

Competition Law in the Asia-Pacific

Pakistan



Part 1: Overview – Legislation and regulatory authorities

1.1 Pakistan competition law regime

Law governing anti-competitive practices was first introduced in Pakistan in the 1970s in the form of the Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance 1970 (**MRTPO**) however this ordinance was found to be ineffective at regulating an increasingly modern economic environment.

As such a program to modernize competition law in Pakistan was launched by the Government of Pakistan in collaboration with the World Bank and the UK Department for International Development (**DFID**). This eventually resulted in the promulgation of the Competition Ordinance 2007 which ultimately took the form of the Competition Act 2010 (**Competition Act**).

This new regime established an independent body corporate known as the Competition Commission of Pakistan and gave it expansive powers to police various kinds of anti-competitive behaviour. The Competition Act further gave the Commission the power to enact subordinate legislation. Since its inception the Commission has proven to be vigilant organization which has protected and promoted competition throughout the country. The law in its current state consists of the Competition Act playing the overarching role of prohibiting or restricting certain types of anticompetitive behaviour in Pakistan and subordinate legislation which provides a framework of procedural rules to implement those prohibitions and restrictions.

1.2 Scope of application – entities

The Competition Act applies to any natural or legal person, governmental body including a regulatory authority, body corporate, partnership, association, trust or any other entity in any way engaged, directly or indirectly, in the production, supply or distribution of goods or provision or control of services.

1.3 Scope of application – extraterritoriality

Section 1(3) of the Competition Act provides that it applies to all actions or matters that take place in Pakistan and distort competition within Pakistan.

1.4 Regulatory authorities

Competition law in Pakistan is enforced by the Competition Commission of Pakistan (the 'Commission'). The Commission is a body corporate with regulatory and quasi-judicial functions and is designed to be administratively and functionally independent from the Federal Government. The Commission has been given a

wide array of powers with which it can ensure that competition law is complied with and any infringements of the law are punished.

The Commission has a Competition Policy and Research Department (**CPRD**) which is responsible for research and analysis of the markets and has remained a key component of the Commission efforts to promote free competition, to complement active law enforcement, consultations and advocacy.

The Competition Act empowers the CPRD to conduct research and review policies as stated in the following sections of the Competition Act:

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

The department's research and market studies programme helps identify anti-competitive factors/actions, and propose appropriate remedies for specific policies/sectors of the economy. Its major activities include focusing on competition policy and conducting sectoral research.

Competition Impact Assessments

The CPRD conducts Competition Impact Assessments which are based on extensive efforts to gather first-hand knowledge from relevant stakeholders covering aspects including market dominance, entry barriers, the effect of international developments on the national market, and the regulatory mechanism. CPRD's approach is primarily to look at various sectors from a competition standpoint and identify competition vulnerabilities, government interventions that may be distorting incentives, information failures and anti-competitive elements within the industry structure. Market studies serve as a diagnostic tool that enables the Commission to evaluate how competitive the markets are, and work out steps to improve the state of competition in particular sectors.

1.5 Key reference table of anti-competitive conduct prohibitions

The following table provides an overview of the primary anti-competitive conduct prohibitions under the Pakistani competition law regime.

| Prohibition summary and classification | Primary section references | Criminal enforcement | Civil enforcement | Primary exceptions / defences |
|---|----------------------------|--|---|--|
| Horizontal arrangements between competitors (non-merger) | | | | |
| <p>PRICE FIXING CARTEL (<i>Per se/strict</i>)</p> <p>Undertakings are prohibited from entering into agreements or making decisions with respect to the ‘<i>production, supply, distribution, acquisition or control of goods or the provision of services which have the object of preventing, restricting or reducing competition.</i>’</p> <p>Section 4(2) of the Competition Act contains a non-exhaustive list of agreements that are prohibited. This confers wide discretionary powers on the Pakistan Competition Commission (Commission) with respect to determining which arrangements are anti-competitive.</p> <p>Agreements which fix the purchase or selling price or impose any other restrictive trading conditions with regard to the sale or distribution of any goods or the provision of any service are prohibited.</p> | <p>ss 4(1) and 4(2)(a)</p> | <p>A failure to comply with an order of the Commission with respect to prohibited agreements shall constitute a criminal offence punishable with imprisonment for a term which may extend to one year or with fine which may extend to Pakistani rupees (PKR) 25 million and the Commission may initiate proceedings against the concerned party in a court of law of competent jurisdiction (s 38 (5))</p> | <p>The Commission may annul the agreement or require the undertaking concerned to take such actions specified in the order as may be necessary to restore competition and not to repeat the violation or engage in any other practice with similar effect (Section 31(b) of the Competition Act)</p> <p>The Commission may impose penalties for entering into a prohibited agreement, an amount not exceeding PKR 75 million or an amount not exceeding ten percent of the annual turnover of the undertaking (Section 38(2)(a) of the Competition Act)</p> <p>The Commission may direct an undertaking or any director, officer or employee of an undertaking, to pay by way of penalty a sum specified in an order after giving an opportunity of being heard. A penalty can be imposed if the Commission determines that the undertaking has been found to have engaged in any activity prohibited under the Competition Act (Sections 38 (2)(a)(b) and 38(3) of the Competition Act.)</p> | <p>The Commission may grant an exemption if the agreements substantially contribute to improving production or distribution; promoting technical or economic progress, while allowing consumers fair share of the resulting benefit; or the benefits of that clearly outweigh the adverse effect of absence or lessening of competition (Section 9). The <i>Competition Commission (General Enforcement) Regulations, 2007</i> set out the conditions and procedure for seeking individual and block exemptions.</p> |
| <p>MARKET ALLOCATION (SHARING) CARTEL (<i>Per se/strict</i>)</p> <p>Agreements which divides or shares markets for the goods or services, whether by territories, by volume of sales or purchases, by type of goods or services sold or by any other</p> | <p>ss 4(1) and 4(2)(b)</p> | <p>As per price fixing, above.</p> | <p>As per price fixing, above.</p> | <p>As per price fixing, above.</p> |

| Prohibition summary and classification | Primary section references | Criminal enforcement | Civil enforcement | Primary exceptions / defences |
|--|--|-----------------------------|-----------------------------|--|
| means are prohibited (also see response to price fixing above). | | | | |
| BID RIGGING (COLLUSIVE TENDERING) CARTEL (<i>Per se/strict</i>) Section 4(2)(e) of the Competition Act prohibits agreements for collusive tendering or bidding for sale, purchase or procurement of any goods or service (also see response to price fixing above). | ss 4(1) and 4(2)(e) | As per price fixing, above. | As per price fixing, above. | As per price fixing, above. |
| OUTPUT RESTRICTION CARTEL (<i>Per se/strict</i>) Agreements which fix or set the quantity of production, distribution or sale with regard to any goods or the manner or means of providing any services are prohibited (also see response to price fixing above). | ss 4 (1) and 4(2)(c) and other sections as per price fixing above. | As per price fixing, above. | As per price fixing, above. | As per price fixing, above |
| EXCLUSIONARY PROVISIONS (COLLECTIVE BOYCOTTS) (<i>Per se/strict</i>) Agreements which include exclusionary provisions boycotting other competitors from the relevant market are prohibited as they have object and possibly the effect of restricting competition with the relevant market. (also see response to price fixing above) | ss4(1) ss 38(2)(a) and (b), 38(3) and 38(5) | As per price fixing, above. | As per price fixing, above. | As per price fixing, above. |
| SECONDARY BOYCOTTS (<i>conditional</i>) There is no specific provision regarding secondary boycotts. | N/A | N/A | N/A | N/A |
| PRICE SIGNALLING There is no specific provision regarding price signalling. | N/A | N/A | N/A | N/A |
| Vertical arrangements between suppliers and acquirers (non-merger) | | | | |
| EXCLUSIVE DEALING (Conditional, other than third-line forcing, below) No specific provision regarding exclusive dealing, but may fall within the ambit of s 4(2)(a). | ss 4(1) and 4(2)(a) | As per price fixing, above. | As per price fixing, above. | As per price fixing, above. |
| THIRD-LINE FORCING (<i>Per se/strict</i>) 'Tie-ins' are prohibited, i.e. where the sale of goods or service is made conditional on the purchase of other goods or services and such practice prevents, restricts, reduces or | ss 3(3)(c), 3(3)(d) and 3(3)(h) s 4(2)(g) | As per price fixing above | As per price fixing above | There are no exemptions or exceptions to abuse of dominant position. It may be noted that an abuse of dominant position shall only take if the practice is of a nature that prevents, restricts, reduces or distorts competition |

| Prohibition summary and classification | Primary section references | Criminal enforcement | Civil enforcement | Primary exceptions / defences |
|---|----------------------------|---------------------------|---------------------------|-------------------------------|
| <p>distorts competition shall constitute 'abuse of dominant position.'</p> <p>Agreements making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which by their nature or according to commercial usage, have no connection with the subject of the contracts shall constitute abuse of dominant position provided such practice restricts, reduces or distorts competition.</p> | | | | |
| <p>RESALE PRICE MAINTENANCE (<i>Per se/strict</i>)</p> | As per price fixing above | As per price fixing above | As per price fixing above | As per price fixing above. |
| <p>No specific provision with respect to resale price maintenance. But, see response to price fixing above.</p> | | | | |

Anti-competitive arrangements

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|--|--|----------------------------|---------------------------|---------------------------|
| <p>ANTI-COMPETITIVE ARRANGEMENTS</p> <p>No undertaking or association of undertakings shall enter into any agreement or, in the case of an association of undertakings, shall make a decision in respect of the production, supply, distribution, acquisition or control of goods or the provision of services which have the objects or effect of preventing, restricting or reducing competition within the relevant market.</p> | <p>s 2 (definitions)</p> <p>s 4(1) (Prohibited Agreements)</p> | As per price fixing above. | As per price fixing above | As per price fixing above |
|--|--|----------------------------|---------------------------|---------------------------|

