

2009

ANNUAL REPORT



Competition Commission of Pakistan



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MISSION

Competition Commission of Pakistan 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 in order to enhance economic efficiency and to protect the consumer from anti-competitive behavior.



Chairman's Message

It gives me great pleasure to present to you, the Second Annual Report of the Competition Commission of Pakistan (CCP). In our First Annual Report, I had stated that one of the principal tasks of the Commission was to create an awareness of competition issues and promote a culture of competition in Pakistan. In this regard, and as this Annual Report brings to light, the CCP has continued to make its presence felt by promoting and strengthening competition norms in the economy.



The Commission has moved very decisively against cartelization in various sectors, collusive tendering, abuse of dominance, unacceptable concentrations, and deceptive marketing practices. The parties affected include several banks, cement companies, a major refinery, the three stock exchanges, cellular companies, a leading business school, several leading newspapers, a government sponsored trust, a professional association, and PIA. Additionally, the Commission has examined and granted some fifty-seven pre-merger clearances during the year, including forty acquisitions, sixteen mergers and one joint venture. Further, ninety potentially competition-reducing agreements have been exempted on grounds of economic merit, with and without conditions, under gateway provisions in the law. In regard to public awareness, extensive and focused advocacy efforts were also undertaken, including four active sessions of the Commission's Competition Consultative Group (CCG) which comprises representatives of sector-specific regulators, senior business and financial sector executives, academics, and media persons.

So far, the Commission has issued a total of six policy advisory notes to the Government and Government agencies - including three during the year under review - on various aspects of public policy and regulation which were patently adverse to accepted competition norms. Apart from these policy notes, the Commission has also held open hearings and publicly announced its opinion with respect to two competition issues. One related to fixation of minimum retail prices at the behest of the tax authorities, and the second was regarding discriminatory tax treatment favouring a particular category of undertakings in a sub-sector of the economy. Lastly, in relation to structural aspects of the Commission, an advisory service has been instituted to assist business undertakings comply with the competition law, including an "Acquisitions & Mergers Facilitation Office" (AMFO) to provide advice with respect to the Commission's merger clearance regime; an "Office of Fair Trading" (OFT) has been set up to address issues pertaining to deceptive marketing practices; a comprehensive set of Frequently Asked Questions and their replies, as well as a variety of operational guidelines have been published; and an "Informants' Rewards Scheme" has been instituted to give cash rewards of up to Rs.5 million, payable in four stages, to "whistle-blowers" who confidentially expose cartel activity as well as other violations of the competition law.



However, I am constrained to observe that despite this substantial progress in enforcement of the Competition Ordinance, there remains an undercurrent of suspicion, if not of outright opposition, to the work of CCP. As the world economy suffered a severe downturn in 2008/09 and Pakistan's economy faced new challenges, many of the actions taken by the CCP came up against the criticism that there was a greater 'good', however defined, that was perhaps being potentially undermined by actions taken by the Commission. Fortunately for CCP, international opinion and policy stands behind competition law as a potent driver for achieving robust economic growth. It is now established that a sound competition regime has even greater relevance during hard times as compared to periods of economic boom.

In our report, 'State of Competition in Pakistan, 2009', CCP makes a powerful conceptual case that in a market economy, productivity and efficiency can only be maximized by promoting competition. As a matter of expert opinion, there is strong theoretical justification and ample empirical evidence that economies that have curtailed competition have only succeeded in stifling innovation and restricting output. But in projecting this case, the CCP has had to contend with determined opposition not only from groups affected by the Commission's measures, but also from other vested interests. I would like to reiterate that Pakistan is hardly a special case - there is absolutely no basis or evidence for arguing that the forces of competition will not work with equal efficacy in Pakistan as they have done in other countries. In fact, the reality is that jurisdictions that have implemented sound competition regimes have bestowed enormous benefits on both businesses and consumers. Competition law is really a win/win scenario for the economy as a whole.

In an economy with a long history of domination by the public sector and rent-seeking by the private sector, old habits naturally die hard. I should like to state here that the CCP is very much alive to weighing arguments about the value, or otherwise, of competition policy and law in particular situations and coming to a conclusion about how competition policy should be implemented with, or in the face of, other policy goals. I am fully aware that government policies have to balance the needs of both efficiency and equity in the economy. My own view is that these needs are not in contention and are certainly not mutually exclusive. Moreover, whilst in the current phase of having to deal with a variety of microeconomic pressures within a highly inflationary environment, the Government should be more alert to the danger that arguments, or any ensuing actions based on them, which are put forward to deal with a crisis situation are often revealed to be unnecessary or even misplaced when subjected to dispassionate analysis. Internationally, there is little doubt that arguments for fixing prices and curtailing competition in any sector of the economy, fall into that category. A competitive environment is more likely, all other things being equal, to lead to lower prices that can be sustained over the medium term.

Looking ahead to 2010, CCP has two challenges to confront. One, the Competition Ordinance 2009, must be approved and enacted by Parliament so that CCP may continue to carry on the work it is mandated to do without a sense of uncertainty looming on the horizon. The Competition Ordinance conforms to international best practice. I see no reason for Pakistan to be left behind, particularly when enhanced competition promotes innovation and productive efficiency which creates jobs resulting in increased purchasing power in the hands of the masses and as a consequence of that purchasing power, the entire market size expands. All this is fairly obvious and certainly, I expect that the Ordinance will, in fact, be ratified.



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The second challenge is implementing an effective competition regime in an environment in which microeconomic distortions and market failures are rife. In the State of Competition in Pakistan 2008, CCP had commented upon the many impediments to competition in Pakistan's economy primarily from a macroeconomic perspective such as the persistent fiscal and balance of payments deficits and exchange rate weakness. But in reality, for instance, policy-induced microeconomic distortions in terms of a complex array of often contradictory duties on raw materials, intermediate inputs and finished goods, have succeeded in largely negating what might be loosely described as a level playing field between domestic producers and competing imports. These matters are more fully explored in the State of Competition in Pakistan 2009.

Suffice it here to say that custom and excise duties, taxes and subsidies - indeed, all government interventions that affect pricing decisions in the economy - must ultimately operate within a coherent rationale. If not, they are likely to skew incentives by sending distorted price signals to investors and encourage anti-competitive behaviour on the part of producers, middlemen and retailers. CCP would like to strongly urge the Government to look closely at its tax and duty structures for all significant products and services in the economy and see where they need to be realigned so that such distortions can be eliminated over time.

Finally, I would like to especially acknowledge our Pakistani media for assisting CCP in its advocacy responsibilities. Establishing the rationale and need for a more robust competition regime is likely to be a continuing battle in which the preferences and attitudes of a more informed public are bound to play a critical role. It is gratifying to note that in its short life, CCP has established a strong presence in the eyes of the public thanks to continued support of the media and civil society. I look forward to their enduring interest and support as we strive to make competition, innovation and efficiency the driving forces of a more dynamic Pakistani economy.

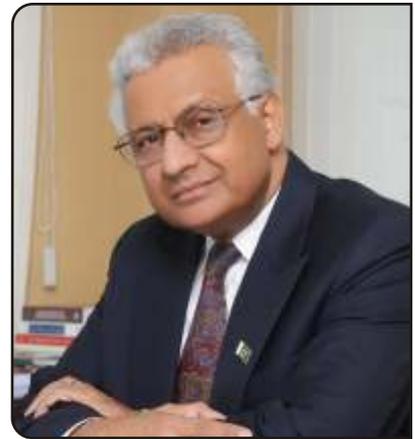
Khalid Aziz Mirza

CHAPTER 1

COMPOSITION OF THE COMMISSION

Mr. Khalid Aziz Mirza

Mr. Khalid Aziz Mirza brings with him over 40 years of experience. In the early part of his career (1968-83), Mr. Mirza gained extensive investment banking experience both in Pakistan (Investment Corporation of Pakistan: 1968-76), and in the United Kingdom (Credit & Finance Corporation: 1976-83) in the areas of project finance, corporate mergers and acquisitions, securities issuance and trading, and portfolio management. He served in IFC from 1983-2000, joining IFC as an investment officer in February 1983, in its Central Capital Markets Department and rising through successive promotions to become Division Manager in April 1989. Later, in 1992, he was appointed Regional Capital Markets Manager and has served as IFC's Chief of Mission in Turkey (1994-96) and Chief of Regional Mission in Thailand (1998-2000).



While with IFC, Mr. Mirza was essentially involved in pioneering highly profitable investments in a variety of financial institutions, banking and non-banking, in several developing countries in different parts of the world. This included investing in specialized investment funds, some with a pronounced private equity orientation. Countries covered for both investment and advisory work included: Argentina , Bangladesh , Botswana , Chile , Ecuador , Egypt , Ghana , Hungary , India , Jordan , Kazakhstan , Kenya , Morocco , Pakistan , Philippines , Rumania , South Africa , Sri Lanka , Thailand , Tunisia , Turkey , Uruguay , Uzbekistan and Zimbabwe .

As Chairman of the Securities & Exchange Commission of Pakistan (2000-2003) he implemented a major program of capital markets and corporate sector reform, including substantive measures to improve corporate governance. He also, implemented a series of carefully considered steps to enhance the institutional capacity of the Securities Commission and make it an effective regulatory body. Serving in the World Bank (February 2003-July 2006) as Sector Manager, Financial & Private Sector Development, East Asia and Pacific, his primary responsibility was managing the Bank's program to develop the Financial Sector and Private Sector in the East Asia and Pacific Region.

As Chairman Monopoly Control Authority (July 2006 -October, 2007), he implemented a program to improve the effectiveness of the institution; and also advised the government on its conversion into a modern competition agency, the Competition Commission of Pakistan.

Mr. Khalid A Mirza is the first and current Chairman of the Competition Commission of Pakistan.



Mr. Abdul Ghaffar

Mr. Abdul Ghaffar is associated with Pakistan's competition agencies since 2002. First, he served the Monopoly Control Authority as Member and later appointed as Member of the Competition Commission of Pakistan on October 2nd, 2007.

He was 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 Secretary, Finance.

As Member (Cartels and Mergers) he has taken several landmark decisions in cases relating to cartels, mergers and acquisitions.

Mr. Abdul Ghaffar has over 37 years of experience ranging from administration, public policy, finance, accounts, taxation, corporate laws, strategic studies, and competition & consumer protection laws. Earlier in his career he gained expertise in international dimensions of taxation laws while actively negotiating Pakistan's conventions of avoidance of double taxation of income with great number of developed and developing countries. For over thirty years he served in Federal Board of Revenue in various capacities dealing with administration of all direct taxes (Income Tax, Capital Tax, Gift Tax, and Capital Value Tax) as well as Sales Tax.

He earned his B.Sc (Physics & Maths) degree from Govt. College Lahore. Then obtained LL.B degree from University College Lahore and M.Sc. degree from Quaid e Azam University Islamabad. Before joining the government Service he was a practicing lawyer as member of Lahore District Bar.



Ms. Maleeha Mimi Bangash

Ms. Maleeha Mimi Bangash, Member, brings with her over 12 years of rich and varied international experience based in Singapore, Pakistan and Turkey in the areas of Investment and Finance. She has obtained her MBA degree (Marketing & Finance) from LUMS Pakistan and Executive MBA Honors (Finance) University of Chicago, International Executive MBA Program at Singapore. In her career to date she demonstrated a results oriented approach by exploring and developing new ideas and concepts. Ms. Bangash has assumed leadership roles and has been instrumental in the success of key projects.



In Singapore, as Vice President, Business Development of a financial firm, Global Strategies Private Limited. 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 MCB's Asset Management Company, Limited and headed its Marketing, Retail & Institutional Sales activities. Here she envisioned and setup the key functions of retail network, institutional sales and the entire marketing campaign.

Ms. Rahat Kaunain Hassan

Ms. Rahat Kaunain Hassan, Member (Legal), received an L.L.B degree from the University of the Punjab and an L.L.M degree from King's College London.

She is a recipient of the coveted Britannia Chevening Scholarship and specialized in the Law of International Finance and International Business transactions. She founded and was a Partner at the Law Firm, Hassan Kaunain Nafees, Legal Practitioners & Advisers, and before joining the Commission had over 15 years of practice as a corporate and commercial lawyer. 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 & Securities Market Division).



Her tenure at the Securities & Commission of Pakistan coincided with the implementation phase of the World Bank assisted Capital Markets Reform Project which aimed at developing a fair, transparent and efficient regulatory environment. She has also been the SECP nominated independent director on the Board of the Islamabad Stock Exchange.

Her experience and interaction with leading corporations as legal adviser coupled with the exposure she acquired during the time she held senior public offices provides her a unique perspective on regulatory approaches to resolving issues confronting the corporate sector.

Dr. Joseph Wilson

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

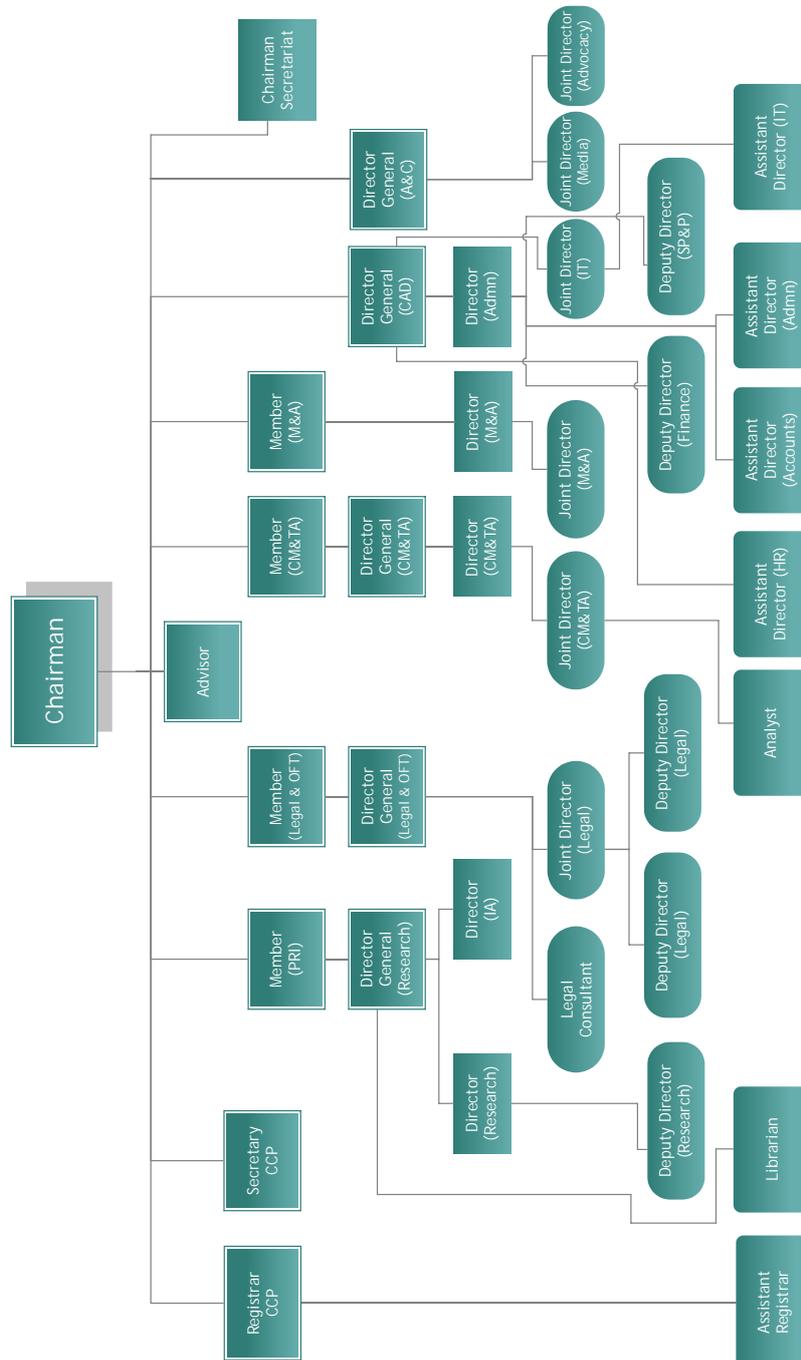


Prior to joining LUMS, Dr. Wilson taught at McGill Faculty of Law, and held an administrative position at its Centre for the Study of Regulated Industries.

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 Loyola University Chicago, Institute for Consumer Antitrust Studies, USA.

CHAPTER 2

ORGANISATIONAL STRUCTURE



ORGANISATIONAL STRUCTURE

The Commission is presently organised into the following departments:

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

Commission Secretariat

The Commission's Secretariat has been established pursuant to the Competition Commission [Conduct of Business] Regulations, 2007, and its framework includes overseeing the conduct of 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 as 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 Commission remains under the safe custody of the Secretary.

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 which is competition adverse and hence prohibited under the Ordinance, comes within 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 of this department.

Advocacy and Research

Overseen by Ms. Maleeha Mimi Bangash, Member, the Department promotes competition in the economy through means other than law enforcement i.e. all manner of activities that create awareness regarding competition issues and promote a culture of competition. The Department also



(as and when necessary or appropriate) looks 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, the Department carries out research to better inform the Commission regarding significant competition issues or to support an on-going investigation to assess the competition vulnerabilities of important economic sectors. Significantly the department is charged with the responsibility of preparing the annual report on the *State of Competition in Pakistan*.

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 comprising sector specific regulators, business executives, bankers, academics, and media to enable feedback for the Commission.

