COMPETITION COMMISSION OF PAKISTAN

ENQUIRY REPORT

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

IN THE MATTER OF ALLEGED CONTRAVENTION OF SECTION 4 OF THE COMPETITION ACT, 2010 BY FERTILIZERS MANUFACTURERS OF PAKISTAN ADVISORY COUNCIL (FMPAC) AND ITS MEMBER UNDERTAKINGS

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Dated: 21st March, 2023

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I. BACKGROUND & FACTS

1. This report has been prepared in pursuance of the enquiry authorized by the Competition Commission of Pakistan ('the Commission'), under Section 37 (1) of the Competition Act, 2010 ('the Act'), on 01st July 2022, against Fertilizer Manufacturers of Pakistan Advisory Council ('FMPAC') and its member undertakings for alleged contravention of Section 4(1) read with Section 4(2)(a) of the Act.
2. A rising trend in the prices of urea coupled with a shortage of the product was witnessed in November 2021. Average prices of Sona Urea and Other Urea (including Tara, Sarsabz, etc.), in Table 1 below, show an upward movement beginning in September 2021 and reaching a high in November 2021 which is the month where urea offtake is usually the highest due to sowing (Rabi) season. Between October and November 2021, Sona Urea jumped from Rs. 1851 (per 50kg bag) to Rs. 2058 (per 50kg bag) a Rs. 207 (11%) increase.

Table 1: Average retail prices of fertilizers Rs./50kg bag[1]		
Month	**Sona Urea**	**Other Urea (Tara, Sarsabz, Shandar etc)**
Jan, 2021	1729	1708
Feb, 2021	1740	1720
Mar, 2021	1751	1720
Apr,2021	1745	1713
May,2021	1739	1708
June, 2021	1748	1714
July, 2021	1748	1719
Aug, 2021	1775	1744
Sep, 2021	1807	1780
Oct, 2021	1851	1802
Nov, 2021	2058	1974
Dec, 2021	1917	1864
Average price	**1801**	**1764**
Source: Average of PBS Weekly SPI		

[1] Average prices for Pakistan are taken per week and then averaged for the month.

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3. Against this backdrop, FMPAC published an advertisement in Dawn, and The Nation on 26th November, 2021 ('the advertisement') (Annex I-A)[2].The contents of which are reproduced verbatim hereunder:

- *With the Government of Pakistan's support, ample stocks of Urea and Phosphorous fertilizers are available and there is no shortage.*
- *Urea Fertilizer is being sold at PKR 1,768 per bag across the country. Buyers should not pay more than this price.*
- *It is our collective responsibility to raise our voice against hoarders and those involved in overcharging.*
- *Complaints against price hike should be made immediately to the relevant government department.*
- *Licensing of dealers overcharging and hoarding will be cancelled.*
- *Maximum Retail Price of Urea PKR 1768 per bag.*

4. The advertisement also bears the logos of Engro Fertilizers ('EFERT'), Fauji Fertilizer Company ('FFC'), Fauji Fertilizer Bin Qasim ('FFBL'), Agritech Limited ('Agritech'), Fatima Fertilizer Company ('Fatima'), FatimaFert Limited ('FatimaFert') and PakArab Fertilizers Limited ('PakArab'). As per available information, it appeared that FMPAC, *"brings together the country's fertilizer producers in a single cooperative forum..*[3]" The above cited urea manufacturers are listed as its member undertakings. It appeared that FMPAC acted as a 'forum' of association of fertilizer manufacturers, and its member undertakings were *prima facie* fixing and announcing the maximum retail price of urea fertilizer in Pakistan.
5. Based on the above analysis on 01st July 2022, an enquiry in the matter was initiated, pursuant to Section 37(1) of the Act, against FMPAC an association and its members which include urea manufacturers of Pakistan (hereinafter referred to collectively as 'member undertakings') to ascertain alleged contravention of Section 4(1) read with Section 4(2)(a) of the Act and the following officers were appointed to the enquiry committee:
    a. Ms. Maliha Quddus, Sr. Joint Director (Cartels & Trade Abuse)

[2] The advertisement can also be accessed via the e version of the Nation online which is circulated throughout Pakistan https://www.nation.com.pk/E-Paper/islamabad/26-Nov-2021
[3] Refer to FMPAC's Website https://fmpac.com.pk/

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b. Ms. Aqsa Suleman, Assistant Director (Cartels & Trade Abuse)

c. Mr. Furqan Khattak, Management Executive, now Assistant Director (Cartels & Trade Abuse) [Hereinafter referred to as 'the enquiry committee']. (Annex I-B)

Correspondence

6. Subsequent to initiation of the enquiry, the enquiry committee conducted correspondence with various government departments at the Federal and Provincial level in order to understand the government interventions in the sector, particularly its role, if any, in the urea pricing mechanism and provision of subsidies. The data gathered from these correspondences forms an integral part of this enquiry report.

7. The enquiry committee corresponded with the Ministry of Industries & Production ('MoIP'),vide letter dated 21.09.2022, regarding information on the regulatory mechanism of urea fertilizer (Annex II-A). The MoIP in its response dated 18.10.2022 informed that as per the Fertilizer Policy 2001 the price of urea was deregulated. (MoIPs response is referenced in the analysis of the enquiry report. Refer to Annex II-B for MoIP's reply).

8. The enquiry committee's correspondences with the provinces confirmed that the prices of urea fertilizers were deregulated and price notifications issued by the respective provincial agricultural departments simply notified the prices fixed by the companies. The purpose of these notifications was to check any profiteering. Details of the correspondence are as follows with details being referenced in subsequent paragraphs of this enquiry report.

    a. Punjab: Letters were written to the Agriculture Departments of Punjab, Khyber Pakhtunkhwa, and Sindh to ascertain the role of the provincial authorities, if any, in regulating the prices of urea (Annex III-A). A reply was received from Agriculture Department Punjab on 01.11.2022 with a detailed description of the fertilizer pricing mechanism being followed (Annex III-B). In furtherance to the response received, the Agriculture department was asked to provide copies of price notifications of different districts vide letter dated 16.12.2022. Copies of the notifications were provided through email dated 06.01.2023. (Letter to Agri Dept placed at Annex III-C). Furthermore, on 09.01.2023 the enquiry committee telephonically contacted the Deputy Director Agriculture (Extension) of Multan, Layyah and Rawalpindi regarding Fertilizer Company-issued price lists. Response

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was received from Rawalpindi wherein record price lists issued by the fertilizer companies were provided.

b. KPK: A response was also received from KPK Agriculture Department vide letter dated 17.01.2023 wherein it noted that provincial authorities had no role in the fixation of prices of urea fertilizer response is referenced in analysis of the enquiry report (Reply at Annex III-D).

c. Sindh: The Sindh Agriculture Department vide response dated 06.03.2023 informed that it has no role in setting the prices of urea. (Reply at Annex III-E).

d. Balochistan: Agriculture Extension Department Balochistan also noted that the prices of urea fertilizer were deregulated and the provincial authority had no role in fixing of prices[4].

9. Government intervention in the urea sector is in the form of provision of subsidized gas to urea plants as gas is the major input for the production of urea. In order to obtain details regarding gas supplies and subsidies to urea fertilizer plants, a letter was written to Ministry of Energy (Petroleum Division) ('MEPD') dated 18.01.2023 response to which was received vide letter dated 15.02.2023. According to the information obtained, each plant is supplied either indigenous gas or RLNG according to its contract. Two plants i.e. Agritech and Fatima Fertilizer (Sheikhupura Plant) are being supplied RLNG at specific rates approved by the ECC of the Cabinet while price differential is being budgeted in the demand of MoIP. (Annex III-F). As discussed in paragraphs 28-30 below.

II. ISSUES

10. Based on the foregoing and the ToRs assigned, to the enquiry committee, by the Commission, the following issues are framed for further deliberation and analysis:

    a. What is the relevant market in terms of Section 2(1)(k) of the Act?

    b. Whether there is any *prima facie* violation of Section 4(1) read with Section 4(2)(a) of the Act by FMPAC and its member undertakings.

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[4] Deputy Director Agriculture Extension, Government of Balochistan. Contacted telephonically by the enquiry committee.

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III. SECTOR BACKGROUND

11. It would be important here to give a brief sector background to understand the dynamics of the industry to place into context any prima facie violations of Section 4 of the Act.

Urea Demand and Supply

12. Fertilizers can be categorized into the following three broad categories:
    a. Nitrogen (Urea and CAN): It supports plants' rapid growth and encourages the healthy development of foliage and fruits;
    b. Phosphorous (DAP, SSP, NP): It helps a plant convert other nutrients into usable building blocks with which to grow;
    c. Potash (SOP, MOP): Vital for proper growth and reproduction of plants[5].

    These fertilizers come in various mixes and compositions and are applied according to soil conditions, weather conditions, crop type, and the desired productivity. The recommended level of fertilizer use in Pakistan for Nitrogen (N), Phosphate (P), and Potash (K) is 2:1:0.5[6].Urea is a concentrated straight nitrogenous fertilizer that contains 46% nitrogen, which is a major plant nutrient and is the most common type of fertilizer used. Total fertilizer use in Pakistan was on average 207 kg per hectare in 2020-21 (as per the latest data available).[7] Out of the three types of fertilizers nitrogen fertilizers (i.e. Urea and CAN) are the most commonly used with a share of 74%, phosphorous (25%), and potash (1%) (Refer to Table 2 below).

Table 2: Nutrient-wise fertilizer use status 2020-21 (Kg/ha)

	Nitrogen	**Phosphate**	**Potash**	**Total**
Total	154	51	2.9	207
Share	74%	25%	1%	100%

Source: NFDC

13. According to the fertilizer use survey, five major crops: wheat, cotton, sugar cane, rice and maize account for about 87% of fertilizer consumption. In terms of total fertilizer

[5] Fertilizer Sector Study, PACRA
[6] Fertilizer / (Nutrients) Use Ratios, Page 17, Fertilizer Sector of Pakistan, Analysis by Projects & Policy Research Department, PBIT, November 2018.
[7] Fertilizer use status 2020-21, Annual Fertilizer Review, 2020-21, NFDC.

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consumption volumes wheat uses about 45%, cotton 23 % followed by sugarcane 14.4%[8]. Urea demand follows the cropping patterns i.e. Kharif (April to September) and Rabi (October to March). In terms of share in the cost of production, fertilizer can be considered a major component for most crops. In wheat production fertilizer is the second largest cost component accounting for 17% of the total cost after land rent. Similarly, fertilizers account for 11% of the cost in sugarcane production, 16.8% in onion 23% in potato and 14% in rice production[9].

14. Demand for urea in Kharif (April-September 2021) was 3,258 thousand tons and 3,195 thousand tons in (October-March 2022). Annual demand for urea, therefore, is approximately 6,364 thousand tons. Overall annual domestic production during the same period was 6,378 thousand tons (Kharif 3,106, Rabi 3,272 thousand tons)[10]. As per the Economic Survey of Pakistan, Pakistan meets 86 percent of its fertilizer requirement through domestic production while remaining 14 percent is met through imports[11]. However, if we look at urea import numbers (Table 3), it appears that Pakistan's domestic production has been able to cater to local demand as import quantities are negligible catering to only 1.5% of annual demand in 2021-22. These numbers illustrate that urea production by FMPAC member undertakings is sufficient to cater to local urea demand.

