



**Economic Freedom
Network Pakistan**

PROTECTION FROM ANTI-COMPETITIVE PRACTICES

Competition Commission
of Pakistan
Creating a level Playing Field

A Guide
for Consumers and Businesses



Supported by

Friedrich Naumann
STIFTUNG **FÜR DIE FREIHEIT**



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Disclaimer

This booklet aims to create awareness about the Competition Act, 2010 and the role of the Competition Commission of Pakistan. It is not intended to be a substitute for legal advice in respect of the subject matter. Undertakings are therefore advised to seek professional legal advice to ensure compliance with the Competition Act. No warranty expressed or implied is made regarding the adequacy or completeness of any information contained in this publication. This disclaimer applies to both isolated and aggregate use of the information contained in the booklet.

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Preface

In the last two decades, a number of developing and transitional economies have adopted competition law. This rapid proliferation of competition regimes across the globe is driven by trade liberalization of the concomitant need to protect the rights of businesses and consumers at large. Competitive markets have direct nexus with consumer welfare. Rivalry serves as the main impetus for businesses to enhance productivity and gain greater market shares through lowering prices, product innovation and improved quality.

In seeking productivity gains, competition encourages innovation in the use of resources. Competition law aims to reduce market barriers and eliminate anti-competitive practices. It is considered to be an essential economic tool to prevent market failure through capture or collusion. Pakistan has a competition regime since 1970 in the form of the Monopolies and Restrictive Trade Practices Ordinance (MRTPO). MRTPO was implemented with the aim to prevent concentration of wealth in hands of few. MRTPO was designed to achieve a social objective of distributive justice more than promoting economic efficiency and enhancing consumer welfare.

However, in 2007 the law makers felt the need to bring a paradigm shift in the competition regime, by introducing Competition Ordinance, 2007 “to provide for free competition in all spheres of commercial and economic activity to enhance economic efficiency and to protect consumers from anti competitive behaviour”. The Ordinance also established the Competition Commission of Pakistan to enforce competition law. The Competition Ordinance was adopted by the Parliament, which enacted Competition Act in October 2010.

It is necessary for all stakeholders to develop a basic understanding about the competition law in order to prevent oneself from engaging in anti-competitive conduct and more importantly to protect one from such conduct by others.

This publication of the Commission aims to create awareness about competition law and its enforcement in Pakistan. It intends to be a brief guide for the readers; businesses and consumers alike. It aims to provide information about what constitutes anti-competitive practices, the substantive provisions of the competition law in Pakistan and the role played by the Commission in competition law enforcement and competition advocacy.

This guide is an effort at educating businesses and consumers about the do's and don'ts of the Competition Act, 2010.

**Ignorance of the law is no excuse.
So get informed!**

Understanding Competition Law

1 Defining competition

In common terms, 'competition' is a process or activity in which people strive for superiority or supremacy. It is generally a contest in which two or more rival parties strive for a goal that cannot be shared. For instance, human beings compete with each other to secure good jobs or to enrol in academic institutions.





In commerce and trade, the term ‘competition’ refers to rivalry among businesses and market players to increase market share from sales of goods and services to the consumersⁱ.

Competition is thus an attempt to maximize ones’ market share through:

- offering better prices
- offering better quality
- constantly bringing about innovative improvements

1.2 Competition law is about

Competition law addresses behaviour that reduces, restricts, prevents or distorts competition. In the absence of competition law, businesses may engage in anti-competitive and unfair practices to oust their competitors rather than competing on a legitimate basis such as quality improvements in their productsⁱⁱ.

Hence, competition law aims to reduce and eliminate anti-competitive practices.

1.3 Anti-Competitive Practices

A broad range of actions and arrangements, such as cartels which fix price and/or output, abuse of dominance and providing misleading or false information to lure the consumers, come under the ambit of anti-competitive practices.



1.4 Competition Laws around the World

More than one hundred countries have competition laws to protect their businesses and consumers from anti-competitive practicesⁱⁱⁱ.

The Roman legislation of 50 B.C. is believed to be the earliest form of competition laws.

1.4.1 Canada

The history of modern competition laws begins with **Canada's Competition Act of 1889** to the current civilization. This is the oldest antitrust statute in the West that aims to preserve free competition.

This law prohibits offences such as price-fixing, bid-rigging, resale price maintenance, price discrimination and predatory pricing.

The Competition Bureau enforces the Competition Act, 1889. The Competition Tribunal reviews mergers and certain business practices, and issues orders to eliminate or reduce anti-competitive effects.

1.4.2 The United States of America

The Sherman Act of 1890 prohibits agreements among competitors that unreasonably restrain competition and prohibits attempts to monopolize trade.

Clayton Act of 1914 prohibits stock and assets acquisitions, which may substantially lessen competition between the acquiring and acquired corporations. The act also prohibits price discrimination, tying of products/services, and exclusive dealing.



