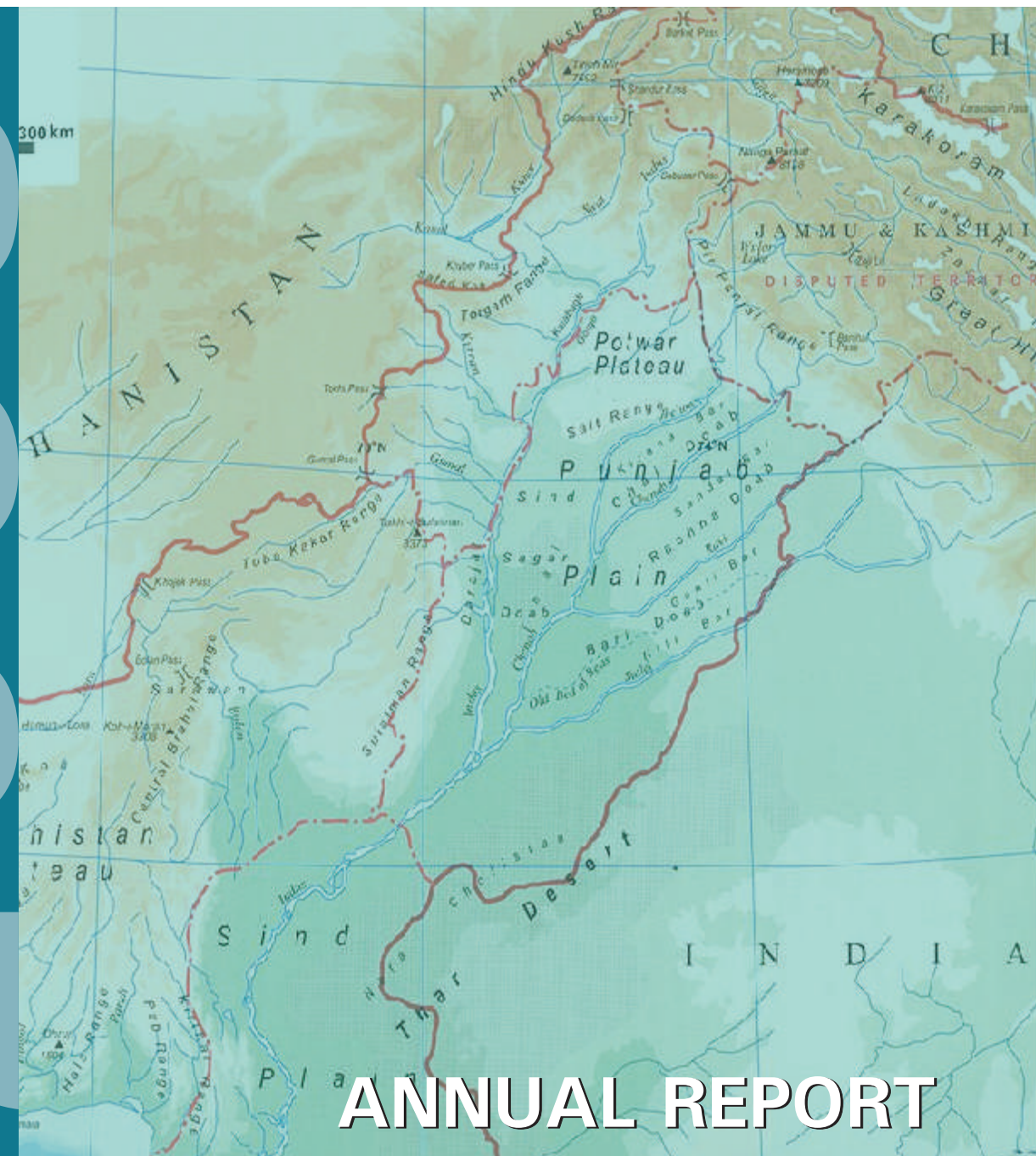


2008



ANNUAL REPORT



Competition Commission of Pakistan

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Mission

CCP strives to achieve a robust economy and to help drive economic growth by encouraging and enforcing free competition in all spheres of commercial and economic activity to enhance economic efficiency and to protect the consumer from anticompetitive behavior.

Chairman's Foreword

Competition and the policies that help to underpin it are among the more important elements of economic management in today's world. Almost every Government around the world now relies on competition to deliver a more robust economy and help drive economic growth. Most Governments are also committed to developing policies that harness the process of competition and to abandon those seeking to abuse it.

Since the efficient use of resources implies that competitive forces are enabled to operate freely and on a level playing field, the Government of Pakistan, too, has sought to strengthen its competition policies. In this regard, the Competition Ordinance 2007 was promulgated on 2 October 2007 and the Competition Commission of Pakistan (the Commission) established on 12 November 2007 to implement the Government's new competition regime. It gives me great pleasure to share with you the Commission's first report.

Since November 2007, there have been important developments in terms of reshaping the legal framework for competition, including the establishment of the Commission. All this constituted a fundamental departure from the past and the last year has been full of challenges. During this period, we have observed the transition from an antiquated law to a state-of-the-art competition law, essentially inspired by the Treaty of Rome. The establishment of the Commission can be seen to be a crucial step since economic policies implemented in the 1990's and 2000's had led to rapid growth of the country's private sector calling for renewed efforts to promote competition in the economy. The Commission is designed to be a quasi-judicial, quasi-regulatory, independent law enforcement agency. In keeping with the spirit of the new law, the Commission seeks to be non-discriminatory, to protect competition not competitors, to facilitate business growth, to achieve coordination with sector-specific regulatory agencies and to maintain integrity in applying the law. As opposed to the normative and prescriptive nature of the previous law, the new law requires the Commission to take a reasoned approach, to carry out research aimed at promoting competition, to engage in advocacy through various means in order to create an awareness of competition issues and to promote a culture of competition in the country.

I am sanguine that the Commission, and the steps it has taken in its short history, will have a substantial and positive impact on making Pakistan a more competitive economy in the years ahead. With that objective, the four pillars underlying the Commission's general approach to its responsibilities are noteworthy:

- (i) adopting an enlightened and progressive approach that encourages business growth without which Pakistan would not be competitive in a globalizing and privatizing world;
- (ii) facilitating and assisting business enterprise in resolving problems in relation to compliance with the new law — a business-friendly stance;
- (iii) striving to be transparent, albeit respecting the confidentiality of business-sensitive information; and
- (iv) endeavouring to be efficient, reducing both the Commission's own enforcement costs as well as the compliance costs for business.

I am conscious of the general criticism that is often leveled against regulatory bodies for being weak in enforcement despite the existence of excellent laws. Here, I am happy to say that the Commission was able to take significant enforcement action, in addition to a lot of other activities, during its first year of existence. Some notable developments during this year are highlighted below:

At the outset, the Government appointed qualified, eminent and capable persons as Members of the Commission. Immediately thereafter, the Commission moved quickly over a broad front, starting with the preparation of a three-year roadmap and the issuance of the Commission's full set of regulations. This was essential in order to operationalise the Commission and to enable it to implement the new law. Necessary staff was recruited and an organisational structure put in place in order to gear up for the challenges under the new law. Finally, as the Commission became active operationally, it took significant steps to implement the new



competition regime in the country, including some landmark decisions.

- Several major banks in Pakistan were adjudged guilty of cartelization with respect to a particular savings product by a single member bench of the Commission and, along with the Pakistan Banking Association, fined an aggregate of Rs. 205 million. The matter is now under consideration of the Commission's Appellate Bench.
- Active investigations (that included a forcible search operation in terms of the competition law) are underway in regard to cartelization in other important sectors, and also in connection with a collusive tendering allegation pertaining to a Government-sponsored trust entity.
- The Commission examined cases brought against Pakistan's leading stock exchange as well as Pakistan's leading oil refinery for abuse of dominance by way of refusal to deal.
- A leading business school was ordered to make appropriate refunds to students forced to buy computers from the school at admission.
- A major cellular company was ordered to arrange the unlocking of SIM's from a particular handset sold by them and also to clearly disclose and advertise the tie-in of the handsets sold with the related telephony services offered.
- Two closely linked and obviously dominant fertilizer companies, substantially owned by an army trust, were ordered to suitably de-link and separate so that they were incentivized to act as separate entities.
- About 40 pre-merger clearances were granted, including one that had to be taken to the second phase of review.
- A comprehensive set of Frequently Asked Questions, as well as a set of merger guidelines, were published.
- Extensive and focused advocacy efforts included numerous seminars, roundtables, media appearances, active sessions of the Competition Consultative Group (comprising leading business executives, sector regulators, academics etc), and bilateral meetings with sector regulators.

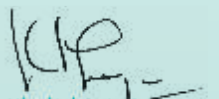
Clearly, much has been achieved in a short period. Indeed, in my view, anti-trust has arrived in Pakistan and is here to stay. But much remains to be done. The Commission's forward-looking perspective has been explained and analyzed in the Commission's report on the State of Competition in Pakistan 2007/08. However, despite the challenges ahead, I am confident that with the enhanced legal powers at its disposal and with our advocacy efforts building greater public awareness of competition issues in the country, the Commission should make a significant contribution to promoting competition in Pakistan's economy and aiding its long term development. The Government must also do its part to strengthen the competition regime in the country and help sustain a stronger pro-competition climate of opinion in the country.

As I write, our greatest challenge continues to be our lack of resources. The Commission has been operating on a shoestring budget since its inception which, obviously, has considerable ramifications on its work and overall impact. The required resources, primarily financial, have broader implications for the Commission's institutional capacity, particularly in its desire to (i) recruit skilled human resources; and (ii) meet the need to develop wider societal linkages to engage in advocacy efforts to promote a pro-competition ethos.

Competition law enforcement requires both legal and economic expertise, as well as forensic investigative skills. Any jurisdiction that seeks to enforce a modern competition regime will need judges and lawyers trained in competition law, as well as skilled micro-economists able to identify anticompetitive behaviour. In addition, a country will also need the active participation of the media, consumer groups, and other non-Governmental organizations (NGO's) that understand the law, the economic benefits it provides and, therefore, can act as watchdogs on behalf of the Commission. To my mind, consumer organizations and NGO's represent the "person in the street" and can be the ears and eyes of a competition agency with respect to any form anticompetitive behaviour by economic agents.

In order to implement a modern competition regime in the circumstances of a country like Pakistan, concerted advocacy efforts are necessary to seek the goodwill of the business community and are intended to maximise voluntary compliance with competition law. Conversely, civil society organizations and the media can help the agency identify and investigate complaints. However, this can be effective only if they understand the principles, functions, and scope of the overall competition regime.

Looking to the future, the Commission certainly needs to enhance its professional capacity. It is my hope that the Government of Pakistan, realizing the increasingly important role of competition in the economy, vigorously supports capacity building of the Commission, enabling it to play an effective role in the economy and to support the second generation of reforms that should propel Pakistan to the ranks of a middle-income country.


Khalid Aziz Mirza
(Chairman)

Preface

There are currently more than 100 countries that have enacted competition regimes. More than 70 mainly developing or transition market economies have enacted new competition laws, or significantly strengthened existing competition laws in the 1990's alone, in light of changing domestic or international economic circumstances. Firms are being encouraged to export while facing greater competition from both imports no longer subject to high tariffs and from the output of foreign firms that set up commercial operations locally. Moreover, firms based in developing countries are increasingly linked with businesses abroad through franchises, subcontracts, or long-term supply relations. As competing in home markets is helpful for integrating effectively in international markets, and as factors limiting competition at home have become increasingly important, the case for an optimal competition policy has become stronger in recent years.

For almost two decades, Pakistan has employed free market policies that have led to improved opportunities for better resource allocation. This has been achieved through the sale of state-owned firms, reductions in trade restrictions, the elimination of some subsidies, and a reduction in the role of the Government in economic regulation in general. These measures have been adopted in the hope that free markets will direct limited resources in the economy efficiently and a help serve the consumer. Across the world, increased reliance is now being placed on the private sector as the main engine for growth and for a market economy to lead to efficient use of resources, competitive forces must be able to operate freely and on a level playing field.

As a part of this process, massive programmes of privatisation have been implemented the world over, with Pakistan being no exception to the trend. Dominant entities that were the preserve of Governments' state-owned enterprises have come into the private sector. Agreements amongst firms, which may have been necessary before, may no longer be appropriate. The pressure on firms to achieve greater efficiency will increase as foreign competition increases by way of FDI and competitive imports.

As part of this change, the Pakistan Government has also decided to shift gears and improve its competition policies, since market-based policies do little to improve economic growth and efficiency if abuse by dominant firms and unfair trade practices are allowed to flourish. The Government now seeks to protect and promote competition in the economy, to facilitate sustainable economic development and improve the well-being of consumers. It is determined to prevent and eliminate barriers to competition that hinder development. The new competition policy and its regulatory framework will support an environment in which entry (and growth) is fostered, anticompetitive behaviour by firms is prevented, and abuse of market power by dominant firms is restrained.

This is the first annual report of the Competition Commission of Pakistan, recording and highlighting the efforts of the Commission as well as those of the Government in order to improve state of competition law and policy in the country. It begins with a historical perspective, explains the current thinking and approach of the Government, together with the changes that have recently taken place, most notably the formulation of the new law, the establishment of the new competition agency and, finally, outlines the challenges that lie ahead.

Competition in Pakistan: Then and Now

COMPETITION IN PAKISTAN: THE 1960's AND 1970's

The history of competition in Pakistan can be traced back to the early 1960's. In 1963, the Government set up an anti-cartel laws study group. Its deliberations and the intellectual ferment which it provoked eventually led to the enactment of the Monopolies and Restrictive Trade Practices Ordinance, 1970 (MRTPO) and the establishment of the Monopoly Control Authority (MCA) as the agency to implement the MRTPO.

THE MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ORDINANCE, 1970

The MRTPO, which was a fairly modern piece of legislation at the time it was enacted, became outmoded over the years.

Its basic ethos, in keeping with the prevailing views during the 1960's and 1970's, was to address the issue of excessive concentration of economic power by seeking to curtail the size and growth of economic muscle in private hands. It tried to realise this through the normative approach of prescribing yardsticks to which the business community was expected to adhere.

The broad objectives of the MRTPO were to provide measures against: (i) the undue concentration of economic power; (ii) unreasonable monopoly power; and (iii) unreasonably restrictive trade practices. It spelled out the activities and behaviours that were deemed to constitute undue concentration of economic power, unreasonable monopoly power, or unreasonably restrictive trade practices. It prohibited these activities and behaviours as clearly defined in the law.

THE MONOPOLY CONTROL AUTHORITY

While the agency to administer the MRTPO, i.e., the Monopoly Control Authority (MCA), had a promising start, it soon lost its

importance and became a largely moribund body due to a combination of two factors, namely, the launch of a massive programme of nationalisation in the early 1970's, and the Government's outright apathy towards it.

The main functions of the MCA were to register undertakings, individuals and agreements; to conduct inquiries into the general economic conditions of the country with particular reference to the concentration of economic power and the existence or growth of monopoly power and restrictive trade practices; to conduct inquiries in specific cases i.e., into the affairs of any undertaking; and to give advice to individuals or undertakings on whether or not a certain course of action was consistent with the provisions of the law.

It also had discretionary, recommendatory, and investigative powers and, to a limited extent, even legislative powers. When proceeding with an inquiry, the MCA had the powers of a civil court. It was also able to make recommendations to the central or provincial Governments with regard to Governmental actions that might affect the concentration of economic power, monopolies, or restrictive trade practices.

But if the MCA's performance over the years is viewed in historical perspective, it is clear that, apart from the initial year or so, it was largely ineffective for nearly 25 years following its establishment. Except for its first year and its last year (during which a partially successful attempt was made to breathe some life in it), the Authority simply limped along not doing anything substantive or worth mentioning and whatever powers it had were not put to any imaginative use in the public interest.

The nationalisation process that started in 1972 limited the scope of the MRTPO as the law had no provision to deal with public sector organisations. Consequently, during the 1970's and 1980's, the MCA's emphasis was on the diversification of the capital resources of undertakings. To this end, a few private companies, with a total value of assets that was not less than the prescribed limit under the law, were converted into public limited companies.

The MCA also suffered from a perennial and

chronic shortfall in funding. Its operating requirements were met through allocations out of the federal budget, seriously curtailing its independence to act. It was also handicapped by having inadequate professional manpower, insufficient physical infrastructure, and a limited database regarding market/industry related information. Being essentially civil servants, the employees of the MCA, recruited on terms and conditions applicable to Government servants, lacked the required professional knowledge, experience, background, and training to tackle the complex issues of assessing market power. Although the MCA acted in the public interest on some occasions, it was unable to communicate its achievements to the general public. It did not have any material to educate the general public on whose behalf it acted nor the capacity to undertake a programme of advocacy to build support for its work in the country.

Furthermore, reinforcing its limited impact, the MCA had only token powers of imposing penalties. It could only fine a maximum of Rs 100,000 (US\$ 1,250) for not carrying out its orders, or, in the event of a continuing infraction, not more than Rs 10,000 (US\$ 125) per day.

Neither did the MCA have any power to grant leniency or reprieve, which are important tools used by competition agencies worldwide today. It also could not conduct “dawn raids” to gather evidence. The MCA, though formally autonomous under the law, simply existed as a Government entity, devoid of any real powers and failing to do anything substantive or worthy of mention. Indeed, whatever powers it did have were almost never used in the public interest.

COMPETITION IN PAKISTAN: THE 1990's AND 2000's

The MCA only started asserting itself in the mid 1990's, but had to face a lot of interference in carrying out its functions. But, at that time, it was obvious that the agency could not accomplish much in light of changing economic and business conditions taking shape in the world and the trends affecting competition regimes. The weaknesses in the old competition regime also became apparent as Pakistan embarked

on a reform programme, generally referred to as first generation reforms, in the early 2000's.

The Government of Pakistan soon became aware that all over the world institutions such as the MCA were being replaced by competition agencies that had a broader, more progressive and more refined mandate. The work of such competition agencies was playing a more specific role in ensuring better quality of goods and services and lower prices for consumers.

Given the imperative to adapt to global trends and changes, the Government, under the umbrella of second generation reforms, has enacted a new competition law with assistance from the World Bank.

At the strategic level, an effective competition policy framework involving a multifaceted set of initiatives was formulated by the Government with the aim of providing equal opportunity to all capable entities to participate in economic activity. This competition policy framework includes: (i) a modern enabling law; (ii) specific rules and regulations to make the law operational; (iii) guidance for corporate behaviour; (iv) the education and empowerment of consumers and other stakeholders; (v) public policy advocacy; and (vi) a professionally competent, autonomous institution to enforce the law.

It was expected that implementation of the new law would empower consumers and instill confidence among domestic and foreign investors. Firms will be compelled to compete on prices, improve quality, enhance choice, and expand the availability of goods and services. They will also be encouraged to observe better standards of business behaviour.

The Competition Ordinance 2007 (the Ordinance), which replaced the MRTPO, was promulgated on 2 October 2007 and the Competition Commission of Pakistan (the Commission) was established on 12 November 2007 to implement the new law.

THE COMPETITION ORDINANCE, 2007

The new competition law regime, under the Ordinance, has been inspired by the principles embodied in the Treaty of Rome and draws upon instruments such as the United Nations Set of Multilaterally Agreed Equitable Principles, Rules for the Control of Restrictive Business

Practices¹, the OECD's Recommendations and Best Practices on Competition Law and Policy.²

THE DIFFERENCE IN THE LAWS

Notable upgrades in the new law are best put in perspective when compared with the previous law.

First, unlike the MRTPO, the new law does not seek to curb or reduce a dominant position. Instead, it prohibits the abuse of dominance. Although the law indicates a certain minimum market share beyond which there will be a presumption of dominance – 40% – such limit is by no means definitive; nor does a presumption (or finding) of dominance suggest in any way that this dominance is being abused. Also, depending on the facts, the new law does not rule out either dominance or abuse at lower levels of market share. Further, while the MRTPO prohibited only “restrictive” trade practices that “unreasonably” lessened competition, the new law prohibits any agreement that reduces competition within the relevant market, whether or not it is “unreasonably restrictive.” In addition, the new law forbids unfair trading practices and stipulates an elaborate procedure for review and clearance of mergers and acquisitions that meet the thresholds that would be notified under the rules.

Second, the new law makes provision for the Commission to prescribe block exemptions from prohibited agreements on the grounds of efficiency or economic merit. There was no such provision for block exemptions in the MRTPO.

Third, the new law eliminates unnecessary transactions or compliance costs. For example, the requirement for registration of agreements, undertakings, and individuals that was specified in the MRTPO have been eliminated.

Fourth, the new law specifically requires the Commission to carry out studies for promoting competition in all important sectors of the economy and to engage in advocacy through various means in order to create awareness of competition issues and to

promote a culture of competition. An important function of the Commission is to hold open hearings on any matter affecting the state of competition in Pakistan and to issue a non-binding opinion or edict publicly in this respect. This was not the case under the MRTPO.

Fifth, under the new law, the Commission can authorise its officers to enter and search any premises, using forcible entry if need be, under appropriate safeguards provided in the law. In other words, it is authorised to carry out dawn raids. Leniency, or a reprieve, as may be merited, is also possible under the law. These provisions, not available in the previous law, should strengthen considerably the investigative capacity of the Commission.

