

ANNUAL REPORT

2014

PROMOTING
COMPETITION

PROMOTING GROWTH



Competition Commission of Pakistan
Creating a level playing field



**CREATING A
LEVEL PLAYING
FIELD**

DISCLAIMER

The views given in this Report are general in nature. It neither binds the Commission nor is any warranty expressed or implied regarding adequacy or completeness of any information. This disclaimer applies to both the isolated and aggregate use of the information.



Mission Statement

Foster a robust economy and help promote economic growth by ensuring competition in all commercial and economic activity. The Commission wishes to enhance economic efficiency and protect consumers from anticompetitive behaviour.

Chairman's Message

ACTING CHAIRMAN



As I present the Annual Report for 2013-14 let me reiterate that the Competition Commission of Pakistan remains committed to curbing anti-competitive behaviour and protecting the consumers. Our priority areas for 2013-14 were: enforcement of competition law, competition advocacy, amending regulations, and streamlining and modernising our internal processes.

Competition law enforcement remains our foremost priority. The Commission passed an order in a case of abuse of dominant position under Section 3 of the Competition Act, 2010. The case concerned unfair trading conditions imposed by Indus Motor Company in its Provisional Booking Order. The case was disposed when Indus Motors agreed to address and rectify the competition concerns raised by the Commission. The Commission initiated 4 inquiries relating to cartelisation and scrutinised 18 related concerns across sectors such as telecommunication, petroleum, public procurement, cement, poultry, media, aviation, pharmaceuticals, jute, insurance, securities, and steel.

Our Mergers and Acquisitions department granted No-Objection-Certificates (NOCs) in 38 cases of acquisitions, 4 cases of mergers and 4 cases of joint ventures. Exemptions were granted to 64 potential competition reducing agreements and we issued 18 Show Cause Notices for various possible violations of the Competition Act, 2010. Our Office of Fair Trade (OFT) concluded 8 enquiries pertaining to deceptive marketing practices in the following sectors: fast moving consumer goods, health, telecom, paint, and fertiliser.

During the year we revised/issued the following regulations: (i) Competition (Leniency) Regulations, 2013 (ii) Competition (Exemption) Regulations, 2014 (iii) Competition (Reward Payment to Informants) Regulations, 2014.

The Commission embarked on an ambitious advocacy strategy to complement these enforcement efforts. We believe that there is a need to engage government departments to ensure that their policies are competitively neutral if not pro-competitive. A crucial element in this advocacy strategy is the issuance of non-binding advice to government departments in the form of policy notes. This year the Commission issued four policy notes -- to the Federal Board of Revenue (FBR) recommending the abolition of an anti-competitive capacity tax on the beverage industry, to the Oil & Gas Regulatory Authority (OGRA) regarding the non-issuance of flare gas licenses, to the Higher Education Commission regarding its equivalence standards and the discriminatory levy of Gas Infrastructure Development Cess (GIDC) on selective fertiliser plants.

Recommendations of our policy note on the non-issuance of flare gas licenses were taken into consideration by the Oil and Gas Regulatory Authority and amendments were made in the process. CCP considers this a success for consumers at a time when Pakistan is facing an energy crisis. Our advice regarding the discriminatory levy of GIDC was taken into consideration by the government and now this cess will be levied equally on all fertiliser plants.

The Commission also initiated advocacy sessions with Chambers of Commerce in different cities across Pakistan to create awareness among the business community on competition related issues. As part of our engagement with various stakeholders, we organized an international seminar in Karachi - Pakistan's economic capital- on the theme of "Role of Competition in Improving Investment Climate" in November 2013. We also held a seminar in Islamabad to observe the World Competition Day on 5th December, 2013, on the theme of "Economic Growth and Competitiveness".

The Commission also received international recognition for its advocacy efforts and won the World Bank's 2013 Competition Advocacy Contest in the category of "Successfully promoting pro-competition market reforms, opening of markets, and infusion of competition principles in other sectoral policies". We won the contest for our policy note to increase competition in the crucial segment of Pakistan's air transportation market — the route between Pakistan and Mecca during Hajj, and its recommendations were implemented by the Civil Aviation Authority resulting in two new airlines entering the market and a decrease in the cost of air travel for consumers. We estimate that consumer savings as a result of this action have been to the tune of PKR 6 billion/(USD 60 million) in the year 2013.

The Global Competition Review (GCR), a leading international competition law journal, in its 14th survey of the world's leading competition authorities gave CCP a rating of two and a half stars out of five and termed our performance consistent despite dwindling human resources. Let me mention that in this survey Pakistan was rated against competition agencies from the US, UK and Japan - which are some of the leading competition agencies in the world.

A major success was the withdrawal of the controversial International Clearing House Agreement (ICH) by the government in June 2014 which was a vindication of our stance that the ICH was anti-competitive as it fixed prices, reduced choice, foreclosed the market, removed incentives for better quality service and for investment in the improvement of infrastructure and was thus a clear threat to consumer welfare. Had our advice been heeded earlier there would

have been less harm to consumer welfare and the economy.

We at the Commission believe that strengthening the capacity of our staff is pivotal in effectively enforcing competition law in Pakistan. We send our officers on various international trainings so that they may learn from the best international practices. Some of the trainings attended were related to merger analysis, investigating cartels, abuse of dominance and advocacy topics that form the core of our functions.

The Commission also faces certain constraints that are hampering our enforcement efforts, one of which is prolonged litigation with over 300 cases pending in the courts. A solution for the speedy disposal of cases was the Competition Appellate Tribunal (CAT) however, that also remains dysfunctional. In view of this situation, the Commission has adopted a strategy of compliance through persuasion whereby we convince companies to comply with the provisions of the law without going through formal legal proceedings. We have achieved success in this especially in cases concerning deceptive marketing with the rate of compliance achieved in such cases being over ninety percent.

Another key challenge confronting the Commission in 2013-14 was the appointment of members. The Commission is a collegiate body composed of between five and seven members. Currently the Commission has only 3 members looking after multiple portfolios.

Our priorities for 2014-15 will remain the: effective enforcement of competition law, enhancing the strength and technical expertise of our enforcement staff, advocacy efforts with the public and private sector and working towards the financial and administrative autonomy of the Commission. To facilitate the business community the Commission is also planning to open a branch office in Karachi.

Looking forward to a productive 2014-15.

Table of Contents

5

CHAPTER 1

The Commission

8

CHAPTER 2

Ministry of Finance

10

CHAPTER 3

Organizational Structure

16

CHAPTER 4

Legal

20

CHAPTER 5

Tackling Cartels and
Monopolistic Behaviour

26

CHAPTER 6

Reviewing Policy
Frameworks

33

CHAPTER 7

Preventing Deceptive
Marketing

39

CHAPTER 8

Overseeing Mergers,
Acquisitions & Joint
Ventures

44

CHAPTER 9

Engaging in Competition
Advocacy

51

CHAPTER 10

Undertaking Research
and Policy Planning

56

CHAPTER 11

Office of International
Affairs

60

CHAPTER 12

Accounts

CHAPTER 1

The Commission



Dr. Joseph Wilson

A C T I N G C H A I R M A N

Dr. Wilson, the acting chairman of the Commission, has been a Member since it was established in 2007. He is overseeing Legal, Trade Abuses and Corporate Affairs departments. Earlier, he has overseen Monopolies and Trade Abuses, Mergers & Acquisitions, International Affairs, and Exemptions Departments.

Dr. Wilson's experience spans public service, law practice, teaching, and research in regulatory laws. Before the Commission, he was an Associate Professor of Law at the Lahore University of Management Sciences (LUMS), Pakistan, where he taught competition law and other courses.

Dr. Wilson taught at McGill Faculty of Law, Montreal Canada, where he earned Doctor of Civil Law (D.C.L.) with Dean's Honour List and Master of Laws (LL.M.) degrees. He has an LL.M. from the University of Georgia, USA. He is a member of the State Bar of New York, USA and Lahore High Court Bar. He is on the International Advisory Board of the Loyola University, Chicago's Institute for Consumer Antitrust Studies. His book is titled "Globalization and the Limits of National Merger Control Laws", published by Kluwer Law International in 2003.



Mueen Batlay

M E M B E R

Mr. Batlay, currently overseeing the Cartel and Competition Policy & Research Departments, joined the Commission in January 2011, in the Competition Policy and Research Department.

His experience spans investment banking, international development, consulting, education, and public policy both in Pakistan and abroad.

Before the Commission, Mr. Batlay managed an investment advisory and consulting firm, Capital Resource, where he looked at project finance and public private partnership at Samba Bank,

Pakistan. At the World Bank, he advised the governments of Sri Lanka and Jordan on privatisation and strengthening of global capital markets. He also worked on a public schools management system for the city of Washington DC, and economic reform management for the Government of Sindh, Pakistan. At Citibank, he worked on developing term finance certificates - the first corporate bonds of Pakistan.

Mr. Batlay has a Master's in Public Policy from the Kennedy School of Government, Harvard University, in which his focus was on international trade and finance.



Dr. Shahzad Ansar

M E M B E R

Dr. Ansar joined the Commission in January 2011 and oversees the Office of Fair Trade as well as advocacy activities.

He is an entrepreneur with experience spanning management, business development, education, and project finance. Before the Commission, Dr. Ansar was CEO at Furniture Pakistan, a subsidiary of Pakistan Industrial Development Corporation. He was also the CEO of a thermal power plant and the head of World Water Corporation, USA in Pakistan.

Dr. Ansar has worked with Pakistan's Virtual University as a resource person. He was Dean of Management Sciences at the University of South Asia and visiting faculty at the University of Central Punjab and the Civil Services Academy.

Dr. Ansar has a Doctorate degree in Business Management from UNEM (a UNESCO-IAU) University. His thesis was on the "Microfinance Sector In Pakistan & its Role in Poverty Alleviation." Dr. Ansar also holds a Master's degree in Engineering Geology from University of the Punjab. He is a Fellow at the Trinity College and a certified SME Manager in the Doctorate category from Cambridge Association of Management.

Ministry of Finance

The Ministry of Finance is the key federal agency responsible to pursue sound and equitable economic policies that put Pakistan on the path of sustained economic development and macroeconomic stability. Its domain extends to important financial matters such as the preparation of the annual budget for the consideration and approval of the Parliament. In so doing, the Ministry focuses on broader areas relating to financial and fiscal policy including economic growth, economic stabilization, inflation, poverty reduction, public debt management and economic reforms. On their course they keep in view the continuous and significant improvement in the quality of all citizens through prudent and transparent public financial management. For administrative purposes, it also serves as the parent Ministry of some federal agencies including the Competition Commission of Pakistan. It is the shared vision of the Ministry of Finance and the Competition Commission of Pakistan to promote economic growth and to foster the necessary ingredients for a vibrant and healthy economy.



Mr. Ishaq Dar
FEDERAL MINISTER

A leading financial-cum-economic expert, Senator Mohammad Ishaq Dar is the Federal Minister for Finance, Revenue, Economic Affairs, Statistics and Privatization. On the academic front, Senator Dar has had renowned institutions among his alma maters, including Government College Lahore, and Hailey College of Commerce, University of Punjab, Lahore (1966-69). He was awarded two Gold Medals and a Roll of Honour for First position in B. Com. (Hons) at the University of Punjab.

He has 42 years of professional experience in audit profession, financial advisory, management consultancy, business, commerce and industry, both in private and public sectors, in Pakistan and abroad.

His post-qualification professional experience earned him Fellowship (FCA) of ICAEW in 1980 and of ICAP in 1984. Subsequently, he also became a Fellow Member (F.P.A) of the Institute of Public Finance Accountants of Pakistan. Currently, Senator Dar has been bestowed Life Membership of ICAEW in January 2012. He has also worked as Director Finance of a British Textiles Group in London. He remained National Partner in a Chartered Accountants firm dealing with tax, corporate and financial management, audit and consultancy matters of the clients, including public sector and public-listed companies. Senator Dar acted as Chairman/Chief Executive and/or Director

of a Non-Banking Financial Institution (Public-Listed) in Pakistan.

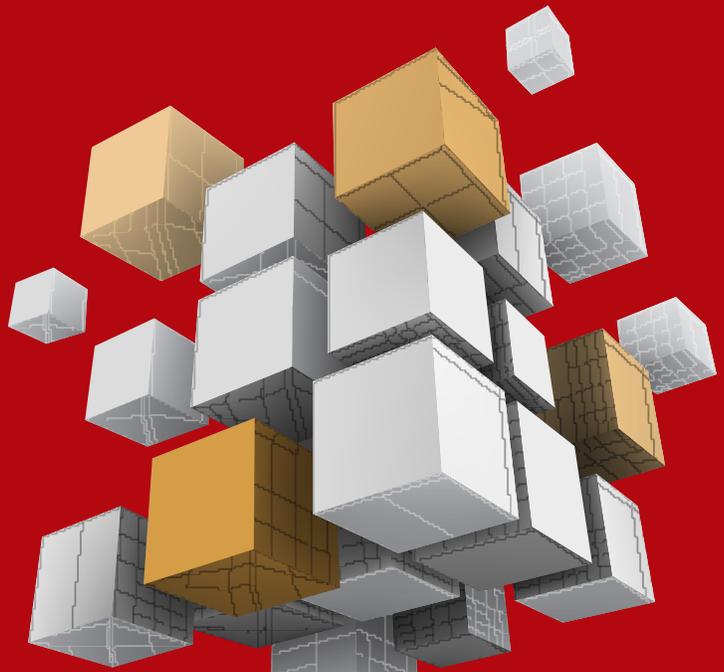
Senator Dar has held the important portfolio of Chairman, Standing Committee on Industries and Production, in addition to working as Member of a few Standing Committees, including Finance, Revenue, Economic Affairs, Statistics and Planning and Development, Commerce and Investment. He is also a Member of the Senate Finance Committee, Executive Committee of Senate Employees Welfare Fund and Board of Governors, and Pakistan Institute of Parliamentary Services (PIPS). In recognition of his Parliamentary services, the Government of Pakistan conferred to him, Nishan-e-Imtiaz (the highest civil award for Pakistani nationals) in 2011.



Dr. Waqar Masood Khan
FEDERAL SECRETARY

Dr. Waqar Masood has a Ph.D in Economics from Boston University Massachusetts, USA; M.A. in Political Economy, M.A. in Economics and LL.B. At present Dr Khan is working as the Federal Secretary, Finance. Prior to this, he has held various senior positions during his service with the Government of Pakistan which includes the position of Secretary Economic Affairs Division, Special Secretary to the Prime Minister, Secretary Finance, Secretary Textile Industry Division, Additional Secretary, Finance Division and Additional Secretary to the Prime Minister.

Organisational Structure



Commission's Secretariat

The Commission's Secretariat is headed by the Secretary, appointed by the Commission, whose duties and responsibilities are prescribed in the Competition Commission (Conduct of Business) Regulations, 2007. The common seal of the Commission remains under the same custody of the Secretariat.

Main functions of the Secretariat:

- Maintenance of record of the Commission's meetings and decisions taken therein
- Circulation of important decisions to concerned departments and monitoring their execution
- Production of documents in Court and other forums
- Communication of all decisions made by the Commission to the relevant people outside the Commission
- Exercise of any powers that may be assigned by the Commission

During the year, the Commission held 11 meetings in which important decisions in light of the statutory provisions of the Competition Law were taken.