Federal Trade Commission Act of 1914 created the Federal Trade Commission authorizing it to prevent firms from engaging in unfair methods of competition.

1.4.3 The European Union (EU)

The EU competition law is based on the articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) (formerly Articles 81 and 82 of the EC Treaty signed in 1957).

Article 101 prohibits agreements, decisions and concerted practices that prevent restrict or distort competition, whereas **Article 102** prohibits abuse of dominance.

In short, the aim of competition laws revolves around free competition, but it is described in a variety of ways. For instance, in Germany, the democratic constitutional system implies freedom of individual action. In France, competition policy is a way of securing freedom of competition. In a majority of countries, competition law applies to both public and private actions that have or are likely to have adverse effects on competition.

1.5 Summing up: The work of Competition Agencies

Competition agencies seek to control or eliminate abuse of dominance that limit access to the market or otherwise restrain competition. These agencies also address anti-competitive agreements or arrangements among firms, review merger and acquisition transactions having competition implications, and tackle deceptive market practices.

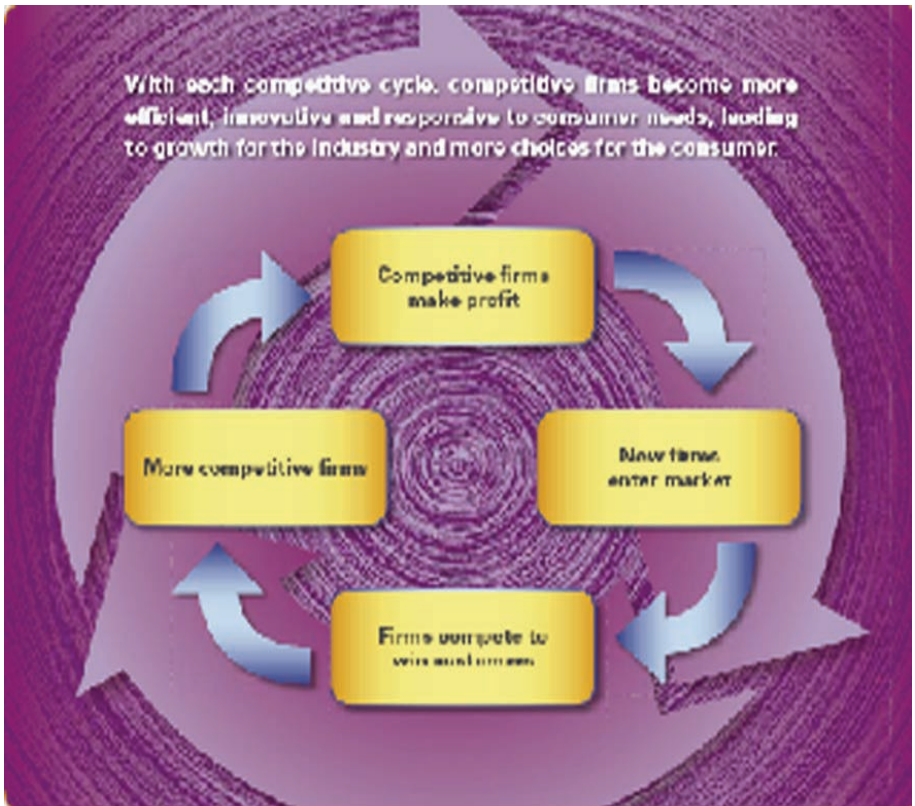
1.6 Competitive markets

Competition amongst businesses tends to:

- lower prices
- increase choices
- encourage research and development

- improve quality
- enhance efficiency
- promote consumer welfare

Competition law focuses on creating competitive markets. The process of competition brings benefits to the businesses, consumers and the overall economy^{iv}.



Businesses

- Get a level playing field to compete
- Tend to become efficient and innovative to meet consumers' demands
- Compete fairly

Consumers

- Get improved choices of goods and services
- Get better value for money

Economy

- Improved resource allocation
- Increase in efficiency and innovation results in increased production
- Employment generation and poverty reduction that ultimately puts the economy on the path of development

Competition Law in Pakistan

The history of competition law in Pakistan dates back to the 1970s when Pakistan promulgated the Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970. The Monopoly Control Authority was established to enforce this law. However, considering the changed economic conditions and various limitations of this legislation, the Government of



Pakistan completely overhauled its competition regime in 2007 by enacting a new legislation, namely the Competition Ordinance of 2007 – a modern competition law essentially based on the principles enshrined in the Treaty of Rome. The Ordinance also established the Competition Commission of Pakistan (hereinafter referred to as the Commission) to implement the new competition law. The Ordinance of 2007 was enacted as an Act of Parliament in October 2010.

The Competition Act, 2010 (hereinafter referred to as the Act) is a modern enabling piece of legislation which prescribes specific rules and regulations to make the law operational. The Act guides corporate behaviour, empowers the consumer, and mandates a professional, autonomous institution to enforce the law. Being a part of the broader competition policy framework of the Government of Pakistan, the Act endeavours to engender free competition in all spheres of commercial and economic activity with the aim to provide all entities an equal opportunity to participate in the economy.

