

**Amjad Ashraf:**

**The gold mine is hidden in the implement of effective competition law in Pakistan**

**Abstract**

In the first part of article, i am going to discuss introduction, role of competition law and historical business classes in Pakistan, with current business environment in Pakistan.

Second part, the legislative history of the competition law and its beginning as well hurdle in the way, the judicial system of Pakistan

Third part included the conclusion of article; I have suggested some solutions to improve the performance of competition commission performance

**Introduction**

Competition law has the object to provide the consumer the quality product in lower price. It also ensures the innovation and creative work in the market. It means that when a company want to compete with other company, then it would bring such products which can catch the attention of the consumer more than its opponent. But it has been found in many cases the companies make the agreement to have certain prices to fix for the purpose of gaining economic advantages. Other hand, they may merge into the one company for the purpose of securing the dominant position in the market. They abuse the dominant position to raise the prices high as they like. The role of competition law to prevent such merger and acquisition or such unfair trade practises. Sometimes companies try to limit competition. To preserve well-functioning product markets, authorities like the Commission must prevent or correct anti-competitive behaviour to have an agreement between the companies that restrict the competition, an abuse of dominant position where a major player tries to squeeze competitor out of the market and avoid merger.<sup>1</sup>

Pakistan is a country in Asia where the competition law has been implemented to avoid unfair trade practise but lack of awareness and judicial system ineffectiveness. The competition law is not contributing the economy of Pakistan as it could have brought the excellent results. We find daily that In front of A hundred of millions of public gathering, politician claims to achieve ultimately goal of an economical prosperity for Pakistan, have endorsed by TV anchors, unprofessional so-called economist specialists and industrial analyses to the spectators on the TV screens. I acknowledge the importance of other factors such institutionalisations, effective judicial system, political and educational reforms. Less explain and more ignore discussion topic of competition law importance for strong, health and vibrant economy which can allow reaping the fruit of their struggle and awarding through quality products in lowest prices. We currently see in Pakistan from health sectors to housing industry witnessing monopolisation, merger and acquisition that have brought unaccountable challenges to its citizens. It seems strange but obvious from fact and figures effective competition law implementation would highly helpful to reduce economic corruption and exploitation as well bring new investments and jobs for its citizens. We have to look historical, cultural and economical back ground of Pakistan as having an observatory eyes on social norms and values.

**Historical**

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<sup>1</sup> [http://ec.europa.eu/competition/consumers/what\\_en.html](http://ec.europa.eu/competition/consumers/what_en.html)

Pakistan came into the map of world in 14 august in 1947 after British colonisation ended in the entire subcontinent. The Statistic indicates that time the 90% of wealth, commercial property, agricultural land, banks assets, gold and silvers possession, industrial sectors, manufacturing industry and political decision making power, was in the hand of only 22 families. In 1968, Dr Mahbub ul haq, the famous development economist and the chief economist of planning commission of Pakistan indentified 22 families in Pakistan where dominating the financial and economic life of country controlling 66% of industrial assets and 87% of the banking.<sup>2</sup> The figures declined slightly because Pakistan chief of army staff imposed the martial law government from 1958 to 1969.<sup>3</sup> Due to army intervention in politics bread new form of industrial monopolisation included the retire army officers and feudal lords. Zalifaqir ali Bhutto was the first democratically elected prime minister who paved the ways of the other feudal lords to find their destiny in the politics. In 1973, first federal constitution was signed and enforced by the legislative assembly of Pakistan which was composed of feudal lords, retired army officers included lawyers, who had supported and assisted the army officer to impose martial law, in the house of senates. We still find the similar situation exchanges of administrative power from army to industrial and feudal lord's hand. According to a report, around ten million children are doing labour in brick kilns, farms, carpet manufacturing workshops and restaurants and another twenty million workers engaged in agriculture and industry work as bonded labour. Feudalism is the real problem and all other problems stem from it. The feudal lords and their allies constitute only five per cent of our agricultural households and own 64 per cent of our farm land. The rest of the 95 per cent are only their political vote-bank.<sup>4</sup>