Lastly, Advocacy and Research oversees the CCP's Acquisitions and Mergers Facilitation Office (AMFO). AMFO was established by the Competition Commission Ordinance to facilitate those parties which are contemplating mergers or acquisitions (as defined in the Competition Ordinance 2007) and would like to benefit from the Commission's non binding view in the matter. AMFO also provides assistance to business undertakings that are seeking applying for merger clearance (i.e., help in completing merger clearance applications) and providing relevant information on how to apply for the Commission's clearance.

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.

In most of the enquiries conducted by the Commission, as of policy generally an officer from the Legal Department is a co-enquiry officer. The Office of the Registrar is housed in the Legal Department, 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 in procedural matters. The Commission has set up the Office of Fair Trading (OFT) to further its objective of creating a business environment based on healthy competition and to protect consumers from anti-competitive 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 legal aspects of the competition law with a view to aligning the Commission with developments in the

competition law regimes of more mature jurisdictions. Legal Department and undertakes extensive research on various competition issues and preparation of comparative statements comparing the Ordinance with the competition laws of more developed and mature jurisdictions.

Corporate Affairs

Overseen by the Chairman, 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 computerization and automation and all matters relating to information technology.

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

- Administration
- Human Resource
- Information Technology
- Accounts
- Finance

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

Appellate Benches of the Commission

Section 41 of the Competition Ordinance, 2007 (the 'Ordinance') provides that any undertaking aggrieved by an order of the Commission or an authorized officer of the Commission, may file an appeal to the Appellate Bench of the Commission within (30) thirty days of the passing of the Order.

The aforesaid Section 41 further provides that the Commission shall constitute an Appellate Bench comprising of not less than two Members to hear the Appeals and it shall not include in it the Member against whose Order an appeal is preferred. While the Commission has constituted 3 Appellate Benches, pursuant to the provisions of sub-section (2) of Section 28 read with sub-section (2) of Section 41 of the Ordinance, the Chairman of the Commission is authorized to constitute new Appellate Bench or re-constitute an existing Appellate Bench to hear the appeal against the order of any individual Member, in specific cases.

The Registrar of the Appellate Bench of the Commission: The Registrar of the Appellate Bench of the Commission scrutinizes the Appeals so submitted to the Appellate Bench of the Commission in order to verify that they are in conformity with the Competition Commission (Appeal) Rules, 2007. The Registrar of the Appellate Bench also present the Appeals before the Appellate Bench of the Commission, and subsequent to the direction of the Appellate Bench of the Commission, fix the date of hearing and intimate it to the appellants and assist the Appellate Bench of the Commission in conduct of hearing.



CHAPTER 3

AMENDMENTS IN THE COMMISSION'S RULES AND REGULATIONS

To ensure free and fair competition in the economy, the Competition Commission of Pakistan (CCP) in exercise of the powers conferred by Section 56 of the Competition Ordinance, 2007 (the Ordinance) has adopted certain amendments to the Commission's existing regulations during the reporting period of 2008/09. The new provisions deal with Regulations on Merger Control, General Enforcement, Leniency, Service Regulations and Conduct of Business Regulations.

The purpose of the amendments to the regulations aims to require all infringements of the law to come to an end and will bring a new wider approach to the regulations concerned. All the changes are an important part of the institutional structure and procedures of the Competition Ordinance. The main amendments during the reporting period are as follows:

Merger Control Regulations

The Merger Control Regulations were reviewed and amended. The ambit of the Regulations has been widened by incorporation of new thresholds and providing the exemptions from mandatory pre-merger notification vide S.R.O No. 1125(I)/2008 dated 30-10-2008. Two new clauses were added in the Regulation dealing with the threshold i.e., the acquisition of shares or assets of the value of Rs.50 million or more and acquisition of voting shares, which would entitle the acquirer to more than 10% of the voting shares. And after the existing clause (b) full stop was replaced with 'semi-colon' and the 'or' was inserted.

A new Regulation namely 4A has been inserted which deals with transactions that would be exempted from filing pre-merger notification. These transactions are those in which a holding company increases its stake in its subsidiary or the subsidiaries thereof (whether incorporated in or outside Pakistan) increase their equity investment in each other; shares acquired by succession or inheritance and allotment of voting shares pursuant to a right issue provided that the voting securities do not increase.

Regulations 4A which deals with the exempted transactions was further amended vide S.R.O. No. 421(I)/2009 dated 29-05-09 and any or all transactions i.e., merger, amalgamation and joint ventures between the holding and subsidiary companies were exempted from the mandatory pre-merger notification requirement. Further more, the acquisition of securities by the undertaking that is involved in the business of buying and selling securities either for itself or for others and re-sell it within a period of six months, was also exempted from mandatory requirement of pre-merger notification.



This deals with general regulations that apply to all undertakings doing business in Pakistan and which commit a contravention or are likely to commit a contravention of the prohibitions under Chapter II of the Ordinance and any other provisions of the Ordinance, Rules and Regulations. The General Enforcement Regulations were reviewed and amended. Some new regulations have been added, such as:

- (a) regulations on the taking of evidence, which covers the manner and nature of the evidence that may be adduced in the proceedings before it. This provision is helpful and convenient to refer to, when submitting evidence before the Commission as it provides a list of ways through which it may be done.
- (b) regulations on "production of additional evidence before the Commission", which the parties cannot submit if it was in the possession and knowledge of the parties but was not produced during the proceedings under section 30 of the Ordinance. However the Commission may allow for such evidence to be produced for examination. This amendment will strengthen the investigation powers of the Commission when conducting an inquiry.
- (c) regulation pertaining to mode and procedure for inspection and obtaining of certified copies was also added;
- (d) regulations pertaining to the conduct of proceedings before the Commission, which provides that, the presiding authority may seek assistance of any expert, adviser, consultant or officer/Member of the Commission to facilitate the orderly completion of the proceedings.
- (e) regulations pertaining to reward payment to informant scheme were also added, which provides that the Commission shall introduce a scheme of "Reward Payment to Informants" aimed at uncovering the and taking actions against cartel activity through guidelines and it further provides that this scheme shall not apply to the cases of leniency as per section 39 of the Competition Ordinance.

Service Regulations

The Competition Commission (Service) Regulations 2007 has also been amended. In the Service Regulations, the regulations pertaining to the annual increment has been amended. The amended regulation provides that the employees of the Commission shall be entitled to one or more annual increments depending upon their performance and ranking, and employees ranked unsatisfactory would not be entitled to any increment. The emphasis is on the performance of an employee in the amended provision. This addition is constructive as it will an incentives employees to produce better results and improve performance with the passage of time.



CHAPTER 4

CORPORATE GOVERNANCE

CCP strives to achieve certain strategic objectives as enunciated in the Competition Ordinance 2007. In this regard, its approach is based on understanding and support for voluntary compliance and the establishment of a win-win culture as far as competition issues are concerned. For quality management and fostering a culture of inter-departmental information sharing, a joint approach and mutual work on projects is encouraged. For this, CCP has established transparent business conduct rules, the Acquisitions and Mergers Facilitation Office and the Office of Fair Trading. Moreover, CCP issues advisory reports and policy notes/opinions to lay down and/or clarify from its own perspective, the proliferation of competition principles in the work of other government agencies. An overview of these efforts is provided in this section.

Business Conduct

The Commission's Secretariat has been established pursuant to the Competition Commission (Conduct of Business) Regulations, 2007. Its framework includes overseeing the conduct of the business of the Commission in accordance with approved procedures. The duties of the Secretary include, *inter alia*, issuing notices and minutes of meetings of the Commission, representing the Commission at any forum if authorized by the Chairman, certifying the decisions or documents used in hearings by the Commission, keeping the common seal of the Commission in his safe custody and performing all other duties as assigned by the Chairman.

The Commission held twenty eight meetings during the year in which proposals submitted by the operational departments were considered and decisions taken. The Chairman, in consultation with the Members, issued specific instructions to the Heads of Department for successful operation of the Commission.

Acquisition and Mergers Facilitation Office

CCP aims to provide guidance and facilitation to undertakings in complying with the Competition Ordinance, 2007. In this spirit the Commission has taken the initiative of establishing the Acquisitions & Mergers Facilitation Office (AMFO).

It performs the functions of a facilitator for the undertakings who are contemplating a merger or acquisition and wish to obtain an informal and non-binding view of CCP. AMFO provides assistance in filing merger clearance applications and also provides information about the proposed acquisition or merger. This service is also available for those law firms, consultants and third parties who wish to obtain CCP's informal view about any issue relating to merger and acquisition matter in which they are advising their clients.

AMFO also contributes to policy formulation, advice and to the law-making process and has so far put forward two proposals for amending the Competition (Merger Control) Regulation, 2007. Two working papers have been submitted by AMFO on the amendment of Regulation 4(a) of the Competition (Merger Control) Regulation, 2007 regarding acquisition pursuant to bonus shares, stock split, *in specie* distribution and merger of mutual funds in Pakistan.

The services of AMFO have been availed by UBL mutual fund, Cornelius Lane & Mufti, Ghani Automobiles Limited, Pakistan Petroleum Limited, Atlas Fund of Funds, Shahid Sultan Corporate Consultants thus for consultation.

AMFO has also formally advised in the matter of M/s JDW Sugar Mills Limited and M/s JS Bank. These undertakings applied for the opinion of the Commission in respect of their intended merger transactions.

All queries are responded to within a week. Inquiries may be made through the AMFO Hotline (051-9247538), through email (amfo@cc.gov.pk) or by writing to AMFO. More Details about AMFO are available at www.cc.gov.pk

Office of Fair Trade (OFT)

Recently the Commission has established the Office of Fair Trade (OFT) mainly responsible for the protection of consumers against deceptive marketing practices/anti- competitive conduct mentioned under Section 10 of the Competition Ordinance 2007. OFT mainly focuses on the aspect of consumer protection enforcement with the mandate to oversee and act as a watch-dog for misleading and deceptive marketing practices. At present the OFT operates through the supervision and control of the Legal Department. The establishment of OFT within CCP facilitates completes the picture of the competition agency in Pakistan and paves the way for creating and enhancing consumer awareness

FINING GUIDELINES:

The Ordinance empowers the Commission to issue directions and impose financial penalties on undertakings for contravention of the provisions of the Ordinance. In line with international best practices and the aim of ensuring transparency the Commission has issued Fining Guidelines in the year 2008. The aim of these, as stated, is to ensure transparency as well as facilitate a measure of certainty for the parties found to be in contravention of the law. These Guidelines also provide Policy Objectives of the Commission when imposing a financial penalty. These are:

- To deter undertakings from engaging in anti-competitive practices.
- To reflect the seriousness of the infringement.

These Fining Guidelines are not legally binding in every case. Neither are these a substitute for the Ordinance, Rules or Regulations made thereunder. They, in fact, provide certain aggravating and mitigating factors which the Commission can take into account when imposing a financial penalty.



Advisory Reports and Policy Notes/Opinions

In the short span of one and a half years the Commission has made significant progress in the implementation of competition law and policy. The Commission has deservedly earned a reputation of being a professional, well-administered and competent body in discharging its mandate. Through both enforcement actions and competition advocacy, it has not shied away from trying to rectify anti-competitive business practices and Government policy interventions, and has put forward more pro-competitive alternatives in the form of policy notes and opinions. During the year under review, CCP issued several advisory notes. A brief account is presented in this section.

Note to the Government on the Cement Sector

Taking exception to CCP's inspection of All Pakistan Cement Manufacturers Association's (APCMA) office, the Ministry of Industries and Production complained to the Prime Minister that "raid of CCP has caused serious harassment among the cement manufacturers", and that CCP's action might "erode confidence of the investors, particularly the foreign investors".

CCP noted that the MOIP also involved the cement industry in negotiations on cement prices and started a process of reconciliation of costing differences. CCP pointed out to the Government, on 3rd September, 2008, that it should not take any step that encourages collusive behaviour on the part of cement manufacturers.

Advisory Note to the Securities and Exchange Commission of Pakistan (SECP)

The SECP issued a Circular 26/2008 dated November 5, 2008 directing all asset management companies to value debt securities held by the collective investment schemes (mutual funds), after applying the appropriate percentage discount rates specified by SECP.

CCP reviewed the said circular and, with a view to promote competition norms through advocacy and persuade all economic agents, government agencies and regulators to act in accordance with the Competition Ordinance 2007, CCP sent a note to SECP

In CCP's view, the Circular appears to be in contravention of Chapter II of the Competition Ordinance, 2007. It is obvious that by specifying the exact percentage of discount rates whereby debt securities are to be valued by mutual funds the Circular substantively fixed the prices which money market mutual fund certificates are sold and redeemed. The Circular is adverse to competition. Markets function best if competition prevails and prices are determined by market forces of demand and supply. By dictating the arbitrary valuation of underlying debt securities, SECP distorted the operation of the market and adversely affected the process of price discovery of mutual fund certificates. In January 2009, it was strongly recommended that the Circular may be withdrawn by the SECP.

Advisory Note on IAS 39 Reporting Requirements

CCP noticed the reports in the press regarding the relaxation being sought with respect to IAS 39 reporting requirements. There appeared to be a vociferous body of opinion urging that any impairment in investments available for sale based on equity values prevailing on December 31, 2008 should be recognized directly in the Balance Sheet as a diminution in equity rather than this being first recognized as a loss in the Profit & Loss Account. It was strenuously argued that since the equity market was dysfunctional for about 100 days due to the imposition of a floor and that it only resumed ordinary functioning as late as on December 15 (upon removal of the floor) the period of half-a-month till the end of December was insufficient for the market to recover its normal equilibrium.

CCP was of the view that: the IAS 39 is a comprehensive and sensible directive covering all aspects of financial asset recognition and measurement; and whether or not the impairment is recognized in the Profit & Loss Account, the financial position of the entity as reflected in the Balance Sheet remains the same.

CCP was also of the view that an overstatement of profits by means inconsistent with established norms and practice would potentially misinform and mislead investors. It would not only be abhorrent to public interest, but also may be tantamount to a violation of Section 10 of the Competition Ordinance, 2007 on Deceptive Marketing Practices. In February 2009, CCP requested SECP to take into consideration the contents of this note in formulating an appropriate directive in the matter of IAS 39 reporting requirements.

Draft Bill to Provide for Corporatisation, Demutualization and Integration of Stock Exchanges

CCP reviewed the draft bill to provide for "corporatisation, demutualization and integration of stock exchanges in Pakistan". CCP expressed its concerns with regard to one aspect of the draft bill which raised competition issues, namely, the provisions pertaining to integration (or merger) of the stock exchanges, i.e., sections 17 and 18.

In its policy note, the CCP noted that under the Competition Ordinance, 2007, Pakistan has a mandatory merger clearance regime whereby all mergers must be pre-approved by CCP. The law has imposed an onerous responsibility on CCP to ensure that no merger takes place that materially reduces or distorts competition in the relevant market, and in allowing a merger, CCP may, in its discretion, impose such conditions as are necessary to ameliorate or prevent any competition-adverse situation arising in the aftermath of the merger. This is, perhaps, the most significant public interest duty entrusted to CCP in connection with which CCP has acquired the necessary technical expertise which it brings to bear in each merger transaction submitted to it for clearance.

CCP observed that the Draft Bill did not specifically require that the "scheme of integration" prepared by the stock exchanges in terms of section 17 be cleared by CCP (in accordance with section 11 of the Competition Ordinance, 2007) as is the case with all mergers. In fact, this is definitively obviated by the non-obstante provision in section 25 of the draft bill which would give the proposed law over-riding effect over all other laws.



CCP was of the considered opinion that no useful purpose would be served by excluding CCP from considering and approving any scheme of integration prepared by the stock exchanges. In order to safeguard public interest, such a merger scheme must be professionally vetted by CCP and competition issues, if any, duly addressed before it is allowed to proceed.

Clearance by CCP can precede or follow approval of the integration scheme by SECP. Provision for this can be made in the draft bill by way of an appropriately worded section following section 18 or by appropriate language in section 25 that precludes the Competition Ordinance, 2007 from being overridden by the draft bill.

CCP is an important tool and resource for the Government to use to full advantage for promoting economic efficiency and consumer/investor welfare through enhanced competition. The Government must utilize the expertise of CCP when giving consideration to any proposed merger of stock exchanges so that the approval accorded is premised on such conditions as are necessary to allow the fruits of competition and contestability to accrue to all stakeholders i.e., the investors, the issuers, the brokers and the general public.

Opinion on Fixing a Minimum Price in the Cigarette Industry sent to Federal Board of Revenue

CCP took *suo moto* notice of advertisements, published in June 2008, by leading tobacco companies of Pakistan pertaining to pack prices of cigarette brands. The Commission also took notice of an advertisement by Federal Board of Revenue (FBR) printed in August 2008, declaring a minimum price for cigarettes and rendering it illegal to sell cigarettes below such minimum price. The fixing of minimum prices appeared to be a prima facie violation of Section 4(1) of the Competition Ordinance, 2007 (Ordinance). However, considering the plea of the manufacturers and FBR that the alleged actions were undertaken as per the taxation laws of Pakistan, the Commission, instead of conducting an enquiry under Section 37(1) and/ or initiating proceedings under Section 30 of the Ordinance, chose to conduct an open hearing and issue an opinion under Section 29 (c) of the Ordinance as to whether there was any conflict under the existing laws in this regard and, if so, how could that concern be addressed.

