY ASSOCIATION  
(File No: CCP/CARTELS/04/2010)**

Dates of hearing:

August 3, 2010  
August 13, 2010

Bench Members:

Ms. Rahat Kaunain Hassan  
**Chairperson**

Mr. Abdul Ghaffar  
**Member (C&M)**

Dr. Joseph Wilson  
**Member (PRI)**

Present for:

**M/s. Pakistan Poultry Association**

- 1). Dr. Bashir Mahmood Bhatti, Secretary General
- 2). Dr. Muhammad Aslam
- 3). Mr. Faqir Muhammad Sabir,
- 4). Mr. Khalil Sabir.
- 5). Mr. Raza Mahmood Khursand
- 6). Mr. Abdul Basit
- 7). Ch. Azmat Ali
- 8). Dr. Muhammad Sadiq
- 9). Ch. Khurshid Ahmed, Advocate

**S. U. Khan Associates**

- 1). Mr. Saifullah Khan
- 2). Mr. Javed Qaiser
- 3). Ms. Khizran

## **ORDER**

1. Through this order the Competition Commission of Pakistan (the 'Commission') shall dispose off the proceedings initiated under Section 30 of the Competition Ordinance, 2010 (the 'Ordinance') against Pakistan Poultry Association (PPA) vide show cause notice number 25/2010 dated 15 July 2010 (the 'SCN').
2. The principal issue in this case is whether PPA, through its central and zonal executive committees, sub-committees, and wings, has taken decisions with respect to production and sale of various poultry products which, by object or effect, prevent, restrict, and distort competition in the poultry sector, thereby violating Section 4(1) read with Section 4(2) (a) and (c) of the Ordinance.

### **Background**

3. The Commission, taking notice of media reports regarding an unprecedented hike in prices of poultry products and possible cartelization, initiated a *suo moto* enquiry under Section 37(1) of the Competition Ordinance 2009. The Commission appointed Ms. Shaista Bano, Director and Mr. Syed Umair Javed, Assistant Director (Collectively the 'Enquiry Officers') to conduct an enquiry into possible violations of Section 3 and 4 of the Ordinance.
4. During the course of the enquiry, the Enquiry Officers, after noticing price related announcements on the PPA's website, recommended a search and inspection of the latter's offices in Islamabad, Lahore and Karachi. During the search and inspection conducted on 24 and 25 May 2010, relevant documents were impounded by the duly authorized officers of the Commission.
5. The Enquiry Officers submitted the enquiry report on 8 July 2010 (the 'Enquiry Report'), concluding that there were *prima facie* violations of Section 4 of the

Ordinance by PPA and recommended that proceedings under Section 30 of the Ordinance may be initiated against PPA.

6. PPA was issued the SCN on 15 July 2010 by the Commission directing it to submit a written reply within fourteen days, and to appear before the Commission on 3 August 2010 to avail the opportunity of being heard.
7. On 27 July 2010, the Commission received a letter from S.U. Khan Associates (SUKA), being the authorized representatives of PPA. SUKA requested the Commission to extend the period for filing reply and appearing before the Commission by three weeks. The Commission vide its letter dated 28 July 2010, informed SUKA that their request has not been approved.
8. PPA officials and SUKA representatives appeared before the Commission on 3 August 2010 without submitting a written reply. PPA and its representatives requested for an adjournment for three weeks, however the Commission allowed PPA ten days to file the submissions.
9. PPA officials and SUKA appeared before the Commission on 13 August 2010, filed a detailed reply, and made a presentation of their case. The representatives were heard at length.

## **Issues**

10. PPA has raised preliminary objections which give rise to the following issues:
  - i. Whether the Ordinance has been applied retrospectively?
  - ii. Whether PPA was provided all the information it required to submit a detailed reply to the show cause notice dated 15 July 2010 (the 'SCN')?
  - iii. Whether the issuance of the SCN violated the principles of natural justice?

- iv. Whether the alleged actions of PPA are in conformity with its mandate in terms of its Memorandum of Association?
11. We believe that the following issues must be addressed to reach a conclusion about the principle issue of the case:
- i. Whether the decisions of PPA's central and zonal executive committees, sub-committees, standing committees and wings are decisions of PPA in the given facts and circumstances?
  - ii. Whether PPA, as an association, has taken decisions which have the object or effect of restricting, reducing, preventing or distorting competition in the relevant markets?

## **Preliminary Objections**

### ***Whether the Ordinance has been applied retrospectively?***

12. PPA has contested the applicability of the Ordinance on the alleged actions and decision contained in the Enquiry Report. PPA contends that the Ordinance took effect from 26 March 2010 and cannot be applied to actions done before that date.
13. In order to address this issue, we deem it appropriate to give a brief history of the Ordinance. The Competition Ordinance, 2007 was promulgated on 2 October 2007 and subsequently after imposition of emergency was protected under the Constitutional (Amendment) Order 2007, which was subsequently upheld by the Honourable Supreme Court vide its judgment in '*Tika Iqbal Muhammad Khan and others vs. General Pervez Musharaf*' cited as PLD 2008 SC 178 (the '**Tika Iqbal Case**'). Subsequently, the Constitutional (Amendment) Order, 2007 was declared illegal and the judgment of the Honourable Supreme Court in Tika Iqbal Case *supra* was overruled by the full court of the Honourable Supreme Court on 31 July 2009 in '*Sindh High Court Bar Association and another vs. Federation of*

*Pakistan and others*' PLD 2009 SC 879 (the '**SC Judgment**'). The Honourable Supreme Court in SC Judgment held that '*...the period of four months and three months mentioned respectively in Articles 89 and 128 of the Constitution would be deemed to commence from the date of short order passed in this case on 31<sup>st</sup> July, 2009...*'. Therefore, the Ordinance 2007 was to remain in force till 28 November 2009. Thereafter, Competition Ordinance, 2009 (the 'Ordinance 2009') was promulgated on 26 November 2009 and was given effect on and from the 2 October 2007.<sup>1</sup> Competition Ordinance, 2009 lapsed after four months and was re-promulgated by the President on 18 April 2010. The legislature through insertion of Section 60 of the Ordinance validated all the actions taken, orders passed and proceedings initiated by the Commission on or after 2 October 2007.<sup>2</sup> For ease of reference Section 60 is reproduced below:

***Validation of actions, etc.** – Anything done, actions taken, orders passed, instruments made, notifications issued, agreements made, proceedings initiated, processes or communication issued, powers conferred, assumed or exercised, by the Commission or its officers on or after the 2nd October, 2007 and before the commencement of this Ordinance shall be deemed to have been validly done, made, issued, taken, initiated, conferred, assumed, and exercised and provisions of this Ordinance shall have, and shall be deemed always to have had, effect accordingly.*

14. Now coming to the case in hand, the Commission took suo motto notice and initiated an Enquiry under Section 37 (1) of the Ordinance on 15 December 2009. At the relevant time the Ordinance 2009 was in force. Subsequently, the Commission conducted '*Search and Inspection*' of the PPA premises at Islamabad, Karachi and Lahore on 24 & 25 May 2010 at that time the Competition Ordinance, 2010 was in force. Enquiry Report in the matter was concluded on 8 July 2010 and the show cause notices were issued to the undertakings concerned on 15 July 2010. Therefore, the contention of PPA that the Ordinance came into force on 26 March 2010 and cannot be applied

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<sup>1</sup> Section 1(3) of the Competition Ordinance, 2009

<sup>2</sup> Section 60 of the Competition Ordinance, 2010

retrospectively is not tenable and ill founded owing to the fact that the documents relied upon in the Enquiry Report relate to the period between 2 October 2007 to 28 May 2010.