### **Cultural, economical and political back ground**

The family system of people Pakistan is based on religious and cultural belief. The majority of them live in joint families where it is easy to approach anybody or influence through the family ties with other families. It means that the majority of industries have been operated by the families such sharif group, The Nishat Group , The Hashoo Group, The Jang Group, The Packages Group, The House of Habib, The Saigols Saigols, that intermarriage with horizontal companies groups for the monopolisation on the market taking the examples of leading the nishat group He is one of the richest Pakistanis around. Nishat Group was country's 15th richest family in 1970, 6th in 1990 and Number 1 in 1997. Mansha is on the board of nearly 50 companies. Chiniotiby clan, Mansha is married to Yousaf Saigol's daughter. He is deemed to have made investments in many bourses, currency and metal exchanges both within and outside Pakistan. He has had his share of luck on many occasions in life and has recently been awarded Pakistan's highest civil award by President Musharraf.<sup>5</sup> There are a plenty such examples in which corporate owners intermarriages their daughter and sons with politicians, bureaucrats, military officers and judges to secure their financial empire and gain monopoly upon the market. These groups and people have extremely powerful influence on all sectors of Pakistan including the business. They own huge assets in Pakistan and abroad. As the panama paper scandal had been breaking news by many broad casting companies around the globe. A treasure trove of leaked documents has blown the lid off the faces behind offshore companies operating in multi-layered secrecy, revealing names throughout the world, including those of Pakistani politicians, businessmen, bankers as well as a serving high court

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<sup>2</sup> <https://paycheck.pk/main/salary/celebrity-income/richest-families-in-pakistan>

<sup>3</sup> <https://www.dawn.com/news/1293604>

<sup>4</sup> <https://www.dawn.com/news/881169>

<sup>5</sup> <http://businessfamiliesofpakistan.blogspot.hu/2010/03/2010-most-influential-business-families.html>

judge and a retired judge.<sup>6</sup> Another hand, Pakistan army has huge investment in oil, gas and manufacturing sectors. The book is well known in this issue “military Inc: inside the military economy” by Ayesha Siddiqua says the military's private wealth could be as high \$20bn, a "rough figure", she says, split between \$10bn in land and \$10 in private military assets.<sup>7</sup> In these circumstances, it is not easy for emerging companies to make their position in the market where the sharks' tank is full of unfair trade practises and having concrete relationship among each other for monopolisation and mergers. The question how to make the competition law legislation effective in the country where such situation exists? But almost all the under developing countries have been facing the similar challenges in one another ways. It is true that above mention situation in fact exists there is a beacon light of hope that is the establishment of Pakistan competition commission of Pakistan.

## Second part

The legislative history of competition law in Pakistan

### Article 38 of constitution

- (a) secure the well-being of the people, irrespective of sex, caste, creed or race, by raising their standard of living, by preventing the concentration of wealth and means of production and distribution in the hands of a few to the detriment of general interest and by ensuring equitable adjustment of rights between employers and employees, and landlords and tenants;<sup>8</sup>

The constitution of Pakistan makes sure that the wealth should be allocated in the hands of few people through the monopoly and unfair trade practises which have been prohibited by the constitution.

#### Pakistani anti-monopoly law

Pakistan passed “Monopolies and Restrictive Trade Practices (control & Prevention) Ordinance, 1970 (V of 1970) with the Preamble that,

“An Ordinance to provide for measures against undue Concentration of economic power, growth of unreasonable Monopoly power and unreasonably restrictive trade practices.”  
“Whereas the undue concentration of economic power, growth of unreasonable monopoly power and unreasonably restrictive trade practices are injurious to the economic well-being, growth and development of Pakistan:-And whereas it is expedient to provide for measures against such concentration, growth and practices and for matters connected therewith or incidental thereto;”<sup>9</sup>

Under this act, it was effective earlier period of time but it was not directly addressing the consumers.