Pursuant to the public hearing and submissions made by the parties, the Commission was of the considered opinion that the conflict did not exist in the legal framework but rather it arose when FBR overstepped the mandate envisaged under law. The Federal Excise Act 2005 (Excise Act) empowers FBR to fix minimum prices only for the purposes of levying and collection of taxes and duties, and not for the purpose of selling cigarettes. The restriction imposed by FBR on manufacturers and other persons associated with the cigarette business of not selling cigarettes below its prescribed minimum price is not envisaged under the law. Section 12 (4) of the Excise Act and Section 2 (27) of the Sales Tax Act, 1999 clearly provide that the retail price is to be fixed by the manufacturers and the law does not by any means bar manufacturers from selling at a retail price below or above the minimum retail price prescribed by FBR. Hence, while FBR may legally set a minimum price on cigarettes to impose tax upon, it may not stop the manufacturer's wholesalers or retailers from selling the cigarettes below that price. Thus it is the implementation and not the law that is giving rise to an anomalous situation.

A similar situation arose when FBR required manufacturers to print their retail prices in the newspapers, creating an automatic mechanism for manufacturers to monitor prices of their competitors, thereby preventing and restricting competition. Sharing of information such as price tables may facilitate anti-competitive behavior since it is likely to eliminate uncertainty as to the future conduct of competitors in the relevant market and inevitably may affect future commercial policies of the undertakings. The Commission therefore recommended that all parties immediately desist from advertising cigarette prices in the print media.

In the Commission's view, the imposition of such a restriction by the FBR Resulted in prescribing minimum retail prices at two levels; first by FBR itself, and subsequently, by the manufacturers who while printing the manufacturer's recommended price use FBR's minimum retail price as a benchmark and prescribe the recommended price over and above FBR's minimum retail price. A random market survey revealed that in most cases, the actual retail price of different brands of cigarettes is above the manufacturer's recommended price printed on cigarette packs and published in advertisements. Resultantly, the manufacturer's recommended price then operates as a minimum price, enabling retailers to sell over and above such price. In this entire process neither FBR nor the consumer benefits in any manner.

The Commission was of the view that where manufacturers enjoy dominance in the relevant market, printing either minimum or maximum prices may have anti-competitive effects. However, if a choice has to be made, the maximum price is a better option because it is considered to have some pro-competitive effects. Perusal of the tax laws in Pakistan indicated that cigarette manufacturers are supposed to print maximum prices on cigarette packs. According to Section 12 (4) of the Excise Act, in case of intra-brand price difference, the price to be printed on the packs is the maximum retail price of that brand. However, a misconception has emerged in the market that the prices printed on the cigarette packs is a minimum retail price set by the manufactures. Moreover, the retail prices published in the newspaper advertisement are likely to be misconstrued as the fixed retail price of cigarettes rather than manufactures recommended price. This appears to be in contravention of Section 10 (2) (b) of the Ordinance, which deems distribution of information lacking reasonable basis related to the price of goods as deceptive marketing. The consumer must, in our view, be clear as to what Retail Price/ MRP stands for as it can be interpreted either as; (1) Manufacturer's Recommended Price, (2) Minimum Retail Price, or (3) Maximum Retail Price. In our considered view, if FBR would require the manufacturer's to print the maximum retail price as Max. R.P. it would remove any misconception in the mind of consumers regarding price.

The Commission also took into consideration international precedents in this matter. The European Union's Commission on Competition has taken the view that manufacturers should be allowed to fix maximum prices and at the same time, EU states should raise both fixed and variable taxed tobacco products to increase tax revenue and safeguard health concerns. In EU, the structure of the taxation system indicates that it was intended that a particular amount of taxes would be made specific i.e. in Euros while the *ad valorem* would be charged on a maximum retail price given by the manufacturer. This way no tax may be evaded and competition is ensured.

CCP advised FBR and the manufacturers to stop publication of advertisements pertaining to minimum retail price with immediate effect. FBR, however, is empowered to intimate to the concerned undertaking what it deems the minimum price for the purposes of levying tax on the concerned goods and collect the same accordingly. Moreover, FBR may require the undertakings to print on the



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cigarettes packs in unambiguous terms the maximum retail price. The Commission believes that the printing of a maximum retail price on cigarette packs would have a three fold advantage. Firstly, it would not in any manner impact FBR's attempt to plug the loopholes in the current tax collection system as FBR can continue to prescribe the minimum retail price for the purposes of levying and collecting tax. Secondly, it would prevent retailers from overcharging consumers because the price would be capped at the maximum retail price. Lastly, if at all placing the maximum price has an impact on pushing prices up that may help in deterring and discouraging consumers from use of cigarettes, thus catering for consumer protection as well as addressing Health Ministry concerns.

CHAPTER 5

HIGHLIGHTS OF ACHIEVEMENTS

CCP issued a number of decisions of major significance regarding various aspects of competition law from June 2008 to June 2009. The decisions passed by the CCP are briefly discussed below.

A. Abuse of Dominant Position

- *Bahria University*
On the 24th of July, 2008, the CCP passed an order against Bahria University for abuse of dominant position in contravention of Section 3 of the Competition Ordinance 2007. 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 appeared, prima facie, to violate Section 3 of the Ordinance. The University was directed to pay back to the students, who purchased laptops on installments, an amount totaling Rs.10 million pro-rated on the basis of the interest amount paid so far, and to be paid in the future by each student. The University was further directed to desist from making the purchase of laptops compulsory to the students and to pay students the rebate as mentioned. Furthermore, they were asked to submit a compliance report.

M/s. Mobile Communications Ltd and Others (Mobilink GSM):

The Undertaking is selling the product, Blackberry[™] along with the following products:

- i). Blackberry Internet Service (BIS, BES, BES Plus),
- ii). Mobile Télécommunications Service (Voice, SMS).

The Undertaking was charging the price of three products separately from the users and, it integrated/tied-in the three products in such a manner that if a user surrenders one product, for example mobile telecommunication service, he is denied of the internet service. The undertaking did not activate Blackberry internet and telecommunication service on Blackberry handset, if the handset is not purchased from it. Such tie-in arrangement, was held to be unreasonably restrictive trade practice as defined under sub-clause (ii) of clause (b) and clause (c) of sub-section (1) of Section 6 of the MRTPO, 1970.

The matter was disposed off vide Order dated 25-07-2007 and the undertaking was directed to:

Make full disclosure and inform all its customers regarding the SIM lock feature. Importantly, all advertisement and promotional sales material with respect to BlackBerry handsets will in



future carry a boldly displayed clear statement that the sales of these handsets are linked/tied with the BlackBerry service and Mobilink GSM Mobile telecommunication service;

- a). disclose the amount of subsidy, in each sale and a reasonable time period not exceeding one year determined
- b). on the basis of a pre-established formula on expiry of which the subsidy would be deemed recovered;
- c). inform the customers how the subsidy could restrict the customers ability to unlock the SIM lock feature;
- d). provide an unlocking procedure that must be convenient to the customer (e.g. not involving return of handset to a manufacturer);
- e). make the SIM locking time bound for the customer, keeping in view, international best practices but not exceeding the time period determine as per (b) above; and
- f). provide the option to switch over to another service provider upon payment of a specified, reasonable fee if the customer wants to switch prior to the expiry of the term.

NOTE: The action was initiated under the provisions of Monopolies and Restrictive Trade Practices (Control & Prevention) Ordinance, 1970 (MRTPO, 1970) by the defunct Monopoly Control Authority (MCA). However when the MRTPO, 1970 was repealed the order was passed by the Competition Commission of Pakistan as the successor MCA under Section 59 of the Competition Ordinance.

SIZA Foods (Private) Limited (In the matter of Murree Brewery Company Limited v SIZA Foods (Pvt) Limited):

Murree Brewery Company Limited filed a complaint with the erstwhile Monopoly Control Authority (MCA) vide its letters dated 8th and 20th August 2007 that fast food restaurants, namely, McDonalds, Pizza Hut and Kentucky Fried Chicken (KFC) had refused to entertain its offer to sell non-alcoholic beverages, *i.e.*, Malt 79, Cindy, Lemon Malt, Original Lemonade and Big Apple, as all of them have exclusive arrangements with either Coca-Cola or Pepsi Cola. The facts as stated in the complaint, *prima facie*, seemed to violate Section 3 read with Section 6 of the Monopolies and Restrictive Trade Practices Ordinance, 1970. Section 3 of the MRTPO prohibited "undue concentration of economic power, unreasonable monopoly power or unreasonably restrictive trade practices", whilst Section 6 provided instances of practices which were deemed to be "unreasonably restrictive trade practices. Based on the undertakings given by SIZA and GAM, and on the fact that the Complainant is satisfied that SIZA will give due consideration to its products, Show Cause Notice No. 03/2008-09 dated 24th November 2008 issued to SIZA Foods (Pvt.) Limited was disposed off vide Order dated 24-04-2009.

NOTE: The action was initiated under the provisions of Monopolies and Restrictive Trade Practices (Control & Prevention) Ordinance, 1970 (MRTPO, 1970) by the defunct Monopoly Control Authority (MCA). However when the MRTPO, 1970 was repealed the order was passed by the Competition Commission of Pakistan as the successor MCA under Section 59 of the Competition Ordinance.

▪ *Pakistan Steel Mills Corporation Limited (PSM)*

On the 15th of May, 2009 the CCP passed an Interim Order on request for judgment against PSM. The CCP took suo moto notice of the news items published on 12, 13 and 14 February, 2009 in The News that most allocations of critical raw material known as steel billets were being allocated to a particular entity known as the Abbas Group and the remaining users of steel billets were not getting these in time or in the quantities required by them. The CCP carried out an enquiry which was concluded on April 10, 2009. It was found that the undertaking, prima facie held a dominant position in terms of clause (e) of sub-section (1) of Section 2 of the Ordinance being inter alia the sole domestic manufacturer of the product and in terms of its finding prima facie violations of clauses (g)&(h) of sub-section (3) of Section 3 of the Ordinance. The undertaking was therefore served a Show Cause Notice on April 29, 2009 and was called upon to show cause and appear before the CCP on May 19, 2009. On the request of the undertaking's counsel the matter was adjourned to 29th May 2009 and the undertaking was directed to reply to the Show Cause Notice on or before 27th May 2009.

Upon receipt of written reply to the Show Cause Notice from the undertaking, a three Member bench of the Commission conducted various hearings and provided the undertaking and respective stakeholders opportunity for a hearing. The Commission has concluded the hearing.

▪ *Karachi Stock Exchange*

On the 29th of May, 2009 the CCP gave a ruling against the Karachi Stock Exchange (KSE) for abuse of its dominant position contrary to Section 3 of the Ordinance. The exact issue was whether refusal by the KSE to share its trading platform with ISE and LSE amounted to an abuse of dominant position under the Ordinance. The Commission directed that refusal to deal on the part of KSE should not continue. KSE, was, therefore, directed to take such measures along with the other exchanges of Pakistan to enter into an arrangement similar to that of UTS (Unified Trading System) existing between LSE and ISE to ensure availability of and access to the best price of commonly listed securities (on all exchanges) to all investors including those of LSE and ISE (regardless of geographical location). This was necessary to restore competition in the relevant market. Upon failure to comply with this direction KSE would be liable to pay a penalty of Rs.50 million at the end of the six month period and thereafter an additional penalty of Rs.250,000 per day if the non-compliance continued. To facilitate implementation the CCP further directed that if reasonable commercial terms for the arrangement/facility were not agreed between the parties within two months of the date of the Order, any or all parties could make a reference to the CCP which would then proceed to appoint a firm of chartered accountants to make such determination. Under all circumstances it would be KSE's responsibility to ensure compliance within the stipulated time periods.



B. Prohibited Agreements/Cartels

- *Institute of Chartered Accountants of Pakistan (ICAP)*¹
On the 4th of December, 2008 the CCP passed a decision against ICAP. The CCP found that fixing of the minimum hourly charge-out rate and the minimum fee for audit engagements by the Council of the ICAP laid out in ATR 14 violated Section 4(1) of the Ordinance. The undertaking was directed under the Order to inform its members through a circular regarding withdrawal of ATR 14 from the Members' Handbook, Volume-II, Part-II Section (c) and further to publish notice of withdrawal in two newspapers, one English and one Urdu, nationwide circulation before December 19, 2008 failing which a penalty in the sum of Rs. 300,000 per day of infringement was to be recovered from the undertaking under Section 40 of the Ordinance.
- *All Pakistan Akhbar Farosh Federation, All Pakistan News Papers Society (APNS)*²
On the 23rd of April, 2009 an order was passed against the All Pakistan Akhbar Farosh Federation, APNS and 13 other members/conveners. There were three issues in this case. Firstly, whether the Minimum Cover Price Formula issued by APNS to all its members constituted price-fixing thereby violating Section 4(1) of the Ordinance, secondly, whether the decision of the Sub-committee on Cover Prices of APNS to set minimum prices and subsequent formulae constituted newspaper price fixing, thus contravening the said provision and lastly, whether the agreement of the All Pakistan Akhbar Farosh Federation with APNS to ensure that no newspaper violated the Minimum Price Formula constituted a restrictive trading condition with regard to the sale of the newspapers thus violating Section 4(1).

Since all the Undertakings had filed Commitments pursuant to Part IV of the Competition Commission (General Enforcement) Regulations, 2007, therefore, a lenient view was taken by not imposing any penalty on the undertakings under Section 38 of the Ordinance. However, APNS and its sub-committees were directed to issue a press release within seven days of the receipt of the Order containing the following information:

“The Minimum Cover Price Formula issued on April 29, 2008 and May 2, 2008 should not be considered a directive of APNS. Neither APNS nor any of its have the power to direct its members to fix a certain price for their respective newspapers, nor can it enforce recommendations regarding cover prices of newspapers. The formula was just recommendatory in nature. The individual newspapers should set their price independently and that the decision to set a minimum cover price is unlawful and therefore withdrawn” .

The Order was duly complied with by the undertaking concerned.

- *Stock Exchanges: KSE; LSE and ISE*³
On the 18th of March, 2009 the CCP passed an order against the three stock exchanges i.e. Karachi Stock Exchange (KSE), Lahore Stock Exchange (LSE) and Islamabad Stock Exchange (ISE) as they were found to be in violation of Section 4(1) of the Ordinance by imposing a minimum price floor on the trading prices of listed securities. The stock exchanges were penalized as follows:

¹ Discussed more fully in Chapter 10

² Ibid

³ Ibid

- i. KSE for a sum of rupees six million (Rs 6,000,000).
- ii. LSE for a sum of rupees one million (Rs 1,000,000);
- iii. ISE for a sum of rupees two hundred thousand (Rs 200,000).

C. Deceptive Marketing Practices

The Office of Fair Trading at the Commission has also moved very decisively against the undertakings for their deceptive marketing practices, these are:

China Mobile Pak. Limited - 8 Anay per call offer:

The Commission took *suo motto* notice of the advertisements of China Mobile Pak. Limited (the CMPak) where under its '8 Anay per call' offer was advertised on various media channels, in which, it was publicized that, the users of ZONG network can now call to one number of any network at '8 Anay per call' and they can change that number anytime. CMPak was asked by the Commission to provide the details of the advertisement in order to verify that no misleading information has been provided to the customers.

The information provided by CMPak relating to '8 Anay per call' offer was not in conformity with the advertisements. Since, CMPak *prima facie* appeared to be distributing false or misleading information to customers/consumers and does not appear to disclose clearly to customers/consumers the true terms and conditions of the '8 Anay per call' offer; therefore, a Show Cause Notice was issued on January 13, 2009.

By the end of the reporting period the Commission has concluded the hearing in the matter and an Order is expected shortly.

M/S Pakistan Telecom Mobile Limited - Ufone Uwon Package

The Commission took a *suo motto* notice of the advertisement of Pakistan Telecom Mobile Limited (the Ufone), where under its *Uwon Package* has been advertised on various media channels, in which, it was publicized that, (a) *Uwon* package offers the cheapest calling rates not only in Pakistan, not only in Asia but in the world; (b) the users of 'Ufone - Uwon' package can call on any network at the cheapest call rates; and (c) *Ufone* packages provide the best connectivity services to its customer as compared to other mobile operators. Ufone was asked by the Commission to provide the details of the advertisement in order to verify that no misleading information has been provided to the customers.

The information provided by the Ufone was examined keeping in view the facts of the case, the claims made by Ufone of its advertised *Uwon package* and the actual facts, appeared to be contradictory and misleading, therefore, a Show Cause Notice was issued on January 15, 2009 to Ufone. By the end of the reporting period the Commission has concluded the hearing in the matter and an Order is expected shortly.

Banks - term/time deposit accounts:

The Commission took a *suo moto* notice of the advertisements published in the print media, against MyBank Limited, United Bank Limited, Askari Bank Limited, and Habib Bank Limited for advertising term/time deposits accounts giving exaggerated and incorrect profit rates, and conducting a detailed enquiry under Section 37 (2) of the Ordinance which was concluded vide Enquiry Report dated 2009.



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In terms of the enquiry report the aforementioned banks, *prima facie*, appear to be distributing false or misleading information to customers/consumers lacking a reasonable basis related to the character of the product advertised in terms of clause (b) sub-section (2) of Section 10 of the Ordinance as; (a) No due disclosure is made to the depositor that interest paid annually can not be added to the principal as may be otherwise done in term deposits; (b) The advertised Indicative Profit Rate is deceptive in that the investment is not being cushioned for the decreasing real value of money for the time period of the deposit as is generally done in term deposits; (c) there can be a substantial difference between the advertised Indicative Profit Rate and the actual Annualized Rate of Expected Return depending on the term of maturity; (d) the advertised Indicative Profit Rate is deceptive and misleading in that it does not duly disclose that the rate advertised for the term shall further vary depending as to when payments are received by the customer (i.e. on monthly, quarterly or half yearly basis); (e) there is no due disclosure that the profit rates offered by them are only applicable when there is disbursement on maturity, while the condition is stated on the advertisement in small print it is hardly legible and is likely to mislead the customer as to the true terms and conditions of the scheme. Consequently Show Cause Notices were issued to the aforementioned Banks.

