

Competition Commission of Pakistan

Conference Report

Competition Regime in Pakistan

Karachi, Pakistan
11-12 January 2010

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Introduction

On 11-12 January 2010, representatives of industry, trade associations, regulators and journalists gathered in Karachi for the first National Conference on Competition Regime in Pakistan. The conference was organized by the Competition Commission of Pakistan (CCP) to provide a platform for exchange information on a number of competition-related issues in various sectors of the country's economy.

CCP is mandated under Section 29 of the Competition Ordinance, 2007 to promote competition through advocacy, which also includes creating awareness and imparting training about competition issues. Keeping this in view, CCP has adopted a proactive advocacy strategy and so far a number of activities have been organized nationwide for the awareness of a range of stakeholders. The National Conference on Competition Regime in Pakistan was one such major event. The conference served an important purpose by providing a platform to bridge gap between the Commission and all its stakeholders.

Besides information sharing and awareness raising, the conference served an important purpose of collecting direct input from the industry on the competition impact assessment of four economic sectors namely, Banking, Sugar, Energy and Automobile. CCP has initiated Competition Impact Assessment Studies in as many as 15 sectors of the country's economy.

The Conference was constructed around four topical sessions and one session on "Multinational Reach of Competition Laws: Need for Regional Cooperation" scheduled over two days. Each session began with brief presentations by industry representative and sector regulator, followed by vigorous discussion and debate.

Inaugural Session

Inaugural Session

An important feature of the conference's inaugural session was the selection of the chief guest – Maulana Abdul Sattar Edhi, Chairman of the Edhi Foundation. Speaking in the inaugural ceremony he said that problems like tax evasion and corruption needs immediate resolution to eliminate poverty from the country. He went on to say that Pakistan needs institutions like CCP, which are "independent and powerful" bodies to curb corruption. He criticized cartelization and misuse of power by the influential in the country belonging to all segments of the society, including feudal, industrialists and even the bureaucracy. He urged industrialists to rise to the occasion and contribute towards eliminating poverty from Pakistan.

President Federation of Pakistan Chamber of Commerce and Industry, Mr. Sultan Ahmad Chawla, in his speech, Mr. Chawla lauded the role being played by CCP in ensuring a level playing field in all economic activities. CCP has a very important role to play in keeping a watch over cartelization, unfair trade practices and other such evils. He called upon the business community to extend its co-operation to CCP.

Speaking at the inaugural session, CCP Chairman Khalid Mirza said that the Commission certainly needs the support of the government and its agencies. He said that implementation of the provisions in the law to provide tied and secured sources of funding to the Commission is essential to ensure its financial autonomy.

Political will of the government must back the Commission for it to become a truly effective, he added. "We are an independent public agency, discharging of our duty for market-based economy in rather difficult circumstances", he said, and added that the government of Pakistan realizes the importance of competition and deserves to be commended for putting in place the Competition Ordinance and its recent re-promulgation. "This is really a state-of-the-art law and has been globally acknowledged".

About the achievements of the Commission, he said that the Commission has moved very decisively against cartelization in various sectors, collusive tendering, abuse of dominance, unacceptable concentrations and deceptive marketing practices. The Commission has examined, and granted, some 110 pre-merger clearances, including one that was taken to the second phase of examination, and further about 200 potentially competition-reducing agreements have been exempted on grounds of economic merit, with and without conditions, under gateway provisions in the law.

The Commission has so far issued a total of five policy advisory notes to the government

and its agencies on various aspects of public policy and regulation, which were patently adverse to accepted competition norms. He pointed out that a variety of 'mafias' and vested interests, which included some of the parties against whom the Commission had acted or proceeded against, "are doing their best to either effectively destroy the law or weaken" the Commission.

"It is imperative that the civil society, right-thinking business elements and the government understand the benefits of this law to the country and the economy, and lend full support to its continued enforcement in its present sharp and form," he said. The CCP Chairman gave a succinct talk about the Commission and the range of activities it has been involved in. He also talked about the menace of cartels in the global economy, and the challenges to address the loss to the economy from cartelization.

The inaugural session was attended in large number by representatives of business community, trade associations, government departments, civil society and media.

