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**THE GOALS OF COMPETITION POLICY – Contribution from Pakistan**

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More documentation related to this discussion can be found at: [oe.cd/gcp](https://oe.cd/gcp).

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## *The Goals of Competition Policy*

### - Contribution from Pakistan –

#### 1. Introduction - Pakistan's Economic Challenges and the Overarching Goals of Competition Policy

1. UNCTAD's 2012-13 **Peer Review** of Pakistan said “*CCP struggles against the difficulties that often challenge competition agencies in economies with a long tradition of strong government control, including a deficient public understanding of competition policy, slow judicial review organs and incomplete support from other parts of the Government, mainly translated into the lack of adequate financial autonomy.*”<sup>1</sup>

2. Although the crucial matter of the COMMISSION'S financial autonomy has been resolved after protracted discussions with key stakeholders in October 2020, other areas identified in the peer review remain valid. In 2020, the PAKISTAN INSTITUTE OF DEVELOPMENT ECONOMICS (PIDE) said “Government's footprint on the economy in Pakistan is more than what annual general government spending (22 percent of GDP) suggests. Apart from this quantum of spending, about 200 State Owned Entities, [Statutory Regulatory Order] SROs culture and cumbersome business regulations combine in a footprint of the government amounting to approximately **67 percent** on Pakistan's economy.”<sup>2</sup> In short, the government has an impact on 2/3<sup>rd</sup> of Pakistan's economy in one way or another. The degree of government involvement in most markets ranging from agriculture to manufacturing, from retail to transport and from trading to construction is **high**. Government is a player as well as a competitor in many of these markets, making it difficult to define a transparent competitive market. It remains dominant because of its easy access to taxpayers' funds and limits entry and competition.

3. UNCTAD's 2012-13 **Peer Review** summarised these challenges when it said “In the coming years, CCP will face difficult choices in deciding how best to facilitate a *basic transformation of the economy* in Pakistan. The economy is a mix of an older regime of industries owing their stature to political choices and a newer, private sector regime shaped by competitive forces. The role of CCP is to encourage the development of the latter – to *support the emergence of a private sector free from old political and economic oligarchies...* by applying competition law in a professional, autonomous manner without regard to the origin and control of the enterprises subject to its authority.”<sup>3</sup>

4. For Pakistan, sustainable economic growth is a priority, and the goals of competition policy must support this broader objective. Both unemployment and the debt burden will continue to rise, **making growth a challenging objective**. Any useful growth strategy must first address how resources can be (i) **re-allocated broadly across sectors**, specifically from low- to high productivity sectors (ii) re-allocated **within sectors** to more **productive firms**, and (iii) re-allocated within firms, towards more **innovative or higher-**

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<sup>1</sup> Para 71, UNCTAD 2013, Overview of [Voluntary Peer Review of Competition Law and Policy: Pakistan](#)

<sup>2</sup> PAKISTAN INSTITUTE OF DEVELOPMENT ECONOMICS, [Estimating the Footprint of Government on the Economy](#), abstract, pg (v) PIDE Working Papers 2020:26

<sup>3</sup> Fn 1, Para 4

**quality products** and more **efficient production processes**. This transition can be steered via competition.

5. For this transition, **market competition** is important as is **market contestability**,<sup>4</sup> *i.e.*, the ease (or lack of it) with which entrants can enter, operate, and challenge the position of large incumbents explains much of the distortions in the economy. Many sectors in the economy are **protected** from foreign competition by restrictive investment and trade policies. Domestic competition is also obstructed by the presence of many SOEs, legal challenges to the enforcement of competition rules, and distortive policies that protect special interest groups or accord direct or indirect advantages to connected incumbents.

6. Thus, for Pakistan, **protecting** and **promoting competition** as the primary method by which its economy allocates scarce resources to maximise growth is a key principle. Competition is our fundamental national economic priority, offering as it does the only alternative to possible collusive behaviour (cartelisation) or governmental participation in large portions of the economy [fn 2]. In recognition of this, the competition principle of ensuring **competitive neutrality** in Pakistan’s State-Owned Enterprises has been placed in the forthcoming SOE (OPERATIONS AND GOVERNANCE) ACT, currently under review in the Parliament.

## 2. The Broader Goals of Competition Policy

7. Firms should win market power lawfully through their own efforts. Competition law must make sure that markets remain open and contestable for others as well. This requires using law and legal institutions to achieve compatibility between individual incentives and economic growth.