***Whether PPA was provided all the information required to submit a detailed reply to the SCN?***

15. PPA has also argued that it was not provided sufficient information regarding the charges and allegations against it to enable it to provide a detailed reply. Reference in this regard is made by PPA to the confidential emails that the Commission received in October 2009 regarding the poultry sector.
16. The representatives of PPA submitted that it their fundamental right under the constitution and also inline with the best practice that, the party being alleged, has the right to see and have copies of the documents upon which the allegations are leveled against him. We agree with this contention of PPA and would like to refer to a well settled principle that, the show cause notice must contain specific and explicit allegations, mentioning therein the minute details of the allegations. The purpose and the logic behind the above settled principle is to enable the undertaking to explain its position *vis-à-vis* the allegations, and to provide it an opportunity to rebut the charges, which is not possible unless the details of the accusations and brought to the notice of the undertaking concerned. Having said that, we may now analyze as to whether PPA was provided copies of all the documents or not.
17. We note that PPA was provided a copy of Enquiry Report (which contained a complete summary of allegations coupled with the evidence relied thereon) along with its complete annexure, which even PPA does not dispute. On 3 August 2010 the representatives of PPA requested for inspection of 'Public Register' in the matter of PPA, which was allowed and the representatives of PPA namely Mr. Jabbar Hussain and Ms. Khizran conducted inspection of the

'Public Register' to their satisfaction and signed an acknowledgement in this regard. Subsequently, the through facsimile letter bearing no. SUK/10/382 dated 9 August 2010 a request was made to provide copies of various documents on behalf of PPA. The requested copies were provided to the representative namely Mr. Jabbar Hussain without any delay. Keeping in view the above, there remains no doubt that the settled principle mentioned above in terms of the show cause notices has been completely complied with and PPA was provided all the documents and evidence. The contention of the representatives of PPA that the documents mentioned in paragraph three of the show cause notice i.e. 'e-mails from the complainants', is out of context. It is pertinent to highlight the fact that the 'emails' were declared confidential under regulation 48 of the General Enforcement Regulations 2007 read with Section 49 (3) of the Ordinance by the Commission in exercise of its discretion. Importantly, it also needs to be appreciated that any confidential document can never be made a part of Public Register. It is pertinent to appreciate that the SCN was never issued on the basis of the 'emails' and it was issued on the basis of the *prima facie* findings of the Enquiry Report. The Commission taking notice of the concern raised in the emails as well as in the media reports, was well within its power to *suo moto* initiate an enquiry. The Enquiry Report has not based a single finding on any 'email' and all the documents on which the Enquiry Report was based have been duly provided to PPA. In our considered view, such objections have no substance and seem to have only been taken to digress from the merits of the case.

***Whether the issuance of the SCN violated the rules of natural justice?***

18. PPA has further argued that it was not included during the process of the enquiry and has not given a chance of providing its point of view before the SCN was issued. This assertion is contrary to the facts. The Commission conducted a search and inspection of PPA premises on 24 and 25 May 2010 with the consent of the former. During the search and inspection, the reasons and the background to the search were explained to PPA representatives. The Enquiry Report was not

concluded until 8 July 2010. Therefore, PPA was completely aware that an enquiry was underway into its activities. PPA was also aware of the contents of the documents and had ample time to approach the Commission if it felt the need to do so. There was no bar on behalf of the Commission in this regard.

19. In any event, the Commission has already held in the *LPG Case*<sup>3</sup> there is no mandatory legal obligation on part of the Commission, under the Ordinance or rules and regulations made there under, to involve undertakings in question at the enquiry stage. In this regard, we concur with the opinion reproduced below.

*Linked with the above is the question whether the steps preceding the issuance of a Show Cause Notice, i.e. conduct of Enquiry in the subject proceedings was an adverse action and required compliance with principles of natural justice. As stated above, JJVL has argued that since it was not contacted during the conduct of the Enquiry therefore principles of natural justice have been violated. We deal with this question now.*

*Natural justice has been described as a concept ‘sadly lacking in precision’ ( as per R v Local Govt. Board [1914] 1 K.B. 160, referred to by De Smith’s treatise ‘Judicial Review’, 6<sup>th</sup> Edition (2007) at Para 6-010). The Supreme Court of Pakistan has also held that rules of natural justice are not cast in a rigid mould and that depending upon the facts and circumstances of each case, there is no mandatory requirement of natural justice that in every case the other side must be given a notice before preliminary steps are taken. As per the Honourable Supreme Court, it might suffice if reasonable opportunity of hearing is granted to a person before an adverse action or decision is taken against him (Commissioner of Income Tax and Others v Messrs Media Network and Others; 2006 PTD 2502). Support can also be gleaned from the following precedents from the UK and USA.*

**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 complaints made against him and given a chance to answer them at the particular stage in question. Essential features leading the Courts to that conclusion had included the fact that the investigation was purely preliminary, that there would be a full*

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<sup>3</sup> Read the Commission’s Order available at [http://cc.gov.pk/images/Downloads/LPG\\_Final\\_Order\\_Proof-\\_15\\_December\\_2009.doc](http://cc.gov.pk/images/Downloads/LPG_Final_Order_Proof-_15_December_2009.doc)



*chance adequately to deal with the complaints later, that no penalty or serious damage to reputation was inflicted by proceeding to the next stage without hearing, that the statutory scheme properly construed excluded such a right to know and to reply at the earlier stage.*

**Parry Jones v Law Society and Others; (1969) 1 Ch Division 1 at pp. 8 and 10:**

*Held by the Court of Appeal that where the only inquiry was as to whether there was prima facie evidence, natural justice did not require that the party should be given notice of it.*

...