Session 1

Session 1: Competition in Sugar Industry

Session Chair:	Ms. Rahat Kaunain Hassan (Member CCP)
Panelist:	Mr. Zakir Hussain (Trading Corporation of Pakistan)
Panelist:	Mr. Akhtar Abdul Haye (Joint Director, Applied Research Centre, University of Karachi)
Industry Rep	Mr. Shunaid Qureshi (Pakistan Sugar Mills Association)
Moderator:	Mr. Shahid Ahmed (Director General, CCP)

The subject generated great interest among the participants. CCP Member Legal Rahat Kaunain Hassan said that our aim is to make businesses understand that CCP is not against business but is completely pro-business. The sugar problem is not limited to Pakistan only. In Pakistan, the crisis is not that of the price but the availability of the commodity. As far as hoarding is concerned, this is a provincial subject. If the hoarding affects the competition in the market, CCP can intervene in the matter. She said that this conference is not the forum to see who is responsible for what but to identify what the problems are and to move ahead with making recommendations as to solve the problem.

Mr. Zakir Hussain, General Manager of the Trading Corporation of Pakistan said that efforts made by CCP to promote competition in the country's economy were remarkable. He said that one of the functions of TCP is to stabilize domestic prices. He clarified the impression that TCP was involved in any kind of hoarding.

Mr. Akhtar Abdul Haye of Economic Research Centre, University of Karachi, explained the overall assessment of the performance of the sugar industry of Pakistan.

He said that despite the multifarious nature of issues confronting the sugar industry, it appears that there are two major distortions which have created the entire upheaval in the industry. First, the political patronage from the government from the beginning has not helped the industry to establish itself on healthy footings.

Specifically, issuing of licences for sugar mills, liberal and non-transparent cost structure of establishing mills, undue expansion in the size of the industry and, above all, fixation of

sugarcane and sugar prices by the government have not promoted fair competition. Rather these have suppressed the entrepreneurial urge of investors, he added.

Second, the government should, instead, focus on ensuring production and trade efficiency, diversification of sugar industry from its traditional pattern and encouragement for research and development. Unless there is a reversal in the policies of the government with a clear focus on modernization of the industry and promotion of competition, the industry would work in the narrow confinement of a quasi-rent seeking industry.

He said that even though the sugar industry and the farming sector in aggregate terms portray a weak and inefficient sugar sector, there are evidences that suggest greater potentials reposed to act otherwise.

About price determination, he said that due to increased number of sugar mills in the region, there has been an intense competition across sugar mills to acquire higher supplies of cane to improve their level of capacity utilisation. Simultaneously, the mills at their collective levels attempt to favour price fixation in order to keep cost of production of sugar at low level.

The net effect of this dichotomous situation is reflected in higher cane prices dictated by the growers and accepted by the mills in order to remain in production. In the process, whereas a collusive behaviour of sugar mills is observed in fixing sugarcane price (which they themselves contradict in their individual capacity by paying higher cane price), the farmers also tend to collude in imposing higher cane prices keeping in view low capacity utilisation of mills, Akhtar added.

Mr. Shunaid Qureshi representing PSMA thanked CCP for giving an opportunity to the industry to present its perspective. About price determination, he said that it was totally a misconception that sugar prices are determined by the industry. It is also wrong that we are earning profits from poor people for becoming rich, as major quantity of the commodity is being consumed for commercial purposes. He requested the CCP to persuade the government to abolish outdated laws including Sugar Factories Control Act, 1950 to ensure fair competition in the sugar industry.

He said that sugar industry is highly regulated sector. The Commission should work with the government in abolishing the parts of the acts that are outdated and out of sync with free market economy and Competition Ordinance, 2009.

When the 'Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance' (MRTPO) 1970 was abolished, the CCP took the plea to introduce a law for promoting fair and free competition in the market in view of global international practices. On the other hand, sugar industry has been still being regulated by such old laws, which force to buy sugarcane at a fixed price under the said Act of Parliament. Both low and high quality sugarcane has to be purchased at the same price. "Even we are not allowed to operate mills at our own decisions. The CCP talks about the free competition for which these old regulations must be replaced with the new laws".



Session 2: Competition in Energy Sector

Session Chair:	Dr. Joseph Wilson (Member CCP)
Panelist:	Mr. Safeer Hussain (NEPRA)
Panelist:	Mr. Roland D’Ssouza
Industry Rep	Ms. Ameena Sohail (Independent Expert)
Moderator:	Amir Zia (KESC)

Dr. Joseph Wilson opened the session and said that energy being the infrastructure industry has far more reaching effects than any other industry that has an overall impact on the development of the economy. Energy being a natural monopoly, there is a lack of competition due to which companies tend to be inefficient and consumers suffer from higher tariffs. He said that Pakistan’s electric power requirement was 20,000 megawatt while the capacity to produce electricity was between 12000-16000 megawatt. He said that this session will focus on how to bring improvement in this situation.

