POLICY NOTE – PRICE FIXING AGREEMENT
between
ALL PAKISTAN SUGAR MILLS ASSOCIATION
and
MINISTRY OF INDUSTRIES AND PRODUCTION

We have noticed news items appearing on August 19, 2009, in leading newspapers of the country, reporting an agreement between All Pakistan Sugar Mills Association **(“APSMA**”), representing all the sugar production stakeholders and Ministry of Industries and Production (“**MOIP**”), on behalf of the Government of Pakistan, fixing the ex-mill rate of sugar at Rs.48/- per kg in Sindh and Rs.49.75/- per kg in Punjab (the “**Agreement**”). In this connection we would like to observe as follows:

i. Recently, the sugar sector has been going through a supply shortage crisis and sugar prices have witnessed an excessive and perhaps an unreasonable price hike throughout the country. The Government has been trying to adopt various measures to check sugar prices in the interests of the consumer. It has also been reported that the Agreement for fixing of sugar prices seems to have been entered into due to the recent threat of sugar mills to terminate sugarcane crushing. The Commission has already taken cognizance of the alleged conduct i.e. ‘threat’ by the Punjab chapter of APSMA and is probing into the matter.

ii. The global scenario of sugar as a commodity has been registering an upward trend in prices and downward trend in production. Sugar prices have been increasing in the international market from the beginning of this year. Import of sugar is also becoming more and more expensive with the passage of time.

iii. It needs to be appreciated that Pakistan’s sugar sector has witnessed turmoil time and again. Interim measures used to address sugar production and prices include, *inter alia*, fixing the sugarcane support price by the Government, intervening in open market supply of sugar through the Trading Corporation of Pakistan, and providing sugar on subsidized rates through government owned Utility Stores Corporation of Pakistan. While such measures are likely to be competition adverse they may have some merit on grounds of consumer protection/welfare.

iv. Since the Commission is entrusted with the mandate to provide for free competition in all spheres of commercial and economic activity to enhance economic efficiency and to protect consumers from anti competitive behaviour, the Commission feels obliged to raise its concern to the Government in relation to policies that impinge upon free competition and economic efficiency in any sector. In respect of the Agreement, the Commission must caution the Government, that whether or not the Government has conceded to the pressure applied by the sugar mills, to avert the possibility of the threat issued earlier, the mere act of entering into such an Agreement (that fixes price) constitutes a violation under Competition Ordinance, 2007 (the "**Ordinance**").

v. In this regard please refer to Section 4 of the Ordinance, which prohibits any "*undertaking or association of undertakings to enter into any agreement, or in the case of an association of undertakings to 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.*" In particular, Section 4 (2)(a) lists the prohibited agreements which includes agreements "*fixing the purchase or selling price or imposing any other restrictive trading conditions with regard to the sale or distribution of any goods*".

In view of the above, it is really very difficult to condone the involvement of the Government in this Agreement. The implementation of such agreements under the auspices of the Government manifests legitimization of practices prohibited under law. The Commission is of the considered view that the Government must not provide any patronage to anticompetitive practices and measures that in effect promote and encourage collusive behaviour on the part of the sugar mills through the platform of APSMA. Fixing of prices, out put etc are universally recognised as having the most detrimental effects on competition; eradicating or seriously reducing the benefits that competitive markets deliver for consumers. While the Commission has noted reports of alleged attempts to create artificial shortages of sugar, the Commission is of the opinion that this stop gap measure of 'fixing price' can at best provide temporary relief to cap the excessive price increase. However, this measure fails to benefit the sector or the economy at large. The short term benefit of fixing prices (if any) does not justify the long term loss caused by such anti competitive policies.

Accordingly, the Commission recommends that the Government terminates the Agreement at the earliest and desists from entering into arrangements that have the affect of encouraging collusive behaviour on the part of economic agents in any sector.