*Putting things in context, a reading of the Competition Ordinance and General Enforcement Regulations 2007 makes it clear that there is no mandatory requirement on the Commission to issue a notice/hold a hearing at the inquiry stage. Regulation 16 allows the Commission to commence an inquiry, inter alia, suo moto or in the case of a complaint. The standard to be satisfied in the latter case is if facts before it appear to constitute a contravention of sections 3, 4, 10, 11 and/or provisions of Chapter II of the Ordinance. Thus there is no requirement of notice or hearing at the stage of inquiry. Therefore it is our considered view that requirements of natural justice (a hearing) do not apply at the initiation of, and during an inquiry, by the Commission. Hence in light of clear local and foreign precedents we find no merit in the assertions made in this regard. (Emphasis Added)*

***Whether the alleged actions of PPA are in conformity with its mandate in terms of its Memorandum of Association?***

20. PPA argued before us that as an incorporated company duly registered with Securities and Exchange Commission of Pakistan, it functions within a mandate provided by the Memorandum of Association approved by the latter and the Directorate General of Trade Organizations. Therefore, PPA contended that every action of PPA mentioned in the Enquiry Report is a normal activity of the association and has the protection of law. PPA submits that the following are its major aims according to its Memorandum of Association:

*a) To provide facilities for and foster, encourage, secure and maintain good and closer relationship and unanimity among members and the trade in general and to promote and protect their business interests and to do all that is necessary for the furtherance and development of Poultry Farming and allied trade in Pakistan.*

*b) To consider all problems and questions confronting Poultry Farming and Poultry Farmers etc. and to devise ways and means for tackling and solving the same.*

*c) To collect and circulate permissible statistics and other information relating to or of interest to the business of its members and/or the trade in general.*

*d) To publish or cause to publish or encourage and support publications, bulletins or any other information considered useful or beneficial to the trade.*

*g) To secure, organize and coordinate action on all matters pertaining to or affecting the business of its members.*

*l) To take effective measures for the eradication of unethical practices from the field of trade, commerce and industry.*

21. We find the argument to be untenable. The Enquiry Report alleges collusive conduct in terms of price fixing and production of various poultry goods. PPA's Memorandum of Association cannot and does not provide for such activities which are illegal and against the principles of free trade. The ethos behind trade associations is to provide representation to industry people in dealing with the government and to improve general industry progress. It is not a platform to discuss and make decisions related to business. We see that the PPA's memorandum does not allow for collusion in pricing, production and sale of poultry products. On the contrary, it even qualifies the sort of information that maybe collected and circulated by PPA by inserting the word 'permissible' before the word 'statistics'. In our view, the rationale for this qualification is to ensure that the association cannot collect and disseminate information that is not permissible by law. Since members of PPA are competitors, they must not have access to information relating to other's production, cost and pricing nor they can

in any manner justify taking collective decision under the umbrella of PPA as being mandated by the latter's memorandum.

22. Moreover, it needs to be appreciated that even a mere memorandum of a company or association cannot provide it immunity from the statutory laws of the country. The Ordinance is a piece of primary legislation and extends to all spheres of the economy without any discrimination or immunity. All actions permitted by the Memorandum of Association are subject to the laws in force, including the Ordinance.

### **PPA's General Submissions**

23. PPA presented some general arguments against the finding of the Enquiry Report prior to its arguments on merits. We wish to address those before moving on to the merits.

24. First, PPA argued that poultry products are perishable goods. Due to this short storage life, farmers, breeders, feed owners etc cannot hoard or store their products to raise prices. Therefore, any sort of collusion is out of the question.

25. We find no merit in this contention. Anti-competitive practices, including collusion, have taken place in markets for perishable items. The *United Brands Company*<sup>4</sup> case involved anti-competitive practices relating to Chiquita bananas, which are a perishable item. There are at least two other jurisdictions where we have found instances of cartelization in the poultry sector. First is Peru which found a 'chicken cartel' in its poultry sector in 1997. Second is Turkey which found a cartel in its poultry sector in 2009. Therefore, the notion that cartels are not possible in markets of perishable products is untenable.

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<sup>4</sup> United Brands Company and United Continentaal BV v Commission of the European Communities. Chiquita Bananas. Case 27/76

26. Second, PPA has also argued that it does not have sufficient market power to engage in collusive activity or to implement any such decision. It contended that PPA represents only 70 broiler farmers out of a total of 20,000, 23 layer farmers out of a total of 6000, 47 hatcheries from a total of 150 and only 43 feed companies out a total of 141.
27. Such an argument is based on the misunderstanding of competition law. Market power is a relevant factor for discussion in abuse of dominance cases where unilateral conduct of a business undertaking is in question. In cases of collusion and cartelization, market power is not a relevant consideration. What matters in collusion is the existence of a collusive agreement or decision. In any event, the true gauge of PPA's market representation is not the number of undertakings that it represents but the market shares of the undertakings it represents. Analysis conducted by the Commission indicates that PPA represents undertakings with large markets shares. For example, statistics show that just eight undertakings represented by PPA in the day old chicks market have a combined share of around sixty percent in the market.

***Whether the decisions of PPA's central and zonal executive committees, sub-committees, standing committees and wings are decisions of PPA in the given facts and circumstances?***

28. PPA is a trade association that represents the poultry sector in Pakistan. It is an association registered under the Trade Organization Ordinance 2007. By virtue of being an association of undertakings which are engaged in the poultry business, PPA is an undertaking as per the definition given in Section 2(1) (p) of the Ordinance.
29. Based on the information contained in the Enquiry Report, the submission of PPA during the hearing, and the Articles of Association, it appears that PPA has a central office and two zonal offices, one for the northern zone and the other for

the southern zone. The central office is headed by the chairman of the central executive committee with assistance of the secretary general. The zonal offices are headed by the chairmen of the zonal executive committees with the assistance of the zonal secretaries. The central and zonal executive committees are assisted in their work by sub-committees and standing committees which are headed by conveners.

30. The Enquiry Report contends that the wings are part of PPA. On the other hand, PPA has tried to distance themselves from the wings at certain times during the proceedings, especially with reference to decisions taken during meetings of the wings. However, it is pertinent to note that at the first hearing of this case, the central chairman of PPA asked for an adjournment on basis of the argument that PPA has over five wings and it was not possible to collect all the relevant information unless further time was provided.
31. Even apart from this statement, there is other evidence to show that the wings are an integral part of PPA. Before indulging into the details of the documents it would be helpful to understand the ordinary connotation of the term 'wing'. The Concise English Oxford Dictionary 11<sup>th</sup> Edition defines wing as '*a group within an organization having particular views or a particular function.*' The Online Free Dictionary defines wing as '*a group affiliated with or subordinate to an older larger organization.*'<sup>5</sup>
32. While the mere definition explains that a wing is a limb and part of a larger organization, the evidence available on record further substantiates this contention. First, we have the minutes of meeting of the layer 'wing' held at PPA's office which have been recorded on PPA letterhead. The relevant part reads:

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<sup>5</sup> <http://www.thefreedictionary.com/wing>

*Minutes of a meeting of Layer Wing of Pakistan Poultry Association (Northern Zone) held at 11 am on 02 January, 2009 at Poultry House, 24-R, Johar Town, Lahore ...*

33. Second, there are the minutes of the emergent meeting of stakeholders of the poultry sector held on 5 August 2008 under the auspices of PPA. The minutes refer to the chairman's speech which states that different stakeholders from all the wings of poultry have being brought together on the PPA platform to discuss problems collectively. Third, we have on record minutes of meeting of PPA feed mill 'wing' dated 27 October 2007 which discuss and deliberate feed prices.
34. It is apparent from PPA records that wings refer generally to sub-sectors of the poultry industry, and are represented by the relevant sub-committee or standing committees at the centre and the zones.
35. Sub-committees and standing committees are part and parcel of PPA. These committees are extremely important given the fact that PPA is an association representing not just one type of business activity in the poultry sector but numerous types in the vertical supply chain of the poultry sector. In such a situation, the formation of sub-committees and standing committees allow PPA to manage issues relating to multiple sectors at the same time. The standing committees and sub-committees are formed with the mandate of the central and zonal executive committees and submit their performance reports to the former on a regular basis.
36. Sub-committees and standing committees are sanctioned by PPA's Articles of Association. Article 30 (i) and 32 (i) respectively sanction the formation and working of sub-committees and standing committees. The articles are reproduced below for ease of reference:

*30 (i) The Central Executive Committee of the Association shall be the main governing body for the whole Association and shall exercise overall control on Zonal Offices. It shall manage and*

*administer all affairs of the Association on behalf of the Central General Body of the Association falling in its jurisdiction. It shall cause to be carried out and executed all policies, programs and resolutions formulated and enunciated by the Central General Body of the Association or by itself in accordance with the rules and regulations in force. It shall enforce all rules and regulations and supervise and watch all activities of the Association. It shall take note of all matters and developments taking place in the country or abroad which may be of interest to or effecting the business of its members and shall take steps as may be necessary for implementing its policies and decision. It shall lay down and direct the pattern of working of the organization in accordance with the Memorandum and Articles of Association. It may appoint standing and/or sub-committees or other committees for specific purposes and shall formulate their terms of reference to etc.*

*32 (i) The Zonal Executive Committee in each Zone shall perform similar duties and function and shall have powers similar to those of the Central Executive Committee of the Association, in respect of their own Zones and in matters pertaining to and affecting purely zonal interests. They shall also carry out the guidelines and/or assignments given to them by the Central Executive Committee. They shall be under the overall control of the Central Executive Committee and all their actions shall have to be in conformity with the overall policies of the Association and the general interests of the trade, in respect of which the decision of the Central Executive Committee shall be followed. The Zonal Executive Committee will deal with the respective Provincial Government and with the respective District Government in respect of any matter and policy relating thereto.*

37. There is no doubt in our minds that wings, sub-committees and standing committees as they are referred to on the record are an integral part of PPA. **The association is carrying out and performing its activities through these subordinate bodies and in effect decision taken by such committees and wings are decisions of PPA.**

***Whether PPA, as an association, has taken decisions which have the object or effect of restricting, reducing, preventing or distorting competition in the relevant markets?***

38. The Enquiry Report rightfully defined relevant product markets for each of the following products: poultry feed, grandparent stock, parent stock, day old chick, broiler chicken, and eggs. We agree with the definition of the relevant markets as detailed by the Enquiry Report. The poultry industry is composed of various products, as pointed out by the Enquiry Report and agreed to by PPA itself numerous times during the hearings, but is a collection of many different types and levels of business activity in multiple poultry products.
39. As far as the geographical market is concerned, we believe that conditions of competition are homogenous in the entire country. The industry is subject to similar policy on matters of taxation, credit etc regardless of their geographical location within the country. There is no bar on the movement of poultry products and the difference in the prices in various places can be attributed transportation costs. Moreover, while there is some import of poultry products, it is not a scale large enough to affect the domestic poultry sector. Therefore the relevant geographic market for all the above mentioned relevant product markets is Pakistan.
40. We must point out here that the Enquiry Report erroneously referred to the parent stock market as the grandparent market. The prima facie violation found in the grandparent stock market is actually a prima facie violation in the parent stock market. We will hence be analyzing PPA's role in the following five relevant markets: the market for poultry feed in Pakistan, the market for parent stock in Pakistan, the market for day old chicks in Pakistan, the market for broiler chicken in Pakistan, and the market for chicken eggs in Pakistan.
41. We now turn to the question of whether PPA has made decisions that violate Section 4 with respect to every relevant market mentioned above.



## Parent Stock

42. We start with the relevant market of parent stock since it is at the top of supply chain in the poultry sector. The Enquiry Report refers to the Activity Report of the PPA's standing committee on grandparent project, dated 15 November 2008, addressed to the secretary general of PPA and signed by the convener of the committee, wherein important information about collusive practices in the parent stock market is provided.
43. The relevant portion of the activity report is reproduced below with important portions underlined:

*Keeping in view the current poultry crises three meetings of G.P owners were held in December 2007, March 2008 and October 2008, to discuss the current issue, probe the contribution of parents stock population in the exiting crises and to make some bold decisions so that there should be a significant support to the poultry industry to cope up this hard time.*

*...After a long discussion the following decisions were finalized and every belonging to G.P project ensured that number of parent stock should be reduced in the existing scenario so that industry which is already in the decline phase because of very high cost of production etc can be saved from over population.*

- *The G.P companies will be strict on the rates of day of P.S chicks;*
- *Surplus P.S will be sold as commercial Broiler;*
- *It was also agreed that the further expansion in GPs will be curtailed until and unless the market improve;*
- *Ban in import of P.S was also proposed in the meeting.*

44. The reading of the above highlights the existence of a decision taken by the standing committee on grandparent project to collusively reduce the number of parent stock to 'support' the poultry industry which means reduction in production to increase the price of parent stock and end products in the poultry sector. There could not have been a clearer representation of a naked anti-competitive decision.

45. During the hearing, PPA made no effort to deny this decision. In fact one PPA representative stated that the poultry industry could not have done anything else but this to prevent losses. In their written submissions, PPA only provided a clarification that grandparent and parent stock is not meant for sale as chicken meat and is only sold once it becomes infertile. No arguments were presented on the nature of the decision.
46. As per PPA own verbal admission during the hearing, both grandparent stock and parent stock is extremely important poultry products that are used as inputs by broiler and layer farmers. Any change in the population of grandparent and parent stock directly affects the costs of the broiler and layer farmers and the price of the end products in the poultry sector. The fact of the matter is that any variation in the production, price, or supply of grandparent and parent stock directly affects the public at large. Reducing production to avoid individual and collective 'losses' is not an argument that can be accepted to avert the prohibition laid out in Section 4 of the Ordinance.
47. The decision taken by PPA's standing committee on grandparent project to reduce the production of parent stock is anti-competitive by its object and is in stark violation of Section 4(1) read with Section 4(2) (c) of the Ordinance.