Ms. Ameena Sohail in her presentation focused on competition in electric power sector. She said that through competition we expect that there will be fair pricing, the commodity we get will be affordable and there will be brakeage of monopoly and due to brakeage of monopoly there will be removal of constraints in supply, resultantly the supply are steady and there is no shortage, at the same time the premium of all of this quality assurance. She said in the energy sector there is lack of competition in that whosoever takes the risk of exploring a particular oil or gas field has control over the supply.

There is a need to find out the reason of current slow exploration in Pakistan. She said there is lack of efficiency in exploration of oil and gas in Pakistan as the public sector organization, OGDCL, which has 65 percent rights of exploration is not that efficient. She said that the areas where there are no gas pipelines depend on LPG and CCP recently gave a very important decision on that recently. Through the introduction of competition laws, what we expect that the sector specific laws, the policies, the procedures and the agreements, if tested through the competition laws, then we can say that we can expect to have qualitative, affordable and reliable power. She said that competition agencies around the world have a role to play in the energy sector, specially in mergers, competitive bidding etc.

Mr. Roland D'Souza said that for the government to thwart the cartels and monopolies is very difficult. He referred to the existence of cartels in Pakistan caught by CCP, saying these cartels are well connected. He said deregulated markets carries a lot of benefits for the consumers and the businesses themselves. He gave example of London where consumers have a lot of choice in using electricity. He emphasized the role of CCP in promoting competition in the energy sector for handling the problems being faced in the energy, especially the electric power sector.

Mr. Safer Hussain in his presentation threw light on the role of NEPRA in regulating the electric power sector in Pakistan.



Session 3: Competition in Banking Sector

Session Chair: Mr. Abdul Ghaffar (Member CCP)
Panelist: Dr. Agha Ghazanfer (CCP Consultant)
Panelist: Mr. Tariq Iqbal Khan (President Pakistan Banking Council (PBA))
Moderator: Mr. Shahid Ahmed (DG CCP)

Mr. Abdul Ghaffar opened the session with his remarks saying that banking is the key sector and all other economic sectors are dependent on it. He said that we have seen over the last 12 months bank failure can trouble the whole economy. That is the reason why CCP adopted Banking as the first field of its competition impact assessment studies.

Mr. Agha Ghazanfer in his presentation on the Banking Report published by CCP said that the issues confronted by banking sector are exactly the same all over the world. He said that he has found out that the experience of the banking sector world wide is similar and the issues confronted by the United Kingdom are the same as faced by countries like Ireland and South Africa. He said that the Banking Report is not an industry study and it does not examine profitability, efficiency or effectiveness of banks. Similarly, the report also doesn't look into the macro or micro economic conditions, but it focuses on competition issues.

Mr. Tariq Iqbal Khan in his presentation complemented the Competition Commission of Pakistan for having done "an excellent job during the past two years." He said that it was a matter of pride for the country that on various international forums the role played by the Commission has not only been accepted but appreciated.

Mr. Tariq Iqbal Khan threw light on the role of PBA saying that it has been working in close coordination with the State Bank of Pakistan in all important matters pertaining to the banking sector. He informed that PBA doesn't look into issues of individual banks, but when collective issues are confronted, it develops consensus to present its case to the regulator, taxation authority or the Government of Pakistan.



Session 4: Multinational Reach of Competition – Need for Regional Cooperation

Session Chair: Mr. Khalid Mirza (Chairman CCP)
Panelist: Mr. Vinod Dhall (Ex-acting Chairman & Member Competition Commission of India)
Panelist: Dr. Joseph Wilson (Member CCP)

CCP Chairman Mr. Khalid Mirza in his key note address in the session first acknowledged the presence of Mr. Vinod Dhall, who had come a long way from India to attend the National Conference on Competition organized by CCP. He said that domestic competition agencies do not have the capacity to check cross-border cartelization. To achieve this objective, effective co-operation among agencies and organized investigation is essential for checking international cartels.

Co-ordination is needed between countries while simultaneously conducting inspections and search in cases of organised international cartels. The bilateral agreements between agencies for sharing information would also help in investigation. The multilateral agreements could more help in such cases, he added.

