



The separation in 1947 of British India into the Muslim State of Pakistan¹ (with two sections, West and East) and largely Hindu India was never satisfactorily resolved, and India and Pakistan have fought two wars – in 1947-48 and 1965 – over the disputed Kashmir territory. A third war between these countries in 1971 – in which India capitalised on Islamabad’s marginalisation of Bengalis in Pakistani politics – resulted in East Pakistan becoming the separate nation of Bangladesh. The dispute over the State of Kashmir is ongoing, but recent discussions and confidence-building measures may be a start toward lessened tensions.

Economy

Since 1947, Pakistan has maintained a mixed economy, wherein both the private and public sectors played an important role to generate growth, supply consumer goods and services, and provide employment opportunities. The involvement of the public sector was considered crucial to kick start economic growth and make investments in the sectors in which the private sector had little incentive or capacity.

However, this resulted in significant market share of the public sector in commodity production and service provision. In fact, public monopolies emerged in a number of key sectors, such as postal services, telecommunications, electricity sector and railways. The participation of private enterprises in these sectors has consistently remained minimal.

In the 1960s, Pakistan vigorously pursued a policy of industrialisation. Although the public sector was assigned an important role in the industrialisation process, parallel emphasis was put on competition through private sector participation in economic activities in specific sectors. Nevertheless, all this had very limited potential to produce meaningful competition, as the relevant initiatives were planned and implemented within the then dominant ‘trickle-down’ policy framework.

PROFILE

Population:	148.4 million***
GDP (Current US\$):	68.8 billion***
Per Capita Income: (Current US\$)	470 (Atlas method)*** 1,940 (at PPP)**
Surface Area:	796.1 thousand sq. km
Life Expectancy:	60.8 years**
Literacy (%):	41.5 (of ages 15 and above)
HDI Rank:	142***

Sources:

- World Development Indicators Database, World Bank, 2004
- Human Development Report Statistics, UNDP, 2004

(**) For the year 2002

(***) For the year 2003

The economic policies and the regulatory mechanisms aimed to produce concentration of wealth with the assumption that it would lead to economic growth, which would ultimately benefit all sections of society through a trickle-down process.

As desired, the concentration of wealth did come about by the end of 1960s. It was evident from the fact that 66 percent of the industrial assets and 87 percent of the banking and insurance assets in the country were owned and controlled by only 22 families.

Competition Evolution and Environment

The concentration of wealth in the economy in the 1960s, and the failure of making high growth benefit the larger sections of society had a significant political backlash. People of the then East Pakistan (now Bangladesh) had felt excluded from the economic growth.

Similarly, a vast majority in Pakistan realised that a tiny privileged elite had cornered the benefits of growth. This feeling significantly contributed to the political agitation

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1 <http://cia.gov/cia/publications/factbook/geos/pk.html>

that resulted in the expulsion of President Ayub Khan from power in late 1960s, and the later unrest and feelings of alienation in East Pakistan.

These developments pushed the Government to realise the importance of keeping a balance between the policy objectives of rapid capital formation and economic development, and social justice and consumer protection. It was realised that the conflict between the aims of economic growth, social development and consumer protection could be partly reconciled through the adoption of a competition law.

Competition Policy and Law

In consideration of the above, the Government of Pakistan circulated a draft Anti-monopoly and RTPs Law for feedback of stakeholders and public opinion in 1969-70. This was followed by the promulgation of the Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance (MRTPO) in February 1970. The MRTPO is aimed to provide measures against ‘undue concentration of economic power,’ ‘monopoly power’ and ‘restrictive trade practices.’

The salient features of this law are as follows:

- It extends to the whole of Pakistan; and
- Undue concentration of economic power, unreasonable monopoly power or unreasonable restrictive trade practices are prohibited therein. The law also defines these situations and provides a mechanism for prohibiting the occurrence of these situations.

