



File No: 52/Food Laws/SY/CCP/2019/
COMPETITION COMMISSION OF PAKISTAN
GOVERNMENT OF PAKISTAN

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POLICY NOTE

SUBJECT: AMENDMENTS IN THE LAWS RELATING TO ESSENTIAL COMMODITIES TO CREATE LEVEL PLAYING FIELD AND ENHANCE ECONOMIC EFFICIENCY

MANDATE OF THE COMMISSION

The Competition Commission of Pakistan (hereinafter the ‘**Commission**’) has been entrusted with the exclusive statutory mandate of providing free competition in all spheres of commercial and economic activity, to enhance economic efficiency and protect consumers from anti-competitive practices. Under clause (b) of Section 29 of the Competition Act, 2010 (hereinafter the ‘**Act**’) the Commission is also empowered by the legislature to review the laws and policy frameworks, and to make suitable recommendations to the Federal or Provincial Governments to make new or amend the existing laws to foster competition.

FACTUAL BACKGROUND

2. This Policy Note is issued, based on the review of framework relating to Control of Pricing and Supply of Essential Commodities carried out by the Commission (hereinafter the ‘**Report**’), which was conducted after taking into account the data collected and views of stake holders from Federal and Provincial Governments. Copy of the Report is placed as ‘**Annexure-A**’. In addition to the foregoing, with the recent price hike in the month of Ramadan and challenges in implementation of price control law as well as disparity of prices throughout the provinces, the Commission deemed it appropriate to issue this Policy Note.

3. The history of price control regulations dates as far back as Third Century B.C. when state in Egypt regulated the grain production and distribution. In many developing jurisdictions the price control laws are in place such as Bangladesh, India, Indonesia, Kenya, Malaysia and Zimbabwe. In developed jurisdiction like, United States of America, over a period of time, the price control regulations have been liberalized and are being applied in emergencies. In Pakistan the price control and price determinations of essential commodities is carried out on regular basis.

4. Under the **Principles of Policy enshrined under Article 38** of the Constitution of Islamic Republic of Pakistan, 1973 (hereinafter the ‘**Constitution**’), the **State is responsible to ensure the provisions of food and basic necessities** along with other social and economic benefits to its citizens. It is with this aim, the price control laws are in place to ensure the availability of essential commodities to the public at large **at affordable prices**. Various economic theories suggest that implementation and monitoring of price controls is not only difficult but also in contrast to the principles of free market economy. In economic theory, price controls and its regulations may reduce entry and investment in the long run and act as a disincentive to improve quality, create black markets, and stimulate costly rationing.¹ Therefore, while implementing the price control laws, it is to be ensured that price regulation must be balanced with adequate supply to cater for the demand, otherwise it cannot achieve its purpose as enshrined under Article 38 of the Constitution.

REVIEW OF EXISTING LEGAL FRAMEWORK

5. In the subsequent paragraphs, the Commission has reviewed the major laws that are in place *vis-à-vis* the essential commodities and agriculture produce:

(A). FEDERAL LEGISLATION:

6. The Price Control and Prevention of Profiteering and Hoarding Act, 1977 (Act No. XXIX of 1977) (hereinafter the ‘**PCPPH**’), empowers the Federal Government to control

¹ The problems of Price Controls by Fionna Scot Morton, Cato Review of Business & Government, 2001

the prices, selling and distribution, transport and movement between provinces and withholding of stocks of different '*essential commodities*' notified by the Federal Government.

7. Essential food commodities can be bifurcated into two broader categories i.e. perishables items and non-perishable items. Non-perishable items include; wheat, pulse, ghee, sugar and rice etc. perishable items include fruits and vegetables. The prices of perishable commodities like fruits and vegetables are determined on a daily basis by monitoring auctions at the *mandis*. The prices of non-perishable items are regulated on monthly basis. The price lists are then enforced in every district through notified price magistrates. The Controller General is empowered to fix maximum prices of essential commodities. The prices may vary for different localities, and different classes or categories of essential commodities. The power to fix prices can also be delegated to the Provincial Governments and officers subordinate to provincial governments.