The Commission has concluded the hearing, it is pertinent to point out that all the banks ensured the Commission during the course of hearing that the advertisements have been stopped and removed from the public domain. The banks also filed commitments/ undertakings before the Commission under Part IV of the General Enforcement Regulations to obtain a favourable Order. The detail of which is as follows:

"That, any/or all other advertisements or promotional materials, in print or electronic form or otherwise, in relation to the Product shall be withdrawn from the public domain no later than end of April, 2009.

That, henceforth, our advertisements, promotional materials or instructional manuals, in print or communicated through the electronic medium or otherwise in relation to any product or service shall clearly specify the rate of profit or rate of return offered to the customers along with true and correct information relating thereto in clear legible font in a manner comprehensible by an ordinary/average consumer disclosing, without prejudice to the generality of the foregoing: (i) that the rate of return being offered is calculated on simple interest rate or as the case may be; (ii) that the rate of profit varies depending on maturity tenure and/or pay out periods (monthly, quarterly, bi-annually or otherwise); (iii) that the terms and conditions apply, which will be reasonably accessible to a potential customer; and (iv) disclaimers (if any) therein shall also be stated in clear terms, which is understandable, readable and/or audible (as the case may be) for an ordinary consumer.

That, we shall comply with any and/or all directions of the Commission in the subject proceedings and shall ensure compliance with the provision of Section 10 of the Competition Ordinance, 2007, letter and spirit, in relation to any distribution of information or making any future advertisement in relation to our products."

An Order is expected shortly.

Proctor and Gamble Pakistan (Pvt.) Limited - Head & Shoulders 100% dandruff free:

The Commission took suo motto notice of the advertisement of Proctor and Gamble Pakistan (Pvt.) Limited (the P&G), wherein one of its products 'Classic Clean Head & Shoulder Shampoo' has been advertised as and it has been claimed that, the Head & Shoulder Shampoo is 'World's No. 1 anti-dandruff shampoo' suggesting that its use renders the hair '100% dandruff free' (hereinafter referred to as the Advertisements). The P&G was asked by the Commission to provide the evidence to substantiate their claim made in the advertisement. The response of P&G was found unsatisfactory and therefore, a show cause notice was issued to P&G.

It has been alleged in the show cause notice that P&G through its advertisements, appears to be distributing false or misleading information to customers/consumers lacking a reasonable basis related to the character and/or suitability for use of the product advertised in terms of clause (b) sub-section (2) of Section 10 of the Ordinance as the report submitted by P&G in support of the claims of being 'World's No. 1 anti-dandruff shampoo' itself suggests that ...[I]t is also possible that that Head & Shoulders is available in more markets than are reported and the Nielson is not confirming whether Head & Shoulders is the leading worldwide anti-dandruff shampoo brand..." and the scientific report submitted by P&G in support of its claim which suggest that its use renders the hair '100% dandruff free', itself suggests that it only removes visible dandruff flakes 'as seen by other people from a distance of two feet', therefore, both the claims made by P&G lacks reasonable basis and were not justified in view of the documents submitted by the P&G itself. By the end of the reporting period, the Commission has conducted one hearing in the matter.

D. Orders passed by the Appellate Bench of the CCP

The Appellate Benches of the Commission have been performing their functions expeditiously. The following appeals were filed before the Appellate Benches of the Commission:

(1) *Appeal Filed by the Institute of Chartered Accountants of Pakistan:*

On 18th December, 2008, the single Member bench of the Commission passed an Order dated 4th December, 2008 against ICAP to withdraw ATR 14. As mentioned, the Commission *vide* its Order dated December 4, 2008 had held that their decision of fixation of minimum hourly charges fee for audit engagements was in violation of Section 4 of the Ordinance, and directed them to withdraw its price fixing requirements through a public notice, failing which a penalty of Rs.300,000 would be imposed on it.

The undertaking filed application for interim relief before the Appellate Bench and the Interim Order was passed on the application for interim relief by the undertaking and the operation of paragraphs 35, 36 and 38 of the Impugned Order was suspended by the Bench till final decision of the Bench.

On 11th March, 2009 the final Order against ICAP was passed where it was held that fixing of a minimum fee through ATR 14 on the part of the Appellant was in violation of Section 4(1) of the Ordinance. Consequently, such an arrangement between the Appellant and its Members was also held to be void in terms of sub-section (3) of Section 4 of the Ordinance. However, the Appellant was directed to withdraw ATR 14 from the Members' Handbook Volume II Par II Section (c), no later than 15



days from the date of the issuance of the Order and was barred from prescribing or enforcing a minimum fee or fixing of fee for audit engagements in any manner whatsoever with immediate effect.

The Appellate Bench in addition to the penalty of Rs. 3,00,000/- per day from the date of infringement, imposed a penalty of Rs. 10,00,000/- (One Million Rupees) on ICAP for violating the provisions of the Ordinance and fixing minimum fees for the audit engagements.

(2) *Appeal filed by the Pakistan Banks' Association and its Member Banks:*

The Single Member bench passed an order dated 10th April 2008 on a *suo moto* notice taken by the Commission and had imposed a penalty amounting to Rs. 205 million on the PBA and seven banks. PBA along with Saudi Pak Commercial Bank Limited, Habib Bank Limited, MCB Bank Limited, Atlas Bank Limited, Allied Bank Limited, National Bank of Pakistan Limited, NIB Bank Limited, United Bank Limited, ABN AMRO Bank (Pakistan) Limited (Now Royal Bank of Scotland) preferred an appeal before the Appellate Bench of the Commission under Section 41 of the Ordinance. The Appellate Bench comprising of the Chairman and Member (Monopolies & Trade Abuses) heard the appeals at length and subsequently vide its Order dated June 10, 2009 disposed of all the (10) ten Appeals and upheld the Order dated April 10, 2008 of the Commission.

The Bench after having heard the Appellants and after due deliberation on all issues in the interests of justice concluded that appeals were liable to be dismissed and the impugned order was upheld. If the time spent from the date of filing of the writ petition i.e. May 13, 2008 till the date it was rendered unfruitful by the Supreme Court i.e. October 23, 2008 is excluded, the appeal still stands barred by limitation, having been filed after 49 days, which puts a further burden on the Appellant to explain each day's delay, which they have failed to discharge. Section 15 of the Limitation Act, in the Bench's opinion, is perhaps more relevant. The said provision requires exclusion of time in computing the period of limitation during which proceedings are suspended. The application of this principle will clearly establish that the limitation period lapsed prior to the grant of stay by the Sindh High Court (the Impugned Order was received on April 17, 2008 and the limitation period started from April 18, 2008 and the stay was granted on May 27, 2008 - a total of 39 days). Furthermore, after the stay becoming infructuous by the Order of the Supreme Court a further lapse of 24 days and a total of 63 days period had expired. Hence, the appeals again remain time-barred. Clearly the Appellants had no case on merit or in regard to the condonation of delay with respect to limitation.

(3) *Appeals filed by Karachi Stock Exchange (Guarantee) Limited and Lahore Stock Exchange (Guarantee) Limited:*

On 17th April, 2009 KSE and LSE filed applications for interim relief in the respective appeals filed against the Order dated 18th March 2009 of a Single Member Bench. KSE and LSE preferred an appeal before the Appellate Bench of the Commission and filed an application for interim injunction, praying therein to stay the operation of the impugned order pending disposal of the Appeal. The Appellate Bench of the Commission accepted their application for interim relief and completed the hearing.

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The Appellate Bench in the interests of justice deemed it just and proper to grant relief to the Appellants to the extent that no recovery proceedings for the penalty imposed shall be initiated by the CCP till the final disposal of the Appeal. The Commission *vide* its Order dated March 18, 2009 held that the decision taken by Karachi Stock Exchange (Guarantee) Limited of placing floor on the trading prices of all securities, keeping in view the bearish trading in securities, which was subsequently followed by Lahore Stock Exchange (Guarantee) Limited and Islamabad Stock Exchange (Guarantee) Limited had been in violation of Section 4 of the Ordinance. The Appellate Bench has concluded the hearing in the Appeals and an order will be passed shortly.

The achievements of the CCP in the year 2008 and 2009 are showcased in the decisions discussed above. The CCP has passed several important decisions regarding major aspects of competition policy and law and has played a fundamental role in facilitating a higher standard of financial regulation in Pakistan.



CHAPTER 6

EXEMPTIONS FROM PROHIBITED AGREEMENTS

Section 4(1) Competition Ordinance, 2007 envisages that “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 the Competition Ordinance, 2007”

Prohibited Agreements

Prohibited agreements are divided into *vertical* (e.g. distribution agreement) and *horizontal* (e.g. joint production agreement); any agreement aimed at modifying the free market (i.e., regarding minimum prices, market partitioning, margins, exclusivity, selective distribution etc) comes within the purview of Competition Law and is as such deemed restrictive.

Exemptions

However, there are some prohibited agreements which, in effect, increase the efficiency of the undertakings involved and have positive effects for enhancing competition in the market. To allow such agreements to be effectuated, an exemption must be sought under Section 5 of the Ordinance. It is pertinent to mention that not all agreements would qualify for exemption e.g. a cartel agreement or resale price maintenance clause within the agreement shall always be null and void. Exemptions are granted after careful scrutiny of the agreements under the Competition Law.

Types of Exemptions

There are two types of exemptions: (1) block exemptions by which certain types of agreements are exempted from prohibition automatically; and (2) individual exemptions, by which certain agreements which do not meet the requirement laid down in the block exemption, can still be exempted by virtue of an exemption application with the Commission. Both ways, the exemption is motivated by and assessed in the context of weighing between benefits and deterrents to consumers and competition at large.

Criteria for Individual and Block Exemptions

The Commission may grant individual and block exemptions in respect of an agreement, which substantially contributes to:

- (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 which clearly outweigh the adverse effect of the absence or lessening of competition.

Exemption Procedure

Analyzing Agreements: Prohibited agreements are analyzed under two categories of competitive analysis.

- In the first category are agreements whose nature and necessary effects are so plainly anti-competitive that no elaborate study of the industry is needed to establish their illegality - they are illegal per se.
- In the second category are agreements whose competitive effect can only be evaluated by analyzing the facts peculiar to the business, the history of the restraint, and the reasons why it was imposed.

Exclusive Dealing: An exclusive dealing contract is one in which a buyer promises to buy one or more of its products from a single seller. Contracts that constitute unreasonable restraints on competition, such as exclusive dealing contracts, are unlawful.

Rule of Reason Analysis: The legality of exclusive dealing is judged under the rule of reason. Exclusive dealing arrangements are considered unreasonable only when the portion of the market foreclosed to other sellers or buyers is substantial enough to adversely affect competition. Two tests are applied to determine when these arrangements have a substantial impact on the market. An exclusive dealing arrangement is unlawful only if the probable effect of the arrangement is to substantially lessen competition in the relevant market. The following two tests are used for determining the same:

1. *Quantitative test*

It assesses whether the foreclosure of competition was substantial by focusing on the percentage of the relevant market foreclosed by virtue of the exclusive dealing arrangement.

2. *Qualitative test*

It weighs the probable effect of the contract on the area of competition and the probable immediate and future effects which preemption of that market share might have on effective competition therein.

Rule of Reason factors: Since exclusive dealing arrangements are vertical in nature, they are evaluated under the rule of reason. In evaluating whether an exclusive dealing arrangement is lawful, the following factors are analyzed:

- Percentage of market foreclosed
- Barriers to entry
- Term of agreement
- Ability to terminate agreement
- Other distribution channels
- Nature of purchaser



Individual Exemptions

The Commission grants individual exemptions by issuing the exemption certificate for a specified period, and that it may attach conditions and obligations. Individual exemptions cannot be granted in perpetuity as the period permitted depends upon the circumstances and could range from a relatively short period, for example 2-5 years, to as much as 6-10 years in an exceptional case. Where detailed conditions and obligations are attached to an individual exemption, breach of condition(s) automatically terminates the exemption.

Cancellation and Variation of Exemptions

Where the Commission has reasonable grounds for believing that there has been a material change of circumstances since it granted an individual exemption, or the information on the basis of which an individual exemption was granted was incomplete, false or misleading, it may, by notice in writing proceed in accordance with General Enforcement Regulation 38 and pass an order in terms of sub-section (1) or (2) of Section 6.

Extension in Exemption

The Commission may on an application made in accordance with the Competition Commission (Extension in Exemption) Rules, 2007 and accompanied with the fee as prescribed under the Fee Schedule, extend the period for which an exemption has effect.

Exemptions Granted (July 2008 - June 2009)

During July 2008 to June 2009, the Commission granted 90 exemption certificates out of the total of 104 applications. Fourteen (14) exemption cases are under process while some other undertakings have also been asked to provide the requisite information for determining their liability for filing applications for exemption of their prohibited agreement(s). The Commission has granted exemption from July 2008 to June 2009 in the following broad categories:

Table I

S. No.	Category	Exemptions Granted
1.	Dealership	3
2.	Distribution	51
3.	Exclusive Supply	9
4.	Franchise	2
5.	License	9
6.	Miscellaneous	14
7.	Technical	2
TOTAL		90

CHAPTER 7

MERGERS AND ACQUISITIONS

Mergers and Acquisitions are a normal feature of a vibrant economy. Firms and undertakings seek to grow by acquiring others with objectives such as improving efficiency and achieving economies of scale. Sometimes an enterprise facing closure (a failing firm) could avoid failing by merging with a more efficient firm.

In a market economy, shareholders and management are entitled to pursue a path which they believe will maximize returns. Normally there can be little objection from competition authorities to such business initiatives. However, some mergers, particularly large ones, may have implications beyond the interests of the shareholders or management. In view of this, for competition authorities across the world, mergers pose a different kind of challenge altogether. Unlike regular cases of abuse of dominance or anti-competitive agreements which require ex-post analysis, merger review is an ex-ante exercise. The quest is to ascertain whether the combination of such merging parties will ultimately result in the creation of market power that is likely to be abused either unilaterally or in collusion, this is about a prospective state of affairs in the future. Hence, it makes the analysis much more difficult. It is akin to future gazing--to balance competition concerns with efficiency concerns arising from the proposed merger. In the case of merger review, the competition authority is conscious that it is walking the razor's edge, as the blocking of an efficiency enhancing merger is as erroneous as allowing an anti-competitive merger to take place.

One area of concern, recognized in economic theory and in countries across the world, is the potentially substantial reduction in competition in the market that could adversely impact consumers and the economy as a whole. This could happen if, for example, the merger leads to a monopoly or an oligopoly, which could result in higher prices and lower output, and could facilitate cartelization of the remaining firms or acquisition of substantial market power. For this reason, competition laws across countries provide for merger control.

Like most of the competition laws in the world, the competition law of Pakistan prohibits the merger of two or more enterprises or acquisition by an undertaking or by a person which would create or strengthen dominant market position, and impedes competition significantly either in the whole or substantial part of the country. The competition law applies equally to all undertakings, be they public, private, foreign or domestically owned, conducting commercial activities in Pakistan. Pakistan's competition law requires mandatory prior notification of every merger (including acquisitions) to the Competition Authority. Although it is a mandatory regime, only mergers above the thresholds given in Competition (Merger Control) Regulations, 2007 fall within the jurisdiction of the Competition Commission. The law prescribes threshold limits in terms of value of assets or turnover coupled with the transaction value or percentage of the voting shares being acquired. Also, once the Commission is notified, it must decide within 30 days from the date of receipt, or else it is deemed approved. The specified time frame ensures that the process is fairly predictable and cases are



handled in an expeditious manner. It is worth mentioning here that the Competition Commission has been clearing cases relating to Mergers and Acquisitions in a much shorter period than what the law provides.

The Commission may take *suo moto* cognizance of a merger perceived as potentially anti-competitive, and it may also inquire/review up till one year after the merger has taken place. It may allow or disallow a merger or can allow it with certain modifications.

In the merger, acquisition / joint venture cases most of the transacting parties are domestic while some are foreign and/or domestic with foreign undertakings. The overall pattern of merger and acquisition activity corresponds to that of advanced and experienced anti-trust jurisdictions where the vast majority of mergers and acquisitions are permitted to proceed. Experience shows that almost 90-95 percent of the mergers are not objected to by competition authorities. Only a small portion of mergers face scrutiny and could be prohibited after due inquiry. The sectors where merger and acquisition activity is taking place has been mentioned in Table II. There have been a high number of merger and acquisition transactions in the financial sector comprising of investment institutions, modarabas, and banks and leasing companies than in other sectors. The sector with the second highest level of activity is chemical products which mainly consists of petroleum products and fertilizers.