Box 25.1: Constitutional Provisions Regarding Competition

The Constitution of the Islamic Republic of Pakistan enshrines the following provisions with respect to competition:

Article 38: It is incumbent on the federation, *inter alia*, to “secure the well-being of the people, irrespective of sex, caste, creed or race, by raising their standard of living, by preventing the concentration of wealth and means of production and distribution in the hands of a few to the detriment of general interest”.

Article 151(1): Subject to Article 151 (2), trade, commerce and interaction throughout Pakistan shall be free.

Article 151(2): Parliament may impose such restrictions on the freedom of trade, commerce or interaction between once province and another, or within any part of Pakistan, as may be required in the public interest

The Constitution of Islamic Republic of Pakistan, 1973

- A Monopoly Control Authority (MCA) is to be constituted to administer the law.
- A penalty of Rs100,000 (US\$1725 approximately) can be imposed for violation of its provisions and non-compliance with the orders of MCA. In case of continuing failure to comply with the orders of the Authority, an additional penalty of Rs10,000 (US\$172 approximately) may be imposed for every day after the first. The decisions of the MCA are challengeable in High Courts.

Under the Pakistan Peoples’ Party Government in the 1970s, the so-called ‘Islamic socialism’ became the dominant ideology behind the economic policy of Pakistan. Its most visible manifestation was the nationalisation of a large number of private enterprises. This development restricted the scope of the MRTPO almost immediately after it was adopted. It is largely because the role of private sector was restricted, whilst the MRTPO had no jurisdiction regarding public sector organisations. In the second half of the 1970s and 1980s, the MCA played a significant role in informing the Government’s de-nationalisation policy and ensuring, through diversification of ownership of capital resources and undertakings, that monopolistic situations were avoided. Since the 1990s, Pakistan has witnessed rapid deregulation, privatisation and trade liberalisation, which have necessitated changes in the MRTPO (1970).

Monopoly Control Authority (MCA)

The MCA was established to administer the competition law of the country i.e. the MRTPO. It has the status of an autonomous and a quasi-judicial body. The administrative structure of the MCA is divided into four sections: (1) Research and Investigation, (2) Registration, (3) Information Management System, and (4) Administration. It comprises three members, including the Chairman, each appointed by the Federal Government for a term of five years.

The main functions of the Authority include:

- to register undertakings, individuals, and agreements;
- to conduct enquiries into the general economic conditions of the country, with particular reference to the concentration of economic power and the existence or growth of monopoly power and restrictive trade practices;
- to conduct enquiries in individual cases; and
- to give advice to persons or undertakings.

The MCA collects information about relevant situations and cases under the Supply of Information Rules 1995 for the purpose of enquiries. For long, MCA’s investigation methodology was asset-based. However, in view of the market liberalisation and the implications of WTO obligations, its methodology has now shifted to market-based investigations. The analysis-based findings of the

Box 25.2: Genesis of Competition Law in Pakistan

1960s	Concentration of wealth and formation of monopolies in Pakistan as a result of the singular focus of the Government policies on growth and the belief that its benefits would automatically 'trickle down' overtime.
1965-70	Concentration of wealth in the hands of 22 families became a major political issue.
1968-69	Draft Anti-monopoly and Restrictive Trade Practices Law circulated by the Government for public opinion.
1970	Monopolies and Restrictive Trade Practices Ordinance (Control and Prevention), 1970 promulgated.
1970	Monopoly Control Authority (MCA) established to administer the Competition Law.
1971	The Ordinance came into force.
1971	Monopoly Control Authority Rules formulated and notified.
1972-77	Government's nationalisation drive, which restricted the MRTPO scope.
1980s	Status of the MCA as an independent body reduced to a department of the Corporate Law Authority (CLA).
1990s	Rapid deregulation and setting up of sectoral regulators.
1994	MCA de-linked from CLA and independent status restored.
2002	MCA drafts new competition law and invites comments of consumer groups and other stakeholders.
2004	Competition Law under review by foreign consultants.