Sixth, the new law gives the Members of the Commission security of tenure in order to preserve the independence of the Commission. The Members of the MCA did not enjoy this protection. Further, the new law gives the Commission tied sources of funding sufficient to meet its operational needs without having to resort to subventions from the federal budget. The MRTPO contained no such provision and MCA was wholly dependent upon allocations from the Federal budget.

Seventh, penalties under the new law are higher than they were under the MRTPO, with further provision for these penalties being varied by notification in the Official Gazette with the approval of the federal Government. It is noteworthy that the new law allows the Commission to penalise not only any breach of the competition law but also any disregard of its orders, whereas MCA could only impose penalties for not carrying out its orders. The Commission is also able to recover penalties (and any other amount owed to the Commission) through a variety of means, including the attachment of property, appointment of a receiver, and recovery from any person who is due to make payments to the defaulter.

Eighth, while the orders of the MCA were appealable to the High Court, the new law provides that any order of an officer or Member of the Commission will be appealable to an appellate bench comprising at least two members of the Commission who have not been involved in the original decision. Of course, judicial

¹www.unctad.org/en/docs/tdrbpconf10r2.en.pdf

²http://www.oecd.org/document/59/0,3343,en_2649_34715_4599739_1_1_1_37463,00.html

redress can always be sought against the final order of the Commission.

KEY PRINCIPLES IN THE APPLICATION OF THE NEW COMPETITION LAW

The new regulatory regime for competition in Pakistan is administered by an institution that is autonomous but accountable, and whose dealings are transparent, fair, and in accordance with the law. Implementation of the law is largely governed by analysis and the "rule of reason." Key principles that are followed in applying the new competition policy framework include:

- **Non-discrimination:** The law's non-discriminatory approach implies predictability in interpretation. The law is supportive of transparency and accountability to promote confidence in its application.
- **Protection of competition, not competitors:** The assessment of competition will be tolerant of single firm growth on the basis that competition law should not punish those who have gained dominance through efficient use of resources and innovation without resorting to exclusionary and anticompetitive tactics.
- **Facilitating business:** Competition law needs to be viewed as supportive to private business, not an additional hindrance. It will promote consumer welfare without hampering the everyday activities of business undertakings.
- **Coordinated approach:** The responsibility for implementing the new law depends on ordinary citizens as well as business entities bringing forward complaints. Coordination will also be required with other public agencies charged with implementing Government policies, as well as with the relevant ministries analysing and making public policy which impacts on the competitive landscape; and
- **Integrity in the application of the law:** This includes (i) a collegiate body of Members possessing integrity, stature, ability, substantial experience, and (collectively) a range of relevant expertise; (ii) transparency and speed in the investigation of serious infractions without undue burdens on individuals and businesses; (iii)

public proceedings with safeguards for proprietary information; (iv) published decisions subject to review on appeal; and (v) annual reporting based on third party audits.

MAKING THE COMPETITION LAW OPERATIONAL

Pakistan's new competition law puts the country squarely in line with international best practice by (i) adopting a system which prohibits anticompetitive agreements and abuse of dominant position while requiring compulsory pre-clearance of mergers and acquisitions; and (ii) establishing the Competition Commission of Pakistan as an administrative enforcement body, operationally independent of Government, with quasi-judicial functions and subject to appeal to the Courts. Multinational enterprises operating in Pakistan will be comforted by the familiarity of both the local competition law and its institutional framework.

The functions of the Commission are wide-ranging, enabling it to (i) pursue enquiries into businesses for the purposes of enforcing the law, (ii) conduct proceedings against those contravening the law; (iii) advise businesses on compliance; and (iv) undertake competition advocacy, including seminars and conferences disseminating competition assessment studies and issuing non-binding opinions after public hearings, and to create an awareness of competition issues and a culture of competition.

To carry out these functions, the Commission has the following powers:

- to carry out investigations, upon receiving evidence from a complainant of standing, or through evidence discovered on its own;
- to compel evidence and if necessary to enter premises;
- to issue orders to terminate anticompetitive conduct including interim orders while proceedings are pending;
- to require periodic information to be furnished, (e.g., for monitoring compliance);
- to initiate proceedings against defaulting undertakings;
- to impose penalties including fines up to a maximum prescribed limit of 15% of annual turnover;
- to give advice to undertakings as to whether



their actions are consistent with the law;

- to hold public hearings on any matter relating the state of competition; and
- to engage in competition advocacy.

Like most competition agencies elsewhere, the Commission will endeavour to make its procedures as transparent and predictable as possible. It will do this through rules notified with approval of the Government to amplify the law, regulations set by the Commission to govern its work; procedures to operationalise the Commission's internal policies; and public guidelines to inform the consumer and business community of its intentions, approach, or views regarding any area of public interest of relevance to the Commission's work.

ADEQUACY OF SANCTIONS

The law provides for credible deterrence in terms of sanctions and includes the ability to prescribe behavioural and structural remedies as may be necessary to restore competition where violations have taken place. Where the Commission finds that there is a contravention of the competition law, it may, by order, require the undertakings concerned to bring such contravention(s) to an end. For this purpose, it may impose behavioural or structural remedies commensurate or proportional to the violation committed. In order to deter violations of competition law, the loss from penalties must outweigh the expected gains from anticompetitive, illegal acts. Penalties will act as deterrents on violators to cease illegal activities and prevent refusal or delay of the correction orders issued by the agency.

ESTABLISHMENT OF THE COMMISSION

The Competition Commission of Pakistan was established pursuant to the Competition Ordinance, 2007 and became operational on 12 November 2007, succeeding the MCA, which was abolished simultaneously. The establishment of the Commission represented an important milestone in the development of a modern competition

framework in Pakistan. The main

objective of the competition law in Pakistan is to ensure free competition in all spheres of commercial and economic activity to enhance economic efficiency and to protect the consumer from anticompetitive behaviour.

A blueprint for the Commission, including its operational modalities, was finalised in advance of the promulgation of the Ordinance to ensure that the new agency became effective from day one. This chapter contains details of the agency's structure and operational guidelines.

FUNCTIONS AND POWERS

The functions and powers of the Commission as enshrined in the Ordinance include the following:

- to initiate proceedings in accordance with the procedures of the Ordinance and make orders in cases of contravention of the provisions of the Ordinance;
- to conduct studies for promoting competition in all sectors of commercial economic activity;
- to conduct enquiries into the affairs of any undertaking as may be necessary for the purposes of the Ordinance;
- to give advice to undertakings as to whether any action proposed to be taken by such undertakings is consistent with the provisions of the Ordinance, rules, regulations, or orders made thereunder;
- to engage in competition advocacy; and
- to take all other actions as may be necessary for carrying out the purposes of the Ordinance.

COMPOSITION OF THE COMMISSION

The Commission is a collegiate body and its main role is to make policy decisions and to oversee the working of the Commission. The Commission, at present, consists of five Members including the Chairman.

MR. KHALID A MIRZA, is the first and current Chariman of the Competition Commission of Pakistan.

He has over 40 years of experience. Between 1968-83, Mr. Mirza gained extensive investment banking experience both in Pakistan and in the United Kingdom in the areas of project finance, corporate mergers and acquisitions, securities issuance and trading, and portfolio management. He joined IFC as an investment officer in February 1983. Rising through successive promotions, he served as IFC's Chief of Mission in Turkey (1994-96) and Chief of Regional Mission in Thailand (1998-2000). As Chairman of the Securities & Exchange Commission of Pakistan (2000-2003) he implemented a major program of capital markets and corporate sector reform and took steps to enhance the institutional capacity of the Commission.

He managed the World Bank's programme to develop the Financial Sector and Private Sector in the East Asia and Pacific Region between 2003-06.

As Chairman of the Monopoly Control Authority (July 2006-October 2007), he improved the effectiveness of the institution and advised the Government on its conversion into a modern competition agency.



MR. ABDUL GHAFFAR, Member (Cartels & Mergers), is a senior officer of the Federal Revenue Administration in Pakistan.

He has professional experience of over thirty years relating to administration of all direct taxes (income tax, capital tax, gift tax), administration of sales tax, policy matters related to these taxes, pronouncement of official interpretation of tax related issues, negotiation of avoidance of double tax treaties, and training of tax officials. In addition, at the international level, he has also remained engaged in negotiation and implementation of treaties for avoidance of double taxation of income, and training of tax officials in international tax issues, such as treaty interpretation, transfer pricing, and other cross-border transactions.

His work since 2002 has related to the monopolies law of Pakistan and the international dimension of competition policy as a Member of the Monopoly Control Authority, Pakistan. He has been actively involved in drafting the new competition law and restructuring of the Monopoly Control Authority of Pakistan in his capacity as a Member of the Steering Committee for Competition Policy headed by the Secretary Finance.



Ms. RAHAT KAUNAIN HASSAN, Member (Legal), received an LL.B degree from the University of the Punjab and an LL.M degree from King's College London.

She is a recipient of the coveted Britannia Chevening Scholarship and specialised in the Law of International Finance and International Business transactions. Before joining the Commission, she had over 15 years of practice as a corporate and commercial lawyer. She founded and was a Partner at the law firm, Hassan Kaunain Nafees, Legal Practitioners & Advisers. She has also been a partner at the international law firm, Amhurst Brown, in Islamabad and has also served at the Securities & Exchange Commission of Pakistan as General Counsel/Executive Director (Law and Securities Market Division).

Her tenure at the Securities & Exchange Commission of Pakistan coincided with the implementation phase of the Asian Development Bank-assisted Capital Markets Reform Programme which aimed at developing a fair, transparent and efficient regulatory environment.

Her experience and interaction with leading corporations as legal adviser, coupled with the exposure she has acquired has provided her with a unique perspective on regulatory approaches to resolving issues confronting the corporate sector.



Ms. MALEEHA MIMI BANGASH, Member (Advocacy & Research), brings with her over 12 years of rich and varied international experience based in Singapore, Turkey, and Pakistan in the areas of Investment and Finance. She has obtained her MBA degree (Marketing & Finance) from LUMS Pakistan and Executive MBA (Investment & Finance) University of Chicago, Graduate School of Business (Deans Honor List).

Ms. Bangash has assumed leadership roles and has been instrumental in the success of key projects. In her career to date she demonstrated a results oriented approach by exploring and developing new ideas and concepts.

In Singapore, as Vice President Business Development of an international investment bank, she devised the bank's positioning strategy and assisted in the establishment of its Singapore office. Upon her return from Singapore, she was instrumental in the highly successful launch of a leading local asset management firm and has headed its Marketing, Retail & Institutional Sales activities, envisioning the key functions of retail network, institutional sales, and marketing.



DR. JOSEPH WILSON, Member (Monopolies & Trading Abuses), has over 15 years of experience of practice, research, and teaching in regulatory laws. Prior to joining the Commission, Dr. Wilson was an Associate Professor of Law at the Lahore University of Management Sciences (LUMS), Pakistan, where he taught "competition law" in addition to other courses.

Dr. Wilson has earned Doctor of Civil Law (D.C.L.) with Deans Honour List and Masters of Law (LL.M.) degrees from McGill University, Montreal, Canada, where he was a recipient of Justice Greenshield's Memorial Scholarship. He also holds an LL.M. from the University of Georgia, USA. He has presented at various international conferences, published in international law journals and authored a

book title "Globalization and the Limits of National Merger Control Laws (published by Kluwer Law International).

Prior to joining LUMS, Dr. Wilson taught at McGill Faculty of Law, and held an administrative position at its Centre for the Study of Regulated Industries. He is a member of the State Bar of New York, USA and Lahore High Court Bar, and also serves on the International Advisory Board of the Loyola University Chicago's Institute for Consumer Antitrust Studies, USA.

ORGANISATIONAL STRUCTURE

The Commission is presently organised into the following departments:

1. Cartels and Mergers
2. Monopolies and Trading Abuses
3. Advocacy and Research
4. Legal
5. Commission secretariat
6. Corporate Affairs

Lack of allocated funding has prevented the Commission from hiring Director Generals (i.e. heads of departments) to lead three of the five operational departments. Director Generals are in place, for only "Advocacy & Research" and "Corporate Affairs." Perforce, instead of the envisaged residual oversight role, the Members concerned are obliged to take on more hands-on departmental head responsibilities with respect to "Cartels & Mergers," "Monopolies & Trading Abuses," and "Legal."

CARTELS AND MERGERS

Overseen by Mr. Abdul Ghaffar, Member, this Department firstly investigates and takes enforcement action with respect to any kind of collusive arrangement or agreement violative of the Ordinance.

Secondly, the Department accords or withholds clearance to mergers and acquisitions after analysing the potential impact on competition, if any, through either the creation or strengthening of a dominant position in the relevant market.

MONOPOLIES AND TRADING ABUSES

Overseen by Dr. Joseph Wilson, Member, this Department investigates matters pertaining to the abuse of dominant position, deemed to have been brought about, maintained, or continued if it consists of patterns or practices that prevent, restrict, reduce, or distort competition in the relevant market. Apart from cartelisation or other forms of collusive behaviour (e.g., bid rigging) any agreement or practice that is competition

adverse and hence prohibited under the Ordinance, comes with the purview of this department. Application of the Ordinance's gateway provisions and grant of exemptions, including block exemptions, with respect to prohibited agreements is an important function to this department.

ADVOCACY & RESEARCH

Overseen by Ms. Maleeha Mimi Bangash, Member, the Advocacy and Research Department looks into ways and means to promote competition in the economy through means other than law enforcement i.e. all manner of activities that create awareness about competition issues and promote a culture of competition in the country.

The Department is also expected (as and when necessary or appropriate) to look at laws and regulations (both proposed and already in place), as well as policies of government departments and agencies with a view to making suitable recommendations supportive of competition. Further, as required or considered necessary, the Department carries out research to better inform the Commission regarding significant competition issues or to support an on-going investigation and also to assess the competition vulnerabilities of important economic sectors. Significantly the department is charged with the responsibility of preparing the annual "State of Competition in Pakistan Report."

As part of its activities, the Department arranges open hearings on matters affecting competition, enabling the Commission to the publicly express an opinion with respect to these issues. The Department also liaises with the private sector and holds meetings of the Competition Consultative Group, an informal panel comprising sector specific regulators, business executives, bankers, academics, and media people to enable the Commission to get feedback on its work.

LEGAL

Overseen by Ms. Rahat Kaunain Hassan, Member, the Department's functions and responsibilities include managing the legal affairs of the Commission, providing inter alia, legal advice and assistance to operational departments and undertakings on matters/issues pertaining to the Ordinance, as well as acting as a liaison with

the Federal Government and its departments, and other regulatory authorities.

The Commission is empowered under the Ordinance to prescribe by-laws and, in this connection, the Legal Department drafts and vets rules and regulations of the Commission and any amendments thereto as and when necessary. The Department also represents the Commission in court cases and drafts court pleadings on behalf of the Commission.

Exemptions filed by undertakings under Section 5 of the Ordinance are initially processed by the Legal Department and exemption certificates are issued after the approval of the concerned Member.

The Department manages the office of the Registrar of the Commission, which, inter alia, issues show cause notices, arranges hearings, and assists Members and the Appellate Bench of the Commission by providing administrative and legal support.

The Commission set up the Office of Fair Trading (OFT) to further its objective of creating a business environment based on healthy competition and protecting consumers from anticompetitive and deceptive marketing practices in terms of Section 10 of the Ordinance. Operating under the supervision of the Legal Department, the OFT enjoys investigative and consequential powers and functions for the enforcement of section 10 of the Ordinance.

The Department is constantly working on formulating guidelines and regulations covering various aspects of Competition Law with a view to aligning the Commission with developments in the competition law regimes of more mature jurisdictions. Part of this activity has involved research and the preparation of a comparative statement comparing the Ordinance with the competition laws of more developed and mature jurisdictions.

COMMISSION SECRETARIAT

The Commission's Secretariat has been established pursuant to the Competition Commission [Conduct of Business] Regulations, 2007. It is headed by the Secretary to the Commission, Mr. Mohammad Hayat Jasra, and its framework includes overseeing the conduct of the business of the

Commission in accordance with the approved procedures. The powers and duties of the Secretary, include, inter alia, issuing notices and minutes of meetings of the Commission, representing the Commission at any forum if authorised by the Chairman, and certifying the decisions or documents used in hearings by the Commission. The Chairman may assign other powers and duties to the Secretary based on organisational exigencies. The common seal of the Commission remains under the safe custody of the Secretary.

CORPORATE AFFAIRS DEPARTMENT

Overseen by the Chairman, Mr. Khalid Mirza, with the assistance of Mr. Shafaat Ahmad, Director General, the Corporate Affairs Division (CAD) is responsible for provision of efficient support services to the entire Commission including matters relating to finance and accounts; development of human resources, appropriate recruitment, induction, and training of staff; administrative matters relating to the security of the Commission's property, upkeep of the office premises and related managerial issues; and computerisation and automation and all matters relating to information technology.

Basically focused on operational support, the CAD is divided into the following units:

- Administration Wing;
- Human Resource Wing;
- Information Technology Wing;
- Accounts Wing; and
- Finance Wing

Because of the multifarious duties assigned to this department, the services rendered by it have a significant impact on the working of the Commission.

RULES, REGULATIONS, AND GUIDELINES

RULES

Pursuant to Section 55 of the Ordinance, the Commission has, with the approval of the Government of Pakistan, made rules for all or any of the matters in which it is required to make rules or for the purpose of implementing the Ordinance. Thus, the Commission, with the assistance of consultants engaged by the World Bank, drafted the Rules listed below, of which the first four were approved by the Government and notified in the official Gazette:³

1. The Competition Commission (Appeal) Rules, 2007, pertaining to filing of appeals by undertakings against any decision taken by the Commission;
2. The Competition Commission Enquiry (Conduct of Investigating Officers) Rules, 2007;
3. The Competition Commission (Extension in Exemption) Rules, 2007;
4. The Competition Commission (Collection of Fees and Charges) Rules, 2007;
5. The Competition Commission (Qualification, Appointment and Remuneration of Chairman and Members) Rules, 2007;
6. The Competition Commission (Inquiry for Removal from Service) Rules, 2007.

The remaining two rules (i.e. numbers 5 and 6 above) are still pending approval by the Government.

REGULATIONS

Section 56 of the Ordinance provides that the Commission may, by notification in the official Gazette, make such regulations as may be

required to carry out the purposes of this Ordinance.

Pursuant to the aforesaid provision, the Commission, with the assistance of consultants engaged by the World Bank, prepared the following draft regulations:

1. Competition (Merger Control) Regulations, 2007;
2. Competition Commission (General Enforcement) Regulations, 2007;
3. Competition (Leniency) Regulations, 2007;
4. Competition Commission (Conduct of Business) Regulations, 2007;
5. Competition Commission (Service) Regulations, 2007;
6. Competition Commission (Expenditure and Investment) Regulations, 2007.

These draft regulations were considered by the Commission and approved on 15 November 2007. Immediately thereafter, they were submitted to the Law and Justice Division through the Finance Division for vetting. The process was completed with their notification in the official gazette on 8 December 2007.

Subsequently, these regulations were renewed by the Commission and amendments were notified in the Gazette in October 2008.

GUIDELINES

The Commission has taken a policy decision to issue guidelines on important aspects of its working for the convenience of undertakings. After comprehensive deliberations in each case, many guidelines have been issued and placed on the website of the Commission.

DELEGATION OF FUNCTIONS AND POWERS OF THE COMMISSION

In order to carry out the purposes of the Ordinance, necessary powers are vested in the Commission and not any individual. As the Commission is a collegiate body, any matter requiring its approval is to be submitted to it and the decision taken in a meeting of the Commission.

Realising that this, in itself, is a process that is likely to hinder the timely disposal of work, the Commission has delegated certain powers and functions to individual Members and senior officers pursuant to sub-section (2) of section 28 of the Ordinance which pertains to the delegation of powers. This delegation was done to ensure operational efficiency and timeliness in the conduct of Commission's business.

The Commission has also delegated financial powers to the Chairman, Members, and senior officers, as appropriate, to ensure operational efficiency.

CONSTITUTION OF APPELLATE BENCHES

Section 41 of the Ordinance provides that the Commission shall constitute Appellate Benches comprising a minimum of two Members to hear appeals of aggrieved undertakings or persons.

Pursuant to this, the Commission has constituted three Benches, namely,

- **Appellate Bench 1** – Comprises of Member (Monopolies and Trading Abuses) and Member (Legal and OFT) to hear appeals against an order of the Member (Cartels and Mergers).
- **Appellate Bench 2** – Comprises of Member (Cartels and Mergers) and Member (Advocacy and Research) to hear appeals against an order of the Member (Monopolies and Trading Abuses).
- **Appellate Bench 3** – Comprises of Member (Cartels and Mergers) and Member (Monopolies and Trading Abuses) to hear appeals against orders of the Member (Legal and OFT) and Member (Advocacy and Research).

The Chairman may, in his discretion, sit in any Appellate Bench as deemed appropriate by him.