Table II

Sector	No of undertakings
Financial services, investment, modarabas, banking, leasing	27
Foods products and beverages and distribution	11
Chemical products, petrochemicals, petroleum products, fertilizers	12
Communications	2
Power and energy	3
Telecommunications	4
Paper and paper products	3
Textiles	5
Automobiles and automobile parts	4
Insurance	3
Electricity / electronics	7
Cement	3
Machinery and equipment manufacturing	3
Pharmaceuticals	7
Steel	2
Construction	1
Conglomerates	7

Table III
Acquisition/Merger/Joint Venture cases analyzed and cleared from
1st July 2008 to 30th June 2009

1. Acquisitions		
1	AEI Asia Limited and DHA Cogen Limited	Acquisition of shares of M/s. DHA Cogen Limited by M/s. AEI Asia Limited
2	Capital Asset Leasing Corporation and Optimus Limited.	Acquisition of shares of M/s. Capital Asset Leasing Corporation by Optimus Limited.
3	M/s. Rafhan Maize Products Company Limited and M/s. Bunge Limited.	Acquisition of M/s. Rafhan Maize Products Company Limited by M/s. Bunge Limited.
4	M/s. Heavy Electrical Complex (Pvt) Limited and M/s. Iljin Electric Company Limited.	Proposed acquisition of 90 to 100 percent shares of M/s. Heavy Electrical Complex (Pvt) Limited by M/s. Iljin Electric Company Limited.
5	M/s. Al-Asif Sugar Mills Limited and M/s. Haq Bahu Sugar Mills (Pvt) Limited.	Acquisition of 62.50% shares of M/s. Al-Asif Sugar Mills Limited by M/s. Haq Bahu Sugar Mills (Pvt) Limited.
6	M/s. Vision Network Television Limited and M/s. Eastgate GEMs SPV3.	Acquisition of 27.40% shares of M/s. Vision Network Television Limited by M/s. Eastgate GEMs SPV3.
7	M/s. Hazara Phosphate Fertilizers Limited and a Consortium comprising of M/s. Kissan Chemicals & Fertilizers (Pvt) Limited and M/s. Chaudhry Steel Re-Rolling Mills (Pvt) Limited	Proposed acquisition of M/s. Hazara Phosphate Fertilizers Limited by a Consortium comprising of M/s. Kissan Chemicals & Fertilizers (Pvt) Limited and M/s. Chaudhry Steel Re-Rolling Mills (Pvt) Limited
8	M/s. Saif Power Limited and M/s. Habib Bank Limited.	Acquisition of 10% shares of M/s. Saif Power Limited by M/s. Habib Bank Limited.
9	M/s. Hazara Phosphates Fertilizer Limited and M/s. Warble (Pvt) Limited	Proposed acquisition of M/s. Hazara Phosphates Fertilizer Limited by M/s. Warble (Pvt) Limited
10	Meezan Bank Limited and M/s. Noor Financial Investment Company.	Acquisition of shares of Meezan Bank Limited by M/s. Noor Financial Investment Company.
11	M/s. MCB Bank Limited and M/s. Adamjee Insurance Company Limited.	Acquisition of 05.63% shares of M/s. MCB Bank Limited by M/s. Adamjee Insurance Company Limited.
12	M/s. Karachi Electric Supply Company and M/s. IGCF SP 21 Limited (Abraaj).	Acquisition of shares of M/s. Karachi Electric Supply Company by M/s. IGCF SP 21 Limited (Abraaj).
13	M/s. BankIslami Pakistan Limited and M/s. Dubai Banking Group LLC.	Acquisition of shares of M/s. BankIslami Pakistan Limited by M/s. Dubai Banking Group LLC.
14	M/s. Sweetwater Dairies Pakistan (Private) Limited and M/s. Unicorn Investment Bank	Acquisition of 29% shares of M/s. Sweetwater Dairies Pakistan (Private) Limited by M/s. Unicorn Investment Bank
15	Tameer Microfinance Bank Limited and Telenor Pakistan (Pvt) Limited	Acquisition of 51% shares of Tameer Microfinance Bank Limited by Telenor Pakistan (Pvt) Limited
16	Mobiserve Pakistan (Pvt) Limited and Mobiserve Holding	Acquisition of 100% shares of Mobiserve Pakistan (Pvt) Limited by Mobiserve Holding
17	Uch Power Limited and Creative Energy Resources Corporation.	Acquisition of 18.14% shares of Uch Power Limited by Creative Energy Resources Corporation.
18	Meezan Bank Limited and Noor Financial Investment Company.	Acquisition of 6.90% shares of Meezan Bank Limited by Noor Financial Investment Company.
19	Tetra Pak Pakistan Limited and Packages Limited.	Acquisition of 1.00 million Non Voting Ordinary Shares of Tetra Pak Pakistan Limited by Packages Limited.



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20	Bristol-Myers Pakistan (Pvt) Limited and S.R. On International B.V, Netherlands.	Acquisition of total paid up shares and associated assets of Bristol-Myers Pakistan (Pvt) Limited by S.R. One International B.V, Netherlands.
21	Dawood Islamic Bank Limited and Unicorn Investment Bank, B.S.C, Bahrain.	Acquisition of 09.25% shares of Dawood Islamic Bank Limited by Unicorn Investment Bank, B.S.C, Bahrain.
22	Hong Kong and Shanghai Banking Corporation (all branches in Pakistan) and HSBC Bank Middle East Limited.	Amalgamation of the Hong Kong and Shanghai Banking Corporation (all branches in Pakistan) with and into HSBC Bank Middle East Limited.
23	Sandal Bar Rolling Mills (Pvt) Limited and Dr. Tariq Mahmood Chaudhry	Acquisition of 20% shares of Sandal Bar Rolling Mills (Pvt) Limited by Dr. Tariq Mahmood Chaudhry
24	M/s. Allied Bank Limited and M/s. Ibrahim Fibres Limited	Acquisition of 8.83% shares of M/s. Allied Bank Limited by M/s. Ibrahim Fibres Limited
25	UCB S.A's and GlaxoSmithKline Trading Services Limited.	Acquisition of UCB S.A's business in Pakistan by GlaxoSmithKline Trading Services Limited.
26	M/s. Shakarganj Food Products Limited and M/s. Crescent Steel and Allied Products Limited.	Acquisition of 6.0 million shares of M/s. Shakarganj Food Products Limited by M/s. Crescent Steel and Allied Products Limited.
27	Packages Limited valuing US\$ 50.0 million and International Finance Corporation (IFC).	Acquisition of Preference/Non Voting Shares of Packages Limited valuing US\$ 50.0 million by International Finance Corporation (IFC).
28	M/s. Habib Sugar Mills Limited and M/s. Bank Al Habib Limited.	Acquisition of 3.0 million shares of M/s. Habib Sugar Mills Limited by M/s. Bank Al Habib Limited.
29	M/s. Eye Television Network Limited and Mr. Duraid Qureshi, Chief Executive of Eye Television Network Limited	Acquisition of 5.86% shares of M/s. Eye Television Network Limited by Mr. Duraid Qureshi, Chief Executive of Eye Television Network Limited
30	Star Hydro Power Limited and M/s. Korea Water Resources Corporation, Daewoo Engineering & Construction Company Limited, Korea and Sambu Construction Company Limited, Korea.	Acquisition of 49% (and in due course at the acquirer's call option 100%) of the shares of Star Hydro Power Limited jointly by M/s. Korea Water Resources Corporation, Daewoo Engineering & Construction Company Limited, Korea and Sambu Construction Company Limited, Korea.
31	M/s. United Bank Limited jointly and Bestway (Holdings) Limited and Mr. Zameer Mohammad Choudrey.	Acquisition of 18.32% shares of M/s. United Bank Limited jointly by Bestway (Holdings) Limited and Mr. Zameer Mohammad Choudrey on conversion of 14.09 million Global Depository Receipts of United Bank Limited.
32	M/s. National Power Construction Corporation (Pvt) Limited and M/s. Saudi Cable Company, Jeddah, Saudi Arabia.	Proposed acquisition of 51% shares of M/s. National Power Construction Corporation (Pvt) Limited by M/s. Saudi Cable Company, Jeddah, Saudi Arabia.
33	SJ Star and Stifle Laboratories Inc.	Acquisition of Stiefel Pakistan by SJ Galaxy Acquisition Corporation, USA as a result of merger of SJ Star Merger Sub., with and into Stiefel Laboratories Inc.,
34	Pakistan Petroleum Limited and Tullow Pakistan (Developments) Limited.	Acquisition of 75% working Interest in the Chahchar Gas Field by Pakistan Petroleum Limited from Tullow Pakistan (Developments) Limited.
35	Pioneer Cement Limited and Vision Holdings Middle East Limited.	Acquisition of 24.95% shares of Pioneer Cement Limited by Vision Holdings Middle East Limited.
36	M/s. MCB Bank Limited and Nishat Mills Limited.	Acquisition of 4.55 million shares of M/s. MCB Bank Limited by Nishat Mills Limited.
37	Wyeth Pakistan Limited and Pfizer Laboratories Limited Inc.	Acquisition of Wyeth Pakistan Limited by Pfizer Laboratories Limited Inc.

38	Pakistan PTA Limited and KP Chemical Corporation.	Acquisition of 75.00% shares of Pakistan PTA Limited by KP Chemical Corporation.
39	Imperial Developers and Builders (Pvt) Limited and G4 Mega (Pvt) Limited	Acquisition of 100% shares of Imperial Developers and Builders (Pvt) Limited by G4 Mega (Pvt) Limited
40	Aisha Steel Mills Limited and Arif Habib Securities Limited.	Acquisition of 25% shares of Aisha Steel Mills Limited by Arif Habib Securities Limited.
41	Dewan Farooque Motor Limited and Dewan Muhammad Yousuf Farooqui.	Acquisition of 11.90 million shares of Dewan Farooque Motor Limited by Dewan Muhammad Yousuf Farooqui.

1. Mergers		
1	M/s. Al-Abbas Holding (Pvt) Limited and M/s. Ghani Holding (Pvt) Limited with M/s. Javedan Cement Limited,	Merger of M/s. Al-Abbas Holding (Pvt) Limited and M/s. Ghani Holding (Pvt) Limited with and into M/s. Javedan Cement Limited,
2	M/s. International Multi Leasing Corporation and M/s. Al Zamin Leasing Modaraba.	Merger of M/s. International Multi Leasing Corporation with and into M/s. Al Zamin Leasing Modaraba.
3	M/s. Pirkoh Gas Company (Private) Limited and M/s. Oil & Gas Development Company Limited	Merger of M/s. Pirkoh Gas Company (Private) Limited with and into M/s. Oil & Gas Development Company Limited
4	M/s. Automotive Battery Company Limited and M/s. Exide Pakistan Limited.	Merger of M/s. Automotive Battery Company Limited with and into M/s. Exide Pakistan Limited.
5	M/s. Pfizer Laboratories Limited and Parke Davis & Company Limited.	Merger of M/s. Pfizer Laboratories Limited and Parke Davis & Company Limited.
6	M/s. Merck Sharpe and Dohme of Pakistan Limited with M/s. OBS Pakistan (Pvt) Limited.	Merger of M/s. Merck Sharpe and Dohme of Pakistan Limited with and into M/s. OBS Pakistan (Pvt) Limited.
7	KASB Bank Limited, KASB Capital and Atlas Bank Limited	Merger of KASB Bank Limited, KASB Capital and Atlas Bank Limited
8	M/s. Nishat Apparel Limited and M/s. Nishat Mills Limited.	Merger of M/s. Nishat Apparel Limited with and into M/s. Nishat Mills Limited.
9	M/s. Jubilee Energy Limited with M/s. Jubilee Spinning and Weaving Mills Limited.	Merger of M/s. Jubilee Energy Limited with and into M/s. Jubilee Spinning and Weaving Mills Limited.
10	Network Leasing Corporation Limited and KASB Bank Limited.	Merger of Network Leasing Corporation Limited with and into KASB Bank Limited.
11	M/s. Karachi Investment Company (Pvt) Limited, M/s. Distribution Network (Pvt) Limited, M/s. The Marketing Company (Pvt) Limited & M/s. General Commodities (Pvt) Limited with M/s International Brands (Pvt) Limited.	Amalgamation of M/s International Brands (Pvt) Limited, M/s. Karachi Investment Company (Pvt) Limited, M/s. Distribution Network (Pvt) Limited, M/s. The Marketing Company (Pvt) Limited & M/s. General Commodities (Pvt) Limited
12	United Money Market Fund and United Growth & Income Fund.	Merger of United Money Market Fund with and into United Growth & Income Fund.
13	Nimir Resins Limited and Descon Chemicals (Private) Limited	Amalgamation/Merger of Nimir Resins Limited and Descon Chemicals (Private) Limited by the transfer to and vesting in Nimir Resins Limited of entire undertaking of Descon Chemicals (Private) Limited
14	Orix Investment Bank Pakistan Limited and ORIX Leasing Pakistan Limited	Merger of Orix Investment Bank Pakistan Limited with and into ORIX Leasing Pakistan Limited
15	Merck & Co. Inc. and Schering Plough Corporation.	Merger of Merck & Co. Inc. and Schering Plough Corporation.

3. Joint Ventures		
1	Joint Venture between M/s. Afzal Motors (Pvt) Limited and M/s. Daewoo Bus Corporation, Korea.	Joint Venture between M/s. Afzal Motors (Pvt) Limited and M/s. Daewoo Bus Corporation, Korea.



CHAPTER 8

LEGAL DEPARTMENT

The Legal Department of the Competition Commission of Pakistan is headed by Mrs. Rahat Kaunain Hassan, Member (Legal), and plays a pivotal role in supporting the smooth running of the affairs of the Commission. The Legal Department provides its services and legal advice to all other departments of the Commission and is thus an important link in helping the Commission towards achieving its objectives and fulfilling its obligations as a statutory body.

The Legal Team

The Legal Department is comprised of a team of dedicated and dynamic lawyers coming from diverse backgrounds, ranging from experience in regulatory authorities to in-house counsel and litigation experience in leading law firms. This diverse team has taken up the challenge of working in an emerging area of law and is cognizant of the importance of their work in developing competition law in Pakistan.

Functions and Responsibilities

The Department's functions and responsibilities include, inter alia, managing the legal affairs of the Commission, researching and staying abreast of competition law developments in mature jurisdictions, providing legal advice and assistance to operational departments and undertakings on matters/issues pertaining to the Competition Ordinance. The Legal Department also acts as a liaison with the Federal Government and its departments and other regulatory authorities in particular the sector specific regulators.

The Commission has been vested, by the Ordinance, with requisite powers to prescribe Rules and Regulations relating to its functions and activities. The Legal Department is charged with the responsibility of drafting such secondary legislation and vetting it to ensure its compliance with the law. The Legal Department, mindful of its role in an ever-changing economic context, has assisted the Commission in consistently reviewing and revisiting the various Regulations. This is directly in line with the Commission's aim of continuously improving upon the law, as required. The Legal Department has also proposed various amendments to the following sets of Regulations which have subsequently been approved by the Commission:

- Competition (Merger Control) Regulations 2007,
- Competition Commission (General Enforcement) Regulations 2007,
- Competition (Leniency) Regulations 2007,
- Competition Commission of Pakistan (Conduct of Business) Regulations 2007, and
- Competition Commission (Service) Regulations, 2007.

Office of the Registrar

The Office of the Registrar of the Commission is housed in the Legal Department and issues Show Cause Notices, arranges hearings and assists the Original and Appellate Bench of the Commission by providing administrative and legal support. The Registrar has been authorized to represent the Commission as its official spokesman in litigation matters before the various courts of Pakistan.

Office of Fair Trading

The Ordinance also directly envisages consumer protection against deceptive marketing and misleading advertising. Consistent with the aim of fulfilling this obligation the Commission has established the Office of Fair Trading ('OFT'). OFT is a separate and distinct department; however it falls under the eventual supervision of the Legal Department. OFT mainly focuses on the aspect of consumer protection enforcement with the mandate to oversee and act as a watch-dog for misleading and deceptive marketing practices. The establishment of OFT within the Commission facilitates completing the picture of the competition agency in Pakistan the paves the way for creating and enhancing consumer awareness. OFT has recently investigated misleading advertising in the telecommunications sector (specifically Zong and Ufone), upon which a Single Member Bench of the Commission passed an Order setting out the standards expected of undertakings while engaging in advertising. The said Order while taking note of consumer protection precedents in the US and EU sets out particular standards with specific reference to the Pakistani context. This represents the first of many steps the OFT hopes to take to facilitate and ensure that the Commission provides greater protection for the Pakistani consumers.

OFT has also recently published a booklet containing guidance on the basics of the relevant law and the standards expected of undertakings. This booklet shall soon be made available for the general public and will be posted on the Commission's website too.

Exemptions under Section 5 of the Ordinance

One of the responsibilities of the Legal Department is the initial processing of exemptions applied for by undertakings under Section 5 of the Ordinance. These exemption applications are initially processed by the Legal Department and the Member (M & TA) makes the final decision regarding grant of exemptions. The Legal Department processes applications for exemptions in light of the criteria set out under Section 9 of the Ordinance. In 2008/09, 104 exemption applications were processed, out of which 90 were granted exemption certificates.

Policy Notes and the assistance rendered by the Legal Department:

The Commission, cognizant of its obligation to promote and create awareness about competition, remains actively engaged with other sector-specific regulatory authorities and governmental departments/bodies. The Ordinance, inter alia, directly envisages a review of policy frameworks by the Commission. The Legal Department has assisted the Commission in fulfilling this function as well. The Department on various occasions has assisted the Commission in the drafting of Policy Notes aimed at bringing to light important issues relating to competition. During the financial year 2008-09 these Policy Notes related to the following matters:



- In January 2009, the Securities and Exchange Commission of Pakistan (SECP) was advised against Fixing of Percentages of Discount Rates for Debt Securities as it could be a violation of Chapter II of the Competition Ordinance 2007;
- In February 2009 a Policy Note was issued regarding IAS 39 Reporting Requirements which could infringe Section 10 of the Competition Ordinance 2007; and
- In April 2009, a Policy Note was sent to the Federal Board of Revenue regarding the Fixing of Minimum Retail Price in the Cigarette Industry.
- In the past year the Commission also issued a Policy Note regarding the Draft Bill concerning the proposed demutualization and integration of the stock changes. The aim of this Policy Note was to bring to light the Commission's concerns regarding the scheme of integration envisaged by the upcoming Draft Bill. The Commission clarified that Pakistan has a mandatory pre-merger clearance regime and therefore any integration of the stock exchanges should be subject to merger clearance by the Commission.