Authority are set out in the form of reports and Orders of the Authority.

In theory, the Federal Government cannot give directions, and hence has no interference with the functions of the Authority. However, the orders of the Authority can be appealed before the High Court. MCA has the powers, under the MRTPO, to issue General Orders for enhancing the scope of the law, according to specified procedures. This provides a space for covering situations which are not defined in the Law.

The MCA has dealt with a large number of cases since its establishment. However, it was not until the 1990s that it became more active and assertive in carrying out its

functions. In 1997-98, the MCA examined 500 cases. In over 50 cases, appeals and writ petitions were filed in the High Court and the Supreme Court against the orders of the MCA.

In view of the constraints imposed by the new economic environment and inadequacies of the MRTPO, the MCA drafted a new law in 2002. Later, it invited comments of consumer groups and other stakeholders in order to replace the MRTPO with a new and modern competition law. The Government, however, has been reluctant to accept such suggestions. It is for numerous reasons including a general tendency in the Government to resist the emergence of autonomous bodies like MCA and the perception that an effective competition law may discourage investment in the country.

In addition to the MRTPO, there are a number of laws and institutions, which have a role to play in promotion of market competition and prevention of unfair trade practices. For instance, the consumer protection laws in the Islamabad Capital Territory (1995), the NWFP (1997) and Balochistan (2004) enshrine provisions for prevention of unfair trade practices as well as consumer awareness through rights, such as the right to information and choice. Although these laws have the potential to contribute to promoting market competition, they are not operational due to apathy of the Government.

Sectoral Regulation

As an integral part of its liberalisation and privatisation policy, the Government of Pakistan has established a number of sectoral regulators. These regulators include the State Bank of Pakistan in the banking sector, the Securities and Exchange Commission of Pakistan (SECP) in the non-banking financial sector, the National Electric Power Regulatory Authority (NEPRA), the Oil and Gas Regulatory Authority (OGRA), the Pakistan Telecommunication Authority (PTA), the Pakistan Electronic Media Regulatory Authority (PEMRA) and the Pakistan Standards and Quality Control Authority (PSQCA).

These newly established regulators have now the exclusive mandate to promote competition in their respective sectors. As a general rule, the Monopoly Control Authority (MCA) has no jurisdiction on economic activities where sector-specific regulatory bodies have been established. This situation has been a subject of serious criticism by a number of civil society organisations and independent commentators.

They argued that the MCA, which is a specialised competition authority, must retain its jurisdiction across sectors with a focus to promote and ensure competition. It is because the sectoral regulators often have too many issues to deal with; and do not necessarily have the capacity

Box 25.3: Cartel of Cement Manufacturers and Action by the MCA

In October 1998, cement manufacturers in Pakistan increased the price of 50-kg bag by Rs100 from Rs 135/bag to Rs 235/bag. Taking a note of this situation, the MCA initiated a special enquiry into the causes of the price increase. The All Pakistan Cement Manufacturers Association (APCMA) informed the MCA that the price increase was due to higher taxes and cost of inputs.

However, the MCA enquiry found that there was no increase in the costs of inputs, except a marginal increase in electricity tariffs, whereas the level of taxation had actually been reduced. The enquiry established that the price was increased to reap undue profit, under a tacit agreement among the manufacturers through cartel formation against the public interest.

The Authority passed an order to break the cartel and revert to the price level which preceded the price increase. The cement manufacturers were also directed to deposit Rs4.25bn, as earned through the unfair price increase, in the Baitul Mal, so that it could be reimbursed to consumers against verifiable claims.

Furthermore, it imposed a fine of Rs100,000 on each individual unit, and in case of continued non-compliance, another Rs10,000 per day.

However, the cement manufactures refused to lower the prices and challenged the order of the Authority in the High Court and obtained stay orders. The controversy lingered on for a while, until the Ministry of Commerce intervened and persuaded the MCA, despite its theoretical independence, to close the case.