8. There is an embarrassment of riches as to why and how competition policy and law enforcement can promote economic development in countries.<sup>5</sup> But to distil all that research into one word, it would be **productivity**. Productivity is a factor of labour, capital formation, corporate governance, education, competition, *etc.* The key factor putting all these together is competition. William Lewis said, “*Economic progress depends on increasing productivity, which depends on undistorted competition.*”<sup>6</sup>

9. Competition law is the study of competition. It is a body of law that tries to assure competitive markets through the interaction of sellers and buyers in the dynamic process of exchange. The promotion of competition by restraints on monopoly and collusive behaviour clearly emerges as the **first key goal** of competition law.

10. Competition laws are based on the premise that an unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest possible quality, and the greatest material progress, while providing an environment conducive to the preservation of our economic, political, and social institutions.

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<sup>4</sup> OECD Glossary of Statistical Terms, online at <https://stats.oecd.org/glossary/detail.asp?ID=3178>. See also definition of contestable markets in Economics Online UK at [https://www.economicsonline.co.uk/business\\_economics/contestable\\_markets.html/](https://www.economicsonline.co.uk/business_economics/contestable_markets.html/)

<sup>5</sup> As an example, see World Bank, Viewpoint Note Number 331, [Competition Policy: Encouraging Thriving Markets for Development](#), 2013

<sup>6</sup> William Lewis, *The Power of Productivity: Wealth, Poverty, and the Threat to Global Stability*, 2004

11. Whatever the motive, consensus exists that certain business conduct prevents competition and thwarts the functioning of free markets. Thus, the responses are generally similar regardless of the developed or developing nature of the economy.

12. Competition can be and is affected by issues of **dominance** or **prohibited agreements** that distort or eliminate competition. **Mergers** and **acquisitions** can result in market power that can be abused or can reduce the number of players facilitating cartelisation. Thus, competition goals are applicable in all economies and there is remarkable similarity in these goals globally.

13. Competition in domestic markets affects the international competitiveness of national firms. Firms typically acquire many of their inputs – transport, energy, telecommunications, financial services in local markets. If these upstream markets lack competition, goods and services needed for production are not priced competitively. As a result, firms may be less competitive than their foreign rivals and domestic GDP growth may suffer. Reforms to open key markets to competition have boosted productivity and growth.<sup>7</sup>

14. Generally, **consumer protection issues** are similar in both developing and developed countries. These can be broadly classified as “marketing,” “trade,” “labelling,” and “safety” concerns.

### 3. Pakistan’s Competition Regime

15. Pakistan’s latest competition law, the COMPETITION ACT, 2010, is a modern and progressive piece of legislation in line with international best practices as it (i) adopts a system that prohibits any **abuse of dominant position** and **anti-competitive agreements** while requiring compulsory pre-clearance of **mergers** and **acquisitions** that meet certain thresholds and (ii) **establishes** the COMPETITION COMMISSION OF PAKISTAN as an administratively and operationally **independent enforcement body** with quasi-judicial functions, subject to appeal to the Superior Courts.

16. The updated competition law regime, initially under the COMPETITION ORDINANCE, 2007, and subsequently under the COMPETITION ACT, 2010 was inspired by the principles of the **Treaty of Rome**<sup>8</sup> and collates best practices from instruments such as the **United Nations Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (UN SET 1980)**,<sup>9</sup> and various **OECD recommendations** and **best practices**<sup>10</sup> on competition law and policy.

17. Pakistan’s competition regime comprises of a competition policy framework that includes: (1) a **modern enabling law**; (2) specific **rules** and **regulations** to make the law operational; (3) **guidance** for corporate behaviour; (4) **education** and **empowerment of consumers**; (5) pro-competition public policy **advocacy**; and (6) a professional **autonomous institution** to enforce the law. Since 2007, Pakistan has had both the **hardware** (CCP) and **software** (RULES, REGULATIONS, and GUIDANCE<sup>11</sup> documents) for both law and policy **enforcement** and **advocacy**.

<sup>7</sup> Fn 5

<sup>8</sup> Emily Allen, [What is the Treaty of Rome?](#), The Telegraph, U.K., 24 March 2017

<sup>9</sup> Available at <http://unctad.org/en/docs/trbpcconf10r2.en.pdf>

<sup>10</sup> OECD, [Recommendations and Best Practices on Competition Law and Policy](#)

<sup>11</sup> In December 2016, the Commission released its [Guidance on Competition Compliance](#), an easy to understand document on the dos and don’ts of Pakistan’s competition law.