### **Day Old Chick**

48. We now move on to the relevant market of day old chicks. The Enquiry Report presents a long series of documents pertinent to this relevant market. However, after having gone through the listed documents in details and having studied the submissions of PPA, we will only discuss the evidence that is most relevant.
49. In this regard, the undated minutes of meeting of PPA northern zone, presided over by the chairman PPA northern zone and signed by the zonal secretary are worth a close scrutiny. The minutes shed light on one instance of an anti-

competitive decision taken by PPA regarding day old chicks. The relevant portion of the minutes is reproduced here:

*Mr. Raza Mahmood Khursand, while analyzing the factors of decrease of rate of day old chick and broiler rate, informed the house that it is due to over all national crises. There is panic amongst the masses and buying capacity of a common man is also deteriorated, Thereafter Mr. Chairman invited the house to discuss the give proposals for revival and to come out the prevailing situation. Dr Muhammad Sadiq, Dr Muhammad Aslam, Dr Abdul Kareem Bhatti, Ch. Muhammad Nusrat, Rana Sajjad Haider, Mr. Tahir Bashir, Dr. Muhammad Arshad, Dr. Muhammad Anwer Randhawa, Dr Mustafa Kamal, Dr. F.M Sabir, Mian Humayun Monnoo, Ch. Muhammad Azmat and Rai Mansab Ali Khairi, discussed the matter in detail and finally following decision were made unanimously by the house:*

4) Culling of birds at early age, i.e.55 weeks instead of 64 weeks should be carried out to support the industry. Starter eggs should not be set in hatcheries and these eggs would be marketed as table eggs.

5) Farmers should be educated to focus on 1.600 grams weight of broiler birds and it should be marketed at this weight to avoid disturbance in demand of the market.

50. The decision of PPA with regard to point number four listed above i.e. early culling of chicken and marketing of starter eggs as table eggs is a decision which is aimed at reducing the production of day old chicks in order to raise its price. This is a blatant example of a decision to collusively restrict production.

51. In its defense, PPA states that the decision has to be seen in the context of the situation of day old chicks between 2006 and 2008. According to PPA, during this time, the rate of day old chick went down to rock bottom due to over population and constant rumors of bird flu, causing losses to the hatcheries and parent stock farmers. Therefore, PPA, by virtue of its objective given in its Memorandum of Association, took the decision to suggest measures to its members to come out of the crisis.

52. We cannot accept the contentions made by PPA in its defense. First, as mentioned in the start of the order, Memorandum and Articles of Association do not provide immunity from the application of competition law. The mandate given by such documents is subject to the law and any action purportedly done under such mandates must conform to the law of the land including competition law. Second, as discussed in case of the parent stock market, taking anti-competitive decisions to reduce losses of undertakings is not a justification that shields from liability. We feel it is important to reiterate here that associations are meant for the general representation of the sector and industry they represent and should not be concerned individual financial well being of its members. Taking business related decisions, especially regarding price, production, marketing etc does not fall within the domain of associations and if the latter engage in such decision making, they stand in violation of Section 4 of the Ordinance.
53. We believe that given the rationale above, the decision of PPA to reduce bird population by culling it early, as a collective measure, is anti-competitive in object and is in violation of Section 4(1) read with Section 4(2) (a) and (c) of the Ordinance.
54. Given that the minutes are undated we feel it is important to clarify when this decision was taken. While no date is given in the minutes of meeting to indicate when it took place, there is strong, irrefutable circumstantial evidence to suggest that this meeting took place, at the minimum after 24 July 2008, which puts the meeting in which the anti-competitive decision was taken within the ambit of the Ordinance. The letterhead on which the minutes are printed bears 24-R Johar Town, Lahore as the location of PPA zonal office. The minutes themselves identify the meeting location as the address given above. We know from the minutes of the 3<sup>rd</sup> zonal executive committee dated 24 July 2008, attached as Annex I of the Enquiry Report, held at Avari Lahore, that 24-R Johar Town,

Lahore was not acquired till much later. So for all practical purposes the anti-competitive decision was taken after July 2008.

## **Broiler Chicken**

55. We now turn to the market for broiler chicken. The list of documents that were considered evidence of the, *prima facie*, anti-competitive decisions by PPA is extremely long. We will only mention here the ones that we feel are most relevant.

56. First, we look at the activity report of the standing committee on broiler farming from 1 October 2008 to 31 October 2009 signed by the convener. The relevant portion is reproduced below.

### *Paragraph 3*

*Moreover throughout the year strict vigilance was exercised on demand and supply of broiler so that farmers may not suffer any kind of loss. During the year, as and when it was felt that demand of poultry products is being affected, immediately meeting were called and preventive measures were adopted*

### *Paragraph 4*

*During the year following major problems were identified by the farmers which were immediately discussed in a meeting of broiler farmers and the following decisions were made and implemented there and then*

*a. There was difference of rate announced by PPA rate committee and traders therefore after discussion it was decided mutually that Same Rate will be announced by the traders and PPA representatives by SMS and text will be the same. No name will be written at the end of the message. Following decisions were also made, which worked in true letter and spirit:*

- 1. Rate will be declared at 01.00 PM daily by both parties*
- 2. Final rate will be announced at 08.15 PM*
- 3. Variation of rate can only be Rs. 01 to 02 at a time.*

4. *If there is any change in the mutually agreed broiler collection between the farmers of supply vehicle, both are ethically bound to inform each other regarding the change before 0900 PM*
5. *If any farmer violates the announced rate he will be liable to pay fine which maybe Rs. 10,000 per farm.*
6. *The above decisions will remain effective up to 28 February 2009, which can continue for ever after analyzing its affects on both parties.*
7. *Since rate committee members are providing their services and working for the whole community, there should be no criticism on their activities whatsoever.*

57. If anything, this extract is self explanatory. The standing committee for broiler farming has been busy in ensuring elaborate system for setting and dissemination of rate of broiler chicken exists in the market. The system envisages sanctioning farmers who do not adhere to the rate. The extract clearly mentions that there is a PPA rate set by the PPA committee. This system is a result of a decision taken by the PPA standing committee on broiler farming.

58. Further the activity report of PPA's standing committee for poultry marketing from 1 October 2008 to 31 October 2009, signed by the convener is also pertinent. The relevant portion is reproduced below.