This Ordinance, under its definition clause, i.e. section 2 with the heading “Definitions” has defined seventeen terms and but has not used or defined the term “consumer” in the definition clause. There appears to be no express direct intention of the legislature to benefit the end consumers. It is interesting to note that no provision of this Law connects with consumers directly.<sup>10</sup>

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<sup>6</sup> <https://www.thenews.com.pk/print/110196-Pak-politicians-businessmen-own-companies-abroad>

<sup>7</sup> <https://www.aljazeera.com/focus/pakistanpowerandpolitics/2007/10/2008525184515984128.html>

<sup>8</sup> <https://pakistanconstitutionlaw.com/article-38-promotion-of-social-and-economic-well-being-of-the-people/>

<sup>9</sup> <http://nasirlawsite.com/laws/mrtpo.htm>

<sup>10</sup> [http://www.pja.gov.pk/system/files/Does\\_Competition\\_Ordinance\\_Result\\_In\\_Consumer\\_Protection\\_0.pdf](http://www.pja.gov.pk/system/files/Does_Competition_Ordinance_Result_In_Consumer_Protection_0.pdf)

The passage of time, the development and progress industry has been legally challenging to enforce the act in its real spirit for the benefits of avoiding the monopoly and having the fair competition.

The Monopoly Control Authority (MCA) was the organization to administer this Law. In the fast changing global and national economic environment, the MRTPO, 1970 was inadequate to address competition issues effectively. This was because:

- i) The 1970's law was out of date for a modernizing and rapidly transforming market economy;
- ii) Due to several limitations in the law, the MCA was not able to meet the expectations of businesses and the consumers at large;
- iii) The first generation reforms that liberalized the economy and encouraged the private sector required a competition policy framework that could promote and protect competition and innovation.<sup>11</sup>

### **The Competition Act, 2010**

The competition act of Pakistan (CA '10) is a state of the art modern law which gives the Competition Commission of Pakistan legal and investigative instruments and powers to engender free competition in all spheres of commercial and economic activity, enhance economic efficiency, and to protect consumers from anticompetitive behaviour.

Briefly, the law prohibits situations that tend to lessen, distort, or eliminate competition such as actions constituting an abuse of market dominance, competition restricting agreements, and deceptive marketing practices.

- **Abuse of Dominant Position.** §3 of the Act prohibits the abuse of a dominant position through any practice that prevents, restricts, reduces, or distorts competition in the relevant market. These practices include, but are not limited to, reducing production or sales, unreasonable price increases, charging different prices to different customers without objective justifications, tie-ins that make the sale of goods or services conditional on the purchase of other goods or services, predatory pricing, refusing to deal, and boycotting or excluding any other undertaking from producing, distributing or selling goods, or providing any service.
- **Prohibited Agreements.** §4 of the Act prohibits undertakings or associations from entering into any agreement or making any decision in respect of the production, supply, distribution, acquisition or control of goods or the provision of services, which have the object or effect of preventing, restricting, reducing, or distorting competition within the relevant market. Such agreements include, but are not limited to, market sharing and price fixing of any sort, fixing quantities for production, distribution or sale; limiting technical developments; as well as collusive tendering or bidding and the application of dissimilar conditions. The Commission is authorised, however, to issue either individual or block exemptions under §5-9 of the Act.
- **Deceptive Marketing.** The Act prohibits deceptive marketing practices, in other words, any advertising or promotional material that misrepresents the nature, characteristics, qualities, or geographic origin of goods, services or commercial activities. An office of Fair trade (OFT) has been created within CCP specifically to oversee consumer protection issues under §10 of the Act.
- **Approval of Mergers.** The law prohibits mergers that would substantially lessen competition by creating or strengthening a dominant position in the relevant market. The Act requires prior notice of proposed mergers or acquisitions that meet the

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<sup>11</sup> [http://www.cc.gov.pk/index.php?option=com\\_content&view=article&id=59&Itemid=103&lang=en](http://www.cc.gov.pk/index.php?option=com_content&view=article&id=59&Itemid=103&lang=en)

notification thresholds stipulated in §4 of the Competition (Merger Control) Regulations 2007. If the Commission determines this to be the case, it can prevent mergers or acquisitions, set conditions or require divestitures. The Act does not distinguish between horizontal and vertical mergers. The term merger in §11 also covers joint ventures, therefore they are subject to the Commission's approval provided that they meet the notification thresholds.<sup>12</sup>

The current Pakistan competition law has all the required provision to bring the effective competition commission in the Pakistan. We have been witnessing the economic progress in the region where china and India are becoming the larger and bigger economies. In this period, the absence of an effective competition regime in a country is now universally regarded as constituting a grave lacuna in the investment climate of that country.<sup>13</sup> There are a number of reasons due the competition commission of Pakistan ineffective in the country.