Policy Notes: The following policy notes were issued:

- to the Government recommending a withdrawal of the discriminatory levy of Gas Infrastructure Development Cess (GIDC) on selective fertilizer plants.
- to the Oil and Gas Regulatory Authority for the issuance of Flare Gas License.
- to the Government to withdraw exemptions in construction sector.
- to the Government recommending the withdrawal of Capacity Tax on the Beverage Industry.
- to the Higher Education Commission to revise equivalence standards.

Opinion: Issuance of Opinion to OGRA and Petroleum Ministry to eliminate discriminatory application of Inland Freight Equalisation Margin.

Amendment in Regulations: The Commission made suitable amendments in Competition Commission (Exemption) Regulations.

Cartels and Trade Abuses Department

§3 of the Competition Act, 2010 prohibits the abuse of market power by dominant undertakings. §4 of the Act prohibits agreements between business undertakings and decisions by trade associations that can distort competition in a market.

The Cartels & Trade Abuses (C&TA) Department investigates potential violations of §3 & 4, specifically those involving collusion and cartelisation, and recommends action against violators to the Commission. It also undertakes policy reviews and recommends issuance of policy notes by the Commission in situations where governmental policy or legislation maybe discouraging competition or facilitating abuse of dominance, or collusion between market players. It also reviews general competition issues in the national economy and, where necessary, recommends the Commission to conduct open hearings and publicly express its opinion on the matter.

Office of Fair Trade (OFT)

The Office of Fair Trade (OFT) enables the Commission to protect consumers from misleading and deceptive marketing practices. The OFT enjoys all powers under the Act to enforce the provisions of §10 of the Act.

The OFT develops a link between the Commission and consumers and establishes a focal point for identifying and providing solutions to issues that pose or may potentially pose problems for consumers.

Mergers & Acquisition Department

The review of mergers and acquisitions of shares or assets, including joint ventures, pursuant to §11 of the Act are among the functions and responsibilities of the Mergers and Acquisitions Department.

To assist undertakings contemplating a merger or acquisition that desire to get an informal and non-binding view of the Commission, the department operates the Acquisitions and Mergers Facilitation Office (AMFO), which plays an advisory role and guides any undertaking or undertakings that are foreseeing a merger or acquisition activity.

The procedure adopted by the department for examining the application and issuance of a “No objection certificate (NOC)” is detailed in the guidelines on merger . The Act gives 30 days for the completing the first phase review and 90 days if the matter requires a detailed second phase review.

Competition Advocacy

§29 of the Act requires the Commission to engage in advocacy through various means to create awareness of competition issues and to promote a culture of competition in the country. The Commission understands the reason for and importance of advocating competition, especially in a developing economy like Pakistan, where the general awareness of the business community may not be at an ideal level.

The work of the CCP towards increasing the awareness of all stakeholders, including the public and private sectors, the legal community, academia, media, and the Government, is done through an advocacy strategy developed by the Advocacy Department.

Advocacy efforts include national and international conferences, seminars, training workshops, round tables, media appearances, sessions of the Competition Consultative Group and bilateral meetings with sector regulators.

Competition Policy and Research Department

A sector inquiry or market study is part of the Commission's task to promote competition in a certain sector or market. The aim of a sector inquiry or market study is diagnostic and often done to assess competition in a particular market and recommend procompetitive measures to increase consumer welfare in the relevant areas. In addition, a sector inquiry may also unearth evidence of competition law infringements that call for regular enforcement actions in the relevant industry or sector. Thus, sector inquiries and market studies form part of an effective competition policy.

§28 requires the Commission to conduct studies for promoting competition in all sectors of the economy and §29(b) empowers the Commission to promote competition by reviewing policy frameworks making suitable recommendations for fostering competition.

Sector inquiries and market studies are extensive, covering market dominance, entry barriers, the effect of international developments on the national market, and the regulatory mechanism. They are based on efforts to gather first hand knowledge from relevant stakeholders. Yet, sector inquiries are resource intensive, and also require access to relevant market data which companies are often reluctant to disclose, for example company data on market shares, strategies, prices, margins and costs.

The reports are of interest to policy makers in both the legislative and the executive branches, market players, investors, academia, and students.

Office of International Affairs

The Office of International Affairs (OIA) was established as the focal coordinating point to liaise with UNCTAD, OECD, and the International Competition Network (ICN). In addition, the Office is responsible for exploring bilateral relations with competition agencies and with donor agencies for possible technical assistance. In essence, the Office is the communications focal point for all international activities.

The OIA is currently involved in two ICN working groups, specifically in the working groups on cartels and mergers. It also contributes to the workings of OECD and UNCTAD. The Office also handles the liaison and cooperation relationships with other competition agencies in the world, be it on a bilateral or regional basis.



Legal Department

The Legal Department manages the legal affairs of the Commission, providing legal advice and assistance to operational departments and undertakings on matters pertaining to the Act. This department, under the mandate of the Commission's leadership, also serves as a liaison with the Federal Government, its ministries, and other regulatory authorities.

The Legal Department is also assigned the responsibility of drafting and proposing secondary legislation, such as rules and regulations, and scrutinising it to ensure its compliance with the law.

It also houses the Office of the Registrar, which issues show cause notices, arranges hearings and assists the Original and Appellate Benches of the Commission by providing administrative and legal support. The Registrar also represents the Commission in litigation matters before the various courts of Pakistan, preparing pleadings to be filed in all litigation related matters.



Corporate Affairs

The Commission's Corporate Affairs are managed by the Administration, Accounts, and Information Technology & Human Resources Departments that actively assist the functioning of the Commission. These departments handle matters pertaining to the internal operations of the Commission. The Management lays major emphasis on the improvement of facilities, policies and procedures. Prominent improvements have been made in the areas of policy formulation, staffing, and information technology.

Accounts Department

The Accounts Wing is responsible for accounts and internal controls. There is an increasing emphasis on cost control within the Commission, in part due to the limited budget available.

Administration Department

The Administration Wing provides administrative and logistical support to the Commission and its employees. Its mandate includes general office management, transport management, assets management, and security and safety.

HR Department

The Human Resources Wing is involved with the planning and assessment of the number of employees and the skills mix that is needed. It is also accountable for the review, design and drafting of job descriptions for current and prospective vacancies, as well as for the recruitment of talent. Once an employee is recruited, the department reviews their performance on a regular basis through performance appraisals. To improve the efficiency levels of the Commission's officers and staff, each employee is required to undertake relevant training sessions and development programmes.

Information Technology



The IT Department manages and supplies all IT related services to support the Commission's technology mission of increasing employee productivity and efficiency. The department focuses on three programme fields: enterprise application services, enterprise operational services, and enterprise design/multimedia services. The IT Department is also responsible for the maintaining and updating of the Commission's website.

Internal Audit

Internal Audit (IA) is an independent appraisal function within the Commission. The work of IA is governed under Internal Audit Charter which covers the role to review the adequacy and effectiveness of the Commission's governance, processes, controls and risk management by implementing the agreed strategies across the organization. The function aims to make the overall management process effective and efficient.

CHAPTER 4

Legal

Litigation involving CCP

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, are subject to legal challenge. Such legal challenges include proceedings in appeal before the Supreme Court as well as constitutional challenges under the writ jurisdiction of the High Courts. In the past year a number of companies, to which show cause notices were issued by the Commission, challenged the constitutionality of the Act before the High Courts. These matters remain pending before the superior courts, where the Commission is being represented by external counsel, including senior Supreme Court practitioners.

Amendments in Rules and Regulations

In exercise of the powers conferred by Section 58 of the Act, the Commission adopted certain amendments to its Regulations. The Leniency Regulations and Exemption Regulations were reviewed while new Regulations on the Reward Payment Scheme to Informants and the Fee Schedule were proposed.

The purpose of this exercise is to ensure enforcement of the Competition Act while improving the legal framework and also to ensure compliance. All the changes affect an important part of the institutional structure and procedures of the Competition Act.

1. Competition (Leniency) Regulations, 2013 :

Subsequent to the enactment of the Competition Act, the Commission reviewed the Leniency Regulations in order to update and bring them in line of the international best practices.

Under the new Leniency Regulations, only the first applicant, who fully cooperates and fulfills other conditions, could invoke the Leniency clause and benefit from a reduction in penalties.

The amended regulations also provide the scope and extent of confidentiality of the leniency applicant to be maintained by the Commission.

2. Competition Commission (Service) Regulations, 2007 :

To reconcile the Service Regulations with the provisions of the Competition Act and to further address the audit observations and for smooth operation of the HR and administrative work within the Commission, a corrigenda was published in the official gazette. The service regulations were amended to include the provisions in the Service Regulations regarding the payments, allowances and salaries made through the fund of the CCP in order to avoid any future anomaly. This would ensure HR and administrative activities that conformed to audit guidelines.

3. Competition (Reward Payment to Informants) Regulations, 2014 :

Certain changes were made to the existing regulations after eliciting public comments, which are as follows:

(a) **Reward Scheme through Regulations:** In terms of Section 20(2) of the Competition Act, the Commission is empowered to make expenditure pursuant to Regulations made under the Competition Act. Since, the rewards given under the scheme fall in the head of expenditures, therefore, it is appropriate to implement this scheme through Regulations rather than Guidelines. Even otherwise, the Regulations are more binding in nature than the Guidelines, therefore, it was proposed that the scheme may be launched through regulations and the previous Regulations may be revoked.

(b) **Reward Payment Scheme – A Cartel Detection tool:** Since the reward payment scheme is aimed at detecting cartels therefore, the scope of the scheme may be restricted to 'Section 4 prohibition only' i.e. cartels/ Prohibited Agreements.

(c) **Quantum of Reward:** Due to scarcity of funds at the disposal of the Commission it was proposed that the quantum of award may be revised. The revised quantum of reward should be from Rs. 200,000 to Rs. 2,000,000. Previously, the reward ranged from Rs. 500,000 to Rs. 5,000,000.

(d) **Designated Officer:** A provision regarding the appointment of a designated officer may be provided in the Reward Payment Scheme similar to the provision proposed in the Leniency Regulations.

(e) **Stages of Payment of Reward:** The stages of payment of reward may be curtailed to two i.e. initial token and upon issuance of show cause notice, unless the Commission deems it appropriate to withhold the final payment till the final decision by the Commission.

(f) **Advocacy of the Reward Payment Scheme:** A dedicated page may be provided on the website of the Commission with a separate email.

4. Competition (Exemption) Regulations, 2014 :

It was noted that there was difficulty in finding the exact provisions relating to the exemption procedure and also there was a need to clarify as when an application for individual/ template or block exemption could be made. Therefore, to facilitate undertakings applying for exemptions and to make it convenient for them to obtain the relevant information, it was considered necessary to issue separate Exemption Regulations.

Accordingly, subsequent to the promulgation of the new exemption regulations, the existing provisions from the General Enforcement Regulations were deleted.

5. Fee Schedule :

The Fee Schedule was revised to provide clarity and distinction in the payment of Fee for filing of complaint by a natural or legal person under Section 10 of the Competition Act. Moreover, a fee for the filing of interim relief was also added.

Exemptions

Consistent with global competition laws, the Competition Act recognizes that certain prohibited agreements or practices may provide an overall benefit to consumers; such as improving production, distribution, and technological development that would outweigh the adverse effects of the lessening of competition in the market. The Commission has the power, under section 5 of the Competition Act, to grant exemptions to such agreements. Applications for exemptions are initially processed by the Legal Department and then the Member (C&TA) makes the final decision regarding the grant of exemptions.

Exemptions Granted (July 2013 – June 2014)

The Commission granted 64 exemption certificates. In addition to the exempted undertakings, certain other undertakings were asked to provide the requisite information for determining their liability for filing applications for exemption of their prohibited agreement(s).

Hearings Conducted (July 2013 - June 2014)

The Office of Registrar scheduled and conducted 7 hearings to bring an end to the infringement of the Competition Act.

Show Cause Notices Issued (July 2013 - June 2014)

The Legal Department is entrusted with the vetting and drafting of the show cause notices for, prima facie, violations of the Competition Act. The Commission took action against undertakings from various sectors of the economy, which inter alia include the telecom sector and the Fast Moving Consumer Goods. A total of 18 show cause notices were issued during the reporting period.

Vetting Of Bilateral Investment Agreement

A number of bilateral investment agreements were received from the Board of Investment for review and feedback. After reviewing, the Commission commented on such agreements in the light of the Competition Act.

CHAPTER 5

Tackling Monopolistic Behaviour and Cartels

During the financial year 2013-2014, the Commission scrutinised and processed over eighteen competition matters relating to Section 4 across sectors such as telecommunication, petroleum, public procurement, cement, poultry, media, aviation, pharmaceuticals, jute, insurance, securities, and steel. As a result of this scrutiny the Commission initiated formal inquiries into four matters.

Enforcement Actions

The Commission, after scrutinising eighteen competition concerns, initiated formal inquiries in four cases. Investigation into one of these four inquiries was completed and submitted to the Commission for further action. The other three were in progress at the close of the financial year. Investigations were conducted in various sectors such as agriculture, manufacturing, and services. The Commission also carried a successful inspection to impound crucial evidence for the investigation.

Order in the matter of Show Cause Notice Issued to Indus Motor Company Limited

The Commission received concerns regarding the Booking Order issued by the Indus Motor Company for purchase of a new car. The Commission noted that the booking order is a consumer contract or standard form contract, offered on a “take it” or “leave it” basis; in contrast to the traditional contracts, which are drafted or freely negotiated by both contracting parties. An inquiry conducted by the Commission revealed that the Toyota’s booking order appeared to be imposing unfair trading conditions on customers, which is in violation of Section 3 of the Competition Act. These conditions caused a significant imbalance in the parties’ rights and obligations, and protected the legitimate interests of the manufacturer unreasonably.

The Commission issued a show cause notice to Indus Motor Company Limited. During the hearing, the Company sought to amend the terms and conditions of its booking order to address the Commission’s concern. The Commission’s bench allowed the company to amend the booking order in compliance of the provisions of the Competition Act. Toyota submitted the revised draft to the Commission with the following changes:

- Previously, cancellation of the booking was at the sole discretion of the manufacturer thus depriving the customers of a countervailing power to cancel an order in the face of unsatisfactory change in price or delivery schedule. The manufacturer corrected this imbalance by not only relinquishing its unilateral right to reject the cancellation request in such event but also waiving off any charges for the same.
- The clause, whereby, the manufacturer had the sole right to alter terms and conditions of the booking order and the right to interpret them conclusively was done away with.
- Previously, any dispute between the manufacturer and the customers was to be settled by the management of the manufacturer. This clause was amended to refer such a dispute to an arbitrator, who would decide the matter in accordance with the arbitration Act, 1940.
- In addition, Indus Motor could alter the design and specification of a customer’s order without informing him/her. This clause was amended specifically mentioning that the company may make minor alterations only if required by federal and/or provincial legislation.

“

Conditions mentioned in the booking order appeared to be unfair trading conditions imposed on customers in terms of Section 3(3)(a) of the Competition Act, 2010.