³These rules can be downloaded from <http://cc.gov.pk/Rules.htm>

Activities of the Commission

The primary responsibility of the Commission is to enforce the substantive provisions of the Ordinance, namely section 3, dealing with abuse of dominant position; section 4, dealing with prohibited agreements; section 10, dealing with deceptive marketing practices; and section 11, dealing with mergers and acquisitions. Moreover, research in the status of competition in various sectors, advocacy activities, and formation of a "culture of competition" is a part of the Commission's responsibilities.

This chapter highlights the major activities of the Commission during the reporting period pertaining to investigation, enforcement, and advocacy.

INVESTIGATION AND ENFORCEMENT UNDER THE COMPETITION ORDINANCE, 2007

The Ordinance is applicable to all commercial and economic activities undertaken by the following i.e. any natural or legal person, governmental body including a regulatory authority, corporate body, partnership firm, 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 includes an association of undertakings.

Potential anticompetitive practices are categorised under four heads, namely (i) the abuse of dominance by undertakings, (ii) prohibited agreements, (iii) deceptive marketing and (iv) mergers and acquisitions which may result in a significant lessening of competition. In the case of practices listed at (i) - (iii) above, the law becomes operative through ex-post review and, in the case of merger and acquisitions, the law prescribes ex-ante assessment.

The Commission has dealt with a number of cases involving anticompetitive practices and has cleared 38 premerger applications. A brief account of the enforcement activities under the four rubrics mentioned above are documented here.

SECTION 3: ABUSE OF DOMINANT POSITION

An undertaking (or several undertakings) can be said to hold a dominant position, or it can be deemed to exist, if these undertakings have the ability to behave independently to an appreciable extent of their competitors, consumers, and suppliers. If this independence is used to reduce or distort competition, this is termed abuse of dominance. This may occur if the dominant

undertaking engages in practices that have the effect of restricting competition which it faces, or of exploiting its market position vis-à-vis its competitors and /or consumers. Examples of such abuse are covered in section 3(3) (see box).

- (3) The expression "practices" referred to in sub-section (2) shall include, but are not limited to
- limiting production, sales and unreasonable increases in price or other unfair trading conditions;
 - price discrimination by charging different prices for the same goods or services from different customers in the absence of objective justifications that may justify different prices;
 - tie-ins, where the sale of goods or service is made conditional on the purchase of other goods or services;
 - making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which by their nature or according to commercial usage, have no connection with the subject of the contracts;
 - applying dissimilar conditions to equivalent transactions on other parties, placing them at a competitive disadvantage;
 - predatory pricing driving competitors out of a market, prevent new entry, and monopolize the market;
 - boycotting or excluding any other undertaking from the production, distribution or sale of any goods or the provision of any service; or
 - refusing to deal.

The law does not abhor dominance itself. In fact, the efficient allocation of resources – an outcome of competition – by an undertaking will help it. The law presumes that an undertaking with a market share of 40% or higher is a dominant undertaking. However, 40% market share is only a presumption, which can be rebutted by circumstantial evidence. In other situations, firms with relatively small market shares can be considered dominant due to their unique ability.

During the period covered by this report, the Commission investigated three cases that fell under the category of abuse of dominant position.

1. National Refinery Limited and Attock Petroleum Limited

The Commission received a complaint from Asphatar (Pvt) Limited on 23 February 2008 alleging that Attock Petroleum Limited, being the selling arm of National Refinery Limited, had abused its dominant position by refusing to supply bitumen produced by National Refinery Limited to Asphatar despite it being a regular buyer for the past 25 years.

The Investigation Team started its enquiry and letters were sent to Attock Petroleum and National Refinery Limited on 3 March 2008 to solicit their comments to the complaint. The Commission received responses from all the parties by 19 March 2008.

Sufficient grounds to proceed against the undertaking were found, namely, abuse of dominant position evident by a refusal to deal with Asphatar on the part of Attock Petroleum. Thus, a show cause notice was issued to Attock Petroleum on 6 May 2008 affording it an opportunity to present its case before the Commission on 26 June 2008. Later, however, National Refinery and Attock Petroleum filed a constitutional petition challenging the existence of the Commission. The matter is pending adjudication before the Islamabad High court.

2. Bahria University and Sale of Laptops as Precondition of Admission

The Commission took notice of a news item published in a daily newspaper on 16 February 2008, according to which Bahria University (the "University") made it mandatory for all incoming students to buy laptops imported by the University.

The University had imported 4,500 Acer laptops in 2006 and started selling those laptops to the students during 2007 and 2008. Tying the sale of the laptops with the provision of educational services was seen as an abuse of dominant position and the University was issued a show cause notice on 9 June 2008 to explain its position.

The facts submitted by the University revealed that the students who could not afford to make a lump sum payment for the purchase of laptops also had to pay 12.65% mark-up on the instalments – in essence, not only were they forced to get a laptop but were also made to take a loan they did not want.

After affording the University an opportunity of being heard, the Commission ordered the University to cease and desist from forcefully selling the laptops to the students and pay a rebate of 5% totalling Rs.10 million to students who purchased laptops on instalments and borrowed loan from the University.

3. The Karachi Stock Exchange (KSE)

Islamabad Stock Exchange (ISE) filed a complaint against the Karachi Stock Exchange (KSE) alleging abuse of dominant position by refusing to allow access to its trading platform.

There are three stock exchanges in Pakistan, namely Islamabad Stock Exchange (ISE), Karachi Stock Exchange (KSE), and Lahore Stock Exchange (LSE), of which the KSE is the largest. There are 654 companies listed on KSE, 516 on LSE, and 247 on ISE. However, the commonly listed securities constitute 90% of the trading volume of listed securities in Pakistan. Approximately 87% of the trading volume of commonly listed securities takes place on KSE while the combined collective share of ISE and LSE is only 13%. Thus KSE holds a dominant position in the relevant market.

ISE filed a complaint against KSE alleging a dominant position by KSE due to the absence of a system of centralised market. In the public interest and for the growth of the securities market and enhancement of competition among prospective sellers and purchasers, a system for the centralised buying and selling of securities should be implemented. Although the basic principle of the securities market is that investors must be assured that they are

participants in a system which maximises the opportunity for the most willing seller to meet the most willing buyer in practice, this principle is not applicable in Pakistan.

The bids and offers of investors entered into trading systems of one exchange cannot be matched with those entered at another exchange, even if the security being traded is listed at both exchanges and for that reason, ISE members have to route many orders of their clients (investors) through the members of KSE resulting in higher out-of-pocket brokerage costs for clients of the ISE. Access to the best price for a particular security, therefore, was not available to other exchanges, thus depriving investors coming through members of such exchanges of an equal opportunity of having a fair and non-discriminatory access to quotation displayed at KSE and thus an opportunity to match such offer quoted at KSE.

Since the bulk of trading volume takes place at KSE, the financial institutions in search of good prices also place their orders at KSE. Hence, more liquidity is produced that results in the application of dissimilar conditions to equivalent transactions and places the investors on other exchanges at a disadvantage. The bids and offers of investors entered into trading systems of one exchange cannot be matched with those entered at another exchange even if the security being traded is commonly listed at both KSE and ISE.

After conducting its preliminary enquiry, the Investigation Team felt that there was, prima facie, evidence that abuse of dominant position was taking place and issued a show cause notice to the Karachi Stock Exchange on 10 April 2008.

However, rather than availing the opportunity to present its rationale to the Commission, the KSE chose to challenge the show cause notice of the Commission in the High Court of Sindh and the normal enforcement provisions available to the Commission under the Ordinance were delayed. The Supreme Court, however, vacated the stay granted by the Sindh High Court and the matter was heard by the Commission.

SECTION 4: PROHIBITED AGREEMENTS

Section 4 of the Ordinance prohibits undertakings from entering into agreements or, in the case of association of undertakings, from making decisions, which have the object or effect of preventing, restricting or reducing competition within the relevant market (see box).

4. 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 of this Ordinance.
- (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;
 - (b) dividing or sharing of markets for goods or services, whether by territories, by volume of sales or purchases, by type of goods or services sold or by any other means;
 - (c) fixing or setting the quantity of production, distribution or sale with regard to any goods or the manner or means of providing any services; or
 - (d) limiting technical development or investment with regard to the production, distribution or sale of any goods or the provision of any service; or
 - (e) collusive tendering or bidding for sale, purchase or procurement of any goods or service;
 - (f) applying dissimilar conditions to equivalent transactions with other parties, thereby placing them at a competitive disadvantage and
 - (g) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

There were five cases falling under section 4 that were opened and investigated during the period under review.

1. The Pakistan Banking Association and the Enhanced Savings Accounts Product by Banks

In November 2007, the Pakistan Banks' Association (PBA) made a public announcement by an advertisement in The News, which, prima facie, suggested that the banks, under the aegis of PBA decided to offer rates of profit and other terms and conditions regarding deposit accounts including the fixing and capping of the maximum rate of profit; fixing and capping of maximum balance requirement of a category of accounts; limiting the number of withdrawals; and fixing the rate of charge on balances below a certain minimum balance.

The Commission began its investigation into the matter in December 2007. Preliminary information gathered about the PBA showed that it had 49 members, broadly classified as:

- (1) Government-owned banks;
- (2) Privatised banks;
- (3) Small and medium enterprises;
- (4) Private banks;
- (5) Foreign banks; and
- (6) Development Financial Institutions (DFIs).

With regard to the product in question, the Enhanced Savers Account (ESA), the Commission believed that the forced conversion of existing Profit and Loss Savings (PLS) accounts into ESAs would impose financial conditions on account holders in terms of minimum balance to be maintained (Rs 5,000), the rate of interest they would earn on this balance and the number of transactions they could make in a month. In essence, dissimilar conditions would be created for ESA holders compared to those having regular PLS accounts, despite the inherent similarities in both the products.

Based on this information, the Commission issued show cause notices to the PBA and 42 banks on the grounds that their behaviour was non-competitive and cartel-like.

In response, the PBA explained that many banks including most Islamic Banks had not implemented the ESA. In terms of market share of the product, the respondents claimed that the ESAs amounted

to less than 2.25% of the deposit base of Pakistan. There was no cartel-like agreement regarding the remaining 97% as all banks were competing vigorously for deposits. The public interest aspect was also highlighted in that the threshold deposit figure of Rs 20,000 for ESA's targeted the lower income group in the country and was to provide them with a higher rate of return on their deposits.

41 banks also responded to the Commission's show cause notice. One bank had been merged after the show cause notice was issued. It was learnt that many banks, though members of the PBA, had different responses regarding the implementation of the ESA product, which can be categorised into three, namely, (i) having implemented the scheme, (ii) not having implemented the scheme, and (iii) not going to implement the scheme due to the existence of a better product already available to customers.

After detailed consideration of the submissions made by the respondents, the Commission decided that the PBA had acted beyond its mandate and violated the provisions of section 4 of the Ordinance. The Commission held that the fixing of 4% return for balances below Rs 20,000 resulted in creating dissimilar conditions, as depositors below Rs 20,000 got a higher rate of return of 4% as compared to account holders with a balance above Rs 20,000 who got lower returns. While the PBA had claimed that depositors with more than Rs 20,000 deposits could avail of other services, it was not clear as to the nature of these services. It was also held that fixing limit of deposits at Rs 20,000 would not encourage many interested savers to increase their quantum of deposits in such accounts. Appropriate fines were levied on the PBA and the seven banks that had admittedly implemented the Enhanced Savings Account scheme – Habib Bank Limited; Allied Bank Limited; Muslim Commercial Bank Limited; United Bank Limited; Saudi Pak Bank Limited, Atlas Bank Limited and National Bank of Pakistan. The PBA and the seven banks chose to challenge the order of the Commission in the High Court and the matter was subjudice by the end of reporting period of this Report.

2. Cartelisation in the Cement Industry

Since 1992, the general public – in particular, cement users (e.g. the Association of Builders and Developers) – have continually complained about the existence of a cartel in the cement sector. The erstwhile MCA had been monitoring the cement sector for the past ten years, and on three occasions it had moved against cement manufacturers on account of alleged cartelisation but without significant success.

In 1992, MCA merely made recommendations, deemed appropriate under the then prevailing circumstances, (e.g., the opening of retail shops in major cities by the then State Cement Corporation, and the printing of suggested retail prices on cement bags) to the Economic Co-ordination Committee (ECC) which were largely accepted and the Ministry of Industries was directed accordingly to implement these.

In 1998, an inquiry by the MCA conclusively established that cement manufacturers had formed a cartel. However, the efforts of the MCA to rectify the situation, and subsequent penalties imposed by it for non-compliance were challenged in the Lahore High Court. Though the case was had merit, the Government intervened and compromised with the cement manufacturers, leaving the MCA no choice but to go along with the Government's decision.

On the third occasion, in May 2003, MCA took cognisance of simultaneous price increases by all cement manufacturers. After several hearings, the MCA issued a weakly reasoned order in November 2005 that was not in keeping with the spirit of the MRTPO. This order was subsequently reversed by the Lahore High Court observing, inter alia, that mere parallel price movement, without additional evidence or "plus factors," was insufficient proof of a cartel.

In February 2007, the MCA conducted an inquiry at the behalf of the Government, which again did not reveal any conclusive proof of a cartel. Despite putative indicators of cartel-like behaviour, substantive evidence could not be adduced. It is important to highlight that the MCA was handicapped by the lack of investigative tools (such as the power to carry out a surprise inspections and searches or to grant leniency in exchange for relevant information and evidence) and also the fact that associations such as All Pakistan Cement

Manufacturers Association (APCMA) were outside MCA's jurisdiction.

After the establishment of the Commission, more evidence of cartel-like behaviour on the part of the APCMA necessitated the use of the forcible entry provisions given in section 35 of the Ordinance. The Commission conducted a search of APCMA office in April 2008 and collected evidence, which was sufficient to warrant issuance of show cause notice to 21 undertakings as well as the APCMA.

The proceedings in the matter are pending before the Commission, at the time of compiling of this report.

3. The Karachi Port Trust (KPT)

The Commission received a complaint in February 2008 from TransGlobal Services (Pvt.) Limited against the Karachi Port Trust (KPT), Karachi International Container Terminal (KICT), and Hutchinson Port Holdings (HPH). In March 2008, the Commission received another complaint of a similar nature from Pakistan International Container Limited against the same parties. The salient points of the complaint were that KPT, while granting concessions for the establishment of a new container terminal, entered into a prohibited agreement with HPH, whereby the latter effectively acquired about 80% container handling capacity.

KPT did not advertise its decision to award the financial bids and awards in local newspapers, thereby limiting participation in the competitive process by interested parties. The complainants alleged that KPT was in "indecent haste" to proceed with negotiations for the finalisation and execution of concession agreement. The haste and clandestine manner was an attempt to achieve a fait accompli on the matter so that the situation could not be reversed.

A complaint to the Ministry of Ports and Shipping (which controls KPT) was made by the parties but was not considered by the Ministry.

KICT had a monopoly over the container traffic until the entry of Pakistan International Container Terminal, Ltd. (PICT) in 2003. KICT

is a wholly-owned subsidiary of HPH, which was establishing another Terminal Operating Company (TOC) in fulfilment of the terms of the concession agreement. As this new TOC would also be a subsidiary of HPH, this would come under the definition of a merger, as defined in section 2 (h) of the Ordinance, and would require a pre-merger notification under section 11 (1).

Grant of a concession to HPH would amount to creating a monopoly position. It was said that that KICT had a current market share of 43% in the Karachi port market; under the new project KICT and the new company, Karachi New Port Container Terminals (KNP), together would account for approximately 73.3% to 80% of the business in Karachi port.

The Investigation Team began an inquiry in the matter and asked for comments from the respondents on the complaint. The respondents' views were received by the Commission by 20 May 2008 and a detailed investigation was conducted into the alleged wide-ranging infractions. The Investigation Team found sufficient grounds to proceed with the issuance of a show cause notice to the KPT and HPH, inter alia, for collusive tendering.

HPH filed a suit in the Sindh High Court against the proceedings of the Commission. The matter is pending adjudication before the Court.

4. CNG Distributors Cartel

The Commission began its investigation into the possibility of cartelisation in the CNG sector when it was copied a letter by the Oil and Gas Regulatory Authority (OGRA) to the CNG Dealers and Owners Association on 5 July 2008.

In their letter, OGRA mentioned that "no CNG Association has any legal authority to determine, fix or notify CNG consumer price as a cartel." CNG consumer price is deregulated and is determined by the CNG licensees on competitive basis. The Commission deemed the letter to be a reference to investigate collusion and price fixing in the CNG sector.

The issue of CNG came to prominence in early July when the government erroneously announced an increase of Rs 13 on 1 July 2008. The price increase was subsequently revised to Rs 5.58 on 2 July 2008 but in the intervening period, loss to consumers was approximately Rs 62M according to the media.

Exercising the powers conferred under section 36 of the Ordinance, the Commission wrote to the Chairman of the CNG Station Owners Association of Pakistan (CSOAP) to acquire facts. Some of the questions asked were:

- Whether the price of CNG is exclusively fixed by the association or do the regional associations have a role in this as well;
- Whether the price fixed by the association is applicable throughout Pakistan on a uniform basis or does it vary from region to region;
- Whether the association has devised a price monitoring system and;
- Whether membership of the association is compulsory for all the CNG stations and if the association ever asked its member stations to stop supplying CNG to customers.

CSOAP, in their written reply, said that there were inter alia two other associations of CNG traders, namely (i) All Pakistan CNG Association (APCA) and (ii) Pakistan Petroleum Dealers Association/CNG Dealers Association (PPDA/CDA).

In view of this, the Commission also requested the same information from the other two associations. Concomitant to the consultation with the CNG Associations, the Commission also wrote to OGRA asking for additional information that could support the theory of cartel-like behaviour by the CNG Associations in fixing prices. Despite two follow-up letters requesting for the provision of any evidence that could support OGRA's claim of cartel-like behaviour in the CNG sector, no such material was provided.

OGRA's final communication to the Commission stated that their initial communication "was issued to CNG stations as warning." It appears that OGRA never had any evidence supporting their contention of cartel-like behaviour by the CNG associations in Pakistan and the sole reason behind involving the Commission was simply to issue a threat to these associations.

After duly examining all the facts and information, the Commission found the CNG sector to be competitive throughout Pakistan. Prices vary from region to region and even

within stations in the same city. Hence, in the absence of any findings of price fixing or cartel-like behaviour or any tangible evidence from the sector regulator, OGRA, the Commission found no reason to proceed any further and therefore closed the matter.

5. All Pakistan Newspapers Society (APNS) and Setting the Minimum Price of Newspapers

In May 2008, the Commission took cognisance of press releases containing details of a recent meeting of All Pakistan Newspapers Society (APNS) in which it was stated that (i) the APNS had decided to raise the minimum price formula for all the newspapers in Pakistan and (ii) any newspaper that did not follow the new pricing formula would not be distributed by the Newspaper Vendors (Akhbar Farosh) Federation.

The Commission found that setting a minimum price at which newspapers could be sold, prima facie, contravenes section 4(1), and section (4)(2)(a) as it constituted "fixing the purchase or selling price or imposing any other restrictive trading condition with regard to the sale or distribution of any goods..." in this case, newspapers.

The Commission began an investigation into the APNS. In response to the information called for from them, the APNS stated that the minimum price formula was raised due to the member newspapers requests in light of the rising cost of inputs. The APNS also said that the minimum price formula was not a requirement but merely a recommendation.

The Commission asked 37 newspapers for corroboration regarding the price increase, the potential punitive impact on newspapers that would not subscribe to the revised formula, and the role of the Newspaper Vendors Federation in ensuring the implementation of the new prices.

Based on the information gathered, it was noticed that there was, prima facie, collusion at two levels in the print media market: first, between the owners of the newspapers represented in APNS to maintain minimum prices and second, between the APNS and the Akhbar Farosh Federation to ensure compliance with the minimum price formula.

The matter was heard by a single-Member Bench of the Commission. Both APNS and the Akhbar Farosh Federation admitted their culpability and expressed their willingness to give an undertaking to the effect that no such agreement would take place in the future.

SECTION 5: EXEMPTIONS FROM PROHIBITED AGREEMENTS

Section 4 prohibits agreements by undertakings or decisions by association of undertakings, which have the effect of restricting, preventing, or reducing competition. However, there could be prohibited agreements which, while reducing competition, in effect increase the efficiency of the undertaking involved and could have positive effects on competition. For such situations, section 5 provides for exemption from the application of Section 4, if the criteria for exemption, as stated in Section 9, is met.