### **The Overloaded judiciary of Pakistan**

Pakistan competition commission is an independent legally but it has to follow the procedure as mention in law. It has been seen that companies finds decision against them they approach to the courts where the companies stands in the line to wait for their turn to be heard by the court.

There are over 1.8 million cases pending in Pakistan courts. As per the latest statistics of the Law and Justice Commission of Pakistan (LJCP), there are 38,539 cases pending with the SC, 293,947 with the five high courts and 1,869,886 cases with the subordinate judiciary of the four provinces and the federal capital.<sup>14</sup>

It is the one of the main hurdle for the implementation of Pakistan competition commission therefore; it is unable to perform despite having the excellent draft competition acts While the commission did reel in about €1 million more in fines - €2.7 million in total - in 2016 than the previous year, over half of that was from consumer protection and deceptive marketing. Multiple people familiar with the commission's activities pointed to consumer protection and deceptive marketing enforcement as the main areas of success in 2016.<sup>15</sup>

"This shows that the judicial review process has started to become functional," a source said. "Delays in various courts have been the biggest challenge that the commission faces."<sup>16</sup>

### **Case laws**

#### **Wise Communication Systems (Private) Limited (WiseCom) Vs. Pakistan Telecommunication Company Limited (PTC)**

In this case, the wise communication system is a complaint who put a petition to the competition commission of Pakistan that Pakistan telecommunication (PTCL) hold a dominant position in fixed local loop market(FLL) and has unilaterally discontinued the services to wisecom who is a customer and a competitor of PTCL in FLL market, the complaint demands the relief under the violation of section 3 (3)(g) which prohibits the abuse

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<sup>12</sup> [http://www.cc.gov.pk/index.php?option=com\\_content&view=article&id=60&Itemid=110&lang=en](http://www.cc.gov.pk/index.php?option=com_content&view=article&id=60&Itemid=110&lang=en)

<sup>13</sup> [http://siteresources.worldbank.org/INTMENA/Resources/Challenges\\_in\\_implementing\\_Modern\\_competition\\_law\\_-\\_updated.pdf](http://siteresources.worldbank.org/INTMENA/Resources/Challenges_in_implementing_Modern_competition_law_-_updated.pdf)

<sup>14</sup> <https://www.dawn.com/news/1384319>

<sup>15</sup> <https://globalcompetitionreview.com/benchmarking/rating-enforcement-2017/1144843/pakistans-competition-commission>

<sup>16</sup> <https://globalcompetitionreview.com/benchmarking/rating-enforcement-2017/1144843/pakistans-competition-commission>.

the dominant position. The commission conducted the inquiry on the issue and also provided the fully right of hearing by the full bench of commission and ordered:

The Bench in its order has held that exclusionary conduct is a commercial decision leading to anti-competitive foreclosure by the dominant firm without any objective justification that causes an actual or potential threat to the market and consumers. The Bench highlighted the important facts which form the background of the case and include; action taken by Pakistan Telecommunication Authority (PTA) against WiseCom on 04-11-13 for engaging in alleged illegal telecom business and subsequently raid conducted by Federal Investigating agency which resulted in seizure of equipment installed at WiseCom's office and suspension of services to WiseCom by PTCL on 26-11-13.

Payment notice dated 12-11-13 issued to WiseCom by PTCL which was alleged by WiseCom as an attempt to exclude it from FLL market was admitted by wiseCom during the course of hearing as disputed amount which matter is lingering on for the past many years and is sub judice before the High Court. Also, emails appended in the annexure to the complaint revealed the warnings of PTCL to pay its dues or else face action according to the books before the payment notice was issued.

Further, the Bench noted that WiseCom has 7000 to 8000 subscribers in five regions which is a very miniscule market share. A competitor having a negligible market share cannot be said to exert enough competitive pressure in the relevant market that its exclusion would impact the behaviour of the dominant undertaking and may cause prejudice to the consumers. Neither has WiseCom provided any evidence that shows any harm to consumers in terms of price, quality and choice due to the alleged action of PTCL.<sup>17</sup>

The important factor in this case law was that the fixing of price matter under proceeding in the high court Lahore in Pakistan was pending to hear by the honourably court.