Consistent with the above mentioned function of advocacy and raising awareness regarding competition, the Commission has embarked on compiling a series of reports regarding competition related issues in various sectors. These include but are not limited to the aviation sector, energy sector, pricing of certain essential commodities, such as ghee (Clarified Butter), wheat, flour, sugar and processed milk. The Legal Department is an important part of such an endeavor and is charged with the function of analyzing the legal structure of each sector, the players involved, their responsibilities, obligations and how competition is affected at an overall level. Any recommendations in this regard, after due analysis, will be forwarded to the Commission.

Litigation involving the Commission: the role of the Legal Department:

Public bodies the world over are often embroiled in litigation as their actions are routinely challenged before the superior courts. Being a public and statutory body, the Commission's actions too receive many legal challenges. These include proceedings in Appeal before the Supreme Court as well as constitutional challenges under the writ jurisdiction of the High Courts. The Legal Department prepares pleadings to be filed in all litigation related matters involving the Commission. In the past year a number of companies, to which Show Cause Notices were issued, challenged the constitutionality of the Ordinance before the High Courts. These matters remain pending before the superior courts. The Commission is being represented by external counsel, including senior Supreme Court practitioners.

In a number of instances, before proceedings could commence before the Commission, undertakings went to the High Court in writ jurisdiction and sought stay orders. However, on appeal the Supreme Court has on a number of occasions been pleased to vacate the stay orders, allowing the Commission to continue discharging its obligations.

Certain undertakings have also filed Appeals before the Supreme Court challenging the relevant Orders passed by the Commission. The Appeals before the Supreme Court relate to:

- the Order against the Institute of Chartered Accountants of Pakistan (ICAP) for their setting of a minimum fee schedule for auditing services.
- the Order against Karachi Stock Exchange (KSE) finding it liable for abusing its dominant position.



- The Order against Pakistan Banking Association finding the Banks liable for entering into a prohibited agreement.
- The Legal Department is also working on Exemption Guidelines and Guidelines on Predatory Pricing. To keep abreast with new developments and findings in competition law in more mature jurisdictions, the Legal Department is constantly engaged in research and is compiling an internal handbook of important precedents and seminal cases in the EU and American jurisdictions to facilitate an understanding of the jurisprudential underpinnings of competition law the world over.

Competition Compliance Code

The Commission, right from its inception, has adopted a compliance-centric approach. Achieving compliance does not always flow from strictly enforcing the law but creating awareness too. Generating this awareness and a sense of responsibility in businesses is thus an important part of the Commission's work. The Legal Department is assisting the Commission in achieving one such objective by drafting a Competition Compliance Code for undertakings. This is in line with global best practices and also aids a nascent body such as the Commission in securing compliance at a larger scale. The aim of a Competition Compliance Code is to ensure that undertakings internalize the requirements of competition law by providing relevant training to their employees. The Legal Department is keen to ensure that competition objectives become an integral part of the corporate culture and are recognized as important governance values. The Draft Code will soon be made available for seeking comments from all stakeholders and its final publication will thus represent another important step forward for the Commission.



CHAPTER 9

ADVOCACY DEPARTMENT

CCP has two roles, one being advocacy and the second being law enforcement. Competition advocacy is about the promotion of competition through means other than law enforcement. The Commission has been very active in advocacy as required under Section 29 of the Competition Ordinance, 2007. One of the main objectives of the CCP is to educate the public on CCP role and the benefits of competition policy. By increasing the level of awareness of competition law among the general public, the public will become more vigilant and able to identify potentially anti-competitive activity. This is the logic behind propagating a knowledge-based approach for consumers and businesses alike.

Seminars, roundtable meetings and CCG (Competition Consultative Group) meetings held in the past have been successful in ensuring that CCP mandate serves the interests of consumers, and ultimately targets enhanced economic efficiency at the level of the individual firm and relevant sectors.

Towards Awareness Creation and Voluntary Compliance

To assist businesses in voluntary compliance and to educate the public at large, the CCP launched an aggressive advocacy campaign utilizing:

- Competition Consultative Group
- Seminars
- Roundtables
- Advocacy policy notes
- CCP Website
- Media Relations
- Publications
- Participation in international fora

The CCP has substantially expanded its outreach to the general public during 2008-09. A review of these activities is provided in the paragraphs below

Competition Consultative Group

This group is an informal think-tank for the Commission feedback and an essential forum for competition advocacy. It is also a platform for seeking feedback for establishing an effective competition regime in Pakistan. Till Date, five meetings of the CCG have been held. Below is a brief overview of the CCG meetings:



- The first CCG held in Karachi focused on the importance of greater advocacy, bilateral communication with sector-specific regulators and clarity about deceptive marketing practices.
- The second meeting focused on achieving a consensus among regulators that CCP should be supported by sector specific regulators.
- The third meeting of the Group took place in Islamabad in November 2008. The discussion was based on "The Supportive Role of CCP in Promoting Business Enterprise".
- The fourth meeting of the CCG took place in Karachi. The meeting attended by renowned representatives of academia, sector specific regulators, the legal community, and the private sector. Presentations about Merger Clearances and Grant of Exemptions which explained the process of analyzing agreements and exemptions under the Competition Ordinance 2007.
- The fifth meeting in Lahore in March 2009. Where it was announced that the CCP was establishing an Acquisitions & Mergers Advisory Cell which would provide advice and facilitate undertakings applying for merger clearances and the Office of Fair Trade. This had been established under Section 10 (Deceptive Marketing Practices) of the Competition Ordinance 2007.
- All the CCG meetings have evinced great interest from participants. Participants have specifically appreciated the consistent approach of disclosure and transparency in the working of the Commission.

Seminars

The aim of Seminars is to highlight the importance of competition law and to create an environment wherein the Commission attains the support of all relevant stakeholders. During 2008/09 the CCP organized seven seminars which received wide participation from the business community, judiciary, government agencies, academia, etc.

Two seminars on the "Importance of the Competition Regime in Modern Business" were held in Bhurban and Karachi. A seminar on Corporate Governance was organized in collaboration with the Management Association of Pakistan in Karachi and a seminar on the Legal Community was organized in April 2009, in Islamabad. It was attended by a large number of lawyers, representatives of business community and government functionaries. A seminar in April, 2009 focused on the "Overview of the Competition Regime in Pakistan" and how it is being implemented by the CCP. Seminars with OICCI and with government and semi-government bodies were organized in May in Islamabad and Karachi. The seminars covered the themes of the "Merger Regime" and "Overview of Competition Law".

Roundtable Sessions and Bilateral Meetings

Roundtable sessions and bilateral meetings focus on the participation of those stakeholders who are directly affected by the enforcement of the Competition Ordinance. During the year 2008/09, a



roundtable was organized at ICAP (Chartered Accountants Rules), Karachi to discuss the working of the Competition Commission. The roundtable was attended by accountants and senior auditors of ICAP. To address concerns of businessmen and FDI (foreign direct investors), a Corporate Lawyers Roundtable and in-house meeting with member companies of OICCI was held in August 20, 2008. Eight other such meetings were held in Karachi, the business hub of Pakistan at SITE Association of Industry, MAP, CFA Association, MHG Group of Companies, MUFAP, Pakistan Advertisers Society and the Investment Bank's Association of Pakistan. Additionally More than forty bilateral meetings were organized with several stakeholders.

Advocacy Policy Notes

An important role of the Commission is to give a 'competition face' to the work of government and regulatory bodies. For this purpose, the Commission issues advice through policy notes. The advice is pre-emptive and preventive in nature to ensure that competition effects can be identified in advance before the impact is costly and irreversible. Such advice takes the form of a review of draft laws, regulations, government programmes, policies, decisions, actions as well as comment on the implementation record of government, regulators, and other public authorities that impact issues pertaining to competition in the economy. Some instances where the Advocacy department assisted the Commission with policy advice include the policy note on IAS 39 Reporting Requirements issued in January 2009. In February 2009, another note was issued on Circular No.26/2008, regarding fixing of percentages of discount rates for debt securities by SECP.

Participation in International Fora

CCP is the only national agency dealing with competition issues. It is imperative that the CCP be networked with other more experienced agencies and to benefit from their perspective on the implementation of competition law in their respective jurisdictions. International gatherings of competition practitioners thus provide a valuable learning opportunity. Knowledge so gained is useful to guide and shape CCP's own efforts in this regard and to develop its modus operandi for the long run.

CCP is actively participating in international workshops, conferences and meetings of experts on competition law and policy. Though there remain budgetary constraints in such participation, the CCP has made its presence felt across the globe through its contributions and speaking orders in several cases. During the year, CCP was represented in the UNCTAD's Ad-hoc Expert Group Meeting and Intergovernmental Group of Experts on 'Competition Law & Policy' 9th Session, Geneva. Other fora include the World Intellectual Property Organisation, International Competition Network's workshops and conferences; 5th Seoul International Competition Forum; American Antitrust Institute (AAI) and Nathan Associates' deliberations; and OECD International Co-operation Program on Competition Policy.

CCP was able to organize two customized training programmes in collaboration with OECD and Turkish Competition Agency, Rekabat Kurumu. These capacity-building programmes focused on cartels, abuse of dominance and advocacy.

Commission Website

CCP is easily accessible to stakeholders. The Commission's website: www.cc.gov.pk provides an excellent opportunity for users to get updated information about the CCP's activities. Web-posting of rules, regulations and amendments therein bring transparency and predictability in the Commission's work. The Commission makes its findings known to all interested in its work by placing its orders and decisions on the website. The availability of guidelines on the website promotes voluntary compliance by the business community. Details about public advocacy such as policy notes, seminars and other important activities are readily uploaded.

Relationship with Media

Media is the most effective way to reach public at large. Interaction with media is an essential element of the Commission's advocacy campaign. The CCP maintains due coverage both in the print and electronic media which enables the Commission to be wholly transparent as its actions and work are visible to all. The Commission regularly issues various communications such as press releases, interviews and articles in and through the media. This has proved to be an effective tool for awareness creation and information dissemination to the undertakings and the general public. The Chairman has been very active in giving interviews pertaining to the enforcement of the competition law in Pakistan and the activities of the Commission. During 2008/09, 12 media interviews were aired on CNBC Pakistan, Dawn News, Geo News, Business Plus, and Aaj TV News. Most of these interviews are available on the Commission's website.

Publications

The Commission has made written submissions to international competition publications on competition issues. CCP's participation in international conferences and workshops has also been accompanied by various submissions to international publications. Information about Commission was published in the annual "Competition and Anti-Trust Review" and in the Handbook of Competition Agencies.

During 2008/09 the CCP published its regular annual publications, namely the The State of Competition in Pakistan and the Annual Report 2008.

The State of Competition report is the key annual output of the research function of the Advocacy and Research Department. This report provides an analytical overview of competition on the economy as a whole. It also covers selected sectoral profiles, focusing on areas and issues where there may be significant competition concerns. In addition, the Report 2008 described specific issues of particular interest during the year, such as monopolies and mergers. CCP intends that 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 any recommended policy changes may serve as an input for the budget.

CCP's Annual Report 2008 was widely disseminated and was valued by all stakeholders. Besides summarizing important tasks performed by the Commission during the year, the Report provided an overview of the competition regime in Pakistan prior to the enactment of the Competition Ordinance, 2007 and subsequently thereafter. The differences between the two regimes were discussed in detail.



An important feature of the report was the section on performance and the cases decided by the Commission showing that during a short span of time, the Commission had been successful in deciding important cases, such as the banks' cartel case.

Competition Impact Assessments

The Commission has initiated a number of sector-specific studies on important sectors of the economy to analyse and assess competition vulnerabilities in the relevant sectors. These Competition Impact Assessments (funded by World Bank) should help ascertain and identify the principal competition issues within each sector such as sugar, energy, telecommunication, wheat, automobiles, aviation and banking.

Once completed it is expected that these studies will serve as monitoring tools for the Commission and will provide dynamic templates which will be continually updated in-house. Further to this, the research department also undertakes research, conducts investigative analysis and prepares reports to remain updated on changes within different sectors of the economy. For this purpose, it collects data periodically from relevant industry sources.

CHAPTER 10

MONOPOLIES AND TRADE ABUSES DEPARTMENT

The Monopolies and Trading Abuses 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 practise 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.

Abuse of Dominant Position

1. *Stock Exchanges of Pakistan*

The Competition Commission of Pakistan took suo moto notice of circulars issued by Karachi Stock Exchange, Lahore Stock Exchange and Islamabad Stock Exchange placing a floor on the trading prices of all securities, keeping in view the bearish trends affecting the market at the time.

The Commission initiated an inquiry to determine whether, by placing a floor below which the price of securities could not descend, the stock exchanges had restricted and foreclosed choice, and created barriers to entry and exit that resulted in the prevention, restriction and reduction of competition in the relevant market and also whether this action constituted violation of Section 4.

The preparation of an inquiry report culminated in a Show Cause Notice being issued to all three stock exchanges, enabling them to present their rationale to the Commission. While the KSE had instituted the price floor to maintain investor confidence, the other two exchanges had no choice but to place the floor as well, as not doing so would have resulted in pricing disparities among commonly-listed securities.

The Order issued by the Commission, dated March 2009, stated that the decision to set the price floor for securities had the effect of fixing the price for the provision of brokerage services to buyers, sellers, investors, and traders. It not only prevented competitive bidding - the very essence for which stock markets are established - but also created a private market for the sale and purchase of listed securities in which trade between brokers continued unabated. This, too, was injurious to competition as prior to the price floor decision, bids were made in public and traders had the advantage of procuring competitive prices by trading in an open and transparent manner in terms of the system of an exchange. However, with the imposition of the price floor, the creation of a private market disadvantaged both buyers and sellers as they could not procure competitive prices. It moved buyers and sellers away from a direct contact available in an exchange setting, instead forcing them



to trade privately under increased risks brought about by asymmetric information available to buyers and sellers.

The price floor mechanism constituted a barrier to both entry and exit as it severely restrained the choice of buyers and sellers as to the price at which they wished to conduct transactions. It prevented investors from purchasing securities at market prices by imposing an artificial minimum price. This, in effect, created a barrier to entry. It also trapped selling investors without buyers for their securities, as prices were above or below that of the floor level, thus creating a barrier to exit.

Finally, the Commission noted that the imposition of the price floor had altered the saving and investment behaviour of market agents, and had unquantifiable adverse effects on the entire economy.

Given the injury to competition resulting from the price floor mechanism, the actions of KSE and LSE had broad consequences on the economy; whereas consequences of ISE's actions were considered de minimis. As a result, the parties were imposed the following penalties:

- i. KSE for a sum of rupees six million (Rs. 6,000,000).
- ii. LSE for a sum of rupees one million (Rs. 1,000,000);
- iii. ISE for a sum of rupees two hundred thousand (Rs. 200,000).

KSE and LSE have filed applications against this Order for interim relief. The matter is currently pending before the Commission.

2. McDonald's Exclusive Dealing Arrangement with Coca Cola

Murree Brewery Company Limited, a beverage manufacturer in Pakistan, filed a complaint with the erstwhile Monopoly Control Authority (MCA) that a number of international fast food restaurants refused to deal with local beverage manufacturers.

After the initiation of the inquiry, the Competition Ordinance was promulgated in October 2007, repealing the MRTPO 70 under Section 59(a), dissolving the MCA under Section 59(b), and establishing the Competition Commission of Pakistan under Section 12. The Commission continued to probe into the matter after the disbanding of the MCA and found that franchisees of McDonald's Corporation in Pakistan, namely SIZA Foods (Private) Limited and GAM Corporation (Private) Limited, were solely placing orders for carbonated soft drinks (CSDs) with Coca Cola Corporation. After analyzing purchasing orders for the previous years, the inquiry team came to the conclusion that there appeared to be, prima facie, an exclusive dealing agreement for CSD's.

Based on this, a Show Cause Notice was issued to SIZA Foods on 24 November 2008 alleging, prima facie, violation of Sections 3(3)(h) and 4(1) of the Ordinance. A hearing took place on 22 December 2009.

During the course of the hearing, franchisees of McDonald's Corporation in Pakistan, namely SIZA Foods (Private) Limited and GAM Corporation (Private) Limited, agreed to deal with local beverage manufacturers, provided the latter meet the global quality standards prescribed by McDonald's to its licensees/franchisees. The undertakings offered by SIZA and GAM would allow them to offer more



choices of beverages to their consumers, as well as allow local beverage manufacturers market access to international fast food restaurants, which was hitherto foreclosed by those multinational corporation through exclusive dealing.

Consequently, in April 2009, the Commission passed an Order in which the decision by SIZA Foods and GAM Corporation was reflected.

3. *Pakistan Steel Mills*

The Competition Commission of Pakistan took suo moto notice of shortages in the supply of steel billets by Pakistan Steel Mills Corporation (PSM), based on media reports and a complaint submitted by Frontier Foundry Private (Limited).