8. While, the law is in place, however, a uniform mechanism to implement the law and ensuring the availability of essential commodities at fair prices to the general public is absent.

(B). KHYBER PAKHTUNKHWA LEGISLATION:

9. In the Province of Khyber Pakhtunkhwa (KPK), following Statutes are in place for the purposes of price control of foodstuff and essential commodities:

- (i). The West Pakistan Foodstuffs Control Act, 1958; and
- (ii). Agricultural and Livestock Produce Markets Act 2007.

10. **The West Pakistan Foodstuffs Control Act, 1958** (hereinafter the '**WPFCA**'), gives broad ranging powers to the Provincial Government for control of supply, distribution and movement of, and trade and commerce in, food stuffs. These powers include *inter alia*:

- (i). Controlling prices at which any foodstuff is bought and sold;

- (ii). Regulating by licenses, permits or otherwise, the storage, transport, distribution, disposal, acquisition, use or consumption of any foodstuff;
- (iii). Prohibiting the withholding from sale of any foodstuff ordinarily kept for sale.

11. Under WPFCA, KPK Provincial Government is empowered to control the prices of food stuff, which include wheat, wheat *atta*, *maida*, *rawa*, *suji*, rice, paddy and sugar. The relevant Provincial Authorities have power under the WPFCA to notify other products which it may deem as '*food stuff*'.

12. In the practical implementation of laws, it has been noticed that in every district a slightly different mechanism is applied *vis-à-vis* the control of prices of essential commodities and ensuring the availability i.e. the demand and supply gaps. The end result is that the consumers suffer be it in terms of higher prices or non-availability of food stuff or essential commodity, in particular, during the times of Ramadan.

13. **Agricultural and Livestock Produce Markets Act 2007**: (hereinafter the 'ALPMA') amended and consolidated the laws relating to marketing of agricultural and livestock produce in the KPK. Under this law the Provincial Government may, by notification, declare its intention of exercising control over the purchase and sale of such agricultural produce and in a specific area through notification. Once the area is notified, a market committee is constituted for its administration. The regulation of all private agriculture markets has been assigned to a Provincial Marketing Board responsible for registration of agriculture markets, establishment of new markets, collection points, warehouses, cold stores and special markets.

14. It has been noted that unlike the province of Sindh and Punjab no statute is in place for registration of godowns. The laws regarding registration of godowns require the registration of godowns with the concerned authority under the respective legislation in the provinces of Sindh and Punjab. It also requires maintenance of records w.r.t. to movement of

essential commodities in and out of the godowns to keep a check on hoarding and ensuring a stable supply and availability of essential commodities.

RECOMMENDATIONS

15. Subsequent to the 18th Amendment in the Constitution of Islamic Republic of Pakistan, 1973 vide Constitution (Eighteenth Amendment) Act, 2010, the powers to regulate and monitor the price control vests with the Provincial Governments, hence, recommendations are made to the Provincial Governments through this Policy Note.

16. While making recommendations, through this Policy Note, we are cognizant of the fact that prices should be determined through natural market mechanism i.e. supply and demand. However, for the purpose of welfare of consumers and ensuring the availability of the essential commodities to the public at large, following is recommended:

- (A). **Upgradation and consolidation of laws:** At the provincial level there are different laws pertaining to **essential commodities, food stuffs, agriculture produce markets and godowns registration Laws** with different departments tasked with enforcement of the same. All provincial laws need to be upgraded and consolidated, keeping in view the current conditions, under one law with a clear responsibilities for implementation under a **single authority**, with the following salient features:

Uniform formula for price determination: The new consolidated law should provide for a uniform formula for **price determination throughout the province**. This will discourage suppliers from hoarding and delivering supplies to places where better prices and margins are available. It is however, reiterated that the prices should be determined through normal market mechanism i.e. supply and demand. Further, the price control

mechanism should only be enforced in cases of emergency or shortages.