As part of a greater global schematic to facilitate economic interchange, an international body, known as 'International Competition Network', or ICN, is devoted exclusively to competition laws enforcement and is currently working with its member countries to create recovery measures for the global economy. "Around 110 countries are members of the ICN and the member countries deemed forerunners of competition law are those whom today we call the developed world," he said. He strongly proposed creation of South Asian Competition Network (SACN) for providing an ideal platform to the regional countries for adopting global standards for enforcement of the competition laws.

He said: "It is crucial that Pakistan embraces a competition law for its own current state's economic betterment, but co-operation and active participation in global forums such as the International Competition Network is almost essential so that we may immediately benefit from the dissemination of global antitrust experience and best practices."

The government would promote the advocacy role of its own anti-trust agency and seek to help facilitate international co-operation in order for Pakistan's current economic

depression to be alleviated and allow local business entities to participate on a level playing field with not only each other but also with their international counterparts, Khalid Mirza added.

Dr. Joseph Wilson in his presentation highlighted the areas where multinational cooperation was needed. These were mainly the areas of mergers and cartels. He said for a domestic agency to probe multinational cartel, cooperation, coordination and information sharing, was needed. He underscored the need to have a SAARC-level competition network for cooperation and coordination. He said regional cooperation will further global cooperation

Vinod Dhall, a former chairman of Competition Commission of India, shared his views about the impact of competition agency on the Indian economy and need for educating the business and trade on the competitive laws for proper enforcement of competition laws.

He said that political support of the government is necessary for effective enforcement of competition laws for taking action against the cartels and companies involved in anticompetitive practices. It is very easy for the powerful lobbies and influential groups to pressurise government through political support. There is a need to strengthen the competition agencies with ample backing of the government to avoid political pressures. "Time has come to think at the level of the government for promoting competition through effective enforcement by such agencies. The regional competition agencies should have a forum to share their experiences. The CCP can share the studies being conducted by the Indian competition agency", he added.

Apart from government law, the South Asian Association for Regional Co-operation (Saarc) should also have some specific provisions relating to competition. He said that the Indian Chamber of Commerce and Industry has requested Pakistan authorities to enhance co-operation in promoting bilateral trade between the two countries. On behalf of Indian business and trade, he conveyed a message to promote trade between the two countries.

About global competition norms and jurisdiction, he said that cross border jurisdiction of the competition agencies is very necessary to take action against the international cartels. The Organisation for Economic Co-operation and Development (OECD) is the leader of the competition dialogue.

He pointed out that if anti-competitive behaviour of one country affects other country, the former should have the jurisdiction to take action against the involved undertakings in the other country. "What would be the situation when your companies go abroad and form international cartels, and what action could be taken against such cartels under the external jurisdiction?" he raised the question.

He said that some clauses of the Doha Agreement of the World Trade Organisation (WTO) talk about the competition laws. These references have been specified in the WTO agreement to ensure free and fair competitive trade through effective implementation of competition laws. The importance of competition laws is evident from the fact that WTO Agreement has also promoted measures to ensure free competition at the global level.

Every country engaged in enforcement of free trade agreements must have an effective competition law for providing level playing fields to all undertakings, he added.

He expressed hope that the competition law would come under the WTO discussion for checking anti-competitive practices and cartelisation globally. He said that the International Competition Network has constituted different working groups to exclusively work on the cartels, abuse of dominance position and anti-competitive behaviour etc. Recently, Indian competition agency has issued merger regulations to keep an effective check on mergers of the undertakings.

Stressing the need of positive co-operation among different competition agencies, he said that co-operation among agencies would ensure proper investigation against international cartels. This positive co-operation would help international agencies to collective work against such cartels. There should be provision in the international competition laws to approach the concerned country, whose companies have been involved in forming cartels in different countries. In case of several countries, such kind of agreements have been inked to share information and for taking collective action against the companies involved in cartelisation.

In reply to a question, he said that the best example of regional co-operation could be of European Union. The European model has become a true model for other regions to follow the competition law to deal with the issues of cross border jurisdiction. The gaps in the existing competition laws need to be removed.

He also emphasised upon developing a culture for fair and free competition. A separate forum should also be provided to the competition practitioners to discuss relevant issues on regular basis. The competition law must provide both efficiency and welfare of the consumers.

The annual regional conferences on competition would also help in sharing of information among countries. The next conference on competition laws is expected to be convened at Bombay by the Indian Chamber of Commerce. The former chairman of Competition Commission of India highly appreciated Khalid Mirza and his team for showing outstanding performance in taking actions against cartels and powerful lobbies since promulgation of the Competition Ordinance 2007.