- Lastly, there was uncertainty regarding the final price in respect of an order as the manufacturer had the sole right to change the price at delivery without any notice to the buyer. As per the revised booking order, it was explicitly mentioned that the revision of prices would only be subject to change on account of Government imposed taxes or in the event of currency fluctuation.

Considering the compliance of Indus Motor, no penalty was imposed and the show cause notice was disposed off by the Commission.

Fee Increase by ICAP



The Commission received complaints from students of chartered accountancy regarding the fee revision by the Institute of Chartered Accountants of Pakistan (ICAP) in February 2014.

The students complained that the drastic increase in fee had become burdensome for them. An initial inquiry by the Commission revealed that ICAP had increased the fee by up to 118% compared to the previous fee for CA final examinations. Such an increase in fee appeared to be unreasonable, prima facie, violating Section 3 of the Competition Act 2010. The Commission sought the rationale for this sharp upward revision of fee from ICAP.

In light of the concerns raised by the Commission, ICAP took prompt action to revise the fee for final CA examination and reduced it to a significant level. ICAP revised the fee structure by reducing it 60%.

The Commission aims to correct behavior which distorts market conditions and may lead to market failure. Businesses are encouraged to rectify their anti-competitive practices/behavior and integrate competition compliance into their corporate governance framework. The compliance oriented approach of ICAP was appreciated by the Commission.

Restriction of competition in Public Procurement

Power Sector

A number of competition concerns regarding the power sector were brought to the notice of the Commission, with respect to procurement of electrical equipment such as PCC Poles, switchgear apparatus and Power transformers by various Distribution companies (DISCOs) and National Transmission & Dispatch Company (NTDC). The Commission observed that the pre-requisites laid down in these tenders were creating entry barriers, thus denying a level-playing field for suppliers. The Commission processed several complaints regarding the anti competitive clauses in tenders and achieved compliance in most of the cases.

SEPCO Tender – Procurement of PCC Poles

The Commission received complaints from engineering and contracting firms against Sukkur Electric Power Company (SEPCO) for introducing a condition in the invitation for a tender. The condition stated that all the participants must have a prototype approval before entering the bidding phase, whereas industry practice of prototype testing was never a pre-qualifying criterion for participation in bidding and was only required once a company acquired a purchasing order on being successful in the bidding.

Moreover, the Commission was informed that the Design Department of National Transmission and Dispatch Company Limited (NTDC) also carried out prototype testing on obtaining a purchase order. The requirement thus had the effect of denying the complainants and other qualified suppliers a level-playing field thereby restricting competition.

The Commission advised SEPCO that the requirement of prototype approval at the bidding stage appeared to be an impediment to competition. In response, SEPCO acknowledged that adding such a condition would hamper fair, transparent and healthy competition and therefore agreed to remove this from its new tenders. The amendment thus made was published in national newspapers, in addition to having been uploaded on the Pakistan Public Procurement Regulatory Authority (PPRA)'s website.

NTDC Tender- Procurement of Grid Station Equipment

The Commission received complaints from suppliers of substation hardware against National Transmission and Dispatch Company (NTDC) for introducing a condition in its tender for the procurement of grid station equipment. As per this condition only those bids were to be accepted for the subject procurement that were accompanied with type test reports for the equipment offered. The Commission also noted that no such condition has been made mandatory in similar bids of other procuring agencies in the power sector.

Since the NTDC specifications were not known internationally and foreign manufacturers had no way of knowing the pre-requisites for bidding beforehand this requirement had the effect of restricting competition. The Commission advised NTDC that the inclusion of such pre-requisites appeared to hinder competition in the market.

In response, NTDC acknowledged the competition concern and resolved the matter by amending the bidding document. As per the amended bidding documents, all type tests carried out by testing laboratories, having ISO certification and duly witnessed by qualified representatives of earlier clients or purchasers, shall be entertained and in case of any shortcomings in these type test reports the same shall be carried out without any additional cost and without affecting the delivery schedule from any one of the seven (7) laboratories listed in the bidding document.

LESCO Tender - Procurement of Power Transformers

The Commission received complaints from suppliers of Power Transformers against Lahore Electric Supply Company (LESCO) for introducing a condition in its tender for the procurement of 31.5/40 MVA Power Transformers. As per the condition, only those bids were to be accepted for the subject procurement that were accompanied with type test reports in accordance with NTDC/WAPDA specifications for the equipment offered.

The Commission observed that in the past two decades all tenders associated with the Asian Development Bank had been devoid of any such requirement. The Commission also learnt, that in a similar tender floated by Islamabad Electric Supply Company (IESCO) the same condition was not a pre-requisite. The Commission noted that each country in the world had a disparate voltage/rating level and specifications and therefore could not be expected to conform to standards that were internationally unknown. Furthermore, international manufacturers had no way of knowing the pre-requisites for bidding beforehand. This requirement thus had the effect of denying the complainants and other qualified suppliers a level-playing field thereby restricting competition.



The Commission advised LESCO that the requirement of type test reports appeared to be an entry-barrier restricting competition in the market to the detriment of suppliers, the procuring agency and the national economy. In its response, LESCO cancelled its tender and only opened it for re-bidding after addressing the concerns raised by the Commission.

Procurement of Bulldozers

The Government of Balochistan allocated PKR 3 billion in budget 2014-15 for the procurement of 200 bulldozers for agriculture purposes. The Agriculture and Cooperatives Department, Balochistan (A&CD), floated a tender to procure the first lot of 40 Bulldozers.

The Commission received complaints from the suppliers of bulldozers concerning the terms of the tender expressing the following concerns:

- Five brands of bulldozers were invited in the tender, however, bids were to be entertained only if the bidders provided details of supply during the last five years for their brands offered in Pakistan. From the import data of Customs, the Commission learnt that only one brand of bulldozer was imported in Pakistan during the last five years, effectively creating a monopoly of one supplier.
- The pre-requisite horse-power (HP) range for the procurement of bulldozers was set at 120-125 HP, despite the fact that the majority of the brands mentioned in the tender failed to meet this requirement. The Commission learnt that the then Ministry of Food, Agriculture & Livestock had established a horse-power range between 120-130 HP to ensure better competition and this practice was followed by the Agriculture Department of Sindh in its latest procurement.

These pre-requisites in the tender document appeared to hinder a level-playing field among various suppliers of bulldozers by ostensibly foreclosing the market for most of the potential bidders. The Commission advised A&CD that the inclusion of the above pre-requisites would restrict competition in the market at a heavy cost to the national exchequer. In response, A&CD acknowledged the competition concerns and resolved the matter by amending the bidding document. This increased the duration of bulldozer supply history in Pakistan by suppliers to the immediately preceding twenty five (25) years instead of the earlier required five (5) years. Further, A&CD, Balochistan agreed to take appropriate action to increase HP requirement from 125 to 130 HP to ensure maximum participation of bulldozer suppliers.



CHAPTER 6

Reviewing Policy Frameworks

The Commission's mandate includes ensuring free competition in all spheres of commercial and economic activity and to enhance economic efficiency. § 29 of the Act stipulates that the Commission shall promote competition by, inter alia; reviewing policy frameworks for fostering competition and making suitable recommendation to the Federal Government or Provincial Governments to amend any law that affects competition in Pakistan.

Policy Note on Capacity Tax

The Commission took notice of various news items regarding the concerns raised by the beverage industry on the imposition of capacity tax, which is Federal Excise Duty (FED) and Sales Tax on production/installed capacity instead of actual sales. Capacity Tax was imposed by the government through a Statutory Regulatory Order (SRO).

As per the SRO, factories having a foreign or mix of foreign and local origin filling machines had to pay tax amounting to PKR 4,700,000, factories exclusively having local origin filling machines had to pay PKR 3,760,000, and factories having filling machines with less than 40 filling valves had to pay PKR 1,175,000. The Commission noted with concern that the levy based on the installed capacity results in imposition of a fixed tax on manufacturing units with varying levels of actual production and thus, discriminates against the smaller manufacturers.

The Commission noted that the Capacity Tax, which was previously introduced in 1991 – withdrawn in 1994; had become a major reason for bankruptcy and closing down of many local competitors, and consequently, around fifteen local beverage plants had ceased operations.

The Commission observed that the Capacity Tax results in gains for large scale manufacturers, who hold a major share in the market, use high speed fillers, and produce at higher rates of capacity utilization (up to 80-100 per cent). On the other hand, a small manufacturer who has less demand in the market and is producing less than half of its production capacity will also have to pay the same fixed rate of tax. Therefore, a fixed rate of tax would reduce the tax burden of large manufacturers and increase it for small manufacturers. This imbalance of tax imposition is anti-competitive, as it puts small competitors at a cost disadvantage, resulting in unfair competition, and eventually could squeeze the small competitors out of the market.

“

The levy based on the installed capacity results in imposition of a fixed tax on manufacturing units with varying levels of actual production and thus, discriminates against the smaller manufacturers

Furthermore, the division of manufacturers into different categories also seems to be unreasonable, as the tax slab jumped from PKR1.17 million to PKR3.7 million if the number of valves went up from 39 to 40. This raise in tax was exponential and would only encourage fixing capacity at 39 valves.

Moreover, the Capacity Tax regime creates barriers to entry and exit. Under the given tax slabs, a potential competitor will be reluctant to increase capacity, as this would result in a higher incidence of tax in the earlier years of the usage of the machinery, when it is typically utilized below full capacity. Even otherwise, it would be difficult for any new competitor to compete with the larger manufacturers who have a stronghold in the market and take the benefit of cost advantage (economies of scale) under the Capacity Tax. The current situation is unlikely to yield higher revenue to the government. Moreover, the Capacity Tax regime also makes the exit from the market difficult. All those manufacturers who are not able to compete will have no buyer in the markets for their plants/machinery.

Finally, once the smaller manufacturers are driven out of the market, competition will be reduced, and the consumers will be left with limited choices. Also, low profile brands having a small market share help in creating choice in favor of the consumer. These brands cannot sell at the same price as the high profile brands, but they do compel a high profile brand to maintain a proportionate price, or risk losing market share.

The Commission noted that Capacity Tax is a regressive way of revenue collection and gives unfair and unnecessary competitive cost advantage to large manufacturers. Such a discriminatory tax regime stifles competition in the beverage industry, and as a result, small local manufacturers will be forced to close down because they will no longer be able to compete in a tax environment that overwhelmingly favors large manufacturers. This is against the nation's professed aim of building and growing businesses and encouraging investment.

The Commission issued a Policy Note to the Federal Government recommending withdrawal of Capacity Tax on the beverage industry.

Policy Note on Gas Infrastructure Development Cess

The Commission took notice of concerns raised by fertilizer companies against the discriminatory levy of the Gas Infrastructure Development Cess (GIDC). According to the companies, GIDC discriminated against the fertilizer plants installed prior to the Fertilizer Policy 2001, as compared to the plants that were commissioned and became operative after the Fertilizer Policy 2001, by placing the pre-2001 plants at a cost disadvantage, thereby distorting competition in the urea market.

The Fertiliser Policy 2001 issued by the Government of Pakistan ensured equal treatment for all market players by stipulating that all the fertiliser producers, domestic and foreign, public and private will be treated equally in commercial, fiscal, corporate, and contractual matters. The Policy granted a certain lower price for gas feed stock to all post-2001 plants.

“

The lower rate of feed gas coupled with exemption of GIDC for post-2001 fertilizer plants resulted in a price difference of PKR 355/MMBTU for feed gas between the pre-2001 and post-2001 plants...

With the controlled rate of feed gas, the price differential of feed gas between pre-2001 and post-2001 fertilizer plants rose to approximately Rs. 41/MMBTU, with the pre-2001 plants paying the higher rate. Thereafter, GIDC was levied only on pre 2001 fertiliser plants at the rate of Rs.197/MMBTU under the GIDC Act, 2011. The GIDC Act was amended in December 2013, enhancing the GIDC levy to Rs. 300/MMBTU from the previous rate of Rs. 197/MMBTU.

In a Policy Note issued to the Government, the Commission observed that the lower rate of feed gas coupled with exemption of GIDC for post-2001 fertilizer plants resulted in a price difference of PKR 355/MMBTU for feed gas between the pre-2001 and post-2001 plants. This cost disadvantage made it difficult for pre-2001 plants to compete with the post-2001 plants.

However, the fact is that post-2001 plants sold the urea at the same price as that sold by pre-2001 plants; the price of urea based on the cost of feed gas alone tilted towards the price of pre-2001 plants, i.e., feed gas with GIDC. Thus, the total urea produced was sold as if all plants paid GIDC. This resulted in Consumer Loss of PKR 28.1 billion and

supra-natural profits for the post-2001 plants to the tune of PKR 11.2 billion, equal to 31% of the production cost based on feed gas. The GIDC accrued to the national exchequer, however was only PKR13.1 billion. Further, after the amendments in GIDC Act in December 2013, cost differential of feed gas was magnified and stood at PKR.355 per MMBTU, resulting in supra-normal profits of PKR 4 billion only in the first quarter of 2014 because of feed gas cost saving for post-2001 fertilizer plants.

The Policy Note observed that the selective imposition had placed the fertiliser sector in a catch-22 situation. If the post-2001 plants sell urea at a price based on their own cost of feed gas, they will certainly sell at a much lower price than that of pre-2001 plants, and therefore will drive the pre-2001 plants out of the market. This will be against the Fertilizer Policy of 2001, as the investment will be driven out of the market, and domestic production will be reduced. On the other hand, if the post-2001 plants will sell urea at a price based on the cost of the feed gas to pre-2001 plants, the price will certainly not be the competitive price, and the farmer will end up paying much higher prices. This will again be against the Fertilizer Policy 2001, as it will not assure reasonable prices of fertilizers to farmers below the import-price. The Policy Note recommended that the GIDC be charged equally to all fertilizer plants to create a level-playing field in the urea market.



Policy Note to Higher Education Commission

The Commission took notice of concerns raised with regard to the Equivalence Standard introduced by the Higher Education Commission (HEC) in the Qualification Framework and Revised Roadmap for Business Education - 2012. The Equivalence Standard was applied retrospectively and rendered the Master's degrees earned prior to introduction of the Equivalence Standard inferior to those earned after the introduction of ES.

The Business Education Roadmap clearly showed that an MBA attained after 16 years of education is equivalent to a BBA or B.Com, culminating in 16 years of education. Though the Qualification Framework and Roadmap for Business Education set a standard for future students, they, perhaps, inadvertently, did not create any exception for Master's degrees (MA, MSc, MBAs etc.) attained prior to introduction of Equivalence Standard.

The Equivalence Standard raised a serious competition concern by discriminating against those who earned their Master's degrees (MA, MSc, MBA etc.) prior to Equivalence Standard by essentially putting them at a competitive disadvantage in terms of employment and higher education vis-à-vis those who earned their degrees after the introduction of Equivalence Standard.