Misuse of market power

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|--|-------------|---------------------------|--|--|
| <p>The Competition Act prohibits abuse of dominant position.</p> <p>The Competition Act deems occurrence of abuse of dominant position where the practices prevent, restrict, reduce or distort competition.</p> <p>Section 3(3) of the Competition Act provides a non-exhaustive list of such practices:</p> <ul style="list-style-type: none"> • <i>limiting production, sales and unreasonable increases in price or other unfair trading conditions;</i> • <i>price discrimination by charging different prices for the same goods or services from different customers in the</i> | ss 3(1)-(3) | As per price fixing above | <p>The Commission may in the case of an abuse of dominant position, order the undertaking concerned to take such actions as may be necessary to restore competition and not to repeat the contravention or engage in any other practice with similar effect (Section 31(a) of the Competition Act)</p> | <p>There are no exceptions or defences whereby an undertaking would be allowed to abuse its dominant position.</p> |
|--|-------------|---------------------------|--|--|

| Prohibition summary and classification | Primary section references | Criminal enforcement | Civil enforcement | Primary exceptions / defences |
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absence of objective justifications that may justify different prices;

- tie-ins, where the sale of goods or service is made conditional on the purchase of other goods or services;
- making conclusion of contracts subject to acceptance by the other parties of supplementary obligations which by their nature or according to commercial usage, have no connection with the subject of the contracts;
- applying dissimilar conditions to equivalent transactions on other parties, placing them at a competitive advantage;
- predatory pricing driving competitors out of a market, prevent new entry, and monopolize the market;
- boycotting or excluding any other undertaking from the production, distribution or sale of any goods or the provision of any service; or
- refusing to deal.'

PREDATORY PRICING (conditional)

No person shall abuse dominant position. An abuse of dominant power shall be deemed to have been brought about if it consists of practices such as predatory pricing driving competitors out of a market, prevent new entry or monopolize the market. (Section 3 (3) of the Competition Act)

Section 3(3)(f) of the Competition Act

As per price fixing above

As per price fixing above.

As per price fixing above

As per price fixing, above.

Mergers / acquisitions

No undertaking shall enter into a merger which substantially lessens competition by creating or strengthening a dominant position in the relevant market.

s 11 (Approval of mergers)

Regulation 4 of the Competition (Merger Control) Regulations, 2007 ('Merger Control Regulations')

As per price fixing above.

If the Commission determines that the transaction under review does not qualify the criteria for approval under s 11, it may undo the merger or approve such merger subject to any conditions

Under s 32 the Commission may issue interim orders directing the undertaking to do or refrain from doing or continuing to do any act or thing specified in its order

any activity prohibited under the Act.

The Commission may impose penalties for contravention of s

If the Commission determines that the intended merger substantially lessens competition by creating or strengthening a dominant position, it may nonetheless approve the transaction if the requirements of s 11(10) are met.

Moreover, pursuant to Regulation 4 of the Merger Control Regulations, no application for clearance is required from the Commission if the merger does not meet certain thresholds.

Furthermore, under Regulation 4A of the Merger Control Regulations, the following transactions are exempt from filing pre-merger notification:

'(i) A transaction in which a holding company (whether incorporated in or outside Pakistan) increases its stake in its subsidiary or the subsidiaries thereof (whether incorporated in or outside Pakistan), or if such subsidiary acquire or increase their equity investment in each other;

(ia) a transaction in which a holding company (whether incorporated in our outside Pakistan), merges, amalgamates, combines or ventures jointly with its subsidiary or

| Prohibition summary and classification | Primary section references | Criminal enforcement | Civil enforcement | Primary exceptions / defences |
|---|----------------------------|---|--|---|
| | | | 11 of an amount not exceeding PKR 75 million or an amount not exceeding 10% of the annual turnover of the undertaking. | <p><i>the subsidiaries thereof (whether incorporated in or outside Pakistan) merge, amalgamate, combine or venture jointly with each other; and</i></p> <p><i>(ii) A transaction in which a bank or an insurance company deals in trading of shares for</i></p> <p><i>its own account for the purpose of earning dividend income and capital gains and not with the intention of acquiring controlling interest in the investee company.</i></p> <p><i>(iii) shares acquired by succession or inheritance;</i></p> <p><i>(iv) shares acquired as a gift from one's spouse or immediate blood relatives;</i></p> <p><i>(v) shares acquired through will (testamentary bequeath voting shares acquired by a person, acting as securities underwriter in ordinary course of business;</i></p> <p><i>(vii) voting shares allotted pursuant to a right issue; provided that the voting securities acquired do not increase, directly or indirectly, the acquiring person's per centum share of outstanding voting securities of the issuer;</i></p> <p><i>(viii) Where an undertaking, the normal market activities of which include the carrying out of transactions and dealings in securities for its own account or for the account of others, acquires securities of another undertaking and sells back the acquired securities on pre-determined price within a period of 6 months from the date of such acquisition.</i></p> <p><i>(ix) real property or goods acquired in the ordinary course of business if the person who intends to acquire the assets shall not, as a result of the acquisition, hold all or substantially all of the assets of a business or of an operating segment of the business; and</i></p> <p><i>(x) un-explored real resource property acquired for the purpose of exploration or development.</i></p> <p><i>While the above transactions may be exempt from pre-merger notification, they may still be subject to substantive review under the Competition Act, if so deemed appropriate by the Commission.'</i></p> |
| INTERNATIONAL The Competition Act applies to all undertakings, actions or matters that take place in Pakistan and which distort competition within Pakistan. | s 1(3) | See generally as per domestic mergers/ acquisitions above | See generally as per domestic mergers/acquisitions above | See generally as per domestic mergers/ acquisitions above |

Part 2: Overview of fundamental concepts

2.1 Introduction

This section outlines some of the key concepts used in competition law in Pakistan.

2.2 'Relevant Market'

Section 2(1)(k) of the Competition Act defines the term 'relevant market' to mean the market which shall be determined by the Commission with reference to a product market and a geographic market.

A 'product market' consists of those products which are regarded as interchangeable or substitutable by consumers by reason of the product's characteristics, prices and intended use. A 'geographic market' comprises the area in which the undertakings concerned are involved in the supply of products or services and in which the conditions of competition are sufficiently homogenous and which can be distinguished from neighbouring geographic areas because, in particular, the conditions of competition are appreciably different in those areas.

By way of example, *In the matter of Pakistan International Airlines*¹, Pakistan International Airlines charged a fee (based on a percentage of the air fare) for the rescheduling of domestic reservations within 48 hours of a flight. The Commission had to consider whether this policy amounted to price discrimination among passengers holding reservations in a particular flight and cabin, constituting an abuse of a dominant position. The Commission concluded that the relevant product market was the scheduled commercial domestic air transportation services offered by carriers licensed in Pakistan, and the geographic market was the whole of the Pakistan.

Relevant prohibitions

Three major prohibitions of the Competition Act rely on the concept of 'relevant market' (i.e. an abuse of a dominant position must be in relation to the relevant market, agreements between undertakings are prohibited only if they prevent, reduce or restrict competition within the relevant market and a merger only requires approval if it substantially lessens competition by creating or strengthening a dominant position within a relevant market).

2.3 'Substantial' (lessening of competition)

The term substantial lessening of competition has not been defined in the Competition Act. This appears to be intentional as it allows the Competition Commission of Pakistan the flexibility to decide whether mergers should receive approval on a case by case basis. The Commission has shed some light on the term through the Competition (Merger Control) Regulations 2007, which state that the strength of the competition in the relevant market and the probability that the merger parties will behave competitively or co-operatively after the intended merger are relevant factors in determining whether a merger substantially lessens competition. The Regulations further provides consideration in determining these factors such as ease of entry on to the market or level of import competition however the definition of term is purposely kept vague for the same reasons as the Competition Act which is to allow the Commission to decide what substantially lessens competition on a case by case bases.

Relevant prohibitions

The concept of substantial lessening of competition is relevant to the restriction on mergers under the Competition Act which requires mergers to be approved if they substantially lessen competition by creating or strengthening a dominant position in the relevant market.'

2.4 'Object'

The Competition Act, having been enacted in 2010, is still in its infancy as such the Superior Courts of Pakistan have not yet had the opportunity to interpret the concept of 'object'. Until such time the word 'object' is being given its ordinary definition (i.e. it refers to the purpose for which that agreement was entered in to). By using the word object, the statute is ensuring that all those agreements which are intended to be anti-competitive, whether they achieve their desired goal or not, are regulated by the Competition Act.

¹ File No. 14/DIR(M&TA)/PIA/CCP/09

Relevant prohibitions

Section 4(1) of the Competition Act, prohibits undertakings from entering into agreements or making decisions with respect to the *'production, supply, distribution, acquisition or control of goods or the provision of services which have the object or effect of preventing, restricting or reducing competition.'*

2.5 'Effect'

The Competition Act, having been enacted in 2010, is still in its infancy as such the Superior Courts of Pakistan has not yet had the opportunity to interpret the concept of 'effect. Until such time 'effect' is being given its ordinary definition (i.e. it refers to the impact of the agreement on the relevant market). As such the statute regulates all such agreements which may not be intended to be anti-competitive but nevertheless effectively curb competition in a relevant market.

Relevant prohibitions

The Competition Act prohibits undertakings from entering into agreements² or making decisions in respect of the production, supply, distribution, acquisition or control of goods or the provision of services *which have the object or effect of preventing, restricting or reducing competition within the relevant market.* In order to determine whether an agreement falls within the ambit of 'prohibited agreement' as set out in the Competition Act, the effect of the agreement with respect to preventing, restricting or reducing competition within the relevant market has to be taken into account.

