

# **“Challenges in Implementing Competition Law in Developing Countries”**

**Lahore, 11-12 May 2010**

Report of the International Conference organized  
by the Competition Commission of Pakistan

## Table of Contents

<b>BACKGROUND.....</b>	<b>3</b>
<b>INAUGURAL SESSION .....</b>	<b>4</b>
<b>SESSION 1 .....</b>	<b>5</b>
<b>INDEPENDENCE OF COMPETITION AGENCIES.....</b>	<b>5</b>
<b>SESSION 2 .....</b>	<b>7</b>
<b>DETERMINANTS OF AN EFFECTIVE COMPETITION REGIME.....</b>	<b>7</b>
<b>SESSION 3 .....</b>	<b>9</b>
<b>IMPORTANCE OF ADVOCACY IN DEVELOPING COUNTRIES.....</b>	<b>9</b>
<b>CONCLUDING SESSION.....</b>	<b>10</b>
<b>ANNEXURE .....</b>	<b>ERROR! BOOKMARK NOT DEFINED.</b>

## Background

The Competition Commission of Pakistan organized international conference on competition law in Lahore on 11-12 May 2010. The theme of the conference was “Challenges in Implementing Competition Law in Developing Countries”. The theme indicated the resolve of CCP to promote international cooperation in the enforcement of competition laws through exchange of information.

The conference brought together eminent international experts on competition law including Mr. William Even Kovacic, Commissioner of the US Federal Trade Commission, Mr. Richard Janda, a well known competition expert from Canada, Mr. Halil Baha Karabudak, Adviser to the Chairman Turkish Competition Authority and Mr. Joe Angland, partner, antitrust & competition practice New York. The conference was also attended by representatives of Pakistan’s corporate sector, industry and trade associations, officials of the Government of Pakistan, and journalists including anchor persons, senior reporters and sub-editors.

The first day of the conference was structured around two sessions including the inaugural session and a technical session on Independence of Competition Agencies. Both sessions generated interesting debate. The second day sessions provided the delegated an opportunity to discuss important aspects in the implementation of competition law.

Overall, the conference was full of importance for CCP due to the presence of international experts who gave interesting feedback on the work of CCP and the state of competition in Pakistan. Input given by Dr. Salman Shah, former federal finance minister, Javed Jabbar, former information minister, and other speakers in all sessions was also worthwhile.

## Inaugural session

Director General (Advocacy & Communications) Imran Ghaznavi opened the conference and acknowledged the speakers, particularly those coming from abroad. He provided a brief introduction of the topics of the conference. The inaugural session was addressed by the Chairman CCP, Khalid Mirza, Federal Trade Commissioner of USA, William E Kovacic, Chairman of FPCCI Punjab Mian Idrees and former Chairman of FPCCI Iftikhar Malik.

In his keynote address, the Chairman Khalid Mirza said that the true implementation of the competition law would be primarily beneficial to the common man and the middle class of the country. Implementation of the competition law is essential for a country enforcing free market mechanism in its economy. Absence of competition inflicts negative impact on economy, he said.

Mian Muhammad Idrees, Chairman of the Federation of Pakistan Chamber of Commerce & Industry (FPCCI) Punjab Chapter addressed the session and said that the role of CCP was crucial for the economy. He lauded the actions taken by CCP against cartels saying that these actions had broken the back of cartels.

He said that CCP has promoted efficiency and production in the country besides having position competition culture and level playing field for business community. He assured full support and assistance of business community to the CCP in achievement of its long-term objectives.

Commissioner US Federal Trade Commission (FTC), William Evan Kovacic, said that Pakistan has secured a respectable position for implementation competition laws within a very short period of time. He said Pakistan has emerged as an outstanding developing country with marvellous implementation of the competition laws world over.

He informed that the participants of a recent meeting in Istanbul listed Pakistan top in connection with implementation of competition laws, which is a very encouraging sign for Pakistan. He said all credit goes to the dynamic chairman of the CCP, who has been working in the context of global developments on this front and ensured institution building in Pakistan and worked in larger community interest. Pakistan, Turkey and Egypt are three glaring examples where relatively three new competition systems are emerged and serious are made for institution building. He said both the Egypt and Turkey have shared the experience of Pakistan on this front.

Former Chairman FPCCI Iftikhar Malik, in his vote of thanks, said that the environment for doing business in Pakistan has much improved after the implementation of Competition Ordinance. He applauded the efforts of CCP to spread education about the competition law.