Table 3

Fertilizer Supply Demand Situation (000 Tonnes)

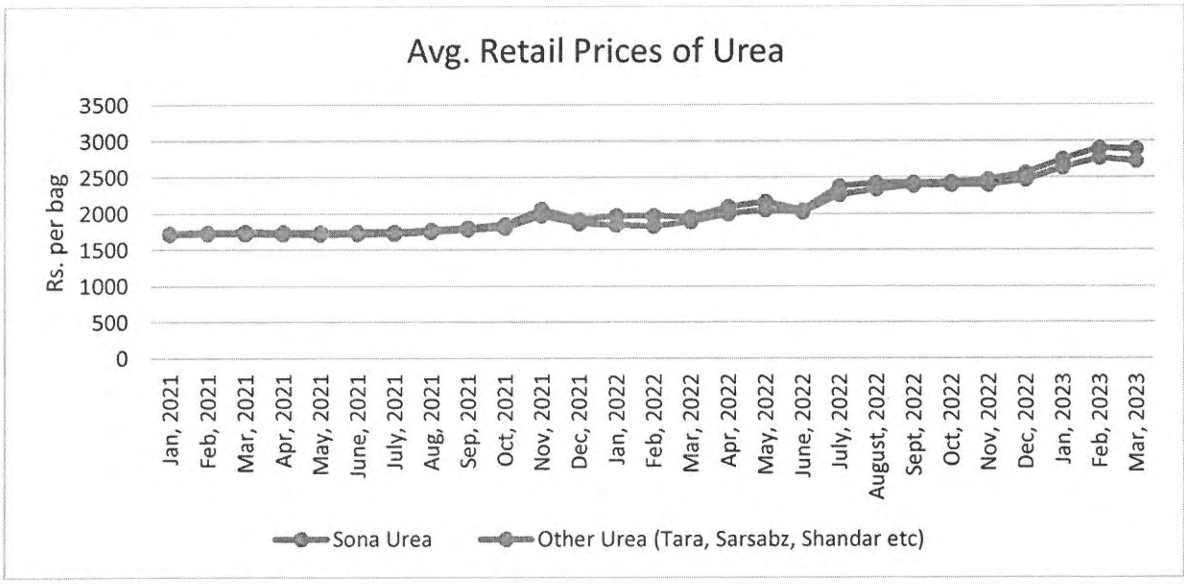
Description	Kharif (Apr-Sep) 2021		Rabi (Oct-Mar) 2021-22		Kharif (Apr-Sep) 2022	
	Urea	DAP	Urea	DAP	Urea	DAP
Opening Stock	298	55	116	353	294	255
Imported Supplies	0	733	100	385	0	30
Domestic Production	3,106	444	3,272	443	3,214	420
Total Availability	3,404	1,232	3,489	1,181	3,508	705
Offtake/Demand	3,258	889	3,195	933	3,364*	907
Write on/off	-29.8	9	0	7	0	0
Closing Stock	116	353	294	255	144	-202

*: Offtake projections are based on demand received from Punjab province and three-year average offtake for rest of the provinces.
Source: National Fertilizer Development Centre

8 Crop-wise usage of fertilizer, Page 9 Fertilizer Sector of Pakistan, Analysis by Projects & Policy Research Department, PBIT, November 2018.
9 AMIS
10 Economic Survey of Pakistan https://www.finance.gov.pk/survey/chapters_21/02-Agriculture.pdf
11 Economic Survey of Pakistan 2021-22 https://www.finance.gov.pk/survey/chapters_21/02-Agriculture.pdf

Urea Prices

15. Retail prices of urea are determined by the companies which issue price lists from time to time and are inclusive of dealers' margin. These prices are notified by the respective provincial district agriculture extension departments as the 'maximum retail prices' for the purpose of checking any profiteering. It is possible, that price at which urea is actually sold in the market is higher than the notified prices due to various factors including profiteering by dealers or other unscrupulous elements. Price lists issued by respective urea manufacturers, show a similarity in the prices of different companies. However, as per the aggregated data collected by PBS, the prices of brands can vary. The overall price trend for urea is the same regardless of whether we look at PBS prices or company-notified prices. Average retail prices of urea products across various cities, were mostly stable in 2021 but there was a surge towards the October-November (sowing season) after which they remained stable at that level for a few months before showing a rising trend from March 2022 onwards. Overall the price of urea rose by 11% in 2021, by 30% in 2022 and 5% in the first three months of 2023.



Source: Average of PBS Weekly SPI

International Prices

16. As will be discussed in the subsequent paragraphs, the GoP's Fertilizer Policy 2001 aims to ensure that prices of local urea stay below imported prices. To this end the policy makes provision for subsidized feedstock gas to domestic urea manufacturers. It is for this reason a substantial price differential exists between local and imported urea prices.
17. International urea prices have risen steadily since mid-2020 one of the major reasons being the rising price of natural gas. The average monthly natural gas price, as indicated by the World Bank's Natural Gas Index, went up by nearly 600% between June 2020 and December 2021[12]. However, as of late international urea prices have declined from a high of Rs. 8052-8800/bag (Arabian Gulf) to Rs. 5482-6085 (Refer to Table 4 below). If we compare the prices of domestic urea with imported it is noted that the differential is on average ranges from Rs. 2597-3200 per bag (or 110%).

Table 4: Ex-Karachi Price of Imported Fertilizer (Rs. Per bag)			
Time period	**China**	**Arabian Gulf**	**Domestic Avg. Retail Price**
May-22	7770-8421	8052-8800	2152
Jun-22	7080-8214	7023-8691	2148
Jul-22	6710-7684	6893-8293	2376
Aug-22	6450-7046	7403-9009	2424
Sep-22	7578-8696	8323-9379	2425
Oct-22	7750-8273	7987-8380	2433
Nov-22	7327-7746	7362-8045	2471
Dec-22	6434-7464	6495-7110	2558
Jan-23	6049-6680	5671-6302	2750
Feb-23	6391-6822	5816-6391	2900
Mar-23	6236-6689	5482-6085	2885
Source: Monthly Fertilizer Reviews NFDC & PBS			

Brief Overview of Market Players

18. The Government of Pakistan (GoP) introduced the first Fertilizer Policy in 1989 with the aim of tackling fertilizer shortages by encouraging domestic production through the

[12] Deloitte: https://www2.deloitte.com/uk/en/insights/economy/global-food-prices-inflation.html

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provision of various incentives for the establishment of new facilities and expansion of existing units. Currently, the following companies are engaged in the production, supply and sale of urea fertilizer in Pakistan:

a. Fatima Fertilizer: Fatima Fertilizer Company Limited is a joint venture between two major business groups in Pakistan - Fatima Group and Arif Habib Group, with its head office located in Lahore. Three units of the Company are situated across the province of Punjab in Sadiqabad, Multan and Sheikhupura. It acquired the production and operating plants from its associated company PakArab Fertilizers Limited with effect from September 01, 2020, located at Multan[13] and sells urea under the brand 'Sarsabz'. Fatima Fert Limited which produces and sells urea under the brand 'Bubber Sher' is a wholly owned subsidiary of Fatima Fertilizer Company Limited. Fatima Fertilizer Company's (consolidated) urea production in 2021 was 801,000 MT.
b. Engro Fertilizer (EFERT): The Company's manufacturing plant is located in Deharki Sindh. EFERT's main business segments include: Fertilizers (Urea, Phosphatic Fertilizers and Specialty Fertilizers), Crop Sciences; and Agri services (including logistic services i.e. Engro logistics). EFERT sells urea under the brand name of 'Engro Urea' and its total urea production in 2021 stood at 2.1 million MT[14].
c. Fauji Fertilizer Company Limited ('FFC'): FFC is involved in the manufacturing, import and marketing of fertilizer products. It has two plants one located in Sadiqabad and the other in Mirpur Mathelo. The company's total urea production in 2021 was 2.5 million MT[15]. It markets urea under the brand name of Sona Urea in prilled form whereas, its other group company FFBL is the only local company that produces urea in granular form.
d. Fauji Fertilizer Bin Qasim ('FFBL'): FFBL produces and markets two fertilizers under the 'Sona' brand i.e. Sona Urea (Granular) and Sona DAP. The company's plant is located at Port Qasim and its total urea production in 2021 was 501,236

[13] Annual Report 2021 https://fatima-group.com/updata/files/files/234_20220412125703.pdf
[14] Annual Report 2021 https://www.engrofertilizers.com/themes/engro/documents/EngroFert-Annual-Report-2022-Final.pdf
[15] Annuall Report 2021 https://www.ffc.com.pk/wp-content/uploads/FFC-AR-2021.pdf

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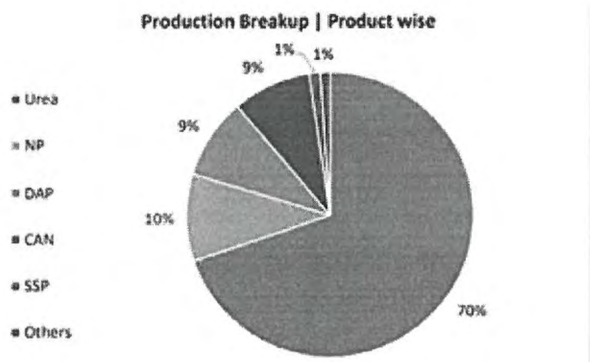
MT[16]. FFC has a share of 49.88% in FFBL both use the same dealer network to market products. It is noted that FFBL produces granular urea only.

e. Agritech Limited: Agritech is involved in the production of urea and SSP. Its urea manufacturing plant is located at Mianwali producing 226,768 MT of urea in 2021 which it markets under the brand name of 'Tara'.

19. It is pertinent to mention here that the sector has come under the scrutiny of the Commission before when the two largest players, i.e. FFC and Engro, were found to have abused their collectively dominant position by excessively increasing prices of urea fertilizer by 86% from December 2010 to December 2011. The Commission's order in the matter reasoned that the fact that the companies were able to charge excessively high prices, earn high profit margins and return on equity ('RoE') after tax indicated that the prices were supra-competitive as well as unreasonable.

Other fertilizer products

20. As the industry overview above shows there are five main domestic producers of urea fertilizer in Pakistan. After urea the most commonly used fertilizer is DAP (phosphate), followed by CAN, NP and SSP. In terms of domestic production, urea is the most widely produced accounting for 70% of all production after which NP takes a share of 10%, DAP 9%, CAN 9% and SSP 1%. The remaining supply is accounted for by imports.