2.6 'Undertaking'

The term 'undertaking' is defined in Section 2(1)(q) of the Competition Act to mean, 'any natural or legal person, governmental body including a regulatory authority, body corporate, partnership, association trust or other entity in any way engaged, directly or indirectly, in the production, supply, distribution of goods or provision or control of services and shall include an association of undertakings.'

2.7 'Contract, arrangement or understanding'

The term 'agreement' is defined under Section 2(1)(b) of the Competition Act and *'includes any arrangement, understanding or practice, whether or not it is in writing or intended to be legally enforceable.'*

Under Pakistan law, a contract is a binding legal agreement reached between two or more parties. Generally speaking, a contract will be formed when an offer to enter into binding legal relations is accepted by another party accompanied by the exchange of valuable consideration. The words 'arrangement' and 'understanding' describe something less than a contract. While there is no precise definition of the words arrangement or understanding, they are taken to imply a meeting of two or more minds. In particular, they ordinarily require communication between the parties, with consensus as to what is to be done, rather than a mere hope or expectation as to what might be done or will happen. Moreover, the definition of 'agreement' in the Competition Act is not only restricted to arrangement or understanding and includes 'practice'.

Relevant prohibitions

Agreements between undertakings that are likely to cause an appreciable adverse effect on competition within the relevant market are automatically void.

Thus any horizontal agreements (between undertakings engaged in identical or similar practices) or vertical agreements (between undertakings and suppliers of goods or services) that prevent, restrict or reduce competition are prohibited in Pakistan.

² 'Agreement' pursuant to the Competition Act includes any arrangement, understanding or practice, whether or not it is in writing or intended to be legally enforceable.

Part 3: Cartels (agreements between competitors)

3.1 Overview

This section outlines the rule relating to agreements between competitors.

3.2 Prohibitions

Agreements which have the object of preventing, restricting or reducing competition

The Competition Act does not have any specific cartel provisions.

However, Section 4(1) of the Competition Act prohibits undertakings from entering into agreements or making decisions with respect to the *'production, supply, distribution, acquisition or control of goods or the provision of services which have the object of preventing, restricting or reducing competition'*.

Section 4(2) of the Competition Act sets out a non-exhaustive list of prohibited agreements. Such agreements include, but are not limited to:

- '(i) fixing the purchase or selling price or imposing any other restrictive trading conditions with regard to the sale or distribution of any goods or the provision of any service;*
- (ii) dividing or sharing of markets for the goods or services, whether by territories, by volume of sales or purchases, by type of goods or services sold or by any other means;*
- (iii) fixing or setting the quantity of production, distribution or sale with regard to any goods or the manner or means of providing any services;*
- (iv) limiting technical development or investment with regard to the production, distribution or sale of any goods or the provision of any service; or*
- (v) collusive tendering or bidding for sale, purchase or procurement of any goods or service.*
- (vi) Applying dissimilar conditions to equivalent transactions with other trading parties, thereby place them at a disadvantage; and*
- (vii) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.'*

The Commission has wide discretion in deciding what agreements it deems as anti-competitive. However, because the Competition Act is relatively new, the superior courts have not yet handed down any judgements concerning such agreements.

With respect to the cartel provisions, there is no requirement per se under the Competition Act for the undertakings to be competitors. However, the agreement entered into by the undertaking should have the object or effect of preventing, restricting or reducing competition within the relevant market for it to fall within the ambit of prohibited agreements.

'Object'

Both the cartel provisions and the exclusionary provision prohibitions (mentioned above) require determination of the 'object' or 'effect' of the relevant provision. Practically speaking, object will be judged by what a person or undertaking has said or done and from a review of documentary records such as letters, memoranda, file notes, business plans, strategy papers and internal and external emails.

However, as aforementioned, notwithstanding the fact that an agreement may not have the object of preventing, restricting or reducing competition within the relevant market, it may still fall within the ambit of 'prohibited agreements' if it has the 'effect' of preventing, restricting or reducing competition within the relevant market.

3.3 Remedies and sanctions

The Commission may initiate proceedings against the concerned party in a court of law of competent jurisdiction.

A penalty can be imposed if the Commission determines that the undertaking has been found to have engaged in any activity prohibited under the Competition Act.

The Commission may impose penalties for entering into a prohibited agreement of an amount not exceeding PKR 75 million or an amount not exceeding ten percent of the annual turnover of the undertaking.

A further penalty of PKR 1 million per day can be imposed by the Commission if it finds that a violation is a continuing one.

The Competition Act also provides for criminal penalties including imprisonment. Pursuant to Section 38(5) of the Competition Act, a failure to comply with an order of the Commission with respect to prohibited agreements shall constitute a criminal offence punishable with imprisonment for a term which may extend to one year or with a fine of up to PKR 25 million.

3.4 Leniency / immunity programs

Leniency

Section 39 read with the *Competition (Leniency) Regulations 2007 (Leniency Regulations)* permits the Commission to take a lenient approach towards undertakings which make true and full disclosure with respect to an alleged violation. This lenient approach only applies to the first party to make the true and full disclosure.

Total immunity

Under Regulation 3(ii) of the Leniency Regulations, an undertaking which first makes a disclosure can obtain total immunity if it:

- (a) provides the Commission with all the information, documents and evidence available to it regarding the prohibited activity;
- (b) maintains continuous and complete cooperation throughout the proceedings and until the conclusion of any action by the Commission arising as a result of the proceedings;
- (c) refrains from further participation in the alleged activity from the time of its disclosure to the Commission; and
- (d) must not have taken any steps to coerce another undertaking to take part in any of the activities prohibited under the Competition Act.

Up to 100% immunity

An undertaking may benefit from a reduction in the financial penalty of up to 100% if:

- (a) the undertaking seeking reduction is the first to provide the Commission with evidence of any of the activities prohibited under the Competition Act;
- (b) this information is given to the Commission after the it has started proceedings but before it has sufficient information to issue a written notice that it proposes to make a decision that the relevant provisions of the Competition Act have been infringed; and
- (c) the conditions specified in Regulation 3(ii) of the Leniency Regulations are satisfied.

When deciding to reduce the penalty, the Commission will take into account factors listed in Regulation 4(2), including the stage at which the undertaking comes forward, the evidence already in the Commission's possession and the quality of the information provided by the undertaking.

Up to 50 % immunity

Undertakings which are not the first to bring forward information in relation to activities prohibited under the Competition Act may receive a 50% reduction in penalty if the conditions in Regulation 3(ii) of the Leniency Regulations are satisfied. The Commission will also have to take the conditions specified in Regulation 4(2) of the Leniency Regulations into account.

Third parties that suffer losses as a result of the prohibited activities may still, however, bring claims against the relevant undertakings in the courts even if the Commission has taken a lenient approach.

3.5 Extraterritorial application

The Competition Act applies to all undertakings, actions or matters that take place in Pakistan and which distort competition within Pakistan.

3.6 Application to State / Government entities

There is no separate or specific competition statute pertaining to government entities. The Competition Act applies to all 'undertakings', which is defined in the Competition Act to include governmental bodies and regulatory authorities.

3.7 Treatment of related bodies corporate

There is no specific treatment of related bodies corporate under the Competition Act. Although the Competition Act provides for individual and block exemptions on grounds including improvement of production and distribution, there are no exemptions for arrangements containing cartel provisions or exclusionary provisions in circumstances where the parties to the arrangement are related bodies corporate.

3.8 Treatment of joint ventures

There is no specific treatment of joint ventures under the Competition Act or exemption for arrangements containing cartel provisions or exclusionary provisions in circumstances where the parties to the arrangement are joint ventures.

3.9 Other exceptions

Authorisation

Under the Competition Act, exemptions may be granted in respect of a single agreement (individual exemption) or in respect of a category of agreements (block exemptions). In order to be eligible for an exemption, the agreement must either:

- (a) improve production or distribution;
- (b) promote technical or economic progress, while allowing consumers fair share of the resulting benefit; or
- (c) the benefit of the agreement must clearly outweigh the adverse effect of absence or lessening of competition.³

An individual exemption may be granted by the Commission with respect to a particular practice or agreement if a request for exemption is made to the Commission by a party to the agreement and the above mentioned criteria is satisfied.

The Commission may attach conditions to the exemption which it deems appropriate.⁴

When applying for an exemption, the period for which the exemption is required must be specified. An exemption can have retrospective effect. The Commission also has the power to cancel, vary and attach more conditions to the individual exemptions it has already granted if it has reasonable grounds for believing that there has been a material change of circumstances since it granted an individual exemption.⁵

If an agreement is part of a particular category of agreements, a block exemption may be granted, subject to the same criterion applicable to individual exemptions. The burden of claiming such an exemption lies on the undertaking seeking the exemption. If granted, all such agreements falling within that defined category will benefit from the

³Section 9, the Competition Act

⁴ Section 5, the Competition Act

⁵ Section 6, the Competition Act

exemption. An order granting a block exemption may impose conditions or obligations subject to which it is to have effect.

Collective acquisition exception for price fixing

There is no such provision in the Competition Act.

Vertical agreements anti-overlap

There is no such provision in the Competition Act.

3.10 Sector / industry-specific regulation / exceptions

There are no relevant industry-specific regulations or exceptions for cartel conduct.