### **Third part**

#### **Lack of awareness about importance law**

Sherman act of united state was the beginning of competition law in the modern world. But When we peruse the history of the Sherman act, it is obvious that people of united state made the legislators to have such act which can protect the market to provide them quality products in lowest price. In Pakistan, people want to get solution of their problems of rising Prices of households item every second day. It creates the uncertainty in life of an individual but he is unaware about the importance of anti-trust law. He should be educated through seminars, TV talk show and other medium of communication. In the democracy, it is essential for the citizen to know the law which are being practised by the states. it is also the responsibility of the government to have an educational institutions a subjects about the importance of competition law for acquiring the quality products in lower prices as well as the excellent economy. Unfortunately, we find that even those people who have been studying law in their honour degree in law. They do not have the competition law subject in their course.

### **Conclusion**

I think that the competition law effectively enforcement could bring outstanding positive result for the economy of Pakistan. It has been considerably connected other sectors of life of common persons. A common person is frustrated due to uncertainty about prices of basic

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<sup>17</sup> [http://www.cc.gov.pk/index.php?option=com\\_content&view=article&id=404&Itemid=222&lang=en](http://www.cc.gov.pk/index.php?option=com_content&view=article&id=404&Itemid=222&lang=en)

needs to buy house. If the government implements and gives free hands to competition commission of the Pakistan, then I can hope that the prices of products will dramatically decrease and provide the healthy boost to the economy. It would be resulted less economic corruption in the society. When a person could not find basic needs in reasonable prices, here reasonable price means according to his salary, then it is more chances to indulge into economic corruption. Furthermore, the agricultural sector continues to play a central role in Pakistan economy. It is the second largest sector, accounting for over 21 percent of GDP, and remains by far the largest employer, absorbing 45 percent of the country total labour force.<sup>18</sup> it has been neglected terribly by the government . The private sector has monopoly in field of seeds to agricultural machinery due to this sector has been suffering by the hand of these monopolies. If a free, independent and effective competition commission comes into the enforcement, i think this sector can produces more jobs and generate handsome amount of revenue for the country. In last, the competition commission the model of south of African can be a solution to Pakistan in the way that it has the power of veto on the merger and acquisition. The competition commission of South Africa has the power to veto the small and medium mergers and the next recommendation is the largest mergers.<sup>19</sup> Otherwise, this institution could not enforce the decisions of it so quickly. Pakistan has gross domestic product 283.7 billion US dollar in 2016.<sup>20</sup> It means the fine we have discussed by the competition commission of Pakistan. It is very smaller amount of the money but still companies move toward the court to stop the enforcement of the decisions and resulted uncertainty in the market. When the companies have more trust in the matter of enforcement of decision, they will approach to commission for having fair trade practises and healthy competition among them.

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<sup>18</sup> [http://www.finance.gov.pk/survey/chapter\\_10/02\\_agriculture.pdf](http://www.finance.gov.pk/survey/chapter_10/02_agriculture.pdf)

<sup>19</sup> <https://www.youtube.com/watch?v=QxEbIKcnc50>

<sup>20</sup> [https://www.google.com/search?q=pakistan+gross+domestic+product&stick=H4sIAAAAAAAAAAOPgE-LQz9U3MC1OMtTSzk620s\\_JT04syczP0y8uAdLFJZnJiTnxRanpQCGr9JSC-Lz83My8xBwA6o5twTkAAAA&sa=X&ved=0ahUKEwji-oyW4oTbAhUIOJoKHTL2BqIQ6BMI6gEoADAY&biw=1093&bih=502](https://www.google.com/search?q=pakistan+gross+domestic+product&stick=H4sIAAAAAAAAAAOPgE-LQz9U3MC1OMtTSzk620s_JT04syczP0y8uAdLFJZnJiTnxRanpQCGr9JSC-Lz83My8xBwA6o5twTkAAAA&sa=X&ved=0ahUKEwji-oyW4oTbAhUIOJoKHTL2BqIQ6BMI6gEoADAY&biw=1093&bih=502)