Section 9 lays down the criteria for exemptions as follows:

- (1) improving production or distribution
- (2) promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit; or
- (3) the benefits of the agreement clearly outweigh the adverse effect of the absence or lessening of competition – the Rule of Reason Analysis

The third criterion requires the Commission to weigh the pro-and-con effects of the agreements/decisions. While engaging in such analysis, the Commission takes into considerations the following factors:

- **Percentage of Market Foreclosed.** As a rule of thumb, the greater the percentage of market foreclosed due to the agreement the greater the anticompetitive effects. A foreclosure of less than or equal to 10% is considered reasonable. A foreclosure between 10–30% is deemed to be borderline unreasonable with some anticompetitive effects. Any foreclosure

above 30% is considered unreasonable with strong anticompetitive effect;

- **Barriers to Entry.** High entry barriers make it likely that existing firms will exploit their power to raise price above competitive level;
- **Term of Agreement.** The shorter the duration of the foreclosure, the less likely it will be found to be unreasonable;
- **Ability to Terminate Agreement.** It must be seen if both parties to an agreement have similar options to terminate the agreement. This ensures that stronger parties may not coerce weak parties to enter into agreements which harm the latter. The analysis must also take into consideration the time required to terminate the agreement. The longer the time the more unreasonable the agreement will be;
- **Other Distribution Channels.** The existence of alternate channels of distribution for competitors makes foreclosure less unreasonable while the lack thereof increases chances of anticompetitive effects;
- **Nature of Purchaser.** If the end user is foreclosed then it is considered a direct foreclosure with strong anticompetitive effects. However, in cases the purchaser in the relevant market is a reseller, an analysis of customer loyalty and market structure must be made;
- **Nature of Product.** Foreclosure of expensive, durable products does not give rise to as strong an anticompetitive effect than the foreclosure of cheaper, everyday products.

The Commission has, so far, granted exemptions in the following broad categories:

▪ Distribution –	74
▪ License –	9
▪ Technical –	9
▪ Franchise –	6
▪ Exclusive Supply –	13
▪ Fuel Supply –	4
▪ Joint ventures & concessions –	2
▪ Royalty –	1
▪ Miscellaneous –	7

SECTION 10: DECEPTIVE MARKETING PRACTICES

Misleading representations and deceptive marketing practices can have serious economic consequences, both for business competitors and consumers. Section 10 of the Ordinance contains provisions (see box) that prohibit deceptive marketing practices in promoting the supply or use of a product or any business interest. The Commission has established the Office of Fair Trading (OFT) whose sole responsibility is to enforce section 10.

So far, the OFT has taken action in matters dealing with deceptive marketing in the mobile telephony and banking sectors:

- (2) The deceptive marketing practices shall be deemed to have been resorted to or continued if an Undertaking resorts to-
- the distribution of false or misleading information that is capable of harming the business interests of another undertaking;
 - the distribution of false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method or place of production, properties, suitability for use, or quality of goods;
 - false or misleading comparison of goods in the process of advertising; or
 - fraudulent use of another's trademark, firm name, or product labeling or packaging.

1. Mobile Telecommunication Sector: OFT took suo moto notice of media campaigns by two major mobile telecommunication companies for their prima facie deceptive marketing practices. Show cause notices under section 30 of the Ordinance for deceptive marketing practices in terms of section 10 of the Ordinance were issued to these companies and hearings were held. The Commission's order was expected shortly.

2. Banking Sector: OFT took suo moto notice of the advertisements published in the print media, by some banks for advertising term/time deposits accounts giving exaggerated and incorrect profit rates. As the advertisements appeared to be deceptive, prima facie, a detailed inquiry was conducted under section 37(2) that concluded in a report which formed the basis for the issuance of show cause notices under Section 30 of the Ordinance for deceptive marketing practices in terms of section 10 of the Ordinance were issued. Hearings were held in the matter and the Commission's order was expected shortly.

SECTION 11: MERGERS AND ACQUISITIONS

Mergers and acquisitions may have potential implications for competition because they reduce the number of market players and may lead to lessening of competition by creating a dominant player.



Relevant sections reproduced:

- No undertaking shall enter into a merger which substantially lessens competition by creating or strengthening a dominant position in the relevant market.
- Notwithstanding the provisions contained in the Ordinance where an undertaking, intends to acquire the shares or assets of another undertaking, or two or more undertakings intend to merger the whole or part of their businesses, an meet the pre-merger notification thresholds stipulated in regulations prescribed by the Commission, such undertaking or undertakings shall apply for clearance from the Commission of the intended merger.
- The concerned undertakings shall submit a pre-merger application to the Commission as soon as they agree in principle or sign a non-binding letter of intent to proceed with the merger.
- The Commission shall by way of an order referred to in section 31, decide on whether the intended merger meets the thresholds and the presumption of dominance as determined in section 3. Such order shall be made within thirty days of receipt of the application.
- If so determined, the commission shall initiate a second phase review and for that purpose the commission may require the concerned undertakings to provide such information as it considers necessary to enable the Commission to make the necessary determination.
- On initiation of the second phase review the Commission shall, within ninety days of receipt of the requested information under sub-section (6), review the merger to assess whether it substantially lessens competition by creating or strengthening a dominant position in the relevant market, and shall give its decision on the proposed transaction. In case concerned undertakings fail to provide the information requested, the Commission may reject the application.

Section 11 of the Ordinance deals with the approval of mergers.

Merger control provisions are aimed at ensuring that mergers do not lead to market concentration, which, in turn, may lead to abusive behaviour.

Pakistan follows a mandatory reporting regime, whereunder undertakings/parties to a merger that meet notification thresholds, as stated in the Merger Regulations, must file for merger clearance. The objective of the clearance process is to identify any potential anticompetitive effects of the merger and to block it if it poses serious competition

concerns.

The Commission makes every effort to ensure that businesses face minimum regulatory compliance cost or delays by clearly defining the process. For the benefit of the business community, the Commission has issued detailed Merger Guidelines that are available on its website.

The merger review is conducted in two phases. The first stage, to be completed within 30 days, assesses whether the merger would substantially lessen competition by creating a dominant position. Should it be necessary, the second stage analysis, to be completed within 90 days, is based on detailed information provided by the undertakings viewed in tandem with prima facie evidence from the first stage.

While reviewing the transactions, the Commission considers the following factors:

- Analysis of the relevant product and geographic markets;
- Identification of competitor undertakings;
- Calculation of market shares;
- Calculation of market concentration;
- Assessment of potential adverse effects of the mergers, based on market concentration and other characteristics of the market;
- Assessment of market entry, that is, would it be, timely likely and sufficient enough either to deter or counteract the anticompetitive effects of the merger;
- Assessment of efficiency gain, which the merger parties cannot otherwise gain but for merger; and
- Assessment of likelihood, in the absence of merger, of either party to the merger to fail causing its assets to exit the market.

The Commission reviewed 37 cases in the period 20 November 2007 to 30 June 2008. Of these, 6 were pure merger cases and 31 were acquisitions. Most cases were cleared by the Commission at the first stage; only one was taken to a second-stage review. A brief description of these are given in the following tables:

Table 1: Merger Cases Analysed and Cleared

Parties	In Re
1. Anwar Cotton Mills Private Limited, Aslam Industries Limited and Acro Textile Mills.	The merger of Anwar Cotton Mills Private Limited and Aslam Industries Limited with Acro Textile Mills.
2. PICIC Limited, PICIC Commercial Bank Limited and NIB Bank Limited.	The merger of Pakistan Industrial Credit and Investment Corporation (PICIC) Limited and PICIC Commercial Bank Limited into NIB Bank Limited.
3. Total Media Limited and Media Times Limited	The merger of Total Media Limited with Media Times Limited.
4. Crescent Bahuman Energy Limited, Crescent Bahuman Textile Limited, and Crescent Bahuman Limited.	The merger of Crescent Bahuman Energy Limited (CBEL) and Crescent Bahuman Textile Limited (CBTL) with and into Crescent Bahuman Limited.
5. Yousaf Sugar Mills Limited, Haseeb Waqas Engineering Limited and Abdullah Sugar Mills Limited.	The separate mergers of Yousaf Sugar Mills Limited and Haseeb Waqas Engineering Limited into Abdullah Sugar Mills Limited.
6. Al-Abbas Industries Limited and Al-Abbas Sugar Mills Limited.	The merger of Al-Abbas Industries Limited with and into Al-Abbas Sugar Mills Limited to achieve administrative efficiencies.

Table 2: Acquisition Cases Analysed and Cleared

Parties	In Re
1. IBL Modaraba Management Private Limited and Dr. Hasan Sohaib Murad	The acquisition of shares of IBL Modaraba Management Private Limited by an individual, Dr. Hasan Sohaib Murad.
2. Wazir Ali Industries Limited and Dalda Foods Private Limited.	The acquisition of approximately 46% of shares of Wazir Ali Industries Limited by Dalda Foods Private Limited.
3. Global Securities Pakistan Limited and NIB Bank Limited.	The acquisition of whole shareholdings of Global Securities Pakistan Limited by NIB Bank Limited.
4. Saudi Pak Bank Limited and the Consortium led by Mr. Shaukat Tarin.	The acquisition of 90% shares of Saudi Pak Bank Limited by a Consortium led by Mr. Shaukat Tarin.
5. Bosicor Chemicals Pakistan Limited, Bosicor Oil Pakistan Limited, Bosicor Pakistan Limited and Byco Industries Incorporated.	Acquisition of shares of Bosicor Chemicals Pakistan Limited, Bosicor Oil Pakistan Limited (BOPL) and Bosicor Pakistan Limited (BPL) by Byco Industries. The acquisition pertaining to Bosicor Chemical was cleared at the first stage. However, the acquisition of shares of Bosicor Oil Pakistan Ltd and Bosicor Pakistan Ltd by Byco necessitated a second stage review by the Commission.
6. DHL Pakistan Private Limited and Deutsche Post International B.V.	The acquisition of DHL Pakistan Private Limited by Deutsche Post International B.V.
7. Worldcall Telecom Limited and Oman Telecommunication Company.	The acquisition of 60% majority shares of Worldcall Telecom Limited by Oman Telecommunication Company.
8. Makro-Habib Pakistan Limited and Thal Limited.	The acquisition of 46.40% shares of Makro -Habib Pakistan Limited by Thal Limited.
9. Tenaga Genereasi Limited and Dawood Lawrencepur Limited	The acquisition of Tenaga Genereasi Limited by Dawood Lawrencepur Limited.
10. Shareholdings in Atlas Group of Companies and Shirazi Capital Private Limited.	The acquisition of shares of the Shirazi family's shareholdings in Atlas Honda Limited, Atlas Battery Limited, Atlas Engineering Limited, Honda Atlas Cars (Pakistan) Limited, Atlas Insurance Limited and Atlas Bank Limited by Shirazi Capital Private Limited.
11. Indus Motor Company Limited and Toyota Motor Corporation.	The acquisition of 12.5% shares of Indus Motor Company Limited (IMCL) by Toyota Motor Corporation (TMC).
12. EFU General Insurance Limited and EFU Life Assurance Limited.	The acquisition of 0.61% of shares of EFU General Insurance Limited by EFU Life Assurance Limited.
13. Heavy Electrical Complex and Siemens (Pakistan) Engineering Company Limited.	Pre-approval for the acquisition of Heavy Electrical Complex by Siemens (Pakistan) Engineering Company Limited through the privatisation process.
14. MCB Bank Limited and Malayan Banking Berhad.	Malayan Banking Berhad's acquisition of 20% shares of MCB Bank Limited

15.	Agro General Insurance Company Limited and The Direct Insurance Company.	The acquisition of 100% equity of Agro General Insurance Company by The Direct Insurance Company.
16.	ABN AMRO Bank Limited and Consortium Led by Royal Bank of Scotland.	The global acquisition of 99.30% shares of ABN AMRO Bank Limited by a consortium led by the Royal Bank of Scotland (RBS).
17.	Pakistan Cement Company Limited and Lafarge S. A.	The acquisition of 69% shares of Pakistan Cement Company Limited by Lafarge S. A. on its acquisition of Orascom Construction Industries Cement Group (UK), the holding company of Pakistan Cement Company.
18.	Nalco Pakistan Private Limited and Nalco Asia Holding Company PTE Limited.	The acquisition of 69% shares of Nalco Pakistan Private Limited by Nalco Asia Holding Company Limited.
19.	Millat Industrial Products Limited and Millat Tractors Limited.	The acquisition of Millat Industrial Products Limited by Millat Tractors Limited.
20.	ICI Pakistan Limited, Pakistan PTA Limited and Azko Nobel N.V.	The acquisition of ICI Pakistan Limited and Pakistan PTA Limited by Akzo Nobel N.V.
21.	Hazara Phosphates Fertilizers Limited and Pak American Fertilizer Company Limited.	The acquisition of Hazara Phosphates Fertilizers Limited by Pak American Fertilizer Company Limited.
22.	First Capital Investment Limited and First Capital Securities Corporation Limited.	The acquisition of shares valuing Rs 50 million of First Capital Investment Limited by First Capital Securities Corporation Limited.
23.	Shaheen Insurance Company Limited and First Capital Securities Corporation Limited.	The matter concerned the acquisition of shares valuing Rs 250 million of Shaheen Insurance Company Limited by First Capital Securities Corporation Limited.
24.	Media Times Limited and First Capital Securities Corporation Limited.	The matter concerned acquisition of shares of Media Times Limited (MTL) by First Capital Securities Corporation Limited (FCSCCL).
25.	Pace Barka Properties Limited and First Capital Securities Corporation Limited.	The matter concerned acquisition of shares valuing Rs 450 million of Pace Barka Properties Limited (PBPL) by First Capital Securities Corporation Limited (FCSCCL).
26.	Unilever Overseas Holdings Limited and Unilever Pakistan Limited.	The acquisition of 10% shares of Unilever Pakistan Limited by Unilever Overseas Holdings Limited.
27.	Shakarganj Food Products Limited and KASB Capital Limited.	The acquisition of 43% shares of Shakarganj Food Products Limited by KASB Capital Limited.
28.	American Express Bank Limited and Standard Chartered Bank Limited.	The acquisition of 10% shares of American Express Bank Limited by Standard Chartered Bank Limited.
29.	Coca-Cola Beverages Pakistan Limited and Coca-Cola Icecek Anonim Sirketi.	The acquisition of approximately 49% shares of Coca-Cola Beverages Pakistan Limited by Coca-Cola Icecek Anonim Sirketi.
30.	Laraib Energy Limited and Hub Power Company Limited.	The acquisition of 75% shares of Laraib Energy Limited by Hub Power Company Limited.
31.	Sweetwater Dairies Pakistan Limited, Habib Bank Limited and Arif Habib Securities Limited.	The acquisition of shares of Sweetwater Dairies Pakistan Limited by Habib Bank Limited and Arif Habib Securities Limited.

INVESTIGATION AND ENFORCEMENT UNDER THE MRTPO

During the period covered in this report, the Commission dealt with three cases pending at the time the Monopoly Control Authority was disbanded. The leftover cases were: (i) a situation of unreasonable monopoly power wielded by Fauji Fertiliser, (ii) a case of tying by Mobilink and (iii) the possibility of cartel-like behaviour by the manufacturers of Polyester Staple Fibre. The cases came within the mischief of unreasonably restrictive trade practices under the MRTPO.

1. Fauji Fertiliser Company and Fauji Fertiliser Bin Qasim

The Monopoly Control Authority looked into the matter of manufacturing, purchasing, and marketing of fertilisers and chemicals production in Pakistan by the two largest entities in the industry, Fauji Fertiliser Company Limited (FFC) and Fauji Fertiliser Bin Qasim Limited (FFBL).

FFBL is an associated undertaking of FFC. The combined market share of FFC and FFBL was calculated to be 47% in phosphatic and 49% in nitrogenous fertilisers, which was more than 1/3rd of the fertiliser's product market and, prima facie, constituted an unreasonable monopoly power as provided in clause (a) of sub-section (1) of section 5 of the repealed MRTPO.

Finding sufficient grounds to proceed, the MCA issued a show cause notice in August 2007. Subsequently, the Competition Ordinance was promulgated in October 2007 whereunder the Commission inherited the pending case of the MCA.

Responding to the show cause notice, the undertakings, FFC and FFBL, showed (i) that there are substantial efficiencies and synergies involved in the two undertakings having a common marketing and distribution network; (ii) the establishment of an

independent marketing and distribution network by FFBL would result in the imposition of substantial additional costs to both FFC and FFBL, which would have to be passed on to the end-consumer, namely the farmer, and that since any such independent distribution network would most likely be focused on a limited area, the availability of FFBL's fertiliser products (in particular, DAP) across the country would be adversely affected. The Commission was also informed that another fertiliser plant was being established in the country and, once operational, would reduce the combined market share of FFC and FFBL. Nevertheless, even the reduced market share would be above the threshold of 33% under the MRTPO and the level of 40% for the presumption of dominance under the new law.

The Commission also noted that the Boards of both entities were closely enmeshed – seven of the nine board members of FFBL were also on the board of FFC and the Chairman of both the undertakings was the same person. The Commission's primary concern here was that the relationship between the associated undertakings, which were competitors in the same market, had to be maintained at arm's length to protect competition in the relevant market.

The Commission, after carefully examining all evidence, facts, and figures placed before it, issued an order that (i) no individual will be a director of both the FFC and FFBL with the exception of (a) the Chairman, (b) the persons representing the minority shareholders (c) individuals representing institutions other than the Fauji Group of Companies including but not limited to FFC & FFBL; (ii) the Chairman of FFBL will not have a second or casting vote nor shall he hold the office of the Chief Executive Officer as long he was also the Chairman of FFC; (iii) FFBL would take necessary measures to ensure the inclusion of three independent directors on its Board; and (iv) a period of two years, expiring in April 2010, was granted to FFC and FFBL to suitably de-link from each other in the manner pertaining to the composition of the Board of both the undertakings.

2. Pakistan Mobile Communications Limited (Mobilink) and the Blackberry Handset

Though it was the MCA that initiated the investigation and issued a show cause notice to Pakistan Mobile Communications Limited (Mobilink), it was the Commission that passed an order against an unreasonably restrictive trade practice i.e., removing the option for Mobilink Blackberry customers to switch over use of their handsets (purchased from Mobilink) to another service provider.

Most of the customers were not aware about the SIM locking restriction. Similarly, no procedure was in place whereby the customer could seek unlocking of the SIM from Mobilink, if it so desired for the purposes of switching over to another network/service provider.

According to the order, the tie-in arrangement of bundling the handset and Mobilink's telephone and Blackberry service through SIM locking had the effect of unreasonably preventing, restraining or otherwise lessening competition. In the Commission's considered view, locking the handset with the SIM card thus preventing its replacement, restricted customers from changing their service provider. With no procedures in place for unlocking, it effectively deterred consumer choice and mobility.

The Commission took a lenient view in the matter initially, but emphasised that further action could be taken in accordance with the law if Mobilink and its senior management did not adequately respond to the issues and concerns raised and move to de-link the Blackberry handset from Mobilink's telephony services.

3. Polyester Staple Fibre (PSF)

The MCA noticed that there was considerable similarity in the price of polyester staple fibre by the manufacturers – Dewan Salman Fibre, Pakistan Synthetics Ltd, ICI Pakistan, Rupali Polyester, and Ibrahim Fibres Ltd. The MCA initiated a suo moto enquiry under Section 14

of the MRTPO on the basis of two reasons that were, prima facie, indicative of cartel-like behaviour, namely (i) the almost identical price quoted in the Business Recorder for a period of a little over two years (between October 2004 and January 2007) and (ii) the fact that domestic producers did not enter into long-term sale contracts, making it difficult for PSF industrial users such as textile mills to enter into commercially viable, long-term, and predictable export commitments with international customers.

Show cause notices were issued in August 2007. In their written submissions, all undertakings denied any collusive agreement or unreasonably restrictive trade practices. All of them cited the increasing price of two important raw materials – purified terephthalic acid (PTA) and monoethylene glycol (MEG) that are closely linked to international oil prices – as the main reason behind price variations as well as their inability to enter into long-term contracts.

Dewan Salman Ltd also quoted part of the judgement of the Lahore Court in an MCA case against a cement company which said that "(I)t is a matter of common experience that the prices of most commodities tend to fluctuate and such changes usually occur in parallel, and this is certainly true for standardized products which are (if at all) differentiated only by the public perception of their brand names or trademarks" and that "a mere parallel price movement is not sufficient to establish the existence of a cartel in the case of commodities."

As the successor to the MCA, the Commission continued hearing the matter in January 2008. Responding to the judgement quoted by Dewan Salman, the Commission highlighted the differences in the two cases in its order. While certain "plus factors" were missing in the quoted case, their presence with respect to PSF manufacturers was sufficient to justify the Commission's concerns of cartel-like behaviour. For one thing, it was noted that tariff reduction in PTA and MEG did not result in domestic manufacturers appropriately reducing their prices of PSF as compared to imported PSF. For

another, the reluctance of domestic manufacturers to enter into long-term agreements because of price fluctuations in raw material seemed contrary to the willingness of international manufacturers to do so.

The Commission felt that the level and type of price parallelism was not possible in a reasonably competitive market with domestic manufacturers having different production capacity and cost structures. So, while plus factors were evident, they were not conclusive. At the same time, the explanations provided by the undertakings were deemed not plausible enough to assuage the Commission's competition concerns.

The Commission decided to obtain undertakings and affidavits from all the five manufacturers of Polyester Staple Fibre and their chief executives respectively to the effect that they did not cartelise in the past and will not do so in the future. The advantage of this was that if they were caught either with respect to the past or the future, they would be liable to be proceeded against both for violating their undertakings/affidavits (which could include prosecution under the criminal law) as well the competition law.

With the filing of these affidavits by the undertakings, the inquiry was concluded.