In the meanwhile, it held negotiations with cement manufacturers, lowered the excise duty and fixed the price of a 50 kg bag at Rs 200. The factors which contributed to the non-implementation of MCA's decision included (1) resistance by the powerful cement manufacturers lobby, which includes even the military enterprises like Fauji Cement, (2) lack of countervailing pressure from consumers, and (3) perception in the Government that the implementation of MCA's decision may lead to closing down of cement manufacturing units, which may result in decreased economic growth and public revenues.

to deal with competition issues. They have also proposed the option that MCA and the respective regulators may be made jointly responsible to deal with competition related concerns. This is considered as the most viable suggestion in view of the fact that such an arrangement would allow the resource-constrained regulators to pool their capacities and resources to produce effective, competent and socially desirable regulation. Government, however, has not paid any heed to such demands from the civil society thus far.

Telecommunications Sector²

Liberalisation is required in network industries such as telecommunications to promote healthy competition for improved productivity, wider consumer choice and lower prices. Even greater is the need to provide basic necessities of life such as health care, education, security and employment. Communications is today ranked as a top-level basic need for the sustainable development of the people. Telecommunications, therefore, play a vital role to develop ICT competencies at the global level, bringing access to an unlimited resource and human activities just a push button away.

Currently, the telecom sector is regarded as a sector where local and foreign investment rate has been highest. During last two years, higher growth of this sector has set the course for a profitable business for investors and perpetual convenience for consumers. With the coming of new

companies in this sector, consumers are enjoying more facilities and accessibility. Healthy competitive environment of the cellular mobile phone sector has a very positive impact over the market.

With the adoption of the Deregulation Policy, the Pakistan Telecommunication Authority (PTA) was assigned the job of its implementation. Thus after a transparent bidding process, licenses have been issued to two new international cellular mobile phone companies including Telenor of Norway and Alwarid of UAE. Both these companies have paid an amount of US\$291mn and an investment of more than Rs two billion is expected over the next few months. Recently, an amount of more than Rs 14 billion has been invested in this sector through the issuance of licenses for Long Distance International (LDI), Fixed Local Loop (FLL) and Wireless Local Loop (WLL) and a large number of reputed national and international companies participated in the auction for Wireless Local Loop.

The PTA has successfully completed the first phase of telecom deregulation through a transparent and well-defined regime. During this phase, a total of 265 licenses were issued including 12 LDI, 73 FLL and 180 WLL licences. Now, as different companies have obtained licences, the PTA is making its best efforts to ensure that licensees may start their businesses as soon as possible, so that a larger number of population may benefit from these

² pta.ire-s.com/index.php?option=com_content&task=view&id=515&Itemid=558&catid=95 - 81k

modern sources of communication and particularly residents of rural and far-flung areas might be able to take the advantage of these state-of-the-art communication and information services.

Keeping in view the significant number of companies licensed, it may be presumed that the entry of these companies will lead to a highly competitive market with an outcome of wide range of choice for customers. Similarly, this huge investment would also create countless job opportunities.

The PTA is playing a pivotal role for the development of telecom sector and provision of better services to the users. It was established in January 1996 and its functions and responsibilities range from the establishment of telecommunications systems to the provision of telecom services and their maintenance.

During the recent deregulation process, the Authority has performed its duties very well. Procedures adopted by the PTA for auction of licences are regarded as very transparent and standardised. Its role does not end with the issuance of licences rather it is also responsible to provide a level playing field to the investors and to protect the rights of users.

Consumer Protection

The consumer protection scenario in Pakistan is not very bright for consumers, since they are very often provided with low quality, unsafe and hazardous goods and services. There exist many laws, both federal and provincial, which separately deal with different sectors of economic activity and consumer transactions. In addition, two consumer acts were passed in Pakistan in 1990s. These included the Islamabad Consumer Protection Act, 1995; and the NWFP Consumer Protection Act, 1997. Their coverage is restrictive and penalties given are inadequate.