3.11 Enforcement action

Recent enforcement action by the Commission under the prohibition against price fixing, the prohibition against exclusionary provisions and the general prohibition against contracts, arrangements or understandings that substantially lessen competition includes:

- Exclusionary provisions
See the matter of Defence Housing Authority Lahore and Wateen Telecom Limited in the response to 3.1 above.
- Price fixing
See the matter of Show Cause Notice issued to Pakistan Vanaspati Manufacturers Association in the response to 3.1 above.
- General prohibition against contracts, arrangements or understandings that substantially lessen competition

In the matter Institute of Chartered Accountants of Pakistan (ICAP),⁶

In October 2012 a show cause notice was issued against ICAP on the basis of a directive issued by ICAP whereby ICAP prohibited its members and chartered accountant firms from training non-ICAP accounting students. The Commission observed that the directive had the effect of preventing, restricting and reducing competition in the relevant market by foreclosing the public practice component of the relevant market for non-ICAP students and raising barriers to entry in the ancillary market for provision of accountancy services, hence violating section 4 of the Competition Act. As a result of the violation the Commission imposed a penalty of PKR 25 million on ICAP in January 2013.

In the matter of Pakistan Banking Association and Others

In April 2008, the Commission imposed a fine of PKR 30 million on the Pakistan Banks Association (**PBA**) for violating Section 4(1), read with Subsections 4(2)(a), (c) and (f) of the Competition Ordinance 2007.⁷ In addition, it penalized each member of the PBA with a penalty of PKR 25 million for carrying out cartel-like behaviour. The Commission found the PBA and the banks had reduced competition by *inter alia*, collectively deciding rates of profit and other terms and conditions regarding deposit accounts, including the fixing and capping of the maximum rate of profit and fixing and capping maximum balance requirements of a category of accounts.

The PBA began an Enhanced Savings Scheme (**ESA**) that allowed account holders in the respective banks with an average balance of PKR 20,000 to receive a return of 4% per annum while account holders with a balance of more than PKR 20,000 received a return at standard rates. In addition, the PBA converted saving accounts, said to be interest free accounts, into interest bearing accounts with guaranteed return of 4% to holders of account balances of up to PKR 20,000, without the consent of the account holders, leaving no option for the small savers to avail interest free saving scheme. This had the effect of creating dissimilar conditions and prima facie breached Section 4 of the Competition Ordinance 2007. The Commission further stated that because this decision was acted upon collectively

⁶F.No:1(52)/ICAP/C&TA/CCP/2012

⁷The competition law statute prior to the Competition Act 2010

by the members of the PBA, it was safe to assume that they too endorsed the decision. PBA by fixing the upper limit of PKR 20,000 had in fact discouraged savers of small amounts from saving more than PKR 20,000 and keeping it in their accounts. This created a cartel which was described by the Commission as *'an agreement amongst willing competitors, the competitors collude on any business aspect (whether capacity utilization, division of markets, introduction of innovation etc.) rather than taking such decisions competitively'*.⁸

In the matter of Defence Housing Authority,⁹Lahore and Wateen Telecom. Limited¹⁰

In March 2011, the Commission held that an agreement between Wateen Telecom Limited (**Wateen**) and the Defence Housing Authority (**DHA**) for the provision of telecommunications services in the area controlled by the DHA had the object or effect of preventing, restricting or reducing competition within the relevant market, thereby violating Section 4(1) read with Section 4(2)(b) of the Competition Act. The Commission ordered Wateen and the DHA to amend their agreement and fined DHA and Wateen PKR 10,000,000 and PKR 5,000,000 respectively for violating the Competition Act.

In establishing whether the agreement was exclusive and anti-competitive, the Commission first determined that (a) the relevant geographic market was the geographical demarcation of land owned by DHA including all of the present and future sectors, phases and expansions, and (b) the product market was comprised of a bundle of services collectively referred to as telecommunication and media services including telephone, internet and multimedia services. Competitors offering the same bundle of services were assumed to be a direct substitute in terms of the relevant product market.

The anti-competitive clause in the agreement stated that *'for the period of the Agreement, DHA undertakes to provide all telecommunication and media (excluding television production) services, in the DHA region under the terms of this Agreement with Wateen only...Provided, however, that DHA shall not enter into any similar agreement(s) and/or arrangement(s) with any third party in any form for any services covered in this Agreement...'*. Wateen claimed that the clause was relevant only to a right of way through DHA and that there were other internet service providers in the DHA region that were providing services to residents. The Commission rejected this and instead concluded that the agreement granted Wateen the exclusive right to dig soil and lay infrastructure to provide telecommunication and media services to the residents of DHA, resulting in a reduction in competition.

Collusive Bidding –

In the matter of Amin Brothers Engineering et al¹¹

The Commission routinely monitors information relating to public sector tenders as part of its bid rigging detection program. In August 2010, the Commission began an inquiry under Section 37(1) of the Competition Act into alleged collusive bidding by five private companies (**Bidders**) and the Peshawar Electric Supply Company Limited (**PESCO**) for the provision of, *inter alia*, 4759 High Tension Pre-Stressed Concrete (**HTPC**) poles and 3678 Low Tension Pre-Stressed Concrete (**LTPC**) poles (**Tender**).

Four of the Bidders entered into a joint venture agreement to collusively bid for the Tender and the fifth Bidder (**Amin**), a company in the same corporate group as one other Bidder (**Nam**) submitted a cover bid, thus providing an impression of competitive bidding. At the hearing, counsel for Amin and Nam put forward the argument that Amin was a separate legal entity and was not related to Nam as stated in the inquiry report. It was asserted that the same person did not sign the bidding documents for Nam and Amin. Moreover, counsel quoted the quantity of HTPC and LTPC poles that Amin and Nam had, and stated that the similar difference in the quoted price of HTPC and LTPC poles

⁸ (File No 2/sec-4/COMMISSION/07) - http://www.cc.gov.pk/images/Downloads/Order_of_Banks.pdf

⁹Defense Housing Authority established by virtue of Chief Executive Order No. 26 of 2002 is a statutory housing and is an undertaking in terms of clause (q) of sub-section (1) of Section 2 of the Competition Act.

¹⁰Wateen Telecom (Pvt.) Limited is a company, incorporated under the Companies Ordinance 1984 and is an undertaking in terms of clause (q) of sub-section (1) of Section 2 of the Competition Act.

¹¹File No. 13/PESCO/CMTA/CCP/2010

between Amin and Nam was purely coincidental and that the fact that both companies operate from the same location did not prove collusion.

The Commission, however, relied on independent evidence that proved that both Amin and Nam were part of the same corporate group, had common directorship and ownership at the time of the bid, operated from the same business address and used the same office facilities, such as phone and facsimile. Furthermore, the Commission maintained that the pricing difference of PKR 110 in the unit prices of HTPC and LTPC poles submitted by the Amin and Nam could not be regarded as a mere coincidence. Thus, the Commission concluded that the pricing strategy was a result of a coordinated move between the two companies to ensure that the joint venture would win while giving the impression of a competitive bidding process. Moreover, the Commission found the other Bidders were party to the agreement and aware of the collusive behaviour.

The Commission imposed a fine of PKR 2,000,000 on each of the bidders, amounting to a total fine of PKR 10,000,000.

Price fixing

In the matter of Show Cause Notice Issued to Pakistan Vanaspati Manufacturers Association (PVMA)¹²

PVMA is a representative association of all ghee and cooking oil manufacturers in Pakistan. The main issue in this case was whether PVMA took the decision to fix the price of ghee and cooking oil and entered into an arrangement with transporters to fix the rates of transportation of edible oil in contravention of Section 4(2)(a) of the Competition Act.

The Commission gathered evidence which revealed that within a short period (four months), price hiked four times in a parallel manner in different categories and brands of ghee and cooking oil, and it was noticed that the price increase was due to a collective decision of all manufacturers or the PVMA as their association resulting in simultaneous increase in price. Prices were discussed in the PVMA meetings, and PVMA had also been actively representing the business interest of its members. Evidence revealed that an announcement via circular was being made by PVMA to all its member mills informing them of the new price. The Commission imposed a penalty of PKR 50 million for contravention of Section 4 of the Competition Act (relating to price fixing) and PVMA was also reprimanded and ordered not to indulge in any anti-competitive practice in future.

Distinction between the criminal cartel offence and the civil cartel prohibition

According to Section 38 of the Competition Act, the Commission is required to give the undertaking concerned an opportunity of being heard before it directs that undertaking to pay a penalty via an order of the Commission. Such penalty can be imposed if the Commission determines that the undertaking:

- (a) has been found engaged in any activity prohibited under the Competition Act;
- (b) has failed to comply with an order of the Commission made under the Competition Act;
- (c) has failed to supply a copy of the agreement or any other documents and information as required under the Competition Act;
- (d) has furnished any information or made any statement to the Commission which the undertaking knows or has reason to believe to be false; or
- (e) knowingly abuses, interferes with, impedes, imperils or obstructs the process of the Commission in any manner.

The Competition Act does not contain any elements which distinguish the criminal offence from the civil prohibition and there is no provision regarding the need to establish specific fault elements for criminal punishment. As with the civil prohibition, non-compliance of the provision pertaining to prohibited agreements does not directly lead to a criminal penalty. It is only when the concerned undertaking fails to comply with an order of the Commission concerning a prohibited agreement that such failure shall constitute a criminal offence punishable with imprisonment for a term of up to one year or with a maximum fine of PKR 25 million. In addition to, or in lieu of the penalties prescribed in the Competition Act, the Commission may initiate proceedings in a court of competent jurisdiction.

¹²File No. 1(15)/PVMA-ISB/C&TA/CCP/2011

Part 4: Restraints in Vertical Agreements

4.1 Overview

Section 4(1) of the Competition Act prohibits undertakings from entering into agreements or making decisions with respect to the 'production, supply, distribution, acquisition or control of goods or the provision of services which have the object of preventing, restricting or reducing competition'. Section 4(2) of the Competition Act provides a non-exhaustive list of specific agreements which are prohibited. This gives the Commission wide discretion in deciding what agreements it deems as anti-competitive and enables the Commission to curb various practices it deems as preventing, restricting or reducing competition.