18. The COMPETITION ACT, 2010:
- does not seek to curb or reduce a dominant position. Instead, it *addresses abuse of dominance*. The law indicates a certain minimum market share for a presumption of dominance – 40% – but this presumption (or finding) of dominance does not lead to any suggestion that it is being abused. Depending on facts, the ACT does not rule out either dominance or its abuse at lower levels of market share if any undertaking (or undertakings in matters of collective dominance) could behave independently of their competitors, customers, consumers, or suppliers to an appreciable extent.
  - prohibits any **agreement** that reduces competition within the relevant market if it is “unreasonably restrictive” regardless of whether it has taken effect or not.
  - stipulates an elaborate procedure for **review** and **clearance** of **mergers** and **acquisitions** that meet the thresholds.
  - allows officers to **enter** and **search** any premises, using forcible entry if need be, under appropriate safeguards provided in the law. It also has a provision for **leniency**.
  - allows for **higher penalties**. *i.e.*, 10% of turnover or PKR 75 million (approx. \$ 333,333).<sup>12</sup> The CA 10 allows the COMMISSION to penalise not only any breach of the competition law but also any disregard of its orders. The COMMISSION is also able to recover penalties through a variety of means.
  - can conduct **market studies** for promoting competition in important sectors of the economy and **advocacy** through various means other than enforcement to create awareness of competition issues and to promote a culture of competition. Advocacy has encouraged the COMMISSION’s interface with sector regulators that regulate competition in varying degrees in their respective sectors.
19. But beyond these enablers, a **principle-based approach** in the application of the law has allowed the COMMISSION to keep a strong focus on Pakistan’s competition policy goals. Principles have **universal applicability** regardless of whether the economy is an emerging one or a developed one. The key principles that have helped Pakistan are:
- **Integrity** in the **application** of the law: This includes (1) a **collegiate body** of Members possessing integrity, stature, ability, substantial experience and (collectively) a range of relevant expertise; (2) **transparency** and **speed** in the investigation of serious infractions without undue burdens on individuals and businesses; (3) **public proceedings** with safeguards for proprietary information (usually redacted in public domain documents); (4) **published decisions** subject to review on appeal;<sup>13</sup> and (5) **annual reporting** based on third party audits;
  - Non-discrimination and fairness: The COMPETITION ACT’S **non-discriminatory** approach shows predictability in interpretation and supports **transparency**, **accountability**, and **confidence** in its application. Any competition authority wanting to develop and maintain **credibility** and **acceptability** of the law must ensure fairness and above all, procedural fairness;

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<sup>12</sup> At the exchange rate of US\$1=PKR225 (October 2022 approximate exchange rate)

<sup>13</sup> Publishing inquiry reports and Orders on the Commission’s website can help firms lower the chances of engaging in prohibitive conduct, saving time and resources.

- **Protection of competition**, not competitors: Any assessment of competition is **tolerant** of **firm growth** and **market power** resulting from **efficient** use of **resources** and **innovation** without any anti-competitive tactics or favours;
- **Facilitating business**: Competition law needs to be viewed as **pro-business**, **pro-growth**, and **supportive** of business, not a compliance or regulatory hindrance. It should promote consumer welfare without hampering the everyday business activity; and
- A co-ordinated approach for a pro-competition policy perspective: Implementing the CA 10 depends on both citizens and business entities bringing forward **complaints**. This requires openness. Co-ordination and information exchange is required with **other public agencies** and **regulatory bodies** that implement government policies, as well as with the relevant ministries analysing and making public policy that impacts the competition landscape. To assist this co-ordination, the COMMISSION has started signing MoUs with key sector regulators.

20. The COMMISSION sees enforcement and advocacy as necessary complements in achieving a competitive market economy. There may be trade-offs between enforcement and advocacy, and while both are imperative, enforcement that relies on sound evidence is, in Pakistan's experience, the best advocacy tool that provides a level of clarity of how competition is affected and how distortions in the *process* of competition can be addressed.