The regulatory regime for competitive markets is based on rules of reason and analysis done by a fair and transparent institution.

Briefly, the law prohibits actions that tend to lessen competition such as abuse of market dominance, agreements that restrict dominance, and deceptive marketing practices. The law sets out procedures relating to review of mergers and acquisitions, enquiries, imposition of penalties, grant of leniency, and other essential aspects of law enforcement.

2.1 About the Competition Commission of Pakistan

Established in 2007, the Competition Commission of Pakistan is a quasi-judicial, quasi-regulatory, independent law enforcement agency consisting of not less than five and not more than seven members. At present, the Commission comprises five members.

2.1.1 Mission

The Commission strives to achieve a robust economy, to help drive economic growth by encouraging and enforcing free competition in all spheres of commercial and economic activity to enhance economic efficiency and protect consumers from anti-competitive behaviour.

2.1.2 Vision

To establish a world class competition regime in Pakistan that plays its role in creating competitive markets as a harbinger of growth and development.

2.1.3 Functions and responsibilities of the Commission

The Competition Commission of Pakistan is the only national agency dealing specifically with competition matters. It promotes competition and fair trade in the market place to benefit businesses and consumers. Its prime responsibility is to ensure that individuals and businesses comply with the competition law. The Commission encourages all economic agents to engage in fair trading practices and protects consumers from anti-competitive behaviour.

The Commission performs two broad functions namely:

- 1) enforcement of the law, and
- 2) advocacy for promoting competition in all sectors of commercial economic activity.

The Act requires the Commission to:

- conduct studies and enquiries;
- initiate proceedings and make remedial orders in cases of contraventions of the Act;
- give advice to the undertakings and to engage in competition advocacy;
- take all other actions as may be necessary for enforcement of the Act.

2.2 Organisational Structure of the Commission

The Commission is presently organised into the following departments:

1. Commission's Secretariat
2. Corporate Affairs
3. Cartels and Trade Abuses
4. Legal
5. Competition Policy and Research
6. Advocacy and Office of Fair Trade
7. Mergers and Acquisitions and International Affairs

2.2.1 The Commission's Secretariat

The Commission's Secretariat oversees the conduct of business of the Commission in accordance with approved procedures. The Secretary issues notices and minutes of meetings of the Commission, represents the Commission at various fora, and certifies the decisions or documents used in hearings by the Commission.

2.2.2 Corporate Affairs Department

The Corporate Affairs Department (CAD) is responsible for provision of efficient support services to the entire Commission including overall administration, finance and accounts, human resource management, and information technology.

2.2.3 Cartels and Trade Abuses Department

This Department investigates and takes enforcement action with respect to any kind of anti-competitive arrangement or agreement that violates the provisions of the Act. These include investigations on alleged cartelisation offences as well as abuse of dominance instances.

The Department initiates inquiries (i) on its own, (ii) on receiving complaints, and (iii) on references from the Federal Government. The Department is empowered to conduct formal inquiries and search/inspect premises of undertakings for the purpose of enforcement of the Act.

2.2.4 Legal Department

The Legal Department manages legal affairs of the Commission such as issuing show cause and hearing notices, providing legal advice to undertakings, representing the Commission in court cases, and issuing necessary certificates for 'exemption' applications filed by the undertakings. The Department is responsible for drafting, reviewing and revisiting secondary legislation including Rules and Regulations relating to functions and activities of the Commission. The Office of Registrar is housed in the Legal Department. The Department also processes exemption applications submitted under Section 5 of the Act and issues exemption certificates.

2.2.5 Competition Policy and Research Department

The focus of this department is to regularly assess the effectiveness of the implementation of competition law and the Commission activities. It strategically positions the Commission through advocacy and outreach activities, and reinforces a culture of compliance rather than forceful law enforcement. The Department also conducts research and competition assessment studies on various sectors of the economy.

2.2.6 Advocacy and Office of Fair Trade

Competition advocacy is a tool for promotion of competition through means other than law enforcement. Advocacy efforts are necessary to maximize voluntary compliance with competition law through sensitizing key stakeholders, including the government, businesses, industry and the public.

The Office of Fair Trade (OFT) is primarily responsible for the protection of consumers against deceptive marketing practices mentioned under Section 10 of the Act. The OFT was established in 2008 to further the Commission's objective of creating a business environment based on healthy competition and to protect consumers from anti-competitive practices.

2.2.7 Mergers & Acquisitions and International Affairs Department

While dealing with pre-merger notification requirements, 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.

Prohibitions under the Competition Act, 2010

The Competition Act, 2010 “extends to the whole of Pakistan”, and applies “to all undertakings and all actions or matters that take place in or outside Pakistan and prevent, restrict, reduce or distort competition within Pakistan”^v.