ADVOCACY AND RESEARCH ACTIVITIES

The Commission views advocacy as a way to promote competition by means other than law-enforcement. The Commission aims to have a knowledge-based approach which renders the research function crucial for its work. The Commission desires that all its actions and initiatives should be viewed both locally and internationally as sound and credible. Thus an enlightened and knowledge-based approach provides an essential foundation on which to build its edifice of regulation and law-enforcement.

ADVOCACY: THE ESSENTIAL ELEMENT IN PROMOTING A "CULTURE OF COMPETITION"

The thrust of the advocacy efforts of the Commission has been to create a "culture of competition." In a short span of time, the Commission has had significant impact and success in creating awareness of the law of a good competition regime amongst the beneficiaries who comprise the target audience, namely businesses, undertakings and other stakeholders. So much so, that not only have the Commission's actions and initiatives been featured regularly in the print and electronic

media, but these have also invoked much interest in the relevant various segments of the economy (including government, regulatory bodies, and private sector).

In the early years of a new competition policy, there has to be an effort to create and strengthen champions and natural allies. The litmus test of successful advocacy, therefore, is that the very messages that are being sent out by the Commission are then relayed by the target audience. The Commission's successful advocacy has made its presence known and felt. The Commission now enjoys the goodwill of a wide range of stakeholders who act as "ambassadors" and are spreading the Commission's messages exponentially, hence furthering the cause of the creation of a competition culture.

The main objective of the Commission's advocacy efforts is to mobilise entities within Government, business, and the public to form a constituency in favour of the protection of competition.

The Commission has adopted a strategy that ensures compliance with the law by creating awareness. This is being accomplished by adopting a proactive and dynamic approach of outreach and interaction with all stakeholders. For this purpose, an effective feedback loop has been created by the Commission, which keeps it informed of the pulse of the businesses and undertakings. The suggestions so obtained are given due consideration by the Commission. In addition to this, all actions and initiatives taken are communicated and shared with the stakeholders. This strategy has been implemented by way of the following multifaceted and wide-ranging initiatives taken by advocacy and research:

- The Competition Consultative Group (CCG)
- Seminars
- Roundtable sessions and bilateral meetings
- Advocacy policy notes
- Participation on international fora
- The website of the Commission
- Media

▪ Publications

A brief description of these is given below.

THE COMPETITION CONSULTATIVE GROUP

The Competition Consultative Group (CCG) is an informal "think tank" and sounding board for the Commission. The purpose of establishing the CCG is to provide a platform for informal feedback and guidance with respect to the Commission's ongoing activities and proposed initiatives. It is a small, select body comprising of around 15 eminent persons drawn from sector specific regulatory agencies, relevant professional bodies, and the private sector. The regulatory bodies represented at the CCG are: The Oil and Gas Regulatory Authority (OGRA); Pakistan Electronic Media Regulatory Authority (PEMRA), National Energy & Power Regulatory Authority (NEPRA), Pakistan Telecommunications Authority (PTA), State Bank of Pakistan (SBP), Civil Aviation Authority (CAA), and the Securities and Exchange Commission of Pakistan (SECP). The CCG convenes quarterly to discuss and deliberate on issues pertaining to competition. The CCG's efforts in bringing together these participants is reflective of the holistic and realistic approach being taken by the Commission to address the concerns of all stakeholders in a positive manner. A number of meetings have been held in Lahore, Karachi and Islamabad, which have been useful in promoting awareness of the competition regime as well as raising interesting points for research and further investigation by the Commission.

SEMINARS

It is difficult for the Commission to function without support from stakeholders within the business and citizen communities. The Commission must make efforts to promote its work and it has to create an environment where it gets support from all stakeholders. For this purpose, periodic but repeated seminars with all stakeholders are being held. Some of these were

seminars organised by Management Association of Pakistan (MAP) (2 seminars), the Forman Christian College (FCC), the Pakistan Institute of Development Economics (PIDE), and the Institute of Chartered Accountants of Pakistan (ICAP).

International competition experts from US, Italy, and India were flown in to address large audiences from the private sector and government in two separate seminars entitled 'The Importance of a Competition Regime' at Karachi and Bhurban. The speakers were: **Mr. Alberto Heimler**, Central Director for Research and International Affairs at the Italian Competition Authority, **Mr. Alden F. Abbott**, Director in the FTC's Bureau of Competition, and **Mr. Vinod Dhall**, Member and acting Chairman of the Competition Commission of India.

ROUNDTABLE SESSIONS AND BILATERAL MEETINGS

The Commission's interactions with the business community — specifically the Management Association of Pakistan (MAP), the CFA Association of Pakistan (CFAAP), the Overseas Chamber of Commerce (OICCI), Institute of Chartered Accountants (ICAP) and the Pakistan Business Council (PBC) have been particularly useful inasmuch as it has been able to provide comfort and understanding of the new law.

Roundtable sessions have provided the opportunity for the Commission to discuss the country's competition regime with those most directly affected by it. Around 13 roundtable sessions and numerous bilateral meetings have been held with sector specific regulators (e.g., SBP, OGRA, SECP), lawyers (both in house and outside counsel), business leaders and professional bodies (e.g. ICAP, OICCI, PBC, CFAAP).

Apart from the extensive roundtable discussions that the Commission has had with

the Pakistan Business Council (PBC), which provided them the opportunity to raise their concerns on the Competition Ordinance, the Commission also prepared issue-wise comments on their "Position Paper on the Competition Ordinance, 2007" and made the information available on its website⁴ for the information of the business community. The Overseas Chamber has been provided a comprehensive written reply to the issues raised by them.

ADVOCACY POLICY NOTES

An important role of the Commission is to sensitize the government and regulatory bodies to the competition issues. This is done by issuing advice through policy notes. The advice has to be pre-emptive and preventive to ensure that competition effects can be identified in advance before the impact is costly and irreversible. Advice of this nature takes a form of a review of draft laws, regulations, government programs, policies, decisions, actions as well as comment on the implementation record of government, regulators, and other public authorities that have an impact the issues pertaining to competition in the economy. Where appropriate, the advice given by the commission is publicized.

The Commission has sent policy notes to government on important and pertinent matters where competition issues could be observed.

PARTICIPATION IN INTERNATIONAL FORA

The Commission has been keen to interact with its regulatory counterpart bodies in other countries and establish its credentials internationally. The Commission's progressive and pragmatic approach, along with the vocal role it has played at global/regional conferences and workshops, has been instrumental in projecting its work to its international counterparts and giving it valuable recognition in international fora.

⁴http://cc.gov.pk/Downloads/REVISED_PBC_COMMENTS_DATED_28.2.8.doc

During the year under review, the Chairman, Members, and other officers of the Commission participated in important conferences and meetings of the Committees of the International Competition Network (ICN), the Organisation of Economic Cooperation and Development (OECD), the United Nations Conference on Trade and Development (UNCTAD), and those organised by other competition agencies.

No request for information from these bodies went unanswered. The Commission has been participating actively in the ICN's task force on abuse of dominance and was also included in ICN's task force on cartels. Mr. Khalid Mirza, Chairman, was also invited to chair a session in the OECD conference on competition in Paris in February 2008.

COMMISSION WEBSITE

The Commission has developed a user-friendly website that throws light on the dynamic work environment and progressive approach of the Commission. www.cc.gov.pk.

By posting information such as the text of the Ordinance, the rules and regulations, amendments, orders passed by the Commission, merger guidelines, details of enquiries undertaken by the Commission, reports and articles, as well as frequently asked questions (FAQs) on the website, the Commission's advocacy has helped firms lower the probability of wilfully engaging in prohibited activities. This, in turn, has ensured ease of compliance and also lowered cost of compliance for the undertakings. The Commission has posted and will continue to post guidelines to help companies gauge the probability of their intended transactions getting clearance from the Competition Commission. The Commission also provides non-binding advice on whether a proposed action of a business is consistent with competition law. All details of important events (seminars,

workshops, and meetings) are posted on the Commission's website for general viewing.

MEDIA

An essential part of advocacy is the interaction with the media. The Commission's actions and work has so far been visible in both print and electronic media. The Commission has regularly issued various communications (i.e. press releases, interviews, and articles) in and through the media, which has proved to be an important means of supporting the advocacy functions of awareness creation and information dissemination to the undertakings and the public.

The Chairman has been active in giving interviews pertaining to the enactment of the new competition law in Pakistan and the activities of the Commission. Various media interviews have been aired on CNBC Pakistan, Dawn News, Geo News, Business Plus, and Aaj TV News. Many of these interviews can be seen on or downloaded from the Commission's website. The Chairman has also been able to prompt well-known columnists to write on the new competition law regime in significant business newspapers and journals. Four articles and three interviews of the Chairman have been published in major newspapers and journals.

PUBLICATIONS

Apart from being represented at various international conferences and workshops (including tele-conferences for training purposes) the Commission has made written submissions to international competition publications on a variety of anti-trust issues. Further participation in international events has also been accompanied by various submissions to international publications. Details are available on the Commission's website.

Information about the Commission was published in the "Competition and Anti-Trust Review" of 2007 and 2008, and in the HANDBOOK OF COMPETITION AGENCIES, 2008.

As further recognition of the Commission's burgeoning role in the international competition community, Dr. Joseph Wilson, Member, prepared a paper entitled "THE ROLE OF COMPETITION LAW AND POLICY IN ALLEVIATING POVERTY IN DEVELOPING COUNTRIES" for UNCTAD that was submitted in the UNCTAD-12 Conference in April 2008. The paper was subsequently published in THE EFFECTS OF ANTICOMPETITIVE BUSINESS PRACTICES ON DEVELOPING COUNTRIES AND THEIR DEVELOPMENT PROSPECTS.⁵

In terms of research activities, the Advocacy and Research Department is responsible for:

- The State of Competition Report
- Competition Impact Assessments in various sectors

STATE OF COMPETITION REPORT

A key annual output of the research function is a report entitled "The State of Competition in Pakistan" that provides the competition perspective on the economy as a whole. It will include all the major sectors of the economy and focus on areas and issues where there may be core competition concerns. Concentration ratios and indices for some major sectors will be developed and traced as a regular feature of the report. In addition, the report may take up specific issues of particular interest during the year, such as mergers.

The State of Competition report is envisioned to be one of the principal tools of advocacy by the Commission. As such it will comment on existing, proposed, and needed Government policies and practices at Federal and Provincial levels. The State of Competition report will be published each year and placed before Parliament at the end of March, prior to the budget cycle, so that recommended policy changes can be considered in time for the budget.

COMPETITION IMPACT ASSESSMENTS

Taking forward the knowledge-based approach of the Commission, the research function is undertaking extensive sector-specific studies. A total of 12-15 Sector Competition Impact Assessments (funded by World Bank) have been planned with a view to ascertaining and identifying the competition vulnerabilities within each sector. Some of the sectors for research and assessment are listed below:

- Energy & Power
- Cement
- Telecommunication
- Sugar
- Polyester Fibre
- Packaged milk
- Drinking Water
- Automobiles & Parts
- Aviation
- Banking
- Investment Advisory
- Fertilisers

These assessments will serve as monitoring tools for the Commission and will provide dynamic templates which will be updated in-house continually.

Additionally, the research function also conducts on-going in-house industry research, investigative analysis, and report writing to remain current on the changes within each sector. For this purpose it collects data periodically from various relevant sources.

⁵The publication can be downloaded from: <http://www.unctad.org/Templates/webflyer.asp?docid=10698&intItemID=2068&lang=1>

THE LEGAL DEPARTMENT

The Legal Department has prepared position papers relating the Competition Ordinance to various business and legal activities. Additionally, the department will also provide legal advice if requested by business entities affected by the Competition Ordinance. These activities are summarised below.

POSITION PAPERS

- Joint Ventures.** A collaborative arrangement whereby two or more undertakings devote their resources for a common objective and where such undertakings have joint control on such arrangement and perform the functions of an autonomous entity on a lasting basis, then the arrangement shall fall within the purview "joining of two or more undertakings or part thereof into an existing undertaking or to form a new undertaking" (merger) as envisaged under section 2(1)(h) of the Ordinance. In fact, regulation 3(1)(f) of the Competition (Merger Control) Regulations, 2007 only illustrates the types of joint ventures "deemed" to be treated as a merger. The concept incorporated in the said regulation is very much in line with the practice followed in other mature or developed competition regimes. It needs to be appreciated that joint

ventures have both behavioural and structural aspects. While cartels have to do with behaviour, mergers relate to the structure. It is for this reason that provisions relating to mergers and cartels can also be applicable to joint ventures. In line with international practice, the pre-requisites mentioned in regulation 3(1)(f) illustrate the test which brings joint ventures from the ambit of co-operation to that falling in the purview of "concentration." However, in order to determine whether a joint venture raises any competition concerns, the Commission has to take into account (among other factors) whether the parties to the joint venture are actual or potential competitors in the field covered by the joint venture. If such parties can neither be considered actual nor potential competitors, it is very likely that the joint venture would not raise competition concerns.

Mergers. Even the acquisition of a nominal percentage share may result in creating or strengthening a dominant position and, for this reason, the Commission has taken the position that all such transactions must be submitted for prior clearance - thus making it a mandatory regime in Pakistan.

The rationale here is that any investment by an undertaking meeting the threshold of a sizeable concern under Regulation 4(3) of the Competition (Merger Control) Regulations, 2007 should not bypass the Commission's scrutiny since various aspects need to be



looked at, e.g., dominant behaviour, strategic alliances, efficiency grounds, etc. The associated undertakings shares in the relevant market and the representation on the board are a few among many other factors that may need examination whereas the mere act of acquiring shares in isolation may not appear that significant.

The determination process under Section 11 consists of two phases:

- the first phase analyses the presumption (abuse) of dominance in terms of Section 3. If no such presumption can be made, the transaction can be approved.
- However, where the Commission determines that a presumption (abuse) of dominance exists, it will begin a second phase review to assess whether the transaction in question would result in a substantial lessening of competition by creating or strengthening a dominant position. Therefore, where the law provides for a mandatory notification regime and provides a clear-cut procedure to reach determination on the stated aspects, it is difficult to expect that such determination can be left to the whims or discretion of the parties concerned.

- Application of the Competition Ordinance to Foreign Undertakings.** Any activity that could or does affect competition in Pakistan comes under the ambit of the Competition Ordinance regardless of whether the concerned entities are domestic or foreign or whether the transaction takes place within or beyond the geographic confines of the country. The application of the law does not discriminate between domestic and foreign undertakings as all agreements "which have the effect of preventing, restricting or reducing competition within the relevant market" are prohibited.

Enquiries and Proceedings. Often in hearings before the Commission, respondents have taken the viewpoint that enquiries, as allowed under Section 37, must be done prior to implementing the provisions of Section 30. The Commission has taken the position that the provisions of Section 37 cannot be interpreted to limit the scope of Section 30 or to put fetters on the powers of the Commission by creating procedural hiccups. It would not be rational to argue that where the Commission is satisfied that the contravention of Chapter II has been committed or is likely to be committed it cannot initiate proceedings unless an enquiry is conducted.

If the Commission is satisfied that a contravention has been committed it will proceed under Section 30 of the Ordinance without conducting any enquiry, as given in the Competition Commission (General Enforcement) Regulation, 2007. However, where the Commission is not satisfied but feels a prima facie case exists, an enquiry can be conducted until it is satisfied that proceedings can be initiated under Section 30.

- Proceedings before the Commission.** Section 33 of the Ordinance says that proceedings before the Commission have been conferred with the privilege to be deemed as judicial proceedings before a Civil Court for the purposes of invoking certain provisions of the Pakistan Penal Code, 1860 and Code of Criminal Procedure, 1898. The Sections mentioned in Section 33 refer to offences relating to false evidence in a judicial proceeding (Sec. 193 PPC), intentional insult or interruption to a public servant sitting in a judicial proceeding (Sec. 228 PPC), prosecution of contempt of lawful authority (Sec. 195 Cr.PC) and procedure for prosecution in respect of offence that has been committed in, or in relation to a proceeding in any Civil, Revenue, or Criminal Court (Sec. 476 of Cr.PC).

LEGAL ADVICE

Business entities and undertakings can also seek the advice of the Commission on competition related matters.

1. SIEMENS PAKISTAN LIMITED

The Company, principally engaged in the execution of projects under contract and in the manufacture, installation, and sale of electrical capital goods, including power transformers, sought the advice of the Commission on 7 February 2008 under Section 28(1)(d) of the Ordinance as to whether their participation in the bidding and possible subsequent acquisition of Heavy Electrical Complex (Private) Limited (HEC), a state-owned company engaged in the production and repair of power transformers, would be consistent with the provisions of the Ordinance and associated rules.

The applicant sought the advice on the following grounds:

- (i) That at no point in time in the foreseeable future, would the applicant, along with HEC, be in a dominant position leading to any abuse the same as proscribed in Section 3 of the Ordinance;
- (ii) The applicant is a law-abiding corporation and could never abuse its dominant position in the market even if it were to attain it.

The Commission, after careful examination of all the facts of the case and the submissions put forth, informed the applicant of its point of view that if the applicant competed with the other prospective bidders of the HEC, such action would not be inconsistent with the provisions of the Ordinance and associated rules and regulations. The Commission supported fair competition in the privatisation process and hence at this stage, under the given facts, could not have any objection to the applicant's participation in the bidding and possible subsequent acquisition of HEC.

2. DAWOOD LAWERENCEPUR LIMITED

The company, DLL, sought the advice of the Commission under Section 28(1)(d) of the Ordinance on the matter of acquisition of shares of Tenaga Generasi Limited. They were interested in knowing whether they required an NOC from the Commission since both companies were engaged in different lines of business.

The Commission, after going through the case as well as the opinion of their legal advisor, issued its advice to the company stating that a prior clearance of the merger was mandatory and that DLL should submit its application to obtain clearance from the Commission, which would be governed by Section 11 sub-section (12).

CORPORATE AFFAIRS DEPARTMENT

The Corporate Affairs Department (CAD) handles matters pertaining to the internal operations of the Commission, namely, administration, information technology, finance, and human resources. The work of the Department has a supportive role in the Commission's work in the implementation of the Competition Ordinance.

The major thrust of work during the reporting period was the continuation of the process that had commenced in July 2006 – preparing for the transition to a new competition regime and revamping the modus operandi inherited from an old institution to an entirely new one. This was a monumental challenge but the roadmap for operationalising the Commission, prepared with the assistance of the World Bank and the DFID, was instrumental in maintaining clarity in the process.

As the Commission has been operating on a shoestring budget it was unable to undertake many of the envisaged activities. The most prominently affected areas include staffing and the development of computerised information systems to facilitate the flow of information between departments and to facilitate routine administrative functions.

Nonetheless, as indicated earlier, the

Commission has been active operationally, deploying its limited resources (both funds and manpower) as optimally as possible. Major activities during the reporting period are given below:

ADMINISTRATION

- The Commission rented a small, newly built, six-storey, state-of-the-art building in the Diplomatic Enclave of Islamabad. The building is fully secured and based on current projections, the approximately 24,000 square feet of space in the building is expected to be sufficient to take care of the Commission's needs for the next three years.
- The office timings were changed from the Government's six-day week from 0800-1500 to a five-day week from 0900-1730. This was more in line with the timings followed by the private sector.
- The Commission's secretariat was established and the Research and Investigation Department was bifurcated to allow for greater specialisation.

INFORMATION TECHNOLOGY

Since July 2006, a major administrative emphasis of the agency, within the ambit of available resources, has been on computerisation and automation with the aim of eventually achieving a paperless office. Steps taken include:

- major improvements in the local area network (LAN) through the acquisition of additional switches, routers etc, purchase and implementation of an appropriate anti-virus solution, connection-and-search facilities with the SECP database, and installation of an Internet Security and Acceleration (ISA) Server and domain controller with implementation of security policies;
- improvement in internet backbone from a bandwidth of 512 kbps to 756 kbps;
- successful installation of customised

integrated accounts and administration software; plus development of customised software for all Commission departments. This software has yet to be tested and launched;

- setting-up of a digital library at the Commission in collaboration with the Higher Education Commission (HEC) with access to 45,000 e-books from publishers worldwide; and
- procurement of hardware (30 laptops, 10 desktops, and 20 printers) and operating systems for staff.

HUMAN RESOURCES

Despite the Commission's funding constraints and Government rules pertaining to employment, considerable progress was made in the area of human resources. These accomplishments are given below:

- The appointment of three seasoned professionals as Members of the Commission in November 2008 – and the departure of a Member of the erstwhile MCA – buttressed the Commission's capacity and versatility immensely.
- In July 2006, the MCA had 21 officers, inclusive of three Members, of which 12 professionals were focusing on research, investigation, and enforcement. At the end of June 2008, the Commission had 31 officers, including five Members and 17 professionals.
- Staff gains saw the appointment of 18 officers, of which 11 were professionals.
- Staff attrition resulted in the separation of eight officers, including six professionals, and repatriation of 16 staff members to the Ministry of Finance in March 2008.
- The gender balance saw an improvement from 20% in July 2006 to 30% in June 2008.
- A service regulations manual was developed.
- The performance appraisal system was revamped to emphasise the Commission's focus on staff being "firm, fair, and helpful," shouldering responsibility, taking initiative, and being responsive, both internally and externally.



OFFICERS OF CCP WITH THE CHAIRMAN



The commission provides a conducive work environment for women & encourages them to participate in its activities at all levels.