The Commission noted that by failing to create an exception for degrees conferred prior to the introduction of Equivalence Standard, the HEC applied the same retroactively against the principles of natural justice. For example, in the case of legal education in Pakistan, where the requirement of a 2 years LL.B changed to a 3 years LL.B, thus, making the completion of LL.B degree requiring 17 years of schooling instead of 16 years. Despite addition of a year in the terminal degree, the old LL.B is considered equivalent to the one that is earned in line with the current standard. While the current standard has been mandatory since its introduction, it has had no retrospective effect thereby ruling out any possibility of discrimination.

“

The ES raises a serious competition concern by discriminating against those who earned their Master's degrees (MA, MSc, MBA etc.) prior to ES by essentially putting them at a competitive disadvantage in terms of employment and higher education.

The Commission believed that the Equivalence Standard discriminated against the old Master's degree as it effectively rendered an old MA, MSc, MBA etc degree inferior despite the fact that the number of years was not even increased in these programs unlike the LL.B program. Taking the example of a business school rated by the HEC as the 'premier business school' in the country, it can be safely assumed that the quality and standard of education imparted in its MBA program before and after the introduction of Equivalence Standard remained the same.





It is essential that people are able to enter the job market. A pre-ES MBA could not apply for jobs specifying the new ES, i.e. 18 years of education for MBA. Thus the Equivalence Standard made it difficult for old MBAs to enter the employment market of management sciences and had the effect of reducing or restricting competition in the said market. Similarly, to seek higher education an old MBA had to repeat the same terminal degree in order to meet the HEC's equivalence criteria.

Moreover, it needs to be noted that the profound goal of a four year bachelor program offered worldwide, is to provide an opportunity to students to broaden their horizon by learning a variety of subjects in various disciplines. A specialist programme such as an MBA prepares people to serve as business specialists in various sectors of the economy. Therefore, the objectives associated with respect to a 4 year bachelor programme and a specialist program is disparate and cannot substitute each other in any way. After attaining a

Master's degree, whether it was held by an old MBA or new one, the ability to perform in a higher education program or the job field remained undistinguished as far as their preparation or training was concerned. The Equivalence Standard of HEC did not differentiate old and new MBA based on the curriculum or teaching methodology but instead on the number of years.

The Commission acknowledged that the initiative taken by HEC to introduce the 4 year bachelor programme was done to make Pakistani degrees compatible with foreign ones. However, the new standard should not adversely affect the degree holders who earned their degrees in accordance with the standard prevalent at the time of their schooling.

The Commission recommended to HEC to revise its Equivalence Standard to create an exception for those who attained their Master's degrees in 16 years, in the period prior to the standard of four-year bachelor program reintroduced by the HEC in Pakistan.

Policy Note Issued to Oil and Gas Regulatory Authority

The Commission received concerns from potential market entrants in the market for flare-gas storage, distribution and transportation, about the delay in issuing of licenses by the (OGRA). The Commission was informed by a potential entrant that its application remains pending despite completion of all formalities. The Commission, therefore, decided to assess the possible anti-competitive impact of such an impediment in issuing license.

The Commission observed that flare-gas is a by-product during the extraction of petroleum and can help in augmenting the supply of gas in the country. Till now flare-gas has not been utilized in Pakistan but it may provide a stepping stone for new entrants that are aspiring to enter the market for the supply of natural gas. Flare-gas can be compressed for easy storage and transportation using gas bowsers.

In its response to the CCP's queries, OGRA noted that the monopoly of Sui Northern Gas Pipelines Company Limited (SNGPL) and Sui Southern Gas Pipelines Company Ltd. (SSGCL) for transmission and distribution of gas ended on 30th June, 2010. OGRA stated that the current flare-gas policy issued by the Federal Government did not provide any guidance to determine: (i) producer price for flare-gas; (ii) tariff applicable for future similar cases; and (iii) tariff applicable for potential consumers.

The Commission noted that OGRA's mandate was to foster competition and increase investment in the midstream and downstream market for petroleum. However, in the matter of issuing a license for flare-gas distribution where, prima facie, all the requirements for issuance of license were met, delaying a decision on the issuance of license created a barrier to entry in the market. Institutional delay in the issuance of the license lengthened the time for a new entrant to enter the market thus benefitting the existing firms and making the market less competitive. At a time when Pakistan was facing an energy crisis, barriers to entry in sectors such as natural gas were a cause for concern, as they restricted the much needed investment in the energy sector.

The Commission recommended to OGRA to take a decision on the issuance of license at the earliest to pave the way for investment and to incentivize the incumbent service providers to be more efficient and innovative which would in turn benefit consumers.

The Commission's Opinion on Proposed Amendment in Public Procurement Regulatory Authority (PPRA) Rules

The Commission's comments were sought by Pakistan Public Procurement Regulatory Authority (PPRA) regarding the proposal by Trading Corporation of Pakistan (TCP) to amend PPRA Rules which would allow price matching or post-bidding negotiations. In this regard, the Commission submitted a detailed opinion which highlighted that price matching is against the norms of competition principles, and if allowed, it may result in violating provisions of the Competition Act. It was advised that instead of seeking an amendment in the law, TCP must develop other modalities and methods to cope with complexities arising in procurement.

CHAPTER 7

Preventing Deceptive
Marketing

Complaint Filed By Agritech Limited Against Tara Group Pakistan For Deceptive Marketing Practices

The Commission received a complaint from Agritech Limited against Tara Group for alleged violation of Section 10, of the Competition Act. Agritech accused Tara Group of using the mark 'Tara' in its branding, which is identical to the product name of Agritech, and thus trying to mislead the consumers that the products of Tara are actually those of Agritech.

An inquiry by the Commission established that Tara group infringed upon the rights of Agritech who is a prior user of the trademark 'TARA', and has invested considerable money and effort in establishing the brand 'TARA'. The Commission noted that it appeared that Tara Crop Sciences through its exclusive franchise network i.e. Tara Zarai Markaz had infringed upon the rights of Agritech. This could lead consumers to believe that the one-stop shop / franchise outlet i.e. "Tara Zarai Markaz" operating as Agritech's franchise/affiliate/branch and the products offered in "Tara Zarai Markaz" are its products. Trademarks are the lifeline of businesses and any unauthorized use of a trademark by another party results in un-quantifiable loss and damage to their goodwill and business, which is irreparable in nature.

“

The inquiry suggested that it was in the interest of the general public that businesses should be stopped from advertising their products/services in an unfair and misleading manner and be encouraged to resort to advertising practices which were transparent

The Commission's inquiry held that the allegations leveled against Tara constituted a prima facie violation of Section 10 of the Competition Act. The inquiry suggested that it was in the interest of the general public that businesses should be stopped from advertising their products/services in an unfair and misleading manner and be encouraged to use advertising practices that were transparent and gave consumers/customers true and correct information.

Complaint Filed Against Internet Service Providers For Deceptive Marketing Practices

A complaint was filed with the Commission against various Internet Service Providers (ISPs) for alleged violation of Section 10 of the Competition Act. The complainant alleged that certain ISPs had advertised their internet packages as “unlimited” while actually there were limits on downloading volume.

An inquiry conducted by the Commission established that the ISPs, by making the claim of ‘unlimited Package’ were, prima facie, involved in deceptive marketing practices. Examining the advertisements of other major ISPs, the Commission observed that ISPs were marketing their internet packages as “unlimited”, thus, giving an impression that consumers can download unlimited data and the speed (as stated in package detail) will remain constant, whereas there were limits on data downloading and speed. It was also observed that in few instances the ISP failed to mention that Fair Usage Policy (FUP) applies to the package. The Commission’s inquiry concluded that ISPs, prima facie, distributed false and misleading information, that could harm the business interest of other undertakings and lacked reasonable basis regarding character, properties and quality of its product, which was the violation of Section 10 of the Competition Act.

The Commission’s inquiry concluded that such practices had a direct impact on the public, therefore, businesses should disclose correct information regarding their product to consumers. False and misleading advertisements induce consumers to purchase the product and hence it gives the business an undue competitive edge over other competing businesses. Consequently, it is in the interest of the public that undertakings should avoid advertising their products in a deceptive manner and be encouraged to use advertising practices that are transparent and give consumers the true and correct information about the products and services.

Complaint Filed By Akzo Nobel Pakistan Limited & Diamond Paints Against Jotun Pakistan (Pvt) Ltd For Deceptive Marketing Practices

Akzo Nobel Pakistan Limited and Diamond Paints lodged a complaint with the Commission against Jotun Pakistan (Pvt) Limited alleging that its claim of ‘No. 1 in Paints’ in marketing materials was disseminating misleading and false information to the consumers.

An inquiry conducted by the Commission established that, prima facie, Jotun had no reasonable basis to make the claim of being “No.1 in Paints”. Therefore, its use was in violation of Section 10 of the Competition Act.

Further, Jotun was also involved in distributing false and misleading information that is capable of harming the business interest of other undertakings. It was suggested in the inquiry report that businesses should be discouraged from selling their products in a deceptive manner and be directed to adopt such practices which are transparent and give consumers/customers true and correct information about their products.

Complaint Filed By K&N Foods (Pvt) Ltd Against A. Rahim Foods (Pvt) Ltd For Deceptive Marketing Practices

K&N's Foods lodged a complaint against A. Rahim Foods (Pvt.) Ltd for alleged violation of Section 10 the Competition Act. K&N accused A. Rahim Foods of copying its packaging and using the recognition and goodwill associated with K&N. The misuse of such packaging causes the consumer to be deceived and/or misled regarding the origin of the product. Consumers may also be attracted towards a product that appears to be a replica thus diluting the goodwill and exclusivity of the packaging or product labeling.

The Commission's enquiry established that businesses invest considerable resources to build their brand identity, distinguish their products from competitors and build a reputation in the market. The four principle devices businesses use to distinguish themselves are trade names, trademarks, service marks and trade dress. Broadly speaking, a trademark can be anything that individualizes the product or services of a given enterprise and distinguishes it from those of others. Trade dress or packaging is also a principle component businesses use to distinguish themselves and it refers to a product's physical appearance- size, shape, texture and design, the way a product is presented or wrapped. A. Rahim Food's marketing of its product in very similar packaging to the K&N's would not only affect the consumer's capacity to make an informed choice and cause deception but would also hinder competition as it would be no longer based on honesty and fairness. One of the main aims of the Competition Act is to ensure that competition is fair and not distorted.

The Commission's inquiry concluded that the act of A. Rahim Foods had the effect of misleading the consumer and could result in substantial losses to K&N's. Therefore, it was proposed that proceedings against A. Rahim Foods under Section 30 of the Act may be initiated for, prima facie, violations of Section 10 of the Act.

Enquiry Conducted Against Reckitt & Benckiser Pakistan Limited For Deceptive Marketing Practices

Reckitt Benckiser Pakistan Limited through various media channels advertised its product 'dettol surface cleaner', in which it made certain claims regarding the efficacy of the products. The advertisement termed "Phenyl" as highly ineffective against germs, while claiming that only Dettol surface cleaner could kill more germs than Phenyl. The campaign further claimed that Dettol surface cleaner can kill 99% of germs and its effectiveness was 10 times higher than Phenyl.

An inquiry conducted by the Commission revealed that Reckitt & Benckiser had relied on a laboratory report for its claim 'Only Dettol Surface Cleaner can kill 99.9% of germs'. An analysis of the test report showed that Dettol Surface Cleaner had been tested against only three species of bacteria. However, in the claim a wider term 'Germs' was used, thus giving an impression that the product was effective against all bacteria, viruses, fungi and protozoa. It noted that the use of the word 'germ' with the test conducted on only three species of bacteria was not appropriate.

To further authenticate its claim they relied on a report showing a disinfectant efficacy test of Dettol Surface Cleaner against ordinary unbranded phenyl. However, in the advertisement the word 'Phenyl' was used without any qualifier i.e. 'ordinary and unbranded phenyl. Moreover, if the claim 'only Dettol Surface Cleaner can kill 99.9% of germs' was used in conjunction with the claim 'Dettol Surface Cleaner can kill germs 10 times more than Phenyl', an impression was given to the consumers that Phenyl can only kill germs up to 9.99%, which seems to be incorrect. The company also failed to provide the reasonable basis of other claims mentioned in the advertisement. The Commission after concluding an inquiry issued a show cause notice to Reckitt Benckiser Pakistan Limited for deceptive marketing practices prohibited under Section 10 of the Competition Act.

Complaint Filed By National Foods Limited Against Shangrila (Pvt) Ltd For Deceptive Marketing Practices

National Foods Limited filed a complaint with the Commission against Shangrila (Private) Limited for alleged violation of Section 10 of the Competition Act.

National Foods alleged that in August 2012 Shangrila claimed that 'Shangrila Tomato Ketchup is Pakistan's No.1 Tomato Ketchup', without any reasonable basis. By doing so, Shangrila was disseminating misleading and false information to consumers that could harm the business interest of National Foods.

According to the inquiry conducted by the Commission, AC Neilson Audit Retail Survey showed that, Shangrila Tomato Ketchup was not "No. 1 in Pakistan" as claimed in the marketing campaign. Shangrila had a volume share of 21.1% in ketchup & sauce business in Pakistan as compared to National Food's volume share of 48.7% in the same category during the period. National Foods also provided the AC Neilson Audit Retail Survey for the same period.

Shangrila submitted that its claim was based on the award obtained from Brands Foundation Pakistan from 2008 to 2011 consecutively. Brand Foundation submitted that their evaluation is in no way related with declaring any brand as the number one or two in any industry category; as they analyse consumer preference, brand attributes analysis, current year market standing and company profile. They further clarified that if Shangrila made any claim to be the No. 1 Tomato Ketchup, it must have been on some other basis.

The Commission's inquiry concluded that Shangrila had violated Section 10 of the Competition Act. During the hearing before the Commission, Shangrila stated that the marketing campaign under question had already been discontinued and the company would ensure compliance with the Competition Act and the directions of the CCP in the matter thereof.

Based on the aforesaid commitment and the forthcoming approach of Shangrila, the Commission's bench disposed of the matter while accepting the commitments and directing it to file a compliance report that none of the marketing material contained the deceptive claim i.e. Pakistan's No. 1.

Action Against Cellular Mobile Telecom Operators (CMTOs)

The Commission took suo moto action on the imposition of additional charges by the Cellular Mobile Telecom Operators (CMTOs) at the time of the reload of balance for prepaid connections. Additional charges were implemented for the first time in July 2011 under various titles, such as operational charge, maintenance fee, administrative fee etc. and ranged from 1.0% to 1.5%. The percentage of these additional charges was revised and increased by the Telecom Operators, once in 2012 and again in 2013. Currently these additional charges range from 3% to 5%.

An inquiry conducted by the Commission revealed that deduction of operational, administration or maintenance charges had an impact on the actual price of cellular telecommunication services availed by the customers, thereby making them more expensive as compared to what was reflected in their package details. Further, prepaid customers of all telecom operators paid a certain amount at the time of recharge but they were not aware of value addition/benefit or any specific service being rendered against these additional charges.

Although Telecom Operators informed their customers regarding these additional charges at the time of levy, none of them disclosed the impact of such levy/charges on the price. The tricky part was that apparently, operators were advertising to sell their voice call or SMS and other telephony services in the most lucrative way i.e. cheap call or cheap SMS etc., but in fact an additional burden was passed on to the consumers by levying charges against which no specific service was being rendered.