The term “undertaking” is defined in section 2 (p) of the Act in the following words:

Undertaking means any natural or legal person, governmental body including a regulatory authority, body corporate, partnership, association, trust or other entity in any way engaged; directly or indirectly, in the production, supply, distribution of goods or provision or control of services and shall include an association of undertakings.

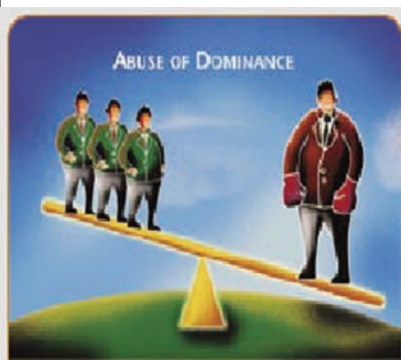
The Act prohibits:

1. Abuse of dominant position;
2. Anti-competitive agreements;
3. Deceptive marketing practices;
4. Mergers and acquisitions that substantially lessen competition.

3.1 Abuse of Dominant Position

Every market involves interaction between sellers and buyers. The principal outcome of this important interaction is a) the prevailing price and b) the quantity of goods and services exchanged.

The key feature that makes this market system of exchange lucrative from a policy standpoint is the fact that a large number of buyers and sellers, all acting in individual self interest ensure the best outcome for society.



However, there are a number of conditions and assumptions inherent in this simple definition. If these conditions and assumptions do not hold, markets fail and create adverse outcomes in terms of exorbitant prices and a decrease in both the quantity and quality of goods exchanged^{vi}.

Dominance occurs when one of the foremost conditions, i.e. a large number of suppliers operating in the market, fails to hold. In a perfectly competitive market, a large number of suppliers compete with each other by cutting prices or improving quality in order to attract maximum buyers. As a result, a competitive price that is close to the cost of production prevails. Any effort by a supplier to charge an excessively high price fails as buyers shift to other sellers offering substitutes at lower, competitive prices. However, if only one supplier operates in the market, buyers do not have a choice. The seller can charge higher prices owing to the fact that no rival seller exists to offer lower prices or different quality. The price charged in such a market will be much higher, and the quantity traded would be much lower than in a competitive market.

3.1.1 Benchmarks/Guidelines for Establishing Dominance

Dominant firms have a special responsibility not to prevent, restrict or reduce competition in the market.

From a competition perspective, the sole seller in the hypothetical example quoted earlier is dominant, and the act of charging an exorbitant price is an abuse of dominance. The mere existence of dominance itself is not frowned upon. The abuse of dominance is prohibited under the Act. The example is illustrative of the nature of problems that dominance could substantially create as dominant positions are often prone to being abused. Such absolute dominance in markets is often referred to as 'monopoly power'.



Source: Images in this section have been taken from:
http://app.ccs.gov.sg/cms/user_documents/main/pdf/CCS%20Abuse%20Brochure.pdf

Section 2 (e) of the Act defines the parameters for determining dominant position:

“dominant position” of one undertaking or several undertakings in relevant market shall be deemed to exist if such undertaking or undertakings have the ability to behave to an appreciable extent independently of competitors, customers, consumers and suppliers and the position of an undertaking shall be presumed to be dominant its share of the relevant market exceeds forty per cent;

Competition legislations around the world set similar benchmarks to establish dominance of firms.

Section 3 of the Act prohibits abuse of dominant position in the following words:

3. (1) No Person shall abuse dominant position.
- (2) An abuse of dominant position shall be deemed to have been brought about, maintained or continued if it consists of practices which prevent, restrict, reduce or distort competition in the relevant market.
- (3) The expression “practices” referred to in sub-section (2) shall include, but are not limited to -
 - (a) limiting production, sales and unreasonable increases in price or other unfair trading conditions;
 - (b) 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;
 - (c) tie-ins, where the sale of goods or service is made conditional on the purchase of other goods or services;
 - (d) 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;

- (e) applying dissimilar conditions to equivalent transactions on other parties, placing them at a competitive disadvantage;
- (f) predatory pricing driving competitors out of a market, prevent new entry, and monopolize the market;
- (g) boycotting or excluding any other undertaking from the production, distribution or sale of any goods or the provision of any service; or
- (h) refusing to deal.

3.1.2 Instances of “Abuse of Dominant Position”

Charging exorbitant prices by a dominant seller is one instance of abuse; there exist other mechanisms through which a dominant position may be abused.

1. Tying

Sale of a good or service on the condition that another good or service is also purchased is referred to as tying. In a tying arrangement, the consumer may be forced to purchase a product that he would not have chosen otherwise, thereby reducing his choice.



The Commission passed an order against a reputed business school for abuse of its dominant position through tying. The practice of compulsory purchase of laptops sold by the university to its students amounted to tying the sale of laptops with the provision of educational services. The university was directed to refund the students who had been forced to purchase laptops through loans at higher mark-up rates. The university was also instructed to discontinue the practice in the future, to which it complied^{vii}.