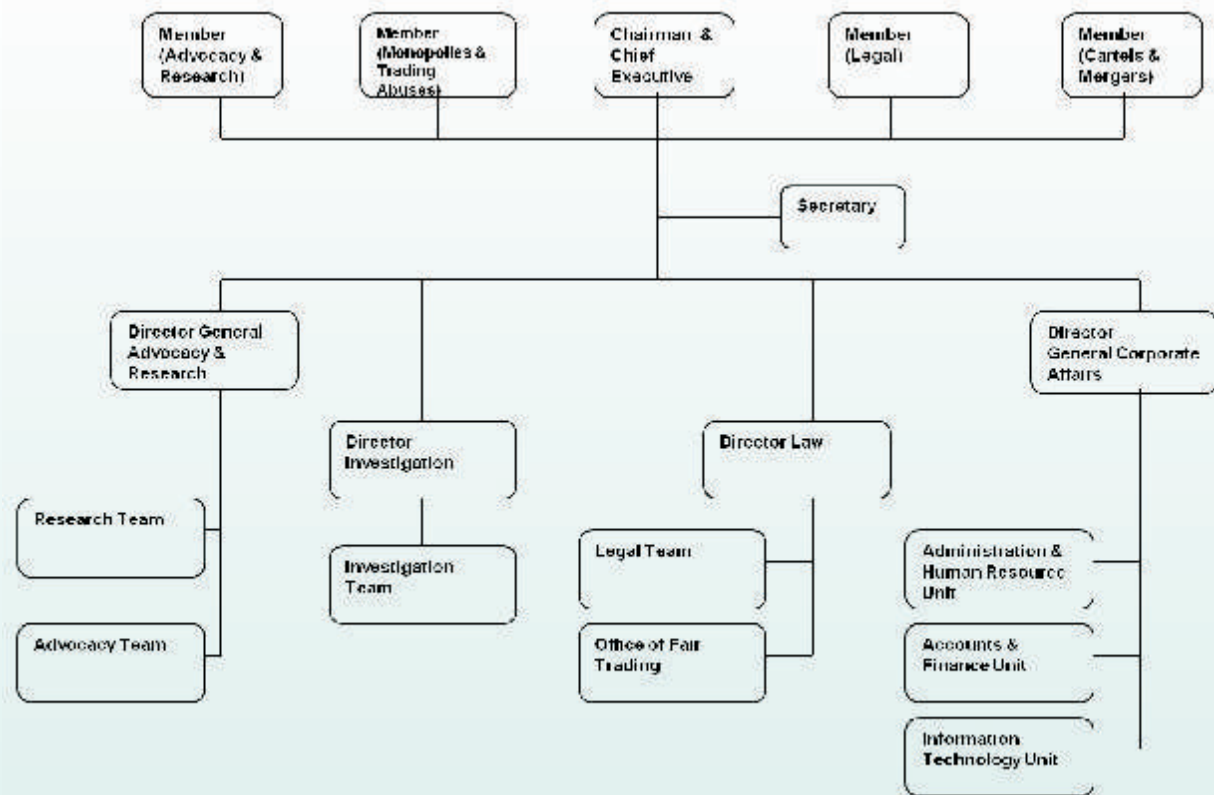


The Chairman with the only female "Naib Qasid"

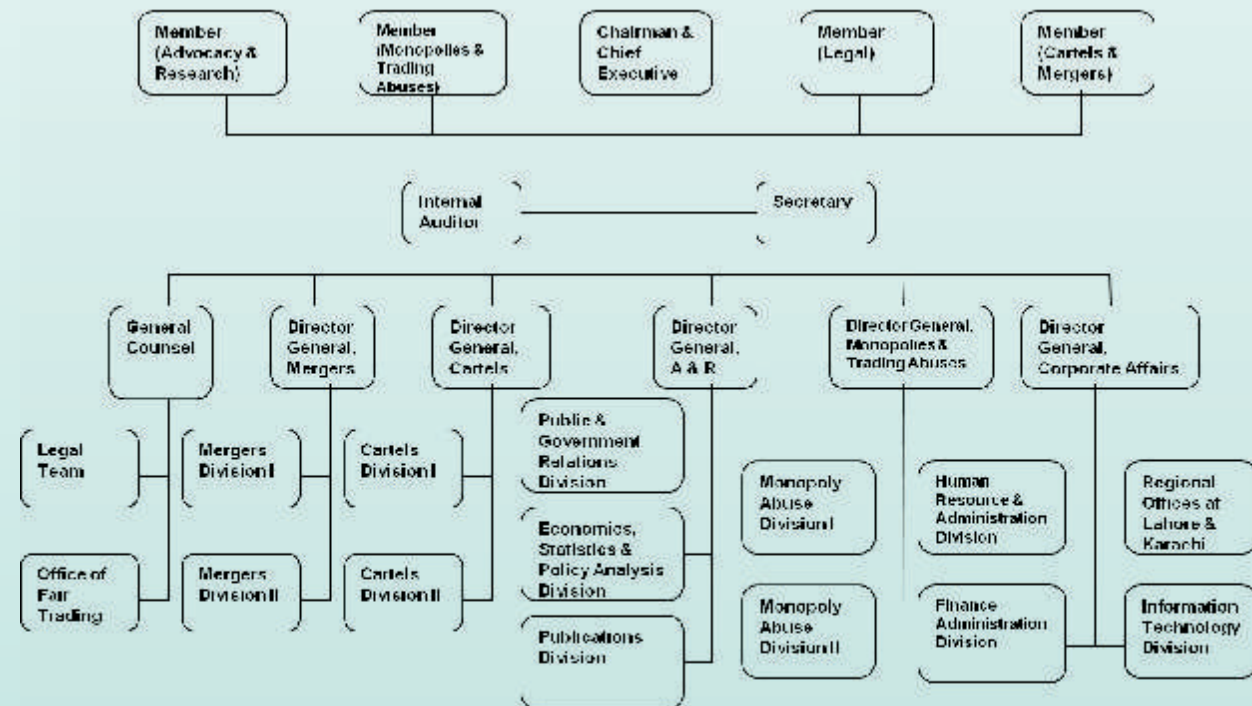


To facilitate research and investigation, the Commission is focusing on upgradation of Library & Information Technology Resources.

Current Organisational Structure



Anticipated Organisational Structure



ANNEXURE

DETAILS OF MERGERS AND ACQUISITIONS

1. IBL Modaraba Management Private Limited and Dr. Hasan Sohaib Murad

The matter concerned the acquisition of shares of IBL Modaraba Management Private Limited by an individual, Dr. Hasan Sohaib Murad.

The Parties. IBL Modaraba Management Private Limited is a company engaged in modaraba business. Dr. Hasan Sohaib Murad runs the University of Management and Technology (UMT), Lahore. UMT is an educational institution that aims to design, prepare and offer leadership, engineering, educational and management training courses and undertake, organise and promote research and dissemination of knowledge on all aspects of organisational and management sciences.

Findings. It was assessed that IBL Modaraba Management Private Limited and UMT were involved in dissimilar activities. Prior to the acquisition, IBL Modaraba Management Private Limited had 0.87 % market share in the modaraba business. The post acquisition would remain unchanged.

Conclusion. The acquisition would not substantially lessen competition by creating or strengthening a dominant position in the relevant markets.

Outcome. The acquisition was cleared and a No Objection Certificate (NOC) was issued accordingly.

2. Anwar Cotton Mills Private Limited, Aslam Industries Limited and Acro Textile Mills

The matter concerned the merger of Anwar Cotton Mills Private Limited and Aslam Industries Limited with and into Acro Textile Mills.

The Parties. Both Anwar Cotton Mills Private Limited and Aslam Industries Limited are engaged in ginning oil and pressing operations. Acro Textile Mills Limited is a public limited company operating a textile spinning unit.

Findings. We found that neither of the firms to be acquired were engaged in textile spinning business.

Conclusion. We concluded that the line of business of the acquirer, Acro Textile Mills, was different from the merged undertakings. Moreover, the merging units were small in terms of turnover and market share and it did not appear that the merger of these two entities with Acro Textile Mills Limited would cause a substantial lessening of competition by creating or strengthening a dominant position in the textile sector.

Outcome. The merger was approved and the NOC was issued accordingly.

3. PICIC Limited, PICIC Commercial Bank Limited and NIB Bank Limited

The matter concerned the merger of Pakistan Industrial Credit and Investment Corporation (PICIC) Limited and PICIC Commercial Bank Limited into NIB Bank Limited.

The Parties. PICIC Limited is a public limited company engaged in term financing for industrial and commercial activities, merchant banking, capital market operations, leasing and consumer financing. PICIC Commercial Bank Limited is involved in commercial banking and related services. NIB Bank Limited is a commercial bank offering services as defined in the Banking Companies Ordinance, 1962.

Findings. It was assessed that the post-merger composite market share of the merged undertakings in loans and deposits would be less than 4 %.

Conclusion. As the composite market share of the merged entities lies within the 40% threshold limit, we concluded that the merger may not be expected to result in a substantial lessening of competition in the banking sector.

Outcome. The merger was approved and the NOC was issued accordingly.

4. Wazir Ali Industries Limited and Dalda Foods Private Limited

The matter concerned the acquisition of almost 46% of shares of Wazir Ali Industries Limited by Dalda Foods Private Limited.

The Parties. Wazir Ali Industries Limited is a public limited company engaged in the manufacture and sale of vanaspati ghee and cooking oils. Dalda Foods Private Limited is a private limited company involved in the manufacture and sale of vanaspati ghee, cooking oils and margarine.

Findings. We received follow-on information from Dalda Foods Private Limited that, through this acquisition of shares, it intended to help Wazir Ali Industries Limited from the latter's looming bankruptcy. Wazir Ali Industries Limited had been placed on the defaulters' counter by the Karachi Stock Exchange (KSE) in 2006. The company's auditors stressed their concern regarding the uncertainty of the Company continuing operations. Before the acquisition, Dalda Foods Private Limited had a market share of 3.4% while Wazir Ali Industries had a share of 0.48% in the ghee and cooking oil market.

Conclusion. Though both undertakings are engaged in the same business, the post-acquisition composite market share would be less than 5%, which is much below the threshold limit of 40% of the total market. Hence the acquisition had not resulted in and may not be expected to result in a substantial lessening of competition in the ghee and cooking oil market.

Outcome. The acquisition was approved and the NOC was issued accordingly.

5. Global Securities Pakistan Limited and NIB Bank Limited

The matter concerned the acquisition of whole shareholdings of Global Securities Pakistan Limited by NIB Bank Limited.

The Parties. Global Securities Pakistan Limited is engaged in equity brokerage, equity research, corporate finance advisory services, money markets and foreign exchange

brokerage. NIB Bank Limited is a commercial bank extending services as defined in the Banking Companies Ordinance, 1962.

Findings. We examined that both undertakings had different line of operation, whereby either entity does not influence the market share of the other.

Conclusion. We concluded that the acquisition had not resulted in and may not be expected to result in a substantial lessening of competition in the banking sector.

Outcome. The acquisition was approved and the NOC was issued accordingly.

6. Saudi Pak Bank Limited and the Consortium led by Mr. Shaukat Tarin

The matter concerned the acquisition of 90% shares of Saudi Pak Bank Limited by a Consortium led by Mr. Shaukat Tarin.

The Parties. Saudi Pak Bank Limited is a public limited company engaged in the provision of banking services in the country. The Consortium led by Mr. Shaukat Tarin comprised of Bank of Muscat SAOG, IFC, Nomura European Investment Limited, Mr. Muhammad Ashraf Qazi, Mr. Muhammad Zahid, Mr. Sadeq Saeed, and Mr. Azmat Tarin.

Findings. We analysed that Saudi Pak Bank Limited has a market share of less than 2% in the commercial banking sector. Prior to acquisition and post acquisition, the market share of Saudi Pak Bank would remain unchanged.

Conclusion. The acquisition was not be expected to result in substantially lessening competition in the commercial banking sector.

Outcome. The acquisition was approved and the NOC was issued accordingly.

7. Bosicor Oil Pakistan Limited, Bosicor Pakistan Limited, Bosicor Chemicals Pakistan Limited and Byco Industries Incorporated

The matter concerned the acquisition of shares of Bosicor Oil Pakistan Limited (BOPL), Bosicor Pakistan Limited (BPL) and Bosicor Chemicals Pakistan Limited (BCPL) by Byco Industries

Incorporated (BII).

The Parties. BII, the acquirer company, was an investment company newly incorporated for the purpose of this transaction. It intended to acquire shares of BPL, BOPL and BCPL from its sellers Bosicor Corporation Limited (BCL) and Abraaj Mauritius Oil and Gas SPV Limited (ABRAAJ).

Bosicor Chemicals Pakistan Limited is a new company engaged in refining and selling of petrochemical products, Bosicor Oil Pakistan Limited is also a new company engaged in refining and selling of petroleum products and Bosicor Oil Pakistan Limited is engaged in the business of refining and selling of petroleum products.

Findings. The line of business of BCPL was different to that of the BII and the other two companies. Therefore, an NOC could be issued to Byco Industries Incorporated for the acquisition of shares of BCPL.

However, we noted that Bosicor Pakistan Limited and Bosicor Oil Pakistan Limited were operating in the same line of business and felt that this transaction merited a second-phase review, which was begun. After the second stage review, it was determined that, while Bosicor Pakistan Limited and Bosicor Oil Pakistan Limited were operating in the same line of business, the acquisition would not result in lessening competition in the market.

Conclusion. The acquisitions of shares had not resulted in and may not be expected to result in substantially lessening competition in the relevant sector.

Outcome. The acquisitions were approved and the NOCs were issued accordingly.

8. DHL Pakistan Private Limited and Deutsche Post International B.V

The matter concerned the acquisition of DHL Pakistan Private Limited by Deutsche Post International B.V.

The Parties. DHL Pakistan Private Limited is a Pakistan based company that provides overland and air freight express transportation services in Pakistan. Deutsche Post

International B.V is a holding and investment company based in the Netherlands.

Findings. In the international express market, DHL Pakistan Limited has a market share of 63.4%. However it was assessed that there will be no change in the market share held by DHL Pakistan Limited after this acquisition.

Conclusion. The acquisition had not resulted in and may not be expected to result in a substantial lessening of competition in the relevant sector.

Outcome. The acquisition was approved and the NOC was issued accordingly.

9. Total Media Limited and Media Times Limited

The matter concerned the merger of Total Media Limited and Media Times Limited.

The Parties. Total Media Limited is a public limited company engaged in production, promotion, advertising, distribution and broadcasting of television programs through satellite. Media Times Limited is a public limited company engaged in the printing and publishing of one English (Daily Times) and one Urdu (Aaj Kal) newspaper.

Findings. Before the said merger, Media Times Limited had a market share of little over 3% while Total Media Limited had a share of less than 1% in the electronic media market. Both undertakings, therefore, did not have a significant composite market share. We also noted that both entities have different line of business.

Conclusion. The merger had not resulted in and may not be expected to result in a substantial lessening of competition in the relevant sector.

Outcome. The merger was approved and the NOC was issued accordingly.

10. Worldcall Telecom Limited and Oman Telecommunication Company

The matter concerned the acquisition of 60% majority shares of Worldcall Telecom Limited by Oman Telecommunication Company.

The Parties. Worldcall Telecom Limited is a Pakistan based public limited company engaged in providing telecommunication, cable television

and internet services in Pakistan. Oman Telecommunication Company is responsible for the establishment, operation, maintenance and development of fixed and mobile telecommunication services in the Sultanate of Oman.

Findings. Since both undertakings have different businesses, the acquisition would have no influence on the market share of both companies in their relevant markets.

Conclusion. The acquisition had not resulted in and may not be expected to result in substantially lessening competition in the relevant sector.

Outcome. The acquisition was approved and the NOC was issued accordingly.

11. Makro-Habib Pakistan Limited and Thal Limited

The matter concerned the acquisition of 46.40% shares of Makro-Habib Pakistan Limited by Thal Limited.

The Parties. Makro-Habib Pakistan Limited runs a chain of wholesale-retail cash and carry stores. Thal Limited is engaged in the manufacture of jute goods, engineering goods, papersack and lamination sheets.

Findings. It was observed that Thal Limited and Makro-Habib Pakistan Limited were involved in different operations, hence, the pre-acquisition market share and the post-acquisition market share of both the companies would remain the same. Since both undertakings have different businesses, the acquisition would have no influence on the market share of both companies in their relevant markets.

Conclusion. As the market position of both entities would remain the same, there was a limited chance of a substantial lessening of competition by creation or strengthening a dominant position in the relevant market, as prescribed in section 11(1) of the Ordinance.

Outcome. The acquisition was approved and the NOC was issued accordingly.

12. Tenaga Genereasi Limited and Dawood Lawrencepur Limited

The matter concerned the acquisition of Tenaga Genereasi Limited by Dawood Lawrencepur Limited.

The Parties. Tenaga Genereasi Limited is a company engaged in wind power generation. Dawood Lawrencepur Limited is involved in the manufacture and sale of yarns and fabrics.

Findings. We noted that since both undertakings are in different lines of business, the merger would have no influence on the market share of both companies in their relevant markets.

Conclusion. The acquisition had not resulted in and may not be expected to result in substantially lessening competition in the relevant sector.

Outcome. The acquisition was approved and the NOC was issued accordingly.

13. Shareholdings in Atlas Group of Companies and Shirazi Capital Private Limited

The matter concerned the acquisition of shares of Shirazi family's shareholdings in Atlas Honda Limited, Atlas Battery Limited, Atlas Engineering Limited, Honda Atlas Cars (Pakistan) Limited, Atlas Insurance Limited and Atlas Bank Limited by Shirazi Capital Private Limited.

The Party. Shirazi Capital Private Limited is a holding company, newly incorporated to institutionalize the shareholding of Shirazi family members in Atlas Group of Companies. The company is not engaged directly or indirectly in the production, supply and distribution of goods or provision of services and is totally owned by the Shirazi family.

Findings. We noted that Shirazi Capital Private Limited is a newly incorporated company to institutionalise the shareholding of Shirazi family members in Atlas Group of Companies. Moreover, the companies whose shares were being transferred to Shirazi Capital Private Limited were in different lines of business. Thus, no impact on their respective market shares was expected if this acquisition of shares was allowed to Shirazi Capital Private Limited. The pre-acquisition as well as post acquisition market

share of all the Shirazi group companies would remain the same.

Conclusion. As the market position would remain the same, there was a limited possibility of a substantial lessening of competition by creating or strengthening a dominant position in the relevant market.

Outcome. The acquisition was approved and the NOC was issued accordingly.

14. Crescent Bahuman Energy Limited, Crescent Bahuman Textile Limited, and Crescent Bahuman Limited

The matter concerned the merger of Crescent Bahuman Energy Limited (CBEL) and Crescent Bahuman Textile Limited (CBTL) with and into Crescent Bahuman Limited.

The Parties. Crescent Bahuman Energy Limited, a Pakistan-based public limited company, is a wholly owned subsidiary of Crescent Bahuman Limited. Its principal activity is to generate and sell electric power. Crescent Textile Limited is a new company which aims to manufacture textile products. Crescent Bahuman Limited is engaged in the manufacture of denim fabrics and garments.

Findings. Crescent Bahuman Limited exports denim fabric and garments to Europe, USA, Australia, Turkey etc. The company also sells leftover garments and fabric in the local market which constitute approximately 5-7% of its total sales. Its exports mainly comprise of denim jeans, which are sold to the premium brands worldwide including Levis, Ben Sherman, Limited Express, Batisitini, Mustang, Big Star and Carrera.

We noted that the acquirer, Crescent Bahuman Limited, and the target companies, CBEL and CBTL, are engaged in dissimilar activities.

Conclusion. As the market position will remain the same, there was a limited possibility of a substantial lessening of competition by creating or strengthening a dominant position in the relevant market.

Outcome. The merger was approved and the NOC was issued accordingly.

15. Indus Motor Company Limited and Toyota Motor Corporation

The matter concerned acquisition of 12.5% shares of Indus Motor Company Limited (IMCL) by Toyota Motor Corporation (TMC).

The Parties. IMCL is a Pakistan based public limited company engaged in assembling, manufacturing, marketing and distribution of Toyota vehicles in Pakistan. The company is also the sole distributor of Daihatsu vehicles in Pakistan. TMC is primarily involved in design, manufacturing, distribution and sales in automobile sector in various countries and has no direct presence in Pakistan. It also conducts business in finance.

Findings. TMC, already holding 12.5% shares of IMCL, wanted to increase its shareholding to 25% by purchasing 12.5% of additional shares. In the passenger cars segment, IMCL has 23.79% market share which is below the threshold limit of 40% of the total market share, as prescribed in section 3 of the Competition Ordinance, 2007. None of its group companies are engaged in the same line of business. TMC has no direct presence in Pakistan.

Conclusion. Since the acquirer has no presence in the country, the pre-acquisition and post-acquisition market share of the IMCL will remain the same. Hence, there is no likelihood of substantially lessening of competition by creation or strengthening of a dominant undertaking in the relevant market.

Outcome. The acquisition was approved and the NOC was issued accordingly.