*Paragraph 2*

*During the current year Standing committee stressed upon the need that there should be no problems as far as poultry market is concerned. As and when problems were highlighted by some farmers efforts were made to rectify the issues as soon as possible. During the month of January, 2009 problems of fixation of rate and commission @Rs. 0.25 per kg to traders was a hot issue which was discussed in detail in a meeting and following decisions were made unanimously by the house:-*

- a. *Commissions maybe approved to pay them @ Rs. 0.25 per kg if traders are ready to make the payment in advance on daily basis.*
- b. *Daily rate would be fixed by the Pakistan Poultry Association and not by the traders.*

*c. Next meeting will be held after a weeks time and a delegation of prominent traders would also be invited to discuss the above proposals.*

*d. Centralize broilers sale system would be activated and maximum sale would be made though central office of control houses.*

*Paragraph 3*

*In pursuance to the above problems another meeting was held and matters were discussed in detail. Following were the recommendations/focused points on which almost all the house was united:-*

*a. Regional offices to control the rates of broilers should be opened at Kot Radha Kishan, Raiwind. Kasur, Sheikhpura, like Okara so that 30-50 persons could control the sale/purchase of broiler consolidated within their regions through the regional offices.*

*b. Sale of broilers should be controlled centrally by the standing committee for broiler marketing.*

*Paragraph 5*

*Keeping the above mentioned measure market rates remained under control and farmers remained satisfied with their farming and marketing activities.*

59. PPA, in its written submissions states that the reports do not reflect a decision of PPA and that documents containing direction of government bodies be considered when looking into them. No explanation is provided by PPA regarding the mechanisms set by these committees for rate determination and sale of broiler chicken. Moreover, no documents or reference to any documents containing direction from government bodies have been provided to us.

60. We have examined the minutes of the first, second and fourth meeting of the PPA zonal executive committee, southern zone which present a progressive picture into rate determination by PPA.

*Minutes of the 4<sup>th</sup> Meeting of the Zonal Executive Committee of PPA, Southern Zone held on 22 May 2009 attached as Annex Q of the Enquiry Report.*

*Paragraph 3*

*(iv) Mr. Lal Bux Kolachi, Convener informed that at present broiler is being lifted from the farms on the rate determined by the broiler committee of PPA. However, on the retail shops, broiler is being sold on the rate determined by Sindh Poultry Wholesalers and Retailers Association. He further informed that efforts are being made to give farm gate rate and supply rate in the newspapers with a margin of Rs. 6 per kg on supply of broiler to retailer by wholesaler. In this regard cooperation on wholesalers is being sought.*

*Minutes of the 2<sup>nd</sup> Meeting of the Zonal Executive Committee of PPA, Southern Zone held on 6 March 2009 attached as Annex R of the Enquiry Report.*

*Paragraph 2*

*(ii) Mr. Lal Bux Kolachi, Convener informed that broiler marketing sub-committee has since been formed and its meetings are held daily outside PPA for determining the broiler rate keeping in view the demand and supply position. The broiler rate so determined is intimated to PPA for reporting in the press.*

*Minutes of the 1<sup>st</sup> Meeting of the Zonal Executive Committee of PPA, Southern Zone held on 10 January 2009. Attached as Annex*

*Paragraph 7*

*Mr. Abdul Maroof Siddiqui said that broiler marketing sub committee is very important. He, however, observed that broiler is not available in the market on the rate reported by this committee. In the market, broiler rate reported by Sindh Poultry and Wholesalers & retailers association is prevailing which is often higher than PPA rate. Mr. Muhammad Jawed Aslam suggested that broiler rate be monitored closely.*

61. It appears from the extracts above that PPA has a decision making process in place to determine farm gate rate of broiler chicken through the sub-committee on broiler marketing. PPA in its reply states that the wholesale rate and retail rate is



determined by the Karachi wholesalers and retailers association and that the rate committee consists of farmers, wholesalers, traders and commission agents. It claims that it only reports the price. However, no documentation has been submitted by PPA that proves their contention. Moreover, even if only farm gate rate is being determined by PPA, it is still an anti-competitive practice and we need not go into an explanation of how wholesale and retail price is fixed.

62. There is further evidence to support the assertion that PPA is engaged in rate fixing activities regarding broiler chicken. In the minutes of the meeting held with the district government on 12 December 2007, PPA is recorded telling the district price control officer that PPA determines the rate of broiler chicken bi-weekly in presence of important poultry owners. The relevant extract is reproduced below.

*Paragraph 2*

*The chair inquired from the representatives of both the associations [PPA and Karachi Wholesales and Retailers Association] what are the basis/criteria for evaluation and fixation of the price of chicken meat and eggs? It was also noted from the rates are being published in the local newspapers and that too are different from each other.*

*Paragraph 3*

*It was informed by the representatives of the above association that presently two poultry associations are working. The rates are evaluated twice a week separately by both the associations and are published in prominent newspapers from both the associations. For this purpose the meetings are held in the office of the Associations in the presence of some prominent owners of poultry farms. The rates are evaluated on the basis of the basic principal of demand and supply prevailing in the market as such price fixation is made with the consent of the poultry farmers only.*

63. PPA argued that there was an omission of words and facts by the drafter of the minutes. No evidence was provided by PPA to substantiate its claim.

64. Further there are three price fixation tables on record under the letterhead of PPA that price fixing under the auspices of the former. The English translation of the three is reproduced below.

Table dated 28 February 2008.

“Today, the following members met and after substantial deliberations the rate of Rs. 76 for broiler chicken was agreed upon.”

Table dated 21 February 2008.

“Today, the following members met and after substantial deliberations the rate of Rs. 74 for broiler chicken was agreed upon.”

Table dated 14 February 2008.

“Today, the following members met and after substantial deliberations the rate of Rs. 60 for broiler chicken was agreed upon.”

65. Regarding the tables, PPA was of the opinion, that they were the result of mutual price agreement between farmers and traders under the directions of the city government. However, no evidence of directions from the city government were produced or referred to by PPA.

66. PPA has been unable to substantially and reasonably rebut the evidence presented in the Enquiry Report regarding collusive decision with regard to pricing, production and sale of broiler chicken by PPA. On the other hand there is sufficient evidence that shows the existence of numerous decisions taken by the PPA through its committees at various times which were designed to determine, at the very least, the farm gate rate of broiler chicken. It is clarified here that, for purposes of showing an anti-competitive decision by an association, it is not necessary to prove a series of individual decisions regarding price or rates when the mechanism of determining those prices or rates is abundantly clear. The existence of a mechanism, a formula or a target price is enough to prove the

existence of a price fixing decision, held by the Commission in its decision in the *Cement Cartel* case. The relevant portion is reproduced below

*It may be relevant to add that in Lombard's Club case the European Commission observed to the effect that it is not necessary for undertakings to reach an agreement to fix an exact price. There can be a cartel even if there's merely a discussion as to target values or ideal prices between competing undertakings.*

67. We believe that given the discussion above, PPA has taken decisions that have the object of reducing, restricting, preventing and distorting competition in the market of broiler chicken in violation of Section 4(1) read with Section 4(2) (a) and (c) of the Ordinance.