2.Limiting Quantity

A dominant firm has an incentive to reduce the quantity to be brought to the market. The rationale behind reducing quantity is based on a dominant firm's ability to charge higher prices by reducing quantity. Economic theory suggests that a monopoly maximizes profits through cutting output to less than the amount where demand and supply match. If more consumers bid for a lesser quantity it will result in an increased price for the product. Dominant firms do not have an incentive of making the maximum customers, but instead of choosing the ones who can pay the most and only cater to them. This creates an adverse outcome for consumers and the economy in general.



3.Price Discrimination

Price discrimination refers to the practice of charging different prices to different sets of buyers for the same product; thereby placing some of them at a competitive disadvantage vis-à-vis others.

The Commission found that an airline of Pakistan was charging a percentage fee for cancellation and rescheduling of tickets. This act was discriminatory in nature as passengers were being charged a varying fee for the same service. As a result of the Commission's order on the airline's price discrimination, the airline agreed to stop charging a percentage fee and charge a fixed fee for the services.

4. Predatory pricing

Dominant firms have an incentive to keep other firms away from entering the market. Pricing strategies to drive out competition or restrict entry of prospective rivals by a dominant firm are considered a form of abuse. A dominant player can lower price to an extent where it is not possible for any competitor to enter and/or remain in the market. Once rivals are driven out of the market, the dominant player can raise prices to a level that can help it recover losses. Given no choice, consumers will have to bear the brunt of increased prices.

The Commission imposed penalties on a liquefied petroleum gas (LPG) company and the LPG Association of Pakistan respectively for using predatory pricing techniques to keep competitors from entering the market (the case is sub-judice)^{viii}.

5. Refusal to Deal

Firms (or a group of firms) sometimes refuse to deal with customers or suppliers. Such behaviour is prohibited by competition law.



For abusing its dominance and refusing to deal with purchasers of low carbon steel billets, the Commission imposed a penalty on Pakistan Steel Mills Corporation (the case is sub-judice).

3.1.3 How the Commission can help you

Being a consumer or a businessman, you need to protect your business against abuse of dominance such as:

- Predatory Pricing – if your competitor is capable to sustain below cost pricing and oust you from the market;
- Exclusive Dealing – if you are left without any option to switch to other suppliers of goods or services at more competitive prices or better quality;
- Refusal to deal – if an entity refuses to do business with you thus making it difficult or impossible for you to operate.

If any of the above or similar situation prevails:

- The Commission will proceed if it receives a complaint from businesses and consumers, or takes action on its own initiative;
- The Commission can take action and investigate suspicious business conduct;
- If in the detailed investigation and during the subsequent legal proceedings abusive conduct is proved, the Commission can impose a penalty and instruct the dominant player to suitably modify its conduct and refrain from indulging in such practices;
- If you have concerns that your business conduct or behaviour violates the Act, you may approach the Commission and seek advice to ensure compliance with the law.

3.2 Anti-competitive Agreements and Cartels

A cartel results from an agreement amongst rival firms to earn excessive profits by co-operating, rather than competing with each other in the market. Cartel members mutually agree on production levels, prices, and other conditions relating to supply in the market.

Regarding prohibited agreements, section 4 of the Act states:

4. (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 or distorting competition within the relevant market unless exempted under section 5 of this Ordinance.
- (2) Sub 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 manners or means of providing any services;
 - (d) limiting technical development or investment with regard to the production, distribution or sale of any goods or the provision of any service;
 - (e) collusive tendering or bidding for sale, purchase or procurement of any goods or service;
 - (f) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a disadvantage;or

- (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.
- (3) Any agreement entered into in contravention of the provision in sub-section (1) shall be void.

3.2.1 Types of cartel conduct

Four main types of cartel conduct that are prohibited under the Act include:

1.Price Fixing

All firms are free to decide their own prices. However, it is a violation of competition law to co-operate or agree with competitors to fix or stabilise prices. The Commission dealt with the banks' cartel case and imposed penalties (the case is sub-judice).

The rationale for this is based on constant economic analysis and the experience of competition agencies and court all over the world where it has been seen countless times that horizontal naked price fixing agreements "impede the ordinary give and take of the market place" and have no pro-competitive effects^{ix}.

2.Bid Rigging

Bid rigging is a form of price fixing in which firms' co-ordinate their bids on procurement contracts. Firms may mutually agree on the bidding terms, resulting in an increased cost of the contract. Public procurement contracts are generally most susceptible to bid rigging.

3.Market Sharing

Competitor firms in a market are prohibited to share or allocate markets for specific territories, products, customers or even sources of supply. For instance, if two competitor firms in an industry decide to cater to two

different geographical markets without competing with each other for customers therein, the consumers may not benefit from competition advantages such as lower prices or efficient services.

4. Production Controls

Competition law prohibits competitors from fixing production and setting buying and/or selling quotas amongst themselves.