The Commission was focused on the imposition of the additional charges as, prima facie, contravention of Section 10 of the Competition Act. The Commission, in order to safeguard the interests of the cellular service subscribers in accordance with the law, issued show cause notices to all Telecom Operators.

CHAPTER 8

Mergers, Acquisitions & Joint Ventures

Section 11 of the Competition Act, 2010 mandates the Commission to review mergers and acquisitions which have the potential to substantially lessen competition by creating or strengthening a dominant position.

An effective pre-merger review requires a careful analysis of the impact of a merger on competition before it takes place. Section 11 of the Competition Act and the pre-merger notification requirements of Section 4 of the Competition (Merger Control) Regulations, 2007, stipulates pre-merger notifications thresholds, based on the size of the transaction and the parties. Once an intended merger/acquisition meets the notification thresholds it becomes mandatory for the parties to notify it to the Commission. A filing fee, set at levels depending on the size of the merging parties, is payable upon notification.

Typically, most of the mergers reviewed by the Commission pose little or no threat to competition and are issued No Objection Certificates within a Phase-I review, i.e., thirty days of the application. But if the possibility of competitive harm is identified in a transaction, a more in-depth investigation, also known as a Phase-II review, becomes necessary. The Commission has policies and procedures to identify and remedy competitive issues in such cases within a period of ninety days.

“

Most of the mergers reviewed by the Commission that pose little or no threat to competition and are issued No Objection Certificates within Phase-I review, i.e., thirty days of the application. But if the possibility of competitive harm is identified in a transaction, a more in-depth investigation, also known as a Phase-II review, becomes necessary.

During the year 2013-14, 46 merger applications were received which included 38 acquisitions, 4 mergers & 4 Joint Ventures, which were reviewed by the Commission. All 46 cases were cleared in the initial review at Phase-I, given their nominal impact on competition.

Sectors	Undertakings
Financial services, investment, modaraba, banking, leasing	6
Foods products and beverages and distribution	2
Chemical products, petrochemicals, petroleum products, fertilizers	2
Power and Energy	9
Textiles	7
Insurance	1
Pharmaceuticals	2
Auto	1
Telecom	1
Real Estate	1
Engineering	5
Communication	3
Conglomerates	6

Acquisition/Merger/Joint Venture cases analysed and cleared during the year from 1st July 2013 to 30th June 2014.

Acquisitions

1	Acquisition of 150,000 (42.86%) preference shares of Worldcall Telecom Limited by Habib Bank Limited Bahrain	03-07-2013
2	Acquisition of 100% shares of Al Hamd Foods Limited by Fauji Fertilizer Company Limited.	16-07-2013
3	Acquisition of 88% shares of SPIG S.p.A, Italy by Clessidra Sgr S.p.A, Italy	22-7-2013
4	Acquisition of 1,249,260 shares of Loads Limited by Treet Corporation Limited	26-7-2013
5	Acquisition of 24.66% shares of Gadoon Textile Mills Limited by YB Pakistan Limited.	05-8-2013
6	Acquisition of 74.99% shares of M/s. Clariant Pakistan Limited by Archroma Textiles S.A.R.	17-09-2013
7	Acquisition of 985,514 shares of Century Paper and Boards Mills Limited by Siza (Private) Limited.	17-09-2013
8	Acquisition of 40.22% shares of Safe Mix Concrete Products Limited by a Consortium comprising (i) Arif Habib Limited (ii) Rotocast Engineering (Pvt) Limited, (iii) Mr. Arif Habib, (iv) Mr. Samad Habib and (v) Mr. Kashif Habib	09-10-2013
9	Acquisition of 30% shares of UCH-II Power (Pvt) Limited by Oasis International Power LLC	14-10-2013
10	Acquisition of 30% shares of UCH-I Power (Pvt) Limited by Oasis International Power LLC	24-10-2013
11	Acquisition of 50% shares of M/s. Indus Home Limited by M/s. Indus Dyeing and Manufacturing Company Limited	08-11-2013
12	Acquisition of 571,348 shares (50%) of Overseas Oil Trading Company Pakistan (Private) Limited by Bakri Trading Company Pakistan (Private) Limited	06-12-2013
13	Acquisition of 99.95% shares of M/s. Tritex Cotton Mills Limited by M/s. Masood Spinning Mills Limited	06-12-2013
14	Acquisition of 100% shares of Tullow Pakistan (Developments) Limited by Ocean Pakistan Limited	17-12-2013
15	Acquisition of 60% shares of Pak Media Communication (Private) Limited by Z2C Limited	03-01-2014
16	Acquisition of leather chemicals business of Clariant International AG ("Clariant") by Stahl Lux 2 S.A. ("Stahl"), to establish a Joint Venture between Wendel SA, Stahl and Clariant	21-01-2014
17	Acquisition of 55% shares of HomeSend CVBA by MasterCard/Europay UK Limited	25-02-2014

18	Acquisition by AerCap Holdings N.V through its wholly owned subsidiary, AerCap Ireland Limited of the 100% shares of International Lease Finance Corporation.	26-02-2014
19	Acquisition of 60% shares of PICIC Insurance Limited by KM Enterprises (Private) Limited.	04-03-2014
20	Acquisition of 80% voting shares of Workforce Software LLC by Wildcat Holdings LLC	10-04-2014
21	Merger of Ghumman Housing (Pvt) Limited with and into Citi Housing (Pvt) Limited	14-04-2014
22	Acquisition of entire shareholding of Chevron Pakistan Limited by Total PARCO Pakistan Limited	18-04-2014
23	Acquisition of 100% shares of M/s. YB Pakistan Limited and Lucky One (Pvt) Limited by YB Holdings (Pvt) Limited.	30-04-2014
24	Acquisition of 100% shares of M/s. Lucky Energy (Private) Limited and Yunus Energy Limited by YB Holdings (Pvt) Limited.	30-04-2014
25	Acquisition of 51% shares of M/s. Lucky Knits (Pvt) Limited and 75% shares of M/s. Fashion Textile Mills (Pvt) Limited by Y.B. Holdings (Pvt) Limited	30-04-2014
26	Acquisition of AGP (Private) Limited by OBS Pakistan (Private) Limited	30-04-2014
27	Acquisition by SOHL Merger Sub Limited (Cayman Islands) of SES Holdings Limited (Cayman Islands).	02-05-2014
28	Acquisition of 150,000,000 shares of Yunus Textile Mills Limited, 200,000,000 shares of Lucky Textile Mills Limited, 12,205,494 shares of Gadoon Textile Mills Limited, 4,632,126 shares of Fazal Textile Mills Limited and 4,000 shares of Yunus Textile (Private) Limited by Y.B. Holdings (Pvt) Limited.	02-05-2014
29	Acquisition by Soorty Enterprises (Private) Limited of certain immovable properties and machinery belonging to Towellers Limited	05-05-2014
30	Acquisition of 100% shares of Lucky Cotton Mills (Pvt) Limited by Mustaqim Dyeing Printing Industries (Private) Limited	09-05-2014
31	Acquisition of 100% shares of Lucky Power Generation (Private) Limited by Mustqaim Dyeing Printing Industries (Private) Limited	16-05-2014
32	Acquisition of 51% shares of Masood Textile Mills Limited by Shandong Ruyi Science & Technology Group Co., Limited.	20-05-2014
33	Acquisition of 99% shares of TCS (Private) Limited by TCS Holdings (Private) Limited	23-05-2014
34	Acquisition of 100% shares of TCS Logistics (Private) Limited by TCS Holdings (Private) Limited	23-05-2014
35	Acquisition of 9.9% shares of Metro Power Company Limited by International Finance Corporation	11-06-2014
36	Acquisition of 10.29% shares in BankIslami Pakistan Limited by Mr. Ali Hussain.	20-06-2014
37	Acquisition of 40% shares of NutriCo Pakistan (Private) Limited by ICI Pakistan Limited.	20-06-2014
38	Acquisition of 100% shareholding of Larr Sugar Mills Limited by M/s. Khawaja Nimr Majeed, Noor Nimr Majeed and Aslam Masoor	30-06-2014

Mergers

1	Merger of Pak Oman Asset Management Company Limited with and into AKD Investment Management Limited.	30-07-2013
2	Amalgamation of Amjad Spinning and Weaving Mills Limited into Gravity Mills Limited	14-10-2013
3	Merger of MCB Dynamic Stock Fund and Pakistan Premier Fund with and into Pakistan Stock Market Fund	10-12-2013
4	Merger of Pak Oman Asset Management Company Limited with and into KASB Funds Limited	30-05-2014

Joint Ventures

1	Joint venture agreement between Thal Limited, Toyota Boshoku Corporation and Toyota Tsusho Corporation, forming a company named Thal Boshoku Pakistan (Private) Limited.	30-7-2013
2	Joint venture agreement between MDC Industry Holding Company LLC and Dubal Holding LLC.	17-09-2013
3	Joint Venture between M/s. Wateen Telecom Limited (“Wateen”) and M/s. Augere Holdings (Netherlands) B.V. (“Augere”), on acquisition of 51% shares of M/s. Wateen ViMax (a subsidiary of Wateen) by Augere.	04-02-2014
4	Joint Venture between Marubeni-Itochu Steel Inc., Japan and Dawood Engineering (Pvt.) Limited	16-05-2014

Acquisition & Merger Facilitation Office (AMFO).

The Commission facilitates and provides guidance to undertakings, law firms, and other stakeholders for any questions they may have regarding the pre-merger review process. Telephonic or written advice may be sought. Information and non-binding advice is given in accordance with section 28(1)(d) of the Competition Act, 2010 and the guidelines on AMFO available on the Commission’s website. During the year, more than twenty undertakings, law firms and consultants were facilitated on different issues relating to merger application filings and related issues. Non-binding written advice/clarification was given in each respective case.

CHAPTER 9

Engaging In Competition
Advocacy



Seminar on Role of Competition in Improving Investment Climate - Karachi

The Commission held a seminar on the “Role of Competition in Improving Investment Climate” at Karachi on 6 November, 2013. The seminar discussed the broad issues concerning competition policy, both in the national and global context. The seminar was organized around three technical sessions besides an opening and closing session.

The three sessions were on:

- I. Nexus between competitive markets and investment
- II. Factors hampering investment climate; and
- III. Competition and investment, cross-cutting issues within the WTO Framework

These sessions were addressed by Mr. Julien Chaisse, Associate Professor, Chinese University of Hong Kong, Mr. Khalid Mirza, former Chairman CCP, Dr. Joseph Wilson, Acting Chairman CCP, Mr. Mueen Batlay, Member CCP, Mr. Saad Amanullah Khan, Former CEO Gillette Pakistan, Dr. Muhammad Saleem, Director General Pakistan Telecommunication Authority, Dr. Zafar Mahmood, Professor of Social Sciences & Humanities, and Dr. Manzoor Ahmad, USAid Trade Project.

The speakers threw light on the important aspects of Competition Law enforcement, constraints to direct foreign investment, international developments with respect to competition policy, trade and investment negotiations, including mutual cooperation, bilateral and multilateral negotiations, and issues concerning automobile, telecommunication, aviation and other sectors of the economy. Presentations given by the Commission’s officials focused on the implementation of the Competition Law. The participants reflected special interests while discussing cases handled by the Commission.

The speakers stressed the need to promote competition in order to create a healthy environment for attracting investment. Effective competition policies foster economic welfare through creating a level playing field. It was emphasized that successful implementation of competition policy results in elimination of anti-competitive practices. Foreign Direct Investment (FDI) has beneficial impact on the economy of a country in terms of enterprise development, technology transfer, employment and competition.

The participants appreciated the Commission for organising the seminar and urged the need for more such interactive sessions.

Competition Consultative Group

The Competition Consultative Group (CCG) was established by the Commission in 2008 as an informal think tank to elicit feedback and guidance regarding its performance on persistent Competition related issues. The CCG is a select body including representatives from regulatory agencies, professional bodies/ associations, academia, media, the private sector and government. CCG meetings are convened quarterly in different cities. This year, two meetings were held.



Participants of 19th CCG Meeting

19th CCG Meeting

The 19th meeting of CCG was held at Sheraton Hotel Karachi on 23 July 2013. The meeting was presided over by the then Chairperson, Rahat Kaunain Hassan and attended by representatives of State Bank of Pakistan, Securities and Exchange Commission of Pakistan, Intellectual Property Organization, Pakistan Engineering Council, Engineering Development Board, FPCCI, ICI Pakistan, Unilever Pakistan, Habib Bank Limited, Indus Motor Company, Lakson Group, Procter & Gamble, Atlas Group, Pakistan Business Council, the Consumers Forum, Consumers Association of Pakistan, Institute of Chartered Accountants of Pakistan (ICAP), and the daily Business Recorder.

The Chairperson briefed the participants of the meeting on the successful completion of the Peer Review of Competition Law and Policy in Pakistan, at the thirteenth annual session of the Intergovernmental Group of Experts (IGE) on Competition Law and Policy, held in Geneva, Switzerland.

The issue of financial autonomy and institutional sustainability of the Commission were also discussed in the meeting.

Commenting on the huge backlog of cases in courts, the Chairperson informed the participants that the Commission had imposed over Rs. 25 billion in penalties on account of anti-competitive behaviour across sectors. The Competition Appellate Tribunal could only dispose off one case before it became dysfunctional again. She strongly believed that the earlier provision for direct appeals to the Supreme Court would have been a much more beneficial for the enforcement of the law. The participants appreciated the role of the Commission in promoting competition in the economy.

20th CCG Meeting

The 20th CCG meeting was held at the Serena hotel Islamabad on 29th Jan 2014. The meeting was chaired by the Acting Chairman, Dr. Joseph Wilson and attended by representatives from OGRA, PEMRA, Institute of Chartered Accountants of Pakistan, Islamabad Stock Exchange, USAID Trade Project, Pakistan Business Council, Federation of Pakistan Chambers of Commerce & Industry, Overseas Investors Chamber of Commerce & Industry, members of academia and members of the business community.



Participants of 20th CCG Meeting

Dr. Wilson who briefed the participants about the amendments in regulations pertaining to Leniency and Reward Payment scheme for informants to bring them in line with the Competition Act. Furthermore, the Policy Notes issued to the government, including the one issued to Oil and Gas Regulatory Authority (OGRA), and another issued for the withdrawal of imposition of 'capacity tax' on the beverage industry, were mainly discussed.

The participants were also briefed about an international seminar organized in Karachi on the "Role of Competition in Improving Investment Climate" and another seminar in Islamabad on the occasion of World Competition Day.

Dr. Shahzad Ansar, Member CCP gave a presentation on the Commission's performance of the Office of Fair Trade. Mr. Mueen Batlay, Member CCP, discussed the research work that the Commission was doing to assess the state of competition in important sectors such as rice, wheat, sugar, milk and pharmaceuticals. Mr. Ikram UI Haque Qureshi, DG Legal briefed the participants on the cases against decisions of the Commission's pending in courts and in most cases courts had granted stay orders. Despite challenges, the role of the Commission in promoting healthy competition within the economy and consumer protection was lauded by the participants. It was also suggested that there was a need for a mechanism whereby Commission's competition concerns, regarding a particular policy, be addressed during the policy formulation stage.