#### **Chicken Eggs (Table Eggs)**

68. Similar to the broiler chicken discussion, the Enquiry Report presents a long list of evidence regarding prima facie anti-competitive decisions in the chicken egg market. Consistent with our approach in the previous markets, we will only discuss evidence which are relevant to the matter at hand.

69. First, we have before us the annual report of the layer wing 2008-2009. The relevant portions are reproduced below:

##### *Paragraph 2*

*Rate committee has have close contact with zones vice versa for marketing and rates, coordination with zones was remained cordial. Daily egg rates were announced with the coordination of North Zone and South Zone*

*Rate committee has been holding meetings time to time in various places of North Zone, Kamalia, Faisalabad, Lahore and Rawalpindi about rates and to monitor the market situation.*

##### *Paragraph 3*

In December 2008 due to penetration of breeders eggs in the market the rate had to dropped but it was absorbed making a strategy. Rate wise the situation remained very critical upto January 2009 after that the situation was controlled.

*Paragraph 6*

*Mr. Khalid Saleem, the convener of the layers wing presided over the meeting and advised that layer farmers and layer traders are two wheels of the layer vehicle and both should work equally. He added that the object is to get maximum eggs out of layer birds and the other rate committee's aim to get good profit margin for the farmers.*

70. From the extracts above, it is evident that: one, the layer egg rate committee meets regularly in different regions and cities to determine and monitor rates. Two, it announces the rates in coordination with the zones. Three, it took corrective measures i.e. reduction of egg production to stabilize the rates in December 2008. Four, the aim of the rate committee is to ensure a 'good profit margin' for the farmers.
71. We believe that no mechanism to determine and announce rates could be more elaborate than the one presented above. PPA has a mechanism in place to ensure that pricing and production of chicken eggs is determined daily to enable good profits for the farmers.
72. PPA in its written reply took the plea that no decision regarding pricing and production is mentioned in the annual report. As mentioned above, there is no need to show individual determination of rates and production level as long as a framework to do so can be proven.
73. In addition to the annual report there are several documents that support the description of the mechanism cited above. For example, the minutes of the second southern zone executive committee meeting of the held on 6 March 2008, the relevant extracts of which are reproduced below.

*Paragraph 2*

*(iv) Mr. Muhammed Jawad Aslam, Convener informed that the [layer marketing] committee has been formed. The committee determined egg rates daily keeping in view the demand and supply position and communicate the same to PPA for reporting.*

74. PPA's only response to the document above is that it does not contravene any provision of the Ordinance. No explanation of the contention has been provided.

75. Two, there is the Letter dated 9 January 2009 from CE, Sultanpur Farms to Secretary Livestock Department, Punjab which talks about the PPA egg rate. The relevant portion is reproduced below.

*The extra cost to the Company of the packing etc of the 'Good Eggs' have been added to the market rate as announced daily by the Pakistan Poultry Association. At present the PPA rate is Rs.44.00 per dozen, which is subject to change by the Association.*

76. PPA states that since the letter is addressed to a government functionary, the rate of eggs is also fixed by rate committee formed under his directive. However, there is no documentary proof of any directive from the government in this regard on the record. What is abundantly clear from this letter is the fact that the rate of eggs is announced by PPA, which corroborates and strengthens the other evidence on record.

77. Evidence on record further indicates that PPA also fixes the margin for the Karachi egg dealers. We have before us the minutes of the sixth meeting of the zonal executive committee southern zone dated 21 May 2008. The relevant portion is reproduced below:

*Paragraph 5*

*(iii) Zonal Secretary placed before the House a letter received from Karachi Eggs Dealers requesting for enhancement of egg retailers margin from Rs. 60 to Rs. 90 per crate of 30 dozen. The House considered and approved it to be effective w.e.f 2-1-2008.*

78. The language of the minutes is abundantly clear. This decision in its own self is anti-competitive. PPA offered no explanation or contentions against this document.

79. We also have a letter from the secretary general of PPA to district coordination officer, Multan, dated 26 October 2007 clearly stating that PPA regulates the price of chicken eggs. The relevant portion is reproduced below.

*Prices of eggs are monitored and regulated by PPA, based on demand and supply in Punjab. Eggs are traded and supplied on benchmark fixed by PPA. If retailers are compelled to sell below cost they will be deprived of their legitimate right of earning profit.*

80. PPA has a mechanism in place under its committee for layer marketing to determine the daily rate of eggs. PPA has also taken decisions to fix the margin of the Karachi egg dealers association. It has also taken decision to curtail production through early culling and sale of starter eggs as table eggs. These decision are a violation of Section 4(1) read with Section 4(2) (a) and (c) of the Ordinance.

**Poultry Feed**

81. There are on record two piece of evidence that indicate that PPA has taken decisions to fix the price of poultry feed. First is the minutes of meeting of the PPA feed mill wing dated 27 October 2010. The relevant portion is reproduced below.

*Haji Muhammad Bashir, CEO of National Feeds Ltd chaired the meeting.*

*Detailed discussions were held regarding the price and availability of poultry feed ingredients prevailing in the market. The prices of all grains and meals have increased rapidly. The price of Maize is Rs.585, wheat is Rs.6000, and rice polish is Rs 435 per 40 Kg respectively. The prices of Soya bean meal, canola meal and rape seed meal have increased drastically. The price of Soya bean meal is Rs.72000 per ton in the local market, and 370 dollars per ton in the international market. The price of canola meal has increased up to Rs.17.5 per Kg and rape seed meal has increased up to Rs.12.5 per kg ex-mill. The current rate of ingredients will continue to prevail in the market or might even increase in the near future. The continuous increase in the price of feed ingredients has also pushed the overhead costs. The overhead cost per bag is now Rs.181 per bag, which mainly includes commission, freight, marketing and factory overheads. It was calculated that at the prevailing market rate of ingredients the ingredient cost of Rs 760 and overheads of Rs.181 yield a same price of 961, thus sale price of the feedbag needs an increase of Rs.67 per bag. Participants recommended increase ranging from Rs.40 to Rs 56 per bag. The chairman finalized an increase of Rs.40 per bag that was agreed by all the participants. All the feed millers will absorb loss for sometime by consuming their previously maintained stocks. The price of the poultry feed would be increased by Rs.40 per bag with effect from 29.10.2007.*

*Detailed discussions were also held regarding the price of Layer Feed. There is a difference of Rs.35 between the price of Layer feed and Broiler Feeds. The participants agreed to gradually eliminate this difference. It was decided to increase the price of layer feed by Rs.55 instead of Rs.40 to gradually eliminate the price differential.*

82. It is abundantly clear that PPA feed mill wing met to discuss, deliberate and take decisions regarding the price of various poultry feeds. PPA in its defense stated that feed is a perishable product and prices of perishable products cannot be manipulated as stock cannot be stored. PPA also took the plea that the decision taken by the wing was merely suggestive or indicative and no decision was taken to fix the price of the feed.