The Commission took action against the fixing of quotas by All Pakistan Cement Manufacturers' Association and its member companies, imposing a penalty of over PKR six billion.

The Agreement pertains to fixing the quota with respect to production and supply of cement and to ensure that sale of cement is not below the target/minimum price by each of the Member Undertakings which per se has the object and effect of preventing, restricting and reducing competition within the cement industry in Pakistan^x.

3.2.2 Actions prohibited by competition law

There exist numerous misconceptions in the business community regarding behaviour that constitutes a violation of competition law. In many countries, overt instances of breach of the competition law become the norm, especially when competition laws are relatively new, or enforcement has been weak. The following list of do's and don'ts briefly summarises the types of interaction between businesses and trade associations that are prohibited under competition law.

Businesses CANNOT:

- Jointly determine prices, price increases or decide on a range to keep prices in.
- Exchange cost or price related information with competitors.
- Fix production quotas amongst competitors.

- Mutually agree to allocate or share territory, products, customers or sources of supply amongst themselves.
- Mutually agree not to supply to certain customers or purchase only from certain suppliers.
- Impose resale prices or any other terms (e.g profit margins) for businesses that operate at another level of the production or distribution chain (such as manufacturers and distributors)

On occasions, trade associations serve as a forum that facilitates competitors to engage in prohibited agreements.

Trade Associations CANNOT be used as an avenue for competitors to share information about:

- Prices
- Discounts
- Conditions of supply
- Profit margins
- Cost structures
- Distribution practices
- New products
- Customers

However, Trade Associations CAN agree on:

- Joint petitioning
- Government relations and policy matters

However, it remains important to ask for clarification if there remains ambiguity about some actions. The Commission can be contacted in such circumstances.

3.2.3 What can be done about Cartels?

Consumers and businesses need to be conscious about prevailing market conditions and practices of the market players^{xi}.



Be watchful and well-informed!

Various factors are indicative of cartels. If you are a witness to any of the following situation, bring it to the notice of the Commission.

1. Sharing Confidential Information

Sharing information that undertakings need to preserve as business secrets is an indication of the existence of a cartel. Cartel members share confidential information with each other that eliminates uncertainty about the future conduct of competitors. Examples of such information are price tables, market allocation graphs or future policies.

2. Targeted Prices

It is not necessary for companies to agree on a specific price. A cartel may exist even if there's merely a discussion with regards to target values or ideal prices.

3. Price Parallelism

Price parallelism, a simultaneous movement in prices between competitors, may indicate collusion. However, there may be other factors for prices to move in parallel. The Commission conducts an investigation to determine whether there is substantive evidence of a cartelization offense.

4. Evidence of communication

Evidence of communication between cartel participants, such as records of telephone conversations between them, travel to a common destination, emails, memos and notes or minutes of meetings in which participants are involved in communication may suggest the presence of a cartel.

5. Attendance at Cartel Meetings

Mere presence at cartel meetings shows tacit approval of the cartel.

3.3.4 How the Commission can help you

As a responsible businessman or consumer, you can approach the Commission with information available to you regarding the aforementioned indicators and activities for further action by the Commission under the Act.

- You can share information about the cartel and be a part of the Commission's Reward Payment Scheme. The scheme incentivises whistle-blowers to come forward with evidence of cartel agreements. The reward is based on the quality of information provided in proving a cartel offence. Whistle-blowers have an option of requesting the Commission to keep their identity secret.

- If you are a cartel member, you can apply for leniency i.e. exemption from a penalty or imposition of a lesser penalty.

Regarding detection of cartelization offences, the Act empowers the Commission by awarding it the authority to conduct surprise raids to collect evidence. The Commission also has the authority to seek forcible entry if an undertaking does not comply with the Commission. This is one of the important differences in the investigative powers of the Commission and the Monopoly Control Authority. In the past, the Commission has used these powers to collect evidence of collusion in multiple investigations.

3.2.5 Exemptions granted to certain agreements

Section 5 of the Act provides for exemption from the application of section 4, if a particular practice or agreement meets the criteria laid down in Section 9 i.e. if the agreement substantially contributes to:

- (a) improving production or distribution;
- (b) promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit; or
- (c) the benefits of that clearly outweigh the adverse effect of absence or lessening of competition.

The Commission has granted individual exemptions in over two hundred instances. These include template distribution/dealership agreements, licenses and franchise agreements among others. While granting exemptions, the Commission has imposed conditions, such as (i) not to fix minimum resale price; (ii) not to restrict party's spouse and children from engaging in similar business; (iii) allowing shelf space to other parties; and (iv) amended lopsided termination clauses so as to give each party equal rights of terminating the agreement.