ADVOCACY SESSIONS

As part of its advocacy programme to sensitize the business community to the Competition Law, the Commission organized advocacy sessions at various chambers of commerce and industry. Advocacy sessions were held at the chambers of commerce in Rawalpindi, Lahore, Sialkot and Multan.

Lahore Chamber of Commerce and Industry

An advocacy session at Lahore Chamber of Commerce and Industry (LCCI) was held on 25 February 2014.



Addressing the session, acting Chairman Dr. Joseph Wilson stated that an effective enforcement of the Competition Law encourages enterprise and efficiency, creates a wider choice for consumers and helps reduce prices and improves quality.

Rawalpindi Chamber of Commerce and Industry

The advocacy session at the Rawalpindi Chamber of Commerce and Industry (RCCI) was held on 6 March 2014. The participants were briefed about the substantive



provisions of the Competition Law besides the issuance of Competition (Reward Payment of Informants) Regulations, 2014. A briefing was also given on the Policy Notes and Opinions issued by the Commission.

Sialkot Chamber of Commerce and Industry

An advocacy session was organized at the Sialkot



Chamber of Commerce & Industry (SCCI) on May 15, 2014, where the participants were briefed on the key provisions of the Competition Act 2010 and Competition rules and regulations.

Multan Chamber of Commerce and Industry



One of the key chambers of Southern Punjab, the Multan Chamber of Commerce and Industry warmly received the Commission's team for an advocacy session on 11 June 2014. The participants were briefed on Competition Law and its various provisions.

Consistent Performance of CCP, notes the Global Competition Review

London-based Global Competition Review (GCR) is a leading international competition law journal and is widely consulted by competition authorities, lawyers and academicians. GCR in its 14th survey of the world's leading competition authorities termed the performance of the commission consistent. Despite dwindling human resources, the Commission maintained its rating of two and a half stars out of five.

GCR stated that the Commission is a maturing authority, which is still facing external challenges of operating in a tough environment, but has stuck to its mandate and continues to build a reputation of being taken seriously both within Pakistan and abroad. It stated that Commission continues to remain active despite significant resource cuts and staff reductions. "While its budget has not changed, the Commission cut staff from 147 in 2012 to 125 in 2013. For such a small authority, that represents a savage bite out of its resources," stated GCR.

GCR welcomed the appointment of Dr Joseph Wilson as Chairman CCP said, "Highly respected by the Pakistani competition bar and in the wider anti-trust community, Dr Wilson is seen as a very safe pair of hands under whom the the Commission will continue on its path to greater and more effective enforcement."

GCR welcomed the Commission's priorities including the revision of regulations, enhancing the strength of enforcement staff, working towards the financial and administrative independence of the Commission, active advocacy both with public and private sector, robust law enforcement and improving the staff's technical expertise.

While discussing the Challenges faced by the Commission, GCR stated a factor that the disposal of cases in court hindered the effective functioning of the Commission. Whereas the the Commission adjudicated on cases in an expeditious manner, appeals before courts prolong endlessly. Currently, more than 200 Commission's cases



are pending in various courts. Competition Appellate Tribunal, which would have ensured the timely disposal of cases have remained dysfunctional due to non-appointment of judges.

“

GCR stated that the Commission is a maturing authority, which is still facing external challenges of operating in a tough environment, but has stuck to its mandate and continues to build a reputation of being taken seriously both within Pakistan and abroad

The Commission wins World Bank's 2013 Competition Advocacy Contest

The Commission won the World Bank's 2013 Competition Advocacy Contest in the category of "Successfully promoting pro-competition market reforms, opening of markets, and infusion of competition principles in other sectoral policies."

The Commission won the contest for conducting advocacy in the crucial segment of Pakistan's air transportation market — the route between Pakistan and Mecca and its recommendations were implemented by the Civil Aviation Authority, resulting in two new airlines entering the market and a decrease in the cost of air travel for consumers.

The Commission had raised its concerns by issuing a Policy Note to the Government of Pakistan in 2010 recommending that the bilateral Air Services Agreement of 1972 between Pakistan and Saudi Arabia should be amended and it should allow multiple airlines of both countries to operate direct scheduled services and hajj services between the two countries. It should also allow market forces to determine ticket prices without interference from either country's aviation authority or airlines.

PUBLICATIONS

Ceteris Paribus - the Newsletter

The Newsletter constitutes a beneficial medium of communication through which information and developments of relevance are shared with the employees as well as outside stakeholders on a periodic basis. It is a very effective way of highlighting the work done by the Commission. Therefore, the Commission revived the publication and issued its latest volume spanning from September 2013 till October 2014. This edition provided an overall review of the Commission's activities over the past months.



ADVOCACY THROUGH MEDIA

The commission realizes the importance of both print and electronic media in promoting awareness about the competition law. The media has been very supportive in this regard. Regular liaison with the print and electronic media helps the commission in garnering wide coverage of its initiatives and improving awareness among its stakeholders.

Interview with Business Recorder

An interview of the Acting Chairman Dr. Joseph Wilson was published in Business Recorder, covering the enforcement and advocacy activities as well as policy issues covering the state of competition.

Press Releases

To enhance the outreach of the Commission's activity among various stakeholders and to disseminate information about various orders passed by the Commission, press releases were issued and uploaded on the website of the commission. Thirty one press releases were issued during the year under review.

CHAPTER 10

Research and Policy Planning

Market Research and analysis of the is one of the key components of the CCP's agenda to promote free competition, besides active law enforcement and advocacy. The Competition Act (Section 28b) requires the Commission to conduct research and review policies (Section 29b) in order to identify anti-competitive practices and suggest remedial measures. To fulfill this requirement, the Commission conducts competition assessment studies of various sectors of the economy. It also prepares policy notes, which contain advice for pro-competition reforms to the government and regulatory agencies on diverse competition issues.

The Competition Policy and Research Department (CPRD) also manages the Commission's Information Resource Centre (IRC)/ Library to facilitate the employees with quality and convenient access to a broad range of information resources on law, economics and updated developments taking place across the globe, in the area of competition law enforcement.

Work for 2013-14

I. Reports:

During 2013-14, the Commission worked on twelve Reports/ Research Studies. After getting public comments, the reports on automobile industry, private sector healthcare and private sector schooling were published. A Report on the Tea Industry was finalised and comments from industry stakeholders were obtained to identify the issues being faced by the industry, and to strengthen the recommendations. The Commission also initiated a survey for the research study on the Pharmaceutical Industry in Pakistan.

Competition Assessment Report on the Tea Industry in Pakistan

Pakistan has a long tradition of tea consumption, which is closely associated with hospitality in the society. Presently, Pakistan is the second largest importer of tea, after the Russian Federation. The industry depends entirely on imported tea, with a negligible quantity of tea produced domestically. Black tea is imported from 22 countries. It is blended to produce various varieties to suit consumers' preferences, and then either packaged or sold in loose form

for consumption. Within the branded packaged tea industry, there are four major players: Tapal, Unilever, Tetley and Vital. More than 80% of the market is accounted for by two major companies: Tapal and Unilever, with Tapal taking the lead with 48% market share.

The Report identifies smuggling as a major challenge faced by the tea industry. Under the Afghan Transit Trade Agreement (ATTA), Afghan imports land at Karachi port, which are then dispatched for Afghanistan

without paying any taxes that imports destined for Pakistan pay. It is alleged that instead of entering Afghanistan, the smuggled tea is sold in the local market along with the legally imported tea. The import cost of tea imported for Pakistan is estimated to be around 32% greater than tea imported for Afghanistan due to the various taxes and duties paid by domestic importers. Due to the cost difference, legally imported tea cannot effectively compete with smuggled tea. It is, therefore, essential that this matter may be taken up by Afghanistan Pakistan Transit Trade Coordination Authority (APTTCA), Ministry of Commerce with Afghan counterparts, so as to curtail black tea import that is in excess of Afghan demand. Therefore, the CCP may recommend APTTCA to take appropriate action.

The Report presents the view that a combination of tax and enforcement tools can be used to control smuggling. The incentive to smuggle comes from the difference in taxation on tea imported for Pakistan and that imported for

Afghanistan. This difference can be reduced through tariff rationalization by reducing the tax imposed on Pakistani imports, and by increasing the cost of tea landing in Pakistan for Afghanistan.

“

The Report presents the view that a combination of tax and enforcement tools can be used to control smuggling. The incentive to smuggle comes from the difference in taxation on tea imported for Pakistan and that imported for Afghanistan.

Tea growers in Pakistan are of the view that an incentive package is required to attract private companies to invest in the industry and add depth to the buyers' market available to the producers. By giving appropriate incentives like guaranteed land availability, private tea producers may be inclined to invest in tea farming and processing. Such measures can help the formation of a tea industry cluster in the area with a

comparative advantage in tea production, thus adding to the competition and efficiency. While such a public-private partnership was started for identified areas in Khyber Pakhtunkhwa (KPK) and Azad Jammu and Kashmir, the devolution of Ministry of Food, Agriculture and Livestock, and the adverse law and order situation in the region resulted in the project being closed down.

“

Pakistan has a long tradition of tea consumption, which is closely associated with hospitality in the society. Presently, Pakistan is the second largest importer of tea.



The Ministry of National Food Security and Research, along with the Ministry of Commerce, should consider revamping the Tea Board, and empowering it to create policies and programs to encourage both trade and production of tea.

Concise Report on Potato Price hike

Potato price was Rs 30 per kg in February 2014, which increased to Rs 43 in March and then to Rs 57 in April 2014. According to retailers, their potato purchase price has increased by Rs 15. Potato prices generally remained stable since 2010, showing seasonal variation. However, 'abnormal' price increase has been observed twice since October 2013. CCP prepared a short report to find out the causes of price surge, and possibility of any action it could take. The following were the findings:

- Potato production was lower this year due to damaged crop in various areas.
- Potato cost is Rs. 38 at the farm level. Its on-farm price is Rs.40/kg. Various stages of value chain keep their margin, and the product is available at the retail level after adding a minimum of Rs.15, depending upon distance to the vegetable mandi.

Potato prices started to increase in November 2013. Again, in April/May 2014, the prices jumped. Retailers sold potatoes at rates between Rs50 and Rs70 per kilogram in May 2014. The potato price almost doubled just in one month. Previously, potato price reached Rs 60 per kg in November 2013. It had gone down with the arrival of new crop in the market. Reasons for imbalance included:

Decline in supplies to the market, on account of the following:

- Reduced production due to the crop damage, and early harvesting in the previous crop months.
- Export of potato from Pakistan to various destinations. There was also a shortage of potatoes in countries like Iran, Afghanistan, Russia and Iraq, which caused the increase in exports.
- Imports were not attractive due to duties.
- According to an estimate, around 500,000 tonnes of potatoes have been smuggled to Central Asian states and Afghanistan through informal channels

by road. This also caused shortage.

- Hoarding

It was further found that the loss to farmers due to crop damage can be minimized by introducing crop insurance. However, this will affect supplies in the next cropping season. There should be a particular period before which the immature crop may not be harvested, as it affects supplies in the upcoming months. Some of the recommendations of the report are:

- Export was allowed, without first considering local requirements. Later on, after shortage and price hike, a regulatory duty on export was imposed. This policy should be changed, and only surplus quantity may be allowed for export, keeping in view domestic consumption. Ideally, there should not be any restrictions on exports but a balancing policy should be in place to maintain supplies in the local market.
- Regarding imports it was noted that the Government has reduced various duties and taxes; as a result, the imports, mainly from India, which were unattractive previously, will become viable. The imports will ease pressure on prices. However, such an action should

“

Potato price was Rs 30 per kg in February 2014, which increased to Rs 43 in March and then to Rs 57 in April 2014. According to retailers, their potato purchase price has increased by Rs 15



have been taken much in advance.

- Smuggling to other countries should be curbed through enforcement actions.
- Pakistan is a large potato producing country yet there were limited storage facilities. Now, such facilities have increased, particularly in Punjab, but apparently, those are being misused to push up price than to maintain regular supplies at reasonable rates.
- Increase in potato price at the cost of common-man cannot be allowed. A breach of Competition Act needs further work to identify an anti-competitive practice. For this purpose, the report recommended:
 - The Commission may look into the conduct of cold storage operators, in case, they are involved in charging unreasonable prices or restricting supplies. Provincial agriculture departments have information about cold storage operators, such as their capacity, quantity stored, contact details, etc. Their conduct will need to be clearly identified, as control of hoarding and profiteering is a provincial matter.
 - The Commission is well equipped to detect anti-competitive conduct of the associations to increase price or restrict supplies through cartel formation or collusion.

Influencing and Modifying Policies

Besides anti-competitive practices, that may be present in the private sector, poorly designed government regulations also lead to inefficient outcomes from a competition perspective. The Commission conducts assessment of policies to identify interventions and actions that distort competition such as laws, rules and procedures relating to various aspects of market entry, procurement, etc. The Commission reviewed about eighteen policy areas including aviation, construction, beverages, tea,

discrimination between motorcycle assemblers and commercial importers for import of spare parts, Trade Related Investment Measures, the role of Engineering Development Board (EDB) and tariff-based system for auto industry; competition issues in the import of worn/used clothing and vegetables' price hike related policies, aiming to:

- I. Scrutinize the impact of regulations and policies on competition;
- II. Review work of the ministries to find instances of regulatory capture or anti-competition outcomes of their actions; and
- III. Recommend suitable pro-competition amendments.

Information Resource Centre

The primary objective of the IRC is to support the Commission's employees by providing them with quality, convenient, timely and affordable access to the most relevant and focused information resources and information research services. The idea is to augment the management and officer's capacity to apply relevant information in their practical endeavors with more ease, preciseness, efficiency and effectiveness.

The purpose of the IRC is to identify, acquire, organize, store, and provide on-demand access to the available intellectual and research products.

At the time of establishment of the Competition Commission of Pakistan in November 2007, the library resources of the Monopoly Control Authority were passed on to serve as the beginning inventory for the Commission's Library. After processing and preparing proper records, all the books were managed by adopting the standardized library parameters. The library was later renamed as Information Resource Centre.

CHAPTER 11

Office of International Affairs

The Office of International Affairs (OIA) is responsible for liaison with international organizations such as the United Nations Conference on Trade and Development (UNCTAD), Organization for Economic Cooperation and Development (OECD), and International Competition Network (ICN) and is also the communications focal point for all international activities. In addition, it explores bilateral relations concerning technical assistance with other competition agencies and donor organizations. It plays an important role in strengthening the technical capacity of the Commission to bring about a pro-competition perspective in the economy.

UNCTAD Peer Review Report

As a major initiative to bring Pakistan at par with the global competition agencies, the Commission nearing completion of 5 years of its establishment volunteered to participate in a Peer Review of Competition Law and Policy organised by United Nations Conference on Trade and Development (UNCTAD). The purpose of the Peer Review was to assess the legal framework and enforcement experience in Pakistan and to draw lessons from past experiences with a view to improving competition law enforcement in the country.

The request was accepted and the Peer Review was done starting from the evolution and structure of the competition legislation followed by the Institutional framework and organization of the Competition Commission of Pakistan. An overview of the major sections of the Competition Act for instance, abuse of dominance, prohibited agreements and exemptions, mergers and acquisitions, deceptive marketing and consumer protection was done. The performance of the commission in the prevalent challenges was also discussed.