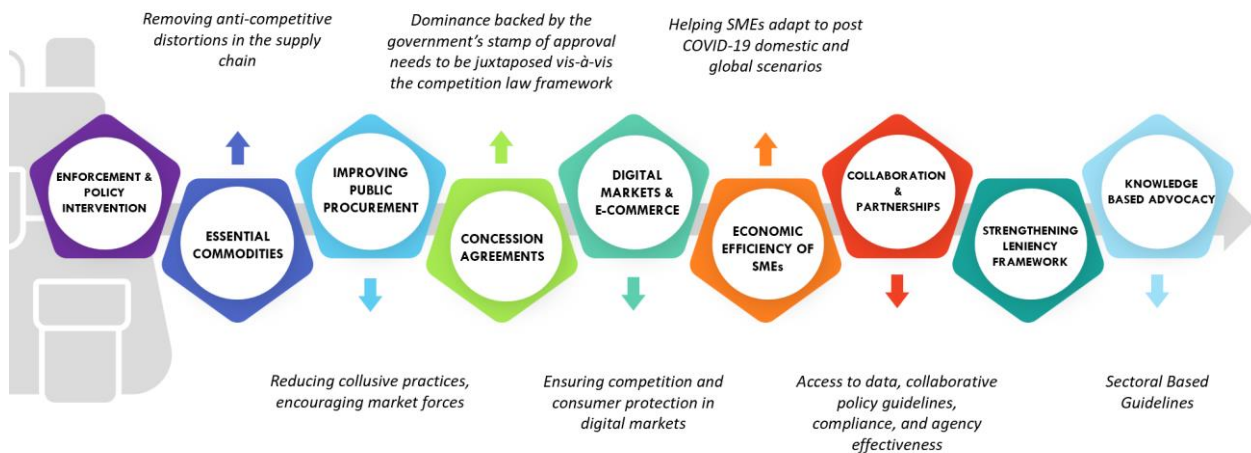
#### 4. Converting Principles to Action: Strategic Framework 2020-23

21. The sectoral focus of strategic activities includes essential commodities and addressing distortions in their supply chains, making public procurement more competitive by tackling bid rigging, developing appropriate guidelines for granting concessions competitively to improve the public-private partnership framework, ensuring both competition and consumer protection in digital markets, and helping Pakistan's SMEs address the aftermath of COVID-19.

22. The COMMISSION's current strategic plan encompasses its principles under **three broad parameters**, *i.e.*, enforcement & policy interventions, knowledge-based advocacy, and collaboration & partnerships. In line with its strategic goals, the COMMISSION will build close relationships with partners to ensure that Pakistan's competition and consumer protection regimes can achieve maximum possible benefits with minimal regulatory duplication or burden on business.

23. Although the COMMISSION will take enforcement action against firms that violate either competition or consumer protection law, it realises that many firms *want* to comply with the law but do not know how to take the first steps towards compliance. At the same time, strategic outreach will increase consultation and collaboration to minimise competitive distortions by advocating for a form of regulation that is, nonetheless, still consistent with valid regulatory objectives. Hence, the inclusion of knowledge-based advocacy and collaboration and partnerships with important stakeholders.

Figure 1. Strategic Framework of Activities 2020-23, Competition Commission of Pakistan



## 5. In Conclusion

24. The COMMISSION agrees with the STATE BANK OF PAKISTAN when it says that “Pakistan’s economy needs a fundamental rethinking with respect to its regulatory structure: while a deliberate push might be needed to encourage export orientation, investments, and ensuring food and energy security in the country, this may not necessarily require direct interventions and heavy regulation by the public sector institutions. Furthermore, even when government interventions are deemed necessary, such policy actions must not go beyond the initial objective of guiding business activities along a more sustainable and competitive growth direction. If prolonged, there is a danger that dependence on public sector involvement may become a permanent characteristic of that industry/structure. In the long run, the role of public sector should be confined to addressing market failures through structural reforms and providing a broader institutional support to businesses.”<sup>14</sup>

25. And finally, **consultation** with those most affected by regulatory burden and complexity is important. While the COMMISSION is a regulator, relying solely on **government** to resolve economic and societal problems is not enough. Encouraging good business conduct is the responsibility of the COMMISSION and thus, it is also the responsibility of **businesses** to consider how they can ensure compliance with rules and of **consumers** to see how they can educate themselves to protect themselves from harm. Good policy recommendations cannot happen without soliciting the viewpoint of business entities, associations, and those most affected by Pakistan’s often-times inconsistent regulatory milieu.

<sup>14</sup> State Bank of Pakistan, The State of Pakistan's Economy - Second Quarterly Report 2019 – 20, pg 110, <http://www.sbp.org.pk/reports/quarterly/fy20/Second/Complete.pdf>