3.3 Deceptive Marketing Practices

The Act prohibits deceptive marketing, stating:

10. (1) No undertaking shall enter into deceptive marketing practices.
- (2) The deceptive marketing practices shall be deemed to have been resorted to or continued if an Undertaking resorts to—
- (a) the distribution of false or misleading information that is capable of harming the business interests of another undertaking;
 - (b) 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;
 - (c) false or misleading comparison of goods in the process of advertising; or
 - (d) fraudulent use of another's trademark, firm name, or product labeling or packaging.

The Commission identified deceptive marketing practices of mobile telephone companies, banks and a leading brand of shampoo, directing the concerned parties to modify their advertisements accordingly.



3.3.1 How the Commission can help you

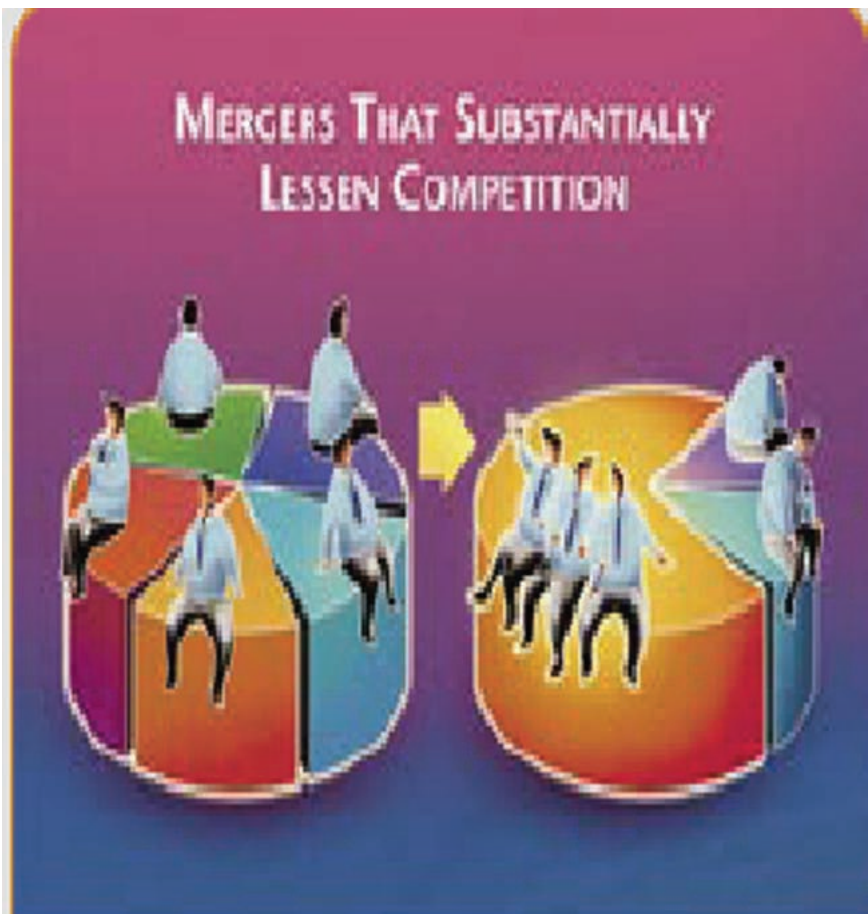
To eradicate instances of deceptive marketing, the CCP has established the Office of Fair Trading (OFT) tasked with the protection of businesses and consumers against deceptive marketing practices.

How to reach the Office of Fair Trade

Complaints can be filed by clicking the 'Complaints' icon at the CCP Website: www.cc.gov.pk

3.4 Approval of Mergers/Acquisitions

Review of mergers and acquisitions is an important component of competition policy to ensure there is no lessening of competition in the relevant market. The basis for this scrutiny is the inherent increase in market power and leniency of competition that can result from mergers and acquisitions^{xii}. For example, a merger amongst two leading



competitors in an industry can create a position of dominance and has the potential of resulting in a significant lessening of competition.

However, in numerous instances, when two firms merge, it may enhance their efficiency through economies of scale, transfer of technology, synergies in R&D, etc. Hence, an evaluation of a prospective merger always needs to be carried out in cognizance of this inherent trade-off between reduction in competition and increased efficiency.

3.4.1 Mandatory Merger Control Regime

Under the Merger Control Regulations 2007, a merger or an acquisition, which meets notification thresholds, must file an application to the Commission for review of the transaction. Notification thresholds are primarily based on (a) the size of the parties, and (b) the size of the transaction.

The Commission reviews the transaction to assess whether it substantially lessens competition by creating or strengthening a dominant position in the relevant market. It is only for the Commission to decide whether a proposed merger substantially reduces competition.

3.4.2 Merger Review

A merger is reviewed in two phases. If the proposed merger does not pose any competition concern, then the merger is cleared in Phase-I. However, if the Commission feels that it requires more information and the proposed merger appears to pose competition concerns, it will initiate Phase-II review. The Commission is required to complete Phase-I in 30 days and Phase-II in 90 days.