Source: PACRA

21. All fertilizer plants produce urea however, the situation is different for other types of fertilizers (also summarized in the figure below):

[16] Annual Report 2021 https://www.ffbl.com/wp-content/uploads/2022/03/FFBL_Annual_Report_2021.pdf

a. DAP: Only one company i.e. FFBL is locally producing DAP with the remainder being imported by FFC, Engro and Fatima. The combined share of FFC and FFBL in DAP sales is 57%[17] and the share of Engro is 35%[18] and the remaining 8% is accounted for by Fatima Fertilizer and imports.
b. NP: It is a mixture of Nitrogen (N) and Phospate (P) and as per annual reports of companies, it is classified in the phosphate category or as specialized fertilizer. In terms of domestic production Fatima (Fatima and Pak-Arab Plant) have a monopoly in the production of this fertilizer. Engro is producing a fertilizer called NP Plus which is a mixture of Nitrogen, Phosphate and Boron fillers. Its product portfolio does not include NP[19].
c. CAN: It is a nitrogen fertilizer and is currently being produced only by Fatima[20]. As per available data from NFDC, CAN is not being imported.
d. SSP: This is a phosphate fertilizer and there are three companies which are producing it: Agritech with a share of 71%, Suraj Fertilizer 28% and Safi Chemicals 1%[21]. As per information from NFDC, SSP is not being imported.
e. SOP & MOP: these are potash fertilizers which are not produced locally and the entire demand is being met through imports. As per information from respective annual reports, it is being imported and marketed only by FFC and Engro with Engro having a share of 53%[22].
f. NPK: This is a mixture of Nitrogen, Phosphate and Potash and is currently being produced locally only by Engro in various grades under the brand of Engro Zarkhez Plus and Zarkhez Khas. As per available information this product is not being imported.

Summation	**FFC &FFBL**	**Engro**	**Fatima**	**Agritech**
DAP	Import (FFC)	Import Mkt Share: 35%	Import <8%	-

[17] Annual report of FFC 2022.
[18] Annual Report Engro 2022.
[19] Engro website.
[20] Annual Report Fatima Fertilizer 2022
[21] Calculations based on Kharif and Rabi production data for 2020-21 obtained from NFDC.
[22] Annual Report Engro 2022

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	DAP production (FFBL) Mkt Share: 57%			
CAN	-		Production No imports Mkt Share 100%	
NP	-		Production Mkt Share 100%	-
NP Plus		Production	-	-
NPK		Production Mkt Share 100%		
SSP				Production Mkt Share 71%. Other Suraj 28% and Safi 1%
MOP & SOP	Import	Import Mkt Share 53%		

Fertilizer Industry Performance

22. The largest players in terms of local urea production (in prilled form) are FFC (44%) and Engro (37%) followed by the two smaller players Fatima Fertilizers (14%), and Agritech (4%).

Table 5: Market share of undertakings in terms of urea production volume

	Urea Production (MT)			
Companies	**2021**	**Share**	**2020**	**Share**
FFC	250,7000	44%	2,487,000	45%
Engro	2,105,000	37%	2,264,000	41%
Fatima Fertilizer Company Limited (consolidated)	801,000	14%	681,000	12%
Agritech	226,768	4%	124,785	2%
Total	5,639,768		5,556,785	

Source: Respective Annual Reports of companies

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23. Capacity utilization of the plants depends on the supply and availability of gas (for feedstock and fuelstock). FFC and Engro's plants are based on indigenous gas and have the highest capacity utilization for their urea plants as compared to Fatima and Agritech which are supplied using imported RLNG (refer to Table 6 below).

Table 6: Capacity utilization

Company	2021	2020
Agritech	52%	29%
FFC	122%	121%
Fatima Fertilizer Company (consolidated)	94%	94%
Engro	93%	100%

Source: Respective Annual Reports of companies

24. Post-Covid, the sector saw an uptick in sales volumes as well as turnover with Agritech posting the highest increase of 72% on account of it being provided uninterrupted gas including during the peak winter months[23].

Table 7: Turnover (Rs.000)*

	2021	2020	Change
Agritech	7,694,580	4,480,999	72%
FFC	83,474,865	81,497,037	2%
Fatima Fertilizer Company (consolidated)	25,872,700	24,231,800	7%
Engro (Overall for manufactured products)	90,659,715	75,252,581	20%

Source: Respective Annual Reports of companies

**Since the companies sell other fertilizer based products as well, the turnover for urea only is taken except for Engro, the financial statements of which did not contain separate figures for urea turnover.*

[23] Agritech Annual Report 2021

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25. In terms of overall profitability, apart from Agritech, the companies are posting healthy returns. The figuresin table 8 below show that FFC made the highest profit before tax of Rs. 30.3 billion, Engro Rs. 29.8 billion and Fatima Rs. 28 billion. Agritech on the other had made a loss of Rs. 4 billion[24].

Table 8: Profit/loss before tax (Rs. 000)		
Companies	**2021**	**2020**
Agritech (Urea)	-4,070,838	-4,712,314
FFC (Overall)	30,339,141	29,591,459
Fatima Fertilizer Company (Overall)	28,185,093	18,742,755
Engro (Overall)	29,890,245	21,298,477
Source: Respective Annual Reports of companies		

26. In terms of profitability ratios, (barring Agritech) the average Gross Profit for the industry in 2021 stood at 35.79% and Net Profit of 17.49%. FFC and Engro, the two largest players, also enjoy high ROEs of 46.08% and 40.29% respectively. As a point of reference if we compare these figures with the Indian urea industry, under the New Investment Policy, floor price of urea are determined at an ROE of 12% and the ceiling price has been determined with an ROE of 20%. In comparison to the ROE allowed to the urea industry in India it would appear that the ROEs of FFC and Engro are on the higher side. A comparison of the ROE of FFC and Engro during the period of December 2010 to December 2011 (when the Commission's order found them to be charging excessively high prices) were 97.5% and 24.60% respectively (after taking debt into account). FFCs ROE has since then declined (to 46.08%) and that of Engro has risen (to 40.29%) (See Table 9 below).

Table 9: Profitability ratios						
	Fatima Fertilizer Company		**FFC**		**Engro**	
Overall (%)	2021	2020	2021	2020	2021	2020
Gross Profit	38.3	40.4	35.78	32.34	33.3	32.4
Net Profit	16.42	18.63	20.15	21.32	15.9	17.1

[24] Agritech's plant faced gas curtailment issues and debt obligations.

Return on equity	18.43	15.24	46.08	48.94	44.97	40.29
Return on Capital employed	18.17	14.24	50.78	59.19	31.3	25.1

Source: Respective Annual Reports of companies

Cost Components

27. Data from urea companies' respective annual reports, shows that for the manufacturing of urea, feedstock gas is the major raw material and cost component accounting for an average share of 52% in the cost of sales (ranging from 42% to 58%). Although the ratio varies from plant to plant, on account of difference in the cost of gas supplied to each under its respective gas purchase agreement, it still constitutes a major share for all the undertakings. The share of feedstock for FFC is the lowest at 40% explained in part due to its cheaper purchase price of gas. The share is higher for Fatima (55%) and Agritech (58%) since they were being supplied RLNG which had a relatively higher tariff than indigenous gas (refer to Table 10 below). Since the production of urea is an energy intensive process, the other major cost head is fuel and power (fuelstock gas for running of the plant) which comprises on average 19% (ranging between 12% and 25%). It is also observed that depreciation of plant and equipment is also a major cost component accounting for an average of 9% of cost of sales (8% to 17%) due to the capital intensive nature of urea production.

Table 10: Share of Cost Components in Total Cost of Sales

	Fatima Fertilizer Company	FFC	Engro	Agritech	Avg.
Raw material(feedstock)	55%	42%	53%	58%	52%
Fuel & Power	12%	25%	23%	14%	19%
Salaries & Wages	10%	17%	6%	6%	10%
Depreciation	8%	7%	5%	17%	9%

Source: Respective annual reports of companies

Subsidies

28. As discussed in the preceding paragraphs, gas is the major cost component in urea production in the form of feedstock and fuelstock. In order to keep the price of urea at an affordable level, the fertilizer sector is subsidized through a dual gas price policy: one price exists for the fuelstock applicable to the general use of gas while the other price, which is

lower than the market price, is gas used as feedstock. The Fertilizer Policies of 1989 and later 2001 envisioned the availability of fertilizers to farmers at reasonable prices and import substitution. The cornerstone of the Fertilizer Policy 2001 was to do so through the provision of feedstock gas at a discount. Clause 2.1.1 of the Policy states:

> *"It is the intent of this policy to provide investors in new fertilizer plants in Pakistan a gas price that enables them to compete in the domestic market with fertilizer exporters of the Middle East so that indigenous production is able to support the agricultural sector's requirement by fulfilling fertilizer demand".*

29. Total annual gas consumption by the fertilizer industry is 266,796 MMCF out of which 221,205 MMCF (83%) is used as feedstock and the remaining 17% as fuelstock[25]. According to the MEPD, each fertilizer plant was supplied indigenous gas or RLNG according to its contract. Generally, most fertilizer plants are being supplied natural gas directly by the producer through dedicated network. Two plants i.e. Agritech and Fatimafert (Sheikhupura plant) are being supplied RLNG at specific rates approved by the ECC of the Cabinet while the price differential is being budgeted in the demand of the MoIP. The details of the feedstock and fuelstock gas price to each plant/unit is given in table 11 below which shows that the rate of gas varies from plant to plant and there is no parity in the range of subsidies. Despite these variations in cost of gas, prices of urea are similar for the companies which raises concerns as to the divergence in urea prices of various companies.

Table 11 : Plant wise feedstock and fuelstock gas price details

Plant	Supplier	Allocated Volume	Type of Gas	Description tariff	Tariff (Rs./mmbtu)	
					Feedstock Rate	Fuelstock Rate
Agritech	SNGPL	41	RLNG	Subsidised RLNG tariff	839	839
Fatimafert Ltd	SNGPL	29	RLNG			
FFC Plant 1	MPCL (dedicated)	184	NG	Indigenous gas tariff	302	1023
FFC Plant 2	MPCL (dedicated)		NG			
FFBL	SSGC	63	NG			
FFC Old plant 3	MPCL (dedicated)	95.5	NG			

[25] Gas consumption by plants during 2020-21, Fertilizer Review 2020-21, NFDC.

Fatima Fertilizer Limited	MPCL (dedicated)	110	NG			
Engro Enven Plant II	MPCL (dedicated) + SNGPL	116	NG	Concessionary gas tariff	USD0.70	1023
Pakarab Fertilizer	MPCL (dedicated)	58	NG	Petroleum Policy, 2012 Price	USD6.1	USD6.1
		70	NG		USD6.1	USD6.1
Engro Plant I	OGDCL (dedicated)	6	NG		-	USD6.1 less 10% discount

30. In order to quantify the subsidies availed by the urea producers, the average rate of feedstock gas, under the Fertilizer Policy 2001, is Rs. 501/MMBTU whereas the industrial policy rate is on average Rs. 1200/MMBTU[26], which results in a price differential of Rs. 690/MMBTU. If we multiply the price differential with the total feed gas consumed by the industry i.e. 221,205 MMCF it results in an annual subsidy of approximately Rs. 152 billion per annum[27].