It was found that much of PSM's production of billets was being allocated to a certain group of companies. Despite the willingness on the part of other consumers to pay premium prices for these billets, PSM continued to selectively choose consumers based on non-business decisions. This refusal to deal had immense repercussions on the steel re-rolling industry, as it was affected by reduced operating shifts and employee layoffs.

From the documentation provided to the Commission and the analysis of the allocation data that PSM was providing on its website, it appeared that the allegation of allocation of billets to one group of companies at the expense of other customers was valid.

In view of the foregoing, it was concluded that PSM was, prima facie, abusing its dominant position and was in contravention of Section 3 as it had refused to deal with many purchasers of low carbon steel billets, despite its own admission that it was holding considerable raw material and finished goods, therefore, excluded "other undertaking[s] from the production, distribution or sale of any goods."

The Commission consequently issued Show Cause Notice to PSM for, prima facie, abusing its dominant position by refusing to deal with purchasers of low carbon steel billets. The matter is pending before the Commission at the time of this report.

Prohibited Agreements

1. *The Institute of Chartered Accountants of Pakistan*

The Competition Commission of Pakistan took suo moto notice and proceeded against The Institute of Chartered Accountants of Pakistan (ICAP) by issuing a Show Cause Notice for a violation of Section 4(1) of the Ordinance.

ICAP had issued ATR 14 in 1987 that fixed the minimum remuneration for conducting the audit of companies by the members of ICAP. After the issuance of the Show Cause Notice, due opportunity of hearing was provided and on December 04, 2008, the single member passed his order thereby declaring ATR 14 void, and directing ICAP to withdraw it from the ICAP Member's Handbook, and to publish notice of such withdrawal in two newspapers on or before December 19, 2008 - failing which ICAP was held liable to pay a penalty of Rs.300,000 for per day of infringement. Being aggrieved by the said order, ICAP appealed before the Appellate Bench of the Commission under Section 41 of the Ordinance.



During both Hearings, ICAP argued that fixing minimum audit fee levels ensures quality and prevents undercutting. In this regard, the Bench observed that the nexus between quality and a minimum fee structure had not been demonstrated by the Appellant. When ICAP was asked, it could not provide any reason why poor quality of audits could not co-exist with a minimum fee structure or how an improvement in audit quality necessarily follows the stipulation of minimum audit fees. The Bench found the argument that ICAP had avoided undercutting through fixing minimum fees even less convincing. The Bench held that while it is axiomatic that the fee cannot be reduced below the minimum fee prescribed, any fee above the minimum fee can be undercut as far down as the minimum fee level.

The decision of the Single Member bench that the arrangement between the ICAP and its Members was void, in terms of Section 4 of the Ordinance, was upheld by the Appeals. Collusive price fixing is considered a serious violation in all competition regimes and could not be overlooked unless there were cogent reasons to do so. ICAP was directed to withdraw ATR 14 from the Members' Handbook within two weeks and barred from prescribing or enforcing minimum fee or fixing of fee for audit engagements in any manner whatsoever with immediate effect. A nominal fine of Rs. 1 million on the Appellant was also imposed. In the event of non-compliance with the directives of the Commission, the Appellant was required to pay a fine of Rs. 300,000 per day of infringement after the two week grace period was over.

2. All Pakistan Newspaper Society

The Competition Commission of Pakistan took suo moto action against All Pakistan Newspaper Society (APNS) for setting the minimum price level to be charged by newspapers. The Commission also took action against the All Pakistan Akhbar Farosh Federation for entering into an agreement with APNS, whereby they would not distribute any newspaper with a cover price below the minimum price level.

The issuance of the minimum cover price formula by the APNS to all its members constituted price fixing. Likewise, the decision of the APNS Sub-Committee on Cover Prices to set a minimum price and the price formula also was a form of price fixing. The agreement of the All Pakistan Akhbar Farosh Federation with the APNS to refrain from distributing those newspapers that did not follow the price formula constituted a restrictive trading condition with regard to the sale of the newspapers. All of these are violations of Section 4(1) of the Ordinance.

Taking notice of these matters, the Commission issued Show Cause Notice's to the APNS, their Sub-Committee on Cover Prices that made the decision to implement a minimum cover price formula, and the Akhbar Farosh Federation.

During the hearing, the APNS admitted their culpability in the matter. The Commission ordered the immediate withdrawal of their decision to set a minimum cover price for newspapers and made it mandatory for the APNS to publish their decision in all leading newspapers.

3. JJVL and LPGAP

The Competition Commission of Pakistan conducted an inquiry into the possible cartelisation and existence of predatory pricing in the LPG sector, based on a complaint it received from Progas Pakistan Limited.

LPGAP is an informal organization of all LPG marketing companies licensed by the Oil and Gas Regulatory Authority (OGRA), while JJVL is Pakistan's largest LPG producer.

The inquiry revealed that LPGAP and JJVL were working together and had formed a vertical cartel to artificially keep the producer price of LPG low, thereby making imports commercially unviable. It was also deduced that JJVL and JJVL allottees take premiums and charge third party commission to marketing companies that do not have allocations. This practice places parties at a disadvantage by applying dissimilar conditions and conditioning the conclusion of a contract on terms which have no relevance to the subject matter of the original contract.

The Commission served identical show cause notices to both LPGAP and JJVL in March 2009, viewing government-directed, industry-wide efforts to ensure fair pricing as evidence of collusion and as being detrimental to the interests of the consumer. Among other things, it was alleged in the show cause notices that LPGAP has prima facie fixed prices through entering into vertical cartel with JJVL and kept the LPG importers out from competing in the relevant market through its exclusionary conduct. It was also alleged that LPGAP through its members who are allottees of JJVL (along with JJVL) is engaged in charging commission from marketing entities that do not have allocations with JJVL. The charging of premium by LPGAP results in applying dissimilar conditions.

After receiving the show cause notice, LPGAP filed a writ petition before the Lahore High Court (LHC). The petition challenged the legality of the notice along with the vires of the Competition Ordinance, 2007. However, in June 2009, the Supreme Court vacated a stay order earlier granted in favour of LPGAP by the LHC. The matter is currently pending.

4. Travel Agents Association of Pakistan and Takaful Pakistan Limited

Travel Agents Association of Pakistan (TAAP) was advised by Civil Aviation Authority (CAA) to seek opinion of the Competition Commission of Pakistan regarding the introduction of a new insurance guarantee plan to avoid subsequent adverse consequences, as CAA is only an executive body and the matter should be reviewed by a higher forum, such as the Commission. However, TAAP did not approach the Commission to seek its opinion regarding the Takaful Scheme. As a result, the Commission proceeded with an inquiry. TAAP was asked to provide a copy of agreement between TAAP and Takaful Pakistan Limited (TPL) with its comments.

After the inquiry, the following was concluded:

- (i) TPL held dominant position in the relevant market and by using its dominant position it developed a scheme that tied Passenger Takaful cover with the Guarantee. Further, TPL, prima facie, abused its dominant position and had been acting anti-competitively by making participants of Takaful Scheme to accept the supplemental obligation to purchase Passenger Takaful Cover, which had no connection with the Guarantee. Such practices prevented, restricted, reduced and distorted competition in the relevant market and therefore TPL had, prima facie, violated section 3(3)(c) and (d) of the Ordinance.
- (ii) Much like TPL, TAAP, prima facie, abused its dominant position by making participants of the Takaful Scheme accept the supplemental obligation, of passing on the Passenger Takaful Cover, which had no connection with the Guarantee—a primary subject of the Agreement. Both TPL and TAAP also had linked an investment plan with the Guarantee



through the Takaful Scheme and made the principal arrangement of Guarantee subject to supplementary obligation. Both these points indicated that TPL and TAAP were in clear violation of section 3(3)(d) of the Ordinance.

- (iii) The Agreement between TAAP and TPL had the effect of manipulating competition within the relevant market by fixing a premium to be charged from the customers through the participants/travel agents. It also imposed additional obligations in the form of Passenger Takaful Cover and investment plan that had no connection with the subject of the Agreement. Such arrangements between the undertakings, prima facie, constituted contravention of section 4(2)(a) and (g) of the Ordinance. Furthermore, to adhere to the conditions of the Takaful Scheme, the participating travel agents passed the cost of the premium to customers without informing them, which, prima facie, violated section 3 and 4 generally, as well as section 10(2)(b) of the Ordinance. Finally, the Takaful Scheme did not fulfil the requirements of IATA and remained a collective guarantee marketed as a customised product, prima facie, amounting to contravention of section 10(2)(a) of the Ordinance.

Decision in the Matter of Complaint Filed by Iljin Electric Company, Korea against Siemens

The Competition Commission of Pakistan had issued a No Objection Certificate (NOC) to Siemens (Pakistan) Engineering Company Limited to participate in the bidding for the Heavy Electrical Complex (HEC) held on 13 October, 2008. Obtaining the NOC was a condition established by the Privatisation Commission for all parties interested in the acquisition of HEC.

The Commission received a complaint from Iljin Electric Company, Korea which asked for the withdrawal of the NOC issued to Siemens on grounds that Siemens (Pakistan) had provided false or misleading information. Iljin Electric Company further suggested that if Siemens successfully acquired HEC, it would become dominant in the manufacture of 132KV power transformers and could abuse this dominance to crowd out competitors.

The Commission investigated the matter to establish whether there were any grounds in Iljin's contention that the proposed merger between Siemens and HEC would create or strengthen a dominant position, allowing the merged entity to raise prices above competitive levels without losing sales or whether Siemens had indeed provided false or misleading information to secure the NOC.

After a detailed scrutiny of the facts, the Commission decided that there was no evidence of dominance in the power transformer market in Pakistan by any one company at present and neither was dominance to be expected as the dynamics of the market showed considerable variability taking into account domestic production and imports. Therefore, no violations of Sections 3 and 11 of the Competition Ordinance, 2007 were foreseen. It was also found that Iljin could not unequivocally establish the fact that Siemens had obtained the NOC on incorrect or misleading information.

Consequently, the Commission decided not to withdraw the NOC issued to Siemens to participate in the bidding for the HEC or take any other action under the Competition Ordinance, 2007. Had the Commission withdrawn the NOC, Iljin would have been the sole contestant in bidding for HEC.

CHAPTER 11

COMMISSION SECRETARIAT

The Commission's Secretariat has been established pursuant to the Competition Commission (Conduct of Business) Regulations, 2007. Its framework includes overseeing the conduct of the business of the Commission in accordance with approved procedures. The duties of the Secretary include, inter alia, issuing notices and minutes of meetings of the Commission, representing the Commission at any forum if authorized by the Chairman, certifying the decisions or documents used in hearings by the Commission, keeping common seal of the Commission in his safe custody and performing all other duties as assigned by the Chairman.

The Commission held 28 meetings during the year in which proposals submitted by the operational departments were considered and decisions taken. Besides, the Chairman, in consultation with the Members, issued specific instructions to the Heads of Department for successful operation of the Commission. The Commission also took certain important policy decisions, including the following:

(i) *Competition Assessment Studies*

These studies were initiated by the Advocacy and Research Department with the help of professional consultants in a number of sectors. Subject to the availability of appropriate resources, the studies ultimately covered all major activities of the economy giving the Commission information and guidance regarding competition issues in the economy.

(ii) *Review of Regulations*

All the Regulations were reviewed, and after eliciting public opinion, were suitably amended and notified.

(iii) *Guidelines*

The following guidelines were issued:

- (1) Guidelines on Seeking Advice,
- (2) Guidelines for imposition of financial penalties,
- (3) Guidelines for conducting proceedings,
- (4) Guidelines on Reward payment to informant scheme,
- (5) Guidelines regarding online submission of pre-merger applications.

(iv) *Delegation of Powers*

Powers of the Commission were further delegated to the Members and senior officers, with



regard to operation of Office of Fair Trading (OFT); conduct of inquires and exercise of financial powers.

(v) *Establishment of New Departments /Cells for Increased Productivity of the Commission:*

- (i) Office of Fair Trading (OFT) to handle the cases of consumer protection.
- (ii) Acquisition & Mergers Facilitation Office (AMFO) to render advice to undertakings intending to conduct acquisitions and mergers.

(vi) *Introduction of Reward Payment to Informants Scheme*

Introduction

The Competition Commission of Pakistan (the Commission) has introduced a scheme of reward payment to be known as "Reward Payment to Informants Scheme". The objective of the Scheme is uncovering and taking action against cartel activity. These guidelines are being issued pursuant to regulation 56 of the Competition Commission (General Enforcement) Regulations, 2007, read with regulation 41 thereof.

Definitions

- (i) In these guidelines, unless there is anything repugnant in the subject or context,
 - (a) "Commission" means the Competition Commission of Pakistan established under the Ordinance.
 - (b) "Informant" means a person who furnishes information regarding contravention of section 4 of the Ordinance, of which cognizance is to be taken by the Commission and includes a 'whistle-blower' i.e. an employee who reports to the Commission, his employer's illegality.
 - (c) "Ordinance" means the Competition Ordinance, 2007.
 - (d) "Scheme" means the Reward Payment Scheme for Informants.
- (ii) The words and expressions used in these guidelines, and not defined herein, shall have the meanings respectively assigned to them in the Ordinance or the rules and regulations prescribed under the Ordinance.

Salient features of the Scheme

Salient features of the Scheme are as under:--

- (i) The Scheme involves the payment of rewards for an amount ranging from a minimum of Rs. 200,000 and maximum of one million rupees.
- (ii) The rewards paid shall be calculated by reference to the usefulness of the information provided, seriousness of the cartel, efforts made by the informant, and level and nature of the informant's contribution/cooperation.

- (iii) The reward shall be paid subject to the condition that the information provided by the informant is accurate, verifiable and useful in the Commission's anti-cartel enforcement work.
- (iv) The informant's identity shall be kept secret, unless he agrees to give evidence in subsequent proceedings.
- (v) The payment of any reward shall be made at the end of the proceedings upon passing of order of the Commission.
- (vi) The Scheme is aimed at those at the periphery of cartel activity, rather than those directly involved, who can benefit from lenient treatment.

Informing the Commission

- (i) The initial contact with the informant may be on phone or otherwise, but without disclosure of his name, if he is hesitant to reveal his identity at the very start.
- (ii) After initial assessment of the information provided, meeting with the informant shall be arranged to seek further details, and at that stage, the identity of the informant would be naturally disclosed
- (iii) The officers designated to deal with the informants shall ensure that any information provided is carefully safeguarded and handled, with a view to protecting the informant's identity from disclosure, if so requested by the Informant.
- (iv) The Commission may designate specially trained officers to deal with the informants.
- (v) It would be in the interest of the informants that they approach the Commission before they had obtained all the information which they might potentially have access to.
- (vi) The Commission may discuss with the Informant in advance the possible risks in obtaining the information and as to how such risks can be reduced?
- (vii) It shall be within the discretion of the Commission not to accept the intended information provided by the informant and it shall also be within the discretion of the Commission to grant the financial reward claim, based on the veracity and usefulness of the information supplied.

CORPORATE AFFAIRS DEPARTMENT

The Corporate Affairs Department handles matters pertaining to the Internal Operations of the Commission namely administration, information technology, Finance and human resources. The Department has a supportive role in the Commission's functioning.

Major emphasis in the work during the reporting period has been improvement of facilities and streamlining procedures in line with the latest policies of the Commission. The prominent improvements have been in the areas of policies formulation, staffing and computerized information system. The Commission is still operating on a very limited budget and, has been unable to complete / undertake all envisaged projects. Nonetheless, the Commission has been operationally active, judiciously deploying limited resources (both funds and manpower) as optimally as possible. Major activities during the reporting period are given below:



Administration

- Former Monopoly Control Authority employees retained in the Commission have been formally inducted and are now managed according to the Competition Commission Service Manual.
- All officials have been issued Commission Identity Cards.
- Attendance has been fully computerized by incorporating a biometric attendance system.
- Supplementary office equipment has been added to Commission's inventory which provides a congenial working environment for the staff and will ultimately result in optimum efficiency.
- A major leap forward has taken place as the record of Commission is being digitalized in order to create a paperless environment. Database storage will begin in the next phase.

INFORMATION TECHNOLOGY

The Information Technology Department (IT Department) provides IT support to CCP, to build the information infrastructure and to expand technology support in order to create an environment which will assist the organizational goals in the future. The IT department is the technology service partner for all other departments of the CCP. The Department is responsible for organizing and implementing an integrated system designed to support the work of communication within the Commission. Following is the progress achieved to date:

⊙ *Projects completed*

- Provision of state of the art IT infrastructure
 - Development of Domain Controller, Backup Domain Controller, File Server, 80 PCs/Laptops, UPS, 35 printers completed.
 - Delivery and Installation of Office Productivity Software (Microsoft Office), Antivirus Solution (System Endpoint Protection) & Email and collaboration suite completed.
 - Development of Local Area Network with 100 nodes at all locations Completed.
 - Establishment of Data Center/Server Room completed.
 - Electrification of all the offices of Commission completed.
 - Wireless Internet access.
 - Training of Competition Commission's office on basic IT skills.

● Biometrics Attendance System

⊙ *Projects under implementation*

- E-Office (Automation of Business Process & Activities) The system aims to reduce paper work and improve various processes within CCP. The system will enhance the internal working of the Commission and will include implementation of workflow environment, business process analysis, document analysis, and business activity monitoring and tracking etc.



