

5. Competition Commission of Pakistan (CCP)

1. The report contained in the following paragraphs was sent by the Adviser to PM on Institutional Reforms to the Finance Secretary on 11th March 2020 for onwards presentation to the Prime Minister and Cabinet.

Findings

A detailed review of the Commission addressed the following set of questions

Q.1. Does the existing structure or legal framework require any change or modification to carry out its assigned responsibilities?

Ans: The Competition Act 2010 provides an adequate legal framework for prohibiting abuse of dominant position (Section 3), price fixing (Section 4), and deceptive marketing practices (Section 10). The law equips the CCP with sufficient authority for surveillance, inquiries, inspections, search and enforcement of its decisions against cartels, mafias and other market malpractices. The CCP can initiate enquiries on the basis of a complaint, a reference or suo motto action and can make raids on the basis of information received.

Q.2. What has been track record of CCP's performance since its inception?

Ans: CCP has imposed penalties of Rs.27 billion between 2007 and December 2019. The three major sectors were Telecom, Fertilizer and Cement. Rs.24 billion or almost 89 percent were imposed against these three sectors:

	Rs. in Billion
Telecom:	9.0
Fertilizer:	8.6
Cement:	6.4

However, the penalties have not been recovered due to court injunctions and stay orders and therefore the expected deterrent effect of the penalties on those found guilty of anti-competitive behavior has remained mute.

The Commission recommended measures on sugar industry in April 2018 and automobile industry in September 2018 to the Federal and Provincial Government but no action has so far taken these measures.

The Commission has also recommended the establishment of Real Estate Regulatory Authority for orderly conduct for real estate business in the country.

Q. 3. Does the Commission have the requisite human resources and expertise, administrative and financial powers to carry out its functions?

Ans. The CCP is fully equipped in its human resource base, to carry out investigations and inquiries. The Commissioners enjoy MPI Scales, Two of the Commissioners have recently been selected on merit through an open, competitive process, The CCP is financially sustainable as the Federal Government has fixed 3% as the regulatory fees that form part of the CCP Fund. They can engage best Consultant experts in specialized fields and sectors to supplement in-house experts. The Commission's annual expenditure is Rs.348 million (compared to Rs.2.9 billion for SECP) and provides room for hiring these experts. World Bank had provided a technical assistance grant of USD

500,000 for the capacity building of the staff, strengthening market research, outreach and institutional infrastructure. In addition, the EU/ITC have developed three training modules with the help of international experts. The Commission has professional relationships with OECD, JICA, Korea etc.

Q. 4. Does the CCP have sufficient enforcement powers under its Act to take punitive and remedial actions against the Cartels and Collusive practices?

Ans: The Commission has adequate powers to enter and search premises, conduct inquiries, issue remedial orders, impose and recover penalties. While conducting inquiries it can call witnesses, requisition records, order production of evidence. In the first three years (2007-2010) it issued decisions in 35 cases, in poultry, cement and Haj Pilgrims flight to Mecca. The Commission has expanded its activities banks, energy, sugar, fertilizer and telecom. For example, in 2009 the CCP found that the Sugar mills were behaving like a buyers cartel fixing the price of refined sugar and engaging in collusive bidding. Show cause notices were issued to the PSMA and the member mills but they obtained stay order from Sindh High court which restrained the Commission from issuing orders. The case is still pending in the Court.

More recently, in December 2019, the CCP raided the premises of Pakistan Flour Mills Association and found that the association was fixing prices of wheat flour, and allocating production quotas to each mill in violation of Section 4 of the Act. Hearings were conducted and a final order imposing fine of Rs.75 million was passed. The Association immediately obtained a stay against the CCP order.

Q. 5. Why has the CCP, despite the legal and enforcement powers, human resources and financial sustainability not been effective in curbing market abuses and non-competitive behavior?

Ans: The major impediment has been the challenge to the Constitutional Legitimacy of the Act itself. Firms have raised a fundamental question whether the Federal Government has the powers to impose competition law on the provinces. The Judgement in this case was reserved by the Lahore High court on 22nd June 2017. After the elevation of the CJ Mansoor Ali Shah, a new full bench was reconstituted on 21st June 2019. In light of this pending challenge all the companies penalized by the Commission have obtained injunctions against the Commission's orders in Courts. In all, 127 court cases are pending adjudication before the High courts since 2009. Every new action taken by the CCP is challenged and clubbed with the existing cases.

Another tool that is available to the CCP and which has not been properly utilized by the Government is the policy notes. For example, the policy note issued on the revamping of food and agriculture market structure has direct bearing on stabilization of food prices.

The Competition Appellate Tribunal is also not functional because of vacant positions of member since January 2019. Since then another position has fallen vacant.

Recommendations

2. The Competition Commission of Pakistan has adequate legal administrative, financial and enforcement powers to act as a bulwark against market abuses, Cartelization and Collusive practices and promote competition. There is no need at present to carry out any restructuring or reorganization of the Commission. The Commission has also acquired

human resources and expertise to carry out its functions and financial resources to engage best experts in the field. However, the Prime Minister has expressed his concern that despite the Cabinet's decision to terminate the services of Chairperson CCP on 4th October 2018, being void ab initio, the Chairperson is continuing to perform her functions based on a stay order granted by the Court in November 2018. It is recommended that the Prime Minister's above mentioned directive issued on 20th January needs to be vigorously pursued by the Finance Division.

3. The major stumbling block in the functioning of CCP is the Constitutional Challenge to its ability to extend the Act in the provinces after the 18th Amendment. The matter is pending since 2010. In the light of this legal suit, the firms that have been penalized by the Commission have obtained injunctions and stay order against the orders of the Commission. Their behavior therefore remains unaltered. It is recommended that the Attorney General of Pakistan may be advised to expedite the hearings and disposal of the Constitutional petition pending for last ten years before the Lahore High Court. All other punitive actions and penalties cannot be enforced because of the injunctions stay order obtained by the accused firms. The High courts may be moved to remove the restraining orders imposed upon the CCP.
4. The Law Ministry may be advised to immediately fill in the two vacant positions in the Competition Appellate Tribunal.
5. The federal and provincial, governments should be advised to make references for prima facie violations of Competition Act to the CCP and also act upon policy notes submitted by the commission after stake holder consultation.
6. Unless the above actions are taken, the effectiveness, and impact of the CCP would remain subdued adversely affecting the smooth functioning of key product and input markets. Had the legal impairments mentioned above been removed and the CCP had a new leader the recent wheat crisis and sugar crisis could have been inquired by the CCP as it has professional expertise and market structure knowledge and would have come up with sound remedial measures to avert such situations from recurring in the future.

DECISION

7. The Cabinet at its meeting held on 21st April, 2020 directed as under:

(a) The sponsoring Davison to vigorously pursue the Intra Court appeal filed against the removal of Chairperson and Two Members.

Status: Appeal granted.

(b) That the cases involving stay orders against the penalties imposed by the CCP and the Constitutional Petition in the Lahore High Court shall be pursued by Finance Division in consultation with Law & Justice Division and Attorney General Office.

Status: Constitutional Petition disposed in the favour of the Government.

(c) The Law Division to fill vacant positions in the Competition Appellate

Status: Appointments are still pending.

(d) That the progress on these issues by presented in the next Cabinet Meeting.