4.2 Prohibitions

Restraints in vertical agreements are covered under Section 4(1) of the Competition Act for prohibited agreements which include fixing the purchase or selling price or imposing any other restrictive trading conditions with regard to the sale or distribution of any goods or provision of any service, dividing or sharing markets for goods or services whether by territories or volume of sales or purchases.

Furthermore, under Section 3 of the Competition Act, tie-ins, where the sale of goods or service is made conditional on the purchase of other goods or services (whether from a third party or not), excluding any undertaking from production, distribution or sale of any goods or provision of any service or refusing to deal are practices constituting 'abuse of dominant position' which are prohibited.

4.3 Remedies and sanctions

See section 3.

4.4 Leniency / immunity programs

See section 3.

4.5 Extraterritorial application

See section 3.

4.6 Application to State / Government entities

See section 3.

4.7 Treatment of related bodies corporate

See section 3.

4.8 Treatment of joint ventures

See section 3.

4.9 Other exceptions

See section 3.

4.10 Sector / industry-specific regulation / exceptions

There are no relevant industry-specific regulations or exceptions for vertical agreements.

4.11 Enforcement action

*In the matter of Bahria University*¹³

In this matter, the Commission took notice of a published news article that claimed that Bahria University (BU) mandated that all incoming students purchase laptops imported by BU thereby potentially breaching Section 3(3)(c) of the Competition Act.

In order to establish the claim of a tie-in, the Commission applied the 'rule of reason' employed under EU and United States law. The rule has 5 elements which need to be proved: (1) a tie exists between two separate products; (2) the tying seller (BU) has dominant position in the tying product (educational services) market so as to be able to prevent, restrict, reduce or distort competition in the tied product market (laptops); (3) coercion (or forcing) by the seller to purchase the two products; (4) the tie affects a 'not-insubstantial' amount of commerce, or forecloses competition to some extent, in the tied product; and (5) the tying seller has some economic interest in the sales of the tied product.¹⁴

Clearly the two products were distinct and the tie-in existed as BU made it mandatory for the students to purchase the laptops upon being enrolled in the university. The Commission determined the second element by viewing admission records of universities in the relevant geographic market which provided the relevant product (i.e. educational services). These records revealed that BU held a substantial market share of students in the programs it offered. In order to ascertain the third element, the Commission stated that BU had unfettered power to force the students to purchase the laptops. In addition, the fact that the mandatory purchase of the laptops from BU was not disclosed to the students at the time of the admission was sufficient evidence to prove that the students were coerced into accepting the tie-in.

The fourth element was determined by calculating the monetary value and market share of the product which BU sold to its students. According to statistics provided to the Commission, BU purchased 4500 laptops and sold 3649 of them during the year, generating total revenue of PKR178 million. In addition, for the year ending 2007, the total import of PC servers in the country was 149,000. Based on information received from computer sellers, the Commission concluded that it was fair to say that of the 149,000 PC servers, 10 per cent equalling to 14,900 were laptops. BU, by purchasing and selling 4500 laptops effectively foreclosed at least 30% of the laptops market. And finally, BU had direct interest in tying the sale of laptops as it wanted to clear the stock of laptops before they became obsolete.

As a result, the Commission penalized BU under Section 38 of the Competition Act by imposing an immediate and permanent ban on the sale of the laptops. BU also agreed to give a refund to the students for the laptops that they purchased. For this reason, the Commission did not impose any further financial penalty.

Part 5: Other anti-competitive agreements

Apart from the agreements prohibited by section 4 of the Competition Act (discussed above in Parts 3 and 4 above), there are no other prohibitions on anti-competitive agreements.

¹³ (File No. 05/Sec-3/CCP/08) - <http://www.cc.gov.pk/images/Downloads/order/Bahria%20University.pdf>

¹⁴ Eurofix-Bauco v Hilti, Commission Decision 88/138/EEC; Tetra Pak II, Commission Decision 92/163/EEC, OJ 1992, L72/I; Reifert v. S. Cent. WLS Corp. 450 F.3d 312; 2006 U.S. App. LEXIS 14327; 2006-1 Trade Cas. (CCH) P75,283 (2006) Cert denied US Reifert v. S. Cent. Wi Mls Corp., 2007 U.S. LEXIS 2856 (U.S., Mar. 5, 2007). See also Carl Sandburg Vill. Condo. Ass'n No. 1 v. First Condo. Dev. Co., 758 F.2d 203, 208 (7th Cir. 1985); N. Pac. Ry. Co. v. United States, 356 U.S. 1, 5-6, 78 S. Ct. 514, 2 L. Ed. 2d 545 (1958); Moore v. Matthews & Co., 550 F.2d 1207, 1212 (9th Cir. 1977); Jefferson Parish Hosp. Dist. No. 2 v. Hyde, 466 U.S. 2, 35, 104 S. Ct. 1551, 80 L. Ed. 2d 2 (1984)

Part 6: Abuse of dominance / market power

6.1 Overview

Section 3 of the Competition Act prohibits the 'abuse of dominant position'. Under section 3(2) of the Competition Act, 'an abuse of dominant position shall be deemed to have been brought about, maintained, or continued if it consists of practices which prevent, restrict, reduce, or distort competition in the relevant market.

Pursuant to section 3(3) of the Competition Act, 'practices' includes, but is not limited to:

- (a) limiting production, sales and unreasonable increases in price or other unfair trading conditions;
- (b) price discrimination by charging different prices for the same goods or services from different customers in the absence of objective justifications that may justify different prices;
- (c) tie-ins, where the sale of goods or service is made conditional on the purchase of other goods or services;
- (d) making conclusion of contracts subject to acceptance by the other parties of supplementary obligations which by their nature or according to commercial usage, have no connection with the subject of the contracts;
- (e) applying dissimilar conditions to equivalent transactions on other parties, placing them at a competitive advantage;
- (f) predatory pricing driving competitors out of a market, prevent new entry, and monopolize the market;
- (g) boycotting or excluding any other undertaking from the production, distribution or sale of any goods or the provision of any service; or
- (h) refusing to deal.¹⁵

6.2 Elements of the prohibition

Dominant position

Under Section 2(1)(e) of the Competition Act, the dominant position of an undertaking or several undertakings in a relevant market shall exist if such undertaking or undertakings have the '*ability to behave to an appreciable extent independently of competitors, customers, consumers and suppliers*'. Moreover, an undertaking will be presumed to be dominant if its share of the relevant market exceeds 40%.

The term 'undertaking' is defined in Section 2(1)(q) of the Competition Act to mean, '*any natural or legal person, governmental body including a regulatory authority, body corporate, partnership, association trust or other entity in any way engaged, directly or indirectly, in the production, supply, distribution of goods or provision or control of services and shall include an association of undertakings.*'

Section 2(1)(k) of the Competition Act defines the term 'relevant market' to mean, '*the market which shall be determined by the Commission with reference to a product market and a geographic market.*' Under the Competition Act, a '*product market consists of those products which are regarded as interchangeable or substitutable by the consumers by reason of the products characteristics, prices and intended use.*' The Competition Act further provides that a '*geographical market comprises the area in which the undertakings concerned are involved in the supply of products or services and in which the conditions of competition are sufficiently homogenous and which can be distinguished from neighbouring geographic areas because, in particular, the conditions of competition are appreciably different in those areas.*'

Factors such as structure of the market (including the number and size of competitors), product specifications and quality and the dynamics of competition have been taken into consideration by the Commission in deciding whether an undertaking has a dominant position in a relevant market.

For instance, *In the matter of Show Cause Notice issued to M/s Cinepax Limited*¹⁶ (**Cinepax**), Cinepax was a company in the business of operating Pakistan's only multiplex cinema in Rawalpindi, the ambience, quality of the theatre, service and prices of tickets at Cinepax put it in a distinct market. The Commission determined that Cinepax has a

¹⁵ Section 3(3) of the Competition Act

¹⁶(File No:07/CINEPAX/CMTA/CCP/10)

dominant position based on its distinct product as the other cinemas in the city are not in the same category and the relevant product market for Cinepax is different than other cinemas operating in the same geographical market.

Moreover, *In the matter of Show Cause Notice Issued to Pakistan Vanaspati Manufacturers Association (PVMA)*,¹⁷ the Commission decided that PVMA holds a dominant position in the market of invoice verification of edible oil as it is the sole service provider designated to verify invoices of its members importing edible oil and commercial importers who are not members.

'Abuse of dominant position'

The mere fact that an undertaking has a dominant position does not mean it will contravene the abuse of dominant position prohibition. The provision relating to prohibition of dominant position will be triggered only if an undertaking abuses such position. Under the Competition Act, abuse shall be deemed to have been brought about if it consists of practices which prevent, restrict, reduce or distort competition in the relevant market.

Proscribed purpose

An undertaking will be deemed to have contravened the abuse of dominant position prohibition if the practice it brings about, maintains or continues prevents, restricts, reduces or distorts competition in the relevant market even if the undertaking or undertakings had no such purpose or intention.

6.3 Specific prohibition: predatory pricing

Pursuant to Section (3)(3)(f) of the Competition Act, the practice of predatory pricing driving competitors out of a market, preventing new entry and monopolizing the market shall constitute an abuse of dominant position.

6.4 Remedies and sanctions

Where the Commission feels that there has been or is likely to be a contravention of the prohibition of abusing a dominant position the Commission may pursuant to section 31 of the Competition Act require the undertaking concerned to take such actions specified in the order as may be necessary to restore competition and not to repeat its actions or engage in any other practice.