SUMMARY OF SECTOR BACKGROUND

31. Based on the above, the following key findings can be summarized vis a vis the urea fertilizer sector:
    a. Demand & Supply of urea: Annual urea demand in 2021-22 was approximately 6,364 thousand tons and domestic production during the same period was 6,378 thousand tons. This shows that the domestic production of urea is sufficient with imports catering to a meagre 1.5% of annual demand.
    b. Local and International Prices: Prices of urea are deregulated with the companies issuing price lists from time to time. These prices are notified by the respective provincial district agriculture extension departments as the 'maximum retail prices' for the purpose of checking any profiteering. Prices of urea began to increase in October-November 2021 at the time of the abovementioned advertisement and continued their upward trajectory from March 2022 onwards. Overall the price of

[26] Analyst Briefing Q1 2023, ENGRO, https://dps.psx.com.pk/download/document/206328.pdf

[27] Total feed gas consumed by industry = 221,205 mmcf which converts to 221,205,000 mmbtu. 221,205,000 mmbtu* Rs.690/mmbtu = Rs.152 billion.

urea rose by 11% in 2021, by 30% in 2022 and 5% in the first three months of 2023. Owing to the subsidized price of gas, domestic urea is cheaper than imported urea with the latter being expensive by Rs. 2597 to 3200.

c. Brief overview of market players: There are five domestic producers of urea with the following market shares in terms of sales volume: FFC (39%), Engro (36%), Fatima Fertilizer Company Limited (13%), FFBL (8%) and Agritech (4%).

d. Fertilizer Industry Performance: Capacity utilization for urea plants depends on the supply of gas. Most of the plants are operating at full capacity. In terms of profit, with the exception of Agritech, the other companies have posted healthy profits. FFC's NP margin in 2021 was 20.15%, Engro 15.9% and Fatima 16.42%.

e. Share of Cost Components: Feedstock gas is the major raw material and cost component accounting for an average share of 52% in cost of sales (ranging 42% to 58%). Although the ratio varies from plant to plant, on account of the difference in the cost of gas supplied to each under its respective gas purchase agreement, it still constitutes a major share for all the undertakings.

f. Subsidies: Total annual gas consumption by the fertilizer industry is 266,796 MMCF out of which 221,205 MMCF (83%) is used as feedstock and the remaining 17% as fuelstock. As per estimates, the annual subsidy to the fertilizer sector on account of feedstock gas is Rs. 152 billion.

ISSUE I: WHAT IS THE RELEVANT MARKET IN TERMS OF SECTION 2(1)(k) OF THE ACT

32. For the purpose of defining the relevant market under this enquiry, we refer to the relevant market as defined under Section 2(1)(k) of the Act.

> *"Relevant market means the market which shall be determined by the Commission with reference to a product market and a geographic market and a <u>product market comprises of all those products or services which are regarded as interchangeable or substitutable by the consumers by reason of the products' characteristics, prices and intended uses.</u> A geographic market comprises the area in which the undertakings concerned are involved in the supply of products or services and in which*

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the conditions of competition are sufficiently homogenous and which can be distinguished from neighboring geographic areas because, in particular, the conditions of the Competition are appreciably different in those areas;"

33. Fertilizers can be divided into three types: Nitrogen based fertilizers (Urea and CAN), Phosphorous fertilizers (DAP, SSP) and Potassium fertilizers (SOP and MOP). A mix of all three fertilizers is used depending on the type of crop, soil, climatic conditions and stage of the crop cycle. Total fertilizer use in Pakistan was on average 207 kg per hectare in 2020-21.[28] Out of the three types of fertilizers, nitrogenous fertilizers are the most commonly used with a share of 75%, followed by phosphorous (24%) and potash (1%).
34. Urea fertilizer is concentrated straight nitrogenous fertilizer that contains 46.7% nitrogen, which is a major plant nutrient. It is a white crystalline solid and is marketed in either granular or prilled form. A urea production plant follows a two-step process: ammonia and carbon dioxide are reacted to form ammonium carbamate, which is then dehydrated to form urea. The urea solution is concentrated by evaporation or crystallization, and the crystals can be melted to produce pure urea as prills or granules[29]. In Pakistan, urea fertilizer is being produced from natural gas and air. Urea is applied on the standing crop followed by irrigation to minimize its losses. In rain fed areas, it is often spread just before rain to minimize losses through volatilization process. Since urea is a nitrogenous fertilizer its closest substitute would be CAN (which is also a nitrogenous fertilizer) however, urea has the highest nitrogen content of all solid nitrogenous fertilizers in common use i.e. 46.7% therefore, it is preferred over CAN.
35. Other than its nutritional value for crops, urea is the most commonly used fertilizer because it is the cheapest in terms of cost. On average in March 2023, price of a 50 kg bag of urea was Rs. 2,544 whereas DAP was selling for Rs. 10,544 and NPK for Rs. 8,238. (Refer to Table 12 below). Therefore, farmers prefer to use urea fertilizer over other types due to its comparatively lower price.

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[28] Nutrient Wise Fertilizer Use Status, National Fertilizer Development Centre (NFDC) http://www.nfdc.gov.pk/Web-Page%20Updating/Fertuse_status.htm

[29] https://sepprosystems.com/urea-production/#:~:text=A%20Urea%20Production%20Plant%20follows,urea%20as%20prills%20or%20granules.

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Table 12: Average retail prices of different types of fertilizers in Pakistan March, 2023	
Type of fertilizer	**Price/50 kg bag (Rs.)**
Sona Urea	2,885
DAP	10,544
NPK	8,238
Source: Fertilizer Review, NFDC	

36. The next step is to determine whether domestically produced urea is substitutable with imported urea. Domestic production of urea is sufficient to cater for local demand with the government resorting to imports (on a G2G basis) depending on the demand and supply situation for each cropping season. The average demand, domestic production and imports for the last five years (refer to Table 13 below) shows that the average demand in Kharif seasons was 3.1 million tons against average imports of 0.02 million tons (20,200 tons) meaning that imports catered to just 0.6% of urea demand in the kharif season. For the rabi season, average demand for the last five years was 3.03 million tons against average imports of 0.041 million tons (41,000 tons) translating into an average share of 1.4%. Imports were on the higher side in the rabi season due to curtailment/shortage of gas to fertilizer plants in the winter months.

Table 13: Fertilizer Demand and Supply			*(000 Tonnes)*
2021-22	Kharif (Apr-Sep) 2021	Rabi (Oct-Mar) 2021-22	Kharif (Apr-Sep) 2022
Opening Stock	298	116	293
Import	0	100	0
Domestic Production	3106	3272	3214
Total Availability	3404	3488	3507
Offtake/demand	3258	3195	3364*
Write on/off	29.8	0	0
Closing Stock	116	293	143
2020-21	**Kharif (Apr-Sep) 2020**	**Rabi (Oct-Mar) 2020-21**	**Kharif (Apr-Sep) 2021**
Opening Stock	591	473	298
Import	0	0	0
Domestic Production	3104	3017	3106
Total Availability	3695	3490	3404
Offtake/demand	3188	3220	3258
Write on/off	34	34	29.8
Closing Stock	473	304	116
2019-20	**Kharif (Apr-Sep) 2019**	**Rabi (Oct-Mar) 2019-20**	**Kharif (Apr-Sep) 2020**

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Opening Stock	135	470	591
Import	101	0	0
Domestic Production	3265	2994	3104
Total Availability	3501	3464	3695
Offtake/demand	3023	2867	-3188
Write on/off	8	17	34
Closing Stock	470	580	473
2018-19	**Kharif (Apr-Sep) 2018**	**Rabi (Oct-Mar) 2018-19**	**Kharif (Apr-Sep) 2019**
Opening Stock	316	115	135
Import	0	105	101
Domestic Production	2698	2923	3265
Total Availability	3014	3143	3501
Offtake/demand	2887	3033	3023
Write on/off	12	25	8
Closing Stock	115	135	470
2017-18	**Kharif (Apr-Sep) 2017**	**Rabi (Oct-Mar) 2017-18**	**Kharif (Apr-Sep) 2018**
Opening Stock	1489	796	316
Import	0	0	0
Domestic Production	2956	2698	2698
Total Availability	4445	3494	3014
Offtake/demand	3234	3003	2887
Export	422	184	12
Write on/off	7	0	
Closing Stock	796	307	115

Source: Pakistan Economic Survey

37. In terms of substitutability of domestic and imported urea, it is observed that the two cannot be substituted due to the wide price differential. As of March 2023, the price difference between imported and domestic urea was in the range of Rs. 2597 to 3200 per 50 kg bag. So, imported urea cannot be considered as a substitute for the locally produced product. This is also borne out by the fact that urea imports accounted for an average of only 0.65% of the total demand in the kharif season and 1.4% in the rabi season.

38. Unlike DAP and other fertilizer products, urea is not being imported by private parties as the practice is unviable due to the price differential between imported and domestic urea. Currently urea is being imported by the Trading Corporation of Pakistan ('TCP') through tender. This urea is then marketed by the National Fertilizer Marketing Limited ('NFML') at a price fixed by the government so as to make it roughly equivalent to prices of domestic urea.

39. Exports of urea is also restricted with export subject to the approval of ECC of the Cabinet on case to case basis[30]. Therefore, keeping in mind the import price differential and the restriction on imports, domestically produced urea forms a distinct market as it does not face competition from imported urea.

40. Based on the above, each type of fertilizer serves a different function in the crop cycle and therefore, urea cannot be substituted with other fertilizers. Moreover, urea is substantially cheaper with a price differential with DAP, and therefore, in response to a price increase farmers cannot switch over to other types of fertilizer. Urea fertilizer itself is sold in three different forms: prilled, granular and neem coated with the prilled form being the most common. It is also noted that the advertisement published by FMPAC refers to the price of urea fertilizer in prilled form. Therefore, the relevant product market is that of urea fertilizer (prilled).

41. In terms of the relevant geographic market, there is free inter-provincial movement of urea and the conditions of competition are homogenous throughout the country. Moreover, as indicated by urea demand, supply and import information above, locally made urea is just enough to cover local demand with imports accounting for an average of 1% of total demand. Exports of urea are also restricted which means that majority of urea is traded within the territory of Pakistan. Therefore, the relevant geographic market appears to be the whole of Pakistan. Based on the findings of the paragraphs above, the relevant market in terms of Section 2(1)(k) appears to be that of urea fertilizer (in prilled form) in Pakistan.

42. In terms of spillover, two points are noted (a) it is noted that urea fertilizer has been notified as an essential product and essential items by their very nature are transported and traded freely between the provinces and there is nothing on the record to suggest that there is any inter-provincial restriction on movement of the same. (b) Urea is an important input to the agriculture sector and agriculture commodities such as wheat, rice, fruits and vegetables etc. are being freely traded all over Pakistan. In light of the above, any anti-competitive impact in the urea fertilizer sector would have effects all over Pakistan, hence, the requirement of spillover appear to have been met. It is also noted that the advertisement

[30] Section 4(1) Export Policy Order S.RO. 544(I)/2022, 22.04.2022.

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campaign was run nationally as it was also available on e-versions of the Nation newspaper therefore, the price was intended for the whole of Pakistan.

ISSUE II: WHETHER THERE IS A *PRIMA FACIE* VIOLATION OF SECTION 4(1) READ WITH 4(2) (a) OF THE ACT BY FMPAC & ITS MEMBER UNDERTAKINGS

43. To assess whether there was any violation of Section 4(2)(a) of the Act in the instant matter the following lines of enquiry have been followed:
    a. Identification of undertakings in terms of Section 2(1)(q) of the Act;
    b. Government intervention, if any, in determination of urea prices;
    c. Whether the advertisement published by FMPAC and its member undertakings is a prima facie violation of Section 4(1) read with Section 4(2)(a) of the Act.
    d. Implementation of uniform price by FMPAC and its member undertakings;

Undertakings

44. Section 2(1)(q) of the Act defines undertakings as:
    ""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 or undertakings"
45. In the context of this definition, and the advertisement in question the enquiry committee finds that the following companies are engaged in the production, supply and sale in the relevant market of urea fertilizer in Pakistan and are therefore, undertakings in terms of Section 2(1)(q) of the Act for purposes of this enquiry:
    a. Fatima Fertilizer Company Limited: Fatima Fertilizer Company Limited is a joint venture between two major business groups in Pakistan namely, Fatima Group and Arif Habib Group, with its head office located in Lahore. In 2018 it acquired the plant and operations of Pak-Arab. They sell urea under the brand 'Sarsabz'. Fatima Fert is a wholly owned subsidiary of Fatima Fertilizer Company Limited.
    b. Fatima Fert Limited which produces and sells urea under the brand 'Bubber Sher' is a wholly owned subsidiary of Fatima Fertilizer Company Limited.