16. EFU General Insurance Limited and EFU Life Assurance Limited

The matter concerned the acquisition of 0.61% of shares of EFU General Insurance Limited by EFU Life Assurance Limited.

The Parties. EFU General Insurance Limited is engaged in general insurance such as insurance of fire and property, marine and other insurances. EFU Life Assurance Limited is doing business in the life insurance market.

Findings. We found that the market share of the merged entities would remain unchanged and below the threshold limit of 40% in the relevant

market since both undertakings are different lines of business.

Conclusion. There was no possibility of a substantial lessening of competition by the creation or strengthening of a dominant undertaking in the relevant market.

Outcome. The acquisition was approved and the NOC was issued accordingly.

17. Heavy Electrical Complex and Siemens (Pakistan) Engineering Company Limited

The matter concerned the acquisition of Heavy Electrical Complex by Siemens (Pakistan) Engineering Company Limited.

The Parties. Heavy Electrical Complex is a private limited company engaged in manufacture and repair of damaged power transformers. Siemens (Pakistan) Engineering Company Limited is a public limited company involved in manufacture, installation and sale of electronic/electrical capital goods, power generation projects, manufacture of power transformers, switchgear panels, generating sets and motors, industrial, infrastructure and healthcare products and services.

Findings. It was assessed that the pre-acquisition and post-acquisition market share of both companies would remain below the threshold limit.

Conclusion. The acquisition had not resulted in and may not be expected to result in a substantial lessening of competition in the relevant sector.

Outcome. The acquisition was approved and the NOC was issued accordingly.

18. MCB Bank Limited and Malayan Banking Berhad

The matter concerned the acquisition of 20% shares of MCB Bank Limited by Malayan Banking Berhad.

The Parties. MCB Bank Limited is a public limited company engaged in extending banking and related financial services including commercial banking, investment banking and asset management services in Pakistan. Malayan Banking Berhad, a

company established under the laws of Malaysia, is engaged in the business of banking and finance in all its aspects. In Pakistan, it has expanded its business mainly on generally insurance business, mainly Takaful. It intended to acquire, whether itself or through a wholly owned subsidiary in the first phase, 15% shares in MCB Bank Limited and, in the second phase, an additional 5% shares of MCB.

Findings. We noted that both MCB Bank and Malayan Banking Berhad were engaged in different line of business and as such, no change in existing market shares of both could be expected.

Conclusion. Allowing the acquisition to proceed was not expected to result in a substantial lessening of competition in the relevant sector.

Outcome. The acquisition was approved and the NOC was issued accordingly.

19. Agro General Insurance Company Limited and The Direct Insurance Company

The matter concerned the acquisition of 100% equity of Agro General Insurance Company by The Direct Insurance Company.

The Parties. Agro General Insurance Company was incorporated as a public limited company in 1985. It was engaged in general insurance business. The Direct Insurance Company was incorporated as a public limited company in 2007 that would provide general insurance.

Findings. Since the acquirer, The Direct Insurance Company, was a non-performing company at the time and Agro General Insurance Company Limited was a small entity engaged in general insurance business with a nominal market share, no impact was foreseen on the pre and post-acquisition market shares.

Conclusion. We analyzed that there was a limited possibility of a substantial lessening of competition by creation or strengthening of a dominant undertaking in the relevant market.

Outcome. The acquisition was approved and the NOC was issued accordingly.

20. ABN AMRO Bank Limited and Consortium Led by Royal Bank of Scotland

The matter concerned the acquisition of 99.30% shares of ABN AMRO Bank Limited by a consortium led by the Royal Bank of Scotland (RBS).

The Parties. ABN AMRO Bank operates as a scheduled commercial bank in Pakistan under a license obtained from the State Bank of Pakistan. It is principally engaged in retail banking, corporate banking and treasury related activities. The Consortium, led by the Royal Bank of Scotland, consists of the foreign banks RBS, Fortis NV, Fortis SA/NV and Banco Santander SA.

Findings. It was assessed that ABN AMRO Bank Limited was engaged in banking and related financial services in Pakistan while the acquiring consortium included foreign based banks that had no presence in Pakistan at the moment. Therefore, the acquisition would not result in any change in market share in the relevant market. ABN AMRO Bank Limited had 2.53% market share in respect of deposits and 2.23% in respect of total assets. In both cases, its market share would remain below the threshold limit of 40% of the total market.

Conclusion. There was a limited possibility of a substantial lessening of competition by the creation or strengthening of a dominant undertaking in the relevant market

Outcome. The acquisition was approved and the NOC was issued accordingly.

21. Pakistan Cement Company Limited and Lafarge S. A.

The matter concerned acquisition of 69% shares of Pakistan Cement Company Limited by Lafarge S. A. on acquisition of Orascom Construction Industries Cement Group (UK), the holding company of Pakistan Cement Company.

The Parties. Pakistan Cement Company Limited is involved in the manufacture and sale of ordinary grey Portland cement. Lafarge S. A. is a UK-based company that has acquired Orascom Cement, a Cairo (Egypt)

based company which has 69% stake in Pakistan Cement Company Limited. On acquisition of Orascom Cement, Lafarge Cement has indirectly acquired 69% stake in Pakistan Cement Company. Lafarge's turnover worldwide is 17.6 billion Euros. A world leader in building materials, it has top ranking positions in all its businesses: cement, aggregates, concrete and gypsum.

Findings. Pakistan Cement Company Limited started commercial production in December 2006. By December 2007, it had produced 1,724,104 million tons of cement against an installed capacity of 2,400,000 million tons per annum – 71.83% capacity of the plant. The total country cement production remained at 24,222,775 million tons, giving the company a 7.12% market share. It was noted that the target company i.e. Pakistan Cement Company Limited was producing cement in Pakistan whereas the acquirer Lafarge Cement was engaged in the production of cement, aggregates, concrete, and gypsum in the UK. Thus, both the undertakings were working in distinct markets and are not direct competitors.

Conclusion. The pre-acquisition as well as post-acquisition share in the relevant market will remain the same. Hence, there was no possibility of a substantial lessening of competition in the market.

Outcome. The acquisition was approved and the NOC was issued accordingly.

22. Nalco Pakistan Private Limited and Nalco Asia Holding Company PTE Limited

The matter concerned acquisition of 69% shares of Nalco Pakistan Private Limited by Nalco Asia Holding Company Limited.

The Parties. Nalco Pakistan (Private) Limited is a private limited company engaged in the sale and marketing of industrial chemicals and provides integrated water treatment and process improvement services to industrial, commercial and institutional customers. It is the only entity supplying specialty chemicals for water treatment and process chemical usage in Pakistan.

Nalco Asia Holding Pvt Limited is a Nalco group company, owned and directly controlled by Nalco

Company. It was a new corporate entity established on 3 October 2007 and had no assets, revenues, or business in Pakistan.

Findings. The target company, Nalco Pakistan (Private) Limited, was working in Pakistan while the acquirer, Nalco Holding Company Pvt. Ltd. or any of its group companies, were doing business solely outside Pakistan.

Conclusion. The current market share of Nalco Pakistan (Private) Limited would remain the same after the acquisition. Hence, there was no possibility of a substantial lessening of competition by creation or strengthening of a dominant undertaking in the relevant market.

Outcome. The acquisition was approved and the NOC was issued accordingly.

23. Millat Industrial Products Limited and Millat Tractors Limited

The matter concerned the acquisition of Millat Industrial Products Limited by Millat Tractors Limited.

The Parties. Millat Industrial Products Limited was engaged in the manufacturing of vehicular, industrial and domestic batteries, cells and related components. Millat Tractors Limited is involved in the manufacture and sale of agricultural and industrial tractors. Millat Tractors Limited submitted an application on 22 May 2008 seeking an NOC for the said acquisition.

Findings. We noted that Millat Industrial Products Limited acquired the assets of the Rex Barren Batter-ies Limited in an open bid. During the year that ending 30 June 2007, it had a market share of 5% in auto batteries market. Millat Tractors Limited had a market share of 50% in the tractor market. However, the line of business of both undertakings was different from each other.

Conclusion. The pre-acquisition as well as post-acquisition share in the relevant markets would remain the same. Hence, there was a limited possibility of a substantial lessening of competition by the creation or strengthening of a dominant undertaking in the relevant market.

Outcome. The acquisition was approved and the NOC was issued accordingly.

24. ICI Pakistan Limited, Pakistan PTA Limited and Azko Nobel N.V.

The matter concerned acquisition of ICI Pakistan Limited and Pakistan PTA Limited by Akzo Nobel N.V.

The Parties. ICI Pakistan Limited is ICI Pakistan Limited is engaged in the manufacture of polyester staple fibre, POY chips, soda ash, paints, specialty chemicals, sodium bicarbonate and polyurethanes, marketing of seeds, toll manufactured and imported pharmaceuticals and animal health products. Pakistan PTA Limited is involved in the manufacture and distribution of pure terephthalic acid which is sold mostly in the local market. Akzo Nobel N.V, a publicly owned company headquartered in Netherlands and listed on the Euronext Amsterdam stock exchange, is engaged in the business of coatings and chemicals.

Findings. We noted that ICI Pakistan Limited had a considerable share of 34% and 25% in decorative and industrial coatings respectively. After the acquisition these market shares would increase nominally to 34.01% and 25.01%. As the pre-acquisition and post-acquisition market share will remain relatively unchanged and below the threshold limit of 40% of the total market, ICI Pakistan would not have a dominant position in the relevant market.

Pakistan PTA operated domestically, while Akzo Nobel NV had limited activities in Pakistan through imports of certain coating products. Neither Akzo Nobel nor any of its subsidiaries (of which there are none in Pakistan) had any involvement in the manufacture, distribution or sale of pure terephthalic acid in Pakistan. As the pre-acquisition and post acquisition market share of Pakistan PTA Limited would remain the same, it would not be having dominant position in relevant market.

Conclusion. In both cases, the pre-acquisition as well as post-acquisition share in the relevant markets would remain the same and not result in a substantial lessening of competition by the creation or strengthening of a dominant position

in the relevant market.

Outcome. The acquisitions were approved and the NOC's were issued accordingly.

25. Hazara Phosphates Fertilizers Limited and Pak American Fertilizer Company Limited

The matter concerned the acquisition of Hazara Phosphates Fertilisers Limited by Pak American Fertilizer Company Limited.

The Parties. Hazara Phosphates Fertilizers Limited is a Pakistan based public limited company engaged in manufacturing and distribution of granulated Single Super Phosphate (SSP). Pak-American Fertiliser Company Limited is a public limited company that is involved in the production and sale of urea fertilisers.

Findings. Hazara Phosphates Fertilizers Limited has a share of little over 4% in the market for production of SSP fertiliser. Pak-American Fertiliser Company Limited has a market share of little over 5%. Both undertakings produce different kinds of fertiliser and the acquisition would not result in any change in their respective market shares and the acquirer would remain below the threshold limit of 40% in the relevant market.

Conclusion. The acquisition was not expected to result in a substantial lessening of competition in the relevant sector.

Outcome. The acquisition was approved and the NOC was issued accordingly.

26. First Capital Investment Limited and First Capital Securities Corporation Limited

The matter concerned acquisition of shares valuing Rs 50 million of First Capital Investment Limited by First Capital Securities Corporation Limited.

The Parties. First Capital Investment Limited provides investment advisory services and manages a closed-end fund named First Capital Mutual Fund. First Capital Investment Limited is engaged in business related to insurance comprising fire, marine, motor, aviation, engineering, transportation, etc. First

Capital Securities Corporation Limited is engaged in long and short-term investments, money market operations and financial consultancy services.

Findings. It was observed that both companies were in different lines of business and therefore, their post-acquisition share in the relevant markets would remain unchanged as a result of this merger.

Conclusion. Hence, there was no likelihood of a substantial lessening of competition through the creation or strengthening of a dominant undertaking in the relevant market.

Outcome. The acquisition was approved and the NOC was issued accordingly.

27. Shaheen Insurance Company Limited and First Capital Securities Corporation Limited

The matter concerned the acquisition of shares valuing Rs 250 million of Shaheen Insurance Company Limited by First Capital Securities Corporation Limited.

The Parties. Shaheen Insurance Company Limited is engaged in business related to insurance comprising fire, marine, motor, aviation, engineering, transportation, etc. First Capital Securities Corporation Limited has investments in subsidiaries and associates engaged in brokerage, telecommunication and real state. In addition, it acts as a broker in the money market.

Findings. Both companies had different nature of business. Therefore, after the said acquisition, their market share would remain the same.

Conclusion. The pre-acquisition as well as post-acquisition share in the relevant markets would remain the same and there was no likelihood of a substantial lessening of competition through the creation or strengthening of a dominant undertaking in the relevant market.

Outcome. The acquisition was approved and the NOC was issued accordingly.

28. Media Times Limited and First Capital Securities Corporation Limited

The matter concerned acquisition of shares of Media Times Limited (MTL) by First Capital Securities Corporation Limited (FCSC).

The Parties. FCSCCL intended to acquire shares of MTL worth Rs 50 million. FCSCCL already has investment of 11 million shares, comprising of almost 20% of the paid-up capital of MTL. MTL is a public limited company engaged in printing and publishing of the English and Urdu newspapers, Daily Times and Aaj Kal respectively. FCSCCL is engaged in long and short term investments, money market operations and financial consultancy services.

Findings. We noted that that the acquirer, FCSCCL, was engaged in long- and short-term investments, money market operations and financial consultancy services while MTL was engaged in print and electronic media activities. Both companies were in different lines of business. Therefore, after the said acquisition, their share in their respective markets would remain the same.

Conclusion. The pre-acquisition as well as post-acquisition share in the relevant markets would remain the same. Hence, there was a limited possibility of a substantial lessening of competition by the creation or strengthening of a dominant undertaking in the relevant market.

Outcome. The acquisition was approved and the NOC was issued accordingly.

29. Pace Barka Properties Limited and First Capital Securities Corporation Limited

The matter concerned the acquisition of shares valuing Rs 450 million of Pace Barka Properties Limited (PBPL) by First Capital Securities Corporation Limited (FCSCCL).

The Parties. Pace Barka Properties Limited was involved in the construction, acquisition, development and sales of shopping malls, apartments, villas and commercial buildings, and manages hotels and restaurants. It had, however, not started commercial operations in Pakistan at the time of the application. FCSCCL was engaged in short and long term investments, money market operations and financial consultancy services,

Findings. We noted that both companies had different line of business from each other.

Therefore, after the said acquisition, their market share would remain the same.

Conclusion. The pre-acquisition, as well as post-acquisition, share in the relevant markets would remain the same and

Outcome. The acquisition was approved and the NOC was issued accordingly.

30. Unilever Overseas Holdings Limited and Unilever Pakistan Limited

The matter concerned the acquisition of 10% shares of Unilever Pakistan Limited by Unilever Overseas Holdings Limited.

The Parties. Unilever Pakistan Limited manufactured and marketed home and personal care products (soaps, detergents, household cleaning, skin care, hair care, toothpaste etc), beverages (tea), ice cream and frozen desserts and spreads (edible margarine). Unilever Overseas Holdings Limited (UOHL) is an investor and principal shareholder in Unilever Pakistan Limited. It was established in 1921 to carry out business as a distributing and transporting agent and is a majority shareholder for various Unilever Companies in different countries. Presently, UOHL owns 70.40% of the total share capital of UPL. The current acquisition will increase its shareholding in UPL to 80%.

Findings. Both undertakings were in different lines of business. Therefore, it was concluded that the proposed acquisition would not create a dominant undertaking in the relevant markets.

Conclusion. The pre-acquisition, as well as post-acquisition, share in the relevant markets would remain the same and there was no likelihood of a substantial lessening of competition through the creation or strengthening of a dominant undertaking in the relevant market.

Outcome. The acquisition was approved and the NOC was issued accordingly.

31. Shakarganj Food Products Limited and KASB Capital Limited

The matter concerned the acquisition of 43% shares of Shakarganj Food Products Limited by KASB Capital Limited.

The Parties. Shakarganj Food Products Limited is

engaged in the production and sales of dairy products and fruit juices. KASB Capital Limited is a non-banking finance company and not a manufacturing/marketing entity.

Findings. We found that both undertakings had different lines of business. Therefore, it was concluded that the proposed acquisition would not create a dominant undertaking in the relevant markets.

Conclusion. There is no likelihood of substantially lessening competition by the creation or strengthening of a dominant undertaking in the relevant market, as proscribed in section 11(1) of the Ordinance.

Outcome. The acquisition was approved and the NOC was issued accordingly.

32. Yousaf Sugar Mills Limited, Haseeb Waqas Engineering Limited and Abdullah Sugar Mills Limited

The matter concerned the separate mergers of Yousaf Sugar Mills Limited and Haseeb Waqas Engineering Limited into Abdullah Sugar Mills Limited.

The Parties. Yousaf Sugar Mills Limited is involved in the manufacture and sale of sugar and its by-products. Haseeb Waqas Engineering Limited is engaged in the manufacture and selling of iron steel products and allied engineering products, including light and heavy machinery. Abdullah Sugar Mills Limited is principally engaged in manufacturing and sale of sugar and its by-products. In addition, the company is working on a molasses alcohol project and operates a wash treatment plant.

Findings. We found that both Abdullah Sugar Mills Limited and Yousaf Sugar Mills Limited were in a similar line of business sugar production. Prior to the merger, Abdullah Sugar Mills Limited had 1.33% market share and Yousaf Sugar Mills Limited had a 1.27% market share in the sugar market. Their post-merger market share would be approximately 2.6%.

In the other merger case, both entities were in different lines of business – Abdullah Sugar Mills Limited in sugar production and Haseeb

Waqas Engineering Limited in the production of engineering products. Therefore, the proposed merger would not create a dominant undertaking in the relevant markets.

Conclusion. In the merger of Yousaf Sugar Mills Limited with and into Abdullah Sugar Mills Limited, it was observed that the post-merger market share would remain below the threshold limit of 40% of the total market. Hence, the latter company would not have a dominant position in the sugar market.

In the second merger case, as Abdullah Sugar Mills Limited and Haseeb Waqas Engineering Limited were engaged in different line of business, their pre-merger as well as post-merger share in the relevant markets would remain the same. Hence, in both situations, there was no likelihood of substantially lessening competition by the creation or strengthening of a dominant undertaking in the relevant market.

Outcome. The NOC was issued, clearing the mergers to take place.

33. American Express Bank Limited and Standard Chartered Bank Limited

The matter concerned acquisition of 10% shares of American Express Bank Limited by Standard Chartered Bank Limited.

The Parties. American Express Bank is a foreign bank based in UK that had maintained representative offices in Pakistan to liaise with Pakistani customers of the Bank in other countries. Standard Chartered Bank Limited is engaged in financial and banking business in Pakistan.

Findings. Standard Chartered Bank (Pakistan) Limited was engaged in financial market activities and banking business and had market share of 5.1%, 4.6%, and 4.6% respectively in total assets, deposits and loans/advances.

American Express Bank Limited runs representative offices of American Express Bank Limited in Pakistan that are neither incorporated entities/undertakings, nor permitted to engage in any commercial, financial or profit generating activity.

Conclusion. The market share of Standard Chartered Bank (Pakistan) was not expected to

increase substantially with the acquisition of shares. Hence, there was no likelihood of substantially lessening competition by the creation or strengthening of a dominant undertaking in the relevant market.

Outcome. The acquisition was approved and the NOC was issued accordingly.

34. Coca-Cola Beverages Pakistan Limited and Coca-Cola Icecek Anonim Sirketi

The matter concerned the acquisition of approximately 49% shares of Coca-Cola Beverages Pakistan Limited by Coca-Cola Icecek Anonim Sirketi.

The Parties. Coca-Cola Beverages Pakistan Limited was bottling and selling beverages and allied products, authorised to prepare, package, and/or distribute and sell products of The Coca-Cola Company (TCCC) throughout Pakistan. It is engaged in the non-alcoholic beverages business and currently prepares, packages, and/or distributes and sells carbonated soft drinks, including, but not limited to, Coca-Cola, Sprite, Fanta and Kinley water and juice drinks. Since June 2008, it is also importing, distributing and selling juice drinks that it imports from authorised bottlers in China.

Coca-Cola Icecek Anonim Sirketi is a public company incorporated in Turkey, having no presence in Pakistan. The company is an authorized bottler of The Coca-Cola Company that prepares, packages, and/or distributes and sells TCCC-branded and other beverages in various countries throughout Southern Eurasia (i.e. Turkey, Kazakhstan, Azerbaijan, Kyrgyzstan and Turkmenistan) and the Middle East either directly or through its various subsidiaries and/or affiliates. It offers a wide range of non-alcoholic beverages, including sparkling beverages as well as an expanding portfolio of still beverages (a category that includes juices, waters, sports drinks, energy drinks and iced tea). Coca-Cola Icecek Anonim Sirketi currently has no business in Pakistan.

Findings. The acquirer Coca-Cola Icecek Anonim Sirketi had no presence in Pakistan

whereas CCBPL has 26% and 3% market share in producing carbonated soft drinks and bottled water respectively. The post-acquisition market share would remain the same.

Conclusion. There was no likelihood of a substantial lessening of competition by the creation or strengthening of a dominant undertaking in the relevant market.

Outcome. The acquisition was approved and the NOC was issued accordingly.