Price controls on essential commodities as well as the food stuffs should be applied at the **wholesale level** which can be monitored easily as compared to the vast retail sector, given the fact that wholesalers are located in *mandis* and have relatively uniform operating cost.

Rather than recommending a single price for one commodity, it is recommended that the price determinations be made with reference to **quality of commodities** through **range/band of prices**. Basic quality standards should be identified i.e. the minimum range/band in the price would be for average quality and the maximum range/band could be for higher quality.

- (B). **Godowns Registration**: The new law should also contain the provision for registration of godowns. The laws regarding registration of godowns should require the registration of godowns with the concerned authority. It should also provide for maintenance of records w.r.t. to movement of essential commodities in and out of the godowns to keep a check on hoarding and ensuring a stable supply and availability of essential commodities.
- (C). **Agriculture Supermarkets**: In order to improve the access of the farmer to the market and to minimize the role of the middleman, the law should provide for establishing of ‘*agriculture supermarkets*’ on public private partnership, where farmers can directly display and sell their products at the price set out by government. These agriculture supermarkets can bring about the efficiency in the demand and supply situation of the agricultural produce.

- (D). **Incentivize the Minimum Support Price (MSP)**: The Minimum Support Prices (MSP) mechanism should be employed to incentivize farmers to cultivate crops that are likely to be in high demand in the future but are currently facing low prices and shortage. For example MSP should be offered on Pulses/lentils in order to increase their cultivation in Pakistan and to avoid reliance on imports. Further, in order to achieve coherence in this regard, the incentivized MSP be deliberated, preferably, by National Economic Council and may also be reviewed accordingly from time to time.
- (E). **Promoting food processing and Cold chains**: In order to reduce wastage of perishable commodities and establish a new economic activity, food processing and allied industries should be encouraged which *inter alia* include cold chains. Tax incentives for establishing this particular industry would facilitate the growth of local industry and reduce the reliance on imports.
- (F). **Exemption of Hyper/Super Market from application of Price Control Laws**: The aforesaid price control laws should not be applied on Hyper/ Super market for the following reasons:
- (i). Supermarket chain stores/hypermarkets bring in foreign investment and introduce international best practices in the food supply chain especially in areas such as post-harvesting, maintenance of cold chain processing of foodstuff.
 - (ii). Most of these stores implement a modern agriculture supply chain under which perishable items are transported and stored in a temperature controlled environment. Fruits and vegetables are sold as per international standards such as **Hazard Analysis of Critical Control Points (HACCP)**. These processes require huge

investments and forcing these stores to abide by low prices acts as a disincentive.

- (iii). All non-perishable items such as pulses and spices are graded, cleaned and packaged. The maintenance of better quality and grading offered by supermarkets results in higher costs as compared to the traditional model. Therefore, implementing the same prices for a product that has been graded and packed according to international standards is not justifiable.
- (iv). Supermarket chains have an average floor space of 10,000 square meters incorporating a number of features to provide an amenable shopping experience to consumers. These features include a large parking area, air conditioned facilities, wide aisles a wide range of products and brands under one roof, customer service and trained staff. Also much effort is expended at the back end of the business to ensure that a broad range of goods reach shelves in a timely and efficient manner. All of these features translate into higher overhead costs for supermarket chains/ stores, making it difficult for these stores to continue its operations within the current price control regime.

17. The above recommendations are made while keeping in view the principles of policy enshrined under Article 38 of the Constitution i.e. the **State is responsible to ensure the provisions of food and basic necessities at fair prices** along with other social and economic benefits to its citizens.

18. While making the above recommendations, we also kept in mind that competition law is a sub-set of competition policies, which primarily are a set of pro-competitive economic measures taken by the Government (be it relating to trade, labour or investment). The more robust the policies, the better, the chances of enhancing economic

efficiency and growth. The consumers stand to gain the most from greater competition. Competitive markets encourage more trade & investment, lower prices; provide greater choice and more employment.

Islamabad the 27th day of August, 2019