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c. Engro Fertilizers Limited: The company's main business segments include: Fertilizers (Urea, Phosphatic Fertilizers and Specialty Fertilizers), Crop Sciences; and Agri services (including logistic services i.e. Engro logistics). It sells urea under the brand name of 'Engro Urea' and its total urea production in 2021 stood at 2.1 million MT[31].

d. Fauji Fertilizer Company Limited ('FFC'): FFC is involved in the manufacturing, import and subsequently marketing of fertilizer products. It markets urea under the brand name of Sona Urea in prilled form whereas, its other group company FFBL markets Sona Urea in granular form.

e. Agritech Limited: Agritech is involved in the production of urea and SSP. It markets urea under the brand name of 'Tara'.

46. The next question is whether FMPAC is an undertaking in terms of Section 2(1)(q) of the Act. The definition of undertakings as per Section 2(1)(q) of the Act, also encompasses an association of undertakings. Since the word 'association' is not explicitly defined in the Act, we look at its ordinary dictionary meaning of the word:

"An official group of people who have joined together for a particular purpose"[32].

47. A look at how FMPAC describes itself and its functions (as per its own website) we see that it falls within the definition of an association as it refers to itself as 'a collective forum' of all fertilizer manufacturers in Pakistan (reproduced below for reference):

"Fertilizer Manufacturers of Pakistan Advisory Council is a collective forum of all the fertilizer manufacturers in Pakistan. It is created to promote, protect and safeguard the common and legitimate interest of the fertilizer industry in Pakistan as well as provide facilitation to farmers. The council interacts with the Government and other stake holders to help and evolve best policies, implementation mechanism and address various issues impacting the fertilizer industry and its beneficiaries (Farmers) thus significantly contributing towards Food Security for the nation".[33]

48. The enquiry committee could not find registration of FMPAC with SECP or the Directorate General of Trade Organization (Correspondence with SECP letter attached as Annex IV-

[31] Annual Report 2021 https://www.engrofertilizers.com/themes/engro/documents/EngroFert-Annual-Report-2022-Final.pdf
[32] (Oxford Dictionary).
[33] www.fmpac.com/about.

B) and DGTO List of Licensed Trade Organizations. However, we take guidance from order of the Commission dated 10 April 2015 in the matter of Show Cause Notice issued to Pakistan Automotive Manufacturers & Dealers Association and its member undertakings, wherein it was held that the form and purpose was not relevant for the purposes of the Act. It also notes that an association whether constituted either formally or informally falls under the ambit of the Act.

49. Furthermore, FMPAC's members/participants constitutes companies engaged in the economic activity of production distribution and sale of urea and fall within the definition of undertakings in terms of Section 2(1)(q) of the Act. According to FMPAC's website and its Facebook page, the membership of FMPAC comprises of: *Fauji Fertilizer Company, Fauji Fertilizer Bin Qasim Limited, Pakarab Fertilizer, FatimaFert Limited, Agritech Limited and Engro Fertilizer*[34]".

50. To sum up, FMPAC is an association/forum representing the fertilizer industry whose members/participants include urea manufacturers of Pakistan therefore, FMPAC is an association of undertakings in terms of Section 2(1)(q) of the Act.

51. We now address the question of whether FFBL is an undertaking for the purposes of this enquiry since FFBL does not produce urea in prilled form which constitutes the relevant product market. Whereas, FFBL produces urea in granular form only and is not directly involved in the relevant market, the enquiry committee believes that FFBL should be considered as an undertaking for the purposes of this enquiry for the reasons below:

    a. FFBL is a member/participant of FMPAC and the advertisement in question bears the logo of FFBL indicating that it was involved in the making of the *prima facie* anti-competitive decision in question.

    b. Furthermore, from price notifications it is observed that the price of Sona urea in prilled form acts as a base price for determination of Sona urea granular i.e. FFBL's product. From price notifications it is noticed that Sona granular is on average Rs. 20 dearer than Sona prilled (referred to Annex IV A for a sample price notification of Toba Tek Singh. This observation can be made across different price notifications in other districts as well).

[34] FMPAC a Facebook page post, dated 31st July 2022. Annex IV-C

Therefore, based on the above, FFBL is an undertaking in terms of Section 2(1)(q) of the Act.

Government intervention, if any, in determining urea prices

52. Since urea is a key agricultural input, it would be pertinent at this point to provide an overview of the government's role, if any, in setting of urea prices and the mechanisms through which it intervenes in the market. Pakistan's first fertilizer policy was adopted in 1989 with the objective to ensure its availability by encouraging investment and expansion in the sector. Various incentives were provided for the setting up of fertilizer plants in the country including: assured supply of gas at existing prices for the purpose of feedstock for a period of 10 years from the commencement of plant operations and duty free import of plant and machinery. In case of 'unlikely event of imposition of price control' the policy guaranteed that ex-factory price so fixed would guarantee a minimum return of 20% on equity after tax at 90% capacity utilization[35]. The next fertilizer policy was adopted in 2001 with the purpose of encouraging new investment into the sector in order to ensure reasonable prices of fertilizer for farmers below the import price. A number of incentives were provided to the sector for the achievement of this objective which primarily included supply of feedstock gas at concessional rates for new plants. (Fertilizer Policies Annex V)
53. In terms of price, Rule 5, Section 5.1 of the Fertilizer Policy 2001 states that prices would be deregulated (reproduced below):

"5.1 <u>Selling price of fertilizer shall remain deregulated on the understanding that while manufacturers will allow free market forces to prevail they will pass the benefits in the form of lower price of fertilizer to the farmers.</u> In order to ensure this objective is achieved a Committee will be set up and shall meet as and when required, but at least on a regular quarterly basis and take appropriate steps as necessary. The Committee will be headed by the Minister for Industries & Production and will include the Minister for Food, Agriculture, Livestock as well as a senior representative from the Ministry of Finance".

[35] Clause (iv) Fertilizer Policy 1989.

54. MoIP in its response to the enquiry committee clearly stated that there was no price regulation of urea by the government. Relevant excerpt from the response by MoIP dated 18.10.2022, is as follows:

"EC: Does the government regulate prices of urea? If yes, kindly share the mechanism for regulating the same.

MoIP: *"As per the Fertilizer Policy 1989*[36] *under rule 5 Section 5.1 "selling price of fertilizer shall remain deregulated", therefore, no mechanism of price regulation by the government is in place.*

55. This point was also reiterated by the Agriculture Department Punjab, in response to the letter by the enquiry committee dated 21.09.2022 wherein it pointed out that the prices of urea were deregulated and fixed by the companies themselves:

"EC: What is the mechanism of price fixing of urea fertilizer?

Agri Punjab: *As per Fertilizer Policy 2001, (Annex-I) circulated by the Ministry of Industries & Production Islamabad, price of Urea fertilizer is deregulated as per provision of section 5.1. However, a Committee headed by Minister of Industries & Production along with Federal Minister, Food & Agriculture as well as Senior representative from Ministry of Finance are empowered to monitor the changes in prices in the benefit of farming community. <u>Hence, in this context the prices of the fertilizers are de-regulated, therefore, their prices are fixed by the companies themselves.</u>*

It further noted that the prices of urea were fixed by the companies were notified for the purpose of price control:

EC: Is any input solicited from the urea manufacturers prior to issuance of the price list?

Agri Punjab: *Agriculture Department Punjab through Deputy Directors Agriculture (Extension) in capacity of Deputy Fertilizer Controller under section 3 of Punjab Essential Article (Control) Act 1973 and after consultation and approval in the District Task Force Sub-committee, <u>notify prices already fixed by the companies</u>".*

[36] It appears that the response of the MoIP has erroneously mentioned Fertilizer Policy 1989 it should be Rule 5 Section 5.1 of Fertilizer Policy 2001.

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56. The KPK Agriculture (Extension) Department in response to the enquiry committee's queries regarding the mechanism for determination of urea prices informed that the provincial authorities had no role in the matter:

"(a) As far as the mechanism of price fixation of urea fertilizer is concerned, the department of Agriculture has no say/authority rather the Federal Govt. through the Ministry of Industries & Production, Ministry of National Food Security and Research (MNFS&R) in consultation with fertilizer manufacturing companies fix the price of fertilizers in the country.

(b) The govt. fixed the rate for the whole province uniformly for which the price mechanism may be obtained from the Federal Govt. or the relevant authority as the provinces do not have any involvement in price fixation".

57. Agriculture extension department KPK was contacted telephonically for further clarification of their response specifically vis-a-vis the Federal Government's role in fixation of urea prices. The enquiry committee was informed that the provincial government was not fixing prices of urea however, it needed a reference price to control its prices in order to check any profiteering. For this reason Agriculture Department KPK contacted the Federal Government (MoIP) for a price however, it was informed by the latter that urea prices were deregulated. It was also noted that under the KPK Fertilizer Control Act 1999 and Fertilizer Control Rules 2003 there was no provision for price control. Current practice in vogue is to use the urea manufacturer's own price lists for a reference to check any profiteering and, unlike Punjab, the KPK government does not issue any notification regarding urea fertilizer prices.[37].

58. The response from the Sindh Agriculture Supply & Prices Department also states that the provincial government has no role in the price fixing of urea:

EC: What is the mechanism of price fixing of urea fertilizer?

Agri Sindh: *It does not pertain to Government of Sindh.*

EC: How is the price list enforced in the market?

[37] Conversation with Deputy Director Agriculture Extension Department KPK and Director Plant Protection, Agriculture Department KPK.

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***Agri Sindh:** Price list enforced by the manufacturers themselves, but prices are controlled by the Revenue Department, under Hoarding/Profiteering Control Act-2006, Govt of Sindh.*

59. Further clarification was sought from Agriculture Department Sindh wherein the enquiry committee was informed that the Department does not have any mandate to enforce prices the power of which lies with the Revenue Department Government of Sindh. Revenue department uses the respective price lists issued by the urea manufacturers as a reference to check profiteering if any. It was also clarified that no price notifications were issued by either of these departments. Furthermore, the Sindh Fertlizer Control Act 1994 did not have any provision for price control[38].
60. Balochistan Agriculture Extension Department also noted that the prices of urea fertilizer were deregulated and the provincial authority had no role in fixing of prices[39].
61. It is noted that all provinces regulate the trade in fertilizers through respective fertilizer control orders however, only in Punjab Fertilisers Control Order 1973 makes an allowance for fixing of maximum price. The KPK and Sindh provincial fertilizer control orders only give mandates to check quality, hoarding, licensing of fertilizer dealers etc. In the case of Punjab the notification issued is based on the company issued price lists whereas in the case of KPK and Sindh no notifications are issued however, the company issued price lists are used to check any overcharging or profiteering.
62. Based on the above, it is fairly clear that <u>the price of urea is deregulated and is determined by the fertilizer companies themselves. The price so announced by the companies are then used by the respective district agriculture departments as a reference to check on hoarding and profiteering.</u>

Whether the Advertisement published by FMPAC and its member undertakings is in prima facie violation of Section 4(1) read with Section 4(2)(a) of the Act.