- Scanning and Archiving of historical as well as live data.
- Audio Conferencing

⊙ *Envisaged projects*

- Disaster Recovery Center
- Enterprise Resource Planning
- Video Conferencing
- Call Center

HUMAN RESOURCES

- The Commission has been able to make considerable progress in the area of human resources as indicated below.
- The gender balance saw an improvement from 30 to 35 per cent between July 2008 and June 2009
- The performance appraisal system has been implemented and enables the Commission to be fair, accurate and supported by evidence.
- Additionally policies & procedures have been put in place to assist employees on various issues effecting them within the workplace & externally.



CHAPTER 12

TRANSPARENCY

Competition policy is increasingly recognized as an important tool for promoting economic development. Competition policy, the aim of which is generally viewed today as the promotion of consumer welfare and a vibrant economy, requires an appropriate institutional framework to succeed. To this end, competition policy plays a specific role in furthering economic development goals by promoting competition in all sectors of the economy

For competition laws and enforcement to be effective, businesses and stakeholders need to understand the rules of the game. Competition laws must to be transparent and their enforcement predictable and rulings on competition cases should be both consistent and based on non-discriminatory criteria. Transparency and predictability help to improve the investment environment by reducing the risk of inconsistent application of laws and regulations. Transparency reduces the undertaking's costs of compliance and promotes confidence by reassuring investors that they are being treated fairly and that the government is exercising its powers responsibly. Competition laws needs to be easily accessible, and any changes in law and regulations should be communicated to interested parties. Foreign businesses wishing to invest in a country through mergers and acquisitions should to be able to easily obtain information on the process for obtaining merger approval of the local competition authority. The same is true for domestic undertakings wishing to enter new product markets through M and A within the same country. Lack of transparency regarding procedures, inconsistent application of merger review policies and potential biases against foreign investors can significantly discourage short and long-run flows of investment and the entry of new undertakings. Similarly in the case of abuse of dominance and cartels, the procedures and investigations should be transparent

The Competition Commission of Pakistan is conscious of these important responsibilities and its policy framework is comprised of:

- A modern enabling law,
- Specific rules and regulations to make the law operational,
- Guidance for corporate behaviour,
- Education and empowerment of consumers,
- Public policy advocacy; and
- A professional autonomous institution to enforce the law

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Pakistan's competition law, regulations and all relevant information are easily accessible and their enforcement has been made clear to all. There is a consistent, predictable system of laws, policies, regulations and administrative practices, as well as information on rulings and judicial decisions. The potential investors from within or outside the country can know what steps are required to obtain approval for a merger, what constitutes abuse of dominance or a cartel, how investigations are conducted, the scale of penalties and the procedures for appeal. There is a process of prior notification and consultation containing public hearings, policy papers, circulation of draft regulatory changes to all concerned stakeholders, and processes for their revision and recirculation based upon public inputs.



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FINANCIAL STATEMENTS

Khalid -AajidRahman Sarfaraz
Rahim Iqbal Rafiq
Chartered Accountants

COMPETITION COMMISSION OF PAKISTAN

FINANCIAL STATEMENTS

FOR THE YEAR ENDED JUNE 30, 2009



Khalid Majid Rahman Sarfaraz
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, 2009 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 (herein-after referred to as the financial statements), for the year ended June 30, 2009 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.



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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. No provision has been made for income tax in these financial statements. *KHALID*

Opinion

In our opinion, except for the effects of the matters stated in paragraph 1 above, the financial statements give a true and fair view of the financial position of the Commission as at June 30, 2009, its deficit and cash flows for the period then ended in accordance with the policies given in note 3.

DATE: 18 JAN 2010
ISLAMABAD

Khalid Majid Rahman Sarfaraz
Rahim Iqbal Rafiq
KHALID MAJID RAHMAN SARFARAZ
RAHIM IQBAL RAFIQ
CHARTERED ACCOUNTANTS
KHALID

Engagement partner:
Mutee-ur-Rehman Mirza

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COMPETITION COMMISSION OF PAKISTAN BALANCE SHEET As at June 30, 2009

	NOTE	2009 (Rupees)	2008 (Rupees)
ASSETS			
NON CURRENT ASSETS			
Fixed assets	4	7,340,525	10,656,878
Long term investment	5	19,500,000	19,500,000
Long term loans and advances	6	5,837,807	5,701,861
CURRENT ASSETS			
Short term investments	7	4,000,000	4,000,000
Advances, prepayments and other receivables-considered good	8	18,246,130	15,510,472
Cash and bank	9	19,143,470	30,202,942
		41,389,600	49,713,414
		<u>74,067,932</u>	<u>85,572,153</u>
FUNDS AND LIABILITIES			
FUND ACCOUNT	10	(48,292,674)	(17,814,076)
DEFERRED LIABILITIES			
General provident fund		6,364,937	5,237,491
Pension fund		103,841,300	90,807,404
Leave encashment		3,905,359	677,445
Gratuity		5,241,157	1,603,453
Grant received from IDRC		1,153,018	-
CURRENT LIABILITIES			
Accrued and other liabilities	12	1,854,835	5,060,436
		<u>74,067,932</u>	<u>85,572,153</u>

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

KHASEEM

CHAIRMAN

DIRECTOR GENERAL



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COMPETITION COMMISSION OF PAKISTAN INCOME AND EXPENDITURE ACCOUNT For the year ended June 30, 2009

	NOTE	2009 (Rupees)	2008 (Rupees)
INCOME			
Fee, charges and penalties	13	42,875,000	41,800,000
Government grant		82,130,000	59,568,000
Interest income on investment		2,419,179	1,352,793
Interest income-Advances to employees		571,738	-
Other income		72,315	-
		<u>128,068,232</u>	<u>102,720,793</u>
EXPENDITURE			
Salaries, allowances and other benefits	14	87,053,016	36,376,396
Operating expenditures	15	67,347,238	30,009,299
Depreciation	4	4,146,576	4,331,438
		158,546,830	70,717,133
SURPLUS/(DEFICIT) FOR THE PERIOD		<u>(30,478,598)</u>	<u>32,003,660</u>

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

CHAIRMAN

DIRECTOR GENERAL

Annual Report 2009



COMPETITION COMMISSION OF PAKISTAN CASH FLOW STATEMENT For the year ended June 30, 2009

	2009 (Rupees)	2008 (Rupees)
CASH FLOW FROM OPERATING ACTIVITIES		
Surplus/(Deficit) for the period	(30,478,598)	32,003,660
Adjustment for non-cash items:		
Depreciation	4,146,576	4,331,438
Provision for doubtful receivables	100,000	-
Provision for gratuity	3,637,704	1,603,453
Provision for leave encashment	3,227,914	677,445
Provision for pension	16,375,956	9,160,875
	<u>(2,990,448)</u>	<u>47,776,871</u>
Working Capital Changes		
(Increase)/decrease in advances, prepayments and other receivables	(2,971,604)	(13,522,146)
Increase/(decrease) in accrued and other liabilities	(3,205,601)	2,109,044
	<u>(6,177,205)</u>	<u>(11,413,102)</u>
Increase in pension fund	529,442	
Increase in G. P fund	1,566,374	
General provident fund payment	(438,928)	(943,708)
Pension fund payment	(3,871,502)	(6,576,862)
Net cash flow from operating activities	<u>(11,382,267)</u>	<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	(830,223)	(11,636,041)
Net cash flow from investing activities	<u>(830,223)</u>	<u>(7,863,041)</u>
CASH FLOW FROM FINANCING ACTIVITIES		
Grant received from IDRC	1,153,018	-
Net cash flow from financing activities	<u>1,153,018</u>	<u>-</u>
(Decrease)/increase in cash and cash equivalents during the period	<u>(11,059,472)</u>	<u>20,980,159</u>
Cash and cash equivalents at the beginning of the period	30,202,942	9,222,783
Cash and cash equivalents at the end of the period	<u>19,143,470</u>	<u>30,202,942</u>

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

CHAIRMAN

DIRECTOR GENERAL



Annual Report 2009

COMPETITION COMMISSION OF PAKISTAN STATEMENT OF CHANGES IN FUND For the year ended June 30, 2009

Description	Note	Net assets acquired from MCA	Surplus/(Deficit) for the period	Total
Balance as at November 01, 2007	-	-	-	-
Net assets acquired from MCA	11	(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		(49,817,736)	32,003,660	(17,814,076)
Surplus/ (Deficit) for the year ended June 30, 2009		-	(30,478,598)	(30,478,598)
Balance as at June 30, 2009		(49,817,736)	1,525,062	(48,292,674)

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

KHAYAT

CHAIRMAN

DIRECTOR GENERAL



COMPETITION COMMISSION OF PAKISTAN
NOTES TO THE ACCOUNTS
For the year ended June 30, 2009

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. *IKMASMA*



COMPETITION COMMISSION OF PAKISTAN NOTES TO THE ACCOUNTS For the year ended June 30, 2009

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. Provision is made annually, to cover obligation under the scheme, by way of charge to income and expenditure account, calculated in accordance with the actuarial valuation. The most recent valuation in this regard was carried out as at June 30, 2009 using the projected unit credit method.

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 (2008-09:15%)

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. *KHASAM*

COMPETITION COMMISSION OF PAKISTAN FIXED ASSETS SCHEDULE For the year ended June 30, 2009

Particulars	As on July 1, 2008 Rs.		Cost		Rate %	As on July 1, 2008 Rs.		Depreciation For the Period		As on June 30, 2009 Rs.	WDV As on June 30, 2009 Rs.
	Rs.	Rs.	Addition Rs.	Deletion Rs.		As on June 30, 2009 Rs.	Deletion Rs.	Addition Rs.			
4 FIXED ASSETS											
For the year 2008-09											
Furniture and fixtures	6,188,710	241,959	-	-	20	6,430,669	-	1,286,134	-	2,523,876	3,906,793
Computer and electronics	8,488,236	356,861	-	-	33	8,845,097	-	1,863,453	-	6,931,382	1,913,714
Office equipments	1,692,283	231,403	-	-	20	1,923,686	-	256,989	-	1,399,669	524,017
Vehicles	4,860,000	-	-	-	20	4,860,000	-	740,000	-	3,864,000	996,000
Period ended June 30, 2009.	21,229,229	830,223	-	-		22,059,452	-	4,146,576	-	14,718,927	7,340,525
4.1 For the period 2007-08											
Furniture and Fixtures	-	6,188,710	-	-	20	6,188,710	-	1,237,742	-	1,237,742	4,950,968
Computer and electronics	3,532,596	4,955,640	-	-	33	8,488,236	-	1,926,422	-	5,067,929	3,420,307
Office equipments	1,473,592	218,691	-	-	20	1,692,283	-	255,274	-	1,142,680	549,603
Vehicles	4,860,000	-	-	-	20	4,860,000	-	912,000	-	3,124,000	1,736,000
Period ended June 30, 2008.	9,866,188	11,363,041	-	-		21,229,229	-	4,331,438	-	10,572,351	10,656,878

4.1.1 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.

KHAGAN



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COMPETITION COMMISSION OF PAKISTAN NOTES TO THE ACCOUNTS For the year ended June 30, 2009

	NOTE	2009 (Rupees)	2008 (Rupees)
5	LONG TERM INVESTMENTS		
	Pension fund investments	19,500,000	19,500,000
		<u>19,500,000</u>	<u>19,500,000</u>
	<p>These investments are held with SME Bank in deposit accounts for the period of 6 months and 12 months at the markup of 14% and 13% per annum respectively. However management has intentions to hold these investments for long term period.</p>		
6	LONG TERM LOANS AND ADVANCES		
	Loans and advances to employees	7,477,230	7,500,000
	Less: short term portion	1,639,423	1,798,139
		<u>5,837,807</u>	<u>5,701,861</u>
	<p>The interest bearing loans are given to employees for house building, car and motorcycle, while interest free loans are given to employees for cycle.</p>		
7	SHORT TERM INVESTMENTS		
	G.P Fund investments	4,000,000	4,000,000
		<u>4,000,000</u>	<u>4,000,000</u>
	<p>These investments are held with SME Bank in deposit account for the period of 3 months at the markup of 12.5% per annum.</p>		
8	ADVANCES, PREPAYMENTS AND OTHER RECEIVABLES-CONSIDERED GOOD		
	Short term portion of loans and advances to employees	2,249,423	1,798,139
	GP fund advance	1,068,507	734,787
	Prepayments	12,744,188	11,536,505
	Interest receivable on investment	1,612,274	1,441,041
	Interest receivable-Advances to employees	571,738	-
	Receivable from GOP	100,000	-
	Less: Provision for doubtful receivables	(100,000)	-
		<u>18,246,130</u>	<u>15,510,472</u>
9	CASH AND BANK BALANCES		
	Cash in hand	24,579	13,465
	Cash at bank:		
	Current account-CCP	102,885	28,482,719
	PLS account-G.P fund	1,097,395	226,393
	Current account-Pension fund	17,918,611	1,480,365
		<u>19,143,470</u>	<u>30,202,942</u>

KHASMA

Annual Report 2009



COMPETITION COMMISSION OF PAKISTAN NOTES TO THE ACCOUNTS

For the year ended June 30, 2009

	NOTE	2009 (Rupees)	2008 (Rupees)
10	FUNDACCOUNT		
		(17,814,076)	-
	11	-	(49,817,736)
		(30,478,598)	32,003,660
		<u>(48,292,674)</u>	<u>(17,814,076)</u>
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	-	(6,181,199)
	Pension fund	-	(87,802,690)
	Accrued monthly pension	-	(227,549)
	Interest payable on GP fund	-	(193,151)
	Accrued expenses	-	(2,951,392)
		<u>-</u>	<u>(49,817,736)</u>
12	CREDITORS, ACCRUED AND OTHER LIABILITIES		
	Accrued expenses	1,237,889	848,045
	Accrued payroll cost	-	3,211,272
	Monthly pension payable	-	305,660
	Pension commutation payable	-	695,459
	Other liabilities	616,946	-
		<u>1,854,835</u>	<u>5,060,436</u>
13	FEE, CHARGES AND PENALTIES		
	Acquisition fee	23,700,000	23,100,000
	Merger / Amalgamation fee	11,850,000	5,500,000
	Advice Fee	-	200,000
	Complaint Lodging fee	150,000	250,000
	Appeal fee	750,000	-
	Penalty Fee	500,000	-
	Exemption fee	7,425,000	12,750,000
	Less: Fee refund	(1,500,000)	-
		<u>42,875,000</u>	<u>41,800,000</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.

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COMPETITION COMMISSION OF PAKISTAN NOTES TO THE ACCOUNTS For the year ended June 30, 2009

	NOTE	2009 (Rupees)	2008 (Rupees)
14	SALARIES, ALLOWANCES AND OTHER BENEFITS		
Basic salary		42,402,339	18,163,051
Senior post allowance		27,800	29,600
House rent allowance		10,988,668	1,876,197
Conveyance allowance		1,415,625	475,545
Dearness allowance		927,592	803,170
Washing allowance		2,010	1,530
Dress allowance		735	560
Special additional allowance		431,487	345,942
Medical allowance		1,010,975	232,897
Entertainment allowance		28,729	35,336
Computer allowance		61,731	54,000
Orderly allowance		152,375	61,750
Deputation allowance		48,000	66,000
Adhoc allowance		675,913	569,713
Special adhoc allowance		675,913	569,713
Integrated allowance		42,150	30,202
Utilities allowance		1,251,282	143,970
Investigation all.		250,000	-
Compensatory all.		138,720	-
Overtime allowance		106,242	79,230
Honorarium		789,055	479,098
Medical charges		962,866	304,908
Contingent paid staff		1,269,386	520,271
Leave salary		266,251	18,510
Gross salaries, allowances and other benefits		63,925,844	24,861,193
Less: Deductions for leave without pay/leave with half pay/conveyance for leave etc		(200,954)	-
Net salaries, allowances and other benefits		63,724,890	-
Pension contribution of employees on deputation		86,552	73,430
Provision for pension		16,375,956	9,160,875
Provision for leave encashment		3,227,914	677,445
Provision for gratuity		3,637,704	1,603,453
		87,053,016	36,376,396

KHASANA

COMPETITION COMMISSION OF PAKISTAN
NOTES TO THE ACCOUNTS
For the year ended June 30, 2009

	NOTE	2009 (Rupees)	2008 (Rupees)
15	OPERATING EXPENDITURES		
	Repair and maintenance	1,160,320	282,861
	Traveling & conveyance	14,186,264	4,109,892
	Postage and telegraph	150,378	45,393
	Communications	4,159,266	2,460,539
	Utilities	1,470,291	484,296
	Security services	835,900	536,432
	Rent for office building	25,499,360	13,928,400
	Rent for residential building	3,289,155	2,655,108
	Printing and stationery	1,374,762	333,832
	Legal and professional charges	9,607,105	2,653,000
	Entertainment	712,877	115,660
	Newspaper and periodicals	635,741	356,374
	Uniforms and protective clothing	73,970	27,385
	Advertisement & publicity	1,284,469	-
	Group insurance	56,106	35,077
	Audit fee	125,000	75,000
	Interest expense-G.P fund	349,014	209,334
	Provision for doubtful receivables	100,000	-
	Other expenditures	2,277,260	1,700,716
		<u>67,347,238</u>	<u>30,009,299</u>

16 DATE OF AUTHORIZATION FOR ISSUE

The financial statements have been authorized for issue on Jan, 18, 2010. by the Commission

17 FIGURES

Figures have been rounded off to the nearest rupee. *KAYASAM*

CHAIRMAN

DIRECTOR GENERAL



COMPETITION COMMISSION OF PAKISTAN

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