35. Laraib Energy Limited and Hub Power Company Limited

The matter concerned the acquisition of 75% shares of Laraib Energy Limited by Hub Power Company Limited.

The Parties. Laraib Energy Limited (LEL) is a company in process of establishing a 84MW hydel power project. The total countrywide electricity produced during the year ended 30 June 2007 was 98,384 GWh. Thus, at the start of its production, Laraib Energy Limited would have an estimated market share of 0.55%.

Hub Power Company Limited is a public limited company that owns, operates and maintains an oil-fired power station with four generating units with an installed net capacity of 1,200 MW in Tehsil Hub, District Lasbella, Baluchistan. It is an independent power producer that owns and operates a 1,200 MW (Net capacity) power plant. During the year ended 30 June 2007, it produced 7,214 GWh electricity giving it a market share of 7.33% market share

Findings. We found that after the merger, the composite market share of both entities would have been approximately 7.88%.

Conclusion. We felt that there was no likelihood of a substantial lessening of competition in this case.

Outcome. The acquisition was approved and the NOC was issued accordingly.

36. Al-Abbas Industries Limited and Al-Abbas Sugar Mills Limited

The matter concerned the merger of Al-Abbas Industries Limited with and into Al-Abbas Sugar Mills Limited to achieve administrative

efficiencies, avoid double taxation, and the holding of two separate Annual General Meetings and two separate lines of administrative staff.

The Parties. Al-Abbas Industries Limited is involved in the business of manufacturing Calcium Carbide, Medium Density Fibre Board (MDFB) and Ferro Alloys. Al-Abbas Sugar Mills Limited is engaged in the production of sugar.

Findings. Al-Abbas Industries Limited started commercial production of calcium carbide and medium density fibre board in November 2006 and April 2007 respectively. Most paper board industries and cement industries were producing calcium carbide as a by-product. It was mostly used in ripening of fruits and packaging. The company had a nominal share in its products market.

Al-Abbas Sugar Mills had 1.22% share in the sugar market.

Since both companies were in different lines of business, it seemed unlikely that a potential competition issue could arise on their merger.

Conclusion. The acquisition would not result in a substantial lessening of competition by the creation or strengthening of a dominant position in the relevant markets.

Outcome. The NOC was issued, clearing the merger to take place.

37. Sweetwater Dairies Pakistan Limited, Habib Bank Limited and Arif Habib Securities Limited

The matter concerned the acquisition of shares of Sweetwater Dairies Pakistan Limited by Habib Bank Limited and Arif Habib Securities Limited.

Sweetwater Dairies Pakistan Limited will be engaged in developing farmlands by improving their fertility by sulphurous acid water treatment technology and natural organic fertilisers to cultivate, grow, produce or deal in fodder with heavy nutritional contents. It will also be involved in setting up cattle rearing/raising facilities and selling, pasteurizing, preparing, bottling, packing milk in its natural form or otherwise. The company

will also sell beef and beef products.

Findings. Since Sweetwater Dairies Pakistan Limited had not started commercial operations at the time of the application, it had no market share. Post-operations market share will be approximately 0.022%.

Prior to acquisition, the structure of shareholdings was:

- Sweetwater Dairies Pakistan Limited 70%
- Habib Bank Limited 15%
- Arif Habib Securities Limited 15%

Post-acquisition structure of shareholdings is expected to be:

- Sweetwater Dairies Pakistan Limited up to 12%
- Habib Bank Limited not more than 5%
- Arif Habib Securities Limited 30-45%
- Mr. Saqib Haroon Bilwani up to 14.25%
- Mr. Shabbir Diwan up to 14.25%

The acquiring companies have no association with dairy business. They are subscribing to shares of Sweetwater Dairies Pakistan Limited as a form of investment.

Conclusion. The line of business of the acquiring companies is different from that of the acquiree. Hence, the acquisition would not be expected to cause a substantial lessening of competition by the creation or strengthening of a dominant position in the market.

Outcome. The acquisition was approved and the NOC was issued accordingly.

A person in a dark suit is holding a large, thick stack of white papers. The person's hands are visible, resting on the top and sides of the stack. The background is a light, neutral color. The text 'THE COMMISSION'S FINANCIAL STATEMENTS' is overlaid in white, bold, uppercase letters on the right side of the image.

**THE COMMISSION'S
FINANCIAL
STATEMENTS**

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Rahim Iqbal Rafiq

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**INDEPENDENT AUDITORS' REPORT TO THE COMMISSION
ON THE FINANCIAL STATEMENTS OF
COMPETITION COMMISSION OF PAKISTAN**

We have audited the accompanying financial statements of **COMPETITION COMMISSION OF PAKISTAN (the Commission)** which comprise the balance sheet as at **June 30, 2008** and the related income and expenditure account, cash flow statement and statement of changes in funds together with the summary of significant accounting policies and other explanatory notes forming part thereof (here-in-after referred to as the financial statements), for the period from November 1, 2007 to June 30, 2008 and we state that we have obtained all the information and explanations which to the best of our knowledge and belief were necessary for the purposes of our audit.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with the Competition Ordinance, 2007 and policies given in note 3. This responsibility includes: designing, implementing and maintaining internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with International Standards on Auditing as applicable in Pakistan. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion and, after due verification, we report that:

1. Net assets acquired from Monopoly Control authority and vested in Competition Commission of Pakistan are unaudited.
2. As we were appointed after the balance sheet date, we were not able to observe physical verification of tangible fixed assets and cash count, and also could not perform the cut off procedures as on June 30, 2008.
3. No provision has been made for income tax in these financial statements.

Opinion

In our opinion, except for the effects of the matters stated in paragraph 1 to 3 above, the financial statements give a true and fair view of the financial position of the Commission as at **June 30, 2008**, its surplus and cash flows for the period then ended in accordance with the policies given in note 3.

DATE: 20 MAR 2009
ISLAMABAD

Khalid Majid Rahman Sarfaraz
Rahim Iqbal Rafiq

KHALID MAJID RAHMAN SARFARAZ
RAHIM IQBAL RAFIQ
CHARTERED ACCOUNTANTS
KMR

Engagement partner:
Mutee-ur-Rehman Mirza

COMPETITION COMMISSION OF PAKISTAN
BALANCE SHEET
As at June 30, 2008

	NOTE	2008 Rupees
FIXED CAPITAL EXPENDITURE		
Fixed assets	4	10,656,878
Long term investment	5	19,500,000
Long term loans and advances	6	5,701,861
CURRENT ASSETS		
Short term investments	7	4,000,000
Advances, prepayments and other receivables	8	15,510,472
Cash and bank	9	30,202,942
		49,713,414
		<u>85,572,153</u>
FUNDS AND LIABILITIES		
FUND ACCOUNT	10	(17,814,076)
DEFERRED LIABILITIES		
General provident fund		5,237,491
Pension fund		90,807,404
Leave encashment		677,445
Gratuity		1,603,453
CURRENT LIABILITIES		
Accrued and other liabilities	12	5,060,436
CONTINGENCIES AND COMMITMENTS		
	13	-
		<u>85,572,153</u>

The annexed notes from 1 to 17 form an integral part of these financial statements.

KHASAN

KH
CHAIRMAN

[Signature]
DIRECTOR GENERAL

COMPETITION COMMISSION OF PAKISTAN
INCOME AND EXPENDITURE ACCOUNT
For the period from November 1, 2007 to June 30, 2008

	Note	2008 (Rupees)
INCOME		
Fee, charges and penalties		41,800,000
Government grant		59,568,000
Interest income		1,352,793
		<u>102,720,793</u>
EXPENDITURE		
Salaries, allowances and other benefits	14	36,376,396
Operating expenditures	15	30,009,299
Depreciation	4	4,331,438
		70,717,133
		<u>32,003,660</u>
SURPLUS FOR THE PERIOD		
		<u>32,003,660</u>

The annexed notes from 1 to 17 form an integral part of these financial statements.

KHASAN

KH
CHAIRMAN

[Signature]
DIRECTOR GENERAL

COMPETITION COMMISSION OF PAKISTAN
CASH FLOW STATEMENT
For the period from November 1, 2007 to June 30, 2008

	2008 (Rupees)
CASH FLOW FROM OPERATING ACTIVITIES	
Surplus for the period	32,003,660
Adjustment for non-cash items:	
Depreciation	4,331,438
Provision for gratuity	1,603,453
Provision of leave encashment	677,445
Provision of pension	9,160,875
	<u>47,776,871</u>
Working Capital Changes	
(Increase)/decrease in advances, prepayments and other receivables	(13,522,146)
(Increase)/decrease in accrued and other liabilities	2,109,044
	<u>(11,413,102)</u>
General provident fund	(943,708)
Pension fund	(6,576,862)
	<u>28,843,200</u>
CASH FLOW FROM INVESTING ACTIVITIES	
Encashment of short term investment	1,000,000
Encashment of long term investment	2,500,000
Addition in fixed assets	(11,363,041)
	<u>(7,863,041)</u>
CASH FLOW FROM FINANCING ACTIVITIES	
	<u>-</u>
Net cash flow from financing activities	<u>-</u>
(Decrease)/increase in cash and cash equivalents during the period	20,980,159
Cash and cash equivalents at the beginning of the period	9,222,783
Cash and cash equivalents at the end of the period	<u>30,202,942</u>

The annexed notes from 1 to 17 form an integral part of these financial statements.

R. MASUD

KHP
CHAIRMAN

R. MASUD
DIRECTOR GENERAL

COMPETITION COMMISSION OF PAKISTAN
Statement of Changes in Fund
For the period from November 1, 2007 to June 30, 2008

Description	Net assets acquired from MCA	Surplus/(Deficit) for the period	Total
Balance as at November 01, 2007	-	-	-
Net assets acquired from MCA	(49,817,736)	-	(49,817,736)
Surplus/ (Deficit) for the period ended on June 30, 2008	-	32,003,660	32,003,660
Balance as at June 30, 2008	<u>(49,817,736)</u>	<u>32,003,660</u>	<u>(17,814,076)</u>

The annexed notes from 1 to 17 form an integral part of these financial statements.

R. MASUD

KHP
CHAIRMAN

R. MASUD
DIRECTOR GENERAL

COMPETITION COMMISSION OF PAKISTAN
NOTES TO THE ACCOUNTS

For the period from November 1, 2007 to June 30, 2008

1 LEGAL STATUS AND OPERATIONS

Competition Commission of Pakistan (the Commission) was established as a body corporate on 2nd October, 2007 under the Competition Ordinance, 2007. The Commission got financial autonomy on 12th November 2007. Main objective of the Commission is to provide a legal framework to create a business environment based on healthy competition towards improving economic efficiency, developing competitiveness and protecting consumers from anti-competitive practices.

The Head Office of the Commission is situated at Islamabad.

2 STATEMENT OF COMPLIANCE AND BASIS OF PREPARATION.

These financial statements are prepared in accordance with approved accounting standards as applicable in Pakistan. Approved accounting standards comprise of Accounting and Financial Reporting Standards for Small-Sized Entities (SSE's) issued by the Institute of Chartered Accountants of Pakistan and provisions of and regulations issued under the Competition Ordinance, 2007.

3 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

3.1 Accounting Convention

These accounts have been prepared under the historical cost convention on accrual basis of accounting, except fee and penalties and government grant for expenses which are recognized on receipt basis.

3.2 Fixed assets

Fixed assets are stated at cost less accumulated depreciation and any impairment losses, if any.

Depreciation is calculated on a straight line method to write off the cost of each asset over its estimated useful life. Rates of depreciation are specified in note 4 to the financial statements. Full year depreciation is charged in the year of purchase while no depreciation is charged in the year of disposal.

Maintenance and normal repairs are charged to income as and when incurred. Major renewals and improvements are capitalized and the assets so replaced, if any, are retired. Gains and losses on disposals of property, plant and equipment are included in the income currently.

3.3 Investments

Held to maturity

Investments with fixed or determinable payments and fixed maturity, that the commission has the positive intent and ability to hold till maturity are classified as held to maturity investments and are carried at cost.

3.4 Receivables

These are stated at cost less allowance for any uncollectible receivables.

KHURSAH

COMPETITION COMMISSION OF PAKISTAN
NOTES TO THE ACCOUNTS

For the period from November 1, 2007 to June 30, 2008

3.5 Pension Fund

The pension is payable to employees of defunct Monopoly Control Authority (MCA). An employee is eligible for pension after the completion of qualifying service of twenty years. In the event of death of an employee, whether before or after retirement, his family shall be entitled to receive such pension. No pension shall be admissible to an employee who is dismissed or removed from service for reasons of discipline actions.

3.6 Contributory provident fund

As per the Competition Commission(Service) Regulations, 2007 provident fund trust is required to be established. However, the Commission being at the establishment stage is in the process of establishment of provident fund.

Currently the commission operates general provident fund in which employees of the defunct MCA are contributing as per the rates specified by the government, and includes the option of having interest free or interest bearing accounts. Interest bearing accounts are credited annually with the interest rate, announced by the government (2007-08:12.50%)

Currently all employees at contract basis as per the regulation of the Commission so no employee is currently entitled to contributory provident fund.

3.7 Staff gratuity

The commission operates an unfunded staff gratuity scheme covering eligible employees. The amount of gratuity admissible shall be the sum equal to one month's gross salary drawn immediately preceding the date of his ceasing to be in the service of the Commission or his death, for each completed year of service in the commission. Any part of service in excess of six months will be considered as one completed year for purposes of gratuity.

3.8 Leave Encashment

Encashment of accumulated earned leave up to 60 working days subject to availability shall be allowed to employees of the Commission on cessation of employment, other than dismissal or removal from service on disciplinary grounds.

3.9 Payables

These are carried at cost which is the fair value of the consideration to be paid in the future.

3.10 Revenue Recognition

Fees and other recoveries, penalties and government grant for expenses are recognized on receipt basis.

Profit on investment and bank balance is recognized on accrual basis.

KHURSAH

COMPETITION COMMISSION OF PAKISTAN
For the period from November 1, 2007 to June 30, 2008
FIXED ASSETS SCHEDULE

Particulars	As on November 1, 2007		As on June 30, 2008		Rate %	Depreciation For the Period		As on June 30, 2008	WDV As on June 30, 2008
	Rs.	Rs.	Rs.	Rs.		Addition	(Deletion)		
4 FIXED ASSETS									
Furniture and Fixtures	-	6,188,710	-	6,188,710	20	1,237,742	-	1,237,742	4,950,968
Computer and Electronics	3,532,596	4,955,640	-	8,488,236	33	1,326,422	-	5,067,929	3,420,307
Office Equipments	1,473,592	218,891	-	1,692,483	20	255,274	-	1,437,209	548,803
Vehicles	4,880,000	-	-	4,880,000	20	912,000	-	3,968,000	1,738,000
Period ended June 30, 2008	8,886,188	11,363,041	-	21,229,229		4,331,438	-	10,897,791	10,558,378

4.1 Opening cost and depreciation of assets shows the values at which they were taken over by the Competition Commission of Pakistan from Monopoly Control Authority.

COMPETITION COMMISSION OF PAKISTAN

NOTES TO THE ACCOUNTS

For the period from November 1, 2007 to June 30, 2008

	Note	2008 Rupees
5 LONG TERM INVESTMENTS		
Pension fund investments-held to maturity		19,500,000
		<u>19,500,000</u>
These investments are held with SME Bank in TDC's for the period of 6 months and 12 months at the markup of 10% and 10.5% per annum respectively.		
6 Long Term Loan And Advances		
Loans and advances to employees		7,500,000
Less: short term portion		1,798,139
		<u>5,701,861</u>
The interest bearing loans are given to employees for house building, car and motorcycle, while interest free loans are given to employees for cycle		
7 SHORT TERM INVESTMENTS		
G.P Fund investments -held to maturity		4,000,000
		<u>4,000,000</u>
These investments are held with SME Bank in TDC's for the period of 3 months at the markup of 9.5% per annum.		
8 ADVANCES, PREPAYMENTS AND OTHER RECEIVABLES		
Short term portion of loans and advances to employees		1,798,139
GP fund advance		734,787
Prepayments		11,536,505
Interest receivable on investment		1,441,041
		<u>15,510,472</u>
9 CASH AND BANK BALANCES		
Cash in hand		13,465
Cash at bank:		
Current account		28,482,719
PLS Account-G.P Fund		226,393
PLS Account-Pension Fund		1,480,365
		<u>30,202,942</u>
10 FUND ACCOUNT		
Net assets acquired from MCA	11	(49,817,736)
Surplus for the period		32,003,660
		<u>(17,814,076)</u>

10/11/08

COMPETITION COMMISSION OF PAKISTAN
NOTES TO THE ACCOUNTS

For the period from November 1, 2007 to June 30, 2008

	Note	2008 Rupees
11 NET ASSETS ACQUIRED FROM MONOPOLY CONTROL AUTHORITY(MCA)		
Fixed assets		3,625,275
Investments		27,000,000
Interest receivable on investment		641,534
Advances and prepayments		7,048,653
Cash and bank		9,222,783
General provident (G.P) fund		(5,181,199)
Pension Fund		(87,802,690)
Accrued monthly pension		(227,549)
Interest payable on GP Fund		(193,151)
Accrued expenses		(2,951,392)
		<u>(49,817,736)</u>
All assets and liabilities of whatever kind of the Monopoly Control Authority subsisting immediately before its dissolution are transferred to and vest in the Commission.		
12 CREDITORS, ACCRUED AND OTHER LIABILITIES		
Accrued expenses		848,045
Accrued payroll cost		3,211,272
Monthly pension payable		305,660
Pension commutation payable		686,459
		<u>5,060,436</u>
13 CONTINGENCIES AND COMMITMENTS		
No known contingencies and commitments exist at the balance sheet date.		
14 SALARIES ,ALLOWANCES AND OTHER BENEFITS		
Basic salary		18,163,051
Senior post allowance		29,600
House rent allowance		1,876,197
Conveyance allowance		475,545
Dearness allowance		803,170
Washing allowance		1,530
Dress allowance		560
Special additional allowance		345,942
Medical allowance		232,897
Entertainment allowance		35,336
Computer allowance		54,000
Orderly allowance		61,750
Deputation allowance		66,000
Adhoc allowance		569,713
Special adhoc allowance		569,713
Integrated allowance		30,202
Utilities allowance		143,970
Overtime allowance		79,230
Honorarium		479,098
Medical charges		304,908
Contingent paid staff		520,271
Leave Salary		18,510
Pension contribution of employees on deputation		73,430
Provision of pension		9,160,875
Provision of leave encashment		677,445
Provision for gratuity		1,803,453
		<u>36,376,396</u>

KARASIA

COMPETITION COMMISSION OF PAKISTAN
NOTES TO THE ACCOUNTS

For the period from November 1, 2007 to June 30, 2008

	Note	2008 Rupees
15 OPERATING EXPENDITURES		
Repair and maintenance		282,861
Traveling & conveyance		4,109,892
Postage and telegraph		45,393
Communications		2,460,539
Utilities		484,296
Security services		536,432
Rent for office building		13,928,400
Rent for residential building		2,655,108
Printing and stationery		333,832
Legal and professional charges		2,653,000
Entertainment		115,660
Newspaper and periodicals		356,374
Uniforms and protective clothing		27,385
Group insurance		35,077
Audit fee		75,000
Interest expense-G.P fund		209,334
Other expenditures		1,700,716
		<u>30,009,299</u>
16 DATE OF AUTHORIZATION FOR ISSUE		
The financial statements have been authorized for issue on <u>MARCH 20, 2009</u> by the Commission.		
17 FIGURES		
- Figures have been rounded off to the nearest rupee.		

KARASIA

KIP
CHAIRMAN

DIRECTOR GENERAL

RESOURCES: GLOSSARY OF TERMS OF COMPETITION LAW

Often, those working on competition related issues must define legal/economic concepts which may not be circumscribed accurately by the case law of Courts and general dictionaries.

In order to assist officials, academics and policy makers from these countries in their understanding of the basic concepts of modern micro-economics, the Organisation for Economic Cooperation and Development (OECD) developed a glossary of industrial organisation economics and competition law, which is really a "must have" for competition professionals. Containing a large number of detailed and

reliable definitions, the document is available online at:

<http://www.oecd.org/dataoecd/8/61/2376087.pdf>

Canada's International Development Research Centre (IDRC) has also made a glossary available online at: http://www.idrc.ca/en/ev-122762-201-1-DO_TOPIC.html. A less detailed list can also be seen on the Canadian Competition Bureau's website at: http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_00784.html#competition

RESOURCES: COMPETITION TOOLKITS AND PRIMERS

The OECD's toolkit can be accessed at: http://www.oecd.org/document/38/0,3343,en_2649_4038164_39680550_1_1_1_37463,00.html

The ASIAN DEVELOPMENT BANK has a toolkit on competition to help countries in "implementing and assessing policies that will increase competition, and thereby the competitiveness of their economies as a whole."

The document is available online at: <http://www.adb.org/Documents/Others/OGC-Toolkits/Competition-Law/default.asp>

The DEPARTMENT FOR INTERNATIONAL DEVELOPMENT of the British Government has a competition assessment framework available online at: <http://www.dfid.gov.uk/Pubs/files/caf-2008.pdf>

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