63. The instant matter revolves around an advertisement or awareness campaign by FMPAC and its members published in Dawn Newspaper, and The Nation on 26th November, 2021

[38] Senior Subject Matter Specialist (Focal Person for Fertlizer), Agriculture Extension Department, Government of Sindh.

[39] Contacted telephonically by the enquiry committee

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(Annex I-A) specifying the price at which urea fertilizer is to be sold in the market. The contents of the advertisement are reproduced verbatim hereunder:

- *With the Government of Pakistan's support, ample stocks of Urea and Phosphorous fertilizers are available and there is no shortage.*
- *Urea Fertilizer is being sold at PKR 1,768 per bag across the country. Buyers should not pay more than this price.*
- *It is our collective responsibility to raise our voice against hoarders and those involved in overcharging.*
- *Complaints against price hike should be made immediately to the relevant government department.*
- *Licensing of dealers overcharging and hoarding will be cancelled.*
- *Maximum Retail Price of Urea PKR 1768 per bag.*

The advertisement also has the logos of FMPAC and its members i.e. Engro Fertilizers, Fauji Fertilizer Corporation, Fauji Fertilizer Bin Qasim, Agritech Limited, Fatima Fertilizer Company, FatimaFert Limited and PakArab Fertilizers Limited

64. We now look at this advertisement in the context of Section 4 of the Act reproduced below:

> ***"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"*;

Based on this, the enquiry committee has to determine whether the association i.e. FMPAC and its member undertakings have taken a decision with respect to production, supply, distribution, acquisition or control of goods. It is noted that the advertisement by FMPAC and its members, collectively announcing price of urea in the relevant market, constitutes a *prima facie* decision for the purposes of the Act.

65. Furthermore, this decision is a *prima facie* violation of Section 4(1) read with Section 4(2)(a) of the Act due to the following reasons:

a. From a competition law perspective the announcement of prices is a purely commercial decision that falls outside the ambit of permissible activities of an association. The enquiry committee would refer to the Commission's Order dated **29th February 2019 in the Matter of show cause notice issued to Pakistan Poultry Association (PPA)** wherein it found the advertisement of prices of poultry items by PPA anti-competitive in terms of Section 4(2)(a) of the Act. The relevant excerpt is as follows:

"*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.*"

Even in the case where the government fixes the price, which is not the case in the matter at hand, associations cannot announce the same the reason for this being that the government regulated price is only a ceiling or maximum price and manufacturers still have the discretion to sell below this ceiling in a bid to compete with other players for higher sales volumes.

b. However, in the instant matter since the prices of urea fertilizer are deregulated, the association as well as urea manufacturers have committed a *prima facie* violation of Section 4(2)(a) of the Act as they are collectively fixing the price of urea and not merely intimating their respective prices independently to the government. The government's stance is that upon receipt of prices from each of the companies the same is notified for the farmers for purposes as a reference price. as noted in paragraphs 52-61 above.

66. In the case of FFBL it is noted that although it doesn't operate in the relevant market, it is party to a prima facie anti-competitive decision and it uses the price of Rs. 1768 as a base for pricing its granular urea which is on average Rs. 20 per bag more expensive than urea in prilled form.

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67. Based on the above the decision by the association i.e. FMPAC and its member undertakings to publish an advertisement wherein they have collectively fixed and announced the rate of urea per 50 Kg bag is a *prima facie* violation of Section 4(1) read with Section 4(2)(a) of the Act.

Implementation of uniform price

68. Whereas, the advertisement in and of itself constitutes a *prima facie* violation of Section 4 of the Act, the enquiry committee has found that uniform price of Rs. 1768 per 50 Kg bag was being implemented by each of the undertakings since at least September 2021 (with the exception of FFBL which is indirectly using it as a base price).

69. As mentioned in the paragraphs above, companies issue their price lists which are then usedby the respective Deputy Director of Agriculture (Extension) to check profiteering. The enquiry committee wrote to the Agriculture Department Punjab to provide copies of price notifications issued by the various districts and the underlying company issued price lists on which they were based (for the calendar year 2021 and 2022). The Agriculture Department provided notifications for 22 districts detailed in the table 14 below (Copies of Notifications have been placed at Annex III-VI)[40].

Table 14: District wise notifications available	
1.Attock	2. D.G. Khan
3. Jhelum	4. Bahawalpur
5. Khanewal	6. Khushab
7. Layyah	8. Rahim Yar Khan
9. Rawalpindi	10. Sargodha
11. Vehari	12. Bhakkar
13. Chakwal	14. Bahawalnagar
15. Multan	16. M.B. Din
17. Mianwali	18. Hafizabad
19. Lodhran	20. Narowal
21. Muzaffargarh	22. Faisalabad.

70. What these available notifications show is that there has been an increase in urea prices by the companies from Rs. 1718-1720 to Rs. 1768 from September onwards and that all companies maintained this uniform price. Prices in Rawalpindi are used as an illustration.

[40] It is noted that not all notifications and underlying price lists for the said period are available. The analysis is therefore, limited to a sample of districts for which the most complete set of documents are available.

The notification for Rawalpindi dated 12.11.2021 is reproduced below. (Annex VII). Price notifications for other districts in Punjab follow a similar format, with the notification detailing the company/brand wise prices of different fertilizers including: urea, DAP, MOP,SSP,SOP, CAN, NP, NPK etc. From the list issued on 12.11.2021 it is clear that the prices of urea for all companies is notified as Rs. 1768 per 50 Kg bag.

OFFICE OF THE DEPUTY DIRECTOR OF AGRICULTURE (EXTENSION) RAWALPINDI
New Agriculture Complex Inside PMAS Arid Agriculture University Rawalpindi
Phone 051-9292160, E-mail dda.ext.rwp@gmail.com

RE-NOTIFICATION

WHEREAS, the Fertilizer Companies have revised the Fertilizer rates; the same are hereby notified w.e.f. 12.11.2021. It has become imperative to notify the Fertilizer price to protect the farmer's/ consumer's interest, ensure regular supply and availability of fertilizers on notified prices in District Rawalpindi

Therefore, I **Saadla Bano, Deputy Controller Fertilizer /Deputy Director Agriculture (Ext.) Rawalpindi** in exercise of the powers vested to me under Section-4 of the Punjab Fertilizers (Control) Order 1973, and under section-4 of the Punjab Essential Article (Control) Act, 1973 fix the following prices of 50 Kg Bags of various fertilizers in the District Rawalpindi with immediate effect:-

S. No	Name of Company	UREA (Rs./Bag)	DAP (Rs./Bag)	CAN (Rs. /Bag)	NP (Rs. /Bag)	K (Rs. /Bag)	SSP (Rs. /Bag)	AS (Rs. /Bag)	MAP (Rs. /Bag)
1	Engro	Engro Urea 1768	Engro DAP 8171	-	Engro NP Plus 5593	SOP (P) 6345 SOP Granular 6559 SOP Zarkhez Khas 5562 SOP Zarkhez Plus 6553 MOP Zarkhez Khas 4519 MOP Zarkhez Plus 5258 MOP Garnular 3814	-	Am Su 2975	Zorawar MAP 7483
2	FFC	Sona Urea P 1768 Sona Urea G 1788 Sona Urea Neem Coated 1798	Sona 8243 FFC 8193	-	-	SOP Granular 7319 MOP 3985	-	-	-
3	Fatima Fertilizer	Sar Sabz Urea 1768	Sarsabz DAP 8244 Baber Sher DAP 8254	CAN G 1571 CAN F 1529	Sar Sabz NP 5777	-	-	-	-
4	Agri Tetch	Tara Urea 1768	-	-	-	-	Tara SSP 2090	-	-

Note: - The rates of fertilizer fixed by Fertilizer Companies are hereby notified for implementation in Revenue Limits of Rawalpindi.

This order shall take effect from date of notification and shall remain in force till it is altered or withdrawn. All shopkeepers/Businessmen shall issue receipt in token of sold article. All shopkeepers/Businessmen shall display rate lists in block letters on conspicuous places of their shops. No person shall with-hold or store any commodity with the purpose to create any artificial shortage in order to enhance rate of that item. Any contravention/abetment of this order shall be punishable under Section 6 & 7 of the Punjab Essential Articles (Control) Act, 1973.

The notification shall be given vide publicity by affixing copies thereof on the notice boards in the office of the Deputy Commissioner, District Police Officer, Deputy Director Agriculture (Ext.), All Assistant Directors Agriculture (Ext.), Assistant Commissioners, TMAs and other conspicuous places in the District.

Sd/-
(Saadia Bano)
Deputy Director of Agriculture
(Extension) Rawalpindi

No. 8040-8061 -/DDA (Ext.) Rawalpindi/Dev: Dated. 12.11.2021

A copy is forwarded to:-

1. The Additional Secretary (Task Force), Government of the Punjab, Agriculture Department Lahore.
2. The Deputy Commissioner, Rawalpindi
3. The Director General Agriculture (Extension & A.R) Punjab, Lahore.
4. The Director of Agriculture (Extension), Rawalpindi Division, Rawalpindi
5. The Additional Deputy Commissioner (Revenue), Rawalpindi
6. The Section Officer (Task Force), Government of the Punjab, Agriculture Department Lahore
7. The Deputy Superintendent Police (Special Branch) Rawalpindi
8. All the Assistant Commissioners Rawalpindi District
9. All the Assistant Directors of Agriculture (Ext)/ Assistant Controllers of Fertilizer in the District with the direction to ensure sale of fertilizers at the rates notified above and affix the price list at the notice boards of all the concerned offices in Tehsils and also provide copy of this notification to all fertilizer dealers in the Tehsils for displaying at their shops at prominent places.

12|11|2021
Deputy Controller of Fertilizer/Deputy Director of Agriculture
(Extension) Rawalpindi

Furthermore, in the underlying price lists issued by the individual companies (reproduced below) the price is also Rs. 1768. It may also be noted that the dates on the price lists of the companies precede the date on which the Deputy Controller of Fertilizer issued its notification.