## Session 1

### Independence of Competition Agencies

Chairman CCP, Mr. Khalid Mirza, introduced the panel which included Dr. Khalid Ranjha, eminent jurist and former law minister; Mr. William Evan Kovacic, Commissioner US Federal Trade Commission (FTC), and Mr. Joe Angland, former president of Anti-trust section of the American Bar Association.

Chairman Khalid Mirza in his speech said that competition agency should be so structured, empowered, and resourced as to be able to apply the law conscientiously, without fear or favour. "If not independent, competition agencies could be potentially subservient to the agenda of the political forces in power. And often, in a developing country context, the agency could be subject to the whims or the commercial interests of an individual or a group of individuals in power."

The Chairman said that there are four essential ingredients of independence of competition agencies: firstly, the Commissioner or the Members of the agency including its chairman must have security of tenure; secondly, the agency must be able to establish its own operation regulations, its own ways of operating without any outside intervention; thirdly, there must not be any intervention in the agency's professional work or the priorities it sets; fourthly, the agency must have available to it tied and secure sources of funding to cover its operational means.

He said that the International Competition Network and the OECD Competition Committee must come out with an unequivocally clear statement in support of operational independence of competition authorities. They must also, if possible, lay down the minimum criteria of what constitutes independence. I am sure developing country agencies would find this most useful in dealings with their Governments.

Mr. William Evan Kovacic in his speech said he agreed to the definition provided in his speech by the Chairman Khalid Mirza. He said government's interference in the working of competition agency cannot keep the agency independent adding that the agency must be able to make its own decisions totally independent of the government's influence. He said accountability for general policy making but not control over the resolution of specific matters is what is acceptable to an agency. If the business community come to think that the elected official can force the agency to take action against a specific enterprise or to back away from that enterprise, the legitimacy that has to accompany the operations of the agency vanishes.

Mr. Joe Angland in his remarks said that undoubtedly CCP had become a role model for the competition agencies developing countries.

He threw light on different influences that affect the independence of competition agencies and suggested remedies to them. These include executive influence, legislative influence, and judicial influence. He said that agencies should justify their Independence

by embracing international best practices to the extent reasonable and proper. They (agencies) should also exercise their independence with an eye toward international complications. Joe said that intelligent enforcement of anti-trust law is very important to encourage competition, but the improper and over-enforcement of anti-trust law to challenge desirable conduct can have extremely bad consequences. He said that effective competition enforcement confers real benefits, so the governments should appoint officials who will do the job well.

Dr. Khalid Ranjha discussed the independence of competition agencies in the Pakistan context saying that CCP has passed through turbulent times during last two years. He said that the Competition Ordinance failed for few times while legislation is also pending the parliament to convert the ordinance into an Act. He said that Competition Ordinance is for the benefit of the consumer and general public and it must continue to be enforced.

A question and answers session was held at the end of the session in which the speakers replied to several queries from the participants.

DG (Research) CCP Shahid Ahmed summed up the session and said that institutional independence of an agency refers to the status of the agency of an institution separate from the executive branch of government. An agency that forms part of the executive branch typically lacks independence. He further said that budgetary independence coupled with properly structured accountability arrangement is the important ingredient of independence of competition agencies.

## **Session 2**

### **Determinants of an Effective Competition Regime**

Member (Legal & OFT) Ms. Rahat Kaunain Hassan opened the session and discussed the challenges faced by the Competition Commission of Pakistan. The first challenge, she said was pushing the law from the temporary phase towards achieving permanency. Had the certainty come earlier, she added, the performance indicator of CCP she believed would have been much higher. She discussed the factors that have an impact on the effectiveness of a competition agency with particular reference to the situation in Pakistan.

Professor Richard Janda in his presentation linked competition policy to good governance and said that competition policy is very important for developing countries. He referred to some actions taken against some cartels in Pakistan and said that CCP was very effectively implementing the competition policy. He discussed the importance of creating a culture of independence of competition agencies.

Dr. Salman Shah in his speech talked about the emerging opening up of the markets for Pakistan through FTA with China, SAFTA, ECO, Central Asian countries, OIC and so on. Mr. Shah linked economic growth to the implementation of competition law. He said CCP has a very important role to play as it is one of the pillars of a competitive market economy. Along with State Bank of Pakistan, SECP and other regulatory bodies, CCP has the biggest role to play. Dr. Shah said that the work done by CCP has had a very positive impact on the Pakistani economy.