The Consumer Rights Commission of Pakistan (CRCP), an NGO, has introduced a Model Consumer Protection Act for Pakistan. The Model Act provides legal protection for the consumer, the promotion of fair commercial practices, speedy redress of consumer complaints, promotion and protection of interests of consumers, consumer welfare and matters arising out of or connected therewith. CRCP's mission is to articulate and promote the interests and rights of consumers at all socio-economic levels, and facilitate the emergence of an organised consumer movement in Pakistan.

Another active consumer group is The Network of Consumer Protection in Pakistan, which too has been lobbying for a stronger consumer protection regime.

Concluding Observations and Future Scenario

In recent years, Pakistan's economy has witnessed rapid transformation in terms of market liberalisation, deregulation and privation. Deregulation and falling trade barriers have led to increased prospects of the emergence of private monopolies through a process of M&As.

Although scientific data about the monopolistic and restrictive trade practices or situations is not readily available, a number of indicators suggest that such a problem exists and may be gradually worsening. For instance, the stock market is dominated by 10 companies, which account for 69 percent of the total turnover of the market.

As stated above, the existing competition legislation in Pakistan has become outdated, as it is not compatible with the changing realities in the market. This necessitates an across-the-board review of existing legal framework and appropriate amendments in the competition law. Some of the areas that need attention are as follows:

- The scope and objectives of the MRTPO need to be redefined in order to make them broad-based and comprehensive. The law, in its existing form, applies only to private firms and does not cover the public sector companies. These companies should be brought under the ambit of the law;
- The penalties, which can be imposed under this law for non-compliance with orders of the MCA, are very low. Enterprises find it much easier to pay the penalty, instead of complying with the orders of the MCA. The penalty should be increased so that it could have a deterrent effect;
- The law does not provide for compensation, if harm is done due to a situation or undertaking, which is prohibited under the competition law. The law should provide for compensation to affected consumers and parties;
- The functions of the MCA are to conduct enquiries, give advice and make recommendations. It is obvious from this provision that it cannot ensure the protection of rights of all stakeholders. To make the MCA more autonomous and independent and give teeth, it is necessary to equip it with necessary powers.
- The procedure to lodge a complaint needs be made simpler and comprehensive. It should be open for any person to lodge a complaint;
- A provision needs to be included in the law, which provides for holding of public hearings in deciding the matters, which may affect the public at large. Such provisions already exist in the laws of other regulators, such as NEPRA, OGRA and PTA etc; and

- There should be explicit provision in the law regarding its overriding effect on any other law with regards to competition issues.

The liberalised and deregulated economic context in Pakistan demands for a more vibrant competition law and

stronger institutional mechanisms for implementation. Efforts are already underway in this regard. However, there is a need for continuous advocacy and capacity building efforts in this area in order to improve the legislative environment and ensure that laws and policies are effectively implemented.

✦ **World Bank Voices Concern about Pakistan**

World Bank (WB) officials have voiced concern about the time it is taking Pakistan's Monopoly Control Authority to convert to a Competition Commission. The draft Competition Law would be approved by the end of 2007.

According to the officials, no progress has since been made. The WB is due to send another delegation to Pakistan in February 2007.

It is vital to give the Monopoly Control Authority the powers that convert it from a price regulator to a fully fledged Competition Law enforcement agency. In the US or Europe, any businessman found guilty of price-fixing is liable for three years' imprisonment, but in Pakistan, the Authority has no such legal power. The proposed Commission will ensure rational commercial conduct and action against the manipulators.

The WB and the Department for International Development (DFID), UK are providing financial support for Pakistan's Competition Law redevelopment process. On completion, current Monopoly Control Authority chairman **Khalid Mirza** will head the Commission.

(Source: Global Competition Review, 05.01.07)

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