In addition to such order the Commission may, under section 38 of the Competition Act impose penalties for abusing a dominant position for an amount not exceeding PKR 75 million or an amount not exceeding ten percent of the annual turnover of the undertaking. A further penalty of PKR 1 million per day can be imposed by the Commission if it finds that a violation is a continuing one.

The Competition Act also provides for criminal penalties including imprisonment. Pursuant to Section 38(5) of the Competition Act, a failure to comply with an order of the Commission with respect to prohibited agreements shall constitute a criminal offence punishable with imprisonment for a term which may extend to one year or with a fine of up to PKR 25 million.

6.5 Collective dominance

Several undertaking in a relevant market can also collectively be deemed to be in a dominant position. The prohibition on abuse of dominant position shall apply mutatis mutandis to several undertakings as it would to a single undertaking.

6.6 Price discrimination

Price discrimination may constitute abuse of a dominant position – please see paragraphs 6.1 and 6.12.

6.7 Misuse of market power and access to natural monopoly infrastructure/facilities

Not applicable

¹⁷ File No. 1(15)/PVMA-ISB/C&TA/CCP/2011.

6.8 Misuse of market power and intellectual property rights

Under Section 10 of the Competition Act, no undertaking shall enter into 'deceptive market practices'. Section 10(2) states that the deceptive marketing practices shall be deemed to have been resorted to or continued if an undertaking resorts to:

- (a) The distribution of false or misleading information that is capable of harming the business interests of another undertaking;
- (b) the distribution of false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to price, character, method or place of production, properties, suitability for use, or quality of goods;
- (c) false or misleading comparison of goods in the process of advertising; or
- (d) fraudulent use of another's trademark, firm name, or product labelling or packaging.'

*In the matter of Show Cause Notices No. 18 and 19 of 2010 issued to M/S ACE Group of Industries (AGI).*¹⁸ M/s BayerischeMotorenWerkeAktiengesellschaft (**BMW**) and M/s H-D Michigan L.L.C. (**HD**) (collectively the **Complainants**) filed complaints against AGI alleging that AGI was manufacturing, offering for sale, selling, exporting leather jackets and was fraudulently and without authorization using the Complainants' registered trademarks on its products. After conducting enquiries into the matter, the Commission held that deceptive marketing in terms of Section 10 of the Competition Ordinance 2010¹⁹ had been carried out by AGI and the fraudulent use of the trademark by AGI was very much capable of harming the business interest of the complainants in violation of Section 10(1) read with Section 10(2)(a) and (d) of the Competition Ordinance 2010. However, a token penalty of PKR 250,000 was imposed on AGI as AGI admitted to the violation of the Competition Ordinance 2010 not only at the enquiry stage but also during the course of the hearing and cooperated by submitting all the records requisitioned by the Commission and, apologized and assured future compliance of the Competition Ordinance 2010 in letter and spirit.

*In the matter of complaint filed by M/s DHL Pakistan (Pvt.) Limited*²⁰ (**Complainant**) show cause notices were issued on February 22, 2012 to 7 courier service providers within Pakistan (**Respondents**) alleging violation of Section 10 of the Competition Act. The Complainant alleged that the Respondents were fraudulently using the Complainant's logo/trademark without the Complainant's permission, authorization or consent, and this amounted to false, deceptive and misleading conduct and was capable of harming the business interests of the Complainant.

After conducting its enquiries, the Commission held that the trademarks used by the Respondents were misleading and deceptive, and capable of being viewed as trademarks of the Complainant by an ordinary consumer. The Commission stated that on comparison the Respondents' trademarks bore close resemblance to the Complainant's trademarks, which was likely to cause confusion and deception. The Commission held that it is a cardinal principle of law and fair commercial trading that deceptive measures should not be adopted to adversely affect the goodwill and recognition earned by other organizations. The Commission found that the only reason for such conduct was to gain an advantage on the goodwill attached to the Complainant's trademark, which is indeed capable of harming the Complainant's business interest. The Respondents were held liable to pay a penalty of PKR 1 million.

6.9 Sector / industry-specific regulation / exceptions

There are no sector specific regulations in the context of abuse of dominant position.

6.10 Other exceptions

Under Sections 5 and 7 of the Competition Act, the Commission has the power to grant individual and block exemptions for practices that it considers may improve production or distribution, promote technical or economic progress and benefit competition. The Commission may impose conditions or obligations on undertakings prior to a block exemption being granted.

¹⁸ (FILE NO. 3/REG/COMP/BMW/SEC.10/CCP/09) and (FILE NO. 4/REG/COMP/H.D/SEC.10/CCP/09)

¹⁹The competition law statute prior to the Competition Act 2010

²⁰(File No. 66/REG/COMP/DHL/CCP/2011)

6.11 Enforcement action

Generally, where undertakings have abused their dominant position for long durations they have been penalised financially heavily. However, there have been a number of 'dominant position' cases in which the Commission has not imposed significant penalties; instead issuing directions to cease the anti-competitive practice, breach of which would attract significant amount of penalties. In a few cases, the Commission has tended to take a lenient view in line with the idea of promoting good business practices in the market rather than penalizing undertakings.

Details relating to enforcement action and penalties in cases relating to abuse of dominant position are as follows:

Unreasonable increase in prices

In the matter of Pakistan International Airlines,²¹ the Commission concluded that Pakistan International Airlines had abused its dominant position by charging an unreasonable airfare in contravention of competition laws. As a result, the Commission imposed a 'token' fine of PKR10 million on Pakistan International Airlines and admitted to taking a lenient view in line with the idea of promoting good business practices in the market rather than penalizing undertakings.

Price discrimination

In June 2011, *In the matter of Pakistan Vanaspati Manufacturers Association*²² (PVMA), the Commission concluded that in discharging the services of invoice verification, the PVMA was discriminating between manufacturing units and commercial importers by charging two different rates in contravention of the competition law. By way of penalty, PVMA was directed to cease the practice of charging discriminatory prices. In addition, it was directed to report compliance within a period of 30 days of issuance of the order. Failure to comply with the direction would make PVMA liable for a penalty in the sum of PKR 1 million for each day default.

Refusal to deal

In the matter of the Karachi Stock Exchange (Guarantee) Limited the Islamabad Stock Exchange (ISE), ISE filed a complaint with the Commission against the Karachi Stock Exchange (Guarantee) Limited (KSE) alleging violation of Section 3(h) of the Competition Act, i.e. abusing its dominant position by refusing to deal. Subsequent to the complaint by ISE, the Lahore Stock Exchange (LSE) also joined in the proceedings.

ISE alleged that KSE was responsible for causing regional discrimination, applied dissimilar conditions on similar transactions and did not make the best price available to ISE and LSE members, which adversely affected the competition within the relevant market and also discouraged investors. This not only affected the economy of the country but also competition inter se KSE, ISE and LSE. The Commission stated that the adverse impact of KSE's behaviour on competition was evident from the fact that the best price for shares was not available at ISE and LSE and hence investors at these exchanges were deprived of the same by virtue of the KSE's refusal to allow the other two exchanges access to its trading platform. In addition, it stated that KSE as a market place offered the greatest depth, primarily for historical reasons and yet it sought to exclude the other two exchanges and their investors from benefiting from this market depth for no rational commercial justification.

As a result of the above justifications, the Commission concluded that KSE was abusing its dominant position. It directed KSE to enter into an agreement with ISE and LSE to ensure availability of and access to the best price of commonly listed securities regardless of geographical location. If KSE failed to comply with the order, it would be liable to pay a penalty of PKR 50 million at the end of the six-month period and thereafter an additional penalty of PKR 250,000 per day if the non-compliance continued.

*In the matter of Pakistan Steel Mill*²³ (PSM), the Commission imposed a fine of PKR 25 million as it concluded that PSM had abused its dominant position in the low carbon steel market by refusing to deal with customers. The Commission imposed a moderate penalty and refrained from imposing a higher penalty which ordinarily would have

²¹(File No. 14/DIR (M&TA)/PIA/CCP/09) http://www.cc.gov.pk/images/Downloads/PIA_ReschedulingCancellation_Order_%5b8_Dec_2009%5d.pdf

²² PVMA is a representative association of all ghee and cooking oil manufacturers in Pakistan.

²³ File No. 3/DIR (M&TA)/PSM/CCP/09

been appropriate, taking into account the fact that the abuse occurred for a period of three months and related to a specific type of billet, which comprises of a very small portion of the annual production at PSM.

Part 7: Other prohibitions on unilateral conduct (e.g. resale price maintenance)

There are no prohibitions other than those already discussed in Parts 3, 4, 5 and 6 above.

Part 8: Mergers

8.1 Overview

Section 11 of the Competition Act states that, 'no undertaking shall enter into a merger which substantially lessens competition by creating or strengthening a dominant position in the relevant market.'

Application

The term merger is defined in Section 2(1)(h) of the Competition Act as any 'merger, acquisition, amalgamation, combination or joining of two or more undertakings or part thereof into an existing undertaking or to form a new undertaking'.

Regulation 3 of the Competition (Merger Control) Regulations, 2007 (**Merger Control Regulations**) states that:

'Without prejudice to the generality of the term merger as defined under clause (h) of sub-section 1 of section 2 merger shall be deemed to have occurred if –

(a) two or more undertakings, previously independent of one another, merge to form a new undertaking and cease to exist as separate legal entities; or

(b) one undertaking is absorbed by another with the latter retaining its legal entity and former ceasing to exist; or

(c) one or more persons or other undertakings who or which control one or more undertakings or acquire direct or indirect control of the whole or part of one or more other undertakings; or

(d) one or more persons or other undertakings acquire direct or indirect control of the whole or part of one or more other undertakings; or

(e) the result of an acquisition by one undertaking (the first undertaking) of the assets or shares (including goodwill), or a substantial part of the assets or shares, of another undertaking (the second undertaking) is to place the first undertaking in a position to replace or substantially replace the second undertaking in the business or, as appropriate, the part concerned of the business in which that undertaking was engaged immediately before the acquisition; or

(f) a collaborative arrangement by which two or more undertaking devote their resources to pursue a common objective; provided that such arrangement must be:

(i) subject to joint control;

(ii) perform the functions of an autonomous entity; and

(iii) on a lasting basis.