A square logo with a black background and a white border. The word "Session" is written in white at the top, and the number "5" is written in white in the center.

Session 5

Session 5: Competition in Automobile Sector

Session Chair: Dr. Joseph Wilson
Panelist: Mr. Ahmed Qadir
Panelist: Mr. Abid Barki

Mr. Abid Burki, Professor of Economics at LUMS, in his presentation, explained that fluctuation in interest rates was interlinked with the growth of the industry. He shared data that the car leasing/financing also played a major role for achieving higher growth number of this sector during 2003-04 till 2006-07.

He said that car financing was increased to Rs 120 billion in 2006-07 from less than one billion till 1999-2000. He said that reduction in average mark-up rate on car financing also played a key role in rampant sales of cars. He said the average mark-up rate was 23 percent by 1998-99 which declined significantly to around 6 to 7 percent by 2006-07. That also gave boost to lease financing of cars. The capacity of car assemblers, he said, was also increased to 200,000 units during 2006-07 which was now again came down to 1,20,000 per annum.

He added that hike in prices of cars was directly linked with devaluation of exchange rate in terms of depreciation of rupee against US dollar. There was no indication that the auto sector was involved in any anti-competitive behaviour by establishing cartels to distort the market.

Mr. Ahmed Qadir in his presentation recommended import of new and old cars in all categories and change in market supply chain structure. "The industry must move from a reactive demand-based model to a just-in-time supply based model, which is international best practice and consumer friendly," he said.

The sector-specific study pointed out that car manufacturers' prices and production fall and rise at the same time. Keeping in view this trend, there is a need to closely monitor this sector to check whether it was being done deliberately, or economic factors were involved in such phenomenon. He raised a question, saying: "Do car manufacturers raise their prices in tandem?"

He informed that the CCP study has found that the automobile industry is facing the problem of low volumes/under utilisation of capacity, high prices, late delivery, premium, and slow transfer of technology. "The need for competition is much more pronounced now than ever before, to keep the industry afloat," he observed.

It was also pointed out that car production target for 2012 was envisaged at 500,000 units, and this target was unlikely to be achieved, keeping in view the existing situation of the sector. The Commission's analysis showed that total \$1.5 billion investment was made in this sector by providing 192,000 jobs, and the auto sector paid around Rs 63 billion in the form of duties and taxes.

The representatives of auto industry present in the session also expressed their views. They said that it was a misconception that the industry was not complying with the international standard, during manufacturing of safe cars.

Closing Session

The closing session was addressed by the President, Karachi Chamber of Commerce and Industry, Abdul Majeed Haji Muhammad, Senior Journalists Mr. Shamim-ur-Rehman and the Chairman CCP, Mr. Khalid Mirza.

Abdul Majeed Haji Muhammad appreciated the CCP services to curb cartelization and anti-competitive practices in the country. He called upon the business community to extend full cooperation to CCP in curbing cartelization and other menaces.

Mr. Shamim Ur Rehman, a senior journalist associated with daily Dawn, while speaking on the occasion said that CCP was doing a great job to purge the economy from cartelization and trade abuses. He urged media to extend its full support to CCP in its struggle to improve the country's economy.

Addressing the closing session, the Chairman CCP, Mr. Khalid Mirza, said that CCP will continue to play its role in promoting competition in all commercial and economic activities in order to enhance economic proficiency and protect consumers from anti-competitive behaviour.

He said the commission has completed studies on four important sectors of the economy i.e. sugar, energy, banking and automobile industry. On the banking sector, the commission's study report has been published while the other three would be published soon, he added.

He said the commission would conduct study on over 10 other sectors. Khalid Mirza said competition related issues were discussed in the conference in addition to debating the multinational scope of competition laws. The law further requires positive steps to create awareness of competition issues and a culture of competition through advocacy and persuasion. Talking to media at the closing session, the CCP chairman said the fixation and control of the prices is not the responsibility of the commission. "We take action on any irregularity in any sector on any complain," he said.

It is the commission's policy to adopt enlightened and progressive approach and we are supporter of trade. "We facilitate and assist the trade and resolve their problems," he added. The commission aimed to provide level playing field to all market participants in all sectors of the economy and to curb cartels and anti competitive practices.

He said the conference was inaugurated by renowned social personality Abdul Sattar Edhi. The integrity and services were the two important qualities for which his name was suggested to inaugurate this first two-day national conference, he added.

Appendix

Conference participants

Presentations/speeches