83. We will let the record speak for itself regarding the second contention. Anyone who can read will be able to tell that detailed discussion took place before the wing decided to increase the price of various poultry feeds with effect from particular dates in the future. The evidence is as clear as a whistle.
84. The second piece of evidence is from PPA's website which is reproduced below.

POULTRY FEEDS RATE W.E.F 10<sup>th</sup> Feb, 2010 IN PAKISTAN  
50KG BAG For PUNJAB AND NWFP AND AJK (-Rs.30.00)

<i>1 Chick Starter Layer Mash</i>	<i>Rs.1315</i>
<i>2 Grower Layer Mash</i>	<i>Rs.1372</i>
<i>3 Layer Mash</i>	<i>Rs.1287</i>
<i>4 Broiler Starter Mash</i>	<i>Rs.1317</i>
<i>5 Broiler Finisher Mash</i>	<i>RS.1307</i>
<i>6A Broiler Breeder Starter Mash</i>	<i>Rs.1333</i>
<i>6B Broiler Breeder Grower Mash</i>	<i>Rs.1284</i>
<i>8A PRE Breeder Mash</i>	<i>Rs. 1319</i>
<i>8B Broiler Breeder Mash</i>	<i>Rs.1329</i>
<i>8C Broiler Breeder Mash</i>	<i>Rs.1317</i>
<i>20 Layer Breeder Mash</i>	<i>Rs.1329</i>

85. The term 'with effect from' clearly indicates that this is not historical data but a pricing decision of PPA that will take effect in the future. The website information supports the idea that PPA is involved in price fixing of poultry feeds. Such decisions are in violation of Section 4(1) read with Section 4(2) (a) of the Ordinance.
86. In our discussion we have restricted our focus on material evidence which is relevant for establishing the contravention under the Ordinance. We note that in PPA's reply a lot of objections have been raised to certain documents which are of trivial consequence when seen in juxtaposition with the relevant material evidence on which PPA has offered very little explanation.



## **Determination of Price in a Free Market**

87. PPA has contended before us that '*price determination through free market mechanism of demand and supply negates the existence of a cartel in the poultry industry*'. From the evidence that is available on record, it needs to be appreciated that the PPA stance stands clearly negated because prices are being determined collectively under the umbrella of PPA. In a free market, prices are determined by negotiation between independent buyers and suppliers – there has to be an offer and acceptance between the two. A collective approach in decision making on economic aspects, as practiced by PPA, is averse to competition, negates the idea of a free market and substantiates the existence of a cartel.

## **Price Information on PPA's Website**

88. As far as placement of pricing data on PPA website is concerned, PPA argued that the prices available on the website are market averages placed on the website one day later. However, there is evidence on record which shows that the prices placed on the website refer to the same day. Multiple instances of this were shown to the Commission and PPA by the Enquiry Officers during the course of the hearing. We do not find merit in PPA's contention. PPA is therefore hereby required as per its own statement to ensure and place the historical data only a day after and also to indicate the basis of such price information.

## **Penalty**

89. Despite a fair performance in terms of economic growth in the most years of the current decade, Pakistan has fallen behind most nations in terms of fair competition. While cartelization may allow greater profits, the consumer suffers direct and indirect losses due to artificial caps on the supply or artificial price

hikes. Thus there is a loss in the total economic surplus and firms also experience efficiency losses due to under utilization of their capacity. A bad state of competition erodes competitiveness in the economy, results in productivity losses and leads to, or accelerates, economic decline.

90. In case of a violation of Section 4 of the Ordinance, the Commission is empowered to impose a fine under Section 38 and to issue a cease and desist order under Section 31. The maximum fine which can be levied for a contravention of any provision of Chapter II of the Ordinance is either PKR 50 million or fifteen percent of the annual turnover of the undertaking. In case of multiple contraventions, as in the instant case, the penalty that could be imposed would be the multiple of the number of contraventions.

91. In the past the Commission has taken into account various factors before levying a penalty on collusive activity. In the first ever case of cartelization, the Commission fined an association of the banks PKR 30 million as a lesser penalty keeping in mind the fact that competition regime was new in Pakistan and that cooperation between competitors was a norm in Pakistan. In case of cartelization in the LPG industry, an LPG association was fined PKR 40 million for collusively setting prices. However, in the case of the cement cartel, the cement association was fined the maximum of PKR 50 million for playing a decisive and lead role in the cartelization of the industry for past many years

92. We have before us today a distinct violation of Section 4 of the Ordinance, by a single association, in five different relevant markets. This is an unprecedented situation in terms of the scope of anti-competitive activities by a single entity. Given that the numerous contraventions, and their potential effects on the public we would be justified in imposing the maximum fixed penalty for each of the contraventions, amounting to PKR 250 million. However, we are inclined to consider other factors as well. We are aware of the fact that collusion has, over many years, become an integral part of the way business is conducted in Pakistan.

We have seen that competitors view and use associations as a means of promoting collective business. A major driving force behind the associations' anti-competitive behavior is the influence exerted by powerful members. We are also cognizant that the poultry industry has suffered huge losses owing to the recent flooding in the country.

93. Keeping in view all the facts and circumstances, we hereby impose a penalty of PKR 10 million for each instance of collusive activity in the different relevant markets amounting to a total of PKR 50 million. However, having done so, we are hereby reprimanding that if we do not witness an immediate corrective behavior, no leniency shall be shown to the members of the association if they, upon initiation of proceedings under the Ordinance and on basis of evidence, are found in contravention of the Ordinance.

94. PPA is hereby also ordered to immediately desist from taking any decision, even if merely suggestive in nature, regarding pricing, production and sale of poultry products. PPA is further ordered to disband its rate, production and market standing and sub-committees. PPA is further ordered not to participate in price related discussion with any stakeholders including government functionaries and to reject any such requests made by the latter. We hereby warn PPA that the Commission shall not take a lenient approach in the future if any anti-competitive behavior is detected.

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 co-ordinate business policy. Ensuring that every, or even one, member has a profitable business is not the job of an association.

97. Ordered accordingly.

**RAHAT KAUNAIN HASSAN**  
Chairperson

**ABDUL GHAFFAR**  
Member (C&M)

**DR. JOSEPH WILSON**  
Member (PRI)

**Islamabad the August 16, 2010**