Explanation: Control, in relation to an undertaking, shall be regarded as existing if, by reason of securities, contracts or any other means, or any combination of securities, contracts or other means, influence is capable of being exercised with regard to the activities of the undertaking and, in particular, by –

(a) ownership of, or the right to use all or part of, the assets of an undertaking; or

(b) rights or contracts which enable decisive influence to be exercised with regard to the composition, voting or decisions of the organs of an undertaking’.

8.2 Application to offshore acquisitions

The Competition Act applies to all undertakings, actions or matters that take place in Pakistan and which distort competition within Pakistan.

8.3 Competition assessment

Under Regulation 6 of the Merger Control Regulations, the Commission shall initially determine whether or not a merger is likely to substantially prevent or lessen competition by assessing the strength of competition in the relevant market, and the probability that, after the merger, the merger parties will behave competitively or co-operatively in the market, taking into account any factor that is relevant to competition in that market, including but not limited to:

- (a) the actual and potential level of import competition in the market;
- (b) the ease of entry into the market, including tariff and regulatory barriers;
- (c) the level and trends of concentration and history of collusion in the market;
- (d) the degree of countervailing power in the market;
- (e) the dynamic characteristics of the market, including growth, innovation, and product differentiation;
- (f) the nature and extent of vertical integration in the market;
- (g) whether the business or part of the business of a merger party has failed or is likely to fail; and
- (h) whether the merger situation will result in the removal of an effective competitor.

8.4 Filing requirements and thresholds

Notification

Section 11(2) of the Competition Act states that where an undertaking intends to acquire the shares or assets of another undertaking, or two or more undertakings intend to merge the whole or part of their businesses, if they meet the pre-merger notification thresholds stipulated in the Merger Control Regulations prescribed by the Commission, such undertaking or undertakings shall apply for clearance from the Commission for the intended merger.

The pre-merger notification thresholds have been prescribed in Regulation 4 of the Merger Control Regulations and are stated hereunder:

‘(a) the value of gross assets of the undertaking, excluding value of goodwill, is not less than three hundred million rupees and/or the combined value of the undertaking and the undertaking(s) the shares of which are proposed to be acquired or the undertakings being merged, is not less than one billion rupees; or

(b) annual turnover of the undertaking in the preceding year is not less than five hundred million rupees and/or the combined turnover of the undertaking and the undertaking(s) the shares of which are proposed to be acquired or the undertakings being merged is not less than one billion rupees; and

(c) the transaction relates to acquisition of shares or assets of the value of one hundred million Rupees or more; or

(d) in case of acquisition of shares by an undertaking, if an acquirer acquires voting shares, which taken together with voting shares, if any, held by the acquirer shall entitle the acquirer to more than 10% voting shares;

(e) in the case of an asset management company carrying out asset management services, its collective exposure for itself and in all of its

collective investment schemes in a single entity is more than 25% of total voting rights; or

(f) the value of total assets under management of an Asset Management Company is one billion rupees or more.’

Pre-merger application

The Merger Control Regulations includes a prescribed pre-merger application form. Applications to the Commission for pre-merger clearance are required to be accompanied by a processing fee amounting to PKR 200,000 or at the rates indicated in the tables below, whichever amount is greater.

| Turnover of merger parties | Fee |
|---|-----------------|
| Up to PKR 500 million | PKR 200,000/- |
| More than PKR 500 million but not exceeding PKR 750 million | PKR 400,000/- |
| More than PKR 750 million but not exceeding PKR 1000 million | PKR 500,000/- |
| More than PKR 1000 million but not exceeding PKR 5000 million | PKR 700,000/- |
| More than PKR 5000 million but not exceeding PKR 10,000 million | PKR 1,000,000/- |
| Exceeding PKR 10,000 million | PKR 1,500,000/- |

| Assets under management of applicant Asset Management Company(s) | Fee |
|---|-----------------|
| Up to PKR 5 billion | PKR 200,000/- |
| More than PKR 5 billion but not exceeding PKR 7.5 billion | PKR 400,000/- |
| More than PKR 7.5 billion but not exceeding PKR 1000 billion | PKR 500,000/- |
| More than PKR 1000 billion but not exceeding PKR 50 billion | PKR 700,000/- |
| More than PKR 50 billion but not exceeding PKR 100 billion | PKR 1,000,000/- |
| Exceeding PKR 100 billion | PKR 1,500,000/- |

8.5 Clearance / approval procedures, stages and timetables

Phase 1 review

Upon receiving a complete application form in respect of pre-merger clearance that meets all the applicable filing requirements, the Commission will carry out a preliminary assessment to determine whether the transaction constitutes a 'merger' under the Competition Act, and whether the proposed merger raises competition concerns (**Phase 1 Review**). Under the Regulation 10(4) of the Merger Control Regulations, the Commission is required to complete a Phase 1 Review within 30 working days of receiving the application. By the end of this period, the Commission will determine whether to issue a favourable decision and allow the merger to proceed, or to carry out a further assessment (**Phase 2 Review**). Failure by the Commission to make a determination within the 30 day period shall mean that the Commission has no objection to the intended merger.

Phase 2 review

If during the Phase 1 Review the Commission is unable to conclude that the merger does not raise competition concerns on the basis of all information before it, the Commission may proceed to carry out a more detailed assessment as a Phase 2 Review. If the Commission decides to proceed with a Phase 2 review, it shall notify the merger parties of its decision and may require the merger parties to provide such further information as it considers necessary. The Commission shall complete the Phase 2 Review and reach a decision within 90 working days (Regulation 11(3)). The 90-day period shall only commence after the Commission notifies the merger parties that it has proceeded to a Phase 2 Review and it has received all the required information (Regulation 11(4)). If the Commission does not render a decision within 90 days, then as per the provisions of Regulation 11(9) of the Merger Control Regulations, it shall be deemed that the Commission has no objection to the merger.

Pursuant to Regulation 14 of the Merger Control Regulations, if the Commission determines that an intended merger substantially lessens competition, it may still approve of the merger if it is shown by the applicant that:

- (a) the merger contributes substantially to the efficiency of the production or distribution of goods or to the provision of services;
- (b) such efficiency could not reasonably have been achieved by a less restrictive means of competition;
- (c) the benefits of such efficiency clearly outweigh the adverse effect of the absence or lessening of competition; or
- (d) the merger is the least anti-competitive option for the failing undertaking's assets, when one of the undertakings is faced with actual or imminent financial failure.

Following the Phase 2 Review, the Commission may either:

- (a) prohibit the consummation of the intended merger;
- (b) approve the intended merger subject to conditions; or

approve the merger on the condition that the said undertakings enter into legally enforceable agreements specified by the Commission in its order

8.6 Remedies

In the context of mergers where there has been a contravention of any of the provision of section 11 of the Competition Act the Commission may, subject to requirements of due process, pass an order;

- a) Authorizing the merger, possibly setting forth conditions to which the acquisition is subject;
- b) Deciding that it has doubts as to the compatibility of the merger with the law thereby initiating a second phase review; or
- c) Undoing or prohibiting the merger, but only as a conclusion of a second phase review.

In addition to the above the Commission may impose penalties for contraventions of section 11 of the Competition Act of an amount not exceeding PKR 75 million or an amount not exceeding ten percent of the annual turnover of the undertaking.

A further penalty of PKR 1 million per day can be imposed by the Commission if it finds that a violation is a continuing one.

The Competition Act also provides for criminal penalties including imprisonment. Pursuant to Section 38(5) of the Competition Act, a failure to comply with an order of the Commission with respect to prohibited agreements shall constitute a criminal offence punishable with imprisonment for a term which may extend to one year or with a fine of up to PKR 25 million.

8.7 Appeals

A decision of the Commission made in the merger context may be appealed to the Appellant Bench of the Commission by way of the procedure outlined in section 9.4 below.

8.8 Use of expert economists

Pursuant to section 23 of the Competition Act the Commission has the power to appoint such experts, advisors or consultants as it considers necessary. We are unaware of a case where expert economists were used by the Commission of the merger parties in the context of a particular transaction.

8.9 Enforcement action

Considering the infancy of the law there has not yet been any significant enforcement action in the merger context i.e. where the Commission has learnt of a violation of section 11 of the Competition Act without intimation of the parties and has undone or prohibited the merger.

8.10 Key recent developments and proposals for reform

There have been no such key developments in Pakistan in the merger context since the Competition Act was passed by the National Assembly of Pakistan in 2010. We are unaware of any current proposals to reform the law relating to mergers.

Part 9: Enforcement

9.1 Regulator's enforcement powers and tools

Power to enter and search premises

Under Section 34 of the Competition Act, the Commission has the power to authorize any officer to enter and search any premises for the purpose of enforcing the provisions of the Competition Act, provided it has reasonable grounds to do so. During such search, the officer is to have full access to any premises, accounts, documents or computers. It may impound any accounts, documents and computers (where no hardcopy is available) and may retain them for as long as may be necessary for the purpose of the Competition Act. However, an undertaking whose accounts, documents or computer have been impounded and retained may examine them and make copies during the Commission's working hours and under its supervision.

The Commission may authorize an officer known as a valuer to enter any premises to inspect accounts and documents as may be necessary to enable the valuer to make a valuation of an asset. An officer seeking to exercise the above rights is required to provide evidence of his authority to act on behalf of the Commission, and the occupier of any premises in question is required to provide all reasonable facilities and assistance to ensure the effective exercise of the right of access.