In determining whether a merger substantially reduces competition, the following factors are taken into account:

- The actual and potential level of import competition in the market;

- Ease of entry into the market, including tariff and regulatory barriers;
- The level and trends of concentration, and history of collusion in the market;
- Degree of countervailing power in the market;
- Dynamic characteristics of the market, including growth, innovation, and product differentiation;
- The nature and extent of vertical integration in the market;
- Whether the business or part of the business of a merging party has failed or is likely to fail
- Whether the merger situation will result in the removal of an effective competitor.

In its final decision, Section 11 empowers the Commission to:

- 1) prohibit a merger;
- 2) require the merging parties to sign legally enforceable agreements that reduce the lessening of competition;
- 3) require the merging parties to dispose off assets or operations;
- 4) require the parties to sign a performance bond, security or any other form of guarantee.

3.4.3 Help for Merging Parties

To provide guidance and facilitation to undertakings to comply with the Act, the Commission has established the Acquisitions & Mergers Facilitation Office (AMFO). AMFO serves as a facilitator for companies contemplating a merger/acquisition and wish to obtain the Commission's informal non-binding opinion. AMFO provides assistance in filing merger clearance applications. This service is also available for law firms, consultants and third parties who wish to obtain the Commission's informal view regarding any merger and acquisition matters in which they are advising their clients.

Inquiries may be made through the AMFO Hotline (051-9247538) or through email (amfo@cc.gov.pk). All queries are responded to within three working days.

The following regulations regarding merger applications can be found on the Commission's website (www.cc.gov.pk):

- Competition (Merger Control) Regulations, 2007
- Competition Commission (General Enforcement) Regulations, 2007

Compliance with the Competition Act, 2010

Any breach of the Competition Act, 2010 may have serious consequences, in the form of damage to reputation and imposition of high financial penalties.

4.1 Powers of the Commission

For effective enforcement of the Act, the Commission can:

- Call for information from any undertaking - person, company, association, etc.
- Seek the assistance of any person, authority or federal agency for the performance of its functions.

- Enter and search premises and impound any evidence of anti-competitive practice.
- Impose a penalty of up to 10 per cent of the preceding financial year's turnover or up to seventy five million Rupees. In case of non-compliance of orders of the Commission, a penalty of up to one million Rupees may be imposed.
- Give any suitable direction to restore competition.

4.2 Voluntary Competition Compliance Code

CCP has prepared a Voluntary Competition Compliance Code (Code) to serve as a guide for competition law's compliance.

The Code lays down a formal internal framework for undertakings to ensure compliance with the provisions of the Act and associated rules and regulations. The Code helps undertakings detect any violations at an early stage and take appropriate corrective action.

4.3 Rights of Undertakings

The Competition Act, 2010 confers certain rights to the businesses such as:

- Requesting the Commission to keep certain information confidential as it could be part of their business strategy.
- A right to be heard on the issuance of show cause notice and presenting evidence before the Commission to argue in their defence.
- Filing a leniency application for no or lesser penalty provided certain conditions are met (please refer to Competition (Leniency Regulations, 2007 available on the Commission's website www.cc.gov.pk).
- Filing an appeal against an order of the Commission first at the Appellate Bench of the Commission and then to the Competition Appellate Tribunal.

The Commission's General (Enforcement) Regulations, 2007 and other regulations by the Commission are available on the website www.cc.gov.pk.

The Commission can help if you wish to know more about competition law. Communicate your specific questions to us. The Commission will let you know more about the competition law by organising customised advocacy sessions.

Contact us

Competition Commission of Pakistan
4-C, Diplomatic Enclave (Shams Gate),
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Email: info@cc.gov.pk
<http://www.cc.gov.pk>

References

- i Image has been taken from: -associates- commercial-real-estate.
- ii Image has been taken from the website of Competition Commission of Singapore.
- iii The image has been taken from:
www.delriobiblechurch.com/beliefs.html.
- iv Image has been taken from the website of Competition Commission of Singapore.
- v Section 1 of the Competition Act, 2010
- vi Image has been taken from the website of Competition Commission of Singapore.
- vii Image drawn by Mr. Zeeshan of Competition Commission of Pakistan.
- viii The Commission's JJVL Decision.
- ix The Commission's Banks Decision.
- x The Commission's Cement Decision.
- xi Image has been taken from the website:
www.lindakernslaw.blogspot.com/2010/10/deciding-who-gets-house-in-divorce-get.html.
- xii Image has been taken from the website of Competition Commission of Singapore.

Economic Freedom Network Pakistan (EFN), established in 2006, is an informal network of academics, businessmen and politicians – organizations and individuals alike – who share the trust in open and free markets benefiting each and every member of the society.

We believe in personal choice, voluntary exchange coordinated by markets, freedom to enter and compete in markets, and protection of persons and their property from aggression by others including government.

In order to facilitate economic growth and human development through meaningful reforms, we welcome public policy advisors, political decision-makers, specialists and experts, businessmen and entrepreneurs to an open dialogue on the merits of free markets and limited government.



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