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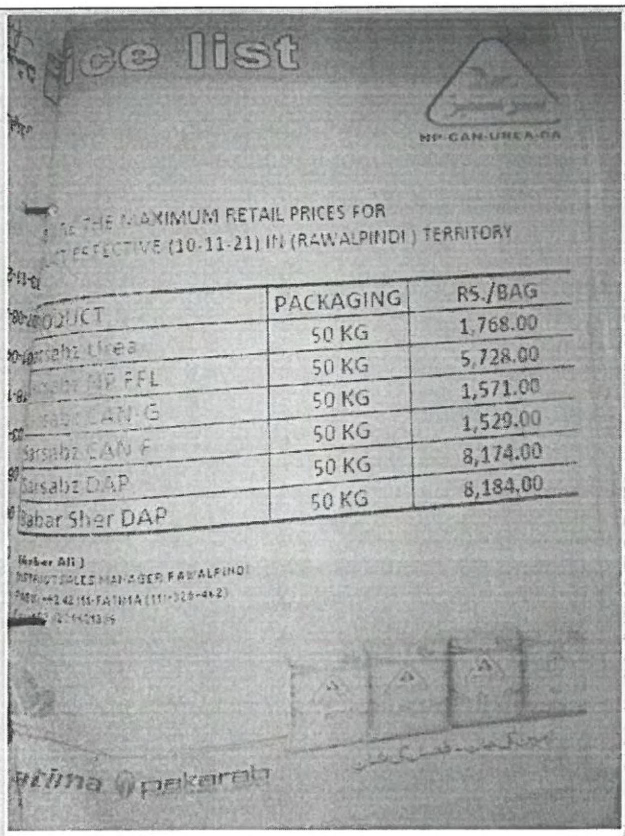
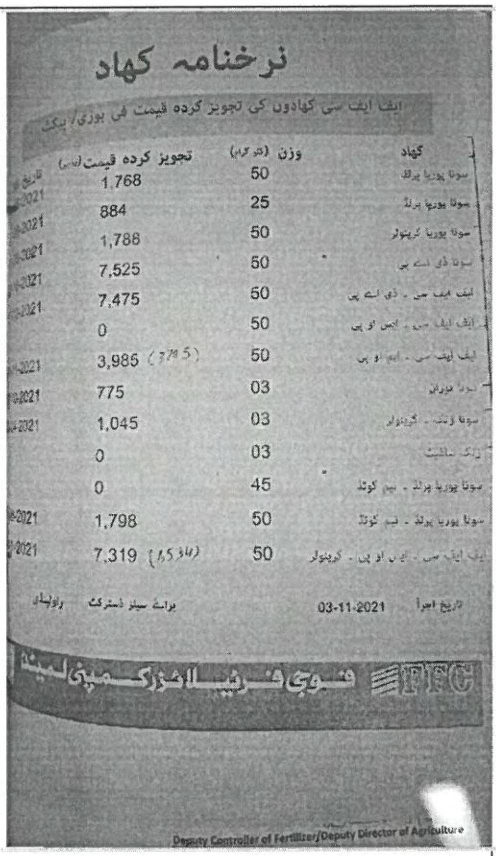
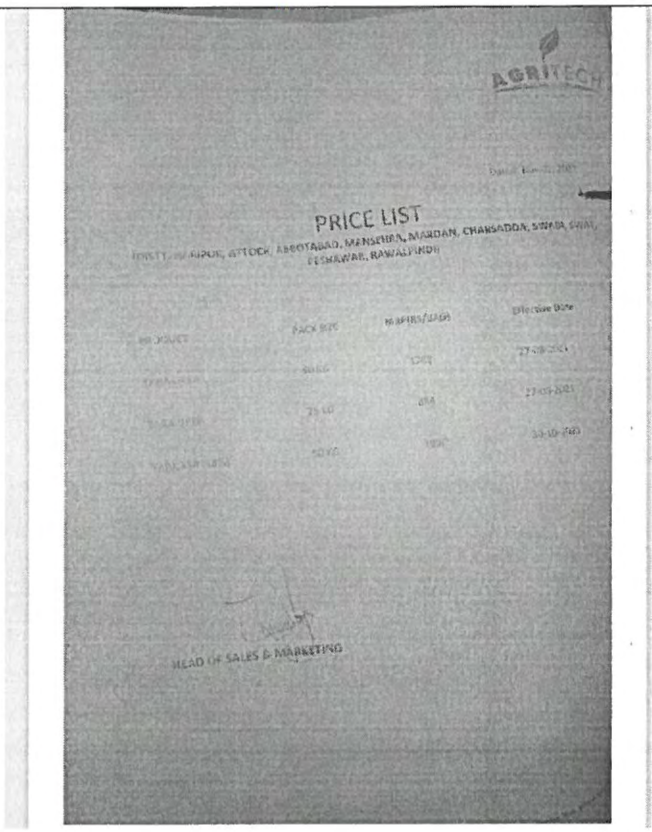


PRODUCT	PACKAGING	RS./BAG
...sabz Urea	50 KG	1,768.00
...NP FFL	50 KG	5,728.00
...CAN G	50 KG	1,571.00
Sarsabz CAN F	50 KG	1,529.00
Sarsabz DAP	50 KG	8,174.00
Babar Sher DAP	50 KG	8,184.00



کھاد	وزن (کلو گرام)	تجویز کردہ قیمت (روپے)
سونا یوریا پرلڈ	50	1,768
سونا یوریا پرلڈ	25	884
سونا یوریا گرینولر	50	1,788
سونا ڈی اے پی	50	7,525
ایف ایف سی - ڈی اے پی	50	7,475
ایف ایف سی - ایس او پی	50	0
ایف ایف سی - ایم او پی	50	3,985 (3745)
سونا بوران	03	775
سونا زنک - گرینولر	03	1,045
زنک سلفیٹ	03	0
سونا یوریا پرلڈ - نیم کوٹڈ	45	0
سونا یوریا پرلڈ - نیم کوٹڈ	50	1,798
ایف ایف سی - ایس او پی - گرینولر	50	7,319 (6534)



AGRITECH

PRICE LIST

HEAD OF SALES & MARKETING

71. The price of Rs. 1768 is also the same for notifications in districts across Punjab (for which notifications are available) for the period of October, November, and December 2021 which further corroborates the fact that there was a uniform price of Rs. 1768 per 50 Kg bag by all the companies.

Trend of Price Similarity

72. Another question that arises here is that was the announcement of a single price (Rs. 1768) by FMPAC and its members merely a one-off event or were similar prices a regular occurrence? From the notifications available, with the enquiry committee, it appears that uniform pricing and price parallelism are common for the urea industry which raises a question mark over whether this was purely coincidental or due to some form of collusive activity . For illustration purposes, urea prices in 2 districts are observed (notifications for other districts are placed as Annex VI) and collated in the tables 15 and 16 below from which the following observations are made:

<u>Rawalpindi</u>

a. It appears that prices of Engro, FFC, Fatima (Sarsabz &Bubber Sher) and Agritech are moving in a parallel manner with prices remaining in the same range. Any difference between prices is minor.

b. Urea prices in July 2021 were Rs. 1718 for Engro, Rs.1720 for FFC and Fatima (Sarsabz & Bubber Sher) and Agritech. These prices remain stable however, in the price notification issued on 12.10.2021 all companies increase their price to a uniform level of Rs. 1768 per bag (a jump of Rs. 48 per 50 kg bag). In November 2021, which coincides with publication of the advertisement, prices of all companies remain at Rs.1768. This shows that the price published in the advertisement by FMPAC was being maintained by its member undertakings.

c. Urea prices begin to increase in March 2022 and by April 2022 the prices of urea are Rs.1933 for FFC, Fatima (Sarsabz & Bubber Sher) and Agritech and Rs. 1918 for Engro. Interestingly all companies subsequently reduce their prices to Rs.1850 in May 2022 before increasing them again to Rs. 1950 in June 2022.

d. Overall for Rawalpindi the price increase between February 2021 and June 2022 is Rs.232 for Engro, Rs.233 for FFC and Fatima (Sarsabz &Bubber Sher) and Rs.230 for Agritech.

Table 15: Urea Notified Prices District Rawalpindi (Rs./50 kg bag)

Price Notification issuance date	Engro Urea	FFC, Sona Urea (Prilled)	Fatima Fert co. (Sarsabz)/ Bubber Sher)	Agri Tech
14th July 2021	1718	1720	1720	1720
12th Oct 2021	1768	1768	1768	1768
27th Oct 2021	1768	1768	1768	1768
12th Nov 2021	1768	1768	1768	1768
10th Jan 2022	1768	1768	1768	1768
18th March 2022	1768	1863	1863	1768
30th March 2022	1918	1933	1863	1863
19th April 2022	1918	1933	1933	1933
31st May 2022	1850	1850	1850	1850
23rd June 2022	1950	1950	1950	1950

Change in Rs.	**232**	**233**	**233**	**230**
%Change	**13.50%**	**13.57%**	**13.57%**	**13.37%**
Source: Agriculture Extension Department, Punjab				

73. Uniformity in price pattern is also observed in the district of Layyah (Table 16 below) for Engro, FFC and Fatima (Sarsabz & Bubber Sher) [41] :

a. In the period from January 2021 to November 2021 it appears that prices of Engro, FFC and Fatima are moving in a parallel manner with prices remaining in the same range. Any difference between prices is minor. Per bag prices of urea rose overall by an average of 3% and the increase is similar for all three i.e. Rs.51 per bag. It is also appears that Agritech did not sell in the district during this period as the notifications do not include the company's prices.

b. Urea prices at the start of 2021 (January) were Rs. 1717 for Engro, Rs.1717 for FFC and Fatima (Sarsabz & Bubber Sher). These prices remain stable however, in September all 3 companies increase their price to a uniform level of Rs.1768 per bag (a jump of approximately Rs. per 50 kg bag). In November 2021, which coincides with publication of the advertisement, prices of all companies remain at Rs.1768.

c. For the period February 2022 to November 2022, the prices of all companies increased by Rs. 482 per bag or 27.26%.

d. Urea prices begin to increase from March 2022 to May 2022 interestingly all companies then reduce their prices to Rs. 1850 in June 2022.

Table 16: Urea Notified Prices District Layyah (Rs./50 kg bag)

	Engro Urea	FFC, Sona Urea (Prilled)	Fatima Fert co. (Sarsabz)/ Bubber Sher)	Agri Tech
23rd Jan 2021	1717	1717	1717	-
19th Feb 2021	1717	1717	1717	-
29th March 2021	1718	1720	1720	-
17th June 2021	1718	1720	1720	-

[41] The complete prices of Agritech are not included in the price notification.

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17th Sep 2021	1768	1768	1768	-
15th Oct 2021	1768	1768	1768	-
29th Oct 2021	1768	1768	1768	-
12th Nov, 2021	1768	1768	1768	-
24th Nov 2021	1768	1768	1768	-
Change in Rs.	**51**	**51**	**51**	
% Change	**3%**	**3%**	**3%**	
26th Feb 2022	1768	1768	1768	1768
22nd March 2022	1918	1863	1863	1863
25th April 2022	2017	1933	1933	1933
25th May 2022	2017	1933	1933	1933
2nd June 2022	1850	1850	1850	1850
5th Aug 2022	2200	2200	2200	2345
22nd Oct 2022	2250	2250	2250	2250
3rd Nov 2022	2250	2250	2250	2250
16th Nov 2022	2250	2250	2250	2250
Change in Rs.	**482**	**482**	**482**	**482**
% Change	**27.26%**	**27.26%**	**27.26%**	**27.26%**
Source: Agriculture Extension Department, Punjab				

74. It is observed that from price notifications that the setting of an identical price is not merely one off event but it appears that uniform pricing and price parallelism are common for the urea industry. It is also interesting to note that these uniform prices exist despite different cost structures and economies of scale for the firms especially FFC and Engro vs the smaller players. Profitability figures for the companies (apart from Agritech) show that they have the space to absorb cost increases however, it appears that these increases have been passed on to the customers in order to protect and maintain their profit margins. The collective market power of FMPAC and its member undertakings is also enhanced given the huge price differential with imported urea of approximately Rs. 2597 to 3200 per 50 Kg bag and the fact that its members have a 100% share in domestic urea production.

CONCLUSION

75. The Commission took notice of the rise in prices of urea fertilizer and shortage of the product in the market in November, 2021 and an advertisement issued by the FMPAC an association and its member undertakings, on 26th November 2021 wherein it had announced 'Maximum Retail Price of Urea at Rs. 1768 per 50 Kg bag.