In the event that an undertaking refuses to allow an officer to enter its premises, the Commission may, by written order, permit the officer to use force to enter the building. Any officer found to be using vexatious or excessive force shall be liable to pay a fine of PKR 500,000 or to imprisonment for a term not exceeding one year. If a fine is collected, part of it shall be paid to the person on whose complaint the officer was convicted. Any sum paid to the aggrieved party will not affect any other remedies available to him under other laws but the court will take into account any sum recovered from the convicted officer and paid to the aggrieved person.

Powers to call for information and initiate enquiries

The Commission may call upon an undertaking to provide information concerning the activities of the undertaking, including information relating to its organization, accounts, business, trade practices and management under Section 36 of the Competition Act.

Finally, the Commission may pursuant to Section 37 of the Competition Act, conduct enquiries into matters relevant to fulfil the purpose of the Competition Act on its own, on a reference made to it by the government or on a complaint received in writing from an undertaking or association of consumers. After conducting these enquiries, the Commission shall initiate proceedings against the concerned undertakings if it finds it necessary in the public interest to do so.

Interim orders

Under Section 32 of the Competition Act, the Commission may issue interim orders directing an undertaking to do or refrain from doing or continuing to do any act or thing specified in its order. The Commission shall for the purposes of a proceeding or enquiry under the Competition Act have the same powers as are vested in a civil court (Section 33 of the Competition Act).

The Commission also has powers to impose penalties of an amount not exceeding PKR 1 million for non-compliance with any order, notice or requisition.

9.2 Remedies

Under Section 30 of the Competition Act, the Commission is empowered to make the orders listed in Section 31 or penalise an undertaking under Section 38 where undertakings have breached any of the provisions of the Competition Act which prohibit anti-competitive behaviour.

Before making the order, the Commission is required to give notice to the concerned undertaking of its intention to make such an order along with its reasons for doing so, and it must give the undertaking an opportunity of being heard.

Under Section 31 the Commission inter alia has the power to:

- (a) annul agreements in contravention of the Competition Act;
- (b) prohibit an undertaking from carrying out anti-competitive practices;
- (c) confiscate goods having hazardous or harmful effects from undertakings conducting deceptive marketing practices; and
- (d) authorise or order a company to divest following a merger.

Under Section 38 of the Competition Act, the Commission may direct an undertaking to pay by way of penalty a sum specified in an order after giving the undertaking an opportunity of being heard. Such penalty can be imposed if the Commission determines that the undertaking:

- (a) has been found engaged in any activity prohibited under the Competition Act;
- (b) has failed to comply with an order of the Commission made under the Competition Act;
- (c) has failed to supply a copy of the agreement or any other documents and information as required under the Competition Act;
- (d) has furnished any information or made any statement to the Commission which the undertaking knows or has reason to believe to be false; or
- (e) knowingly abuses, interferes with, impedes, imperils or obstructs the process of the Commission in any manner.

The Commission has power to impose penalties at the following rates:

- (a) for abuse of dominant position, prohibited agreements, deceptive marketing practices and mergers without approval, an amount not exceeding PKR 75 million or an amount not exceeding 10% of the annual turnover of the undertaking, as may be decided in the circumstances of the case;
- (b) for non-compliance of any order, notice or requisition, an amount not exceeding PKR 1 million; and
- (c) knowingly abusing, interfering with, impeding, imperilling or obstructing the process of the Commission in any manner, an amount not exceeding PKR 1 million.²⁴

A further sum of PKR 1 million per day can be fined by the Commission if it finds that the violation is a continuing one. In addition, a failure to comply with an order of the Commission shall constitute a criminal offence punishable with imprisonment for a term which extends to one year or with a fine which may extend to PKR 25 million and the Commission may initiate proceedings against the concerned party in a court of law of competent jurisdiction.

9.3 Relevant courts/tribunals

Under Section 41 of the Competition Act, an aggrieved party may file an appeal with the Appellate Bench of the Commission within 30 days of the passing of an order. Pursuant to Section 42 of the Competition Act, any person aggrieved by an order of the Appellate Bench of the Commission may, within 60 days of the communication of that order, appeal to the Competition Appellate Tribunal.²⁵ Alternatively Section 42 also provides that an aggrieved party may directly file an appeal with the Competition Appellate Tribunal without first approaching the Appellate bench of the Commission if the impugned order of the Commission was passed by two or more members of the Commission. Under Section 44 of the Competition Act, any person aggrieved by an order of the Competition Appellate Tribunal may then appeal to the Supreme Court within 60 days of the communication of the order.

9.4 Litigation – matters of procedure

Appeals

The *Competition Commission (Appeal) Rules 2007 (Rules)* provide further details as to the process by which aggrieved parties can appeal against the decisions of the Commission. The party appealing must file a memorandum of appeal with the details provided in Rule 7 of the Rules and in the form provided in Schedule II of the Rules. The memorandum must be accompanied by a certified copy of the order and all documents and evidence which the party will be relying

²⁴Section 38 (2) of the Competition Act

²⁵Tribunal established pursuant to section 43 of the Competition Act.

on. Where the party is appealing a penalty imposed by the Commission, it must deposit 25% of the penalty in the account of the Commission as fees before the application can proceed.

As provided for in Rule 9 of the Rules, the Appellate Bench may, after giving the aggrieved party an opportunity of being heard, reject the appeal in whole or in part at any stage in the proceedings if:

- (a) it considers that the memorandum of appeal discloses no valid ground of appeal;
- (b) it considers that the appellant is not an aggrieved party or person under Section 41;
- (c) it is satisfied that the appellant has habitually and persistently, and without any reasonable ground:
 - (i) instituted vexatious proceedings before the Appellate Bench; or
 - (ii) made vexatious applications in any proceedings before the appellate bench; or
- (d) the appellant fails to comply with any provision of these rules, or any direction, or order of the Appellate Bench.

Rule 22 of the Rules states that the Appellate Bench may, *inter alia*, confirm, remand, set aside or cancel the impugned order, or enhance or reduce the penalty or make such other order as it may deem just and equitable in the circumstances of a case. If all the parties to the appeal agree to settle the proceedings, they may request the Appellate Bench to make a consent order under Rule 23 of the Rules.

A person aggrieved with the order of the Appellate Bench or an order of the Commission comprising of two or more members may, within 60 days of the communication of such order, file an appeal to the Commission Appellate Tribunal. Section 43(4) empowers the Commission Appellate Tribunal to make rules governing the procedure of such appeal in consultation with the Federal Government however no such rules have been framed to date. Pursuant to Section 44 of the Competition Act a person aggrieved with an order of the Competition Appellate Tribunal may, within 60 days, prefer an appeal to the Supreme Court.

Power in relation to a proceeding or enquiry

By virtue of Section 33(1) of the Competition Act, the Commission has the same powers as are vested in a civil court in Pakistan under the Code of Civil Procedure 1908 (Act V of 1908) with respect to, *inter alia*, summoning a witness, accepting evidence on affidavits and requisitioning of any public record from any court or office. Moreover, any proceedings before the Commission shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Pakistan Penal Code (Act XLV of 1860) and the Commission shall be deemed to be a civil court for the purposes of Section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (Act V 1898).

For the purpose of any enquiry, the Commission may require undertakings to produce all relevant documents which may be necessary for the purpose of the Competition Act to be examined by an officer of the Commission. It may also require an undertaking to give any other information that may be in the undertaking's possession as required to fulfil the purposes of the Competition Act.

Under Section 37 of the Competition Act, the Commission may conduct enquiries on its own initiative, on a reference made to it by the government or on a complaint received in writing from an undertaking or association of consumers. After conducting these enquiries, the Commission shall initiate proceedings against the concerned undertakings if it finds it necessary in the public interest to do so.

Standing

With respect to appeals against orders of the Commission, according to the Competition Act, a person 'aggrieved' by an order of the Commission can submit an appeal to the Appellate Bench or Competition Appellate Tribunal as the case may be.

Standard of proof

The standard of proof in civil cases is based on the 'balance of probabilities' and is 'beyond reasonable doubt' in criminal cases.

Class actions

There is no restriction to class actions pursuant to the Competition Act. For an example of a class action case, see *the matter of Defence Housing Authority*,²⁶*Lahore ('DHA') and Wateen Telecom Limited*²⁷ above at paragraph 3.1.

Limitation periods

A person aggrieved by an order of the Commission is required to submit an appeal to the Appellate Bench of the Commission within 30 days of passing of the order.

A person aggrieved by the order issued by the Appellate Bench of the Commission may then appeal to the Competition Appellate Tribunal within 60 days of communication of the order given by the Appellate Bench of the Commission.

A person aggrieved by an order of the Competition Appellate Tribunal may then appeal to the Supreme Court within 60 days.

Costs (funding, settlement, contingency fee structures)

Pursuant to the Rule 28 and Schedule 1 of the Rules, the cost for filing of memorandum of appeal is PKR 50,000, for each issue of summons is PKR 500 and for filing an application for interim relief is PKR 25,000.

With respect to settlement, it may be noted that if all the parties to an appeal agree to settle the proceedings, they may request the Appellate Bench to make a consent order under Rule 23 of the Rules.

²⁶Defense Housing Authority established by virtue of Chief Executive Order No. 26 of 2002 is a statutory housing and is an undertaking in terms of clause (q) of sub-section (1) of section 2 of the Competition Act

²⁷Wateen Telecom (Pvt.) Limited is a company, incorporated under the Companies Ordinance 1984 and is an undertaking in terms of clause (q) of sub-section (1) of Section 2 of the Competition Act.