The peer review team that assessed the state of competition law and policy in Pakistan and prepared the Peer Review Report comprised of competition experts including, William Kovacic, Professor of Law at George Washington University (former US FTC Chairman), Fernando Furlan, former Head of the Brazil's Council for Economic Defence, Orcun Senyücel, Head of Supervision and Enforcement Department No IV at the Turkish Competition Authority.

The Peer Review report concluded that the achievements of the Commission are internationally recognised by the world competition community, as well as local business, media, government and civil society. The Commission has been performing a crucial leadership role in taking the Pakistani economy forward to a greater level of confidence on competition-based and consumer-welfare oriented market system. As an institution, the Commission has a country-wide recognition of excellent reputation based on integrity, technical competence and governance. In fact, there is a clear perception that it has been an essential

“

CCP has been performing a crucial leadership role in taking the Pakistani economy forward to a greater level of confidence on competition-based and consumer-welfare oriented market system..

example for institution building in Pakistan, favoring not only the consistency and stability of institutions themselves, but also the legal certainty able to attract the inflow of investments.

It further stated that in previous analysis of the achievements/accomplishments of the Commission, experienced and respected commentators have called attention to what the agency's efforts, with outstanding competence in ascending a steep learning curve, concluding that it is to be considered one of the best performing newly established agencies in the developing world.

Discussing the challenges faced by the agency, the Report said that the Commission struggles against difficulties that often challenge competition agencies in economies with a long tradition of strong government control, including a deficient public understanding of the competition policy, slow judicial review, and incomplete support from other parts of the government, mainly translated into the lack of adequate financial autonomy.

Among the major strengths of the Commission that were repeatedly mentioned during the Peer Review process were, a recognised mindset toward the importance to comply with and enforce the law and not only to punish; that the Commission is not against the concept of enterprises maximising their profits but in favour of regulating the market; that transparency is very accountable with fairly

clear decisions; a noticeable and successful advocacy program, including the very useful policy notes. The Commission is also considered to have an excellent sense of responsibility and has managed to create a good leniency policy, making the business community look for legal counsel on competition issues beforehand.

The report concluded its findings with some recommendations intending to facilitate the enforcement of competition law and policy issues in Pakistan in a more efficient manner. The peer review has strongly recommended that the provision in the Act stipulating that 3 percent of the revenue of the regulatory agencies of Pakistan form part of the Commission Fund be finally implemented. Those resources would permit the Commission to focus on implementing advocacy policy more effectively by expanding its outreach and establishing its regional offices. The Commission has called the attention of the country to competition problems in some sectors and it must now become capable of proposing and employing ways and means to tackle those concerns, whilst retaining professional expertise and further enhancing capacity.

It has further recommended harmonizing government policies with competition law and has expressed that competition assessment at the policy design stage is desirable and recommended to achieve regulatory objectives with less harm to competition. In this regard, it is important to: Identify existing policies that are likely to adversely impact competition; prioritize policies which should be reviewed first – such priorities have to be decided by a body representative of Government; Ensure that reviews are undertaken by sector-specific regulators in conjunction with the Commission.

The recommendations deal with issues such as: financial autonomy, institutional arrangements, widening the scope of legislation and policies, enforcements pertinent to anticompetitive conduct, active involvement in key working groups of ICN, OECD and UNCTAD, capacity building of the commission and Public Procurement

Authority. They also enhance the knowledge of competition law and practice amongst the academic community and further developing and strengthening relations with private consumer protection associations and NGOs.

CCP was able to conceive and implement a successful leniency policy, in a record time. It is an uncontroversial fact that leniency is one of the most effective instruments to deter cartels. Consequently, it is recommended that the Commission continue to pursue an increasingly active policy toward leniency. It is emphasised that it is important to ensure that corrupt practices cases are distinguished from cartels and collusive behaviour. After the leniency decision, the National Accountability Bureau and Transparency International have expressed interest in the case and any such intervention or lack of clarity on this aspect may deter future leniency applications. Bearing in mind that there is huge backlog of competition cases, the report recommends constitution of special benches that may enable expeditious disposal of cases, serving public and consumer interests. It has also been emphasised that it is important for the Government and the judiciary to recognize the need to prioritize matters of economic importance that have an impact on the public. This would benefit enforcement by all economic regulators and contribute towards effective enforcement by regulatory bodies.

Activities of OIA from July 2013- June 2014:

The Commission successfully conducted two IFUSE (Investment Climate Facility of UK Specialists Expertise) Workshops during 2013 in collaboration with UK's Competition and Markets Authority (formerly known as Office of Fair Trading) for the capacity development of the Commission's professional staff. A wide range of issues and topics related to competition, abuse of dominance, mergers etc. were covered in the workshops.

Some of the on-going international activities include arranging for the participation of the Commission's staff and members

in workshops, conferences, and trainings organized by ICN, OECD, UNCTAD and other international fora on a regular basis.

- The Commission organized IFUSE Workshops in collaboration with UK's Competition and Markets Authority (formerly known as OFT) 18th-21st November 2013, Islamabad.
- Participated in the OECD Korea Policy Centre workshops 2013-2014:
 - › “Use of Indirect evidence in cartel Investigations” 4th-6th September, 2013, Seoul, Korea
 - › “Complex Mergers: Analysis and Procedures”, 11th-13th December 2013, Busan, Korea.
 - › “10th Anniversary Celebration International Cooperation in Cross-Border Competition Cases” held in Seoul, Korea on 19th -21st March, 2014.
 - › “Evidentiary Issues in Establishing Abuse of Dominance” to be held on 3rd – 5th June 2014, in Jeju Island, Korea.
- Active participation in the Merger Working Group and the Cartel Working Group of ICN includes activities such as:
 - › Regular participation in teleconferences and webinars
 - › Handbook of Competition Enforcement Agencies
 - › ICN Agency Effectiveness Working Group Competition Culture Survey
 - › Annual Survey of “Rating Enforcement” of leading competition agencies
 - › ICN Member Confidentiality Survey.
- 13th UNCTAD Intergovernmental Group of Experts, (IGE) 8th -10th, July 2013: Pakistan's Peer Review report was presented and discussed at this event. Each year, an **Intergovernmental Group of Experts** on Competition Law and Policy meets to discuss ways of improving worldwide cooperation on competition policy implementation and enhancing convergence through dialogue.
- Participation in the first international conference organized by the Malaysian Competition Authority “MYCC Competition Law Conference: New Standards for Business in Malaysia” 25th- 26th September, 2013, Kuala Lumpur, Malaysia.
- Participation in the 13th ICN Annual Conference held in Morocco on the 23rd-25th April 2014.
- Chapter on Pakistan for the “Global Trend Report” by Policy and Regulatory Report –Competition Law- Global Intelligence

Capacity Building Workshop in Collaboration With The Office Of Fair Trade UK

The Commission, in collaboration with UK AID under its Investment Climate Facility of UK Specialists Expertise (IFUSE) Programme, conducted a 4-day capacity-building workshop for its professional staff.

The workshop was conducted by experts from the Office of Fair Trade (OFT), UK. Neda Moussavi, Principal Case Officer and Patrick Coen, Assistant Director of Economics. The aim of the workshop was to build capacity of the CCP's enforcement staff in key enforcement areas i.e. abuse of dominance, merger review analysis, and to enable them to learn from international best practices.

Neda Moussavi made presentations on different techniques for merger analysis, how the OFT deals with merger clearance and merger remedies. Patrick Coen's presentations focused on how to identify instances where a firm was abusing its dominant position, predatory pricing and how to deal with cases where parties refused to supply information.

In the closing ceremony of the workshop at the Commission, certificates were distributed among the participants and shields were presented to the speakers.

CHAPTER 12

FINANCIAL STATEMENTS
for the Year Ended June 30, 2014

COMPETITION COMMISSION OF PAKISTAN
STATEMENT OF FINANCIAL POSITION
AS AT JUNE 30, 2014

	NOTE	2014	2013
		(Rupees)	
ASSETS			
NON-CURRENT ASSETS			
Property, plant and equipment	4	18,036,329	27,618,733
Long term loans, advances and deposits	5	23,010,529	17,195,719
CURRENT ASSETS			
Short term investments	6	96,000,000	103,000,000
Advances, prepayments and other receivables	7	34,239,058	34,213,360
Cash and bank balances	8	38,856,164	10,816,220
		169,095,222	148,029,580
		<u>210,142,080</u>	<u>192,844,032</u>
FUNDS AND LIABILITIES			
FUND ACCOUNT			
		(69,175,675)	(57,166,129)
DEFERRED LIABILITIES			
General provident fund		3,145,203	2,867,873
Pension fund	9	178,684,801	174,036,463
Liability under finance lease	10	8,651,136	14,791,056
Provision for leave encashment		21,423,251	17,952,501
Gratuity		61,889,068	34,473,309
Restricted grant IDRC		353,728	353,728
CURRENT LIABILITIES			
Accrued and other liabilities	11	4,487,585	5,446,820
Provision for tax	12	682,984	88,412
		5,170,569	5,535,232
CONTINGENCIES AND COMMITMENTS			
	13	-	-
		<u>210,142,080</u>	<u>192,844,032</u>

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



CHAIRPERSON



DIRECTOR (ACCOUNTS)

COMPETITION COMMISSION OF PAKISTAN
STATEMENT OF INCOME AND EXPENDITURE
FOR THE YEAR ENDED JUNE 30, 2014

	NOTE	2014	2013
		(Rupees)	
Income			
Fee income	14	68,298,400	70,611,651
Government grant-unrestricted		200,000,000	200,000,000
Interest income on investment		6,941,729	4,419,061
Interest income-advances to employees		101,365	4,410
Other income	15	228,855	862,874
		275,570,349	275,897,996
Expenditure			
Salaries, allowances and other benefits	16	202,841,742	211,394,111
Operating expenditures	17	71,540,934	75,838,242
Depreciation		12,507,615	11,901,228
		286,890,291	299,133,581
Surplus/ (Deficit) for the year before tax		(11,319,942)	(23,235,585)
Income tax expense		682,984	353,058
Surplus/ (Deficit) for the year after tax		(12,002,926)	(23,588,643)

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


CHAIRPERSON


DIRECTOR (ACCOUNTS)

COMPETITION COMMISSION OF PAKISTAN
CASH FLOW STATEMENT
FOR THE YEAR ENDED JUNE 30, 2014

Notes	2014	2013
	(Rupees)	
CASH FLOW FROM OPERATING ACTIVITIES		
Surplus/ (Deficit) for the year before taxes	(11,319,942)	(23,235,585)
Adjustments for non-cash items:		
Depreciation	12,507,615	11,901,228
Profit on sale of fixed assets	(47,280)	(93,666)
Provision for gratuity	36,183,099	14,311,138
Provision for leave encashment	9,295,229	5,858,356
Provision for pension	21,391,418	49,599,837
Operating cash flows before working capital changes	68,010,139	58,341,308
Increase/(Decrease) in advances, prepayments and other receivables	(163,958)	(6,259,023)
Increase/(Decrease) in accrued and other liabilities	(815,596)	2,158,423
	(979,554)	(4,100,600)
Increase in pension fund	-	-
Payments from pension fund	(16,743,080)	(11,987,874)
General provident fund deductions	277,330	225,288
Payment of gratuity	(8,767,340)	(3,521,993)
Payment of leave encashment	(5,824,479)	(2,087,207)
Income tax paid/adjusted	(88,412)	(871,823)
Net cash flow from operating activities	35,884,604	35,997,099
CASH FLOW FROM INVESTING ACTIVITIES		
(Increase)/decrease in long term loans and advances	(5,826,810)	(6,240,203)
(Increase)/decrease in short term investments	7,000,000	(93,000,000)
(Addition) in fixed assets	(2,925,210)	(10,997,315)
Increase/(Decrease) in finance lease liability	(6,139,920)	(5,266,320)
Proceeds from sale of fixed assets	47,280	133,000
Net cash flow from investing activities	(7,844,660)	(115,370,838)
Net cash used in financing activities	-	-
Increase in cash and cash equivalents during the year	28,039,944	(79,373,739)
Cash and cash equivalents at the beginning of the year	10,816,220	90,189,959
Cash and cash equivalents at the end of the year	38,856,164	10,816,220

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


CHAIRPERSON


DIRECTOR (ACCOUNTS)

COMPETITION COMMISSION OF PAKISTAN
STATEMENT OF CHANGES IN FUND
FOR THE YEAR ENDED JUNE 30, 2014

	Net assets acquired from MCA	Surplus/ (Deficit) for the year		Total
	Rupees			
Balance as at June 30, 2010	(50,752,362)	20,739,183	-	(30,013,179.00)
Adjustment for prior year provision for income tax	-	(578,818)		(578,818.00)
Balance as at June 30, 2010 (restated)	(50,752,362)	20,160,365		(30,591,997.00)
Surplus/(Deficit) for the year ended June 30, 2011	-	(6,242,155)		(6,242,155.00)
Balance as at June 30, 2011 (restated)	(50,752,362)	13,918,210		(36,834,152.00)
Surplus/(Deficit) for the year ended June 30, 2012	-	3,826,683		5,734,277.00
Adjustment for prior year TA/DA Advances		(517,478)		(517,478.00)
Balance as at June 30, 2012	(50,752,362)	17,227,415		(33,524,947.00)
Prior Period Adjustment		(52,539)		(52,539.00)
Surplus/(Deficit) for the year ended June 30, 2013	-	(23,588,643)		(23,588,643.19)
Balance as at June 30, 2013	(50,752,362)	(6,413,767)		(57,166,129.19)
Prior Period Adjustment		(6,621)		(6,621.00)
Surplus/(Deficit) for the year ended June 30, 2014	-	(12,002,926)		(12,002,925.88)
Balance as at June 30, 2014	(50,752,362)	(18,423,314)		(69,175,674.06)

The annexed notes from 1 to 16 form an integral part of these financial statements.



CHAIRPERSON



DIRECTOR (ACCOUNTS)

1 LEGAL STATUS AND OPERATIONS

The Competition Commission of Pakistan (the Commission) was established on 2nd October, 2007 under the Competition Ordinance, 2007 which was later transformed into Competition Act 2010. The Act sets out the principles and norms of sound competitive behavior as well as the manner in which these norms are to be enforced. It provides a legal framework in which a business environment based on healthy competition towards improving economic efficiency, developing competitiveness and protecting consumers from anti-competitive practices is to be created.

The Head Office of the Commission is situated at 7th, 8th and 9th floor of ISE Building, Blue area, Islamabad.

2 STATEMENT OF COMPLIANCE AND BASIS OF PREPARATION

These financial statements are prepared in accordance with approved accounting standards as applicable in Pakistan, provisions of and regulations issued under the Competition Act 2010 and accounting policies stated in Note 3 to these financial statements. Approved accounting standards comprise of Accounting and Financial Reporting Standards for Small & Medium Sized Entities (SMEs) issued by the Institute of Chartered Accountants of Pakistan.

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 the cash flow information and as otherwise stated in respective policies and notes given hereunder.