76. Based on the ToRs, assigned to it the enquiry committee constituted in the matter framed the following issues to deliberate upon:
    a. What is the relevant market in terms of Section 2(1)(k) of the Act?
    b. Whether there is a *prima facie* violation of Section 4(1) read with Section 4(2)(a) of the Act by FMPAC and its member undertakings.

77. A brief overview of the urea sector was conducted with the following key points:
    a. Demand & Supply of urea: Annual urea demand in 2021-22 was approximately 6,364 thousand tons and domestic production during the same period was 6,378 thousand tons. This shows that the domestic production of urea is sufficient with imports catering to a meagre 1.5% of annual demand.
    b. Local and International Prices: Prices of urea are deregulated with the companies issuing price lists from time to time. These prices are notified by the respective provincial district agriculture extension departments as the 'maximum retail prices' for the purpose of checking any profiteering. Prices of urea began to increase in October-November 2021 at the time of the abovementioned advertisement and continued their upward trajectory from March 2022 onwards. Overall the price of urea rose by 11% in 2021, by 30% in 2022 and 5% in the first three months of 2023. Owing to the subsidized price of gas, domestic urea is cheaper than imported urea with the latter being expensive by Rs. 2597 to 3200.
    c. Brief overview of market players: There are five domestic producers of urea with the following market shares in terms of sales volume: FFC (39%), Engro (36%), Fatima Fertilizer Company Limited(13%), FFBL (8%) and Agritech (4%).
    d. Fertilizer Industry Performance: Capacity utilization for urea plants depends on the supply of gas. Most of the plants are operating at full capacity. In terms of profit, with the exception of Agritech, the other companies have posted healthy profits.

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FFC's NP margin in 2021 was 20.15%, Engro 15.9% and Fatima Fertilizer Company Limited 16.42%.

e. Share of Cost Components: Feedstock gas is the major raw material and cost component accounting for an average share of 52% in cost of sales (ranging between 42% to 58%). Although the ratio varies from plant to plant, on account of difference in the cost of gas supplied to each under its respective gas purchase agreement, it still constitutes a major share for all the undertakings.

f. Subsidies: Total annual gas consumption by the fertilizer industry is 266,796 MMCF out of which 221,205 MMCF (83%) is used as feedstock and the remaining 17% as fuelstock. As per estimates, the annual subsidy to the fertilizer sector on account of feedstock gas is Rs. 152 billion.

78. **Relevant Market:** Based on the findings of the paragraphs 32-41 above, the relevant market in terms of Section 2(1) (k) of the Act has been defined as that of urea fertilizer (in prilled form) in Pakistan. This prima facie determination took into account the following factors:

a. Product characteristics: urea is a concentrated straight nitrogenous fertilizer that contains 46.7% nitrogen, which is a major plant nutrient. Out of the three types of fertilizers, nitrogenous fertilizers are the most commonly used with a share of 75%, followed by phosphorous (24%) and potash (1%). Each type of fertilizer serves a different function in the crop cycle and therefore, urea cannot be substituted with other fertilizers. Since urea is a nitrogenous fertilizer its closest substitute would be CAN (which is also a nitrogenous fertilizer) however, urea has the highest nitrogen content of all solid nitrogenous fertilizers in common use i.e. 46.7% therefore, it is preferred over CAN.

b. Price differential: Other than its nutritional value for crops, urea is the most commonly used fertilizer because it is the cheapest in terms of cost. On average in March 2023, price of a 50 Kg bag of urea was Rs. 2,544 whereas DAP was selling for Rs. 10,544 and NPK for Rs.8,238. Therefore, farmers prefer to use urea fertilizer over other types due to its comparatively lower price.

c. Local vs imported urea: Local urea forms a distinct market since it cannot be substituted for imported urea since imported urea was on average Rs. 2597 to 3200 (per 50 Kg bag) more expensive than local urea.

d. Relevant geographic market: There is free inter-provincial movement of urea and the conditions of competition are homogenous throughout the country. Moreover, as indicated by urea demand, supply and import information above, locally made urea is just enough to cover local demand with imports accounting for an average of 1% of total demand. Exports of urea are also restricted which means that majority of urea is traded within the territory of Pakistan. Therefore, the relevant geographic market appears to be the whole of Pakistan.

79. **Spillover:** Based on paragraph 42 above, with regards to spillover, two points are noted (a) it is noted that urea fertilizer has been notified as an essential product and essential items by their very nature are transported and traded freely between the provinces and there is nothing on the record to suggest that there is any inter-provincial restriction on movement of the same. (b) Urea is an important input to the agriculture sector and agriculture commodities such as wheat, rice, fruits and vegetables etc. are being freely traded all over Pakistan. In light of the above, any anti-competitive impact in the urea fertilizer sector would have effects all over Pakistan, hence, the requirement of spillover appear to have been met. It is also noted that the advertisement campaign was run nationally as it was also available on e-versions of the Nation newspaper therefore, the price was intended for the whole of Pakistan.

80. **Undertakings:** Based on the findings of paragraphs 44-51, following have been defined as undertakings, in terms Section 2(1)(q) of the Act, for the purposes of this enquiry:

a. Fatima Fertilizer Company Limited, Fatima Fert Limited, Engro Fertilizers Limited, Fauji Fertilizer Company Limited, Agritech Limited. These companies are involved in the production and sale of urea fertilizer (prilled form) in the relevant market.

b. FMPAC is an association/forum of the fertilizer industry whose members/participants include manufacturers of Pakistan therefore, FMPAC is an association of undertakings in terms of Section 2(1)(q) of the Act.

c. FFBL: Since FFBL does not operate in the relevant product market as it produces urea in granular form only. However, it is considered as an undertaking due to the reasons that: (a) it participated in the prima facie anti-competitive decision; (b) from price notifications it is observed that the price of Sona urea in prilled form acts as a base price for determination of granular urea. From price notifications it is noticed that Sona granular is on average Rs. 20 dearer than Sona prilled.

81. **Government Intervention:** Based on the findings of paragraphs 52-62 as per correspondence with MoIP and Agriculture Departments of Punjab, KPK and Sindh the prices of urea fertilizer are deregulated as per Rule 5, Section 5.1 of the Fertilizer Policy 2001 and is being determined by the fertilizer companies themselves. The price so announced by the companies are then used by the respective district agriculture departments as a reference to check on hoarding and profiteering.

82. **Whether the Advertisement published by FMPAC and its member undertakings is in prima facie violation of Section 4(1) read with Section 4(2)(a) of the Act:** Based on the findings of paragraphs 63-67 above, the advertisement by FMPAC and its members wherein they have collectively announced the price of urea in the relevant market *prima facie* constitutes a decision for the purposes of the Act. this decision is a *prima facie* violation of Section 4(1) read with Section 4(2)(a) of the Act due to the following reasons:

    a. From a competition law perspective the announcement of prices is a purely commercial decision which falls outside the ambit of permissible activities of an association.

    b. In the instant matter since the prices of urea fertilizer are deregulated, the association as well as urea manufacturers have committed a *prima facie* violation of Section 4(2)(a) of the Act as they are collectively fixing the price of urea and not merely intimating their respective prices independently to the government.

    c. In the case of FFBL it is noted that although it doesn't operate in the relevant market, it is party to a prima facie anti-competitive decision and it uses the price of Rs. 1768 as a base for pricing its granular urea which is on average Rs.20 per bag more expensive than urea in prilled form.

83. **Implementation of uniform price:** Based on the findings of paragraphs 68-71 above, it is noted that whereas, the advertisement in and of itself constitutes a *prima facie* violation of

Section 4 of the Act, the enquiry committee has found that uniform price of Rs. 1768 per 50kg bag was being implemented by each of the undertakings since at least September 2021 (with the exception of FFBL which is indirectly using it as a base price).

84. **Trend of Price Similarity:** Based on the findings of paragraphs 72-74 above, it is observed from price notifications that the setting of an identical price is not merely one off event but it appears that uniform pricing and price parallelism are common for the urea industry. From the information currently available it is also observed that that prices of Engro, FFC, Fatima and Agritech are moving in a parallel manner with prices remaining in the same range. Any difference between prices is minor. For illustration purposes, urea prices in 2 districts are observed.

    a. Overall for Rawalpindi the price increase between February 2021 and June 2022 is Rs.232 for Engro, Rs.233 for FFC and Fatima and Rs.230 for Agritech. Interestingly all companies reduce their prices to Rs.1850 in May 2022 before increasing them again to Rs. 1950 in June 2022.

    b. For Layyah district in the period January 2021 to November 2021, Engro, FFC and Fatima (Agritech did not sell in this period in the district) prices increased by Rs.51 per bag. For the period February 2022 to November 2022, the prices of all four companies increased by Rs. 482 per bag or 27.26%.

RECOMMENDATION

85. The agriculture sector contributes 22.7% to Pakistan's GDP[42] and fertilizer is an important input for this sector with an average usage 207 kg per hectare. Fertilizer is the second largest cost component for most crops after land rent accounting for approximately 17% of total cost. The decision by FMPAC and its member undertakings to increase the price of urea from Rs. 1720 per 50 Kg bag to Rs. 1768 per 50 Kg bag i.e by Rs. 48 alone resulted in gains of Rs. 1.8 billion for the undertakings in the four month period of Rabi season (October 21 to January 2022)[43]. This was also reflected in the bottom line of the

[42] Economic Survey of Pakistan 2021-22

[43] The last notified price of urea July 2021 was Rs.1720 per 50kg bag, This price increased to Rs. 1768 i.e by Rs. 48 per bag, The total demand for urea in Rabi Season (October 21 to March 2022) was 3195000 tons. The price of Rs. 1768 was implemented for the 4 months starting from October 21 to January 22. The urea demand for these 4 months comes out to 2130000 tons or 1,932,303,496 Kgs or 38,646,069 bags. The impact is therefore, Rs 48 increase multiplied by 38,646,069 bags which is Rs.1.8 billion.

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undertakings with the major companies posting healthy profits in 2021 as compared to the previous year. FFC's profit before tax in 2021 was Rs.30.3 billion, Engro Rs. 29.8 billion, Fatima Fertilizer Company Limited Rs. 28.2 billion[44]. Only Agritech posted a loss of Rs. 4 million in 2021. These gains for the companies meant higher costs for farmers and ultimately the consumers. Given the fact that the sector benefits from subsidized gas, to the tune of Rs.152 billion ultimately paid for by the exchequer, makes the *prima facie* violation even more blatant.

86. In light of the above stated findings, the enquiry committee recommends that the Commission may consider initiating proceedings under Section 30 for *prima facie* violation of Section 4(1) read with subsection 4(2)(a) of the Act against the following:
    a. Fatima Fertilizer Company Limited;
    b. Fatima Fert Limited;
    c. Engro Fertilizers Limited;
    d. Fauji Fertilizer Company Limited;
    e. Agritech Limited and
    f. Fertilizers Manufacturers of Pakistan Advisory Council
    g. Fauji Fertilizer Bin Qasim Limited.

Maliha Quddus Enquiry Officer	Aqsa Suleman Enquiry Officer	Furqan Khattak Enquiry Officer

[44] It is noted that the profitability figures available from respective financial statements are overall figures and are inclusive of profits from other product/fertilizer segments as well.