Joseph Angland in his speech discussed some characteristics of a successful competition regime focusing mainly upon the new regime that have started working during the last few years. The key elements of an effective competition regime, he said, were authority, independence, objectives, leadership, capacity, remedies, outreach, transparency and self-appraisal. A competition agency, he said should be able to assert its authority. The agency needs to have a proper set of objectives; it should be targeting what actually should be prohibited in the economy. Without proper objectives the agency will get strayed. Leadership is another important factor that will keep the agency functioning well. Capacity of an agency enables it to perform well and up to the mark. Outreach is extremely important especially for a new competition agency; it should constantly strive to persuade the stakeholders to increase compliance of competition law. Similarly, transparency and self-appraisal will make the agency effective in its working.

Mirza Mahmood Ahmed said that competition policy of any country is the system of check and balances which ensure the interest of the common people of that country. Competition law, in order to be effective, has to be sensitive to the demands of the country in which it is being implemented. In Pakistan, he said, the competition law is

facing a lot of resistance in getting validation of the parliament. Effective implementation of the law is extremely important for all developing countries.

Dr. Joseph Wilson summed up the session and said that for an effective competition regime, there is need to have a comprehensive competition law and an effective competition agency. He referred to the speeches of session panelists who talked about the determinants of an effective competition regime.

At the end of the session, the speakers answered questions from the participants.



## Session 3

### Importance of Advocacy in Developing Countries

The Chairman CCP, Khalid Mirza, opened the session with his remarks. Advocacy is the soft side of the work of a competition agency. It comprises all those activities that help promote and protect competition outside the area of law enforcement, i.e. the inculcation of sound competition modes and conduct through means other than law enforcement. Almost all competition agencies try to encourage and promote competition values and a culture of competition through advocacy and persuasion. The Chairman mentioned the actions taken by CCP to promote competition through advocacy.

Mr. Halil Baha Karabudak gave a lucid presentation and elaborated the concept and importance of competition advocacy in developing countries. He said that it is very important to spread education and awareness about competition law in the society in order to increase compliance. Public awareness of the benefits of the competition, respect of the competition authority and diffusion of the compliance culture should be among the missions involving competition advocacy and development of competition culture. He referred to the actions taken by Turkish competition authority as part of its advocacy campaign to promote competition.

Professor Richard Janda said Pakistan is not the only country that has faced problems in the enactment of competition law. He discussed the challenges faced by Canada in getting the competition law enacted. It took Canada 20 years of advocacy to get a piece of legislation adopted. Mr. Janda discussed the methods and techniques that a competition agency could use in running the advocacy campaigns effectively.

Mr. Javed Jabbar said that CCP has achieved credibility in a short period of time for which he facilitated its Chairman Khalid Mirza. He said it was heartening to note that Pakistan had a public sector institution which was working with dedication and honesty. "The credit goes to the Chairman of the Competition Commission of Pakistan, Khalid Mirza who is running the CCP as a real public service institution." He urged the government to extend the tenure of Khalid Mirza as CCP chief for another three years. He said that the role of CCP is extremely important to safeguard the rights of the citizens. Javed Jabbar urged the role of leadership in running the state institutions. Mr. Jabbar suggested that CCP may look into the existing version of PEMRA law to check whether they do not actually prevent fair competition in media sector.

Summing up the session, Mr. Imran Ghaznavi referred to the speeches of the panelists and said that credibility and trust is very important for the competition agency. He added that CCP has earned both credibility and trust by virtue of its actions. Mr. Ghaznavi said that CCP's advocacy agenda, inspired by the vision provided by its Chairman Khalid Mirza, has resulted in spreading a great deal of knowledge about the competition law. He concluded by commending media for its support to CCP.

## **Concluding Session**

The concluding ceremony was addressed by the Chairman CCP Khalid Mirza, Chairman Anglo Corporation Limited Asad Umar, Mr. Javed Jabbar and a representative of the Lahore Chamber of Commerce and Industry.

Mr. Asad Umar said that competition was the backbone of capitalist economy and essential for creating a level playing field to businesses. He lauded the role being played by CCP in promoting competition and encouraging businesses to improve their efficiency. He urged businesses to understand the concept of competition and the value of competition law.

Mr. Javed Jabbar in his speech urged the government to fully support CCP in all its matters. He called upon the civil society, the media and the citizens to stand by CCP in its campaign for consumer rights and free competition. He urged the government to extend the term of CCP Chairman Khalid Mirza for another three years to ensure continuity of policy.

The Chairman CCP, Khalid Mirza in his speech thanked all the speakers, organizers and the sponsors in organizing the conference. He thanked the media and all the participants of the conference for patiently attending all sessions. He said that as part of its advocacy efforts, CCP would continue holding such events in future as well.