3.2 Significant accounting estimates and judgments

The preparation of financial statements in conformity with the Accounting and Financial Reporting Standards for the Small & Medium Sized Entities issued by the Institute of Chartered Accountants of Pakistan, requires management to make judgments, estimates and assumptions that affect the application of policies and reported amounts of assets and liabilities, income and expenses. The estimates and associated assumptions are based on historical experience and various other factors that are believed to be reasonable under the circumstances, the results of which form the basis of making judgment about carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates.

The estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which estimates are revised if the revision affects only that period, or in the period of the revision and any future periods affected.

Significant areas requiring the use of management estimates in these financial statements relate to the useful life of depreciable assets, provision for doubtful receivables, provision for pension fund, provision for gratuity and provision for leave encashment. However, assumptions and judgments made by the management in the application of accounting policies that have significant effect on the financial statements are not expected to result in material adjustment to the carrying amounts of assets and liabilities in the next year.

3.3 Property, plant and equipment

Owned

Property, plant and equipment are stated at cost less accumulated depreciation and impairment losses, if any.

Depreciation is charged on straight line method over the estimated useful life of the asset. 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 and expenditure account as and when incurred. Major renewals and improvements are capitalized and the assets so replaced, if any, are written off. Gains and losses on disposal of property, plant and equipment, if any, are included in the income and expenditure account.

3.4 Intangible assets

Intangible assets under development are stated at cost.

Intangible assets which are available for use are stated at cost less accumulated amortization and accumulated impairment losses and are amortized on a systematic basis over their estimated useful lives.

3.5 Investments

Investments with fixed or determinable payments and fixed maturity of less than a year, are carried at cost.

3.6 Receivables

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

3.7 Cash and cash equivalents

Cash and cash equivalents are carried in the balance sheet at cost. For the purpose of cash flow statement, cash and cash equivalents comprise cash in hand and cash with banks on current and deposits accounts.

3.8 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 disciplinary 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.

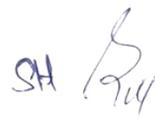
3.9 Contributory provident fund

As per clause (2) of chapter (7) of the Competition Commission (Service) Regulations, 2007 Contributory provident fund trust is required to be established for the benefits of the employees and Members of the Commission including the Chairperson. The Commission has not for the time being introduced the CPF due to its stringent financial position. However, the Commission, having regard to the interest of employees, does not intend to eliminate the scheme of CPF altogether. It may consider introducing the CPF, when its financial position improves.

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.

3.10 Staff gratuity

The Commission operates an unfunded staff gratuity scheme for eligible employees. The amount of gratuity admissible shall be the sum equal to one month's gross salary drawn immediately preceding the date of the employee 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. The difference between the current and the previous liability is charged to income and expenditure account as expense for the year.

COMPETITION COMMISSION OF PAKISTAN
NOTES TO THE ACCOUNTS
FOR THE YEAR ENDED JUNE 30, 2014

3.11 Leave encashment

The Commission provides for annual leave encashment of its eligible employees. Leave on full pay shall be earned at the rate of two working days for every calendar month of the period of duty. The duty period for more than fifteen days in a month shall be treated as a full calendar month for this purpose. The maximum limit of accumulation of earned leave shall be 60 working days as on 31 December of the year, i.e. any leave balance over and above 60 working days as on 31 December shall stand lapsed. No employee shall proceed on earned leave without prior approval of the competent authority, in writing. The difference between the current and the previous liability is charged to income and expenditure account as expense for the year.

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.

3.12 Accrued and other liabilities

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

3.13 Revenue recognition

Fees, other recoveries and grant from Government of Pakistan are recognized as and when the Commission establishes right over sums received. The grant from Government of Pakistan is a non returnable contribution to the Commission Fund and therefore is recognized as income in the period to which it relates. The restricted grant is recognized as income over the periods necessary to match them with the related costs which they are intended to compensate, on a systematic basis.

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

3.14 Taxation

The charge for current taxation is based on taxable income at the current rates of taxation after taking into account applicable tax credits, rebates, losses and exemptions available, if any.

COMPETITION COMMISSION OF PAKISTAN
FIXED ASSETS SCHEDULE
FOR THE YEAR ENDED JUNE 30, 2014

4 Property, plant and equipment

Particulars	As on July 1, 2013		Addition		Cost		As on June 30, 2014		Rate %	As on July 1, 2013		Depreciation		As on June 30, 2014		WDV As on June 30, 2014	Assets fully depreciated as on June 30, 2013	
	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.		Rs.	Rs.	Rs.	Rs.	Rs.	Rs.			
For the year 2013-14																		
Office Refurbishment	10,821,293	-	202,040	-	11,023,333	17	4,400,070	1,873,967	-	6,274,036	4,749,297	-	-	-	-	4,749,297	-	
Furniture and fixtures	13,885,533	-	397,808	-	14,283,341	20	9,674,486	1,630,918	-	11,305,403	2,977,938	-	-	-	2,977,938	6,128,753		
Computer and electronics	16,007,743	-	1,683,138	-	16,117,247	33	14,376,167	1,528,186	-	14,330,719	1,786,528	-	-	-	1,786,528	11,532,229		
Office equipments	3,804,218	-	642,224	-	4,416,826	20	2,728,379	677,734	-	3,376,497	1,040,329	-	-	-	1,040,329	1,028,158		
Vehicles-Owned	6,434,420	-	-	-	6,434,420	20	4,255,225	746,884	-	5,002,109	1,432,311	-	-	-	1,432,311	2,700,000		
Vehicles-Leased	24,199,708	-	-	-	24,199,708	25	12,099,854	6,049,927	-	18,149,781	6,049,927	-	-	-	6,049,927	-		
	75,152,915	-	2,925,210	-	76,474,875		47,534,181	12,507,615	-	58,438,546	18,036,329	-	-	-	18,036,329	21,389,140		
For the year 2012-13																		
Office Refurbishment	7,783,404	-	3,037,889	-	10,821,293	17	2,560,450	1,839,620	-	4,400,070	6,421,223	-	-	-	6,421,223	-		
Furniture and fixtures	10,237,933	-	3,647,600	-	13,885,533	20	8,074,738	1,599,748	-	9,674,486	4,211,047	-	-	-	4,211,047	5,886,795		
Computer and electronics	14,193,861	-	1,992,852	-	16,007,743	33	13,446,324	1,069,480	-	14,376,167	1,631,576	-	-	-	1,631,576	12,799,303		
Office equipments	3,601,728	-	652,490	-	3,804,218	20	2,582,810	595,569	-	2,728,379	1,075,839	-	-	-	1,075,839	826,371		
Vehicles-Owned	4,767,936	-	1,666,484	-	6,434,420	20	3,508,341	746,884	-	4,255,225	2,179,195	-	-	-	2,179,195	2,700,000		
Vehicles-Leased	24,199,708	-	-	-	24,199,708	25	6,049,927	6,049,927	-	12,099,854	12,099,854	-	-	-	12,099,854	-		
	64,784,570	-	10,997,315	-	75,152,915		36,222,590	11,901,228	-	47,534,181	27,618,734	-	-	-	27,618,734	22,212,469		

4.1

SH
V22

	2014	2013
5 LONG TERM LOANS, ADVANCES AND DEPOSITS		
Loans and advances to employees- considered good	28,121,719	23,714,535
Less: Short term portion	7,667,286	9,074,912
	<u>20,454,433</u>	<u>14,639,623</u>
Security deposits	2,556,096	2,556,096
	<u>23,010,529</u>	<u>17,195,719</u>
5.1	Prior to July 2010, interest bearing loans were being given to employees for house building, car and motor cycle, at the interest rates announced by the Federal Government from time to time, while interest free loans were being given to employees for cycle and general purposes. From July 2010 onwards, consequent to the S.R.O 666 (I)2010 dated 19-07-2010 of the Commission, all the loans and advances to employees are given interest free.	
6 SHORT TERM INVESTMENTS		
Pension fund investment	8,000,000	-
Main account investments	88,000,000	103,000,000
	<u>96,000,000</u>	<u>103,000,000</u>
6.1	These investments are held with National Bank in Term Deposit Receipts (TDRs) for a period of 3 months at the mark-up of approximately 9.40 % per annum.	
7 ADVANCES, PREPAYMENTS AND OTHER RECEIVABLES		
Short term portion of loans and advances to employees- considered good	7,667,286	9,074,912
General provident fund advance- considered good	152,746	161,423
Other advances- considered good	773,289	2,267,457
Prepayments	21,890,897	19,911,290
Withholding tax deducted at source	1,511,877	1,567,445
Interest receivable on investment- considered good	1,200,778	234,626
Interest receivable-advances to employees-considered good	815,096	769,118
Other receivable- considered good	227,089	227,089
	<u>34,239,058</u>	<u>34,213,360</u>
8 CASH AND BANK BALANCES		
Cash in hand	50,000	50,000
Cash at bank:		
Current account-CCP- National Bank of Pakistan	34,802,618	(6,815,132)
Current account- Employee Terminal Benefits	5,000	-
Current account-Pension fund- National Bank of Pakistan	1,562,307	15,411,825
	36,369,925	8,596,693
Deposit account		
PLS account-G.P fund- National Bank of Pakistan	2,436,239	2,169,527
	<u>38,856,164</u>	<u>10,816,220</u>
9 PENSION FUND		
Opening balance	174,036,463	136,424,500
Payments during the year	(16,743,080)	(11,987,874)
Expense for the year	21,391,418	49,599,837
Closing Balance	<u>178,684,801</u>	<u>174,036,463</u>

SH 19/14


COMPETITION COMMISSION OF PAKISTAN
NOTES TO THE ACCOUNTS
FOR THE YEAR ENDED JUNE 30, 2014

	2014	2013
10		
LIABILITY UNDER FINANCE LEASE		
Opening balance	14,791,056	20,057,376
Payments during the year	(6,139,920)	(5,266,320)
Closing balance	<u>8,651,136</u>	<u>14,791,056</u>
11		
ACCRUED AND OTHER LIABILITIES		
Accrued expenses	3,069,713	4,999,915
Withholding tax payable	1,320,064	296,741
Other liabilities	97,808	150,164
	<u>4,487,585</u>	<u>5,446,820</u>
12		
PROVISION FOR TAX		
Opening balance	88,412	607,177
Provision for income tax - prior years		-
Provision for income tax - current years	682,984	353,058
	<u>771,396</u>	<u>960,235</u>
Income tax paid/adjusted	(88,412)	(871,823)
	<u>682,984</u>	<u>88,412</u>

13 CONTINGENCIES AND COMMITMENTS

13.1 Contingencies

a) Several cases are pending adjudication in the superior Courts against the actions taken or orders passed by the Commission. Recovery of exact amount of penalties imposed by the Commission will be determined after the decisions of the said cases by the superior Courts whereby the Courts can uphold, set aside or reduce the penalty. All penalties & fines recovered shall be credited to the Public Accounts of the Federation u/s 40(8) of the Competition Act 2010 .

b) Under Section 20(2)(f) of the Competition Act, 2010 read with S.R.O 1292(I)/2008 dated 23-12-2008, a statutory charge in the amount of 3% of the fee and charges collected by other regulatory bodies, is payable to the Commission by five regulatory bodies. The regulatory bodies have not yet paid the 3% charge to the Commission.

13.2 Commitments

There are no material capital commitments as at June 30, 2014 (2013: Nil).

V2C SH 1914

COMPETITION COMMISSION OF PAKISTAN
 NOTES TO THE ACCOUNTS
 FOR THE YEAR ENDED JUNE 30, 2014

	2014	2013 Restated
14 FEE INCOME		
Acquisition fee	48,100,000	56,900,851
Exemption fee	13,900,000	11,250,000
Merger / amalgamation fee	5,300,000	2,200,000
Complaint lodging fee	520,000	245,000
Conference Registration fee	230,000	-
Statement Showing fee	141,800	-
Copying fee	6,600	15,800
Penalty fee *	100,000	-
	68,298,400	70,611,651
<i>* the penalty is income as it relates to MCA ordinance</i>		
15 OTHER INCOME		
Profit on sale of fixed assets	47,280	93,666
Miscellaneous income	181,575	769,208
	228,855	862,874
16 SALARIES, ALLOWANCES AND OTHER BENEFITS		
Basic salary	72,096,160	78,640,919
House rent allowance	37,520,003	36,317,996
Conveyance allowance	3,484,292	3,159,420
Dearness allowance	131,230	140,625
Washing allowance	720	720
Special additional allowance	88,684	77,267
Medical allowance	5,512,395	4,884,592
Entertainment allowance	86,609	10,000
Orderly allowance	380,975	605,613
Adhoc allowance	2,447,454	2,621,370
Special adhoc allowance	110,878	134,086
Integrated allowance	12,300	12,600
Utilities allowance	5,817,129	5,481,257
Additional charge allowance	229,224	745,328
Overtime allowance	64,609	118,000
Honorarium	10,000	744,267
Medical charges	2,284,773	1,250,219
R & R	3,994,396	6,010,357
Other allowances	708,408	66,560
Arrears	658,809	445,682
Salaries, allowances and other benefits	135,639,048	141,466,878
Pension contribution of employees on deputation	277,068	143,488
Group Insurance Subscription	55,880	14,414
Provision for pension	21,391,418	49,599,837
Provision for leave encashment	9,295,229	5,858,356
Provision for gratuity	36,183,099	14,311,138
	202,841,742	211,394,111

COMPETITION COMMISSION OF PAKISTAN
 NOTES TO THE ACCOUNTS
 FOR THE YEAR ENDED JUNE 30, 2014

	2014	2013
17 OPERATING EXPENDITURES		
Travelling & conveyance	11,164,307	11,196,294
Rent for office building	30,967,610	30,073,218
Office building services charges	3,140,897	2,583,389
Finance Charges	17.1 1,921,202	3,240,822
Communications	4,255,920	4,072,487
Utilities	4,201,404	4,179,775
Security services	551,331	1,325,335
Printing and stationery	1,531,441	1,752,964
Legal and professional charges	4,766,200	8,267,080
Consultancy expense	41,000	2,600,998
Fee & subscription	1,384,360	178,780
Advertisement & Publicity	1,209,109	1,739,632
Conference/ work shop/ seminar	1,547,724	675,284
Repair and maintenance	2,320,729	1,145,274
Office supplies	239,711	265,871
Entertainment & Gifts	322,596	580,323
Newspaper and periodicals	441,634	572,666
Uniforms and protective clothing	267,794	130,437
Insurance of vehicles	685,087	684,449
Postage and telegraph	197,313	149,728
Training & Development	139,040	-
Bank charges	14,742	22,842
Other expenditures	229,783	400,594
	<u>71,540,934</u>	<u>75,838,242</u>

17.1 This represents the Finance Cost of Ijarah lease rental payments made to the Bank Islami Pakistan for fourteen vehicles.



CHAIRPERSON



DIRECTOR (ACCOUNTS)

CREATING A LEVEL PLAYING FIELD

7th-8th-9th Floor, 55-B, ISE Towers, Jinnah Avenue, Islamabad
Ph: +92 51 9100260-3 | Fax: +92 51 9100251
www.cc.gov.pk